MITIGATING POLITICAL RISK IN UGANDA'S OIL AND GAS EXPLORATION AND SECTOR

A Case Study of the Albertine Graben in Western Uganda

BY

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DECLARATION

I, **NAIGA ZAKIA** hereby declare that this Dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfillment of any academic award.

Name: …….

Signed…….

Date……

APPROVAL

This is to certify that, this dissertation **"Mitigating Political Risk in Uganda's Oil and Gas Exploration and Sector: A Case of the Albertine Region"** has been done under my supervision and now it is ready for submission.

Signature……

Isaac Christopher Lubogo (Doctor of Laws Fellow)

(Academic supervisor).

Date……

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ABBREVIATIONS / ACRONYMS

A2I Access to Information Act

CSOs Civil Society Organizations

PFMA Public Finance Management Act

POMA Public Order Management Bill

NOGP National Oil and Gas Policy

ACODE Advocates Coalition for Development and Environment

CISCO Civil Society Coalition on Oil

NGOs Non-Governmental Organizations

ABSTRACT

The discovery of commercial oil reserves in Uganda raised expectations of improved livelihood among the populace. However, there is concern prevailing political environment sequent to oil discovery and preceding exploration could lead Uganda to an oil curse if not mitigated. The purpose of the study was to access efficacy of policy, laws and institutional frame work to mitigate political risk in oil and gas exploration in Uganda. The study's analytical framework was based on institutional economic theory by Ronald Coase.

Using doctrinal research design the study was conducted based on legal concepts and principles of law, statutes, and case law relating to political risk in Uganda's oil and gas sector. Findings I revealed political risks such centralization of authority in cabinet, repressing CSOs, Militarizing oil fields, Land ownership concerns, the unresolved Bunyoro question, and corruption with impunity among politicians in charge. The study also found that policy and law perpetuate political risk by further centralizing decision making to the Minister of Energy, Limiting independence of NOC, PAU and access to oil agreements and licenses. Parliaments oversight role on oil is Usurped by policy and Law. It was also revealed that institutional governance framework is weak and eliminates CSOs activity.

A comparative analysis with Norway, Nigeria and Botswana indicates that political events in Uganda coupled with weak institutional framework to enforce policy and law relates more with Nigeria's oil curse than with success stories of Norway or Botswana. The study concludes that oil curse is likely to become a reality courtesy of un resolved political and governance issues in the oil and gas sector. We recommend strengthening institutional governance of oil to reign in on concerns such as transparency and accountability, public participation (CSOs), resolvinganxieties in Bunyoro and land ownership around the oil field. The oversight role of parliament onoil and gas should be reestablished urgently.

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CHAPTER ONE: INTRODUCTION

1.1 Background to the study

Evidence of hydrocarbons in Uganda has been around for many years. The first attempt to explore crude oil resources in Uganda was conducted by E. J. Wayland of the African European Investment Company in the 1920s in the Butiaba, Kibiro and Semliki areas of the rift valley. During the 1945 to 1980 periods, petroleum exploration stagnated, initially due to World War II and later due to the political instabilities and uncertainties that prevailed in the country. Exploration in Uganda was resumed at the beginning of the 1980s due to the high prices of crudeoil that prevailed since the 1970s and aeromagnetic survey evidence of the presence of sedimentary basins of hydrocarbons. This spurred the enactment by the government of Uganda of the 1985 petroleum exploration and production Act[1]. Prospects of Uganda's social economic development were greatly hovered with the confirmation of commercially viable oil deposits in 2006[2]. Crude oil was discovered beneath the Albertine Rift Valley Graben, west of Uganda. Uganda joins Ghana, Ethiopia, Kenya, Mozambique and Tanzania as the newest African continent energy frontier – spurred by the discovery of oil onshore [3].

Uganda is among the few African countries that are putting in place mechanisms to extract the oil resource besides the oil giants Libya, Egypt, Angola. Uganda has been described by the oil industry press as Africa's 'hottest inland exploration frontier'. Currently, it is estimated that Uganda has 6.5 billion barrels and only 1.4 to 2.2 billion is recoverable[4]. Once oil production reaches full capacity, the new fields could yield anywhere from 200,000 to 350,000 barrels per day (b/d)[5], Projected oil will significantly increase revenues for the government and, if well managed and invested, could improve economic growth, reduce poverty and promote development in Uganda. According to the Ministry of Energy and Minerals Development, the Albertine Graben is subdivided into ten Exploration Areas (EAs), out of which, there are six active Production Sharing Agreements (PSAs) and four PSA operators most recent being

[1] Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations. Accessed 19.04.2020
[2] ibid
[3] Patey, L. (2015). Oil in Uganda: Hard Bargaining and Complex Politics in East Africa. *Oxford Institute for Energy Studies* (Working Paper 60). Retrieved August 28, 2020
[4] ibid
[5] Manyak Terrel (2015) Oil and Governance in Uganda. Journal of Public Administration and Governance: ISSN 2161-7104, Vol. 5, No. 1; available on www.macrothink.org/jpag

Kingfisher licenced in 2019[6]. The four PSA operators are Heritage Oil and Gas Uganda Limited;[7] Tullow Oil plc, which operates Block 2 (in Bunyoro); Dominion Petroleum Limited, which operates in the area around Lake Edward and Lake George; and Neptune – now Tower Resources – which operates in the West Nile region. These companies are currently carrying out oil exploration activities, albeit at different phases of discovery, with Tullow said to have to started production in 2012[8].

That as it may be, oil and gas studies affirm that oil as a natural resource has become a kind of resource paradox for developing economies that engage in its production.[9] Developing nations endowed with oil resource have been associated with a phenomena referred to as "natural resource curse" or "Dutch Disease"[10]. This precisely means a situation where, exploitation of newly-discovered natural resources does not lead to a reduction in poverty and improvements in human development, but instead, exacerbates poverty and negatively affects the people's living standards[11]. For example, oil revenues have become a threat to the achievement of sustainable democracy, peace and development in some oil-rich developing economies like Nigeria, Angola, Gabon, Venezuela and Sudan (Andersen, 2008).

Similarly progress in bringing the oil recovery project to fruition in Uganda has placed increased attention on the need for a strong governance system to ensure that oil wealth will be used for the long-term betterment of the country[12]. Underling the call for improved governance is the fear that Uganda will experience the same "natural resource curse" that has plagued most resource- rich African nations. The fear is that the 'Museveni's regime will use the expected oil income to

[6] Joseph Mawejje &Lawrence Bategeka. Accelerating Growth and Maintaining Intergenerational Equity Using Oil Resources in Uganda. Economic Policy Research Centre (Eprc); Research Series No. 111 (2013).
[7] Van der Ploeg, F. and Venables, A. J. (2011), "Harnessing Windfall Revenues: Optimal Policies for Resource-Rich Developing Economies," *The Economic Journal*, Vol. 121, No. 551:1–30, at http://dx.doi.org/%2010.1111/j.1468-0297.2010.02411.x
[8] Vokes, R. (2012). 'The politics of oil in Uganda', *African Affairs* 111, 303-314: Published by Oxford University Press on behalf of Royal African Society
[9] (Oloka-Onyango, 2018)
[10] Brunnschweiler, C. N., & Bulte, E. H., The resource curse revisited and revised: A tale of paradoxes and red herrings. Journal of Environmental Economics and Management, 55, 248. 2008 https://doi.org/10.1016/j.jeem.2007.08.004.
[11] Kiev C.W. *What Dutch disease is, and why it's bad*. The Economist Nov 5th 201; Accessed 28 April 2019
[12] Kamugisha, D., Muhereza, E., & Elima, D. (2008). *Promoting the application of access rights in Uganda's oil sub-sector* (No. 4). Kampala: Africa Institute for Energy Governance

further entrench its domination of the country'[13]. The undoing of reforms in order to winelections and extend the over three decades long control of the government has manifested its self in form of elimination of presidential terms and age limits, the weakening of local governments to engender political support[14], and questionable measures taken to undermine political opposition[15].

Whereas previous studies [16] have addresed the position of the law in relations to social, economic, enviromental and health risks associated with oil and gas production in Uganda, none has exhaustively addressed efficacy of policy and laws to mitigate political risk in the oil and gassector in Uganda. It seems too early to forecast doubts on the government's intention however, researchers have already voiced concerns about the governance of oil in Uganda[17]. Scholars reiterate that Uganda's political settlement suggests that the impressive levels of elite commitment and bureaucratic capacity displayed to date are unlikely to withstand the intensified pressures that will accompany the commencement of oil flows[18]. This is an indicator that there political risks are likely to frustrate citizens expectations from the oil revenue.

Studies over the years have not agreed on how the concept of political risk should be defined and operationalized or measured.[19] [20] Bremmer and Keat defined political risk as, the probability that a particular political action will produce changes in economic outcomes[21], while Root (in Kobrin, 1979:68) defines it as the possible occurrence of a political event of any kind (such as war, expropriation, exchange controls and import restrictions) at home or abroad that can cause a

[13] Gelb, A., & Majerowicz, S. (2011, July). *Oil for Uganda – or Ugandans? Can cash transfers prevent the resource curse?* (No. 261). Washington, DC: Center for Global Development.
[14] Manyak, T., & Katono, I. (2010). Decentralization and conflict in Uganda: Governance adrift. *African Studies Quarterly, 11*(4), 1-24.
[15] Ibid (n,5)
[16] Kasimbazi E, (2009) Legal and Environmental Dimensions of Oil and Gas Exploration and Production in Uganda .
[17] Ibid (n,8); (n,4); (n,5)
[18] Hickey, S., Bukenya, B., Izama, A., & Kizito, W. (2015). The political settlement and oil in Uganda. *Effective States and Inclusive Development Research Centre (ESID)*(48). Retrieved August 28, 2020, from www.effective- states.org
[19]Kobrin, S. J. (1979), *Political risk: A review and reconsideration*, in Journal of International Business Studies 10(1):67-80
[20] Jarvis, D. S. L.,(2008) *Conceptualizing, Analyzing and Measuring Political Risk: The Evolution of Theory and Method*, Lee Kuan Yew School of Public Policy Research Paper No. LKYSPP08-004. Available at SSRN: http://ssrn.com/abstract=1162541 or http://dx.doi.org/10.2139/ssrn.1162541
[21] Bremmer, I. & Keat, P. 2009. *The Fat Tail: The Power of Political Knowledge for Strategic Investing.* New York: Oxford University Press.

loss of profit potential and/ or other goals of a particular enterprise[22]. For the purposes of this study, Tamara, J (2014) definition was adapted, political risk is an analytical process by which governance is assessed within a specific framework, which aims to determine relevant political risk factors, measure them, forecast the probability of occurring, and look at ways of managing and mitigating such risk[23].

In Uganda the the political risks include but are not limited to the inevitable process of political succession aforementioned, tranparency and accountability, corruption with impunity among government officials involved in oil and gas negotiations, geopolitical issues concerning pipeline, centralization of authotiy to make decisions on oil, militirization of oil fields among others [24]. Unless these forecasted political risk factors are mitigated the 'paradox of plenty' is likely to become a reality in Uganda. It is against this background the study assessed efficacy of policy, laws and institutions to mitigate political risk in the oil and gas sector in Uganda.

