

**THE OIL AND GAS EXPLORATION AND PRODUCTION: PROSPECTS AND  
CHALLENGES OF INSTITUTIONS IN ENFORCING COMPLIANCE WITH  
ENVIRONMENTAL LAWS: A CASE STUDY OF UGANDA**

**SHERIFAH NALWANGA**

**REG NO.M20M23/007**

**A DISSERTATION**

**SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS FOR THE AWARD OF A MASTER OF LAWS IN OIL AND GAS AT  
THE INSTITUTE OF PETROLEUM STUDIES KAMPALA IN AFFILIATION TO UCU.**

**AUGUST 2021**

## **DECLARATION**

I, Sherifah Nalwanga hereby declare that I am the author of this dissertation, that any assistance I received in its preparation is fully acknowledged and disclosed in the paper. I have also cited sources from which I used information, ideas or words, either quoted directly or paraphrased. I certify that this dissertation was prepared by me specifically for the partial fulfilment of my Master of Laws in Oil and Gas at Uganda Christian University. This dissertation has not been submitted before to any higher institution of learning for any academic award.

Signed .....

Date.....

**APPROVAL**

This is to certify that, this dissertation entitled “The Oil and Gas Exploration and Production: Prospects and Challenges of Institutions in Enforcing Compliance with Environmental Laws: A Case Study of Uganda” has been done under my supervision and now it is ready for submission.

Signature.....

Associate Professor George W.K.L Kasozi

Date.....

## **DEDICATION**

The dissertation is dedicated to Jesus my saviour, to my beloved mother Ms Lydia Ssemuwemba, to my husband Mr Babukiika Allan and my dear children Asimwe Gabriela and MathewGiovani Ayebare, my niece Namusoke Habibah and Angel Birungi.

## **ACKNOWLEDGEMENT**

I wish to express my profound gratitude to the Office of the Director of Public Prosecutions for the great support towards the completion of my masters of Law in Oil and Gas.

I also wish to express my profound gratitude to my supervisor Associate professor George W.K.L Kasozi for his great mentorship during this research and the support towards my professional development and academic growth generally.

My special thanks go to my mother Ms Lydia Ssemuwemba for the great support and immense love in ensuring that I attain this academic dream. My appreciation goes to my friends as well for the support in this journey.

I also extend my appreciation to my husband Mr Babukiika Allan, my children Asimwe Gabriela, Mathew Giovanni Ayebare and my niece Namusoke Habibah for the understanding,for having to bear with me during the long hours of research that I had to put in this work.

Iam further grateful to all the participants for the information provided to me, this greatly contributed towards the development of this work academically.

I wish to above all give the glory and honour to God for making this possible, without Him all this would not have been possible. I attribute everything to Him.

## TABLE OF CONTENTS

DECLARATION .....	i
APPROVAL .....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
TABLE OF STATUTES.....	xi
TABLE OF CASES .....	xvi
LIST OF ACRONYMS .....	xviii
ABSTRACT.....	xx
<b>CHAPTER ONE: INTRODUCTION AND BACKGROUND.....</b>	<b>1</b>
1.0. General Introduction .....	1
1.1. General Overview of Oil and Gas Exploration and Production Operations .....	2
1.2. Background of Study .....	3
1.3. Statement of Problem.....	6
1.4. Purpose of the Research.....	7
1.5. Objectives of the Study .....	7
1.5.1. Main Objective of Study.....	7
1.5.2. Specific Objectives of Study.....	8
1.5.3. Specific Research Questions.....	8
1.6. Scope of Study .....	8
1.6.1. Content Scope .....	9

1.6.2. Time Scope .....	9
1.6.3. Geographical Scope .....	9
1.7. Significance of the Study .....	10
1.8. Justification of the Study .....	10
1.9. Structure of Dissertation... ..	11
<b>CHAPTER TWO: LITERATURE REVIEW .....</b>	<b>13</b>
2.0. Introduction.....	13
2.1. Factors for Effective Application of Environmental Law. ....	14
2.3.Conclusion .....	22
<b>CHAPTER THREE: . RESEARCH METHODOLOGY .....</b>	<b>23</b>
3.0. Introduction.....	23
3.1. Research Framework .....	23
3.2. Research Design.....	24
3.3. Study Population, Size and Sampling Techniques.....	25
3.4. Data Collection Methods... ..	26
3.5. Questionnaire Design.....	26
3.6. Methods of Data Analysis and Tools.....	27
3.7. Legal Research Method... ..	28
3.7.1. Doctrinal Research.....	29
3.7.2. Comparative Study General Overview and Legal Transplant .....	29
3.7.3. Comparative Study Utilization in this Study .....	30

3.8. Credibility and Validity .....	31
3.9. Limitations.....	32
<b>CHAPTER FOUR: THE LEGAL FRAMEWORK, POLICY AND INSTITUTIONAL FRAMEWORK FOR ENFORCEMENT AND CHALLENGES THEREOF .....</b>	<b>33</b>
4.0. Environmental Crime in the Oil and Gas Industry .....	33
4.1. Pollution.....	33
4.2. General Overview of Environmental Principles with Aspects of Criminal Enforcement .....	35
4.3. Polluter-Pays Principle.....	35
4.4. Principle on Sustainable Development.....	36
4.5. Overview of Environmental Regulation of the Ugandan Oil and Gas Industry on Criminal Enforcement.....	38
4.6. The National Oil and Gas Policy .....	38
4.7. The National Environment Management Policy.....	39
4.8. The Uganda Wildlife Policy .....	39
4.9. The Energy Policy.....	40
4.10. The Uganda National Land Policy.....	40
4.11. The National Water Policy.....	40
4.12. Uganda Forestry Policy.....	41
4.13. Uganda Policy Framework for Industry sector.....	41
4.14. The Constitution of the Republic of Uganda .....	41
4.15. The Water Act.....	42



4.16. The Water Discharge Regulations...	42
4.17. The Petroleum (Exploration, Development and Production) Act...	42
4.18. The National Environment Act...	43
4.19. Petroleum (Waste Management) Regulations...	43
4.20. National Environment (Standards for Discharge of Effluent into Water or Land) Regulations .....	44
4.21. The Office of the Director of Public Prosecutions.....	45
4.22. The Uganda Police .....	45
4.23. National Environment Management Authority .....	45
4.24. Conclusion... ..	46
4.25. Challenges of Criminal Enforcement of Compliance by the ODPP and Uganda Police .....	46
4.25.1. Knowledge of the Oil and Gas Exploration and Production Activities Adverse Effects .....	46
4.25.2. Adequacy of the Criminal Sanctions. ....	47
4.25.3. The Role of the ODPP and the Uganda Police in the Oil and Gas Exploration and Production... ..	47
4.25.4. Support to the ODPP and the Uganda Police in the Criminal Enforcement of Compliance .....	47
4.25.5. Technical Expertise of the ODPP and the Uganda Police .....	48
4.25.6. Trainings of the ODPP and the Uganda Police.....	48
4.25.7. Conclusion. ....	48

<b>CHAPTER FIVE: ENVIRONMENTAL CRIMINAL SANCTIONS: A UK, USA AND UGANDAN COMPARATIVE STUDY .....</b>	<b>49</b>
5.0. Introduction.....	49
5.1. The Environmental Regime of the USA General Overview.....	49
5.2. The UK Environmental Criminal Regime General Over.....	53
5.3. Comparative Study of USA and UK Regimes.....	54
5.4. Enforcement Mechanisms by the USA and UK Environmental Agencies.....	55
5.5. Application of Sufficient Enforcement by USA .....	55
5.6. Application of Sufficient Enforcement in the UK .....	61
5.7. Criminal Sanctions through Criminal Prosecutions Applications .....	63
5.8. Application of Multiple Expert Prosecutors .....	63
5.9. Utilisation of Multiple Expert Prosecutors in the USA .....	63
5.10. Utilisation of Multiple Expert Prosecutors in the UK.....	65
5.11. Tough Sanctions use for Deterrence of Violators .....	66
5.12. USA Tough Sanctions for Deterrence .....	67
5.13. UK Tough Sanctions Application... ..	70
5.14. Corporate Officers Criminal Liability for Pollution Offences... ..	71
5.15. USA Corporate Sanctioning .....	72
5.16. Corporate Sanctioning Application in the UK... ..	75
5.17. Conclusion .....	79
<b>CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS .....</b>	<b>81</b>

6.0. Conclusion...	81
6.1. Recommendations...	82
6.2. Environmental Standards Enforcement Enhancement...	82
6.3. Adequate Criminal Sanctions to Realise Criminal Enforcement of Compliance .....	83
6.4. Trainings of ODPP and Uganda Police Officers .....	84
6.5. Prosecutions Strengthening of Enforcement.....	84
6.6. Uganda Government Commitment.....	86
<b>BIBLIOGRAPHY.....</b>	<b>87</b>
Text books.....	87
Journals... ..	88
Reports... ..	92
News Reports... ..	98
Websites/Web pages... ..	99
<b>APPENDIX.....</b>	<b>102</b>
Interview Guide .....	102

## TABLE OF STATUTES

### International Instruments

African Nature Convention African Convention on the Conservation of Nature and Natural Resources on the 15<sup>th</sup> of September 1968.

ASEAN Agreement on Conservation on Nature and Natural Resources on July 9, 1985<<http://sedac.ciesen.org/entri/texts/asean.natural.resources.1985.html>> accessed 10 December 2018

Bergen Ministerial Declaration on Sustainable Development in the United Nations Economic Commission for Europe (UNECE) Region on the 16<sup>th</sup> of May 1990.

Brundtland Report of the World Commission on Environment and Development, 1987.

Convention on the Protection and Use of Trans boundary Watercourses and International Lakes on 17<sup>th</sup> March 1992.

Convention on the Protection of the Alps (Alpine Convention) on November 7, 1991.

Convention on the Protection of the Marine Environment of the Baltic Sea Area signed in 1992 and entered into force on 17 January 2000. (Helsinki Convention).

Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) open for signature at the Ministerial Meeting of the Oslo and Paris Commissions in Paris on 22 September 1992 and entered into force on 25 March 1998.

International Convention for the Prevention of Pollution from Ships, 1973.

Kyoto Protocol to the United Nations Framework Convention on Climate Chang. 1997.

Rio Declaration on Environment and Development (1992) 31 I.L.M. 876. <<http://www.unesco.org/education/pdf/RIO E. PDF>>accessed 10 December 2018.

## **Ugandan Legislative Instruments**

### **Statutes**

Constitution of the Republic of Uganda, 1995 as amended.

National Environment Act 2019, Acts 5.

Petroleum (Exploration, Development and Production) Act 2013, Act 3.

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

Petroleum Act cap 149, 1957.

Petroleum Supply Act 2003.

The Water Act cap 152, 1997.

Uganda Wild life Act 2019, Act 17.

### **Regulations**

National Environment (Standards For Discharge of Effluent into Water or Land) Regulations, SI No. 144/ 2020.

Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations 14.

Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, SI No.46/ 2016.

Petroleum (Exploration, Development and Production) Regulations, SI No.47/ 2016.

Petroleum (Exploration, Development and Production) (National Content) Regulations, SI No. 44/ 2016.

Petroleum (Refining, conversion, Transmission and Midstream Storage) Regulations, SI No.34/2016.

Petroleum (Spirit) (Marking) (Approval of Marker and Prescription of Fees) Notice, statutory Instrument 149-6.

Petroleum (Spirit) Licensing, Testing and Possession) Rules, statutory Instrument 149-1.

Petroleum (Waste Management) Regulations, SI No.3/ 2019.

Water (Discharge) Regulations, No. 32/ 1998.

### **Policy law**

Energy Policy (2002).

National Environment Management Policy, 1994.

National Oil and Gas Policy, 2008.

National Uganda Policy Framework for Industry Sector (2008) Water Policy (1999).

Uganda Forestry Policy, 2001.

Uganda National Land Policy (2013).

Uganda Wildlife Policy (1999)

### **USA Legislative Instruments**

Act to Prevent Pollution from Ships 1980.

Air Pollution Control Act 1955.

Clean Air Act 1963(as amended in 1990).

Clean Air Act 1969.

Clean Water Act (CWA) 1972.

Deepwater Port Act 1974.

Federal Land Policy and Management Act (FLPMA) 1976.

Marine Protection, Research, and Sanctuaries Act 1972.

Migratory Bird Protection Acts 1918.

Mineral Leasing Act of 1920(as amended in 1947)

National Environmental Education Act 1990.

National Environmental Policy Act (NEPA) 1968.

Oil Pollution Act 1990.

Outer Continental Shelf Land Act 1978.

Port and Waterways Safety Act 1972.

### **UK Legislative Instruments**

Clean Air Act 1993.

Climate Change Act 2008.

Continental Shelf Act 1975.

Criminal Justice Act 2003.

Environment Act 1995.

Environmental Permitting (England and Wales) Regulation 2010.

Environmental Protection Act UK 1990.

Hazardous Waste (England and Wales) Regulations 2005. (S.I. No. 894 of 2005).

Health and Safety at Work Act 1974 (HSWA).

Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (S.I No.147 of 1996).

Offshore Installation and Wells (Design and Construction, etc.)Regulations 1996 (DCR) (SI No.913 of 1996).

Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.(SI No.2055 of 2005).

Oil Pollution Prevention and Control Regulations 2005.

Petroleum Act 1998.

Prevention of Oil Pollution Act 1971.

The Merchant Shipping Act 1995.

Water Resources Act 1991.



## TABLE OF CASES

USA Cases and UK cases

United States v Agosto-Vega 617 F.3d 541, 552-53 (1<sup>st</sup> Cir. 2010).

United States v Philip Morris USA, Inc. 566 F.3d 1095, 1118-119 (DC Cir.2009).

United States v Singh, 518 F.3d 236, 249 (4th Cir.2008).

United States v Jorgensen 144 F. 3d 550, 560 (8th Cir. 1998)

United States v Twentieth Century Fox Film Corp. 882 F.2d 656, 660 (2d Cir. 1989)

United States v Gold 743 F.2d 800, 822-23 (11th Cir. 1984)

United States v Beusch 596 F.2d 871, 877-78 (9th Cir. 1979)

United States v Carter 311 F.2d 934, 941-42 (6th Cir. 1963).

New York Central & Hudson River Railroad Co. v United States (n. 185)

United States v Egan, et al. No. 1:10-cr-00033 (2014)

United States v Shapavalov NO. 1:13-cr-00079-SLR (2013).

United States v Kondratyev NO. 1:13-cr-00080-SLR (2013).

United States v Pacific International Lines NO. 1:13-cr-00019-TFH (2013).

United States v BP Exploration and Production, Inc. NO. 2:12-cr-00292-SSV-DEK (2013)

United States v Mix NO. 2:12-cr-00171-SRD-SS (2013).

United States v Lupera NO. 2:12-cr-002816-SDW (2013).

United States v W \$ T Offshore NO. 2:12-cr-00312-EEF-SS (2014).

United States v Barnett No. 2:12-cr 00378-TC (2014).

United States v Transocean Deep Water, Inc NO. 2:13-cr-00001-JTM-SS (2014).

United States v Colombia ShipManagement GmbH NO.2: 13-cr-00205-SDW (2013).

United States v Nadel & Gussman Rockies LLC. NO. 2:13-CR-00211- ABJ (2014).

United States v CartayaNo.2:13-cr-00219-ABJ (2014).

United States v HarcrosChems., Inc. NO. 2: 14-cr-20070-CM-DJW (2014).

United States v Action Manufacturing Co. NO. 2:14-CR-00224-NIQA (2014).

Huckerby v Elliot [1970] 1 ALL ER 189.

## LIST OF ACRONYMS

- APPS: Act to Prevent Pollution from Ships 1980
- BEIS: Business Energy and Industrial Strategy
- BLM: Bureau of Land management Act (BLM)
- BP: British Petroleum
- CAA: Clean Water Act
- CNR: Canadian Natural Resources
- COPFS: Crown Office and Procurator Fiscal Services
- CWA: Clean Water Act
- DECC: Department of Energy and Climate Change
- DEFRA: Department of Environment Food and Rural Affairs
- DOI: Department of Interior
- DOJ: Department of Justice
- DPP: Director of Public Prosecutions.
- EA: the Environment Agency
- ECS: The Environmental Crimes Section
- EIA: Environmental Impact Assessment
- EMS: Environmental Management System (EMS)
- ENRD: Environment and Natural Resources Division
- EPA: Environmental Protection Agency
- EU: European Union

FLPMA: Federal Land Policy and Management Act of USA 1976

HSE: House and Safety Executive

MMO: Marine Management Organisation

MPRSA: Marine Protection Research and Sanctuaries Act 1972

NAAQS: National Ambient Air Quality Standards

NE: Natural England.

NESHAPs: National Emission Standards for Hazardous Air Pollutants.

NIEA: Northern Ireland Environment Agency

NRW: Natural Resources Wales

NSPS: New source Performance Standards

OCS: Outer Continental Shelf

ODPP: Office of the Director of Public Prosecutions

OECD: Organisation For Economic Cooperation and Development

POTW: Publically Owned Treatment Works

RCRA: Resource Conservation and Recovery Act

SEPA: Scottish Environment Protection Agency

SIPs: State Implementation Plans

SNH: Scottish Natural Heritage

SPCC: Spill Prevention, Control and Counter Measure

UNDP: United Nations Development Program

UNEP: United Nations Environment Program

## **ABSTRACT**

The oil and gas industry is known widely for great benefits. Despite all the known benefits, it causes significant adverse effects to the environment. The adverse effects to the environment manifest in the form of environmental violations hence the requirement for compliance with environmental laws through enforcement by the relevant institutions. Uganda just like other oil producing countries is not unique to these environmental violations. Although Uganda is yet to start production, she has already experienced environmental violations thus the need for enforcement of compliance. To ensure compliance of the oil and gas exploration and production activities with environmental law, it requires the effort of all institutions in enforcement. This has however not been the case as some institutions have been involved in the enforcement of compliance and others such as the Office of the Director of Public Prosecutions and the Ugandan Police have not been able to criminally enforce compliance due to a number of challenges. The failure to address these challenges faced by the ODPP and Uganda Police in criminal enforcement encourages the noncompliance with environmental laws engendering great threats to the environment. The study found that criminal enforcement is important so as to cause deterrence, incapacitate violators and also rehabilitate the damaged environment in the oil and gas exploration and production industry. The study also found that the ODPP and Uganda Police have a role to play and are relevant for purposes of criminal enforcement. The institutions however face various challenges in the form of inadequate criminal sanctions, lack of trainings, lack of the necessary expertise, lack of knowledge, lack of support from the government, this making it difficult to enforce compliance. The study through a comparison of the Ugandan regime with the UK and USA regimes made recommendations to practically solve these challenges. These included; government support to the institutions in the form of funding, tough criminal sanctions, multiple expert prosecutions, multi- disciplinary approaches to investigations and prosecutions; trainings of the officers and utilization of corporate sanctioning.

## CHAPTER ONE

### INTRODUCTION

#### 1.0 General introduction.

The activities of oil and gas exploration and production though known for great benefits, can cause social and environmental impacts. This calls for the need to ensure they comply with environmental laws. The only way to ensure compliance with the environmental laws is through the effective enforcement by all the designated bodies and institutions. In absence of such enforcement, adverse effects will occur to the environment, ranging from effects on the quality of water, air, sound, human beings. The potential effects also include alteration of the biological diversity in the respective areas.

All the above effects can be mitigated by giving careful management attention, ensuring staff is trained, and the activities of oil and gas are monitored. There are five best practices for good environmental management. These include an environmental and social impact assessment, a system of management of rules of procedure that enable the project officers to detect violations and prevent the same, evaluations of performance against the targets, auditing and monitoring and finally coming up with reports of the same.<sup>1</sup> However, the enforcement of compliance is not limited to this only this, it extends to criminal enforcement. Careful management requires applying the national environmental principles and the international environmental conventions, like the Rio Declaration<sup>2</sup> and the Kyoto Protocol.<sup>3</sup>

Uganda has adopted a number of these international conventions and guidelines. These can be seen in the various petroleum laws and environmental laws passed. However, even with the adoption of the best international practices, there have been challenges by the institutions specifically the ODP and the Uganda Police in enforcing environmental law compliance of the oil and gas exploration and production.

---

<sup>1</sup>Alexandra S.Wawryk, Adoption of International Environmental Standards by transitional oil companies: Reducing the Impact of oil operations in Emerging Economies, 20 J. of Energy & NAT, RES.L.402(2002)

<sup>2</sup> Done in Rio de Janeiro, between 3-14 June 1992)

<sup>3</sup>adopted on 11 December 1997

## 1.1 General Overview of Oil and Gas Exploration and Production Operations

It is important to understand the different stages of the oil and gas operations and what is involved in the processes, this will emphasise the need for enforcement. This study focuses on the oil and gas exploration and production operations in Uganda. The operations of oil and gas are taking place in the Albertine Graben region currently, the region is situated in the East African Rift System and this is in the border of the Democratic Republic of Congo and the western border of Uganda. The region of Graben is in kilometres 23,000 squares, in width 45km and 500km long approximately. The operations of oil and gas are generally in three major stages these include; upstream, midstream and downstream.<sup>4</sup>

The activities in the upstream consist of exploration, development and the production stage of the petroleum. During this process there is searching for the accumulation of petroleum, it requires appraisals of wells<sup>5</sup> of the accumulation to determine how much is below the surface area and also make preparation for production if commercially viable.<sup>6</sup> The stage of exploration includes going in search for formations of rocks with deposits of natural gas or oil.<sup>7</sup> Facilities are put in place such as infrastructure for collection, processing and transportation of the crude oil and gas. During the production, the oil that has accumulated is then removed from below the surface of the earth and preparations are made for transportation and for refinery processing of the oil, the natural gas processing is done at the natural gas plant for removal of the impurities.<sup>8</sup> After the end of the cycle of production the abandonment of wells takes effect.<sup>9</sup>

After the upstream, the next stage is the midstream, during which the petroleum commodities such as crude oil and natural gas, and other products such as diesel, gasoline and jet fuel are transported; this is followed by the refining of the oil and the gas conversion. The transportation from the well to the processing facilities is done through oil tankers, pipelines, trucks or

---

<sup>4</sup>USA's Environmental Protection Agency (EPA), 'EPA Office of Compliance Sector Notebook Project Profile of the Oil and Gas Extraction Industry' (Environmental Protection Agency 1999) p.15.

<sup>5</sup>Square Space, 'Overview of The Oil and Gas Exploration and Production Process' (Environmental Management in Oil and Gas Exploration and Production, 2019).

<sup>6</sup>Department of Trade and Industry, 'An Overview of Offshore Oil and Gas Exploration and Production Activities' (Department of Trade and Industry 2001) 4.

<sup>7</sup>Ibid.

<sup>8</sup>International Oil and Gas BMP Project, 'The Development Process' (2019) Intermountain Oil and Gas BMP Project <https://www.oilandgasbmpps.org/resources/development.php> accessed 11 October 2019.

<sup>9</sup>USA's Environmental Protection Agency (EPA), 'EPA Office of Compliance Sector Notebook Project Profile of the Oil and Gas Extraction Industry' (Environmental Protection Agency 1999) p.33

rail.<sup>10</sup>The products are converted into petroleum products for sale, there is also storage of the products at this stage.<sup>11</sup>

The downstream operation is the last stage, it involves marketing, distributing and selling of the petroleum products, the crude oil is refined and the natural gas is processed.<sup>12</sup>These operations are sometimes combined together with midstream operations in some countries and taken as one.

Uganda's commercial petroleum resources were confirmed in 2006, the country's petroleum resources rose from 300 million barrels in 2006 to 3.5 billion in 2010 and 2012. The country by 2016 had 6.5 billion estimated barrels of oil discovered and only 40% of the Albertine Graben area had been explored in 2017. Only 21% of the oil and gas discoveries have been made in Uganda. Uganda has licensed countries such as Tullow Uganda Limited and China National Offshore Oil Corporation (CNOOC) Uganda Limited, Total E&P Uganda BV and Tullow Uganda Operations. The commercial oil production was slated to start in 2020 as it required putting in place infrastructure like pipelines, processing plants, refinery among others.<sup>13</sup> Currently Uganda has signed an agreement in 2021 with Tanzania for the East African Crude Oil Pipeline (EACOP).

The above processes though have benefits attached to them, they involve processes that interfere with the environment if not managed well, these pose great threats to human beings, marine, water and air, thus the need for enforcement of compliance of the oil and gas exploration with environmental laws. This enforcement by institutions is however faced with a number of challenges.

## **1.2. Background of the Study**

During the 19<sup>th</sup> century, there were attempts made to explore oil and gas in Uganda, way back in the 1920s. Along Lake Albert, oil seepages were known by the local communities for

---

<sup>10</sup>Claudine Sigam and Leonardo Garcia, 'Extractive Industries: Optimizing Value Retention in Host Communities' (United Nations Conference on Trade and Development 2012) p.4.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>Ministry of Energy and Mineral Development, The Oil and Gas Sector in Uganda: Frequently Asked Questions, January 2017.



generations. The explorers from Britain first made references to oil formally late in the 1800s, in the early 1900s, some exploration was made at Kibiro fishing village only to come to a halt with the world war 1 break out. In 1938, the first drilling of oil was made at ButaibaWaki-1,<sup>14</sup> but because of the world war 11, no progress was made. Even with the independence of Uganda in 1962, there was political instability and several civil wars, which discouraged the investors. Following the revolution of Iran in 1970 and the Middle East nationalisations and North Africa, the focus of International oil companies then shifted to East Africa. This led to the enactment of the Petroleum Act.<sup>15</sup>

In 2006, the commercial discovery of oil and gas was made in the Albertine Graben region. This followed a series of more discoveries and also marked the end of all the prior failed attempts of exploration made. This then led to a number of International oil companies entering Uganda as a country that is landlocked to explore the oil resources. The current oil companies include Tullow, CNOOC, Total and E&P Uganda Ltd, Armour Energy Limited and Oranto Petroleum Limited. The oil of Uganda was found to be the largest on shore discovery in the whole of the Saharan Africa. The estimated barrels of oil are now 2 billion in 2010 and 3.5 billion in 2012 from 300 million in 2006 and as of May 2019, the oil is at 6.0 billion barrels of oil.<sup>16</sup>

The ownership and control of the minerals and petroleum as provided by the constitution of the Republic of Uganda, article 244 and the Petroleum (Exploration, Development and Production) Act,<sup>17</sup> section 4, is in the Government that holds the same on behalf of the people of Uganda. The parliament of Uganda is further enjoined to make provision for laws for the regulation of the exploration of minerals and petroleum.

Following the discovery of commercial oil in 2006, the National Oil and Gas Policy<sup>18</sup> was put in place by the Ministry of Energy and Mineral Development in February 2008.<sup>19</sup> It was aimed at ensuring that standards that are set for the governance of oil are high and that new legislation is

---

<sup>14</sup> Brian Smith and John Rose, Uganda's Albert Graben due first serious exploration test. The oil and Journal, vol.100, issue 23, 10 June 2002.

<sup>15</sup>The Petroleum Act 1985.

<sup>16</sup>The oil and Gas Sector in Uganda: frequently Asked Questions, Ministry of Energy and Mineral Development, may 2019, P.3.

<sup>17</sup> Of 2013.

<sup>18</sup> Of 2008.

<sup>19</sup>See, International Alert, Oil and Gas Laws in Uganda: A legislature's Guide, Oil Discussion Paper No. 1 May 2011, P.13.

enacted and the existing ones amended. The laws that existed then were the Petroleum(Exploration and Production) Act,<sup>20</sup> Petroleum Act,<sup>21</sup> the Petroleum Supply Act,<sup>22</sup> the Petroleum (Exploration and Production)(Conduct of Exploration Operations) Regulations,<sup>23</sup> the Petroleum ( Spirit) Licensing, Testing and Possession) Rules, <sup>24</sup> the Petroleum ( Spirit) (Marking)(Approval of Marker and Prescription of Fees) Notice.<sup>25</sup>

The Oil and Gas industry is currently governed by the Petroleum( Exploration, Development and Production)Act,<sup>26</sup> the Petroleum( Refining, Conversion, transmission and midstream Storage ) Act,<sup>27</sup> the Petroleum( Exploration, Development and Production) Regulations,<sup>28</sup> The Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations,<sup>29</sup> the Petroleum(Exploration, Development and Production)( National Content) Regulations,<sup>30</sup> The Petroleum( Refining, conversion, Transmission and Midstream Storage) Regulations, <sup>31</sup> the Uganda Wild life Act,<sup>32</sup> The National Environment Act.<sup>33</sup>

The statutes as discussed above make institutions responsible for the enforcement of compliance of the oil and gas exploration and production to environmental law. The said institutions include the NEMA, the ministry of energy, the office of the Director of Public prosecution for prosecution, the Judiciary for adjudication, the Uganda Police, the ministry of water, Uganda wild life, provisions are made for various sanctions like fines, appeals, prosecution of the non- compliant to the environment laws.

The studies that have been conducted reveal challenges to mainly institutions like NEMA, petroleum authority, ministry of energy. So little has been researched in the area of other institutions such as the Office of the Director of Public Prosecutions and the Uganda police

---

<sup>20</sup>1985 Chapter 150 Laws of Uganda.