1.2 Statement of the Research problem

The discovery of commercially viable hydrocarbons in the Albertine Rift Valley in western Uganda has elicited a mixture of excitement and trepidation. For many Ugandans, there is hope that the discovery of oil and gas will result in economic transformation, growth, development and prosperity. However, for many others, there is fear, anxiety and concern that the emerging oil and gas industry presents significant political risks which if not handled urgently could result in the 'oil curse' also know as 'Dutch disease' (economic deterioration, insecurity and abject poverty) for generations to come[25]. Whereas previous legal researchers have focused much on mitigating social, enviromental, and health risks associated with oil and gas exploration noknown legal study has addressed the aspect of politcal risk which is likely to exacerbate all other oil related threats aforementioned. Oil and gas scholars have revealed that Uganda's political settlement suggests that the impressive levels of elite commitment and bureaucratic capacity

[22] Ibid (n 13)
[23] Tamara Joy, (2014) Political Risk in the Oil and Gas Industry in Emerging Markets: A comparative study of Nigeria and Mexico. Master of Arts Thesis submitted to the Faculty of Arts and Social Sciences at Stellenbosch University, unpublished
[24] Ibid (n,4), (n,5), (n,8) and (n, 19)
[25] Olanya, D.R (2015) Will Uganda succumb to the resource curse? Critical reflections. The Extractive Industries and Society 2: 46 - 45

displayed to date are unlikely to withstand the intensified pressures that will accompany the commencement of oil flows[26].

Indeed Uganda's oil exploration is in early stages however, years preceeding this process have been marred with political events likely to frustrate citizens expectations from oil revenue. The regulatory environment in Uganda has been difficult to discern from its politics. The President has faced growing criticism over the way in which he has attempted to centralize decision making in relation to Uganda's nascent oil industry.[27] The centralizing authority of President Museveni in recent years helps to explain the government's hard position on regulatory issues. The obscure control over the oil industry by Museveni and a small circle of Ugandan officials and international advisors has played a divisive role across government and society. In addition the inevitable process of political succession in Uganda is widely seen as a significant political risk. In the short and medium term, Museveni is likely to stay in power. He intends to run for president again in 2021 and will very likely win the election. The President has taken a direct andprominent role throughout the process, claiming the resource as 'my oil' and entreating citizensto entrust him (rather than government institutions) to manage it effectively.[28]

Further more, militarisation of oil fields has resulted into cross-border skimishes between Uganda and Congolese trroops in 2007; this has further culminated into securitization of oil fields, lucrative security contracts around oil installations have been handed to a companyassociated with the President's brother, while the the Special Forces unit is overseeing security inoil exploration areas,[29]pre-empting the prediction that "…where oil reigns supreme, the military are sure to follow"[30].

Charges of high-level corruption against leading members of government involved in oil negotiations have gone unpunished[31], and the government has been reluctant to enable oversight

[26] Ibid (n,19)
[27] Vokes, R. (2012). 'The politics of oil in Uganda', *African Affairs* 111, 303-314: Published by Oxford University Press on behalf of Royal African Society
[28] Ibid (n, 21)
[29] Ibid (n, 24)
[30] Watts, M. J. (2004). 'Antinomies of community: Some thoughts on geography, resources and empire', *Transactions of the Institute of British Geographers*, 29, 195–216.
[31] Uganda's former Minister of Energy, Hillary Onek, and the former Prime Minister, Amama Mbabazi, were Implicated for accepting bribes from Tullow Oil Limited. In 2012, Transparency International ranked Uganda among the most corrupt countries in East Africa.

bodies to engage in the process, a lack of transparency in the production sharing agreements, repressing civil society activities in the sector and until recently refusing to become asignatory to the Extractive Industries Transparency Initiative in years preceeding exploration process all suggests that a lot needs to be done to mitigate the grabbing of oil revenues via corrupt practices.[32] Another political-regulatory risk still facing the oil industry is the development of a regional pipeline. Regional politics are central to the monetization of Uganda's oil industry. If Uganda and Kenya wish to see oil by the end of the decade, President Museveni and President Uhuru Kenyatta must compromise on domestic political goals to establish regional regulatory measures, such as financing and security for the pipeline, that allow its construction and stable operation. Alternatively, a route through Tanzania is emerging as a possibility for Uganda in a complicated game of regional politics.[33]

Whereas Uganda has legal, policy and institutional mechanisms in place to regualte oil and gas exploration, little is known of about their capacity to the prevailing political risk. Until we know the capacity of existing laws, policy, institutions, organizations and strategies are managing afromentioned political risk, the 'paradox of plenty' or 'oil curse' associated with oil and gas rich nations is likely to become a reality in Uganda.

1.3 General objectives

To assess efficacy of laws to mitigate political risk associated with oil and gas exploration sector in Uganda.

1.3.1 Specific objectives

1. To critically analyse political risks associated with the oil and Gas exploration Sector in uganda.

2. To evaluate capacity of national policies, laws and institutional framework to mitgate political risks in the oil and gas exploration sector in Uganda.

3. To compare Uganda's political and insitutional governance of oil with successful and failed oil producing nations to draw lessons to mitigate political risks.

[32] Ibid (n, 21)
[33] Ibid (n,19)

4. To recommend policy alternative to feel gaps in national laws and strengthen institutional capacity to manage political risk in the oil and gas sector.

1.4 Research questions

1. What are the political risks associated with oil and gas exploration in Uganda?
2. What policies are in place to manage political risks in the oil and gas exploration sector in Uganda?
3. What laws are in place to manage political risks in the oil and gas exploration sector in Uganda?
4. What is institutional capacity is place to implement policy and laws to mitigate political risk political risk in the oil and gas sector in Uganda?
5. What lesson can Uganda learn from Norway, Botswana and Nigeria to mitigate political risk in the oil and gas sector.

1.5 Research Justification

The government has reiterated that oil revenue will be used for infrastructure development, expand electricity both in capacity and in access, make sure the roads are motorable, there is clean water for drinking and production, schools and hospitals are up and well facilitated[34]. It is therefore presumed that oil resources will be managed well to deliver social economic trnaformation of Uganda. Unfortunately, stories of successful natural resource use are hard tofind in the developing world. Poor governance and widespread corruption mean that too often the wealth generated from natural assets seldom reaches government accounts. The Political eliteand quite often the ruling class hijack state oil institutions, take advantage of weak laws and policies governing the oil and gas sector and in collusion with the foreign owned oil companies primitively amass wealth by diverting the oil revenues to their private enrichment. The extra money from oil revenues corrodes governance and encourages high-level state-looting

Similarly in Uganda, the prevailing political events (centralisation of authority for oil decisions, corruption, lack of transparency and accountability and geopolitics) have created a lot of queries concerning oil resource management. It is feared that oil exploration process and revenue

[34] Uganda announces oil discovery, available at http://www.iol.co.za/news/africa/uganda-announces-oil-discovery-1.296822#.UvvDhvvE3To.

accruing from the same could be mismanaged by elite politicians and oil companies. This in the long run could actually frustrate citizens expectations from oil revenue and instead lead to the dreaded oil curse. Whereas there exists policy, legal and instiutional mechanism to to regulate oil and gas exploration it is not known with certainity if these have potential to mitigate precarious political risks in regard to oil and gas exploration in Uganda. In this regard:

The study findings will contribute significantly to the exploration of the extent of the political risk involved in oil and gas exploration and how this can be managed to avoid the oil curse. This study will also highlights gaps in the existing laws, policy and institutions necessary to manage political risk in oil and gas exploration and production. The study is also expected to provide a base for future research on political risks in oil and gas exploration which will help to bridge the existing gaps on the subject. The recommendations made will contribute political risk mitigation in oil and gas exploration and steer debate in academia and civil society on oil and gas management amidist political risks.

1.6 Scope of the Study

1.6.1 Geographical scope

The study will focus geographically on Uganda, Uganda is located in East Africa astride the equator and Sub Saharan Africa with a total land of241,550.7 (Sq. Km); with water and swamp covers 41,743.2 Sq. Km and land area of 199,807 Sq. Km. (UBOS, 2012). Hitherto, its population is estimated at 37.5 million people, GDP $19.59 billion and with agriculture as the backbone activity. It is rich and endowed with amiable climate and natural resources coupled with ample, fertile land and regular rainfall. Uganda's attractive climatology were labelled as the 'Pearl of Africa'. Kenya neighbor Uganda in the east, Democratic Republic of Congo to west, Tanzania to south, South Sudan to north and Rwanda to Southwest. However the area where commerciasl oil exploration is taking place is the Albertine Graben located in the western part of Uganda, mainly in the Masindi, Kibale, and Hoima districts around Lake Albert. It extends fromthe northernmost part of the western rim of the East African Rift Valley to the border with South Sudan (see Figure 1). It should be noted that political risk prevails across all this geographical areas.

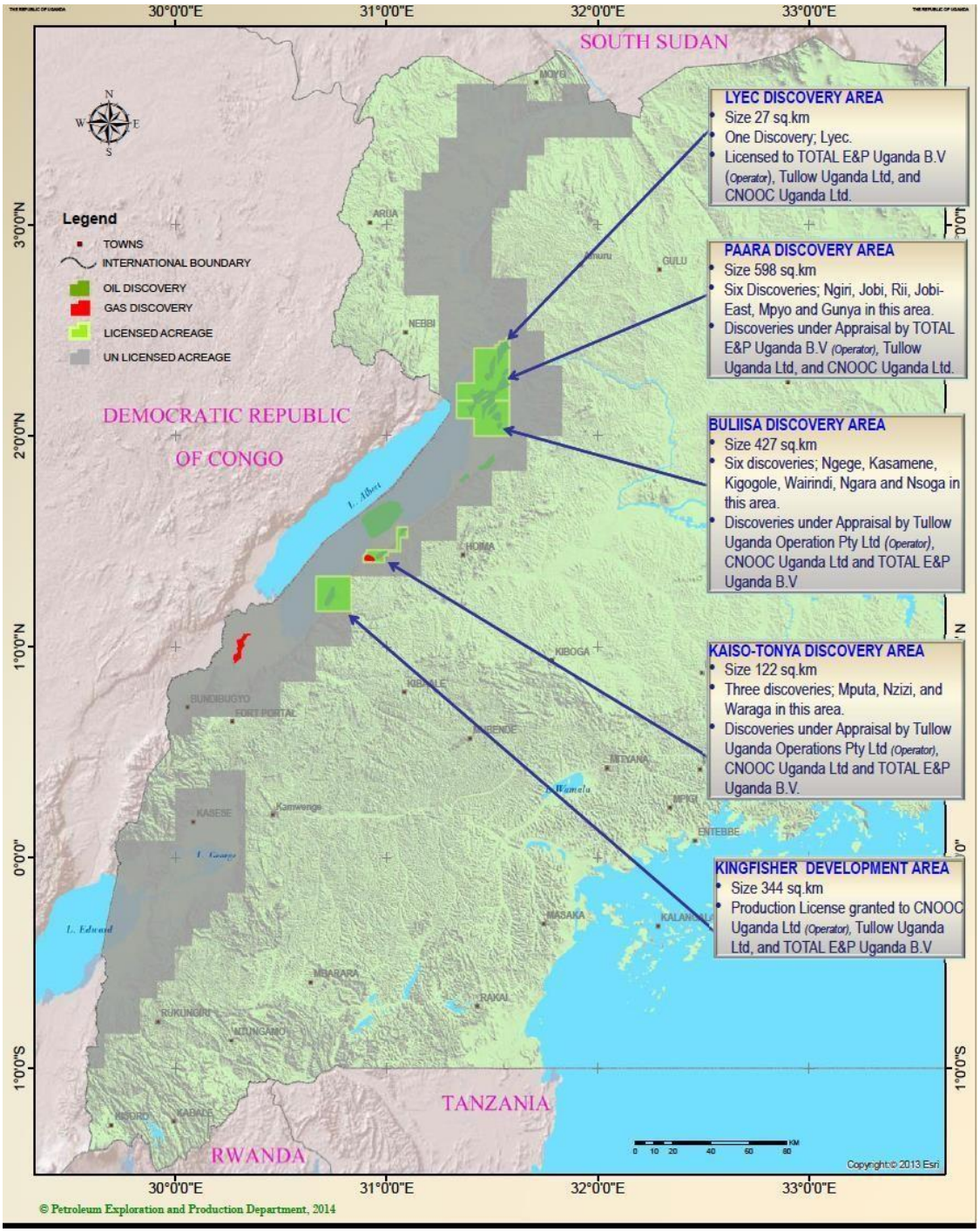

Figure 1: A Map Of Uganda Showing Oil Discovery Areas

Source: Ministry of Energy and Mineral Development, Uganda

1.6.2 Content scope

The study content will be restricted to assessing the effectiveness of laws in mitigatingprevailing politcal risk in the oil and gas exploration in Uganda. The study emphasis will be examining whether national and international laws can manage the political risk associated with oil exploration. The study will also inquire into organizations and strategies in place to mitigate political risk for oil exploration companies that invest huge capital intensive technology in exploration process.

1.6.3 Time Scope

The study will focus on the scope of a period starting 2006 to date. This is the period in which political events likely to be risky to oil and gas expectations have occured.

1.7 Theoretical framework

The study will be guide by the New Institutional Economics theory. The theory represents a new approach to economics and polical economy in general[35]. New institutional economics (NIE) was derived from articles by Ronald Coase, *The Nature of the Firm* (1937) and *The Problem of Social Cost* (1960). Institutional economists work within a modified neoclassical framework, which includes consideration of efficiency, that is, transaction and distribution costs[36]. The NIE approach differs from neoclassical economics in several ways. First, it rejects the assumption that people act independently on the basis of full and relevant information. Institutional economists argue that decisions are made on the basis of less than complete and accurateinformation, because the acquisition of information involves costs in time and money and both are constraints. Second, engaging in transactions involves the incurrence of transaction costs andtransaction risk, which influence the decision making process and therefore the decision. Third, the two preceding points make a formal system of rules desirable because formal rules lower information and transaction costs, and reduce the risk associated with aparticular transaction. The issues addressed by institutional economics include: organizational arrangements, property rights, transaction costs, credible commitments, modes of governance, persuasive abilities, socialnorms, ideological values, decisive perceptions, gained control enforcement mechanisms, asset specificity, human assets, social capital, asymmetric information, strategic behavior, bounded

[35] Ibid

[36] Oliver E. Williamson, *Markets and Hierarchies, Analysis and Antitrust Implications: (1983) A Study in the Economics of Internal Organization* (Free Press)

rationality, opportunism, adverse selection, moral hazard, contractual safeguards, surrounding uncertainty, monitoring costs, incentives to collude, hierarchical structures, and bargaining strength[37].

The two principal classes of participants in the institutional economic framework are institutions and organizations. There are no universally accepted definitions for the terms "institution" and "organization", but most scholars working within the NIE framework follow Douglass North's definitions. Institutions are the "rules of the game", consisting of both the formal legal rules and the informal social norms that govern individual behavior and structure social interactions.

> Institutions are the humanly devised constraints that structure political economic and social interaction.They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights). Throughout history, institutions have been devised by human beings to create order and reduce uncertainty in exchange.… They evolve incrementally, connecting the past with the present and the future; history in consequence is largely a story of institutional evolution in which the historical performance of economies can only be understood as a part of a sequential story [38].

Organizations are those groups of people and the governance arrangements they create to coordinate their group action against other groups also performing as organizations[39]. In the context of this study the government is an organization. Coase, North, Williamson and others argue that the role of institutions has been underestimated and that institutions are not a neutral or unchanging background against which rational individuals and organizations make decisions. Rather institutions "together with the standard constraints of economics … define the choice set and therefore determine transaction and production costs and hence the profitability and feasibility of engaging in economic activity". Institutions not only define the "choice set", but also influence organizations, consequently changing both the organizations and the institutions over time. "Incremental change comes from the perceptions of the entrepreneurs in political and economic organizations that they could do better by altering the existing institutional framework at some margin"[40]

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[37] ibid
[38] Douglass C. North, "Institutions", *Journal of Economic Perspectives*, Vol. 5, No. 1, Winter (1991): 97-112
[39] Ibid, p. 97
[40] Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge, UK: Cambridge University Press, 1990), p. 8

Institutions (contracts, domestic laws, treaties, international law, formal rules and informal customs) and the entities that implement them (regulatory agencies, financial exchanges, nongovernmental agencies and inter-governmental agencies) are involved in virtually every stage of the oil and gas exploration, development and production process. This involvement extends beyond the neoclassical assumptions regarding rules and regulations needed to maintain an orderly market and includes laws regarding capital formation, ownership structure, foreign direct investment, capital allocation, domestic and international product pricing, taxation, capital repatriation and social service expenditures. That as it may be, the scope of this study in application of institutional framework will be limited to policy, laws and institutions responsible for implementing domestic laws in oil and gas exploration to manage prevailing political risk in Uganda.

1.8 Methodology

The study was purely qualitative based on doctrinal legal research method a suitable method since it is concerned with reviewing documents rather than with people and society because it is based on legal concepts and principles of law, statutes, cases and rules in Uganda. Henceforth allowed the researcher to adequately address and discuss the legal concepts in relation to managing political risk in oil and gas sector.

Doctrinal legal research method is a theoretical research and it is pure in nature. It is a library-based research that seeks to find the one right answer to a certain legal issues or questions[41]. This research design enables the legal researcher to take one or a series of legal propositions as a starting point and focus of the research objective and designs the research methodology and structure around for them. Conventional legal research takes place in a law library, the reseacher located authoritative decisions, applicable legislation and other secondary resources, and then analysed the material, formulated a conclusion and wrote up the study results.

Library and desk research methods were employed to review national policy, legal framework and institutions in the oil and gas exploration and production industry in Uganda. Also relevant journal articles were reviewed to obtain and contextualize scholarly opinions for the guidance of

[41] Aimee, I, "ParadoxicalVoting in the SupremeCourt," 3 Georgetown Journal of Legal Ethics, 1990

this study. The study mostly relied on some internet sources for secondary or tertiary information.

Data was collected using using a documentary review checklist. This tool listed all relevant documents to the study to be reviewed by the researcher. The list will included the policies, constitution, statutes of general application, regulatiions national policy and scholarly peer reviewed journal article on the subject matter. The checklist is attached in Appendix 3 as back matter.

Data was simultaneously annalysed and presented thematicaly in chapters relating the study objectives.

1.9 Organization of the Dissertation

This dissertation comprises six chapters as explained bellow;

Chapter 1 : Comprises of the background of the study, the statement of the problem, General and Specific objectives of the study, research questions, justification of the study, the scope of the study, and theoretical framework, and methodology.

Chapter 2 : looks at Policy frameworks in Uganda so far as the efficient and effectiveregulation of the oil and gas sector is concerned. Major emphasis is on the 2008 National Oil and Gas Policy of Uganda (NOGP) and the Petroleum (Exploration, Development and Production) Act, 2012 and the relevance and/or appropriateness of those Instruments for effective and efficient management of the oil and gas sector in Uganda to avoid political risk.

Chapter 3 : Examines effectiveness of legal framework to mitigate political risk in the oil and gas sector. Emphasis is put anxieties created by the Petroleum Act 2013.

Chapter 4: Annalyses capacity of the Institutions to enforce compliance with policy and laws of the oil resource proposed by the NOGP to mitigate political risk.

Chapter 5: Comparative annalysis of successful and failed oil producing nation to draw lessons for Uganda to mitigate political risk

Chapter 6: Presents Summary, conclusions and recommendations to existing gaps in the laws intended to manage political risk in the oil and gas sector.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter reviews related literature on political risk in oil and gas exploratiaon and production. Schorlarly peer revied journal articles, government periodicals and reports related to the subject matter were criticaly reviewed. The literature is arranged starting with a brief conceptual review on political risk followed by generic literature theme addressing study objectives.

2.2 The concept of Political risk

To appreciate the concept of political risk it is important to start by understanding what a risk is. Risk is frequently understood to mean the possibility of failure or loss, but it is better understood as a dispersion or range of the possible outcomes. Risk is therefore a measure of the degree of uncertainty or variability of outcome and does not necessarily reflect a high probability of failure or loss.[42] This definition is applicable to political risk, however the conceptual boundaries of political risk have always been hazy, as testified by the fact that starting from the 1970s, the scholarship on political risk features many literature reviews trying to grab hold of this ambiguous concept (e.g. Kobrin 1979[43], Fitzpatrick 1983[44], Simon 1984[45], Friedman 1988[46], Chermack 1992[47], Jarvis 2008[48]) [49]. Yet, it is important to for purposes of this study to achieve clarity of the concept

[42]

[43] Kobrin, S. J. (1979), *Political risk: A review and reconsideration*, in Journal of InternationalBusiness Studies 10(1):67-80.

[44] Fitzpatrick, Mark, (1983) *The Definition and Assessment of Political Risk in International Business: A Review of the Literature*, Academy of Management Review. 1983, Vol. 8, No. 2, 249-254.

[45] Simon, Jeffrey D., (1984) *A Theoretical Perspective on Political Risk,* Journal of International Business Studies, Vol. 15, No. 3 (Winter), pp. 123-143

[46] Friedman, Roberto and Kim, Jonghoon, (1988) *Political Risk and International Marketing,* Columbia Journal of World Business, (Winter), pp.63-74

[47] Chermack, J.M. (1992) *Political Risk Analysis: Past and Present*, Resources Policy, September, pp. 167 -178

[48] Jarvis, Darryl and Griffiths, Martin, (2007*) Learning to Fly: the Evolution of Political Risk Analysis,* Global Society, Volume 21,Number 1, January 2007, pp. 5-21

[49]Cecilia Emma SOTTILOTTA (2013) *Political Risk: Concepts, Definitions, Challenges*. Working Paper Series; Working Paper 6**,** ISSN: 2282-4189; LUISS School of Government, ITALY

Political risk, however, sometimes also referred to as "noneconomic risk", was predominantly considered to be a feature of "underdeveloped" or"modernizing" countries [50]. The 1980s and 90s saw a shift on this out look as political risk focused on global, geopolitical aspects of debt management by host countries, and terrorism respectively. Thus, political risk is not any more seen as an exclusive attribute of "least developed countries"[51].