<sup>21</sup>5<sup>th</sup> December 1957, Cap 149.

<sup>22</sup>Of 2003.

<sup>23</sup>Statutory Instrument No. 150-1.

<sup>24</sup>Statutory Instrument No. 149-1.

<sup>25</sup>Statutory Instrument No. 149-6

<sup>26</sup>Of 2013, Act 3.

<sup>27</sup>Of 2013, Act 4..

<sup>28</sup>Of 2016, Statutory Instrument No. 47.

<sup>29</sup>Of 2016, Statutory Instrument No. 46.

<sup>30</sup>Of 2016, Statutory Instrument No.44.

<sup>31</sup>Of 2016, Statutory Instrument No.34.

<sup>32</sup> Of 2019, Act 17.

<sup>33</sup>Of 2019, Act 5.

regarding criminal enforcement and the challenges they face, this clearly shows that there is a gap that needs to be filled, thus the need for this study.

### **1.3. Statement of Problem.**

The criminal enforcement institutions are unable to enforce environmental law compliance because of lack of support from government. This is further compounded by inadequate sanctions and lack of training in the area.

In order to ensure the oil and Gas exploration and production sector compliance to environmental law, all institutions responsible for enforcement including ODPP and the Uganda Police who enforce criminally have to be effective. Their effectiveness will however depend so much on the political will or government will to support them. This also depends on availability of adequate funding, motivation, adequate equipment for monitoring, appropriate appeals and sanctions mechanisms and clear and existing guidelines for the enforceability of the compliance. This ideal situation should be in place worldwide; this applies to Uganda as well.

The government of Uganda responded by coming up with the National oil and Gas policy,<sup>34</sup> this followed with the enactment of various petroleum laws including; The Petroleum( Exploration, Development and Production)Act,<sup>35</sup>The Petroleum (Exploration, Development and Production) Regulations,<sup>36</sup> The Petroleum ( Exploration, Development and Production) (Health, Safety and Environment) Regulations,<sup>37</sup> the Petroleum(Exploration, Development and Production)( National Content) Regulations,<sup>38</sup>The Uganda Wild life Act<sup>39</sup>and The National EnvironmentAct.<sup>40</sup> The statutes and regulations make provision for the bodies responsible for enforcement; these include office of the DPP, Uganda Police office, the Judiciary, NEMA, petroleum authority, ministry of energy, ministry of water. The enforcement ranges from EIAs, monitoring, audits, investigations, prosecution and emergency preparedness.

---

<sup>34</sup>The National Oil and Gas Policy, 2008.

<sup>35</sup>The Petroleum (Exploration, Development and Production) Act, 2013.

<sup>36</sup>The Petroleum (Exploration, Development and Production) Regulations, 2016.

<sup>37</sup>The Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, 2016.

<sup>38</sup>The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

<sup>39</sup> The Uganda Wild life, 2019.

<sup>40</sup>The National Environment Act, 2019.

Even with all the above enacted laws in place and the adoption of the international best practices, the institutions are still facing challenges in enforcement of compliance with the oil and gas exploration and production to environmental laws. Where as some have received support to enforce compliance, others like the Office of the DPP and the Uganda police due to a number of challenges have not been able enforce compliance criminally.

The failure by the criminal institutions to effectively enforce compliance with the oil and gas exploration and production to environmental law poses great threats to the environment. The bio diversity, human beings, quality of air and water quality is greatly affected by any non- compliance to environmental law. It is of utmost importance that all the institutions are effective in their respective mandates.

#### **1.4. Purpose of the Research.**

The main purpose of the study was to establish the efficacy of the responsible Ugandan institutions in the enforcement of compliance of the oil and gas exploration to environmental law. In particular the study will focus on the office of the Director of Public Prosecutions (ODPP) and the Uganda Police (Environmental Protection Unit) given their role in criminal enforcement of environmental laws.

#### **1.5. Objectives of the Study.**

These objectives are divided into main and specific objects of the study

##### **1.5.1. Main Objective of the study**

The general objective of this study was to examine the effectiveness of the office of the Director of Public Prosecutions and the Uganda police in the enforcement of compliance of the oil and gas exploration to environmental law.

### **1.5.2. Specific Objectives of the study**

To analyse the laws for enforcement by the ODPP and the Uganda Police of compliance of the oil and gas exploration and production with environmental laws.

To analyse the challenges to the effective enforcement by the ODPP and Uganda Police of compliance of the oil and gas exploration and production with environmental laws.

A comparative analysis from other countries of enforcement of compliance of the oil and gas exploration and production with environmental laws.

To find practical solutions and recommendations to the ODPP and the Uganda Police for the enforcement of compliance with environmental laws.

### **1.5.3. Specific Research Questions**

- (i) What are the relevant environmental laws for enforcement by the ODPP and the Uganda Police regarding Oil and gas exploration and production?
- (ii) What are the challenges hindering effective enforcement of environmental laws by the ODPP and the Uganda Police in the oil and gas exploration and production?
- (iii) How have other countries addressed the problem of enforcement of compliance with environmental laws in the oil and gas exploration and production?
- (iv) What are the findings, practical solutions and recommendations regarding enforcement of compliance with the oil and gas exploration and production?

### **1.6. Scope of the Study**

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

### **1.6.1. Content Scope**

The focus of this study was the oil and gas industry in the Republic of Uganda. It was limited to oil and gas activities in the upstream sector. It reviews the ODPP and the Uganda Police (Environmental Protection Unit) effectiveness in the enforcement of compliance of the oil and gas exploration and production to environmental law. The study concentrated on the efficacy of the ODPP and the Uganda Police in the enforcement of the oil and gas exploration and production compliance to environmental law.

### **1.6.2. Time Scope**

This study was for a span for a period of 14 years considering the time period from the year 2006 to 2020. This period was used on the basis of good quality and relevant data reliable to the topic being investigated.

This helped the researcher in the analysis of the efficacy of the ODPP and the Uganda Police in the enforcement of the oil and gas exploration and production compliance to environmental law.

### **1.6.3. Geographical Scope.**

This study was carried out in Uganda since the study focus was on Uganda as country in terms of assessing its oil and Gas industry. It is found in East Africa Neighbouring Kenya in the East, Tanzania in the south, D.R. Congo in the west, South Sudan in the North and Rwanda in the south Western part of East Africa. It is also located in the heart of Africa in the central sub- Saharan region of Africa. Its Oil and Gas fields are located near the part of Uganda and D.R. Congo.

## **1.7. Significance of the Study.**

### **i). To the Researcher.**

This study was helpful to the Researcher to analyse challenges that are hindering the criminal enforcement by the ODPP and the Uganda Police of the oil and gas exploration and production compliance to environmental law. The Researcher was able to add value to what has already been researched and further contributed to the key issues that are important in ensuring all institutions and not only a few effectively enforce the oil and gas exploration and production compliance to environmental law. The study enabled the researcher fulfil one of the basic requirements for the award of the degree of master of laws (LLM) in Oil and Gas of Uganda Christian University, Mukono (UCU).

ii). **To the policy makers.** The study illustrated solutions that are practical to the policy maker and made recommendations. The policy maker will be able to learn about the importance of supporting all institutions in the enforcement of compliance of the oil and gas exploration and production to environmental law. To learn how best to support the relevant institutions. It will also make the public appreciate the importance of criminal enforcement by these institutions.

iii). This study is of importance for the fulfilment of the first requirement for award of a master's degree in oil and gas at Uganda Christian University

The researcher also intends to publish his piece of work for academic purposes.

## **1.8. Justification of the Study.**

The oil and gas industry exploration and production activities have great adverse effects to the environment in its entirety, they have the potential to alter the biological diversity, to cause pollution to water and compromise the quality, they can affect wild life, human being, air quality and sound quality. The impact of these activities can however be mitigated or minimised through the compliance of the oil and gas industry to environmental.

In order to ensure this compliance, there should be enforcement mechanisms that require institutions to effectively monitor, audit, conduct EIAs, prosecute and adjudicate on cases of those non-compliant.

The absence of the effective enforcement of the institutions of compliance of the oil and gas exploration to environmental law, will lead to the continued violations of the environmental law by the industry.

The studies that have already been done show that some institutions are supported by the government in the enforcement of compliance though also not adequately and there those such as the ODPP and the Uganda Police that are not given any kind of support to enforce compliance, this poses great threats to the environment.

The most significant element of the study is the fact that has produced evidence regarding the effectiveness of the various institutions in the criminal enforcement of oil and gas exploration and production compliance to environmental law.

The findings of the study will be shared with the policy maker and responsible government ministries to ensure the institutions get the necessary support for enforcement. This is intended to lobby for support to the institutions, funding to the institutions and establishment of special departments in the institutions for the enforcement of compliance.

A lot has been written on the challenges of institutions in the enforcement of compliance of the oil and gas exploration and production to environmental law, only a few institutions have been researched on, leaving out a number of other institutions such as the ODPP and the Uganda Police responsible for criminal enforcement. Therefore, this study will be justified in the sense that it brings out the importance of having all institutions on board to ensure effectiveness of enforcement of compliance of the oil and gas exploration and production to environmental law.

## **1.9. Structure of the Dissertation**

This study is divided into has six (6) parts, as follows:



- i) Chapter one introduces the study. It presents an overview of the background, problem statement, Research Objectives and Questions, Significance of the study, Scope of the study, Justification of the study as well as the theoretical framework.
- ii) Chapter 2: It presents the literature review, it brings out the gap in the literature, laying a basis for the reasons for this research.
- iii) Chapter 3: It presents the research methodology; the research design, population study, sample criteria, the data collection tools, the data analysis tools, validity, questionnaire design and the limitation to the study.
- iv) Chapter 4: It presents the general overview of environmental principles with aspects of criminal enforcement. The chapter also presents the Ugandan legal framework. This follows with the issues of criminal enforcement by the Office of the Director of Public Prosecutions and the Uganda police as collected during the interviews. A presentation of the findings of the research is discussed and analysed.
- v) Chapter 5: It presents the comparative study of the UK, USA and the Ugandan regimes. The UK and USA criminal aspects general application of criminal law environmental system are discussed in comparison to the Ugandan regime. It gives an analysis, interpretation and discussion of the findings.
- vi) Chapter 6: The chapter presents the summary of the findings of the study. It also presents practical solutions to the challenges in the form of recommendations.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0. Introduction.

There is no doubt that even with a variety of enacted laws in a host country, there are still challenges in the enforcement mechanisms of the laws and the personnel have been found to be inadequate. It has been also discovered that sometimes these natural resources are in virtually failed states with no governments to operationalise the laws.<sup>41</sup> To this end the command-and-control regulation to environment was adopted by most developing countries. Universally as a means of precautionary measures, this requires Environmental Impact Assessment, environmental insurances, environmental audits, capability oil spill responses.

The developing countries have adopted a number of enforcement tools such as cancellation of licenses, fines and criminal penalties and environmental charges and taxes.<sup>42</sup> Uganda is not an exception to all the adopted enforcement mechanisms, this however presents with gaps in the various institutions charged with the duty of enforcing compliance to environmental law, so little has been done about some of such as the ODPP and the Uganda Police in terms of criminal enforcement. Even with a lot of literature written about this and also presently adopted best international practices and laws, there is a great need to have all these domesticated<sup>43</sup> and address the Ugandan challenges in the institutional enforcement of compliance of the oil and gas exploration and production to environmental laws. The following are important for effective institutional enforcement of compliance to environmental laws.

---

<sup>41</sup>Claude Duval, Honore'LeLeuch Andre' Pertuzio, Jacqueline Lang Weaver, International Petroleum, Exploration and Exploitation Agreements, page 389.

<sup>42</sup>Claude Duval, Honore'LeLeuch Andre' Pertuzio, Jacqueline Lang Weaver, International Petroleum, Exploration and Exploitation Agreements, page 389.

<sup>43</sup>Notwithstanding the fact that many pieces of literature have been written in the field of oil and gas law and economics, most of the writings are not domestic. Hence their information however accurate cannot fit in the context of Uganda without modification. Additionally, most of the writings are based on highly developed technologies and advanced democratic politico-economic dispensations which don't exist in Uganda, something which creates the need to review this literature, identify the gaps and advise on the on the relevance of that literature mutatis mutandis. The literature review proceeds in distinct heads showing key issues considered by the researcher. These include: environmental and social costs of oil and gas exploration and production; managing the oil sector in Uganda: regulation and oversight; good oil governance principles; the resource curse(paradox of plenty);the Dutch disease syndrome; transparency and accountability including budget transparency and expenditure transparency ; Strategic Environmental Impact Assessment(EIA)

## 2.1. Factors for effective application of environmental law

The establishment of UNEP in 1975 was aimed at ensuring the procedures and principles for environment are implemented, to ensure that in industrial development plans, environmental criteria is considered. This with the aim to help in the promotion of preventive environmental protection, by ensuring the production is cleaner and then allow experiences and procedure exchange across the world. UNEP also observed that the oil and gas activities come with great potential impacts to the environment, thus the need for effective application of environmental legislation.

The factors for the effectiveness include, the adequate funding to and motivation to the authorities responsible for enforcement, ensuring the monitoring protocols and procedures are appropriate. In addition to this, having sanctions that are appropriate and the political will for the same, having existing mechanisms for appeals and clearly defining the responsibilities and putting standards in place for enforceability of the operations.<sup>44</sup>This presented very important guidelines as regards the factors for enforcement that are very helpful for this research. However, the publication does not specifically give an approach to Uganda's situation where all institutions such as the ODPP and the Uganda Police are not considered for funding in terms of enforcement, even those that are funded, it is not adequate.

The UN Environment Programme report made an assessment of environment rule of law and found weak enforcement as trending globally as a very big threat to the environment, despite the growth of laws in environment and worldwide agencies over the last four decades. The mystery to the continuous problems of biodiversity that is declining, pollution and climate change is solved in this report by recommendation for the strengthening of the environmental rule of law for a healthy environment.<sup>45</sup> The report makes good observations and recommendations, however it is general and does not address the specific needs of countries like Uganda, it does not look at all the institutions like the ODPP and the Uganda Police and their challenges as regards enforcement.

---

<sup>44</sup> UNEP (1997) Environmental management in Oil and gas exploration and production: an overview of issues and management approaches, at, P.28-34.

<sup>45</sup>UN Environment Programme, Dramatic growth in laws to Protect environment, but widespread failure to enforce, 24<sup>th</sup> Jan 2019

Christine Echokit Akello made observations of the challenges in the processes of environmental monitoring and impact assessment. The issues raised were the lack of political support for the use of Environmental Impact assessment at both the central and local levels and the no measures to provide for public consultation. Among the recommendations made was the increased funding to the environment sector for the management of environment activities and to the law enforcement.<sup>46</sup>The author made very good recommendations, however this does not capture all institutions like the ODPP and the Uganda Police involved in the oil and gas enforcement when it comes to funding. This is also limited to only environmental monitoring and impact assessment, yet this compliance can be enforced in other ways and by other institutions.

Other observations were made by Edeema et al on the increasing levels of pollution that are increasing around Lake Victoria, the gap between the law and practice was clearly emphasized. The results revealed ineffective and inadequate public participation, weak follow up and political interference. Among the recommendations made were, the building of capacity of the Judiciary, increased political will for environmental protection, equipping of the environmental officers and public participation. All these geared towards the maximization of the EIA potential for purposes of achieving the sustainable development goal.<sup>47</sup>The authors made very good recommendations, however this leaves out some institutions such as the ODPP and the Uganda Police involved in the oil and gas enforcement when it comes to funding. They also limit this to only environmental monitoring and impact assessment, yet this compliance can be enforced in other ways and by other institutions.

The civil society coalition on oil and gas in their research paper made observations on the challenges that affect compliance to the international and national best practices. They found inadequate maintenance of the equipment and facilities at the sites, the multi sector limited involvement and irregular inspections and the monitoring that is inadequate by NEMA. The recommendations were made in the form of the strengthening of the monitoring and inspections in the Albertine Graben region oil and gas waste management sites. They pointed out the stake

---

<sup>46</sup> Christine Echokit Akello, Environmental Regulation in Uganda: Success and challenges, 3/1Law, Environment and Development Journal (2007), P, 20, available at <http://www.lead-journal.org/content/07020.pdf>

<sup>47</sup>Taako Edema George, Kiemo Karatu, Andama Edward, An Evaluation of the Environmental Impact assessment Practice in Uganda: Challenges and opportunities for achieving sustainable development, vol 6, issue 9, September 2020, e04758, <http://doi.org/10.1016/j.helijan.2020.e04758>

holders such as PEPD, NEMA, UWA, MEMD, Ministry of Water and Environment, DWRM and the District Local Government leadership.<sup>48</sup> However, the paper did not make any reference to other institutions like the ODPP and Uganda police when it comes to criminal enforcement it limited its findings to those.

Elenwo et al,<sup>49</sup> in their findings revealed authorities overlap and ministries responsibilities and the key institutions lack of resources to greatly impact the management of environment. The other findings contributing to this impact included enforcement, the authors further found bureaucratic bottle necks, inadequate trainings of manpower, environmental education that is poor among the challenges of compliance. It was also noted that the establishment of institutions, the laws development and the awareness globally play a big role in the man power development and the development of knowledge of environmental policies and strategies.

The key recommendations made by the authors included, environmental policies development and sector strategies putting into considerations capacity for their enforcement as a means of ensuring their implementation. Also key was the need for ministries streamlining of departments and agencies and funding increase. In their conclusion, the author emphasized the need forefforts that are concerted by all stakeholders to respond to the challenges and effectively address the Oil and Gas environmental challenges that are numerous.

In the article, very good key recommendations were made as regards the institutions and the need for concerted efforts. The article is not elaborate on what those key institutions are. It is limited to Nigeria and there is also no mention of any criminal enforcement by police and prosecuting bodies for purposes of enforcing environmental laws, this clearly presents a gap in the literature.

Kasimbazi,<sup>50</sup> observes the importance of Environmental Impact Assessments as a requirement legally, the author's focus is on the NEMA and local environment committees as regards measures of actions against violators, discontinuing the act as a means of prevention and

---

<sup>48</sup> Civil Society Coalition on Oil and Gas (2015), *The State of Oil & Gas Waste Management Facilities & Environment Compliance in the Albertine Graben Region of Uganda*, at 26-29

<sup>49</sup> Elenwo, E and Akankali, J, *Environmental policies and Strategies in Nigeria Oil and Gas Industry: Gains, Challenges and prospects*. *Natural Resources*, 2014, 5, 884. doi: 10.4236/nr.2014.514076, p.893.895.

<sup>50</sup> Emmanuel B Kasimbazi, *Environmental Regulation of Oil and Gas Exploration in Uganda*, *Journal of Energy & Natural Resources Law*, 2012, 30: 2, 185-221, Doi: 10.1080/0264811.2012. 11435291, published online: 03 June 2015

stopping the action. The author also looks at the environmental management tools such as monitoring and audits and the regulation of oil and Gas on environment.

In his conclusion, he notes that finances are limited and the human resources to implement the policies, legal framework and provisions are inadequate. He also notes the need to mitigate through measures the adverse effects to the environment during the exploration and production stages of the oil and gas industry. Despite making key recommendations this work has limitations regarding the institutions responsible for enforcement of compliance with environmental laws. The criminal enforcement of compliance through the office of the DPP and the Uganda police is also not addressed..

Aniefiok et al,<sup>51</sup> in their findings revealed that poor governance, the unsustainable exploitation of the resources of petroleum and the environmental regulations that are ineffective were the cause for the issues of environment in Nigeria. The institutional failures to adequately deal with problems of environment, are the sources of degradation of environment. In their conclusion they recommended the importance of sustainable strategies development as a means of environmental management and mitigation of risks. The authors made very good key recommendations on the management of environment and risk mitigation, they however do not look at the enforcement means of compliance with environment by the oil and gas exploration and production industry. The criminal enforcement aspect is not considered in their article. This is also limited to Nigeria as a country and does not extend to Uganda.

Twum,<sup>52</sup>in the discussion reveals that the failure to implement and enforce environmental laws properly caused a great shift in the region. It was recommended that for enforcement to be effective, there was a need to incorporate new ideas and methods of enforcement of the existing environmental laws and regulations as other countries such as the Norway and Canada have done. The study makes very good recommendations as regards enforcement, it however does not elaborate on how best to enforce these laws and there is no mention specifically of the criminal enforcement. It is also limited to Nigeria, this presents with a gap in the literature.

---

<sup>51</sup>Aniefiok E. He, Udo. J. Ibok, Margaret U. Ite, Sunday W. Peters<sup>51</sup>, Petroleum Exploration and Production: Post and Present Environmental Issues in the Nigeria's Niger Delta American Journal of Environmental Protection, 201, Vol. 1, No. 4, 78-90.

<sup>52</sup>Antoniette Twum, Environmental Impact of Oil and Gas Exploration and production on the Socio-economic life of Niger Delta, 2019, p.47-58.

It was also found by Ezike,<sup>53</sup> that the Nigerian government had failed to effectively monitor compliance using the enforcement of the laws for environmental laws that are available as regards gas flaring. This as a result exacerbated the devastation of the environment in the region. He further found it necessary to use enforcement in form of criminal liability so as ensure compliance, as the failure to having some regulation of the pollution that was extensive, could end up being interpreted as permitting in full the crime of pollution, yet the laws were clear on the as regards pollution being restricted.

The above findings clearly reflect the need for enforcement using criminal liability especially under circumstances where the polluter fails to comply. Only that this is strictly restricted to Nigeria and does not extend to Uganda as a country as regards criminal enforcement by the Office of the DPP and Uganda Police.

Ezike,<sup>54</sup> also in another study observed the violations of the standards of regulations of environment by Oil and Gas companies in Nigeria and that these were repeated and persistent. He noted that despite the provided sanctions that are criminal in the law, all these violations continued. It was found that the enforcement agencies had failed in their duty of criminal enforcement, thus the noncompliance with environmental standards.

The findings revealed the inadequacy of enforcement agencies and their inability, lack of technical expertise for environmental crimes prosecutions, lack of relevant experience to deal with such crimes. It was also found that there was lack of laboratories for such environmental cases, lack of litigation that is public interest in nature, lack of sentencing guidelines as regards environmental offences in the oil and gas industry. The findings further revealed the neglect of enforcement agencies and their corruption thereof, environmental watch dog absensure, lack of political will, lack of resources, funding and manpower to the agencies responsible for enforcement. The enforcement agencies were found to be with corrupt tendencies, with statutory provisions that are conflicting, lack of environmental awareness on compliance rates and progress of enforcement and corruption limitations on the environmental crimes detections.

---

<sup>53</sup>Chuks-Ezike, Environmental law Crime liability of the Nigerian government in its Oil Pollution menace, 2018, Environmental risk assessment and remediation (online), 2(2), pages 1-7. Available from: Research Article, <http://www.alliedacademies.org/environmental-risk-assessment-and-remediation/ISSN:2529-8046>

<sup>54</sup>Chuks-Ezike, C. , An analysis of the deficiencies impeding regulation of environmental Standards in the Nigerian oil and gas industry and possible solutions through legal transportation from other model regimes, 2020. P.130-183.

The observations and findings above, reveal the challenges that institutions face in the enforcement of compliance to environmental law, the study is however limited to Nigeria and not Uganda as a country, thus the gap presented in the context of Uganda.

Sakyi et al,<sup>55</sup> noted that pollution that emanates from the oil and gas industry cannot merely be solved by a prescription of environmental setting of standards and codes and the EMS development. This was seen as the reason for the failure of the mining industry of Ghana and also bound to happen to the oil industry if not addressed. It is therefore not enough to simply prescribe laws without enforcement. It was further noted that ensuring of strict compliance of the regulations by the oil companies was of utmost importance, thus the need for punishment that is well documented as regards the violation of the laws. The study recommended for the government to ensure that there is environmental policies enforcement strictly among others. This raised very critical issues as regards merely having laws in place and not having them enforced. The study is however generalised as regards enforcement and the bodies responsible for this enforcement. The criminal enforcement aspect is not specifically referred to,

In their findings, Oluduro et al,<sup>56</sup> revealed that even though all steps necessary to comply with the best international practices and standards of protection of the environment were taken, the Niger Delta events region are reflective of this being merely on paper and not practical. Despite the oil MNCs in Nigeria, having their principles and policies on environment published, to indicate that they are adhering to the relevant laws as regards their operations. The oil companies have failed to comply with the standards, thus the incidents of gas flaring and oil spills.

The findings revealed the failures of enforcement by the institutions were due to lack of technical expertise, lack of trainings, lack of equipment, funding and the existence of unskilled personnel to enforce the rules. It was recommended that adequate funding is extended to the responsible agencies regulating the oil and gas industries. They noted the importance of the government having all categories of people that are charged with the duty of enforcement of the oil and gas industry compliance to the laws, effective. The authors raise very important findings that it is

---

<sup>55</sup>P.A. Sakyi, J.K. Efavi, D. Atta-Peters and R. Asare, Ghana's Quest for Oil and Gas: Ecological Risks and Management Frameworks, *West African Journal of Applied Ecology*, Vol. 20(1), 2012.

<sup>56</sup>Olubisi, Friday Oluduro, Olubayo Oluduro, Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria, *Journal of Law, Policy and Globalisation* ISSN 2224-3240(paper) ISSN 2224-3259 (online) Vol 37, 2015, [www.iiste.org](http://www.iiste.org)



enough to have oil companies self regulating themselves, thus the need for effective enforcement of all responsible bodies. The journal is however so broad, as regards enforcement, it does not specifically mention the criminal enforcement of compliance, it is also limited to Nigeria, thus the gap presented in the literature.

Kaweesi<sup>57</sup> found that there was a good legislative environmental law compliance regime and a sound policy that can lead to a sound oil and gas sector environmentally with effective enforcement. The author however found that, even with all this in place, there was low levels of compliance in the oil and gas industry, he noted some of the challenges, being the required standards of operations of the multi sectoral monitoring system not being adhered to. The no specific EIAs for Lake Albert, oil sector having no audit plans, poor funding and understaffing of enforcement agencies, the agencies referred to in this paper, were NEMA and the local government. The study was limited in terms of enforcement and the institutions responsible for enforcement, the criminal enforcement aspect was not discussed, thus the gap in the literature.

Ekhator,<sup>58</sup> revealed that there was ineffective regulation of the oil MNCs activities in the oil and gas sector in Nigeria, that this was due to lack of political will, corruption and enforcement and implementation of the laws failures. It was noted that despite the existence of government agencies responsible for enforcement and monitoring the oil and gas regulatory paradigm, there were still failures in compliance. The challenges were as a result of politically and institutionally induced ills. The author made very good findings as regards enforcement of government agencies in general. This study is limited to Nigeria and has no criminal enforcement aspects, thus the gap presented in the literature.

Olujobi,<sup>59</sup> revealed in his findings, that anti- flaring laws poor enforcement was due to funding that was low and human capacity, and the inefficient regulatory legal techniques for anti-flaring laws enforcement, were all responsible for weak enforcement. The author in his conclusion noted the importance of making laws that are efficient, with regulatory authorities that enforce

---

<sup>57</sup> Emmanuel Kaweesi, *Environmental Law Compliance and its Implications for Oil and Gas Exploration and Production in Uganda*, 2014, p.145.

<sup>58</sup>Eghasar Ekhator, *Environmental Protection in the oil and gas industry in Nigeria: the roles of governmental agencies*.

<sup>59</sup>Olusola Joshua Olujobi, *Comparative Appraisals of Legal and Institutional Framework Governing Gas Flaring in Nigeria's upstream Petroleum Sector: How Satisfactory?* Article in *Environment Quality management*- July 2020, p.15-16.

anti flaring laws as a must without favour or fear as a means of ensuring that there is compliance with the environmental laws and the laws of anti flaring. The focus of his paper was generalized on enforcement, it did not specifically deal with criminal enforcement of agencies especially the office of the Director of Public Prosecutions and Uganda Police, it was also limited to Nigeria, thus the gap in the literature.

Enforcement of compliance was also found to be superficial by OEBODE,<sup>60</sup> the punishment was further found to be inadequate and injured parties not properly compensated, it was also noted that instead of criminal punishments for the environmental crimes, some received administrative punishments. The author recommended funding to environmental management programs, increased awareness of environmental cases and the enforcement officers who are corrupt to be checked. The findings and recommendations as far as criminal enforcement is concerned though good, they do not extend to Uganda and the challenges it faces in the criminal enforcement through the office of the Director of Public Prosecutions and the Uganda police, thus the gap in the literature.

Baldwin et al,<sup>61</sup> in understanding regulations, reveals that in cases of risk that is very high as concerns the activities and there is no compliance, it may necessitate going for the enforcement that is immediate to the pyramid higher levels. Also under circumstances where there are risks that are catastrophic, it may require starting from the upper pyramid layer.<sup>62</sup>The escalation of step by step through the escalation to the pyramid top may at times not be sufficient so as to bring about criminal enforcement. Ayres et al finds that to cause compliance of the agencies, it requires having various sanctions ranging from persuasion to sanctions such as enforcement that is criminal, suspension of licenses or even revocation.<sup>63</sup> The importance of criminal enforcement cannot therefore be under rated, especially under circumstances where there is repetitive environmental violations and those beyond restoration in the oil and gas industry. The Ugandan

---

<sup>60</sup>Oluwadare Joshua OYEBODE, Impact of Environmental Laws and Regulations on Nigerian Environment. World Journal of Research and Review( WJRR) ISSN: 2455-3956, Volume- 7, Issue-3, September 2018 pages 09-14

<sup>61</sup>Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulations; Theory, Strategy, and Practice, second Edition, 2012, page 261.