Political risk definitions range between the general and the specific[52]. In an attempt to classify the alternative "technical" meanings that have been attached to political risk over time, the following definitions were identified: 1) Meyer (1985) Political risk as non-economic risk[53]; 2) Henisz and Zelner (2010) political risk as unwanted government interference with business operations[54]; 3) Root (1972) Political risk as the probability of disruption of the operations of MNEs by political forces or events[55]; 4) Robock (1971:7) Political risk as discountinuities in the business environment deriving from political change, which have the potential to affect the profits or the objectives of a firm[56]; 5) Kobrin (1979:77) states that political risk is ―the probability that changes in the political environment will reduce returns to the point where the project would be no longer acceptable on the basis of ex ante criteria|"[57]; 6) Green (1974) Political risk substantially equated to political instability and radical political change in the host country[58]

The first definition by Meyer 1985 reflects innitial phase when Banks and Firms classified all non economic and Business risks as political risks. The second Henisz and Zelner (2010)definition by was criticised by Kobrin (1979), because it assumes that government intervention is necessarily harmful, without evidence base for the assertion. The third definition gives a a precise perpective, does not consider political risk in terms of events, but rather in terms of

[50] Ibid
[51] Ibid
[52] ibid
[53] Mayer, Emilio (1985), *International Lending:* Country Risk *Analysis* , Reston, Va. : Reston Financial Services
[54] *Henisz* , Witold J.and *Zelner* , Bennet A.(2010) *The Hidden Risks in Emerging Markets,* Harvard Business Review, April
[55] Root, Franklin R. (1972) *Analyzing Political Risks in International Business,* in *MultinationalEnterprise in Transition: Selected Readings and Essays,* in A. Kapoor and Philip Grub, eds., Detroit, Michigan: Darwin Press
[56] Robock (1971)
[57] Ibid (n,20)
[58] Green, Robert T. (1974) *Political Structures a a Predictor of Radical Political Change*, Columbia Journal of World Business, Spring: 28-36

probability of events. The fourth definition focuses on the "business environment", whereas he fifth focuses on changes in the political environment. The fifth group of definitions was basically developed by authors who aimed at bridging the gap between political science and business studies, building on the scholarship on political change. From Green's reexamination of the concept and definition of systemic political risk from the point of view of empirical political science, the current study will adapt Green's (1972) definition. Political risk in this study will mean the probability that the profitability of an investment (oil and gas exploration) be negatively affected by circumstances ascribable either to unforeseen changes (e.g. revolutions, even when linked to democratization processes) in the domestic or international political arena, or to governmental policy, legal and institutions affecting national priorities.

Green's contribution was the first to focus on the relationship between the type of political regime and political risk[59]. Seven types of regime are individuated, with a growing level of risk: Instrumental Adaptive (e.g. US, UK) and Instrumental Non-adaptive (e.g. France, Italy), which are labeled as "modernized nation-states"; Quasi-Instrumental (e.g. India, Turkey) , Modernizing Autocracies (e.g. Syria, Jordan), Military Dictatorships (e.g. Burma, Lybia), Mobilization Systems (e.g. China, Vietnam, Cuba, North Korea) and Newly Independent (e.g.Indonesia,Ghana), which are defined as "modernizing nation-states"[60].

Green's approach rests on a number of assumptions. The first is that radical political change is intrinsically detrimental to the activity of MNEs. The second is that the younger the political system, the less it is "adaptive" to change, and thus the higher the risk of radical political change. The third is that economic modernization inevitably puts the political system under stress, and that the political institutions in modernizing states must either change or be replaced. Although, as already pointed out, it interestingly focuses on the origins of political risk in terms of political regime structures, this analysis has little empirical foundations and does not delve into the specific mechanisms linking the different kinds of political regimes and political risk[61].

[59] ibid
[60] ibid
[61] ibid

This study pursues the the third assumption of Green's conceptualisation of political risk supra. Uganda polical system has been categorised as 'hybrid' or quasi-authoritarian governance[62]. whereas this isnt a threat because international oil companies have global operations in countries across the political spectrum, an ongoing hybrid political process presents the oil industry with an unpredictable political environment[63]. The discovery of oil and gas has mounted more presureon the political system. There has been a noticeable centralizing of political power and patronagein Uganda in years subsequent commercial oil discovery. In line with centralizing political authority, President Museveni has been adamant that he will maintain firm control over the oil industry. The day-to-day government managers of the industryare Permanent Secretary Kaliisa Kabagambe and the Acting Director of the Petroleum Directorate Ernest Rubondo, both at the Ministry of Energy and Mineral Development. But Museveni has the last word on key policy decisions. "In the case of petroleum and gas, I direct that no agreement should ever be signed without my express written approval of that arrangement", he said in 2010[64]. From the State House, Museveni and his inner circle govern the oil industry, while most government ministries and bodies have little sway[65]. Bishop David Zac Niringiye, a leading political figure in the opposition said, 'You can't build institutions while Museveni is still in power – he is the institution.'[66]

If the president can create a predictable governing system, the centralization of power in Uganda is not necessarily a problem for the oil industry. But if president degrades the functionality of formal institutions managing the economy in the process, international oil companies will continue to face delays in moving forward. Uganda's oil industry is coming out of a transitional period where some key decisions have been made without the appropriate institutions andregulations put in place[67]. Under these circumstance we do not know whether government bodies and laws have political space to fully function. As the oil industry has experienced, President Museveni's demand that his stamp of approval be on all major deals makes his

[62] Aili Mari Tripp, *Museveni's Uganda: Paradoxes of power in a hybrid regime*, Lynne Rienner Publishers, Boulder, CO, 2010.
[63] Ibid (n, 4)
[64] Eric Watkins, 'Uganda's president wants final approval of all oil, gas deals', *The Oil and Gas Journal*, Vol. 108, Issue 32, 30 August 2010
[65] Ibid (n,19)
[66] Magnus Taylor, '"We shall manage you": Oil, NGOs and journalists in Uganda', *African Arguments*, 28 April 2014.
[67] Ibid (n,4)

schedule quite full, delaying key investments. It is against this conceptual understanding that the study assessed efficacy of laws to manage political risk in oil and gas sector in Uganda.

2.3 Political Risks Associated With The Oil And Gas Exploration Sector In Uganda.

Political risk has gained renewed interest especially in academic journals of governace and public adminstration in regard to extractive industries particularly oil and gas exploration. Scholars in the ongoing discourses of oil governance and development in Uganda, relate political risk to prevailing political enviroment viz-a-viz regulation of the oil and gas exploration. Indeed assessing the ‘‘resource curse’’ requires an understanding of the quality of institutional and governance capabilities[68]. This line of reasoning is commonly shared among mainstream institutional economists and political scientists. As indicated, a country with existing institutional capacity has a greater likelihood of avoiding the ‘‘resource curse.’’[69] The World Bank (2010)[70] argues persuasively that new revenue from resource booms will most likely exacerbate institutional weaknesses and fuel rent seeking and poor governance. With reference to Uganda’s oil industry, the government has always maintained that it will seek to first satisfy domestic markets. The government is now constructing an oil refinery project in the Hoima District that covers 29 square miles of land. It is important to examine in more detail each of the govenance factors that are raising doubts on the benefits of newly discovered oil in Uganda.

Hickey, S et al,[71] annalysed political settlement and oil in uganda. He argues that the developmental potential of oil in Uganda can be more insightfully understood through a political settlements framework which goes beyond a focus on institutional form to examine deeper forms of politics, power and ideas. Researchers focused on the extent to which the interplay of interests and ideas within the ruling NRM coalition in Uganda has enabled it to protect its national interest during negotiations with international oil companies. Findings revealed that the impressive levels of elite commitment and bureaucratic capacity displayed to date are unlikely to withstand the intensified pressures that will accompany the commencement of oil flows. The study cited centraslization of decision making, corruption and militirization of oil fields as political risks likely to fail the oil and gas expectations for Uganda. whereas this study highlights governance

[68] Ibid (n,23)
[69] ibid
[70] ibid
[71] Ibid

concerns it was done before oil exploration begun. The instant study will establish if these risks can be mitigated our policy, legal and institution framework.

Vokes, R [72], in his study the politics of oil in Uganda, higlights centralization of authority on oil and gas decisions as a critical political risk among others cited. He argued that although full- scale production hadnt begun in by 2012, machinations at that time over the nascent oil industry provided an interesting lens into the current political climate in the country. In particular, he highlighted how President Museveni has faced growing criticism over his autocratic handling of oil issues, particularly the ways in which the oil process is dominated by key actors from within the ruling coalition, who negotiate with rentier oil companies in a highly secretive manner, show scant regard for issues of transparency, oversight and accountability, and adopt a repressive approach to activities of civi society and activities in the sector at both local or national levels[73]. Similarly Watts 2004,[74] affrimed that the President has taken a direct and prominent role throughout the process, claiming the resource as 'my oil' and entreating citizens to entrust him (rather than government institutions) to manage it effectively. Pre-empting the prediction that "…where oil reigns supreme, the military are sure to follow"[75], and reflecting the fact that the military played a key role in establishing security in Uganda and remains a critical player within the ruling coalition, the President has directly involved the military and private security companies to secure oil fields Kingfisher is one of the exploration sites with heavy military prescence.[76] As such, Museveni's growing tendency to micromanage presents a concerning political risk for the nation and international oil companies. A quasi-authoritarian leader in a dysfunctional democracy could very well lead to further delays in the industry's development.An unpredictability remains for the oil industry in this hybrid governing system.[77] The study willexamine extent to which centralization of authority is mitigated by laws and institutional framework to prevent the oil curse.

[72] ibid
[73] ibid
[74] Ibid (n, 28)
[75] ibid
[76] Ibid (n, 21)
[77] Ibid (Luke Patey n, 19)

Wars and conflicts have been associated with oil rich nations particularly developing nations in Africa and Asia[78]. This directly relates to the most serious criticism Museveni currently faces, 'militarizin of the oil fields'. In mid-2007, shortly after Heritage and Tullow's string of successes began, a series of cross-border skirmishes broke out between Ugandan and Congolese troops in and around Lake Albert[79]. The clashes reflect the fact that the two countries have never agreed on the exact position of the border running through the lake (from colonial times onwards), and therefore both felt it necessary – in the context of oil discoveries – to 'stake their claim' through force. It was not only soldiers who were caught up in these skirmishes. In one incident, a British engineer working for Heritage was killed while carrying out a seismic survey on the lake, while in another several Ugandan civilians died. Following these events, in September 2007 President Museveni met with his Congolese counterpart in Tanzania to agree the creation of a new joint permanent boundary commission for the area (a deal that was finally signed off as the Ngurdoto Agreement)[80]. The Agreement appeared also to lay the groundwork for future cooperationbetween the two countries on oil exploration in the region. However, following the deal, both sides continued to build up their military presence in the area. For example, in early 2009 the Ugandan Army (UPDF) announced that work had begun on a new military base at Kyangwali Sub-county, Hoima District. When complete, it will be one of the largest military installations in the country and in late 2011 it emerged that over 3,000 residents from seven surrounding villages are to be evicted, to make way for it. Yet the sheer scale of the base also fed a growing suspicion that Museveni might be using the Congolese threat as a 'cover' for establishing direct control over the oilfields themselves, through the military.

Julius Kiiza *et al*[81], asserts that the resource curse is associated with eight distinctive problems. He mentions four of the problems related to oil governance. The problem of political instability (such as in Nigeria, DRC or Angola), The problem of 'leakages' or corruption, which is commonin resource-rich countries (such as Nigeria) that have weak institutions of governance andreiterates the risk of entrenching authoritarian rule or unaccountable governance discussed supra

[78] Di John, J., 2010. The Resource Curse: Theory and Evidence. SOAS, University of London.
[79] Ibid (n, 19)
[80] ibid
[81] Righting Resource-Curse Wrongs in Uganda: The Political Economy of Oil Discovery and the Management of Popular Expectations, pp. 183-203 By Julius Kiiza, Lawrence Bategeka, & Sarah Ssewanyana

by all other scholars aforementioned. Luke Patey[82] affirmed that the overlap between politics and regulatory disputes in Uganda has also been associated with corruption. He illustrates using Capital gains tax disputes which he argues were regarded as a means for the ruling National Resistance Movement to tap new sources of campaign financing for national elections 2016. Charges of high-level corruption against leading members of government involved in oil negotiations have gone unpunished,[83] and the government has been reluctant to enable oversightbodies to engage in the process, innitially refusing to become a signatory to the Extractive Industries Transparency Initiative and repressing civil society activities in the sector. Uganda topped the five countries in the East African Community (EAC) considered to be the most corrupt in 2012 (Transparency International, 2012). In public sector corruption, Uganda is ranked 130 out of 176 on a scale of least to most corrupt. In 2013, Uganda recorded the highest corruption ranking (82%) in the East African Community, followed by Tanzania (67%), Kenya (64%), Burundi(60%), and Rwanda with the lowest rating. This level of systemic corruption is acrtitical poltical risk, could slow industry progress and efficiency resulting into oil curse if not managed urgently. The study will invesitgate whetther our policy, legal and institutional framework can mitigate corruption by politicians in charge.

One of the largest political risks still facing the advancement of the oil industry in Uganda, and the East Africa region, is the development of a regional pipeline[84]. The government needs to work effectively with foreign oil companies and neighboring countries to recover and transport the oil [85]. Often preoccupied with domestic political goals, Uganda and Kenya are challenged with finding common ground on regional policies for the development of the pipeline. Only recently have bilateral relations warmed to the possibility. Leading up to the 2013 Kenya generalelection, fearful of a repeat of the 2007/08 post-election violence that shut Uganda off from key imports from the Kenyan coast, President Museveni was cautious about fostering closer ties with Nairobi. He was exploring cooperation with Tanzanian president Jakaya Kikwete about anexport pipeline along the western shore of Lake Victoria and through Tanzania to the coast.

[82] Ibid (n, 19)
[83] The main case involved charges of corruption made in 2011 against the Minister for Foreign Affairs, and the then Prime Minister and Minister of Energy, all powerful players both withinthe ruling coalition and with regards to oil negotiations. All were subsequently cleared by aparliamentary investigation, although a minority report argued that the investigation was compromised by the fact that it did not uncover any new data, but relied instead on evidence generated by the same ministries under the control of those charged.
[84]Ibid ; Luke Pattey (n, 21)
[85]Ibid (n,5)

The regional pipeline debate is not simply about finding the best economic route, but is entrenched in domestic politics of the East African countries involved. In Kenya, the Kenyatta government is promoting the northern route exactly because of development and security challenges it faces. It regards the pipeline as essential in kick-starting the wider LAPSSET infrastructure agenda to develop the country's north, which will satisfy an electoral manifestoand act as a powerful campaigning tool in 2017 general elections. Kenyan officials argue infrastructure will bring development and ease tensions in these marginalized areas, placing the isolated north into the orbit of the Kenyan economy.Whether Kenya is prepared to make further compromises on financing and security to quell Ugandan concerns remains to be seen.These political goals may yet delay Ugandan oil from hitting international markets for even longer than expected.

According to Mehlum et al the main reason for diverging growth experiences of resource rich countries lies in differences in the quality of institutions.[86] Institutions have been defined as the humanly devised constraints that structure political, economic and social interaction such as constitutions, laws and property rights. Mehlum et al argue that the quality of institutions explains whether a country avoids a resource curse or not. Robinson et al also finds that the overall impact of resource abundance depends on institutions. Low quality institutions may be conducive to bad policy choices since they provide an environment that allows inefficient, politically motivated redistribution policies to take place. High quality institutions on the other hand, constrain decision makers and render rent seeking or clientelist policies infeasible or costly[87]. The extent to which Uganda's existing laws and policies will bring transparency and accountability to Uganda's oil industry is unclear. Institutional weakeness is highlighted in disocurse by current researchers as major political risk. Mehlum *et al*,[88] for example, asserts thatthe key question is no longer 'how' natural resources often harm the economy but why some countries gain, while others lose. The answer arguably lies in cross-national differences in the quality of domestic laws, policies and institutions present in a particular country designed to manage the oil and gas sector and the revenues that accrue there from. Resource-rich countries

[86] Mehlum, Halvor, Karl Moene and Ragner Torvik. (2006). Institutions and the Resource Curse. *The Economic Journal, 116*(508), 1-20. Retrieved August 27, 2020
[87] Robinson, John Alan, and Q. Neil Parsons. 2006. "State Formation and Governance in Botswana." *Journal of African Economies* 15 (AERC Supplement 1): 100–140.
[88] Ibid 90.

that have a malfunctioning bureaucracy and poor laws and policies in the oil and gas sector tend to attain lower growth outcomes and more violent conflicts than those that have high quality (Weberian) systems of public administration and sound laws, policies and institutions established for the management of the oil resource. In other words, laws, policies and institutions put in place for the management of the oil resource matter. For example, when the domestic laws, polices and institutions are 'grabber-friendly,' the benefits of resource abundance are reaped by afew state elites in alliance with foreign oil companies. The 2010 dispute between Tullow Oil and the government over the Capital gain tax that should have been paid after the sale of Heritage's assets to Tullow Oil can be considered an institutional weakness in the management contract[89]. The study will examine whether existing legal, policy and institutional framework has capacity to mitgate political risks inorder to avert the oil curse and it associated problems. A comparative annalysis of insitutional strucutures with failed and successful nations will be done to adope best practices in Uganda in a bid to mitigate political risk and associated outcomes.

The role of civil society in oil and gas governance cannot be overstated. CSOs are crucial in advocate for transparency and accountability in the oil sector[90]. In Nigeria arguably, the void created in the extractive sector by the non-performance of government regulatory bodies and the non-implementation of existing legal enactments is gradually being filled by CSOs.[91] In contrast Ugandan government has created difficult environment for their operations in regard to oil and gas. Represive measures against CSOs involved in oil and gas includebut not limited to formation of Public Order management Bill (POMA) to limit meetings and political advocacy related to oil and gas issues[92]. There is currently an attempt to restore legislations, such as the 1989 NGO Act, to restrain potentially 'troublesome' CSOs. Using this legislation, the government will require CSOs to renew their registration annually, so as to ensure that the

[89] Gelb, A., Majerowicz, S., 2011. Oil for Uganda – or Ugandans? Can Cash Transfers Prevent Resource Curse? CGD Working Paper 261. Center for Global Development, Washington, DC.

[90] Kendra Dupuy,Lise Rakner,Lucas Katera. (2019). *Civil Society's Role in Petroleum Sector Govevrnance: The Case of Tanzania* (Vol. CMI & REPOA BRIEF NO. 2). (:. I. Hestad, Ed.) unpublished. Retrieved from www.repoa.or.tz

[91] Ekhator, Rhuks Ako & Eghosa O. (2016). *The Civil Society and The Regulation* (Vol. 7: 1). Afe Babalola University: J. OF SUST. DEV. LAW & POLICY. doi: http://dx.doi.org/10.4314/jsdlp.v6i2.9

[92] Ibid (Bukenya, B., & Nakaiza, J. , 2020)

government could spell out what CSOs could renew registration and which could not[93]. Annual registration allows the government to de-register those organisations that might prove troublesome. These measures, experts argue, have ensured that CSOs, especially the new oil and gas CSOs, exercise caution in choosing where to focus their advocacy and influencing activities, being careful not to antagonise the government. Moreover researcher[94] have found that one of the governance gaps in oil governance is lack of coordination and coherence of oil and gas CSOs and limited CSOs access to the local level. The study further revealed that there exist competing interests, political agendas, or manipulations by elite interests[95]. These practices have promoted divisions within civil society, making it difficult to construct an alliance around the core functions of civil society such as promoting citizen participation, representation and accountability. Without coordination and a shared frame, civil society groups may not develop the 'counter discourse' needed for accountability to occur in oil and gas sector. This study will examine capacity of CSOs as stakeholders in oil governance in Uganda to mitgate political risk likely to escalate into an oil curse.

2.4 Case Law

2.1 Production Sharing Agreements

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

The blocs in the Albertine Graben in western Uganda were initially jointly licensed to Anglo-Canadian, Heritage Oil and the Anglo-Irish company, Tullow Oil. In this case 'farming down'* arose Heritage sold their stake to Tullow for US$ 1.5 billion. A Production Sharing Agreement between Heritage Oil and Gas and the Uganda Government was the root of a dispute where Government, through its tax organ, the Uganda Revenue Authority issued capital gains tax assessments for Heritage Oil and Gas company that it insisted was not meant to pay. The Government instituted a suit in the Tax Appeals Tribunal to recover unpaid taxes resulting from

[93] *Bukenya, B., & Golooba-Mutebi, F. (2019) Political settlements and the delivery of maternal healthservices in rural Uganda. ESID Working Paper No. 113. Manchester, UK: The University of Manchester.Available at www.effective-states.org*

[94] J. Van Alstine et al. (2014). *Resource governance dynamics: The challenge of 'new oil' in Uganda* (Vols. Resources Policy 40: 48-58). Leeds: Elsevier Ltd. doi:http://dx.doi.org/10.1016/j.resourpol.2014.01.002

[95] Ibid

* selling the original license to a larger company with the capacity and expertise required to pull together the resources needed to extend exploration and begin actual production.

the transaction. The company on the other side rushed to the High Court. When both the Court and Tribunal ruled in favour of the Government, the Oil Company lodged a case in the International Court of Arbitration, which also ruled in favour of the Government.

This legal entanglement created by the initial production sharing agreement identified another complex problem. The terms of production sharing agreements are a closely guarded secret between the government and the oil companies. Lacking transparency, it is difficult for outsiders to make a reasoned judgment as to equity. Some observers speculate that oil companies‟ revenues are only 17%, which is in line with the Uganda Mining Act[96]. Other observers claim that oil companies are reaping profits that are far out of line with international standards.Moreover, the production sharing agreements bring into question the possibility of the misuse of funds resulting from signing bonuses that are not revealed to the public. It is also speculated that production sharing agreements contain a stabilization clause that protects company profits from damages caused by any future changes in the law [97].

2.2 Suppression of Public Participation and Civil Socirty Activities

Human Right Network and four others Vs Arttoney General, constitutional no 56 of 2013

The POMA was enacted in 2013 to provide (a) a regulatory framework for public assemblies in Uganda and (b) for the duties and responsibilities of the police, organisers and participants in public assemblies. Section 8 was intended to keep peace, order, and tranquillity in the country, especially in urban areas, to ensure that public assemblies do not disrupt businesses, traders or commerce.

Facts

In *Constitutional Petition No. 09 of 2005 Muwanga Kivumbi v Attorney General* (**earlier decision**), the Court, in a judgement delivered on 27 May 2007, declared Section 32 (2) of the Police Act unconstitutional to the extent that it contravened Articles 20 (l) (2) and 29 (1) of the Constitution which guarantee the right to freedom of assembly.

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[96] Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center.

[97] Lay, T. (2010). Uganda‟s oil contracts give little cause for optimism. *The Guardian*. Retrieved from http://www.theguardian.com

The Court held that the impugned provision was prohibitive and not regulatory and therefore not acceptable and demonstrably justifiable in a free and democratic society. Section 32 (2) of the Police Act granted the Inspector General of Police, or such designated officer, powers to prohibit the convening of any assembly on reasonable grounds or belief that the assembly is likely to cause a breach of peace.

In contrast, section 8 of the POMA, grants the Inspector General of Police, or such designated officer, absolute discretion and broad authority to: stop or prevent the holding of a public meeting on reasonable grounds that it is likely to cause a breach of peace; use force and disperse public meetings; as well as impose criminal liability on organizers and participants in public meetings.

The Petitioners contended that the import of Section 8 of the POMA is the same as Section 32(2) of the Police Act which the Court nullified in the earlier decision. The Petitioners further contended that in passing the POMA, Parliament reversed the earlier decision of the Court and interfered with the rationale of the decision of the Court, thereby offending Article 92 of the Constitution which restricts parliament from enacting retrospective legislation.