<sup>62</sup>K. Murphy, Moving Towards a More Effective Model of Regulatory Enforcement in the Australian Tax Office (2004) British Tax Review, 603- 19.

<sup>63</sup>Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulation, Theory, Strategy and Practice, Second Edition, Page 259.

regime has not given so much attention to criminal enforcement by the ODPP and Uganda Police of compliance of the Oil and gas exploration and production with environmental laws.

In Uganda, the Environmental Impact Assessment was adopted as a requirement after the discovery of quantities of oil and gas that are commercially viable in Uganda in the Albertine Graben Region in 2006,<sup>64</sup> the commercial discovery brought with it a lot prospects, as seen in the Niger Delta and the Gulf of Mexico. It was realized that there are great risks involved. This made it important for the Ugandan government to enact the necessary legislation as a means of ensuring that the risks are mitigated.<sup>65</sup>

It is a requirement of the constitution of the Republic of Uganda under article 245,<sup>66</sup> that all natural resources are managed in a manner that guarantees that the environmental needs and the development of both the present and the future needs are met. This therefore requires enforcement of compliance of the oil and gas exploration and production by all institutions, there is a gap however as the ODPP and Uganda Police have not been utilised as regards criminal enforcement of compliance with environmental laws in the Oil and Gas exploration and production.

## **2.2. Conclusion**

The literature reviewed studies, journals, articles, text books on the factors responsible for enforcement by institutions of compliance of the oil and gas exploration and production industry with environmental laws. It identified the gaps in the literature as regards criminal enforcement of compliance by the ODPP and Uganda police.

---

<sup>64</sup>Ministry of energy and mineral development policy report of 2006.

<sup>65</sup>International Alert, Oil and Gas Laws in Uganda: A Legislatures' Guide, Oil Discussion Paper No.1, May 2011, p.38-39.

<sup>66</sup>Of 1995 as amended.

## CHAPTER THREE

### RESEARCH METHODOLOGY

#### 3.0. Introduction

This chapter explains how the research was conducted. It presents the research approach, the methods used to collect data, sampling techniques used, the population size forming the investigative unit, data collection methods and the data analysis tools. In addition, the researcher demonstrated the reliability and validity of the methodology adopted and the limitations endured in the course of the study. Methodology is the principle that guided this research.<sup>67</sup> It refers to the process by which one sets out to prove a given set of paradigms.<sup>68</sup> The methodology adopted follows the objectives and research questions and the literature review.

#### 3. 1.Research Framework:

There are two types of frameworks, the theoretical framework and the conceptual frame work. The theoretical frame work comprises of experts theories expressed in the planned field of study which is drawn upon for data analysis and results interpretation. The conceptual framework on the other hand is the total logical association of anything and everything that forms the underlying thinking, plans, structures and practices of the entire research project.

For this research, the theoretical frame work was adopted so as to have a scholarly foundation for the data meaning. The study adopted the theory of environmental enforcement and compliance. The command and control or deterrence theory were emphasised for this particular study. For the effectiveness of enforcement of environmental law, it is important to ensure that the environmental statutes goals are met as deterrence is the basis of environmental enforcement.

It is the role of enforcement agencies under the theory to make penalties and the detection high enough a probability such that the entities that are regulated find it unprofitable to go against the laws.<sup>69</sup>The development of criminal environmental law is further explained by the theory as the

---

<sup>67</sup>Dr Catherine Dawson, Practical Research Methods, A user friendly guide to mastering research

<sup>68</sup>Wills Harmon: An Incomplete Guide to the Future. (New York W.W. Norton 1970) 5

<sup>69</sup>A. Heyes, Implementing Environmental Regulation: Enforcement and Compliance at pp.2-4.

criminal sanctions imposition against the environmental law violators.<sup>70</sup>Under the theory of deterrence criminal sanctions are imposed for the violators to be incapacitated, the entities to be regulated, to rehabilitate the environment that is damaged and a strong message to be sent out to the public so as to prevent future crime.<sup>71</sup>

The findings of the study established that criminal enforcement is a necessity so as to cause deterrence, incapacitate violators and rehabilitate the damage occasioned on the environment, the findings agreed with the existing theories.

### **3.2. Research Design**

There are two methods of conducting a research, quantitative and qualitative research methods.<sup>72</sup>However, in recent years a third type, mixed- methods research<sup>73</sup> has been introduced. The quantitative research is aimed at testing the theories validity so as to search for evidence of proof of the theory or not.<sup>74</sup>Qualitative on the other hand aims at assembling of data on the subject under research from which themes are identified that enable the development of the research theory.<sup>75</sup> There is also much utilisation of past literature for review by the researcher in order to justify the research and also give reasons for conducting the research.<sup>76</sup> It is therefore possible for the researcher to identify the research questions from the literature review.<sup>77</sup> To this end, the researcher adopted the research methodology of qualitative as the approach to the study. To analyse the oil and gas exploration and production industry challenges of institutions in the criminal enforcement of compliance with environmental law, this study relied on the inquiries

---

<sup>70</sup>A. Mark Cohen (1992) ‘Environmental Crime and Punishment: Legal/ Economic Theory and Empirical Evidence on Enforcement of Federal Environmental Statutes’ in *Journal of Criminal Law and Criminology* Vol. 84 (Issue 4 Winter) at 1059.

<sup>71</sup>Ibid.

<sup>72</sup>Dr Catherine Dawson, *Practical Research Methods, A user friendly guide to mastering research*

<sup>73</sup> Mixed-Methods research may be defined as one where the research mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study. ‘see’ Burke R Johnson and Anthony J Onwuegbuzie, *Mixed methods research: a research paradigm whose time has come*, (2004) 33(7) *Educational Researcher* 17.

<sup>74</sup>Anthony j Onwuegbuzie and Nancy L. Leech, *Taking the “Q” out of Research. Teaching Research Methodology Courses without the Divide Between Quantitative and Qualitative Paradigms’* (2005) 39 *Quality and Quantity* 270. P.280-282

<sup>75</sup>Ibid.

<sup>76</sup>Karen Soiferman, ‘Compare and Contrast Inductive and Deductive Research Approaches’ (2010) *Educational Resources Information Centre* <https://files.eric.ed.gov/fulltext/ED542066.pdf>> accessed 22 march 2019.

<sup>77</sup>Ibid.

made through research questions and the answers were drawn from the literature analysis that was under review under the study. The study also made an analysis of the USA and UK regimes for the researcher to be able to gather ideas for possible solutions to this problem in the Ugandan regime. The researcher further collected perceptions, experiences and opinions of selected individuals, this was through the use of semi structured interviews, open ended questionnaires. This guaranteed the researcher the required results.

### 3.3. Study Population, size and sampling techniques

The group of people and the set of things form the investigative unit of study and these are the population.<sup>78</sup> As a source of conducting research, the knowledge of the people about a subject is so crucial.<sup>79</sup> Taking into consideration the Oil and Gas industry age in Uganda and the technicality of the study, the researcher used the purposive sampling technique. This was on the basis of the people with the knowledge in the respective institutions under the study, the respondents were also known and not many in the population. The Participants were from Office of Director of Public Prosecutions and Uganda Police.

The selection of the groups was in accordance with the interests of stakeholders, For example, the Office of the Director of Public Prosecutions and the Uganda Police.

The size of the sample was of small people in the jurisdiction with the information required, these were few in number. In order to ensure that the samples selected had the knowledge necessary to give the information, senior officers of the Office of the Director of Public Prosecutions and the Uganda Police were engaged in the process of selection.

<b>Respondents</b>	<b>Number Interviewed</b>
Prosecutors	3

***Table: Illustration of Research Population***

<sup>78</sup> Uma Sekaran, Research methods for business: a skill-building approach (New York, John Wiley & Sons, 2003)

<sup>79</sup> Floyd J. Fowler Jr, Survey Research Methods (3<sup>rd</sup>edn, London, Sage Publication 2002) 58

### **3.4. Data Collection Methods**

Different types of data collecting methods exist, the determination of the researcher's choice, depends so much on the work force available, the finances and the facilities and the population sample characteristics.<sup>80</sup> There are also other factors to put into consideration, these include; the technicality of the questions under investigation and the time. The secondary and primary methods were therefore used by the researcher, through semi structured interview methods, open-ended questionnaire as data collection tools for the research study. The researcher also collected data from the internet, libraries, journals and articles. The telephone interviews were also used by the researcher as follow up.

The same questions were asked for each Semi Structured interview, a schedule for the interview was extracted and the respondents were allowed flexibility. These methods made it easier to use and interviews via telephones are cheaper, not time consuming and also requires a small work force.

Also the respondents' busy working schedules and the well informed population for this subject and highly technical, in combination with the research limited time, the selected methods were the best option for attaining of the research targets within the limited resources and the limited time.

### **3.5. Questionnaire Design**

The validity and reliability of the data to be collected will determine the response rate. The design of the questionnaire should be understandable, simple and clear for that reason.<sup>81</sup> This will ensure less questions of clarity are asked and less complaints from respondents. The design of questionnaires to be used will be Open ended questionnaires, this will allow the participants to freely give their view or opinions. The researcher as such adopted the use of short and simple words, starting with very simple questions and ending with the complex ones. All this provided

---

<sup>80</sup> Floyd J. Fowler Jr, Survey Research Methods ((3<sup>rd</sup>edn, London, Sage Publication 2002) 58

<sup>81</sup> Mark Saunders, Phillip Lewis and Andrian Thornhill, Research Methods for Business Students ( 5<sup>th</sup>edn, Harlow, FT Prentice Hall, (2009). 'See also Abraham N Oppenheim, Questionnaire Design, Interviewing and Attitude

quick responses, efficiency and accuracy. The costs of collecting and response burdens were also minimised.

### **3.6. Methods of Data Analysis and Tools used**

The process and stage of the reducing data by the researcher to raw levels that are understandable and meaningful and conclusion drawing from the said data is what is referred to as data analysis.<sup>82</sup> The use of large statistics during the analysis of data in quantitative research is viewed as cumbersome due to the complex language.<sup>83</sup> The researcher must also additionally determine clearly the statistical tests that have been used and give reasons for the same and the achieved result from their use.<sup>84</sup> In quantitative research fifty percent of targeted persons who have been sampled must actually take part in the research and if not the result may not be conclusive on the basis of the few people who have participated.<sup>85</sup>

On the other hand the qualitative research methodology makes utilisation of the text data for analysis. It uses texts that are in existence already, it can be in various forms including policy documents, legislation, existing texts, text books.<sup>86</sup> The methodology can also be incorporated in the transcribed interview or focus group data of the researcher.<sup>87</sup> It is therefore possible for the sources of data for quantitative and qualitative to be similar but with different expressions of data.<sup>88</sup> Whereas qualitative research uses words for the expression of data, quantitative research uses numerical statistics for analysis.<sup>89</sup>

---

<sup>82</sup> Robert Bogdan and Sari KnoppBikken, *Qualitative research for education: an introduction to theory and methods* (Boston, Allyn and Bacon inc, 1982) 145. 'See also' Mathews B. Miles and Michael A. Huberman, *Qualitative Data Analysis* (2<sup>nd</sup> ed, Thousand Oaks CA: Sage Publications, 1994) 11.

<sup>83</sup> Micheal Coughan, Patricia Cronin and Frances Ryan, 'Step by Step Guide to Critiquing Research. Part 1, Quantitative Research' (2007) 16 *British Journal of Nursing* 661.

<sup>84</sup> Frances Clegg, *Simple Statistics. A Course Book for the Social Sciences* 2<sup>nd</sup> edn, Cambridge University Press 1990) p.56.

<sup>85</sup> Micheal Coughan, Patricia Cronin and Francis Ryan, 'Step by Step Guide to Critiquing Research Part 1, Quantitative Research' (2007) 16 *British Journal of Nursing* 661.

<sup>86</sup> Nicola K Gale and others, 'Using the Framework Method for the Analysis of Qualitative Data in Multi-Disciplinary Health Research' (2013) 13 *BMC Medical Research Methodology* <https://www.ncbi.nlm.nih.gov/pmc/articles/pmc3848812/>> accessed 23 March 2019.

<sup>87</sup> *Ibid.*

<sup>88</sup> Office of Data, Analysis, Research & Evaluation, 'Qualitative Research Methods in Program Evaluation, 'Qualitative Research Methods in Program Evaluations: '(Office of Data, Analysis, Research & Evaluation, 2013)



The researcher adopted mostly the use of desk based research. Research was gathered from law journals, text books, legislative materials, statutory documents, online public documents, law reports, environmental agencies and departments in Uganda. The study also used laws and case studies from other jurisdictions and made comparisons with the Ugandan environmental regime. The study made a categorisation of the case laws, and laws of those regimes, they were then paired and then picked themes from them for analysis to pick out the ones of the regime that is more developed and that can be incorporated for solving of the problem identified. The use of transcripts from an interview with a detailed series of answers, on the open ended questionnaire, with names of places of interviews, participants' names, emerging themes, was also used by the researcher. The comparative and the thematic analysis was used, data analysis was an ongoing process done during the process of data collection and comparison of data from different respondents. This ensured accuracy by the researcher of the data being analysed.

### **3.7. Legal Research Method**

This method requires an investigation into a subject continuously so as to get a solution or result.<sup>90</sup>This may involve a special finding or a new finding on the existing fact.<sup>91</sup>In this vein, the systematic analysis and investigation of the cases, rules, doctrines or legal theories is what is referred to as legal research.<sup>92</sup> This method looks at the legal rules regarding a social problem, the purpose of those rules and make a determination on amendments that can possibly be utilised to solve the problem or a new law as a recommendation.<sup>93</sup>

To this end, the different methods of legal research are the non-doctrinal, doctrinal and the comparative study.<sup>94</sup> The researcher limited the discussion to the comparative tool and the doctrinal research tool for purposes of utilisation for this study.

---

[https://www.act.hhs.gov/sites/default/files/acyf/qualitative\\_research\\_methods\\_in\\_program\\_evaluation.pdf](https://www.act.hhs.gov/sites/default/files/acyf/qualitative_research_methods_in_program_evaluation.pdf) accessed 23.

<sup>89</sup>Micheal Coughan, Patricia Cronin and Frances Ryan(n.57)

<sup>90</sup>Debashree Chakraborty, 'Empirical (Non-Doctrinal) Research Method and its Role in Legal Research' (2015) 3 International Journal Advances in Social Sciences 23.

<sup>91</sup>Ibid.

<sup>92</sup>Ibid.

<sup>93</sup>Ibid.

<sup>94</sup>Debashree Chakraborty, 'Empirical (Non-Doctrinal) Research Method and its Role in Legal Research' (2015) 3

### 3.7.1. Doctrinal Research

This method requires researching into the cases, statutes or the legal guiding principles of a legal phenomenon.<sup>95</sup> It involves case law analysis, legal doctrine arrangement and the legal institutions study.<sup>96</sup> It allows for the legal concepts and propositions to be critically analysed.<sup>97</sup>

The researcher applied the doctrinal research methodology for the determination of the various challenges, prospects in the Ugandan criminal enforcement by the Office of the Director of Public Prosecutions and the Uganda Police. There was a review of the Ugandan environmental criminal regime that is in existence on the extent of utilisation of criminal sanctions. For this purpose the study used the desk based method and the interview method.

### 3.7.2. Comparative Study General Overview and Legal Transplant

The researcher is of the view that the use of a study that is comparative served the purpose best of getting solutions for the challenges and prospects for the Ugandan criminal enforcement regime of compliance of oil and gas exploration and production activities with environmental law. The study discusses what comparative legal study is all about. It has been defined as “An academic discipline in its own right” regarding “a study of the relationship, above all, the historical relationship, between legal systems or between rules of more than one system.”<sup>98</sup> It has also been defined as a jurisprudence sub-discipline that involves engaging in studying the different legal systems of the world and the comparative analysis and examination of the different world.<sup>99</sup>

The method of comparative analysis in law requires looking at the similarities and differences of the legal systems being compared of the different world and take them into consideration.<sup>100</sup> The recommendations picked from the developed country can then be used for policy decisions of the

International Journal Advances in Social Sciences 23.

---

<sup>95</sup>Vijay Gawas, ‘Doctrinal Legal Research Method: A Guiding Principle in Reforming the law and Legal System Towards the Research Development’ (2017) 3 International Journal of Law 128

<sup>96</sup>SN Jain, ‘Doctrinal and Non Doctrinal Legal Research’ (1975) 75 Journal of the Indian Law Institute 516.

<sup>97</sup>Ibid.

<sup>98</sup>Alan Watson, *Legal Transplants* (2<sup>nd</sup> edn, university of Georgia Press 1993, p 9.

<sup>99</sup>Micheal J. Rainer, *Introduction to Comparative Law* (Wein Mainz 2010) p.2.

<sup>100</sup>Konrad Zweigert and Hein kotz, *Introduction to Comparative Law* (3<sup>rd</sup> edn, Tony Weir-transplanted, Oxford University Press, Oxford 1998, p.2.

nation under comparison.<sup>101</sup>The differences and similarities of the different legal systems are then analysed explaining the rationale for such differences and similarities.<sup>102</sup>

### 3.7.3. Comparative Study Utilisation in this Study

In order to get practical solutions to the challenges of the Ugandan criminal enforcement environmental regime, this study used the comparative legal research, it identified the USA and UK aspects that possibly present solutions to the challenges in the Ugandan regime, The researcher before making a comparison of the regimes of the USA and the UK first of all established the reasons as to why the UK and the USA are the best regimes for the comparison.

This study was mainly concerned with the environmental violations in the oil and gas industry and these include pollution mainly. The study was concerned with the criminal enforcement of compliance with environmental laws by the Office of the Director of Public Prosecutions and the Uganda Police. The study for that reason had identified the UK and the USA who are all oil and gas producing countries with environmental criminal regimes that are established for the regulation of the oil and gas operations in their countries, this is irrespective of the effectiveness of the regimes.<sup>103</sup>Uganda has also been established by the study to be endowed with oil and gas.

Similarly, the upstream oil and gas operations of the UK and USA are important and worthy of attention.<sup>104</sup>The two jurisdictions have gone through reforms that are significant following the

---

<sup>101</sup>Mathias M Seims, 'Legal Originality' (2008) 28 Oxford Journal of Legal Studies 147-165.

<sup>102</sup> Rudolf B Schlesinger, 'The Past and Future of Comparative Law' (1995) 43 The American Journal of Comparative Law 477.

<sup>103</sup>Phillip Mace and others, 'Oil and Gas Regulation in the UK: Overview' [2019] Thomas Reuters [https://uk.practlla.thomsonreuters.com/5524349?transitionType=Default&contextData=\(sc.Default\)&firstpage=true&comp=pluk&bhcp=1](https://uk.practlla.thomsonreuters.com/5524349?transitionType=Default&contextData=(sc.Default)&firstpage=true&comp=pluk&bhcp=1) accessed 28 March 2019; E Allison and B Mandler, 'US Regulation of Oil and Gas Operations' (American Geosciences Institute 2018)<https://www.americangeosciences.org/critical-issues/factsheet/pe/regulation-oil-gas-operations> accessed 15 April 2019; Ojide Makuachukwu Gabriel and others, 'Impact of Gas Industry on Sustainable Economy in Nigeria: Further Estimations through Eview'(2012) 12(21) Journal of Applied Sciences 2244-2251.

<sup>104</sup>Micheal P Joy and Sashe D Dimitroff, 'Oil and Gas Regulation in The United States: Overview' [2016] Thomas Reuters [https://content.next.westlaw.com/document/1466099551c9011e38578f7ccc38dcbee/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstpage=true&bhcp=1](https://content.next.westlaw.com/document/1466099551c9011e38578f7ccc38dcbee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstpage=true&bhcp=1)>accessed 13 October 2019.

disasters of environment that took place in the countries.<sup>105</sup>The regimes have better developed environmental criminal regimes as compared to Uganda.

The USA, UK and Uganda are all jurisdictions of common law with legal systems that are similar in style, thus the historical background to the legal system of the Jurisdictions. The similarities between the three Jurisdictions make it a good comparison. Uganda just as the UK and USA has criminal sanctions that have been developed and mechanisms of enforcement in place for purposes of regulation of the oil and gas aspects of environment. In the UK, criminal sanctions have been utilised as well as enforcement mechanisms for purposes of compliance of the oil and gas industry with environmental law.<sup>106</sup>

It is the researcher's view that the adaptation of the enforcement mechanism of the UK and criminal sanctions will bring practical solutions to the challenges in the Uganda regime. Only specific aspects of the UK will be adopted for the Ugandan challenges.

Furthermore there was also utilisation of the USA regime in coming up with solutions to some of the challenges to the Ugandan regime. The USA federal laws apply to all companies in the USA and citizens as held in *Butz v. Economou*,<sup>107</sup>The reason for using USA is also because it is believed by scholars that they have fully utilised criminal enforcement effectively against environmental violations in the oil and gas industry.<sup>108</sup>

### **3.8. Credibility and validity**

In order to maintain credibility and have consistence enhancement of the data to be collected. The researcher used member checks and audits. In order to ensure trustworthiness the respondents were got from the relevant institutions. Trustworthiness is the degree of confidence in data, interpretation and methods used to ensure quality of the study.<sup>109</sup> The respondents were

---

<sup>105</sup>Engobo Emesch, 'Regulatory and Institutional Framework for 'Enforcing Criminal Liability for Environmental Damage: A study of Oil Industry in Nigeria' (PhD, university of Dundee 2005) p.200.

<sup>106</sup>Micheal Watson, 'The Enforcement of Environmental Law: Civil or Criminal' (2005) 17 ELM Journal 3.

<sup>107</sup>*Butz v Economou*, 438.US.478, 506, 985.Ct.2894, 2910, 57 L.Ed.2d 895 (1978).

<sup>108</sup>Micheal Hertz, 'Structures of Environmental Criminal Enforcement' (2019) 7 Fordham Environmental Law Review 679-681.

<sup>109</sup>Polit, D.F and Beck. C.T.(2014) *Essentials of Nursing Research: Appraising Evidence for Nursing Practice*.8<sup>th</sup> Edition, Lippincott Williams & Wilkins, Philadelphia

also not stressed as the researcher endeavoured to collect the questionnaires. This was supplemented by a telephone interview.

To ensure validity,<sup>110</sup> respondents to be selected were got from relevant fields to this study and questionnaires assigned to them. There was follow up telephone interviews using the trend of semi structured. The use of the telephone interview was used for only those who had filled the questionnaires as this ensured there was consistence and information flow.

### **3.9. Limitations**

Time limitation; the study time coupled with the Covid 19 spread did not enable the researcher sufficient time to interview all the participants from the ODPP and the Uganda Police with the knowledge on the subject. The researcher minimised this by ensuring interviews were conducted at the convenience of the time of the participants.

Limited access to respondents; this was caused by the schedules that are tight of the respondents. The method of the sending questionnaires in advance was adopted as a means of mitigating the limitation.

Low response to the questionnaires; this was mitigated by the researcher adopting the method of straight forward questionnaires, to make them user friendly.

---

<sup>110</sup> Validity is the degree and ability of a research instrument to measure what it is actually intended to measure. (Jensen, 2003:2) & (AERA et al, 1999:184)

## CHAPTER FOUR

### THE LEGAL FRAMEWORK, POLICY AND INSTITUTIONAL FRAMEWORK FOR ENFORCEMENT AND CHALLENGES THEREOF

#### 4.0. Environmental Crime in the Oil and Gas Industry.

It is important to understand what entails environment crime before embarking on some of the environmental crimes in the oil and gas industry and the environmental principles. Environmental crime is referred to as the failure to take action or the taking of actions that are in contravention of the regulations of environment this resulting in harm that is significant and risk to the environment.<sup>111</sup> Environmental crime has different definitions, in Uganda pollution under section 2 of the National Environment Act<sup>112</sup> is everything that is likely to occasion damage or even aggravates it or in terms of health to cause nuisance or even nuisance to environment. It further includes introducing solids, gases, liquids, water, vibrations noise radiation, light and temperature effects. It has also been argued that compliance to environmental regulations can only be enforced effectively only with regulation that is efficient so as to ensure that there is compliance.<sup>113</sup> Most of the regimes establish authorities responsible for enforcement of the standards of environment as regards the activities.<sup>114</sup> The effective implementation in itself requires use of all mechanisms or actions for compliance with the standards to happen.<sup>115</sup>

#### 4.1. Pollution

One of the reasons as to why environmental standards are put in place is because of the significant damage that is occasioned onto the environment in the process of socio-economic developments. Harm to the components of environment such as water, air and land and public health is as a result of the industrialised activities, this therefore requires regulations in place for

---

<sup>111</sup>European Commission, 'Criminal Sanctions for Environmental Offences' (European Commission- European Commission, 2019 <https://ec.europa.eu/info/energy-climate-change-environment/implementation-eu-countries/criminal-sanctions-environmental-offences.en> accessed 23 October 2019.

<sup>112</sup>Of 2019.

<sup>113</sup>Raymond W Marshal, 'Reflections Upon American Environmental Enforcement Experience as it may relate to Post-Hampton Developments in England and Wales' (2007) 19 *Journal of Environmental Law* 201.

<sup>114</sup>Daniel Riesel, *Environmental Enforcement*, 11<sup>th</sup> edn, Law Journal Press 2012, p.28

<sup>115</sup>Ibrahim Shihata, 'Implementation, Enforcement, and Compliance with International Environmental Agreements- Practical Suggestions in the Light of the World Bank's Experience' (1997) 9 *Georgetown International Environmental Law Review* 37.

the industrial activities as regards the environmental aspects.<sup>116</sup>In the oil and gas industry, one of the environmental violations is pollution, it manifests in a notorious form.<sup>117</sup>

In some countries like the USA, strong criminal sanctions have been developed, this was seen in the Exxon Valdez Oil Spill.<sup>118</sup> Another example of strong criminal sanctions is the Deep-water Horizon spill.<sup>119</sup>The USA is one of the countries with a regime of criminal sanctioning that has been built over the years as way of responding to the oil and gas industry pollution.<sup>120</sup>For purposes of ensuring enforcement with regulation, the use of criminal law should be explored in cases of serious violations with standards of environment.<sup>121</sup>

Although Uganda has not yet reached the production stage of the oil and gas industry, there are already reports of violations to the environmental standards in the Albertine Graben, some incidents of violations of waste management practices and compliance with National and International Standards and good industry practice have been found in Kisinja and Bugungu, where the waste treatment plant was found to be within a 10m-20m distance near residential communities. The disposal sites clogged with sediments are an issue that raises concerns of health, environment and safety.<sup>122</sup> The use of criminal law to enforce compliance with environmental law in the oil and gas exploration and production operations has not been utilised as such, institutions such as the ODPP and Uganda police have not been able effectively involved in the criminal enforcement.

---

<sup>116</sup>Claude Sigam and Leonardo Garcia, 'Extractive Industries: Optimising Value Retention in Host Communities' (United Nations Conference on Trade and Development 2012) p.4.

<sup>117</sup>United Nations Environmental Programme, 'Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches' (Words and Publication 1997) p.11.

<sup>118</sup>This spill occurred on March 24, 1989, in the Gulf of Alaska, after the Exxon Valdez ran aground on Bligh Reef. Delayed efforts to contain the spill dispersed nearly 11,000,000 gallons (41,640 Kilolitres) of crude oil across the sound. The spill eventually polluted 1,300 miles (2,092 kilometres) of shoreline and adjacent waters.

<sup>119</sup>This spill (also referred to as the BP oil spill or the Macondo blowout) occurred on April 20, 2010, in the Gulf of Mexico on discharging an estimated 4.9 million barrels (210 million US gal; 780,000 m<sup>3</sup>). It is regarded as the largest marine oil spill.

<sup>120</sup>Engobo Emesch, 'Regulatory and Institutional Framework for Environmental Damage: A study of the Oil Industry in Nigeria' (PhD, University of Dundee 2005, p.200.

<sup>121</sup>The Law Commission, 'Criminal Liability in Regulatory Contexts': Consultation Paper No 195 (The Law Commission, UK 2010) pp.2-3.

<sup>122</sup>Civil Society Coalition on Oil and Gas (CSCO), The State of Oil & Gas Waste Management Facilities & Environmental Compliance in the Albertine Graben Region of Uganda, CSCO Research Paper No. 2, 2015.

## **4.2. General Over view of Environmental Principles with aspects of Criminal Enforcement**

These principles establish the environmental protection framework in the respective regimes. The chapter then looks at the law provisions of environment in Uganda that establish environmental standards. The chapter will have two parts: an over view of the environmental principles specifically with a focus on criminal enforcement in general and secondly environmental standards in Uganda that reflect criminal sanctions for the violations of the standards and also reflect some of the principles. The overview in general may give grounding to the future formulation of the Ugandan oil and gas industry new environmental law provisions and criminal enforcement mechanisms through the office of the Director of Public Prosecutions and the Uganda Police. The principles may not necessarily be all reflected in the Ugandan environmental regime.

## **4.3. Polluter-Pays Principle**

The environment quality degradation with substances that are hazardous by a person is referred to as pollution.<sup>123</sup> Introducing substances into the environment that result into effects that are deleterious by a human being is also regarded as pollution, this can either be indirectly or directly. Damage to the environment is also caused by economic activities increase and the growth in population.<sup>124</sup> It therefore follows that, where a polluter causes pollution, he should bear the cost of the environment for the pollution.<sup>125</sup> Importantly, it should be determined in the polluter pays Principle on who is to bear the pollution cost, the pollution extent and scale including the potential pollution is taken into consideration for purposes of the cost of pollution.<sup>126</sup>

In the 1972, in Europe, the principle of polluter-Pays was recommended as a guiding principle for every policy on environment.<sup>127</sup> This applies to accidental pollution and pollution that is

---

<sup>123</sup>Jude Eeanokwasa, 'An Appraisal of the Conformity of the 2007 Nigerian Minerals and Mining Act to the Polluter Pays Principle 1' (2017) 8 *Nnmdiaziwe University Journal of International Law and Jurisprudence* 66

<sup>124</sup>Arne Bleeker, 'Does the polluter- Pays Principle in the Case Law of the European Court of Justice' (2009) 18 *European Energy and Environmental Law Review* 289.

<sup>125</sup>Phillipe Sands, *Principles of International Environmental Law*, second edition, p.206.

<sup>126</sup>Arne Bleeker, 'Does the polluter- Pays Principle in the Case Law of the European Court of Justice' (2009) 18 *European Energy and Environmental Law Review* 289.

<sup>127</sup> Organisation for Economic Co-operation and Development (OECD) Council Recommendation concerning the Application of the Polluter-Pays Principle to Accidental Pollution C (72)128 (1972), 14 *ILM* 236 (1975).



illegally discharged from waste of oil or waste that is hazardous.<sup>128</sup> Following this declaration, this principle of polluter-Pays is now adopted in environmental legislation.<sup>129</sup> This was also emphasised in the Rio Declaration principle 16, requiring authorities at national level to incorporate the principle, as such a number of states have had the principle incorporated into their legislation.<sup>130</sup>

In several environmental treaties, the principle of polluter-Pays has been adopted, the Alpine convention article 2(1),<sup>131</sup> the Baltic Sea convention Article 3(4),<sup>132</sup> the ASEAN Convention Article 10(d),<sup>133</sup> the UNECE Trans boundary Waters Convention<sup>134</sup> Article 2(5) that clearly makes provision for determination of costs of pollution control, prevention and measures of reduction for the polluter to bear and the OSPAR Convention Article 2(2).

The Ugandan regime of environmental has several provisions on the polluter-Pays principle, the law also provides for criminal provisions in form of liability for pollution damage under section 163 of the National Environment Act.<sup>135</sup> The person is also criminally liable for illegal management of waste under section 162 of the National Environment Act.<sup>136</sup> The criminal liability is also reflected in other laws specifically regulating petroleum activities as will be discussed later in chapter. The Provisions are not there by accident, they are a clear indication that criminal enforcement is meant to take effect in case of significant harm to the environment arising out of oil and gas operations.

#### **4.4. Principle on Sustainable Development**

Sustainable development as a principle has been emphasised overtime in a number of literatures<sup>137</sup> several instruments and treaties as such recognise the principle of sustainable

---

<sup>128</sup>Directive 2008/98/EC on waste (Waste Framework Directive).

<sup>129</sup>Jude Eeanokwasa, 'An Appraisal of the Conformity of the 2007 Nigerian Minerals and Mining Act to the Polluter Pays Principle 1' (2017) 8 Nmmdiazikiwe University Journal of International Law and Jurisprudence 66

<sup>130</sup>Ibid

<sup>131</sup>Convention on the Protection of the Alps (Alpine Convention) on November 7, 1991

<sup>132</sup>Convention on the Protection of the Marine Environment of the Baltic Sea Area signed in 1992 and entered into force on 17 January 2000. (Helsinki Convention).

<sup>133</sup>ASEAN Agreement on Conservation on Nature and Natural Resources on July 9, 1985

<http://sedac.ciesin.org/entri/texts/asean.natural.resources.1985.html> accessed 10 December 2018.

<sup>134</sup>Of 1992.

<sup>135</sup>Of 2019.

<sup>136</sup>Ibid.

<sup>137</sup>Paragraph 7 of the Bergen Ministerial Declaration on Sustainable Development in the United Nations Economic

development.<sup>138</sup>The concept has also been referred to by the Brundtland Report,<sup>139</sup> as a censuring that the present and the future generation needs are not compromised in the process of carrying out any development.<sup>140</sup>It therefore follows that, it is important to make sure that in the process of industrialisation of the resources, measures are applied to not affect the environment as a means of ensuring the future generation and the present are protected from harm.<sup>141</sup> The Rio Declaration Principle 3 also reiterates this. The activities of oil and gas should therefore be exploited in a sustainable development manner.

This principle has been asserted in the Lome Convention<sup>142</sup> Article 33 requiring enhancement of environment and natural resources and protection, forest and land deterioration halting, ecological balances restoration, natural resources preservation and exploitation. It ensures the population living conditions are improved and future generations safeguards are in place.<sup>143</sup> Similarly, African Nature Convention<sup>144</sup> preamble also reflects the sustainable development assertions, requiring natural resources utilisation, aimed at the needs of man satisfaction in accordance with the environment capacity.<sup>145</sup>

The principle on sustainable development is also reflected in several other principles. The principle on Polluter-Pays requires that “governments should require polluting entities to bear the costs of the pollution rather than impose those costs on others or on the environment.”<sup>146</sup>States are therefore under duty to make provision for concerns on environment integration so as to ensure environmental sustainability.

In the Ugandan regime, the principle on sustainable development is reflected in a number of statutes, the supreme law of the land, the constitution of the Republic of Uganda,<sup>147</sup> also provides

---

Commission for Europe (UNECE) Region on the 16<sup>th</sup> of May 1990.

<sup>138</sup>Jo Burges and Edward Barbier, ‘Sustainable Development’[2001] International Encyclopaedia of the Social & Behavioural Sciences 15329

<sup>139</sup>Brundtland Report 1987.

<sup>140</sup>World Commission on Environment and Development, ‘Our Common Future’ (1987) Oxford University Press p.43.

<sup>141</sup>Phillipe Sands, Principles of International Environmental Law, second edition, p.206.

<sup>142</sup>Of 1989

<sup>143</sup>African Convention on the Conservation of Nature and Natural Resources on the 15<sup>th</sup> of September 1968.

<sup>144</sup>Of 1968.

<sup>145</sup>African Convention on the Conservation of Nature and Natural Resources on the 15<sup>th</sup> September 1968.

<sup>146</sup>John C Dernbach, ‘Sustainable Development as A Framework for National Governance’ (1998) 49 Case Western Reserve Law Review 58

<sup>147</sup>Of 1995.

for sustainable development under article 244 and 245, requiring that the government of Uganda holds all resources on behalf of all Ugandans and is expected to exploit resources while at the same time ensuring that there is conservation of the environment for the present and the future generation.

#### **4.5. Overview of Environmental Regulation of the Ugandan Oil and Gas Industry on Criminal Enforcement.**

The study has looked at the environmental law principles in respect to criminal enforcement so as to have environmental protection. This section discusses the Ugandan regime of environment to determine whether the environmental principles are provided for. The extent to which international environmental law provisions are provided for in the Uganda regime will be also looked. The discussion is approached as follows: Are the Ugandan environmental law provisions reflecting the international environmental law principles?

This study specifies the environment standards that specifically reflect criminal enforcement, it looks at the criminal provisions that enforce these standards. The study will examine the sanctions and their monetary effect.

#### **4.6. The National Oil and Gas Policy<sup>148</sup>**

It is a guiding principle 5.1.5 under the policy to ensure that there is environmental protection and biodiversity conservation. For the purposes of development that is sustainable, there should be compliance of the oil and gas activities to environment and the government to monitor and regulate the same. The objective 5:3:9 is to make sure that there is conservation of biodiversity and environment in the process of undertaking the activities of oil and gas. Among the strategies is to ensure there is regulatory frame work and institutional for addressing the biodiversity and environment issues of oil and gas. There should also be a strengthening of the institutional mandate for the management of the oil and gas activities impact on the biodiversity and the environment. The office of the Director of Public Prosecutions and the Uganda relevance is in

---

<sup>148</sup>of 2008.

the strengthening of their mandates so as to effectively enforce compliance with environmental laws.

#### **4.7. The National Environment Management Policy <sup>149</sup>**

The policy's goal overall is for the establishment of economic and social development that enhances or maintains quality of environment and productivity of the resource ensuring that the needs of the present are met without a compromise of the needs of the future.<sup>150</sup> The policy aims at the enhancement of quality of life of all Ugandans and the promotion of socio-economic development that is sustainable through sound environmental management, it requires the integration of environmental concerns in the planning and development activities at all levels of the government. The policy key principle in the implementation and development of strategies include:<sup>151</sup> constitutional right of every person to living in a healthy environment, keeping the environment clean. It further includes the use of technologies that are socially acceptable and affordable and also friendly environmentally. The policy encompasses environmental protection which extends to criminal enforcement.

#### **4.8. The Uganda Wildlife Policy<sup>152</sup>**

The aim of this policy overall is ensuring that long-term conservation of wildlife and biodiversity is promoted in a manner that is cost effective to towards the maximisation of wildlife resource benefits to the people. The objective of the policy includes conservation of resources in wildlife protected areas and within national parks. It also requires UWA to make consultations with the local communities as regards management plans for development in the protected areas. The oil and gas industry activities are within the important wildlife zones of Uganda covering bird species, reptile and a mammalian matrix. This makes the policy guidelines very relevant and they reflect the sustainable development principle.

---

<sup>149</sup>Of 1994.

<sup>150</sup>Chapter II Part 2.1 of the Policy.

<sup>151</sup>Part 2.3.

<sup>152</sup>Of 1999.

#### **4.9. The Energy Policy<sup>153</sup>**

The policy's main goal is ensuring that the Ugandan population energy needs for social and economic development are met in a manner that is sustainable environmentally. One of its broad objectives includes increasing accessibility, affordability and reliability of energy services that are modern in order to eradicate poverty. In the achievement of this, the Government seeks attraction of private capital in the energy sector management, energy service providers competition promotion, energy technologies markets development promotion and services all this to be put in a conducive environment place. The government is also under obligation to promote environmentally friendly technologies in the use of the energy resources working towards the reduction of energy related emissions that are harmful to the environment. The management of the oil and gas resources in Uganda is not however catered for in the policy as it was developed before the National Oil and Gas Policy.

#### **4.10. The Uganda National Land Policy<sup>154</sup>**

There are a number of objectives provided for in this policy, but the relevant one for oil exploration and production is ensuring that human settlements development for the rural and urban areas that include infrastructure is planned in a manner that is environmentally friendly. It further seeks to ensure the social economic development of resource utilisation, management and protection is done in an environmentally sustainable manner.<sup>155</sup> The policy makes recognition of the constitution article 244(1) that vests mineral resources and petroleum in the government to be held on behalf of all Ugandans. In the policy, the government is to ensure that natural resources are managed optimally for the present and future generation benefits. The policy is therefore very important for the oil and gas industry as the resources occurs underneath the earth surface the environmental protection aspect then comes into play.

#### **4.11. The National Water Policy<sup>156</sup>**

It is the policy's overall objective to ensure development and management of Uganda's water resources in a manner that is sustainable, ensuring that the social and economic needs of the

---

<sup>153</sup>Of 2002.

<sup>154</sup>Of 2013.

<sup>155</sup>Part 2.4, page 9.

<sup>156</sup> Of 1999.

present and the future are met with full stakeholder's participation. In regard to the oil exploration, there is provision for industrial discharge effluents regulation to water, sharing and use of the water resources. To the oil and gas exploration and production this policy is relevant as it puts emphasis on quantity and quality use of the water, this ensures that the activities of operators do not lead to pollution in water as a result of aqueous discharge.

#### **4.12. Uganda Forestry Policy<sup>157</sup>**

In respect to sustainable development, the policy seeks to protect under the government trusteeship the Permanent Forest Estate (PFE) and the management and development of natural forest in a sustainable manner. It emphasizes conservation and sustainable use of the biodiversity of the forest. This policy is of great relevance to the oil and gas industry on the guidance of the forest conservation. There are already reports of threats to Itwara Forest Reserve, Budongo Forest Reserve and Kagombe Forest Reserve.

#### **4.13. Uganda Policy Framework for Industry Sector<sup>158</sup>**

The policy is also important to the oil and gas exploration and production industry as its objective is the exploitation and development of industries that are natural domestic resource based such as petroleum. The policy has emphasis on the industrialisation that is efficient and effective in an environmentally sustainable development. This incorporates the principle on sustainable development.

#### **4.14. The Constitution of the Republic of Uganda<sup>159</sup>**

The constitution makes provision for taking all the necessary measures by the government in the protection of natural resources, these including minerals, oil, fauna and flora, land and water and this to be done on behalf of all Ugandans.<sup>160</sup> It is stated that: "The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner of the present and future generation." It further provides that "The utilisation of the natural resources of Uganda shall be managed in such a way as to meet the

---

<sup>157</sup>Of 2001.

<sup>158</sup>Of 2008.

<sup>159</sup>Of 1995 as amended.

<sup>160</sup>Principle XIII Of 1995 as amended.

development and environmental needs of present and future generations of Ugandans and in particular the state shall take all possible measures to prevent or minimise damage and destruction to land, air, and water resulting from pollution or other causes.”<sup>161</sup>The article is a reflection of the sustainable development principle on environment, it clearly reflects the international environmental principle, that requires protection of the environment for the future and the present and that all measures are to be taken to ensure protection is upheld. These measures may involve various enforcement mechanisms including criminal enforcement.

#### **4.15. The Water Act<sup>162</sup>**

The act makes provision for pollution as an offence under section 31, a person is held criminally liable for allowing without authorisation waste into water, pollution of water and upon conviction to meet the cost of remediation of the damage and environment reinstating. The act under section 40 also makes provision for other penalties such as not more than 5 years imprisonment or not more than six million fine and for every day of continued offence one million fine, this is however where there is no other penalty for provided for on violation under the act.

#### **4.16. Water (Discharge) Regulations<sup>163</sup>**

The regulations under 4 prohibit waste or effluent discharge on land or aquatic environment unless with a permit. Regulation 5 a person is criminally liable for failure to make installation of anti-pollution equipment for effluent treatment and waste discharge that emanates from the industry criminally liable under section 40 of the Water Act.

#### **4.17. The Petroleum (Exploration, Development and Production) Act<sup>164</sup>**

The Act under section 131 provides for liability for pollution arising out of a petroleum activity. Section 30 as well makes provision for liability of pollution and section 163 of the Act provides for criminal liability of a body corporate especially where there is negligence; the person is to serve imprisonment for one month or fine. A forfeiture under Section 164 of money, funds,

<sup>161</sup>Article 245 of 1995.

<sup>162</sup>Cap 152, of 1997.

<sup>163</sup>Statutory Instrument No. 32/1998.

<sup>164</sup>Of 2013, Act 3..

documents, instruments, vehicles, facilities, crafts, vessels or equipment that have been used in the crime commission may also be prescribed as a penalty.

#### **4.18. National Environment Act<sup>165</sup>**

A number of environmental provisions are stipulated, Section 158 of the Act, a person is criminally liable for failing to establish an environmental management system, it gives rise to a penalty of not more than ten years or a not more than fifty thousand currency fine or both. Section 162 criminally liable for management of waste illegally, the penalty is for not more than fifteen years or not more than fifty currency points or both. Section 163 criminal liability arises for pollution leading to a penalty of not more than fifteen years imprisonment or not more than fifty thousand currency points or both. Any failure to comply with environmental standards leads to criminal liability, the provisions allow for criminal enforcement through the office of the Director of Public Prosecutions and the Uganda Police though has not been utilised.

#### **4.19. Petroleum (Waste Management) Regulations<sup>166</sup>**

The regulations under 4 require the petroleum waste handler and the licensee to comply with the principles of environment in the National Environment Act and also apply the petroleum waste management measures for the pollution prevention, biological diversity harm and best environmental practices use and technologies. Regulation 6 the licensee is to take all necessary steps in ensuring that there is appropriate petroleum waste management according to NEA, environmental standards and the law applicable. The environmental management practices use is also encouraged under Regulation 10 and upon violation of the regulation, the person is criminally liable for not more than ten years imprisonment or not exceeding five thousand currency points fine or both.

A waste management system under Regulation 11 in compliance with the NEA, environmental standards and best industry practices for petroleum, are to be developed by the petroleum waste handler and licensee, it should take into consideration the safe guards for environment. The waste management plans developed must as well be suitable environmentally. There will be criminal liability on failure to comply with the regulation, the person will serve upon conviction

---

<sup>165</sup>Of 2019, Act 5.

<sup>166</sup>Of 2019, Statutory Instrument No. 3/2019.



not more than four years or two thousand currency points or both. A person is also criminally liable under Regulation 25 for failure to use a container to store petroleum waste in accordance with NEMA standards, they will upon conviction serve not more than ten years imprisonment or not exceeding five thousand currency points fine or both. Further still criminal liability arise where under regulation 26 a person packages hazardous chemicals in petroleum containers not in accordance with environmental standards, the penalty shall be imprisonment not exceeding eight years or not more than four thousand currency points or both.

The Regulations under 27 also provide for criminal liability for the licensee or petroleum waste handler failing to ensure that the storage of petroleum waste containers or facilities for petroleum waste management do not go against NEA standards of air quality, the penalty is not more than six years or not more than a fine of three thousand currency points or even both. It will also be an offence under Regulation 37 for failure to make provision for a secure buffer zone as per the standards of environment, the penalty will include not more than ten years or not more than five thousand currency points or even both. Criminal liability will also arise under Regulation 38 where an incineration for petroleum waste is not designed to control air pollution and does not therefore conform to standards of environment, the penalty shall be not more than ten years imprisonment or not more than five thousand currency points or both. The failure under Regulation 40 as well to ensure emissions, effluent discharge does not adversely affect the environment is criminally liable and the penalty is imprisonment not exceeding six year or not more than three thousand currency points or both.

In addition to all the above offences, forfeiture may be ordered under regulation 54, it may be in form of facilities, vehicles, funds, documents, vessels, equipment or crafts that could have been used in the crime commission. The regulations emphasise criminal enforcement through relevant bodies though not yet utilised.

#### **4.20. National Environment (Standards For Discharge of Effluent into Water or Land) Regulations<sup>167</sup>**

There will be criminal liability arising under regulation 5 for effluent discharge into water or land against the environmental standards or in accordance with the NEA or Water Act, the

---

<sup>167</sup> Of 2020, Statutory Instrument No.144/2020.

penalty under regulation 7 will be not more than five years or not more than ten thousand currency points or both. For a body corporate, the punishment will be not more than fifty thousand currency points or not more than two thousand currency points for each day or for the continued commission of the offence for each day.

#### **4.21. The office of The Director of Public Prosecutions**

The above criminal offences as pointed out in the preceding sections of the laws can only be enforced by the ODPP, the office is under the mandate of the <sup>168</sup> in charge of all prosecutions of all criminal matters other than those in the court martial. It therefore follows that all other bodies can only work in support of the ODDP for criminal prosecutions or if delegated by the office. It is therefore important to ensure that the office is involved in environmental violations of the oil and gas exploration and production activities so as to effectively enforce compliance with environmental law and to have deterrence.

#### **4.22. The Uganda Police**

The institution is mandated under the constitution<sup>169</sup> to ensuring that there is law and order preservation, detection of crime and prevention. Under article 120,<sup>170</sup> of the constitution of Uganda, the ODPP also directs police on investigations, this therefore means that the Uganda police works under the direction of the ODPP. The environmental unit under NEMA is therefore meant to work in cooperation with the ODPP for purposes of investigating environmental violations in the oil and gas exploration and production industry in order to ensure that compliance with environmental laws is effectively enforced.

#### **4.23. National Environment Management Authority**

The authority under section 9 of the National Environment Act<sup>171</sup> is under the mandate to ensure all environment activities are regulated, the functions include supervising, monitoring, regulating and coordinating the activities. The authority generally complements the criminal enforcement of

---

<sup>168</sup>Article 120 of the Constitution of the Republic of Uganda 1995.

<sup>169</sup>Article 211 Constitution of the Republic of Uganda 1995 as amended.

<sup>170</sup>Of 1995 as amended.

<sup>171</sup>Of 2019.

compliance of the oil and gas operations with environmental law. It cannot therefore work in isolation.

#### **4.24. Conclusion**

The findings in the section established what entails environmental crimes and the serious nature of crime in oil and gas. The study found that the international framework and national framework provide for criminal enforcement through the institutions of the office of the DPP and the Uganda Police as mandated under the Ugandan constitution. The utilisation of criminal enforcement has however not been utilised so much in Uganda as regards oil and gas industry compliance with environmental laws as little consideration has been given to it. The above findings meet objective number one as they have shown that the respective institutions have a role to play in criminal enforcement so as to cause deterrence, the importance of the deterrence theory is emphasised.

#### **4.25. Challenges of Criminal Enforcement of Compliance by the Office of the Director of Public Prosecutions and the Uganda Police**

The study sought to establish in accordance with the purpose of the research the efficacy of the ODPP and Uganda Police, interviews were carried out in the ODPP, three officers were interviewed from the ODPP in line with the specific objectives of this study. The study established the following findings from the officers, these are presented in this chapter, analysed and discussed accordingly.

##### **4.25.1. Knowledge of the Oil and Gas Exploration and Production activities adverse effects and environmental crimes.**

The study established from all the officers that only a few officers who had gone through the oil and gas training at the institute had knowledge of the adverse effects to the environment of the activities. These few officers had the required knowledge of the known adverse effects that include pollution, which greatly affects the aquatic system, the atmospheric, eco system and the human beings. It was further revealed that the criminal offence is pollution and illegal waste management. The officers interviewed revealed “Not much awareness by the officers of the

adverse effects and crime.” The study’s view is that there is a challenge in the criminal enforcement by the ODPP and Uganda Police as the institutions cannot enforce what is not known to them.

#### **4.25.2. Adequacy of the Criminal Sanctions**

It was established from the officers interviewed that the criminal sanctions are not sufficient to serve the purpose of deterrence, “the imprisonment of 10 years and the five thousand currency points may not serve the purpose of criminal enforcement.” “The Oil companies have a lot of money, they can very easily pay the money even where the harm to the environment is significant.” One of the officers was of the view that “production has not yet taken place and the laws have not yet been tested as regards criminal enforcement” and another was that “restoration orders would serve the purpose well.” The study’s view is that the criminal sanctions are not adequate enough to realise deterrence especially in cases of repeated violations so as to ensure compliance of the oil and gas exploration and production operations with environmental law and as such it defeats the purpose of the Office of the Director of Public Prosecutions and the Uganda Police.

#### **4.25.3. The Role of the ODPP and the Uganda Police in the Criminal Enforcement**

The officers interviewed revealed that “only few officers had knowledge about the industry and the role of the ODPP and Uganda police in ensuring environmental crimes arising out of the oil and gas operations are investigated and prosecuted so as to ensure compliance.” “Majority of the officers have no knowledge of the criminal elements of environmental law in the oil and gas industry.” There is complete ignorance of the role of the ODPP and Uganda Police in criminal enforcement. The study’s view is that the role and relevance of the ODPP and Uganda police has not been fully utilised, this reflects in the responses, this then undermines the criminal enforcement of compliance.

#### **4.25.4. Support to the ODPP and the Uganda Police in the Criminal Enforcement of Compliance**

The study found from all the officers interviewed that there was “no support to the ODPP from the government whatsoever for purposes of criminal enforcement of the compliance to the ODPP.” The view of the study is that this makes criminal enforcement by the said body impossible, yet the other institutions receive some kind of enforcement as established from the literature review. This presents a challenge to the institutions responsible for criminal enforcement especially the ODPP as mandated under the constitution of Uganda.

#### **4.25.5. Technical Expertise of the ODPP and Uganda Police.**

The study revealed that the “officers who have the expertise are very few and the majority lack the required expertise” for purposes of effectively enforcing compliance of the oil and gas operations with environmental law. The view of the study is that this makes enforcement difficult to realise by the ODPP and Uganda Police and instead encourages non compliance with the environmental standards.

#### **4.25.6. Trainings of the ODPP and Uganda Police**

The findings to the study from all the officers interviewed showed that the “majority officers of the ODPP have not received any kind of training as regards oil and gas activities.” The activities involve complex process and as such it may be hard for the officers to gather evidence and also direct on the same. The study’s view is that this hinders criminal enforcement of the officers of the ODPP and Uganda Police and promotes environmental violations in the sector as such.

#### **4.25.7. Conclusion**

The study has established the various challenges to criminal enforcement by the ODPP and Uganda Police of compliance with environmental laws by the Oil and Gas exploration and Production. It is the view of the researcher that the challenges if not addressed, there will continue to be adverse effects to the environment resulting from the activities of the Oil and Gas industry. The findings clearly answer research question number two and relate to research objective number two.

## CHAPTER FIVE

### ENVIRONMENTAL CRIMINAL SANCTIONS: UK, USA AND UGANDAN REGIMES A COMPARATIVE STUDY

#### 5.0. Introduction

A number of environmental standards violations have been identified in the Ugandan oil and gas industry. It has been further established that despite the existence of laws for purposes of preventing the violations and several other mechanisms for enforcement specifically criminal enforcement, there have been failures in the enforcement of compliance to environmental law. In light of the limitations above, challenges responsible for the failures in the criminal enforcement by the Office of the Director of Public Prosecutions and the Uganda Police have been identified. This chapter makes a comparison to the UK and USA regimes presenting solutions to the challenges of the ODPP and Uganda Police in the criminal enforcement of compliance of the oil and gas activities to environmental law. The importation of the criminal enforcement aspects of the UK and USA regime will bridge the gaps in the Uganda regime. The chapter does not present the major recommendations; this is done in the following chapter 6 of the study. The general application of the criminal law environmental systems of the USA and the UK are discussed in details.

#### 5.1. The Environmental Regime of the USA General Overview

Oil pollution has been one of the most significant effects that the USA has undergone.<sup>172</sup> In the 1960, there was an outcry of the land, water and air pollution, oil and gas pollution in the country that was massive.<sup>173</sup> From that time, the environmental Criminal regime of the USA aims at the

---

<sup>172</sup>Some of the examples of the oil spill pollution include: the Keystone Pipeline spill of 16<sup>th</sup> November, 2017 which discharged approximately 9,700 barrels of oil; the Delta House oil spill of 11<sup>th</sup> October, 2017 which discharged 9,350 barrels of oil; the Energy Transfer Dakota Access Pipeline Leak of 4<sup>th</sup> April, 2017 which discharged approximately 4,000 barrels of oil; the shell Gulf of Mexico oil spill of 12<sup>th</sup> May, 2016 which discharged approximately 2,100 barrels of oil; the Refugio oil spill of 19<sup>th</sup> May, 2015 which discharged approximately 3,400 barrels of oil; the Yellowstone River oil spill of 17<sup>th</sup> January, 2015 which discharged approximately 1,200 barrels of oil; the Lake Michigan oil spill of 24<sup>th</sup> March, 2014 which discharged approximately 39 barrels of oil; and the Deepwater Horizon oil spill of 20<sup>th</sup> April-15<sup>th</sup> July, 2010 mentioned in the literature review section

<sup>173</sup>Department of Justice (DOJ), 'Historical Development of Environmental Criminal Law/ ENRD/Department of Justice' (Justice .Gov, 2018 <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law>) accessed 10 December 2018.

prohibition of environmental offences in different forms.<sup>174</sup>The period before the 1967, civil enforcement was being used widely for purposes of implementing the administrative environmental laws.<sup>175</sup>Compliance was more relaxed and not coercive in the form of cooperative compliance with the principles of environment.<sup>176</sup> The use of criminal sanctions was only used upon the failure of enforcement that was civil.<sup>177</sup> It is because civil enforcement was the centre of focus at the time, that there was very minimised prosecution of acts of pollution as environmental criminal offences and sanctions allocation by the USA Attorney, Criminal Division of the Justice Department and the Federal Bureau of Investigation, in order to ensure compliance, civil injunction, civil Judicial actions and civil administrative actions were employed.<sup>178</sup>

It is important to note, that non compliance by the companies in the USA and residents of the environmental protection standards under the Clean Air Act <sup>179</sup> and the Clean Water Act (CWA)<sup>180</sup>was so noticeable.<sup>181</sup>This was so, even though the USA pollution sources was widely provided for in the statutes.<sup>182</sup>As a result there was increased environmental pollution and failure of protection by the Acts arising from the provisions non compliance. Following this, there were amendments in the USA regime of the Clean Air Act (CAA).<sup>183</sup> Regulatory programmes that were major, were introduced in the 1970 amendment, these including: The State Implementation Plans (SIPs); The National Ambient Air Quality Standards (NAAQS); the New source Performance Standards (NSPS); and the National Emission Standards for Hazardous Air Pollutants (NESHAPs).<sup>184</sup> The enforcement was being done by the EPA.<sup>185</sup>This amendment, led

---

<sup>174</sup>DOJ, 'Prosecution of Federal Pollution Crimes/ Department of Justice'( Justice.gov, 2018) <https://www.justice.gov/enrd/prosecution-federal-pollution-crimes> accessed 10 December 2018; Environmental Protection Agency (EPA), 'EPA Continues To Exceed Previous Numbers in Civil, Criminal Cases, Penalty Assessments' (Environmental Protection Agency 1990) 1534.