The Respondent contended that the POMA does not violate any provision of the Constitution or fundamental rights.

The issue for determination was whether the enactment and ascent to Section 8 of the POMA is inconsistent with, and in contravention of, Article 92 of the Constitution of the Republic of Uganda.

Judgment

The Court held that the action of the Respondent (legislature and executive) assenting to Section 8 of the POMA, which section is materially similar to Section 32 of the Police Act that was declared unconstitutional by the Court in the earlier decision, not only violates Article 92 of the Constitution which prohibits retrospective legislation, but also Article 29 of the Constitution which guarantees freedom of assembly and the right to demonstrate peacefully and unarmed. Accordingly, Section 8 of the POMA was annulled.

The Court took judicial notice of the fact that certain gatherings such as sports competitions and music shows *inter alia* occasionally cause breach of peace but law enforcers do not react by prohibiting such from taking place in future; the refusal to extend the same favour to gatherings of political nature is simply a reflection of unconstitutional animus.

The Poma was limiting activities of civil society organizations to enagage freely in discussions about oil and gas issues. It said such CSOs activities pressured government to exercise accountability and transparency which according to skeptics government wasn't willing to do.

2.3 Limitng Access to Information

Charles Mwanguhya Mpagi & Angelo Izama v. The Attorney General[98]

In this case two journalists sought copies of agreements made between the Government of Uganda and various companies involved in prospecting for and the exploitation of oil. Although the Permanent Secretary to the Ministry of Energy did not directly reject the request, he responded to it by stating that more time was needed to consult other government bodies before he could properly react. The Solicitor General also stepped in to argue that the agreements could not be accessed due to a confidentiality clause prohibiting their disclosure. Using section 18 [99]of the A2I Act, the petitioners took the Permanent Secretaries's non-committal response and the Soliciter General's opinion as a refusal to release the information, and filed a complaint in the Chief Magistrates' Court at Nakawa under section 37 of the A21. The court dismissed the Government's argument that the information could not be released for fear of breaching a confidentiality clause contained in the agreements because to do so would mean that the State would be able to restrict all information arising out of agreements by simply inserting language which covered this angle. This was a positive response to the Government's attempt to place a blanket cover over the release of the agreements.

However, the court went on to assess both the public interest and the harm contemplated by the disclosure and declared that it was not satisfied that the public interest in the disclosure was greater than the harm contemplated. After examination, the ***court held*** that the two journalistsdid not show how they would use the information for the benefit of the public. According to the

[98] Miscellaneous Case No. 751 of 2009
[99] Access to information Act herein after reffered to A21

court, 'Government business is not in its entirety, supposed to be in the public domain'. The court determined that demonstrating such a benefit was necessary to prove a public interest in disclosure.

The *Mwanguhya & Izama*[100] case can be criticised on two main grounds. First of all, it is for the public authority to prove that any disclosure of information in its possession would be more harmful to the public interest that its non- disclosure. It is not for the persons requesting that information to prove it. Secondly, there is no provision in the law that requires the person requesting the information to justify how they are going to use it. Nevertheless, the decision was arrived at within the context of a heated exchange between Parlia- ment and the executive, with threats issued by the President that eventually deterred the legislature from further pursuing the matter. When eventually accessed, Global Witness found many loopholes in the agreements.[101] While Government claims that the agreements have been provided to Parliament, MPs continue to complain of a lack of information and transparency about the sector.[102] Signs of an early disconnect between laws and practice are thus begin- ning to show, even with the same laws containing various inconsistencies. Consequently, it is plausible to say that unless Uganda fully adheres to the requirements of full disclosure of information, it is bound to make the same mistakes as many other earlier oil-producing countries have, and to fall into the same traps they fell into or are in. Without access to information, the public will be blindsided as to the Government's actual activities, thereby providing a cloak for the same embezzlement and misappropriation of oil revenues that befell (and continue to befall) countries like Nigeria, Gabon, Angola and Equatorial Guinea (Gary and Karl, 2003, pp.25–42).[103]

2.4 Conclusion

Political risk has gained renewed interest among oil and gas schorlars. Whereas previous schorlars have addressed the threat of oil curse from dimension of enviromental, social and economic risks few have addressed the issue of political risk. Oil governances in terms o policy, laws and institution determines success or failure of resource rich countries. Whereas Uganda

[100] Ibid (n, 100)
[101] Global Witness, 'A Good Deal Better? Uganda's Secret Oil Contracts Explained', September 2014, Retrieved from: https://www.globalwitness.org/en/reports/good-deal-better/
[102] Odyek, J. (2016, 28 July), 'MPs Want Information on Oil and Gas Sector', *New Vision.* Retrieved from: https://www.newvision.co.ug/new_vision/news/1430974/mps-information-oil-gassector.
[103] Gary, I., and T.L. Karl (2003), *Bottom of the Barrel: Africa's Oil Boom and the Poor.* Baltimore, Maryland: Catholic Relief Services

has an institutional framwork to implement policy and law it is not known if they are effective to mitigate amidst quasi-autocratic system of governance prevailing in Uganda.

CHAPTER THREE

POLICY AND LEGAL FRAMEWORK TO MITIGATE POLITICAL RISK IN THE OIL AND GAS EXPLORATION AND PRODUCTION SECTOR IN UGANDA

3.0 Introduction

This chapter presents policy and legal framework to manage political risk in oil and gasexploration in Uganda. Generally, the policy framework is the foundation of the legal framework and law is ordinarily a result of policy. It is therefore prudent to first discuss the policy framework in the oil and gas sector in Uganda before dwelling into the legal framework

3.1 Policy Framework

3.1.1 National Oil and Gas Policy 2008

In February 2008, the Ministry of Energy and Mineral Development published the National Oil and Gas Policy (NOGP). The Policy explicitly recognizes many of the challenges associated with natural-resource wealth, including the need to mitigate the potential for negative economic and fiscal impacts that often stem from a sudden influx of revenue in the extractive industry sector[104]. The NOGP outlines internationally recognized mechanisms for managing impacts associated with the sudden influx of resource wealth to enable the country avert the resource and channel oil and gas revenue into sustainable development outcomes. "The policy also highlights the need for a long term national strategy to ensure optimal impacts from oil and gas exploitationby maximizing benefits to Ugandans along the industry "value chain". The overarching goal of the policy is that oil and gas development in Uganda will 'contribute to early achievement of poverty eradication and create lasting value to society"[105]. In particular, the NOGP is consistent with the internationally-recognized Extractive Industry Transparency Initiative (EITI) disclosure standards (though Uganda became signatory in July 2020). EITI, launched by the United Kingdom in 2002, is avoluntary approach to transparency.It has achieved some success in a few countries, but its overall record is patchy. The NOGP enshrines transparency and accountability as guiding principles in Uganda's future governance framework:

[104] Available at http://conserveuganda.files.wordpress.com/2010/06/national-oil-and-gas-policy-for-uganda.pdf (retrieved 12 Feb 2013)
[105] International Alert, *infra*, Note 81.

Openness and access to information are fundamental rights in activities that may positively or negatively impact individuals, communities and states. It is important that information that will enable stakeholders to assess how their interests are being affected is disclosed. This policy recognizes the important roles different stakeholders have toplay in order to achieve transparency and accountability in the oil and gas activities. This policy shall therefore promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas. The policy will also support disclosure of payments and revenues from oil and gas using simple and understood principles in line with accepted national and international financial reporting standards.[106]

It should be noted though NOGP sets standards for the future governance of oil in Uganda. It is more a set of principles than a detailed governance guide. Petroleum exploration and production activities in Uganda were previously governed by the Petroleum (Exploration and production) Act, Chapter 150 of the Laws of Uganda, 2000; the Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations, 1993 and the Production Sharing Agreements (PSA's). The Act came into effect in September, 1985 and was considered adequatefor the petroleum operations being undertaken at that time. These activities included promotion, licensing of exploration acreage to oil companies and monitoring of their activities. The formulation of this Act was not guided by a policy on oil and gas; there was none and the level ofskepticism in the country at that time regarding the petroleum potential of the country was high. Up to 2003, there was no appreciation of the country's oil potential to the extent that even the Energy Policy of 2003 only catered for the establishment of that potential.

However, following the unprecedented discoveries of oil and gas in the Albertine Graben and early confirmation of the commerciality of these discoveries, it became instructive to put in placea new regulatory framework to reflect the new reality. With the support of the Norwegian Government under the project: "Strengthening the State Administration of the Upstream Petroleum Sector in Uganda," the National Oil and Gas Policy was put in place and this lay the basis on which the development and management of the oil industry would be based. This Policy

[106] Section 5.1.3, National Oil and Gas Policy for Uganda, 2008

recommended, *inter-alia*, the formulation of a new petroleum law for the country and it was upon this policy that the new legislation on oil in Uganda is based:

> *The Policy recommends upgrading of the existing regulatory framework by putting in place a new law for the administration of oil and gas activities and a law for the management of oil and gas revenues. The former will better provide for the development and production phases of the oil and gas value chain, bring on board international best practice in areas like improved oil recovery together with Health, Safety and Environmental standards. It will also operationalise the Oil and Gas Policy by providing for, among others, competitive licensing and national content in the sub sector. The latterwill be formulated to regulate the payment, use and management of oil and gas revenues and their use to create lasting value for the entire nation. This will include prescribing the necessary frameworks to manage the revenues used to support the national economy and creation of a sustainable asset in form of a petroleum fund to store revenues not usedin the national economy. It shall also provide for the sharing of royalties in accordancewith the constitution.*[107]

Further, public statements on the management and use of oil revenues by Uganda's President H.E. Yoweri Kaguta Museveni and other senior government officials were consistent with these laws and policies. For example, in his New Year 2010 Address to the Nation, President Museveni spoke of the importance of managing oil revenues to promote economic growth: He stated *"the Government recognizes the critical importance of managing oil resources well, to avoid the mistakes many other countries have faced."*[108] He went on to say that "*the key element in these legislations will be to ensure transparency and accountability in the production and utilization of oil resources"*[109]. Just days later on 12 January 2010, at a conference of the ruling National Resistance Movement (NRM) party, President Museveni reiterated many of these samemessages, but added, *"Oil money should never be used to pay wages should never be used for recurrent expenditure o to support consumption. It should be used to create a higher capacity…I do not have the same intoxication with oil as some of the less discerning people seem to.*

[107] National oil and Gas Policy for Uganda 2008
[108] "Museveni's Voluminous 2009/2010 New Year Message," *Buganda Post*1 January 2010, online at: http://www.bugandapost.com/main/archives/1015.
[109] ibid

Petroleum is not more important than agriculture, industry, services and a developed human resource." [110]

Taken together, these laws, policies and statements at the time suggested that Uganda's oil sector, including oil revenues, would be managed in an open and transparent manner to ensure accountability. However subsquent governance and political events have raise question marks on whether this policy and associated laws will be effective to manage political risk associated with oil and gas exploration in Uganda. In 2013, two bills were finalised in parliament: the Petroleum Exploration, Development and Production (or Upstream) Bill; and the Petroleum Refining, Gas Processing and Conversion Transportation and Storage (or Midstream) Bill, both of which were signed in 2013. The Public Finance Management Bill, which consolidated existing public finance management laws and addressing the management of oil revenues, was passed in November 2014. As discussed in the following sections, Despite the fact that theselaws had been innitialy rejected for contradicting the NOGP, the process of formulating and implementing these arrangements has been highly revealing of how the politics could influencesinstitutional performance and subquent outcome of the oil and gas exploration..