<sup>175</sup>Robert I McMurry and Stephen D Ramsey, 'Environmental Protection Agency 1990) 1534.

<sup>176</sup>ibid. p.1137.

<sup>177</sup>ibid. p.1136.

<sup>178</sup>ibid.

<sup>179</sup> Of 1963 as amended in 1990.

<sup>180</sup> Of 1972

<sup>181</sup>ibid.

<sup>182</sup> Ibid.p.1137

<sup>183</sup>Environmental Protection Agency (EPA), 'Evolution of The Clean Air Act' (EPA, 2017) with amendments in 1970, 1977 and 1990 <https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act> accessed 18 March 2019

<sup>184</sup>Ibid.

<sup>185</sup>Ibid.

to the authority enforcement being widened under the Act.<sup>186</sup>The amendments of 1977 and 1990 came with modifications in the review requirements of permits majorly in order to ensure that there is NAAQS attainment and maintenance.<sup>187</sup> The USA regime has made use of several environmental statutes to implement environmental standards alongside the CAA.

The crime of pollution in the USA is provided for under the CWA,<sup>188</sup>Resource Conservation and Recovery Act (RCRA),<sup>189</sup> the Marine Protection Research and Sanctuaries Act<sup>190</sup>(MPRSA), the Oil Pollution Act<sup>191</sup> and the Act to Prevent Pollution from Ships (APPS).<sup>192</sup>

It is a crime under the RCRA for a person to fail to obtain an RCRA permit, endangering the environment knowingly by failure to treat, dispose hazardous waste or otherwise,<sup>193</sup>a person faces either a fine or conviction imprisonment upon conviction.<sup>194</sup> The punishment was further enhanced by the 1980 Congress amendment to s.3008 of the statute, to a maximum penalty of \$50,000 for each day of the violation or a term of imprisonment of 15 years. This amendment made the crime a felony and not a misdemeanour as earlier provided.<sup>195</sup>The criminal sanction as reflected shows that it is tough enough to cause deterrence, Uganda could as well use some of the tough sanctions so as to ensure effective enforcement of compliance.

The illegal discharge of waste the waters of USA is also prohibited in the CWA.<sup>196</sup>It additionally also prohibit crude oil waste into USA waters.<sup>197</sup>Also any failure to report the oil discharge or substances that are hazardous is a criminal violation.<sup>198</sup>Further still, the discharge to a publically Owned Treatment Works (POTW) against the federal pre-treatment standards;<sup>199</sup>and the local

---

<sup>186</sup>Ibid.

<sup>187</sup>Ibid.

<sup>188</sup>Of 1972.

<sup>189</sup> Of 1976,

<sup>190</sup> Of 1972

<sup>191</sup> Of 1990

<sup>192</sup> Of 1980

<sup>193</sup>42 U.S.C.S 6901 et seq.

<sup>194</sup>42 U.S.C.S 6928(d) (2) (A).

<sup>195</sup>Cristoher Harris, Patrick O Cavanaugh and Robert L Zisk, 'Criminal Liability for Violations of Federal Hazardous Waste Law: The Knowledge Of Corporations and their Executives' (1988) 23 Wake Forest Law Review 207.

<sup>196</sup>33 U.S.C.1319 (1)&2.

<sup>197</sup>33 U.S.C.1319 (1) &2 & 1321 (b) (3).

<sup>198</sup>33 U.S.C. 1321 (b) (5).

<sup>199</sup>33 U.S.C. 1319 (1) (A) & (2) (A).



pre-treatment program;<sup>200</sup> plus a discharge to a POTW causing harm to the system is prohibited and attracts sanctions.<sup>201</sup> The illegal discharge offences attract penalties ranging from 1 year and \$ 2,500-& \$ 25,000 computed daily for subsisting offence and convictions that are subsequent, for negligent violations from 2 years or for each day the offence subsists \$ 50,000, alternatively 3 years and \$ 5000-\$ 50,000 for the subsisting offence each day and 6 years for the convictions that are subsequent and per day for violations committed by the offender intentionally \$ 100,000.<sup>202</sup>

The transportation of the US waste material intentionally to dump into ocean waters with no permit is also prohibited under the MPRSA<sup>203</sup> A penalty of \$ 250,000 maximum fine and or imprisonment maximum is provided for.<sup>204</sup> The offence of violating the international Convention of Pollution knowingly from ships (MARPOL Protocol)<sup>205</sup> and all other USA statutes in relation to waste discharge of materials from ships, including oil and garbage and others is prohibited under the APPS.<sup>206</sup> This offence attracts a 10 year imprisonment term or fines.

Similarly, the endangering of another person knowingly is liable to a term of imprisonment of 15 years and/ or & 250,000 (\$ 1,000,000 for corporations) and convictions that are subsequent, it is doubled.<sup>207</sup> Under the Act, where knowingly or negligently, the offender occasions harm to public health and safety resulting from the offence of pollution, the penalty is enhanced. Also making statements that are false is criminally liable for 2 years and or \$ 10,000 or alternatively 4 years for convictions that are subsequent and or \$ 20,000 on subsisting commission of the offence per day.<sup>208</sup>

---

<sup>200</sup>33 U.S.C.1319(1) (A) & (2) (A)

<sup>201</sup>33 U.S.C. 1319(1) (B) & (2) (B).

<sup>202</sup>ibid

<sup>203</sup>Of 1972.

<sup>204</sup>33 U.S.C.141.

<sup>205</sup>Of 1973.

<sup>206</sup>33 U.S.C. 1980(a).

<sup>207</sup>33 U.S.C.1319 (3).

<sup>208</sup>33 U.S.C.1319 (4).

## 5.2. The UK Environmental Criminal Regime General Overview

It is very important to understand the regime of environmental crime in the UK and its statutory provisions thereof. Environmental crime is not defined specifically as concept.<sup>209</sup> Environmental crime offences according to the Environmental Audit Committee are deregulatory offences under the establishment of the statutory environmental legislation.<sup>210</sup>

This study looks at the illegal waste disposal offences treated or not treated,<sup>211</sup> hazardous waste discharge and failure of compliance with the notice of clean-up. A similar provision in the Ugandan regime on illegal waste management is reflected in the National Environment Act section 162.

The untreated waste shipping from OECD<sup>212</sup> to the non- OECD countries was made illegal under the Basel Convention.<sup>213</sup> Established authorities responsible for enforcing environmental criminal laws such as waste crime in the UK, have been set up. Environmental regulators are responsible for handling waste crime. These range from the Scottish Environment Protection Agency (SEPA), the Environment Agency (EA), the Northern Ireland Environment Agency, the Natural Resources Wales, the Marine Management Organisation, the Scottish Natural Heritage (SNH), the Department for Environment, Food and Rural Affairs (DEFRA), and Natural England (NE).

The industrial emissions regulation in the UK makes reference to EU Industrial Emissions Directive.<sup>214</sup> This clearly shows that the EU is responsible for the import of some of the regulations. Environmental offences in the EU as per the European Commission range from the harmful discharge that is illegal into the atmosphere, discharge of waste illegally into soil or

---

<sup>209</sup>Advameg Incorporated, 'Environmental Crime' (Advameg Incorporated, 2019).

<https://www.pollutionissues.com/Ec-Fi/Environmental-Crime.html> accessed 18 March 2019.

<sup>210</sup>Environmental Audit Committee, 'Environmental Crime: Wildlife Crime Twelfth Report of Session 2003-04' HC 605 ( House of Commons London: The stationery Office Limited 15<sup>th</sup> September 2004)

<https://www.nwcu.police.uk/wp-content/uploads/2013/04/House-of-Commons-Environmental-Audit-Committee-Environmental-Crime-Wildlife-Crime-Twelfth-Report-of-Session-2003-04.pdf>> accessed 10 December 2018.

<sup>211</sup>Sam Taylor and others, 'Waste Crime: Tackling Britain's Dirty Secret' ( Environmental Services Association Education Trust ( ESAET) 2015)

<sup>212</sup>United Nations Environment Program (UNEP0, The Basel Convention Ban Amendment' ( Secretariat of the Basel Convention 2011)

<sup>213</sup>Of 1992.

<sup>214</sup>Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (Integrated Pollution Prevention and Control) (OJL 334, 12.12.2010, pp.17-119).

water, wildlife illegal trade in Ozone depleting substances and shipment that is illegal or waste dumping that is illegal.<sup>215</sup> The EU Directive on the protection of the environment using criminal law was then imported to the UK.<sup>216</sup> Behind the importation was to ensure adequate deterrence was provided for criminal sanctions in order to protect the environment.<sup>217</sup> It was therefore a requirement of every EU member state to treat environmental breaches that are serious as criminal offences, especially if occasioned with gross negligence or are deliberate.<sup>218</sup> It is further stipulated in Article 5, that member states are to take all measures that are necessary in ensuring offences as referred to in Article 3 and 4 are effectively punishable, proportionate and dissuasive criminal penalties.

The above EU regulation corresponds with the UK regime of environmental crime that prohibits environmental offences of different ranges.

These fall under section 85 Water Resources Act,<sup>219</sup> Regulation 62 (1) (a) and (b) of the Hazardous Waste (England and Wales) Regulations,<sup>220</sup> and section 2(e) of the prevention of Oil Pollution Act.<sup>221</sup> This however only reflects a section of the environmental criminal law provisions.

### **5.3. Comparative Study of the USA and UK Regimes**

There was an identification of challenges in the Ugandan environmental crime regime including: insufficient knowledge of environmental offences by the enforcement agencies such as the Office of the DPP and the Uganda police, inadequate trainings, insufficient funding to the criminal enforcement agencies, inadequate prosecution of environmental offences, inability of the enforcement agencies to perform, weak penalties for environmental offences. This study will

---

<sup>215</sup>European Commission, 'Environmental Crime- Legislation- Environment- European Commission' (Ec.europa.eu, 2016) <http://ec.europa.eu/environment/legal/crime/> accessed 10 December 2018.

<sup>216</sup>Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law ( OJL 328, 6.12.2008, pp. 28-37).

<sup>217</sup>Andrea Jarolimkova, 'Enforcement of Environmental Protection through Criminal Law' [2013] 3 Common Law Review <http://www.commonlawreview.cz/enforcement-of-environmental-protection-through-criminal-law> Review/> accessed 10 August 2019.

<sup>218</sup>ibid

<sup>219</sup>Of 1991.

<sup>220</sup>Of 2005.

<sup>221</sup>Of 1971.

make determination of the US and UK environmental criminal laws that can be incorporated into the Ugandan regime to solve some of these challenges.

#### **5.4. Enforcement mechanisms by the USA and UK Environmental Agencies**

It has been observed by this study that there are forms of environmental crimes in the Ugandan oil and gas industry. It has also been observed by this study that there has been a failure by the enforcement agencies to enforce environmental standards for purposes of the prevention or compulsion of the oil and gas companies in Uganda in compliance with the principles of environment and obligations. The study looks at the UK and USA enforcement approaches towards the environmental standards implementation and examine them. There is a discussion of the environmental standards enforcement approaches as utilised by the USA and the UK regimes for the upstream oil and gas industry.

#### **5.5 Application of sufficient enforcement by the USA**

The Mineral Leasing Act,<sup>222</sup> is the governing regulation of the conventional oil and gas reserves development on the federal lands of USA. This occurs mainly through schemes of leasing that are regulated by the Bureau of Land management Act (BLM) under the Department of Interior (DOI).<sup>223</sup> The BLM is also established by the Federal Land Policy and Management Act of USA (FLPMA),<sup>224</sup> section 301. The utilisation of lands for oil and gas under section 302 of FLPMA must be coordinated according to the statutory instruments in existence these including the environmental protection. An operator's licence under section 303 of the FLMPA will be terminated or suspended on failure to act in compliance with the standards.

The EPA is also another agency that provides environmental enforcement in the onshore industry of the USA. As asserted, the EPA prioritises prevention, preparation for and crude oil spills response that take place in the USA inland waters.<sup>225</sup> It has also been argued by scholars that EPA

---

<sup>222</sup>Of 1920.

<sup>223</sup>This is pursuant to sections 13 and 26 of the Mineral Leasing Act as amended 1947.

<sup>224</sup>Of 1976.

<sup>225</sup>EPA, 'Oil Spills Prevention and Preparedness Regulations' (EPA 2018) <https://www.epa.gov/oil-spills-prevention-and-preparedness-reglations> accessed 28 October 2019.

utilises the Rule Strategy as a agency.<sup>226</sup>As a reason the strategy is employed to ensure that there is compliance with environmental standards by the companies and individuals, as such they warn on utilisation of enforcement mechanisms that are tough.<sup>227</sup>A number of enforcement rules that are practical have been employed by EPA for performance of their duties effectively: these include: the Facility Response Plan (FRP) Rules<sup>228</sup> and the Spill prevention, control, and Countermeasure (SPCC).<sup>229</sup>

The oil and gas operators that are likely to cause risk through the FRP rule, are under compulsion to make a submission of their response plan and also for any significant oil discharges or discharge threats be ready to respond.<sup>230</sup>The oil and gas corporation facilities also through the EPA under the SPCC Rules are assisted in the prevention of crude oil discharge into thenavigable waters of the USA or shorelines that are adjoining to the USA. There are also practicalguidelines that have been put in place by the EPA for the enablement of enforcement roles implementation that is practicable. There was even a revision of the SPCC Guidance for regionalinspectors in August 2013 by the EPA.<sup>231</sup>The purpose of the guidance is to ensure that the regional inspectors check facilities ‘Spill Prevention, Control, for review, this is also available to the facilities operators who as a requirement are expected to act in compliance with the SPCC Rules and the general public.<sup>232</sup> An Underground Injection Control Programme has also been implemented by the EPA, for purposes of ensuring compulsion of USA states to regulate wells likely to discharge oil waste.<sup>233</sup>For the response to the coastal waters spills and deep water ports, the main enforcement agency is the USA Coast Guard.<sup>234</sup>

---

<sup>226</sup>Neil Gunningham, ‘Enforcing Environmental Regulation’ (2011) 23 Journal of Environmental Law 175.

<sup>227</sup>EPA, ‘Basic Information on Enforcement |US (EPA, 2019) <https://www.epa.gov/enforcement/basic-information-enforcement> accessed 28 October 2019.

<sup>228</sup>Malcom K Sparrow *Imposing Duties: Government’s Changing Approach to Compliance* (Praeger Publishers 1994) p.ix.

<sup>229</sup>Malcom K Sparrow, *Imposing Duties: Government’s Changing Approach to Compliance* (Praeger Publishers 1994) p.ix.

<sup>230</sup>This is provided in the Oil Pollution Prevention Regulation 40 CFR 112.

<sup>231</sup>EPA, ‘SPCC Guidance for Regional Inspectors’(EPA 2018) <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-guidance-regional-inspectors>>accessed 15 April2019.,

<sup>232</sup>*Ibid.*

<sup>233</sup>EPA, ‘Distribution of Final Work Product from the National Underground Injection Control (UIC) Technical Workgroup- Minimising and Managing Potential/Impacts of Injection Induced Seismicity from Class II Dis at Veils: Practical Approaches’(EPA 2015)<https://www.epa.gov/sites/production/files/2015-08/documents/induced-seismicity-201502.pdf>accessed 15 April 2019; Edith Allison and Ben Mandler, ‘US Regulation of Oil and Gas Operations’(American Geosciences Institute 2018)

<sup>234</sup>EPA, ‘EPA Announces FY 2020-2023 Priorities for Enforcement and Compliance Assurance’ (EPA 2019)

In order to ensure that the energy extraction operations are in compliance with environmental obligations, the EPA has put in place the National Compliance Initiative (NCI).<sup>235</sup>The NCI is responsible for addressing the concerns as regards significant environmental problems and public health as a result of hazardous compounds exposure and non compliance to the environmental standards.<sup>236</sup>The above plan also includes the air quality, improvement, clean and safe water provision and compliance improvement with the environmental laws of USA.<sup>237</sup>

In furtherance of environmental standards compliance, a new compliance assistance resource for operators was released by the EPA.<sup>238</sup> The information that is accessible is easily provided by the resource to assist the operators of the oil and gas in the environmental standards and federal compliance.<sup>239</sup>This portal has so much information in one place that helps in compliance of the operators.<sup>240</sup>

It is also believed that compliance will be achieved through investigations that are efficient and ruthless and this mechanism of enforcement will make it possible to have deterrence.<sup>241</sup>The violations of the standards that are in existence under the statutory instruments is identified by EPA, evidence is then gathered for onward submission to the ECS.<sup>242</sup>The Special Agents then carry out investigations constantly of the environmental offenders in the industry of oil and gas, these are then reported for prosecution.<sup>243</sup> The EPA has a Criminal Investigation Division with special agents in charge of investigations.<sup>244</sup>These agents are trained for eight weeks at the

---

<https://www.epa.gov/newsreleases/epa-announces-fy-2020-2023-priorities-enforcement-and-compliance-assurance>> accessed 15 October 2019.

<sup>235</sup>EPA, 'National Compliance Initiative: Ensuring Energy Extraction Activities Comply with Environmental Laws' (EPA 2019) <https://www.epa.gov/enforcement/national-compliance-initiative-ensuring-energy-extraction-activities-comply> accessed 15 October 2019.

<sup>236</sup>Ibid

<sup>237</sup>EPA (n. 118).

<sup>238</sup>EPA, 'EPA Announces Environmental Compliance Website for the Crude oil and Natural Gas Sector' (EPA 2019) <https://www.epa.gov/newreleases/epa-announces-environmental-compliance-website-crude-oil-and-natural-gas-sector> accessed 7 October 2019.

<sup>239</sup>Ibid.

<sup>240</sup>Ibid.

<sup>241</sup>Neil Gunningham(n.110)

<sup>242</sup>Clifford Rechtschaffen and David Markell, 'Reinventing Environmental Enforcement and the State/ Federal Relationship' in D Kaniaru and E Kruzikova (eds) Making Law Work: Environmental Compliance and Sustainable Development (Vol 1, Cameron May 2005) 158.

<sup>243</sup>EPA, 'Criminal Investigations' (EPA, 2019) <https://www.epa.gov/enforcement/criminal-investigation> accessed 15 October 2019.

<sup>244</sup>EPA, 'Criminal Enforcement: Special Agents | USA EPA' (EPA, 2019) <https://www.epa.gov/enforcement/criminal-enforcement-special-agents> accessed 29 October 2019.

Federal Law Enforcement Training Centre in the Criminal Investigator training and the basic federal law enforcement.<sup>245</sup> They receive training in water, land and air resources.<sup>246</sup> The agents' composition consists of lawyers, technicians and scientists, they have a rich work experience with diverse backgrounds.<sup>247</sup>

The EPA also supports criminal enforcement in the form of environmental forensic analyses' and technical evaluations.<sup>248</sup> Using the National Enforcement Investigation Centre (NEIC), the EPA conducts environmental forensics for its programmes.<sup>249</sup> It is the role of NEIC to facilitate in terms of support for civil enforcement investigation and programmes and complex criminal investigations.<sup>250</sup> For purposes of the forensics laboratory, the NEIC is the fully accredited laboratory for EPA that provides expert teams that are multi-disciplinary in conducting field investigations, it also gathers and evaluates for the prosecution evidence of the computer.<sup>251</sup> The US Attorneys and the ECS are supported by the EPA in terms of technical advice for the prosecution of environmental matters under DOJ.<sup>252</sup> In the detection of environmental standards violations, the EPA is more confrontational and adversarial.<sup>253</sup>

There are a number of cases that are considered successes, these include: the investigation into the International Petroleum Corporation of Delaware (IPC) where the company was found to be criminally liable on the 2<sup>nd</sup> of February 2017 to pay a \$ 1,300,000 fine and \$ 2,200,000 as restitution for the environmental crimes to the Wilmington city and the violation of the Clean Water Act for conspiracy.<sup>254</sup> The wood Group PSN investigation Inc. where the corporation was found liable for the Deep Water Horizon Spill on the Gulf of Mexico involvement and a \$ 9.5 million ordered to be paid on the 23<sup>rd</sup> February, 2017. <sup>255</sup>The KMTEX, KTX, Crosby and Ramsey investigation where a \$ 3.5 million dollars was ordered to be paid for the Clean Air Act

---

<sup>245</sup>ibid

<sup>246</sup>ibid

<sup>247</sup>EPA, 'Criminal Enforcement Overview | USA EPA' (EPA, 2019) <https://www.epa.gov/enforcement/criminal-enforcement-overview>> accessed 29 October 2019.

<sup>248</sup>EPA, National Enforcement Investigations Centre (NEIC)' (EPA 2019).

<sup>249</sup>EPA, National Enforcement Investigations Centre (NEIC)' (EPA 2019).

<sup>250</sup>ibid

<sup>251</sup>EPA, National Enforcement Investigations Centre (NEIC)' (EPA 2019).

<sup>252</sup>ibid.

<sup>253</sup>Neil Gunningham(n.110)

<sup>254</sup>EPA, '2017 Major Criminal Cases | USA EPA' (EPA, 2019)<<https://www.epa.gov/enforcement/2017-major-criminal-cases>> accessed 29 October 2019.

<sup>255</sup>ibid

criminal violations of releasing hazardous air pollutants negligently on the March 31, 2011 after an explosion of a tank at their petroleum and chemical processing facility in Port Arthur, Texas.<sup>256</sup>

Environmental enforcement in the USA regime, is not only limited to EPA and BLM, it extends to the enforcement in the offshore industry, this comprises of the Outer Continental Shelf (OCS). The Bureau of Safety and Environmental compliance enforcement division (BSEE) that is part of DOI is also responsible for environmental compliance enforcement in the OCS.<sup>257</sup> The roles of BSEE extend to verification, monitoring, improvement and enforcement of environmental matters standards compliance in the OCS.<sup>258</sup> From what has been reported, the enforcement has mainly taken the form of industry participants' compliance with the Environmental Protection Act, it has been through activities of the corporations being monitored to ensure they are within the context of the Act.<sup>259</sup> A number of mechanisms have been put up by the BSEE to enable them enforce their tasks more effectively. The BSEE, set up an Environmental Stewardship Core Working Group for clarification of its ambition and mission and build its programme responsibilities and objectives towards the enhancement of its environmental stewardship.<sup>260</sup>

Other than having paper obligations, the BSEE like the EPA has taken steps further to enforce environmental standards in the USA regime. It has Well Control Rules that are implemented for pollution control standards during the operations of drilling in the OCS.<sup>261</sup> As regards the oil and gas production, they have implemented the Oil and Gas Production Safety Systems Rules for the pollution control standards.<sup>262</sup> The Oil and Gas Production Safety System Rules<sup>263</sup> and the Well Control Rules<sup>264</sup> have been revised by the agency, in order to ensure that the operations are

---

<sup>256</sup>Ibid.

<sup>257</sup>Bureau of Safety and Environmental Enforcement (BSEE), 'Environmental Focuses' (Department of Interior: BSEE 2019) <https://www.bsee.gov/what-we-do/environmental-focuses>> accessed 16 April 2019.

<sup>258</sup>Ibid.

<sup>259</sup>Ibid.

<sup>260</sup>BSEE, 'Environmental Stewardship Collaboration Core Group (Final Report)' (USA Department of Interior: BSEE 2016) <https://www.bsee.gov/sites/bsee.gov/files/bsee-environmental-stewardship-core-group-final-report.pdf> accessed 16 April 2019

<sup>261</sup>BSEE, 'Regulatory Reform' (USA Department of Interior: BSEE 2019) <https://www.bsee.gov/guidance-and-regulations/regulatory-reform> accessed 16 April 2019.

<sup>262</sup>ibid.

<sup>263</sup>BSEE, 'Oil and Gas Production Safety Systems Rule 2018' (USA Department of Interior: BSEE 2018) <https://www.bsee.gov/guidance-and-regulations/regulations/oil-and-gas-production-safety-systems-rule> accessed 16 April 2019.

<sup>264</sup>BSEE, 'Revised Well Control Rule' (USA Department of Interior: BSEE 2018)



carried in an environmentally friendly manner.<sup>265</sup>For purposes of enhancement of environmental safety during the operations of oil and gas, recommendations on the best practice mechanisms have been issued by the agency.<sup>266</sup>

As a lesson for the safety and environmental protection, the Deepwater Horizon pollution serves as a good example, it is something that cannot therefore be ignored.<sup>267</sup> The Safety and Environmental Management Systems (SEMS) rules referred to as the Workplace Safety Rules that were issued in October 2010 arose out of the above.<sup>268</sup> There has also been an enhancement of this SEMS by the SEMS 11 which extends to training of employees and auditing procedures strengthening by third parties who are independent.<sup>269</sup> Further enhancement is in environmental protection of oil and gas drilling operations offshore.<sup>270</sup> The rules of SEMS II Final have undergone further revision adding other new requirements of reporting guidelines of violations of safety and environmental regulations to BSEE directly and the BSEE tasked to take action on such reports.<sup>271</sup>

The above multi-disciplinary approaches as regards investigations and prosecutions of oil and gas exploration and production violations are not in place in Uganda, the ODPP and the Uganda Police as far criminal enforcement is concerned have been ignored. This could be adopted by Uganda, officers of the ODPP and Uganda police should all be trained in order to strengthen and enhance their capacity to effectively enforce compliance of the environmental laws in the oil and gas exploration and production.

---

<https://www.bsee.gov/guidance-and-regulations/regulations/revised-well-control-rule-summary-page> accessed 16 April 2019

<sup>265</sup>BSEE (n.147)

<sup>266</sup> United States Secretary of the Interior, 'Review of Panel Report for Walker Ridge 469' (USA Secretary of the Interior 2019)<https://www.bsee.gov/sites/bsee.gov/files/memos/director-response-memo-wr469s.pdf> accessed 16 April 2019.

<sup>267</sup>Control Global, 'SEMS after Deepwater Horizon'(Control Global 2004)

<sup>268</sup>BSEE, 'Safety and Environmental Management Systems (SEMS) Fact Sheet' (USA Department of Interior: BSEE 2019)<https://www.bsee.gov/site-page/fact-sheet> accessed 16 April 2019.

<sup>269</sup>Ibid.

<sup>270</sup>Ibid.

<sup>271</sup>Ibid.

## 5.6. Application of Sufficient Enforcement in the UK

As far as the UK oil and gas industry is concerned, permission for the location of any wells and well pads is granted by the Minerals Planning Authorities (MPA), the MPA then imposes conditions for ensuring that acceptability of the impact on the use of the land.<sup>272</sup> This planning system is responsible for the use of the land in public interest and the control of the development.<sup>273</sup> This takes into consideration all the effects on health, natural environment as a result of the pollution.<sup>274</sup>

The Environmental Agency is the major agency for environment for the England and Wales as provided for in the Environment Act.<sup>275</sup> It is established for purposes of minimising, prevention and environmental pollution remedying as provided for in section 1 (1) and 5 of the Act. It is responsible for ensuring that precautions against discharge of hazardous waste illegally are taken by all corporations.. This can be done in different forms such as clean up of the illegal waste sites or even have the polluter prosecuted. Other ways can be through compensation of the victims and making restitution to the environmental agencies.

The study will also look at the offshore environmental regulation in the comparative model jurisdictions of the UK oil and gas industries.

The Department of Energy and Climate Change (DECC) before the 2016 restructuring was responsible for regulation of offshore oil and gas exploration and production environmental aspects, it would even extend to decommissioning.<sup>276</sup> After the restructuring, the Department for Business Energy and Industrial Strategy's (BEIS) took charge.<sup>277</sup> The takeover of BEIS was just a

---

<sup>272</sup>Department for Communities and Local Government, 'Planning Practice Guidance for Onshore Oil and Gas' (Crown Copyright 2013) p.6.

<sup>273</sup>ibid.

<sup>274</sup>United Kingdom Onshore Oil and Gas (UKOOG), 'Regulation' (United Kingdom Onshore Oil and Gas 2017) <https://www.ukoog.org.uk/regulation>> accessed 23 February 2020.

<sup>275</sup>Of 1995.

<sup>276</sup>Department of Energy and Climate Change (DECC)-Offshore Oil and Gas Environment Unit Enforcement Policy' (Assets. Publishing.service.gov.uk, 2015) [https://assets.publishing.service.gov.uk/government/uploads/systems/uploads/attachment\\_data/file/470442/DECC Offshore Inspectorate Enforcement Policy - October 2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/systems/uploads/attachment_data/file/470442/DECC_Offshore_Inspectorate_Enforcement_Policy_-_October_2015.pdf) accessed 7 March 2019.