3.2 NOGP Policy Concerns

3.2.1 Revenue Management

Oil and gas activities should be most efficient and effective so as to maximize their returns. This policy strives to ensure that oil and gas resources are managed efficiently through reducing costs of operations and maintaining optimal levels of production. It also promotes effective revenue management by striving to ensure that petroleum revenues are used to boost balanced growthand sustainable development. Revenues accruing from oil and gas resources shall not be used for consumer purposes, but for durable investments like infrastructure development and other activities which will contribute to lowering the cost of doing business in the country.[111]

"The revenue of the state is the state", Edmund Burke remarked in his *Reflections on the revolution in France,* and his words are emphatically confirmed by the experience of oil exporters. The origin of the state's revenue reveals the links among modes of economic

[110] President Museveni Opens NRM Conference In Entebbe, Clarifies On Gay Claims," State House Republic of Uganda, 12 January 2010, online at: http://statehouse.go.ug/news.php?catId=1&&item=719.
[111]

development, the transformation of political institutions, the shaping of preferences and ultimately, the capacity of states to design or alter their development trajectories. When mineralsare the key source of wealth for a state, the mining revenues alter the framework for decision making. They affect not only the actual policy environment of officials but also alter other basic aspects such as the autonomy of goal formulation, the types of public institutions adopted, the prospects for building other extractive capabilities and the locus of authority.

The emergence of the oil and gas resources presents opportunities as well as challenges. The key advantage is that oil and gas revenues are generated by the discovery of a sub-soil asset - *"a gift from nature"*. The discovery of oil and gas resources is expected to translate into an improvement in the Government's wealth and hence the expansion of the country's economic growth and development. However, experience shows that with oil revenues, there can be challenges, especially if these revenues are not well managed. The key question is how to avoid falling into the 'resource curse' trap, a complex phenomenon in which, through several economic, institutional and political economy transmission mechanisms, oil and gas revenues could translate into economic stagnation and waste. One of the transmission mechanisms is through the "Dutch Disease" phenomenon, that I have already referred to, which is a reference toa set of negative macroeconomic effects caused by a large increase in resource–funded spending.Large increases in spending, if mainly allocated to domestically produced goods, can push up domestic prices, and eventually appreciate the nominal and real exchange rate. This often resultsin a shift of capital and labor into the production of non-traded goods and an erosion of the competitiveness of the non-resource economy

The NOGP recommends the establishment of Key Institutions and mechanisms to support Government efforts to develop a robust revenue management system with adequate checks and balances to mitigate any risks by contributing to speeding up the process of putting in place the policy, legal and regulatory framework before oil production starts, for example, the establishment of the Petroleum Authority of Uganda[112] and the National Oil Company.[113]However there is need to contribute to building the required capacity in these institutions if these institutions are to execute their legal mandate under the new oil legislation. In addition, the

[112] NOGP, Section 7.2.4
[113] NOGP, Section 7.2.5

Policy does not clearly stress the independence of these institutions so far as management of oil revenues is concerned which clearly leaves room for political manipulation from the state in access to such revenues.

3.2.2 Transparency and accountability

NOGP calls for openness and complete access to information as well as disclosure of revenues received from the oil/gas, according to generally accepted accounting principles and international financial reporting standards. The Policy proposes possible ways to ensure transparency[114]. Among these, it is noted that in order to improve the level of transparency and accountability, PSAs should include commitments on transparency issues. The policy also correctly notes that "appropriate transparency and accountability systems are only effective if information is readily available." However, government commitment to transparency in the oil industry is still questionable. For example in 2006, the Solicitor General issued a statement to theeffect that the government will not avail the oil exploration agreements to members of parliamentbecause the agreements were confidential.[115] This would seem to undermine the government'sclaim to be committed to transparency and accountability, reiterated in the Policyas indicated above.

The Policy further acknowledges that corruption is still widespread in Uganda, and the oil and gas sector could fall prey to the practice.[116] The policy recognizes that Uganda has poor monitoring and control mechanisms[117], yet the proposals about revenue sharing need good and strong mechanisms to ensure that the policies are adhered to and respected. One of the proposals of how to ensure proper monitoring and control is to 'develop clear Petroleum Sharing Agreement documentation." This is more reason why the PSA documentation must not be kept secret from the public.

3.2.3 Capacity and institution building

The importance of capacity building for the country's ability to benefit from oil activities cannot be overstated, as indeed the draft Policy clearly stipulates. The NOGP takes cognizance of this

[114] Ibid (Section 8.2)
[115] Henry Baguma, (August 2006) *'Government not to avail Oil agreements'* the New Vision..
[116] NOGP, pp 45- 46
[117] Ibid section 8.3

and commits government to using oil revenues for training and skills development[118]. It also makes a commitment to provide appropriate training to government personnel in the fields relevant to the oil sector. Unfortunately, African countries have often created capacity among their human resources only to lose them to greener pastures, especially given the high marketability of the specialized skills required in the oil industry worldwide. The policy is silent on this issue and yet it should pronounce itself on the problem and indicate how this can be mitigated (especially through retention measures, special remuneration packages and other incentives).

In addition NOGP envisages and specifies roles for the following organs:[119] The Ministry of Energy & Mineral Development through the Petroleum Exploration and Production Department (PEPD); The National Petroleum Authority; The National Oil Company; Cabinet and Parliament. The roles of the proposed organs are quite numerous and extremely technical. In addition, there are other institutions which will be involved in specific aspects of the industry, for example the National Environment Management Authority (NEMA), Uganda Revenue Authority (URA), Uganda Wildlife Authority (UWA), The Auditor General and the Local Governments. The question is whether the country has the built capactity to ensure that those roles are carried out efficiently with maximum benefit to the country, and without duplication or unseemly institutional conflict. There is a real likelihood that politician could duplicate institutions whichcould create unnecessary bureaucracy in the whole system and delay the decision-making process, creating frustration in oil and gas exploration.

3.2.4 Petroleum Fund

The policy acknowledges the problems resulting from very high prices (wasteful spending) and very low pieces (extreme insecurity), and lists possible options as mechanisms to manage the shocks resulting from fluctuating oil prices[120]. The policy specifically indicates that government will establish a Uganda Petroleum Fund whose role will be 'to ensure effective oil and gas revenue management and to contribute to overall price stabilization.' While this is a positive proposition, it is important for the policy to set out exactly how the Fund will be managed and controlled to ensure transparency, accountability and good management and, in particular, to

[119] Section pp. 15-17 of the NOGP
[120] Ibid section 8.1

ensure that it does not suffer from interference of political officials. Although the policy proposes legislation to ensure proper systems of financial management and accountability of oil revenues, the experience of Uganda indicates that legislation has not necessarily resulted in respect for proper systems of financial management. The stakes will be very high for the oil industry and the temptation not to respect proper financial guidelines is likely to be even higher than usual

3.3 National Legislative Framework

3.3.1 The Constitution of the Republic of Uganda (1995) (as amended)

The principle law of Uganda is the 1995 Constitution, which is the supreme law in Uganda. In the National Objectives and Directive Principles of State Policy, (National objective XXVII), the Constitution requires the government of Uganda to take measures to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. ***Article 237*** of the 1995 Constitution of the Republic of Uganda vests all land in Uganda in the hands of citizens who shall hold it in accordance with the Constitution and the tenure systems created there under. This Provision created the Public Trust doctrine in that government was to hold in trust on behalf of the people all natural resources including all natural lakes, rivers, wetlands, forests, national parks and other ecologically important areas. However itis important to note that the provision was silent on minerals and petroleum. Nonetheless ***Article 244*** of the Constitution formerly dealt specifically with minerals and did not cover oil and petroleum resources. The Article did not squarely put the minerals into government hands although under its Clause 2, it was provided that in the exploitation of these minerals the interests of individual landowners, local governments and the Central Government had to be taken care of. But, this Article was totally silent on Petroleum and issues affecting it.

In 2005, the 1995 Constitution of the Republic of Uganda was amended.[121] This Constitution Amendment was a step forward in the oil and gas sector in Uganda since for the first time it specifically provided for minerals and in particular for petroleum. Under the new Article law[122], all minerals and petroleum in, on or under any land or waters in Uganda were vested in the Government on behalf of the Republic of Uganda and therefore, the Government not only

[121] Constitution (Amendment) Act, 11 of 2005
[122] Article 244 of the 1995 Constitution of the Republic of Uganda

became a mere trustee but also the owner of all the minerals and petroleum on behalf of the people of Uganda. In addition the Constitutional provisions that vested in parliament the powers to make laws regulating the exploitation of minerals, sharing of royalties, payment of indemnities and restoration of derelict lands were equally to apply to petroleum or in other words, the oil and gas sector.

Before the enactment of the Petroleum (Exploration, Development and Production) Act 2012 and the Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Act 2012, the existing legal framework was largely inadequate for the regulation of the oil and gas sector. This is largely because at the time of the enactment of those laws, large scale oil production had not been envisaged in Uganda. Some of these laws included, *inter alia*, the 5th December 1957 Petroleum Act,65 the Petroleum (Exploration and Production) Act66 and the Petroleum Supply Act 2003.

The 1985 Petroleum (Exploration and Production) Act, Cap. 150, Laws of Uganda was assented to on the 13th June1985 and its date of commencement is 27 September 1985. However, this law largely remained dormant until the enactment of the two oil Bills of 2012 because there was virtually no petroleum exploration and production to be regulated and in fact the Petroleum (Exploration, Development and Production) Act 2012 repeals this law.

Prior to the 2012 Oil Legislation by Parliament, this Act was the substantive piece of legislation guiding oil exploration and production activities in the country. However, this piece of legislation was over two decades old hence outdated and therefore not alive to the new and emerging challenges created by the discovery of commercial quantities of oil and gas. For example, this Act was enacted at a time when worldwide, natural gas was not looked at as a viable source of energy. Indeed this Act recognized gas as an inconvenient associate ofpetroleum. A case in point was section 31 of the Act which prohibited wasteful or environmentally damaging oil field practices whereas subsection (2) and (3) of the same provision empowered the holder of a petroleum exploitation license (the licensee) to flare or otherwise destroy by fire the natural gas encountered during oil operations. In recent years however, natural gas has emerged as a cheap and highly viable alternative source of energy andin fact Uganda's Oil and gas Policy, 2008, recognizes gas as a major component of oil.

In addition, the National Oil and Gas Policy for Uganda, 2008, required to be operationalised by a vibrant law if the major goal of the policy of achieving optimum development from the oil resource was to be achieved. Further, there was need to give effect to Article 244 of the Constitution of the Republic of Uganda, 1995. Therefore, as indeed noted by the Parliamentary Committee on natural resources, this culminated in the need to overhaul the existing legal framework so as to enhance the effective handling of petroleum activities. The old oil legal regime was inadequate in effectively and efficiently addressing key oil exploration and production concerns which included, *inter alia*, the environment, revenue management, transparency, institutional management and capacity building.

The Petroleum Supply Act of 2003 guided all downstream petroleum activities that involved the distribution, marketing, and selling of petroleum products. The new ***Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Act 2013*** is expected to expand beyond the governance of downstream activities to include midstream activities, as well—from oil and gas transportation and processing, to refining.