<sup>277</sup>Phillip Thompson and Julia Derrick, 'United Kingdom: Oil and Gas Regulation 2019'(International Comparative Legal Guides, 2019) <https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/united/kingdom> accessed 15 October 2019.

continuation of DECC, the Environmental Management System (EMS) with the objectives of the OSPAR offshore Strategy was continued.<sup>278</sup>

There is a record of notices of sanctions that have been issued to operators by BEIS for having defaulted, the operators include BP Exploration Operating Company Limited for breach of Regulation 13,<sup>279</sup> the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations.<sup>280</sup> Statoil (UK) Limited in breach of the Health and Safety at Work Act<sup>281</sup> Sections 21, 23 and 24,<sup>282</sup> lastly the Canadian Natural Resources (CNR) International (UK) Limited in breach of the Offshore Petroleum Activities ( Oil Pollution Prevention and Control <sup>283</sup> ) Regulations.<sup>284</sup>

The BEIS in addition to other sanctions has used other general sanctions such as improvement notice, prohibition notice, enforcement notice and the prosecution sanction.<sup>285</sup>

There is also the Scottish Environment Protection Agency (SEPA), this is set out under the Environment Act<sup>286</sup> Chapter 11.<sup>287</sup> It is the principle environmental regulator for Scotland.<sup>288</sup> The SEPA has used the enforcement mechanisms among the many, it refers cases to the Crown Office and Procurator Fiscal Services (COPFS) and also for the statutory notice issuance.<sup>289</sup> Between the period 2014 and 2015, environmental offences referred to COPFS for

---

<sup>278</sup>Department for Business, Energy & Industrial Strategy (BEIS) and Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), 'Oil and Gas: OSPAR EMS Recommendation' (GOV. UK, 2013) <https://www.gov.uk/guidance/oil-and-gas-ospar-ems-recommendation> accessed 17 February 2020.

<sup>279</sup>Healthy and Safety Executives, 'Offshore Statistics & Regulatory Activity Report 2017' (Hse.gov.uk, 2018) <https://www.hse.gov.uk/offshore/statistics/hsr2017.pdf>. accessed 7 March 2019.

<sup>280</sup>Of 2005.

<sup>281</sup>Of 1974.

<sup>282</sup>Ibid.

<sup>283</sup> Ibid.

<sup>284</sup>Of 2005.

<sup>285</sup>BEIS, 'Enforcement Policy: Offshore Petroleum Regulator for Environment & Decommissioning' ( Crown Copyright 2020)

<sup>286</sup>Of 1995.

<sup>287</sup>The establishment of SEPA is stipulated in Section 20 of the Environment Act.

<sup>288</sup>This Stipulated in Sections 32 and 33 of the Environment Act.

<sup>289</sup>Environmental Law Association, 'Criminal Prosecution in Scotland' (Environment law.org.uk, 2017) <https://www.environmentlaw.org.uk/rte.asp?id=312> accessed 18 February 2020. SEPA works with the Crown Office and procurator Fiscal Service to improve the prosecution of environmental crime in Scotland. Generally, enforcement mechanisms that have been utilised by SEPA include: referrals to COPFS, warning letters, statutory notices, guidance plans, compliance initiatives, and control rules.

prosecution were 36,<sup>290</sup> statutory notices 93 were also made between the periods of 2013-2014 and warning letters 137 in the period 2013-2014.

The above UK regime clearly shows that multi mechanisms are used to enforce compliance with the environmental law. This is however not the case as already revealed by the literature review that only some institutions participate in the enforcement of compliance. The ODPP and the Uganda Police are not so much utilised when it comes to criminal enforcement of compliance of the oil and gas industry with environmental law. This demonstrates that Uganda still has various bottleneck hindrances and practical lessons can be picked from the UK regime for Uganda.

### **5.7. Criminal Sanctions through Criminal Prosecution Application**

As far as Uganda is concerned, in respect to the oil and gas exploration and production operations, there are no known prosecutions. Criminal enforcement has not been utilised much by the ODPP and Uganda police. The study will examine the USA and UK regimes that can be incorporated in the Ugandan regime for the improvement of environmental offences prosecution.

### **5.8. Application of Multiple Expert Prosecutors**

The ODPP is mandated under article 120 of the constitution of the Republic of Uganda to prosecute all criminal cases other than those arising in the court martial. It is therefore under duty to also prosecute environmental violations in the oil and gas sector. All the other bodies can only do a complementary role.

### **5.9. Utilisation of Multiple Expert Prosecutors in the USA**

The criminal prosecutions in the USA are carried out by the Department of Justice (DOJ) generally.<sup>291</sup> The Environmental Crimes Section (ECS) under the DOJ coordinates the prosecution of environmental offenders in the oil and gas industry.<sup>292</sup> For the prosecution of environmental offenders on behalf of the department, there are forty three prosecutors and

---

<sup>290</sup>The Crown Office and Prosecutor Fiscal Services (COPFS) is responsible for criminal prosecution in Scotland..

<sup>291</sup>Department of Justice (DOJ), 'About DOJ' (Justice.gov, 2019)<https://www.justice.gov/about> accessed 28 August 2019.

<sup>292</sup>DOJ, 'Prosecution of Federal Pollution Crimes: ECS' (Justice.gov, 2019)<https://www.justice.gov/enrd/prosecution-federal-pollution-crimes> accessed 28 August 2019.

support staff twelve.<sup>293</sup> The prosecution of the environmental criminal cases is done in ninety four federal judicial districts by the ECS who coordinates with the Environment and Natural Resources Division (ENRD) and the select number of Assistant USA Attorneys in the USA Attorney's offices who have been trained in the criminal prosecution of environment cases.<sup>294</sup> The process of prosecution requires the ECS prosecutor who participated in the environmental crime investigation arraigning before the grand jury for indictment the environmental offender.<sup>295</sup> The prosecutor thereafter makes preparation for the trial the charge.<sup>296</sup>

There is usually a coordination of the ECS special agents with the Criminal Investigation Division EPA and the other prosecuting agencies in the environmental offences investigations. For most of the environmental crime offences, they come together on the Environmental Crime Task Force Teams that was constituted for efficiency.<sup>297</sup> A number of strategies, information for the detection and prosecution of environmental crime and deterrence is shared by the different agencies.<sup>298</sup>

The same cannot be said for the Ugandan situation in terms of oil and gas environmental crimes, the literature has already established that the ODPP and Uganda Police as far as criminal enforcement in the oil and gas have not been utilised. This poses a great danger to the environment. It demonstrates that practical solutions can be picked from the USA regime.

The study is of the view that the utilisation of the ECS and the ENRD in the USA regime ensures that there is specialisation of the services and effectiveness in the environmental crimes matters prosecution. There is multiple prosecutions for criminal enforcement on oil and gas compliance with environmental law. It has been established by the study that 1,083 individuals and 404 corporate offenders were prosecuted by the ECS between the period 1<sup>st</sup> October 1998 and 30<sup>th</sup>

---

<sup>293</sup>DOJ, Environmental Crime Section' (Justice.gov,2019) <https://www.justice.gov/enrd/environmental-crimes-section> accessed 28 August 2019.

<sup>294</sup>Ibid.

<sup>295</sup>Ibid.

<sup>296</sup>Ibid.

<sup>297</sup>EPA, 'Criminal Environmental Crime Task Force Partners' (EPA 2019)<https://www.epa.gov/enforcement/criminal-environmental-crime-task-force-partners> accessed 15 October 2019.

<sup>298</sup>Ibid.

September 2014, this resulted into \$825 million in criminal fines and restitution and incarceration 774 years.<sup>299</sup>

The above analysis clearly shows that the USA is determined to prosecute environmental offences, this is lacking in the Uganda regime, as it has not been utilised so much. There is also evidence of criminal sanctions from the case law in the USA regime done through prosecutions. The study observes that USA regime sends out a clear message to corporate officers that they must comply with environmental standards lest they are prosecuted.

### **5.10. Utilisation of Multiple Expert Prosecutors in the UK**

In the UK, some of the environmental enforcement agencies are allowed to prosecute cases. This is however not the case in the Scotland where all prosecutions are have to go through COPFS as already noted above. The Environment Agency under Section 54 of the UK's Environment Act<sup>300</sup> is allowed to prosecute environmental offences. This ensures that there is specialisation as the agency is able to enforce standards and also detect offenders. The study will look at the environmental prosecutors' roles in the Scotland, their commitment, availability and timely prosecution of environmental crimes in the Scotland.

In line with what has already been noted in this chapter, COPFS together with SEPA work jointly for the improvement of environmental crime prosecution in Scotland.<sup>301</sup> For the best outcome on environmental crime reports the Crown Office, SEPA and COPFS work in liaison asorgans.<sup>302</sup> The Environmental Crime Protocol has further ensured transparency in the relationship between SEPA and COPFS for purposes of consistency and effectiveness in the dealing with the environmental cases,<sup>303</sup> This protocol extends to joint trainings, disclosure and publicity at the national and local levels.<sup>304</sup>

---

<sup>299</sup>ibid.

<sup>300</sup>Of 1995.

<sup>301</sup>Environmental Law Association

<sup>302</sup>SEPA, 'Environmental Crime Protocol | Scottish Environment Protection Agency (SEPA)' (Sepa.org.uk, 2020) <https://www.sepa.org.uk/regulations/how-we-regulate/policies/environmental-crime-protocol/> accessed 18 February 2020.

<sup>303</sup>ibid.

<sup>304</sup>ibid.

There is a division of COPFS into 11 regions, with each region having one procurator Fiscal Depute for specialisation into SEPA cases.<sup>305</sup>In the case of concerns by the reporting solicitor, these can be discussed as early as possible by case conferencing with the allocated Procurator Fiscal Depute (Area Specialist), this ensures that there is efficiency and transparency to the case by COPFS.<sup>306</sup>The target of SEPA is to have within six or four months from the date of commission of the crime, 90% of the cases reports, this ensures that there is timely investigations and reporting.<sup>307</sup>This may however not be possible for complex cases that may take longer than six months or six months.<sup>308</sup>In some of the cases that are significant, post disposal assessment meetings may be made at the request of either party, this may help in learning lessons for the future, these lessons are disseminated to the national or local SEPA/COPFS liaison meetings.<sup>309</sup>

The above joint trainings and working committees are not in existence in Uganda, the ODPP and the Uganda Police have not been utilised as far as criminal enforcement of compliance with the oil and gas exploration to environmental laws is concerned. This confirms the bottleneck hindrances in the enforcement of compliance and also practical lessons that can be picked for Uganda.

### **5.11. Tough Sanctions Use for Deterrence of Violators**

In order to deter an environmental offence, it would be ideal that there is a severe punishment that is attached to the offence.<sup>310</sup>It has been emphasised by this study in chapter 4 that to deter offences, there should be tough penalties. As observed by this study, if the regime has poor sanctions, the deterrence effect would not be achieved. It is important to have adequate punishment provided in the laws so as to ensure that crimes are not committed in the future. It has been discovered in the Ugandan regime that the sanctions are too weak to cause the deterrence effect on the environmental criminals. This leaves the environment open to adverse effects as it will not be protected.

<sup>305</sup>ibid.

---

<sup>306</sup>ibid.

<sup>307</sup>ibid.

<sup>308</sup>ibid.

<sup>309</sup>ibid.

<sup>310</sup>Michael Hertz, 'Structures of Environmental Criminal Enforcement' (2018) 7 Fordham Environmental Law Review 685.

## 5.12. USA Tough Sanctions for Deterrence

The USA general overview in the chapter has already given a description of the tough environmental sanctions in their regime. It has been observed that the USA regime makes use of daily fines, as per chapter two literature review, The Ugandan regime does not make utilisation of the daily fines in the criminal sanctions. The daily fine should however be on the basis of proportionality with the offence.<sup>311</sup>

These sanctions above are practically reflected in the sentences imposed on the offender and not merely provided for in the laws. This study will look at some of the cases of environment crime cases that have undergone prosecution in collaboration with the ECS, the ENRD and the Attorney's office. The main focus of this study will be between the period 2013 and 2014. The reasons are because major environmental pollutions in the oil and gas industry occurred in those years and a number of criminal prosecutions took place.

i) United States v BP Exploration and Production, Inc.;<sup>312</sup> United States v Mix<sup>313</sup>

The BP was sentenced to five years probation and a \$ 4 billion criminal fine.<sup>314</sup> This was after they pleaded guilty to the violation of the migratory bird preservation standard an establishment under the Migratory Bird Treaty Acts<sup>315</sup><sup>316</sup> the violation of CWA Section 1319 (c) (1) (a)<sup>317</sup> and the obstruction of congress.<sup>318</sup> An order for \$350 million for restitution to the community service payment to NAS for the oil pollution prevention was also made. In addition a community service payment to the NFWF of \$ 2.4 billion for the Gulf of Mexico habitat repair was made.<sup>319</sup> The BP criminal fines was the biggest made by the USA environmental regime compared to any other before.<sup>320</sup> This sentence also significantly played a deterrence role against any future similar

---

<sup>311</sup>Bureau of Justice Assistance, 'How to use Structured Fines (Day Fines) As an Intermediate Sanction' (Department of Justice 1996) <https://www.ncrj.gov/pdffiles/156242.pdf> accessed 28 August 2019.

<sup>312</sup>United States v BP Exploration and Production, Inc. NO. 2:12-cr-00292-SSV-DEK (2013).

<sup>313</sup>United States v Mix NO. 2:12-cr-00171-SRD-SS (2013).

<sup>314</sup>United States v BP Exploration and Production, Inc. NO. 2:12-cr-00292 at 44.

<sup>315</sup>Of 1918.

<sup>316</sup>16 U.S.C.703.

<sup>317</sup>33 U.S.C.1319(c) (1) (A).

<sup>318</sup>18 U.S.C. 1505.

<sup>319</sup>ibid.

<sup>320</sup>EPA, 'Summary of Criminal Prosecutions | Enforcement | USA EPA' (Cfpub.epa.gov.2020) [https://cfpub.epa.gov/compliance/criminal\\_prosecution/index.cfm?action=3&prosecution\\_summary\\_id=2468](https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2468) accessed 24 February 2020.



crimes by BP.<sup>321</sup> It was noted by General Lanny A Assistant Attorney of the Justice Department's Criminal Division that "The Deepwater Horizon explosion was a national tragedy that resulted in the senseless deaths of 11 people and immense environmental damage. Through the tenacious work of the Task Force, BP...received just punishment for its crimes leading up to and following the explosion."<sup>322</sup>

ii) United States v Transocean Deep Water, Inc.,<sup>323</sup>

The company Transocean who were in breach of the CWA pleaded guilty to negligent charges of oil pollutants discharge into the waters of USA, this was during the Deepwater Horizon oil spill pollution,<sup>324</sup>the company admitted that there was negligence of the employees on the Deepwater Horizon of failing to investigate indications of insecurity of the Macondo well and that there was a leak of oil and gas substances into the well, the employees acted on the BP's well site leaders instruction.<sup>325</sup>The corporation received a sentence of probation five years, a \$100 million criminal fine and a community service payment of restitution of \$ 150 million to the National Academy of Science (NAS) for the Gulf of Mexico Oil Prevention. Further to this, a community service payment of \$ 150 million to National Fish and Wildlife Federation (NFWF) was ordered.

The Judge in the above case found the punishment just and that it served the purpose for deterrence to the crime.<sup>326</sup>The punishment would act as deterrence to other corporations form committing pollution and corporate offenders as well.

iii) United States v Colombia ShipManagement Ltd.;<sup>327</sup> United States ShipManagement GmbH;<sup>328</sup> United States v Lupera;<sup>329</sup> United States v Shapavalov;<sup>330</sup> United v Kondratyev<sup>331</sup>

---

<sup>321</sup>ibid.

<sup>322</sup>ibid.

<sup>323</sup>United States v Transocean Deep Water, Inc., NO. 2:13-cr-00001-JTM-SS (2014).

<sup>324</sup>33 U.S.C. & 1319 (c) (1) (A) and 33 U.S.C. & 1321 (b) (3).

<sup>325</sup>Department of Justice, 'Closed Criminal Division Cases: United States v Transocean Deepwater Inc.' (Justice.gov,2018) <https://www.justice.gov/criminal-vns/case/transocean> accessed 10 December 2018.

<sup>326</sup>United States v Mix NO. 2:12-cr-0017-SRD-SS (2013).

<sup>327</sup>United States v Colombia ShipManagement Ltd. NO. 2:13-cr-00193-SDW (2013).

<sup>328</sup>United States v Colombia ShipManagement GmbH NO.2: 13-cr-00205-SDW (2013)

<sup>329</sup>United States v Lupera NO. 2:12-cr-002816-SDW (2013).

<sup>330</sup>United States v Shapavalov NO. 1:13-cr-00079-SLR (2013).

<sup>331</sup>United States v Kondratyev NO. 1:13-cr-00080-SLR (2013).

The company Colombia ShipManagement Ltd and Colombia ShipManagement GmbH was found criminally liable after pleading guilty to Oil waste discharge illegally, this was contravening the APPS 1980 and also obstructing justice. The company made an admission of evading the pollution prevention equipment requirement intentionally and false oil record. Coast Guard book provision.<sup>332</sup>

The two corporations received probation of 48 months. Colombia ShipManagement GmbH was made to pay a \$ 4.8 million fine and community service fine of \$ 1.6 million to NFWF.<sup>333</sup> Colombia ShipManagement was made to pay community service of \$ 1 million to NFWF and a \$ 3 million fine. The payment involving vessels in Delaware and New Jersey is said to be the largest.<sup>334</sup> The emphasis was put on the damage to the marine environment that the criminal offences of the companies occasioned.<sup>335</sup> It was asserted by Judge Moreno that the tough sanctioning of waste discharges offences acted as deterrence to others as strong message of heavy punishment for the pollution is sent out.<sup>336</sup> The prosecution was said to be a multi-district cooperation example for achieving a just sentence and enforcement of federal environmental law.<sup>337</sup>

iv) United States v Pacific International Lines<sup>338</sup>

The corporation was ordered to pay a \$ 2,000,000 criminal penalty fine, a community service payment of \$ 100,000 to NFWF as restitution and probation of 36 months sentence. This was after pleading guilty to the violation of the APPS<sup>339</sup> for the falsification of the oil record book, concealment waste water operations and discharges and operating a vessel in the waters of USA with no functioning separator. It was noted by Matterson<sup>340</sup> as the third of its kind since 2011.

---

<sup>332</sup>NPS Corporation, 'USA (UPDATE): Colombia ShipManagement Handed \$ 10 Million Fine | News | Lutbetech' (Npscorp.co.uk,2013) <https://www.npscorp.co.uk/6/news/article/732/usa-update-colombia-shipmanagement-handed-10-million-fine> accessed 10 December 2018.

<sup>333</sup>JOC Staff, 'Pacific International Lines Fined for Criminal Oil Pollution | JOC.Com' (JOC.com, 2013) <https://www.joc.com/maritime-news/container-lines/pacific-international-lines/pacific-international-lines-fines-criminal-oil-pollution-20130227.html> accessed 10 December 2018.

<sup>334</sup>ibid.

<sup>335</sup>ibid.

<sup>336</sup>ibid.

<sup>337</sup>ibid.

<sup>338</sup>United States v Pacific International Lines NO. 1:13-cr-00019-TFH (2013).

<sup>339</sup>Of 1980.

<sup>340</sup>He was Special Agent in Charge of Coast Guard Investigative Service-Pacific Region at the time.

The case clearly sent out a serious signal to other shipping companies who cut corners wilfully and those who violate the enacted laws for the protection of the oceans.<sup>341</sup>

vi) United States v HarcrosChems., Inc.<sup>342</sup>

They were found criminally liable for hazardous waste storage without a permit in contravention for the RCRA and sentenced for more than two years. Also additionally a \$ 1.5 million fine was ordered as payment.

vii) United States v W \$ T Offshore<sup>343</sup>

The corporation was ordered to pay a \$ 700,000 criminal penalty fine and probation of 36 months sentence. They were additionally ordered to make a \$ 50,000 restitution to the Southern Environmental Enforcement Network for the environmental enforcement training funding for criminal pollution that is similar and to NMSF a \$ 250,000 for restoration of the Gulf of Mexico funding projects.

viii) United States v Action Manufacturing Co.<sup>344</sup>

The corporation was found criminally liable for 4,570 M608 Explosive Leads storage without a permit and with no proper documentation for the hazardous substance, this was in violation of the Pipeline and Hazardous Materials Safety Administration (PHMSA) Regulations. They were fined \$ 1.2 million and a five year sentence on probation.<sup>345</sup>

It is evident that environmental crime application of sanctioning is tough and not merely on paper, the environmental law violators in the oil and gas industry are severely punished as a means of deterrence.

### **5.13. UK Tough Sanctions Application**

Similarly the UK regime also provides tough sanctions for environmental crimes. The Environmental Protection Act of the UK Section 33(1) (a) provided for the crime of disposal of

---

<sup>341</sup>ibid.

<sup>342</sup>United States v HarcrosChems., Inc. NO. 2: 14-cr-20070-CM-DJW (2014).

<sup>343</sup>United States v W \$ T Offshore NO. 2:12-cr-00312-EEF-SS (2014).

<sup>344</sup>United States v Action Manufacturing Co. NO. 2:14-CR-00224-NIQA (2014).

<sup>345</sup>ibid.

waste intentionally and illegally. The person is liable for a term not exceeding six months imprisonment or a £40,000 or both under Section 33(8) of the Act; also to a fine or term not exceeding two years imprisonment or both upon indictment. A person is also liable criminally for the standards of discharge set in an environmental permit violation under Regulations 12 and 38 (1), (2) and (3) of the Environmental Permitting (England and Wales) Regulation,<sup>346</sup> and environmental permit failure obtaining under the regulations. The person is liable for a term of imprisonment not exceeding 12 months or not exceeding a £50,000 fine or both or a term not exceeding a term of imprisonment 5 years or a fine upon indictment. The Merchant Shipping Act<sup>347</sup> also makes a person liable for £250,000 for oil discharge into waters of UK under section 131(3). The sanctions according to this study are tough against offenders, to the multinational companies they may appear small but if applied to the repeated violations, the finances of the companies may be affected.

The study observes that there have been less oil spill pollutions in the UK with one that is recent the Gannet Alpha Spill<sup>348</sup> and the preceding one the Braer spill<sup>349</sup> It is argued that tough sanctions should be administered more or reflected in the laws so as to discourage similar crime of a similar nature. The study has found that the PEDP Act<sup>350</sup> section 131 and 163 does not provide for daily fines, neither does the NEA<sup>351</sup> of Uganda of section 163 and section 162, the Petroleum (Waste management) Regulation,<sup>352</sup> also has very weak sanctions. This greatly undermines the effective criminal enforcement by the ODPP and Uganda police of compliance with environmental law in the oil and gas exploration and production industry.

#### **5.14. Corporate officers' criminal liability for pollution offences**

The piercing of the corporate veil doctrine was discussed in chapter 4. It is essential to ensure that corporate actors 'behaviour is brought in conformity with the environmental standards

---

<sup>346</sup>Of 2010.

<sup>347</sup>Of 1995.

<sup>348</sup>Of 2011.

<sup>349</sup>Of 1993.

<sup>350</sup>Of 2013.

<sup>351</sup>National Environment Act, 2019.

<sup>352</sup>Of 2019.

provided for by statute, these including clean up notice compliance, prevention of pollution and many others as per the provisions. The study will therefore look at the USA and the UK use of the doctrine to consider application of the doctrine in the Ugandan regime. The study will start the discussion with the USA regime and thereafter the UK regime.

### **5.15. USA Corporate Sanctioning**

The use of criminal sanctions for liability to environment of corporations that operate within the USA is provided for in the USA Federal environmental laws.<sup>353</sup>In a number of cases in the USA, this doctrine has been applied widely, Uganda as a country could explore such a doctrine for prosecution. It has been emphasised in the USA in New York that corporations are criminally liable for their employee actions done while acting within authority.<sup>354</sup>It was held by the court that criminal offences would end up being unaccounted for, if criminal penalties were not applied against such companies that were errant.<sup>355</sup>Court further held that the most important thing was to prove that the agent was acting within authority and the corporation would stand to gain from the actions of the agent that amounts to a criminal act.<sup>356</sup>

In order to have a corporate officer prosecuted for criminal pollution in the USA, court may need to prove the extent of his participation in the environmental crime, A number of cases have been decided in the USA prosecuting and sanctioning corporate officers, among which include:

i)United States v Nadel&Gussman Rockies LLC.;<sup>357</sup> United States v Cartaya<sup>358</sup> In Nadel&Gussman, there was a plea of guilty of illegally discharging crude oil barrels from a tank battery of a company of its operations of oil and gas operations, this was in contravention of section 1319 (c) (2) (a) of the Clean Water Act of USA. The court emphasised the grave implications of

---

<sup>353</sup>United States v Agosto-Vega 617 F.3d 541, 552-53 (1<sup>st</sup> Cir. 2010); United States v Philip Morris USA, Inc. 566 F.3d 1095, 1118-119 (DC Cir.2009); United States v Singh, 518 F.3d 236, 249 (4th Cir.2008); United States v Jorgensen 144 F. 3d 550, 560 (8th Cir. 1998); United States v Twentieth Century Fox Film Corp. 882 F.2d 656, 660 (2d Cir. 1989); United States v Gold 743 F.2d 800, 822-23 (11th Cir. 1984); United States v Beusch 596 F.2d 871, 877-78 (9th Cir. 1979); United States v Carter 311 F.2d 934, 941-42 (6th Cir. 1963).

<sup>354</sup>New York Central & Hudson River Railroad Co. v United States (n. 185) at 491.

<sup>355</sup>Ibid. at 492.

<sup>356</sup>Ibid.

<sup>357</sup>United States v Nadel& Gussman Rockies LLC. NO. 2:13-CR-00211-ABJ (2014).

<sup>358</sup>United States v CartayaNo.2:13-cr-00219-ABJ(2014).

the hazardous waste discharge to natural environment and public health and that CWA prohibits it accordingly.<sup>359</sup>.

In the above case the corporation received a sentence of three years probation and a criminal penalty fine of \$ 357,500 and restitution of \$ 212, 000 and \$ 430, 500 to be paid to the Grand Teton National Park Foundation and the Yellowstone Park foundation respectively

In the Cartaya case, where this was a major contractor, the penalty was probation of three years and a \$ 10, 000 and community service of 250 hours. The study views that the corporate officer is held responsible for the pollution perpetration even when the pollution was not committed by them specifically.<sup>360</sup>

ii) United States v Egan, et al.<sup>361</sup>

In this case, it involved discharge of 4,800 gallons of oil and 32 tons of oil solids into canal, it was a fatal explosion of 2005 on board a petroleum barge of Egan Marine Corp the captain Dennis Egan and Egan Marine Corp were found criminally liable for the negligent discharge of oil pollution into a navigable waterway and also found guilty of manslaughter.<sup>362</sup> The court found that due to the instruction given by Dennis Egan to the employee to warm up the pump using the propane torch, pollution was caused.<sup>363</sup> Dennis Egan was found to be directly liable for the pollution caused due to the instructions he gave and therefore in violation of the Clean Water Act.<sup>364</sup>

The case is popular for serving as an example for corporations and corporate officers when they fail in performance of their duties of care as owed to the crew members on their respective vessels and also not acting in compliance with the environmental standards concerning control of

---

<sup>359</sup>EPA, '01/31/2014: Joint EPA and BLM Investigation Results in Funding for Wyoming Natural Resources and Oil Spill Cleanup (Carbon County)'( EPA Archive, 2014)

[https://archive.epa.gov/epapages/newsroom\\_archive/newsreleases/2dldb97c8bcce4685257c7100772140.html](https://archive.epa.gov/epapages/newsroom_archive/newsreleases/2dldb97c8bcce4685257c7100772140.html)> accessed 10 December 2018

<sup>360</sup>ibid

<sup>361</sup>United States v Egan, et al. No. 1:10-cr-00033 (2014)

<sup>362</sup>Lance Duroni, 'Barge Captain Gets 6 Mos. For Fatal Accident, Oil Spill-Law360' (LexisNexis, 2018) <https://www.law360.com/articles/673150/barge-captain-gets-6-mos-for-fatal-accident-oil-spill>> accessed 10 December 2018.

<sup>363</sup>United States v Egan Marine Corporation, Denis Micheal/15 F. 2d 2477-Court of Appeals, (7th Cir. 2016)

<sup>364</sup>33 U.S.C.SS 1321 (b) (3), 1319 (c) (1) (A).

pollution.<sup>365</sup> Dennis Egan was sentenced by the federal district court for the Northern District of Illinois to six months imprisonment in the federal prison.<sup>366</sup> A sentence of three years was given to Egan Marine Corp of supervised release and a \$ 5.3 million as restitution to the National Pollution Fund Centre for the cleaning up of the spill cost incurred by them.<sup>367</sup>

Ii) United States Barnett<sup>368</sup>

In this particular case, Barnett having authorised oil and waste grease discharge and also falsely making statements in a bid to conceal the discharge, he pleaded guilty and as the principal agency of Denali Industries Inc, he received a 48 months sentence of probation and a \$ 15,000 payment as restitution. It was found that the direct instructions of Barnett to the employees of the company, led to the pollution.<sup>369</sup>

The possible absolution of guilt of a corporate officer, due to the lack of having directly participated in the act of pollution, was nullified in the case of United States v. Iverson<sup>370</sup> It was further established in that case that to be regarded as a relevant corporate officer, the person must be in position to be able to influence the company policy to permit discharge. It therefore mattered less if he was not directly involved, they would still be criminally liable for the discharge.<sup>371</sup> It can thus be argued that just like the UK, the USA uses the corporate strategy regarding policies of the company as far as pollution is concerned.

It has further established that the doctrine of corporate responsibility creates more deterrence in as far as criminal pollution is concerned as compared to simply awarding fines to corporations.<sup>372</sup> It is therefore so important to have such deterrent measures considering the adverse effects of criminal pollution to the environment and sometimes public health. This was

---

<sup>365</sup>Lance Duroi 'Barge Captain Gets 6 Mos. For Fatal Accident, Oil Spill-Law360' (LexisNexis, 2018) <https://www.law360.com/articles/673150/barge-captain-gets-6-mos-for-fatal-accident-oil-spill>> accessed 10 December 2018.

<sup>366</sup>United States Department of Justice, 'Monthly Bulletin: Environmental Crime Section' (justice gov, 2018) <https://www.justice.gov/enrd/file/78373/download> accessed 10 December 2018.

<sup>367</sup>ibid

<sup>368</sup>United States v Barnett No. 2:12-cr 00378-TC (2014).

<sup>369</sup>ibid

<sup>370</sup>United States v Iverson 162 F.3d 1015, 1025 (9th Cir. 1998).

<sup>371</sup>Siegel L Micheal, White Collar Crime: Law, Procedure, Theory, and Practice ( Wolters Kluwer Law & Business 2014) p.86

<sup>372</sup>Lisa Ann Harig, 'Ignorance Is Not Bliss: Responsible Corporate Officers Convicted of Environmental Crimes and the Federal Sentencing Guidelines' (1992) 42 Duke Law Journal 146.

clearly evidenced in the Deep-Water Horizon oil spill pollution<sup>373</sup> that caused a discharge of 4.9 million barrels of crude oil, resulting into 11 persons dead and 17 worker injured.<sup>374</sup> It is the study's view that, a criminal fine may not serve the purpose for multinational companies that will definitely pay, in this case BP was capable of paying, the fine, the criminal pollution was so significant, that a fine would not cause deterrence to further pollutions.

## 5.16. Corporate Sanctioning Application in the UK

This study in the discussion will look at the approach that is being used by the UK in the corporate liability of offenders of oil pollution. Some environmental pollution that is significant has been caused by corporations<sup>375</sup> as has been discussed above. Some of the significant oil pollution that has been caused by corporate owners of ships and those managing includes:

- a) The Sea Empress spill causing a 72,000 tons of crude oil discharge nearing Pembrokeshire in Wales, this resulted in harm to the marine life and the birds significantly.<sup>376</sup> The MV Sea Empress was the registered oil tanker single-hull Suezmax that was under management by Sea Tanker Management Co Ltd.<sup>377</sup>
- b) The Torrey Canyon Oil spill, that was due to a 1119, 000 tons of crude oil discharge on the Scilly Isles, this resulting in 120 miles contamination of the Cornish coast, measuring 50 miles of the coastline of the French, there were also some deaths of sea birds to the tune of 15,000.<sup>378</sup> The super SS Torrey Canyon tanker that caused the oil spill was a under ownership of the Barracuda Tanker Corporation, that was also the Union Oil company of California subsidiary, that was chartered to British Petroleum.<sup>379</sup>

---

<sup>373</sup>Of 2010.

<sup>374</sup>EPA, 'Deepwater Horizon- BP Gulf of Mexico Oil Spill' (EPA, 2017)

<sup>375</sup>Stuart Bell, Donald McGillivray and Ole W Perdersen, Environmental Law (8<sup>th</sup> edn, Oxford University Press 2013) p. 280.

<sup>376</sup>British Broadcasting Corporation 'BBC NEWS |World |Europe | Comparing the Worst Oil Spills' British Broadcasting Corporation (2018) <https://news.bbc.co.uk/1/hi/world/europe/2491317.stm> accessed 10 December 2018

<sup>377</sup>David Johnson and Nickie Butt, 'The Sea Empress- 10 Years On' (World Wildlife Fund 2006) [http://assets.wwf.org.uk/downloads/ma\\_seaemp10yrson.pdf](http://assets.wwf.org.uk/downloads/ma_seaemp10yrson.pdf) accessed 15 February 2020.

<sup>378</sup>Adam Vaughn, 'Torrey Canyon Disaster- The UK's Worst Ever Spill 50 Years On' (The Guardian (2017) <https://www.theguardian.com/environment/2017/mar/18/torrey-canyon-disaster-uk-worst-ever-oil-spill-50th-anniversary>) accessed 1 December 2018; Fiona McKay, 'The Worst Marine Oil Spills in UK and World History' (HeraldScotland,2016) <https://www.heraldscotland.com/news/homenews/15809323.The-worst-marine-oil-spills-in-uk-and-world-history/> accessed 10 December 2018.

<sup>379</sup>ibid



- c) The Braer spill that resulted in high respiratory hazards to seals in the region was a 85,000 tons of oil discharge on the Islands of Shetland.<sup>380</sup> This was an oil tanker under the ownership of the Braer Corporation, it was being managed by B+ H ShipManagement Company and being operated by the Canadian Ultramar Ltd.<sup>381</sup>
- d) There was also the Gannet Alpha platform spill<sup>382</sup> that happened in the North Sea off the coast of Aberdeen, this resulting into 200 tons of oil discharge.<sup>383</sup> The platform was under operation by Shell.<sup>384</sup>

The above oil spills make it important to look at how the UK has dealt with pollution offences that have been caused by corporations, this ensures that environmental criminal violations by the officers in control are put in check and thus a reduction in the violations. It has also been found by the Environmental Audit Committee that such pollution by corporate activities is due to the environmental obligations neglect.<sup>385</sup> In other cases it was found to be as a result of acts that are intentional and deliberate by the company, which is in the awareness that the act could result into the environmental harm.<sup>386</sup> The provision ensures that the offender is punished for the criminal violation and as such criminal enforcement is realised.

In the UK the liability is both strict liability and mensrea for purposes of proof of environmental offences. Under the EPA it is provided for in section 33(1) (a), that a person is criminally liable for depositing waste that is controlled on any UK land without a permit obtained for the same and the also ensuring that the waste discharge regulations are complied with. The provision above has mensrea as an element.

---

<sup>380</sup>Ailsa J. Hall, John Watkins and Lex Hiby, 'The Impact of the 1993 Braer Oil Spill on Grey Seals in Shetland' (1996) 186 Science of the Total Environment 119-125.

<sup>381</sup>John Macgregor, 'Braer' (Asset Publishing Service Gov. UK 1993)[https://assets.publishing.service.gov.uk/media/54c11606e5274a15b3000015/MAIBReport\\_Braer-1993.pdf](https://assets.publishing.service.gov.uk/media/54c11606e5274a15b3000015/MAIBReport_Braer-1993.pdf) accessed 15 February 2020.

<sup>382</sup>Of 2011.

<sup>383</sup>Adam Barnet, 'Shell's 22, 500 (pounds symbol) Fine for North Sea Oil Spill Slammed As 'Paltry' By Campaigners' Independent (2015) <https://www.independent.co.uk/environment/shells-22500-fine-for-North-sea-oil-spill-slammed-as-paltry-by-campaigners-a6747536.html> accessed 10 December 2018.

<sup>384</sup>ibid

<sup>385</sup>Environmental Audit Committee 'Corporate Environmental Crime, Second Report of Session' HC 136(House of Commons London: The Stationery Office Limited 8<sup>th</sup> Feb 2005) p.5.

<sup>386</sup>ibid

However, as is the case with Uganda, the UK environmental offences have a strict liability force in offences such as pollution. An example is in the Prevention of Oil Pollution Act<sup>387</sup> where the offender is criminally liable for oil pollution caused by the discharge of oil from a pipeline or in the process of exploration and will pay a 50000 pounds fine. An offender in the Water Resources Act<sup>388</sup> will also be liable criminally for having caused poisonous, noxious, polluting or solid matter discharge into waters that are controlled and will serve up to three months imprisonment or pay a 20000 pounds or both if found guilty and if indicted, to serve not more than two years imprisonment or to fine or both.<sup>389</sup> The enforcement agencies are therefore expected to have these environmental sanctions enforced as provided for corporate crimes.<sup>390</sup> Also, for purposes of the determination of the company liability, the officers' acts and state of mind are in the representative capacity of the will and directing mind of the company is imputed to the company itself. These are referred to as corporate officers who are either directly involved in the company or responsible for the company functioning, these may be company directors, and the officer must be in a position to have influence over policies that could have led to the company pollution offence commission.<sup>391</sup> The doctrine of imposition of criminal liability on corporate officers has been believed by Tromans and Thornton to be effective as it makes these officers to be more responsible in the compliance of with environmental laws.<sup>392</sup> The corporate officer is more likely to comply with the environmental principles knowing that criminal liability could ensue against him if he acts in violation of the principle.<sup>393</sup> The officer is therefore liable for any negligence, recklessness or intentional act that causes an environmental offence by the company. The officer

---

<sup>387</sup>Of 1971.

<sup>388</sup>Of 1991.

<sup>389</sup>Similarly, Regulation 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 finds any person that causes' discharge of oil or oil waste from UK tankers into the Mediterranean Sea, the Baltic Sea, the Black Sea and the Antarctic area (hence, contravening the provisions of Regulations 12, 13, and 16) to be guilty of an offence and liable to a penalty of up to a 50, 000 pound fine. In *National Rivers Authority v The Yorkshire Water Services Ltd* [1995] 1 AC 444, Yorkshire Water Services Ltd was found liable for causing the discharge of polluting substances from their system into the river, regardless of the fact that it was a third party that directly caused the discharge through their system. The court also disregarded the fact that they did not necessarily explicitly consent to the pollution act. All that mattered was that the pollution occurred on an existing system they had already set in place. In this case, the court considered the explicit meaning of the word 'caused' to determine that it was an existing system they had already set in place that eventually resulted in the discharge.

<sup>390</sup>Valsamis Mitsilegas and Malgosia Fitzmaurice, 'Fighting Environmental Crime in the UK: A country Report' (Queen Mary University Press 2018) p.52.

<sup>391</sup>Section 41 (3) (4) of the Petroleum Act 1998; Section 217 of the Water Resources Act 1991; and Section 41 of the Environmental Permitting (England and Wales) Regulation 2016.

<sup>392</sup> Stephen Tromans and Justine Thornton, 'Taking Responsibility; Personal Liability under Environmental Law' (Earthscan Publications Ltd 2001) p.1.

<sup>393</sup> Ibid.

is deemed to be working with the company in connivance or consent to commit the offence of environment.<sup>394</sup>

In *Huckerby v Elliot*,<sup>395</sup> Huckerby the director was found liable for the criminal pollution as neglect was attributed to her, evidence showed that she lacked knowledge of the operations of the company as a co-director and the operations were being handled by the manager of the company. She was found guilty of connivance as she failed to exercise oversight over the manager. The act of connivance was defined as an officer “well aware of what is going on but this agreement is tacit, not actively encouraging what happens but letting it continue and saying nothing about it.”<sup>396</sup> From the above case, it is clear it must be proved in court that the corporate officer had knowledge of the offence but omitted to act to stop it. This ensures that the corporate officer acts responsibly to stop or prevent the pollution offence.

The decision was however overturned, in argument that the director may delegate his or her duty and does not have to oversee the operations directly. The law has provided however, those in circumstances where the corporate officer has authority to stop the offence or can influence to prevent the offence, and agrees to the commission of the environmental offence, the officer is criminally liable for having connived.<sup>397</sup>

Similarly, it was held in *Woodhouse v Walsall Metropolitan Borough Council*,<sup>398</sup> that the manager must be in a position of a decision maker to be capable of influencing the policies of a company. The corporate officer must be able to have influence over the policy of the company and the company strategy operations.<sup>399</sup>

In line with the oil and gas, the Merchant Shipping Act<sup>400</sup> in section 137(2), the captain, owner of the ship, captain are liable for any pollution that arises from the ship. The law targets these

---

<sup>394</sup>Environmental Audit Committee (n.171).

<sup>395</sup>*Huckerby v Elliot* [1970] 1 ALL ER 189.

<sup>396</sup>*Ibid.* at 193

<sup>397</sup> *ibid*

<sup>398</sup>*Woodhouse v Walsall Metropolitan Borough Council* [1994] Env.LR 30.

<sup>399</sup>In the appeal case of *R v Boal* [1992] 1 QB 591, the initial conviction of the day-to-day ‘general manager’ of the Foyles bookstore subject to section 23 Fire Precautions Act 1971, was overturned on the grounds that he lacked the requisite power to determine the corporate policy of the book store. It was rather maintained that criminal liability as specified in Section 23 of the Act only apply to officers who are in authority and are decision makers and strategy developers within a company.

<sup>400</sup>Of 1995.

particular persons involved with the ship, irrespective of the corporation the ship is registered with. The law in section 139 further provides for a fine not exceeding 50, 000 pounds upon being found guilty under section 137(2). The study appreciates the lifting of the corporate veil to proceed against the real culprit who caused the oil and gas pollution offence.

The corporate officer is therefore under obligation by the law to ensure that there is environmental responsibility, corporate social responsibility and good corporate governance in the coordination of the policies of the company.<sup>401</sup> The officer must have sufficient authority, however, in other circumstances, a third party under Water Resources Act section 217 who acts or defaults in contributing to the pollution commission is criminally liable for the offence. This is so even where the third party is not a member of the corporation polluting like the oil pipeline vandals, the officer is liable criminally.

In Uganda there are provisions for corporate criminal liability under section 163 of the PEDA,<sup>402</sup> this is further provided for in a number of other laws. The study's view is that the provision has not yet been utilised for purposes of criminal enforcement by the office of the DPP and the Uganda Police in the oil and gas exploration and production compliance.

## **5.17. Conclusion**

The chapter has analysed the criminal enforcement mechanisms and criminal sanctions in the USA and the UK, these have been compared with the Ugandan regime and differences and similarities discussed thereof. The study has established the importance of the use of enforcement mechanisms and criminal sanctions for sufficient enforcement in order to have efficient and effective prosecutions. The mechanisms include trainings of relevant officers, multi-disciplinary approaches in investigations and prosecutions, coordination in investigations and prosecutions, multiple expert prosecutions, tough sanctioning for deterrence, sanctioning of corporate bodies and financing of enforcement agencies. If such mechanisms are adopted by Uganda through the ODPP and the Uganda Police, violators of crime will be incapacitated and

---

<sup>401</sup>This was highlighted in the cases of *National Rivers Authority v Alfred McAlpine Homes East Ltd* [1994] Env. LR 198; and *Shanks and MCEwan (Teesside) Ltd v Environment Agency* [1997] EWHC Admin 873.

<sup>402</sup>Of 2013.

the damaged environment rehabilitated. The findings in this chapter have effectively met research objective number three having analysed the criminal aspects of the respective jurisdictions and answered research question two. They are also in line with research objective number four as the comparative analysis of the jurisdictions clearly provides practical solutions for the challenges in the Uganda regime from which recommendations can be got. The findings assert the importance of the deterrence theory.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

#### 6.0. CONCLUSION

The study sought to establish the efficacy of the ODPP and the Uganda Police in the criminal enforcement of compliance of the oil and gas exploration and production compliance with environmental laws. The study established through chapter four that there is both an international and national legal framework in place with criminal penalties for criminal enforcement of compliance with environmental law in the oil and gas exploration and production thus emphasising the deterrence theory. The legal framework also provides for responsible institutions that is, the ODPP and Uganda Police as mandated to criminally enforce compliance with environmental laws in the oil and gas exploration and production. This emphasises the role and relevance of the institutions and answering the research question number one. It was further found that use of criminal enforcement is necessary especially in cases where there is repetitive environmental violations damage or damage that is irreparable in the oil and gas exploration and production industry. This asserts the importance of the deterrence theory in incapacitating violators, regulating the entities and ensuring the damaged environment is rehabilitated.

The study has however established that there are various bottleneck hindrances to criminal enforcement by the ODPP and the Uganda Police of compliance of the oil and gas exploration and production to environmental laws. The research question number two was answered. These include:

- i) Lack of knowledge of the oil and gas exploration and production operations by the relevant institutions of the adverse effects and environmental crimes.
- ii) Inadequate Criminal sanctions so as to ensure deterrence for effective criminal enforcement.
- iii) Lack of support from the Government to the ODPP and Uganda Police for enforcement.
- iv) Lack of Trainings of the officers of the ODPP and Uganda Police.
- v) Ignorance of the role of the ODPP and Uganda Police by the officers themselves.

viii) Inadequate enforcement by the ODPP and the Uganda Police as the officers do not have the required expertise,

The above as analysed, clearly reveals that Uganda has challenges in enforcement of compliance with environmental law by the ODPP and Uganda Police in the oil and gas exploration and production. The comparative study in chapter five has demonstrated that lessons can be learnt from the USA and UK regimes, the study shows that they have better criminal sanctioning and enforcement mechanisms in place as compared to Uganda. Some of the criminal aspects of the USA and UK can be applied to the Ugandan regime so as to solve the challenges of enforcement by the respective offices of the ODPP and the Uganda Police. The study will make recommendations from the aspects of the USA and the UK for possible solutions to the Ugandan regime to the challenges faced by the respective institutions.

### **6.1. Recommendations**

Recommendations will be made by this study for purposes of development of the Ugandan regime, this will be on the basis of the USA and the UK regimes. The aspects as established will address the Ugandan enforcement systems and the environmental criminal laws in order to realise improvement of the same.

### **6.2. Environmental Standards Enforcement Enhancement**

The researcher's view is that it is important to have in place a team of institutions for enforcement that are fully supported by the government, this in turn ensures that there is effective enforcement of compliance of the oil and gas exploration and production with environmental laws. The study has established that there are a number of challenges in the Ugandan regime preventing compliance. Through the comparative study with the USA and the UK regime, the following is recommended:

i) That a financial budget be put in place for criminal enforcement of compliance with environmental laws through the ODPP and the Ugandan Police, as it is done in the USA and the UK, this will ensure the respective institutions effectively enforce compliance and therefore

cause deterrence. This will require the government having in place financial provisions specifically to deal with criminal enforcement through the ODPP and the Uganda Police.

ii) Data sharing and allocation of tasks of enforcement by the respective agencies will lead to efficiency in criminal enforcement. As discussed the USA also has the environmental crime task force team constituted for efficiency, there is data sharing by the different agencies for efficiency. For effectiveness in the environmental crimes matters the COPFS, Crown office work jointly for crime reports of environment better outcomes. They also do case conferencing for purposes. They emphasise timely investigations and case reports, the team also holds post disposal assessment meetings for significant cases. It is recommended that Uganda adopts the practice of data sharing and clearly defined roles of the enforcement agencies in order to have efficient prosecutions of their cases so as to cause deterrence.

### **6.3. Adequate Criminal Sanctions to realise criminal enforcement of compliance**

The study has established that the criminal sanctions in place are weak and will not be able to serve the purpose of enforcement by the institutions, the penalties as reflected in the laws do not translate into deterrence to the environmental offences. This therefore defeating the purpose of the deterrence theory. The researcher through the comparative analysis of the USA and the UK found that the USA and the UK have tough sanctions manifesting in the form of high penalties. These have been used to incapacitate violators, to regulate entities and also rehabilitate the environment damaged. The UK also has daily fines as a penalty, this prevents the oil corporations from repetitive environmental violations. The researcher therefore recommends as follows:

Enacting criminal sanctions of environment in the oil and gas exploration and production that match the nature of the harm or damage occasioned on the environment. Considering that the oil companies are rich, the fines should be harsh enough to significantly affect their finances so as to deter them from committing further crime. This may require adapting the USA and UK regimes of criminal sanctions, it may require taking into consideration how significant the offence committed is. It is also recommended that daily fines be adopted for purposes of regulating the



entities in as far as repetitive violations in the oil and gas exploration and production are concerned.

#### **6.4 Trainings of ODPP and Uganda Police Officers**

The study has established that the officers lack the required knowledge as regards their role in the criminal enforcement of compliance of the oil and gas exploration and production. The comparative study has found that in the UK and the USA the prosecutors and investigators have joint trainings. In the USA, the EPA has team of special agents of lawyers, technicians, scientists, these are trained in water, air and sound resources, this is done at the federal law enforcement centre, they are trained in the federal enforcement basics. This ensures that they have successful investigations of cases.

The researcher recommends that the officers are trained on their roles and relevance to the oil and gas exploration and production industry so as to effectively enforce compliance with environmental law. This if adopted by the Ugandan regime will cause deterrence of the violators as the prosecutions will be conducted by knowledgeable officers.

#### **6.5 Prosecutions strengthening of Enforcement**

The study has established that the Ugandan regime has a legal framework in place for purposes of criminal enforcement in the oil and gas exploration and production compliance with environmental laws through the office of the DPP and the Ugandan Police. This has however not been utilised due to challenges the institutions face. The researcher through a comparative study of the USA and UK and the challenges affecting the institutions recommends the following:

i) The ODPP making use of prosecution guided or led investigations in the oil and gas exploration and production compliance, the USA and the UK regime has demonstrated that the environmental bodies contact the prosecuting bodies at the earliest opportune time, there is conferencing of cases. An example is the Procurator Fiscal Depute (Area Specialist) holds

discussions early enough with the COPFS and the SEPA, this ensures transparency and efficiency in prosecutions.

ii) Establishment of specialised departments and units for oil and gas to address the environmental crimes in the industry considering the unique nature of the crimes that causes irreparable damage to the environment.

iii) Utilisation of multiple prosecutions through the ODPP working with the Uganda police, the NEMA and other relevant bodies specialised in the criminal matters, forensics and environmental matters in the oil and gas industry to ensure that there is effective prosecutions so as to cause deterrence of the violators. It has been established that in the Ugandan regime, there is so much emphasis on the NEMA, the ODPP as the major prosecuting body and the Uganda Police have not been utilised for purposes of criminal enforcement, this defeats the purpose of effective enforcement. The Ugandan regime can make use of the USA and UK utilisation of the practice as per the discussion in chapter five.

iv) Making use of the enforcement pyramids that start from mechanisms of warning letters to civil, criminal enforcement and even revocation of licenses, the enforcement bodies can even decide to start with criminal enforcement for cases of irreparable damage to the environment, this will efficiency. The research has established that in the UK explicit mechanisms are used and this has made their process of prosecutions more efficient, it helps to regulate the entities better in terms of compliance and deterrence.

v) Multi-disciplinary approaches in investigations and prosecutions are recommended. The study has found that in the USA, the EPA gathers evidence of forensics, through the NEIC, it also gathers computer evidence. It therefore supports the USA attorney and the ECS in terms of providing technical advice for the prosecution of matters of environment under the DCJ this ensures sufficient enforcement of compliance. In the UK, the SEPA works with the EA, SEPA refers cases for prosecution to the Crown office and the Procurator Fiscal Services for Prosecution and this makes investigations efficient. Uganda adopting such an approach will make prosecution efficient and effective.

The researcher recommends that the ODPP and the Uganda Police adopt this as a practice for purposes of ensuring efficient investigations for prosecutions. The NEMA and the Uganda Police

could be utilised to gather technical evidence with guidance of the ODPP in matters of environmental violations in the oil and gas exploration and production and this could be used to support the ODPP. This practice if adopted will ensure efficient investigations and lead to efficient prosecutions, thus bringing about deterrence.

#### vi) Corporate sanctioning utilisation

The study has established that the Ugandan regime has not utilised corporate sanctioning in as far as criminal enforcement is concerned, this is irrespective of the fact that there are provisions in the law providing for the same. The USA and the UK as discussed above, have both fully utilised corporate sanctioning. The researcher therefore recommends that the Ugandan regime through the ODPP and Uganda Police adopt the utilisation of corporate sanctioning so as bring deterrence of the non compliant corporations in the oil and gas exploration and production industry. This will ensure that there is effective enforcement of compliance with environmental laws.

### **6.6. Uganda Government commitment to Enforcement of Compliance**

The researcher established that in as far as criminal enforcement by the ODPP and the Uganda Police is concerned in the oil and gas exploration and production compliance to environmental laws, there is no support from the government. The comparative study has found that in the USA and the UK, there is commitment from the government to support enforcement of compliance. The study therefore recommends that the Ugandan government makes use of the recommendations above by ensuring they are put into effect.

The recommendations above if adopted from the USA and the UK regime by the Ugandan regime, will address the challenges to the Ugandan regime so as to ensure compliance of the oil and gas exploration and production to environmental laws. This will further ensure that the violators of environmental laws are incapacitated and the damaged environment rehabilitated and therefore meet the purposes of the deterrence theory so as to protect the environment from the adverse effects of the oil and gas exploration and production industry.

## BIBLIOGRAPHY

### Text Books

Abraham N Oppenheim, Questionnaire Design, Interviewing and Attitude, 1992.

Alan Watson, Legal Transplants: An approach to comparative Literature (2<sup>nd</sup> edn, university of Georgia Press 1993).

Claude Duval, Honore'LeLeuch Andre' Pertuzio, Jacqueline Lang Weaver, International Petroleum, Exploration and Exploitation Agreements

Clifford Rechtschaffen and David Markell, 'Reinventing Environmental Enforcement and the State/ Federal Relationship' in D Kaniaru and E Kruzikova (eds) Making Law Work: Environmental Compliance and Sustainable Development (Vol 1, Cameron May 2005) 158.

Control Global, 'SEMS after Deepwater Horizon' (Control Global 2004).

Dr Catherine Dawson, Practical Research Methods, A user friendly guide to mastering research.

Edith Allison and Ben Mandler, 'US Regulation of Oil and Gas Operations' (American Geosciences Institute 2018).

K.Murphy, Moving Towards a More Effective Model of Regulatory Enforcement in the Australian Tax Office (2004) British Tax Review, 603- 19.

Malcom K Sparrow, Imposing Duties: Government's Changing Approach to Compliance (Praeger Publishers 1994).

Mark Saunders, Phillip Lewis and AndrianThornhill, Research Methods for Business Students (5<sup>th</sup>edn, Harlow, FT Prentice Hall, (2009).

Mathews B. Miles and Michael A. Huberman, Qualitative Data Analysis (2<sup>nd</sup> end, Thousand Oaks CA: Sage Publications, 994) 11.

Micheal J. Rainer, Introduction to Comparative Law (Wein Mainz 2010).

Polit, D.F and Beck. C.T. (2014) Essentials of Nursing Research: Appraising Evidence for Nursing Practice.8<sup>th</sup> Edition, Lippincott Williams & Wilkins, Philadelphia.

Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulation, Theory, Strategy and Practice, Second Edition.

Robert Bogdan and Sari KnoppBikken, Qualitative research for education: an introduction to theory and methods (Boston, Allyn and Bacon inc, 1982) 145.

Sam Taylor and others, 'Waste Crime: Tackling Britain's Dirty Secret' (Environmental Services Association Education Trust (ESAET) 2015).

Siegel L Micheal, White Collar Crime: Law, Procedure, Theory, and Practice (Wolters Kluwer Law & Business 2014).

Stephen Tromans and Justine Thornton, 'Taking Responsibility; Personal Liability under Environmental Law' (Earth scan Publications Ltd 2001).

Uma Sekaran, Research methods for business: a skill-building approach (New York, John Wiley & Sons, 2003).

## **Journals**

Ailsa J. Hall, John Watkins and Lex Hiby, 'The Impact of the 1993 Braer Oil Spill on Grey Seals in Shetland' (1996) 186 Science of the Total Environment.

Alexandra S. Wawryk, Adoption of International Environmental Standards by transitional oil companies: Reducing the Impact of oil operations in Emerging Economies, 20 J, of Energy & NAT, RES.L.402 (2002).

Aniefiok E. He, Udo. J. Ibok, Margaret U. Ite, Sunday W. Peters, Petroleum Exploration and Production: Post and Present Environmental Issues in the Nigeria's Niger Delta AmericanJournal of Environmental Protection, 201, Vol. 1, No. 4.

Anthony J Onwuegbuzie and Nancy L. Leech, Taking the "Q" out of Research. Teaching Research Methodology Courses Without the Divide Between Quantitative and Qualitative Paradigms' (2005) 39 Quality and Quantity 270.

Antoinette Twum, Environmental Impact of Oil and Gas Exploration and production on the Socio-economic life of Niger Delta, 2019.

Brian Smith and John Rose, Uganda's Albert Graben due first serious exploration test. The oil and Journal, vol.100, issue 23, 10 June 2002.

Burke R Johnson and Anthony J Onwuegbuzie, Mixed methods research: a research paradigm whose time has come, (2004) 33(7) Educational Researcher 17.

Christine Echokit Akello, Environmental Regulation in Uganda: Success and challenges, 3/1Law, Environment and Development Journal (2007), P, 20, available at [http:// www.lead-journal.org/content/07020.pdf](http://www.lead-journal.org/content/07020.pdf).

Chuks-Ezike, Environmental law Crime liability of the Nigerian government in its Oil Pollution menace, 2018, Environmental risk assessment and remediation (online). Available from: Research Article, <http://www.alliedacademies.org/environmental-risk-assessment-and-remediation/ISSN:2529-8046>.

Civil Society Coalition on Oil and Gas (CSCO), The State of Oil & Gas Waste Management Facilities & Environmental Compliance in the Albertine Graben Region of Uganda, CSCO Research Paper No. 2, 2015.

Daniel Riesel, Environmental Enforcement, 11<sup>th</sup> edn, Law Journal Press 2012

David Johnson and Nickie Butt, 'The Sea Empress- 10 Years On' (World Wildlife Fund 2006) [http://assets.wwf.org.uk/downloads/ma\\_seaemp10yrson.pdf](http://assets.wwf.org.uk/downloads/ma_seaemp10yrson.pdf) accessed 15 February 2020.

Debashree Chakraborty, 'Empirical (Non-Doctrinal) Research Method and its Role in Legal Research' (2015) 3 International Journal Advances in Social Sciences 23.

Eghasar Ekhattor, Environmental Protection in the oil and gas industry in Nigeria: the roles of governmental agencies, January 2013.

Emmanuel B Kasimbazi, Environmental Regulation of Oil and Gas Exploration in Uganda, Journal of Energy & Natural Resources Law, 2012, 30: 2, 185-221, Doi: 10.1080/0264811.2012.11435291, published online: 03 June 2015.

Jo Burges and Edward Barbier, 'Sustainable Development' [2001] *International Encyclopaedia of the Social & Behavioural Sciences* 15329.

Jude Eeanokwasa, 'An Appraisal of the Conformity of the 2007 Nigerian Minerals and Mining Act to the Polluter Pays Principle 1' (2017) 8 *NnmidiAzikiwe University Journal of International Law and Jurisprudence* 66.

Lisa A Harig, 'Ignorance Is Not Bliss: Responsible Corporate Officers Convicted of Environmental Crimes and the Federal Sentencing Guidelines' (1992) 42 *Duke Law Journal* 146.

Mark P. Jensen, Validity is the degree and ability of a research instrument to measure what it is actually intended to measure. 2003& (AERA et al, 1999:184).

Mathias M Seims, 'Legal Originality' (2008) 28 *Oxford Journal of Legal Studies*.

Michael Hertz, 'Structures of Environmental Criminal Enforcement' (2018) 7 *Fordham Environmental Law Review* 685.

Micheal Watson, 'The Enforcement of Environmental Law: Civil or Criminal' (2005) 17 *ELM Journal* 3.

Micheal Coughan, Paricia Cronon and Frances Ryan, 'Step by Step Guide to Critiquing Research. Part 1, Quantitative Research' (2007) 16 *British Journal of Nursing* 661.

Neil Gunningham, 'Enforcing Environmental Regulation' (2011) 23 *Journal of Environmental Law* 175.

Ojide Makuachukwu Gabriel and others, 'Impact of Gas Industry on Sustainable Economy in Nigeria: Further Estimations through Review' (2012) 12(21) *Journal of Applied Sciences* 2244-2251.

Olubisi, Friday Oluduro, Olubayo Oluduro, Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria, *Journal of Law, Policy and Globalisation* ISSN 2224-3240(paper) ISSN 2224-3259 (online) Vol 37, 2015, [www.iiste.org](http://www.iiste.org).

Olusola Joshua Olujobi, Comparative Appraisals of Legal and Institutional Framework Governing Gas Flaring in Nigeria's upstream Petroleum Sector: How Satisfactory? Article in Environment Quality management- July 2020.

Oluwadare Joshua OYEBODE, Impact of Environmental Laws and Regulations on Nigerian Environment. World Journal of Research and Review (WJRR) ISSN: 2455-3956, Volume- 7, Issue-3, September 2018.

Organisation for Economic Co-operation and Development (OECD) Council Recommendation concerning the Application of the Polluter-Pays Principle to Accidental Pollution C (72)128 (1972), 14 ILM 236 (1975).

P.A.Sakyi, J.K.Efavi, D. Atta-Peters and R. Asare, Ghana's Quest for Oil and Gas: Ecological Risks and Management Frameworks, West African Journal of Applied Ecology, Vol. 20(1), 2012.

Raymond W Marshal, 'Reflections Upon American Environmental Enforcement Experience as it may relate to Post-Hampton Developments in England and Wales' (2007) 19 Journal of Environmental Law 201.

Rudolf B Schlesinger, 'The Past and Future of Comparative Law' (1995) 43 The American Journal of Comparative Law 477.

SN Jain, 'Doctrinal and Non Doctrinal Legal Research' (1975) 75 Journal of the Indian Law Institute 516.

Square Space, 'Overview of the Oil and Gas Exploration and Production Process' (Environmental Management in Oil and Gas Exploration and Production, 2019).

Taako Edema George, Kiemo Karatu, Andama Edward, An Evaluation of the Environmental Impact assessment Practice in Uganda: Challenges and opportunities for achieving sustainable development, vol 6, issue 9, September 2020, e04758, <http://doi.org/10.1016/j.helijan.2020.e04758>.

Vijay Gawas, 'Doctrinal Legal Research Method: A Guiding Principle in Reforming the law and Legal System towards the Research Development' (2017) 3 International Journal of Law 128.



## Reports

Arne Bleeker, 'Does the polluter- Pays Principle in the Case Law of the European Court of Justice'(2009) 18 European Energy and Environmental Law Review 289.

BEIS, 'Enforcement Policy: Offshore Petroleum Regulator for Environment &Decommissioning' (Crown Copyright 2020).

Bergen Ministerial Declaration on Sustainable Development in the United Nations Economic Commission for Europe (UNECE) Region on the 16<sup>th</sup> of May 1990.

British Broadcasting Corporation 'BBC NEWS |World |Europe | Comparing the Worst Oil Spills'  
British Broadcasting Corporation (2018)  
<https://news.bbc.co.uk/hi/world/europe/2491317.stm> accessed 10 December 2018.

BSEE, 'Environmental Stewardship Collaboration Core Group (Final Report)'(USA Department of Interior: BSEE 2016) <https://www.bsee.gov/sites/bsee.gov/files/bsee-environmental-stewardship-core-group-final-report.pdf>accessed 16 April 2019.

BSEE, 'Regulatory Reform' (USA Department of Interior: BSEE 2019)  
<https://www.bsee.gov/guidance-and-regulations/regulations/regulatory-reform>accessed 16 April 2019.

BSEE, 'Revised Well Control Rule' (USA Department of Interior: BSEE 2018)  
<https://www.bsee.gov/guidance-and-regulations/regulations/revised-well-control-rule-summary-page>accessed 16 April 2019.

BSEE, 'Safety and Environmental Management Systems (SEMS) Fact Sheet' (USA Department of Interior: BSEE 2019)<https://www.bsee.gov/site-page/fact-sheet>accessed 16 April 2019.

BSEE, 'Oil and Gas Production Safety Systems Rule 2018' (USA Department of Interior: BSEE 2018) <https://www.bsee.gov/guidance-and-regulations/regulations/oil-and-gas-production-safety-systems-rule>accessed 16 April 2019.

Bureau of Justice Assistance, 'How to use Structured Fines (Day Fines) As an Intermediate Sanction' (Department of Justice 1996) <https://www.ncrj.gov/pdffiles/156242.pdf> accessed 28 August 2019.

Bureau of Safety and Environmental Enforcement (BSEE), 'Environmental Focuses' (Department of Interior: BSEE 2019) <https://www.bsee.gov/what-we-do/environmental-focuses> accessed 16 April 2019.

Cristoher Harris, Patrick O Cavanaugh and Robert L Zisk, 'Criminal Liability for Violations of Federal Hazardous Waste Law: The Knowledge Of Corporations and their Executives' (1988) 23 Wake Forest Law Review 207.

Department for Business, Energy & Industrial Strategy (BEIS) and Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), 'Oil and Gas: OSPAR EMS Recommendation' (GOV. UK, 2013) <https://www.gov.uk/guidance/oil-and-gas-ospar-ems-recommendation> accessed 17 February 2020.

Department for Communities and Local Government, 'Planning Practice Guidance for Onshore Oil and Gas' (Crown Copyright 2013).

Department of Energy and Climate Change (DECC)-Offshore Oil and Gas Environment Unit Enforcement Policy' (Assets. Publishing.service.gov.uk, 2015)[https://assets.publishing.service.gov.uk/government/uploads/systems/uploads/attachment\\_data/file/470442/DECC Offshore Inspectorate Enforcement Policy - October 2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/systems/uploads/attachment_data/file/470442/DECC_Offshore_Inspectorate_Enforcement_Policy_-_October_2015.pdf) accessed 7 March 2019.

Department of Justice (DOJ), 'About DOJ' (Justice.gov, 2019) <https://www.justice.gov/about> accessed 28 August 2019.

Department of Justice (DOJ), 'Historical Development of Environmental Criminal Law/ENRD/Department of Justice' (Justice .Gov, 2018)<https://www.justice.gov/enrd/about-division/historicaldevelopment-environmental-criminal-law>> accessed 10 December 2018.

Department of Justice, ‘Closed Criminal Division Cases: United States v Transocean Deepwater Inc.’ (Justice.gov, 2018) <https://www.justice.gov/criminal-vns/case/transocean> accessed 10 December 2018.

Department of Trade and Industry, ‘An Overview of Offshore Oil and Gas Exploration and Production Activities’ (Department of Trade and Industry 2001) 4.

Directive 2008/98/EC on waste (Waste Framework Directive).

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJL 328, 6.12.2008).

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (Integrated Pollution Prevention and Control) (OJL 334, 12.12.2010)

DOJ, ‘Prosecution of Federal Pollution Crimes/ Department of Justice’ (Justice.gov, 2018) <https://www.justice.gov/enrd/prosecution-federal-pollution-crimes> accessed 10 December 2018.

Environmental Protection Agency (EPA), ‘EPA Continues To Exceed Previous Numbers in Civil, Criminal Cases, Penalty Assessments’ (Environmental Protection Agency 1990) 1534.

DOJ, ‘Prosecution of Federal Pollution Crimes: ECS’ (Justice.gov,2019)<https://www.justice.gov/enrd/prosecution-federal-pollution-crimes> accessed 28 August 2019.

DOJ, ‘Environmental Crime Section’(Justice.gov,2019) <https://www.justice.gov/enrd/environmental-crimes-section> accessed 28 August 2019.

Elenwo, E and Akankali, J, Environmental policies and Strategies in Nigeria Oil and Gas Industry: Gains, Challenges and prospects. Natural Resources, 2014, 5, 884.doi:10.4236/nr.2014.514076.

Environmental Audit Committee ‘Corporate Environmental Crime, Second Report of Session’ HC 136 (House of Commons London: The Stationery Office Limited 8<sup>th</sup> Feb 2005)

Environmental Audit Committee, ‘Environmental Crime: Wildlife Crime Twelfth Report of Session 2003-04’ HC 605 ( House of Commons London: The stationery Office Limited 15<sup>th</sup> September 2004) <https://www.nwcu.police.uk/wp-content/uploads/2013/04/House-of-Commons-Environmental-Audit-Committee-Environmental-Crime-Wildlife-Crime-Twelfth-Report-of-Session-2003-04.pdf>> accessed 10 December 2018.

Environmental Law Association, ‘Criminal Prosecution in Scotland’ (Environmentlaw.org.uk, 2017) <https://www.environmentlaw.org.uk/rte.asp?id=312> accessed 18 February 2020.

Environmental Protection Agency (EPA), ‘Evolution of The Clean Air Act’ (EPA, 2017) <https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act> accessed 18 March 2019.

EPA, ‘01/31/2014: Joint EPA and BLM Investigation Results in Funding for Wyoming Natural Resources and Oil Spill Cleanup (Carbon County)’( EPA Archive, 2014) [https://archive.epa.gov/epapages/newsroom\\_archive/newsreleases/2dldb97c8bcce4685257c7100772140.html](https://archive.epa.gov/epapages/newsroom_archive/newsreleases/2dldb97c8bcce4685257c7100772140.html)> accessed 10 December 2018.

EPA, ‘2017 Major Criminal Cases | USA EPA’ (EPA, 2019) <<https://www.epa.gov/enforcement/2017-major-criminal-cases>>accessed 29 October 2019.

EPA, ‘Basic Information on Enforcement | US (EPA, 2019) <https://www.epa.gov/enforcement/basic-information-enforcement> accessed 28 October 2019.

EPA, ‘Criminal Enforcement Overview |USA EPA’ (EPA, 2019) <https://www.epa.gov/enforcement/criminal-enforcement-overview>> accessed 29 October 2019.

EPA, ‘Criminal Enforcement: Special Agents | USA EPA’ (EPA, 2019) <https://www.epa.gov/enforcement/criminal-enforcement-special-agents>accessed 29 October 2019.

EPA, ‘Criminal Environmental Crime Task Force Partners’ (EPA 2019) <https://www.epa.gov/enforcement/criminal-environmental-crime-task-force-partners>accessed 15 October 2019.

EPA, ‘Criminal Investigations’ (EPA, 2019) <https://www.epa.gov/enforcement/criminal-investigation> accessed 15 October 2019.

EPA, ‘Deepwater Horizon- BP Gulf of Mexico Oil Spill’ (EPA, 2017).

EPA, ‘Distribution of Final Work Product from the National Underground Injection Control (UIC) Technical Workgroup- Minimising and Managing Potential/Impacts of Injection Induced Seismicity from Class II Dis at Veils: Practical Approaches’ (EPA 2015) <https://www.epa.gov/sites/production/files/2015-08/documents/induced-seisimity-201502.pdf> accessed 15 April 2019.

EPA, ‘EPA Announces Environmental Compliance Website for the Crude oil and Natural Gas Sector’ (EPA 2019) <https://www.epa.gov/newreleases/epa-announces-environmental-compliance-website-crude-oil-and-natural-gas-sector> accessed 7 October 2019.

EPA, ‘EPA Announces FY 2020-2023 Priorities for Enforcement and Compliance Assurance’ (EPA 2019) <https://www.epa.gov/newsreleases/epa-announces-fy-2020-2023-priorities-enforcement-and-compliance-assurance>> accessed 15 October 2019.

EPA, ‘National Compliance Initiative: Ensuring Energy Extraction Activities Comply with Environmental Laws’ (EPA 2019) <https://www.epa.gov/enforcement/national-compliance-initiative-ensuring-energy-extraction-activities-comply> accessed 15 October 2019.

EPA, ‘Oil Spills Prevention and Preparedness Regulations’ (EPA 2018) <https://www.epa.gov/oil-spills-prevention-and-preparedness-reglations> accessed 28 October 2019.

EPA, ‘SPCC Guidance for Regional Inspectors’ (EPA 2018) <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-guidance-regional-inspectors>> accessed 15 April 2019.

EPA, ‘Summary of Criminal Prosecutions | Enforcement | USA EPA’(Cfpub.epa.gov.2020) [https://cfpub.epa.gov/compliance/criminal\\_prosecution/index.cfm?action=3&prosecution\\_summary\\_id=2468](https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2468) accessed 24 February 2020.

EPA, National Enforcement Investigations Centre (NEIC)’(EPA 2019).

European Commission, ‘Criminal Sanctions for Environmental Offences’ (European Commission- European Commission, 2019 <https://ec.europa.eu/info/energy-climate-change->

[environment/implementation-eu-countries/criminal-sanctions-environmental-offences.en](http://environment/implementation-eu-countries/criminal-sanctions-environmental-offences.en)

accessed 23 October 2019.

European Commission, 'Environmental Crime- Legislation- Environment- European Commission' (Ec.europa.eu, 2016) <http://ec.europa.eu/environment/legal/crime/> accessed 10 December 2018.

Fiona McKay, 'The Worst Marine Oil Spills in UK and World History' (Herald Scotland, 2016) <https://www.heraldscotland.com/news/homenews/15809323.the-worst-marine-oil-spills-in-uk-and-world-history/> > accessed 10 December 2018.

Floyd J. Fowler Jr, Survey Research Methods ((3<sup>rd</sup>edn, London, Sage Publication 2002) 58

Frances Clegg, Simple Statistics. A Course Book for the Social Sciences 2<sup>nd</sup> edn, Cambridge University Press 1990).

Healthy and Safety Executives, 'Offshore Statistics & Regulatory Activity Report 2017' (Hse.gov.uk, 2018) <<https://www.hse.gov.uk/offshore/statistics/hsr2017.pdf>> accessed 7 March 2019.

Ibrahim Shihata, 'Implementation, Enforcement, and Compliance with International Environmental Agreements-Practical Suggestions in the Light of the World Bank's Experience' (1997) 9 Georgetown International Environmental Law Review 37.

John C Dernbach, 'Sustainable Development as A Framework for National Governance' (1998) 49 Case Western Reserve Law Review 58.

Ministry of energy and mineral development policy report of 2006.

Ministry of Energy and Mineral Development, The Oil and Gas Sector in Uganda: Frequently Asked Questions, January 2017.

Robert I McMurry and Stephen D Ramsey, 'Environmental Protection Agency 1990) 1534.

The oil and Gas Sector in Uganda, frequently Asked Questions, Ministry of Energy and Mineral Development, may 2019.

UN Environment Programme, Dramatic growth in laws to Protect environment, but widespread failure to enforce, 24<sup>th</sup> Jan 2019.

UNEP (1997) Environmental management in Oil and gas exploration and production: an overview of issues and management approaches.

United Kingdom Onshore Oil and Gas (UKOOG), 'Regulation' (United Kingdom Onshore Oil and Gas 2017) <https://www.ukoog.org.uk/regulation>> accessed 23 February 2020.

United Nations Environment Program (UNEP), 'The Basel Convention Ban Amendment' (Secretariat of the Basel Convention 2011).

United Nations Environmental Programme, 'Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches' (Words and Publication 1997).

United States Department of Justice, 'Monthly Bulletin: Environmental Crime Section' (justice gov, 2018) <https://www.justice.gov/enrd/file/78373/download> accessed 10 December 2018.

United States Secretary of the Interior, 'Review of Panel Report for Walker Ridge 469' (USA Secretary of the Interior 2019) <https://www.bsee.gov/sites/bsee.gov/files/memos//director-response-memo-wr469s.pdf> accessed 16 April 2019.

USA's Environmental Protection Agency (EPA), 'EPA Office of Compliance Sector Notebook Project Profile of the Oil and Gas Extraction Industry' (Environmental Protection Agency 1999).

## **News Reports**

Konrad Zweigert and Hein kotz, Introduction to Comparative Law (3<sup>rd</sup> edn, Tony Weir-transplanted, Oxford University Press, Oxford 1998).

Stuart Bell, Donald McGillivray and Ole W Perderson, Environmental Law (8<sup>th</sup> edn, Oxford University Press 2013).

Valsamis Mitsilegas and Malgosia Fitzmaurice, 'Fighting Environmental Crime in the UK: A country Report' (Queen Mary University Press 2018).

Wills Harmon: An Incomplete Guide to the Future. (New York W.W.Norton 1970) 5.

World Commission on Environment and Development, 'Our Common Future' (1987) Oxford University Press p.43.

### **Conference papers/ Proceedings**

Claudine Sigam and Leonardo Garcia, 'Extractive Industries: Optimizing Value Retention in Host Communities' (United Nations Conference on Trade and Development 2012) p.4.

The Law Commission, 'Criminal Liability in Regulatory Contexts': Consultation Paper No 195 (The Law Commission, UK 2010).

International Alert, Oil and Gas Laws in Uganda: A legislature's Guide, Oil Discussion Paper No. 1 May 2011.

### **Dissertation/Thesis**

Emmanuel Kaweesi, Environmental Law Compliance and its Implications for Oil and Gas Exploration and Production in Uganda, 2014.

Engobo Emesch, 'Regulatory and Institutional Framework for 'Enforcing Criminal Liability for Environmental Damage: A study of Oil Industry in Nigeria' (PhD, university of Dundee 2005).

Chuks-Ezike, C., An analysis of the deficiencies impeding regulation of environmental Standards in the Nigerian oil and gas industry and possible solutions through legal transportation from other model regimes, 2020.

### **Websites/ WebPages**

Advameg Incorporated, 'Environmental Crime' (Advameg Incorporated, 2019) <https://www.pollutionissues.com/Ec-Fi/Environmental-Crime.html> accessed 18 March 2019.



Andrea Jarolimkova, 'Enforcement of Environmental Protection through Criminal Law' [2013] 3 Common Law Review [http://www.commonlawreview.cz/enforcement-of-environmental - protection-through-criminal-law](http://www.commonlawreview.cz/enforcement-of-environmental-protection-through-criminal-law) Review/> accessed 10 August 2019.

JOC Staff, 'Pacific International Lines Fined for Criminal Oil Pollution | JOC.Com' (JOC.com, 2013)[https://www.joc.com/maritime-news/container-lines/pacific-international-lines/pacific-international-lines-fines-criminal-oil-pollution 20130227.html](https://www.joc.com/maritime-news/container-lines/pacific-international-lines/pacific-international-lines-fines-criminal-oil-pollution-20130227.html) accessed 10 December 2018.

JohnMacGregor, 'Braer' (AssetPublishingServiceGov.UK1993)[https://assets.publishing.service.gov.uk/media/54c11606e5274a15b3000015/MAIBReport\\_Braer-1993.pdf](https://assets.publishing.service.gov.uk/media/54c11606e5274a15b3000015/MAIBReport_Braer-1993.pdf) accessed 15 February 2020.

E Allison and B Mandler, 'US Regulation of Oil and Gas Operations' (American Geosciences Institute 2018) <<https://www.americangeosciences.org/critical-issues/factsheet/pe/regulation-oil-gas-operations>> accessed 15 April 2019.

Micheal P Joy and Sashe D Dimitroff, 'Oil and Gas Regulation in The United States: Overview' [2016] ThomasReuters[https://content.next.westlaw.com/document/1466099551c9011e38578f7cc38dcbee/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstpage=true&bhcp=1](https://content.next.westlaw.com/document/1466099551c9011e38578f7cc38dcbee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstpage=true&bhcp=1)>accessed 13 October 2019.

Nicola K Gale and others, 'Using the Framework Method for the Analysis of Qualitative Data in Multi-Disciplinary Health Research' (2013) 13 BMC Medical Research Methodology <https://www.ncbi.nlm.nih.gov/pmc/articles/pmc3848812/>> accessed 23 March 2019.

NPS Corporation, 'USA (UPDATE): Colombia ShipManagement Handed \$ 10 Million Fine | News|Lutbetech' (Npscorp.co.uk,2013)<https://www.npscorp.co.uk/6/news/article/732/usa-update-colombia-shipmanagement-handed-10-million-fine> accessed 10 December 2018.

Office of Data, Analysis, Research & Evaluation, 'Qualitative Research Methods in Program Evaluation, 'Qualitative Research Methods in Program Evaluations: '(Office of Data, Analysis, Research&Evaluation,2013)[https://www.act.hhs.gov/sites/default/files/acyf/qualitative\\_research\\_methods\\_in\\_program\\_evaluation.pdf](https://www.act.hhs.gov/sites/default/files/acyf/qualitative_research_methods_in_program_evaluation.pdf) accessed 23.

Adam Barnet, 'Shell's 22, 500 (pounds symbol) Fine for North Sea Oil Spill Slammed As 'Paltry 'By Campaigners' Independent (2015) <https://www.independent.co.uk/environment/shells-22500-fine-for-north-sea-oil-spill-slammed-as-paltry-by-campaigners-a6747536.html> accessed 10 December 2018.

Adam Vaughn, 'Torrey Canyon Disaster- The UK's Worst Ever Spill 50 Years On' The Guardian (2017) <https://www.theguardian.com/environment/2017/mar/18/torrey-canyon-disaster-uk-worst-ever-oil-spill-50th-anniversary>> accessed 1 December 2018.

ASEAN Agreement on Conservation on Nature and Natural Resources on July 9, 1985 <http://sedac.ciesin.org/entri/texts/asean.natural.resources.1985.html> accessed 10 December 2018.

International Oil and Gas BMP Project, 'The Development Process' (2019) Intermountain Oil and Gas BMP Project <https://www.oilandgasbmps.org/resources/development.php> accessed 11 October 2019.

Karen Soiferman, 'Compare and Contrast Inductive and Deductive Research Approaches' (2010) Educational Resources Information Centre <https://files.eric.ed.gov/fulltext/ED542066.pdf>> accessed 22 March 2019.

Lance Duroi, 'Barge Captain Gets 6 Mos. For Fatal Accident, Oil Spill-Law360' (LexisNexis, 2018) <https://www.law360.com/articles/673150/barge-captain-gets-6-mos-for-fatal-accident-oil-spill>> accessed 10 December 2018.

Phillip Mace and others, 'Oil and Gas Regulation in the UK: Overview' [2019] Thomas Reuters [https://uk.practlla.thomsonreuters.com/5524349?transitionType=Default&contextData=\(sc.Default\)&firstpage=true&comp=pluk&bhcp=1](https://uk.practlla.thomsonreuters.com/5524349?transitionType=Default&contextData=(sc.Default)&firstpage=true&comp=pluk&bhcp=1) accessed 28 March 2019.

Phillip Thompson and Julia Derrick, 'United Kingdom: Oil and Gas Regulation 2019' (International Comparative Legal Guides, 2019) <https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/united/kingdom> accessed 15 October 2019.

SEPA, 'Environmental Crime Protocol | Scottish Environment Protection Agency (SEPA)' (Sepa.org.uk, 2020) <https://www.sepa.org.uk/regulations/how-we-egulate/policies/environmental-crime-protocol/> accessed 18 February 2020.

## **APPENDIX**

Interview Guide:

### **THIS IS AN INTERVIEW GUIDE CARRIED OUT TO ESTABLISH THE OIL AND GAS EXPLORATION AND PRODUCTION: PROSPECTS AND CHALLENGES OF INSTITUTIONS IN THE ENFORCEMENT OF COMPLIANCE WITH ENVIRONMENTAL LAW. CASE STUDY UGANDA.**

#### **Background**

The Oil and Gas exploration and production activities are known for causing adverse effects to the environment, the industry in the operation of its activities is expected to comply with environmental law, this compliance can only be effectively achieved through enforcement mechanisms among which is criminal enforcement.

The office of the Director of Public Prosecutions and the Uganda Police have been identified as one of the institutions directly responsible for the criminal enforcement of compliance of the Oil and Gas exploration and production activities to environmental law.

The overall aim of this study is to establish the efficacy of the Office of the Director of Public Prosecutions and the Uganda Police in the enforcement of compliance of the Oil and Gas exploration and production activities to environmental law.

As one of the key stakeholders, the researcher is interviewing you to provide information and practical solutions that can be useful, to enable the policy maker support the ODPP and Uganda Police in the discharge of their role in the criminal enforcement of the Oil and Gas exploration and production activities compliance to environmental law, this will ensure that adverse effects to the environment are avoided.

Below are the questions that we kindly request you to answer.

NAME.....

DESIGNATION.....

Interview questions

1. What do you know about the Oil and Gas exploration and production activities adverse effects to the environment?

.....  
.....  
.....  
.....  
.....  
.....

2. What environmental crimes are known to you as regards the Oil and Gas exploration and production activities?

.....  
.....  
.....  
.....  
.....  
.....

3. How adequately do the laws address criminal violations of the oil and gas exploration and production activities compliance to environmental law?

.....  
.....  
.....  
.....  
.....  
.....

.....  
.....

4. What do you think is the role and relevance of the ODPP and Uganda Police in the Oil and Gas exploration and production as regards enforcement of compliance to environmental law?

.....  
.....  
.....  
.....  
.....  
.....

5. What kind of support does the ODPP and Uganda Police receive in terms of criminal enforcement of the Oil and Gas exploration and production compliance to environmental law?

.....  
.....  
.....  
.....  
.....  
.....

6. What technical expertise do the officers have in terms of enforcement of compliance of the Oil and Gas exploration and production activities to environmental law?

.....  
.....  
.....  
.....  
.....  
.....

7. How adequately trained are the officers of ODPP and Uganda Police in regard to criminal enforcement of the Oil and Gas exploration and production compliance to environmental law?

.....  
.....  
.....  
.....  
.....  
.....  
.....

8. How much awareness exists in terms of enforcement of compliance of the Oil and Gas exploration and production activities to environmental law?

.....  
.....  
.....  
.....  
.....  
.....  
.....

9. What are the various hindrances in the enforcement of compliance of the Oil and Gas exploration and production activities to environmental law?

.....  
.....  
.....  
.....  
.....  
.....  
.....

10. How are the offices supported in terms of prosecution led investigations in the enforcement of compliance of the Oil and Gas exploration and production to environmental law?

.....  
.....

.....  
.....  
.....  
.....  
.....

11. What are the key recommendations for effective enforcement of the ODPP and the Uganda Police in the compliance of the Oil and Gas exploration and production activities to environmental law?

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....