3.3.2 Petroleum (Exploration, Development, Production) Act 2013

On February 8th 2012, following a 2011 Parliamentary resolution compelling the Executive to initiate laws for the oil sector, Mr. Kamanda Bataringaya, the Minister for Minerals (as he then was), tabled before Parliament the Petroleum (Exploration, Development and Production) Bill 2012 or otherwise, the Upstream Bill. The Bill was debated for over a year amid wide opposition and disagreement among the Legislators. However as expected, the ruling National Resistance Movement (NRM) used its overwhelming majority in Parliament to pass the controversial Petroleum (Exploration, Development, Production) Act 2013 that prepares Uganda to move from oil exploration to production between 2014 and 2017. "President Museveni put a lot of pressure on members. He was calling members to vote against their own conscience and intimidating them at the same time," remarked Hon. Theodore Ssekikubo, a member of the House.[123] There is no doubt that this controversy might have affected the quality ofthis important piece of legislation.

[123] Grace Matsiko, "NRM M.Ps accuse Museveni of influencing the outcome of oil Bill", the Daily Monitor, Dec 10th
2012.

The Act was passed along with another one – the ***Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Act*** which had been introduced in parliament around the same time. At the time of this research the two Acts are the substantive and fundamental Laws governing the oil and gas sector in Uganda. However, although this study makes referenceto the entire legal regime governing oil and gas activities in Uganda, my major emphasis will be on the Petroleum (Exploration, Development and Production) Act 2013 or otherwise 'the upstream' Act since it is the major legal instrument regulating commercial exploration oil and gas in Uganda.

The Act seeks to give effect to ***Article 244*** of the ***1995 Constitution of Uganda*** which provides that subject to ***Article 26*** of the same Constitution all minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. The long title to the Petroleum (Exploration, Development and Production) Act 2012 reads thus:

> *An Act to give effect to article 244 of the Constitution; to regulate petroleum exploration, development and production; to establish the Petroleum Authority of Uganda; to provide for the establishment of the National Oil Company; to regulate the licensing and participation of commercial entities in petroleum activities; to provide for an open, transparent and competitive process of licensing; to create a conducive environment for the promotion of exploration, development and production of Uganda's petroleum potential; to provide for efficient and safe petroleum activities; to provide for the cessation of petroleum activities and decommissioning of infrastructure; to provide forthe payment arising from petroleum activities; to provide for the conditions for the restoration of derelict lands; to repeal the Petroleum (Exploration and Production) Act, Cap 150; and for related matters*[124].

Therefore the major focus of the Act is to regulate the production, exploration and development of petroleum in Uganda. The major rationale behind the enactment is that the previous petroleum laws in Uganda did not extensively deal with exploration, development and production of the country's petroleum resources and cover issues such as the licensing, exploration, development and marketing Uganda's petroleum potential for investment. The

[124] Petroleum (Exploration, Development and Production) Act 2012, Long Title

Petroleum (Exploration, Development and Production) Act 2012 also sets up institutions for management of the petroleum resource in Uganda, including the National Petroleum Authority[125] and the National Oil Company[126].

The following sections are therefore dedicated to out lining and analyzing governance cocnerns in the Petroleum (Exploration, Development and Production) Act 2012 and its efficacy tomanage such political risk associated with oil and gas exploration.

3.4 Political Concerns and Anxieties created by Petroleum (Exploration, Development and Production) Act 2013

3.4.1 Powers and duties of the minister

Throughout the entire parliamentary debates when the Act was still a Bill, no clause in the Bill was as controversial as clause 9. It was debated amid opposition and great disagreement among the Legislators:

> *"Last week, several M.Ps stormed out of Parliament protesting the recommitting of Clause 9 (now section 9 of the Act) which vests the powers of negotiating and awarding exploration contracts to the Minister of Energy, which they claimed would be cheating Ugandans."*[127]

Among other things this provision vests with the minister the discretionary powers to: Granting and revoking of Petroleum licenses; Negotiating, endorsing and administering Petroleum agreements; Initiating, developing and implementing the oil and gas policy; Issuing petroleum Regulations and submitting draft legislation to parliament; Approving Plans for Field Development; Promoting and sustaining transparency in the oil and gas sector and Approving data management.

Although the Section mandates the minister to grant and revoke licenses, negotiate and endorse contracts on behalf of government, it does not state with whom the minister can perform such duties. The same minister is mandated to approve plans for field development, promote and sustain transparency in the sector, develop Regulations and policies for the same. By

[125] Section 11 of the Petroleum (Exploration, Development and Production) Act, 2012
[126] Ibid section 43
[127] Ibid (n,3)

concentrating such wide discretionary powers in one person to both issue oil licenses and regulate the industry, the Act creates the potential for insufficient capacity and conflicts of interest. Moreover this Minister is appointed by the President and is personally answerable to him.. An option to the present approach would be to vest licensing authority in the national Petroleum Authority because the agency is intended to be independent of the Minister of Energy and Mineral Development (Human Rights Network-Uganda, 2012)[128]. The governmentresponded to this option by noting that Article 244 vests all control of mineral and petroleum resources in the government. While parliament makes laws regulating the exploitation of these sources, the president appoints ministers and they are answerable to him. As expressed by Prime Minister Amama Mbabzzi, "… removing the minister is tantamount to removing the President from control of the oil resources"[129] . Consequently, the Petroleum Acts effectively exclude parliament and the independent National Petroleum Authority from participating directly in the licensing process and approving plans for oil field development. This provision is a major launch pad for political exploitation of oil resources, abuse of discretionary powers and corruption

It is also noted with dismay that Section 54 of the same Act allows the same Minister to receive direct exploration bid applications if, he is acting in a matter of national interest in respect of areas that are adjacent to the existing reservoirs. The area of exploration contracts is a technical matter and vesting all the discretionary powers in one individual who may lack the technical capacity to deal with matters of oil exploration is very dangerous to the success of the Ugandan oil and gas industry. It would for example be prudent practice if the Act provided that the Minister acts with the Petroleum Authority in the execution of his numerous roles under the Act

3.4.2 Licences and Concessions Issues

The Petroleum (Exploration, Development and Production) Act 2012 contains a transitional provision that is ambiguous in effect. Section 188(1) (a) of the Act provides that licenses issued under the old law "shall have effect from the commencement of this Act as if granted under this Act". This suggests that existing licenses should be subject to the provisions of the new law.

[128] Human Rights Network-Uganda. (2012). *Key concerns in the Petroleum (Exploration,Development and Production) Bill.* Retrieved from Human Rights Network-Uganda website:http://www.hurinet.or.ug
[129] Etukuri, C. (2012, December 12). President must have control over oil-Mbabzai. *In2EastAfrica*. Retrieved from http://in2eastafrica.net

However, the same section under 188(2) provides for the opposite that "the terms and conditions including the rights and obligations under a license or petroleum agreement in force immediately before the commencement of this Act, shall not be less favorable than those that applied immediately before the commencement of this Act". This ambiguity, lack of clarity and contradiction could potentially be used by licensees to argue, for example, that section 127 of the same Act, which provides for strict liability of the licensees in the case of pollution damage, should not apply to them because the obligations that it imposes upon them are more onerousthan those that prevailed under the previous law. In short, this gives existing licensees extensive stabilization by law, even in the event such a clause is absent from their license or petroleum agreement. For example as a matter of fact, the Government of Uganda signed a Production Sharing Agreement with Tullow Oil on February 3rd, 2012 before the Acts could be finalized, it would be imperative that the Act clearly specifies that the new law applies in all respects to existing agreements

3.4.3 Conflict of Interest

Section 159 of the Act regulates conflicts of interest, by prohibiting public officials involved in the implementation of the Act from having a stake in the oil matters that they regulate. Although this provision is a right step in the right direction it falls short of extending to family members and agents, to private or public companies or business enterprises in which such public officials, their spouses or agents have controlling interests. Already, there are early warning signals of personalization of the oil and gas sector by high ranking political officials including the president himself and his blue eyed boys. "In June 2010, it was announced that Uganda's Presidential Guard Brigade would be integrated into the Army's Special Forces Unit in a bid to protect and enhance the country's strategic assets, including oil fields along the border. The Special Forces Unit at the time was led by Lt Col (read Brig) Muhoozi Kainerugaba, the President's son".72 The Saracenprivate security company is contracted to provide security inside some drilling sites. A United Nations report names President Museveni's brother, Gen Caleb Akandwanaho alias Salim Saleh as the majority shareholder in the Ugandan branch of the company.[130] Museveni's close relations are evidence of increased personalization of control by him of the oil and gas

[130] Ibid n,3 (Patey, 2015)

sector. Such deviation from international best practices and democratic principles is highly undesirable at this stage.

There are some Ugandan legal instruments which can be emulated by the oil legislation in so far as guarding against the danger of conflict of interest in the oil and gas sector is concerned. The Leadership Code Act of 2002 addresses conflicts of interest among high-ranking government officials. Section 9(5) prohibits officials from participating in activities where they have personal interests, while Section 12(1) prohibits them from making contracts with the government or foreign business organizations. These regulations are extended to the leaders' family members and business organizations in which the leaders or their family members have a controlling interest. The 2005 Code of Conduct and Ethics ("Code of Ethics") regulates the conduct of lower ranking public officials. It promotes governance, transparency and accountability among public officers and in particular ensures that public official areaccountable for all resources under them. It also prohibits public officials from accepting (and giving) gifts and bribes. This code extends to their family members. In addition, under section
4.6 (i), the Code of Ethics states that public officers shall not put themselves in a position where their personal interests conflict with their duties and responsibilities as public officers and they are also prohibited from entering into any contracts with the government. These obligations are extended to the public officers' family members and private companies in which the public officers or their family members hold a controlling interest. The foregoing are healthy legislative provisions which the new oil legislation had to be perfectly in harmony with to prevent 'elite capture' by politicians.

3.4.4 Lack of independence and politicization of the oil and gas institutions

Oil is one strategic commodity of the world that government, from super powers to minor states will never allow to be free from political control.74 The two major oil and gas institutions established by the Act are the Petroleum Authority of Uganda75 and the National Oil Company of Uganda76. Although these are established as independent institutions, free from political manipulation, a clear perusal of the Act reveals the contrary. The Petroleum Authority is mandated to monitor and regulate exploration, development and production of petroleum in Uganda. Its independence is strongly echoed by Section 15 of the same Act. However, under Section 14 of the Act, the Minister may give directions in writing to the authority with respect to

the policy to be observed and implemented by the Authority and the Authority SHALL comply with the directions. The extent of such directions is not defined in the Act. This creates an obvious risk that the independence of the Authority will be undermined by political interference.

In the same regard, the National Oil Company established under the Act, shall be incorporated and be managed under the Companies Act77, to manage and handle the state's commercial interests in the petroleum subsector. However, Section 47 of the Act allows the Minister to issueinstructions in respect of the National Oil Company's execution of its management task underthe Act including the stipulation of rules relating to the duty of secrecy of Board members and employees. It is legally unperceivable and ridiculous, how a company incorporated under the Companies Act (*supra*) can be managed in that manner. In addition, Company law dictates that it is only the shareholders of the National Oil Company who can have a say in the company and hence Uganda citizens' interests will be valid only to the extent of the shares government ownsin the National Oil Company. "Previous experience in Uganda has not shown government to bea good business entity and where government has owned shares in private companies many have been dogged with corruption, waste and lack of competitiveness"78. It is not clear how the othershareholders for National Oil Company will be selected and how many shares government and other shareholders will have. This provision can thus be manipulated to favor selected individuals who may not necessarily have the competence to be shareholders. It is also possible for government to be a minority shareholder in National Oil Company with a limited say. This would inevitably result into failures by the government to protect citizens' interests in the National Oil Company. Equally ridiculous, is that there is no stipulation in the Act, that the Minister for Petroleum will be appointed by Parliament yet it is the Minister's role to appoint Board members of the Authority and those in key positions in the National Oil Company tasked with managing commercial aspects of petroleum activities and the participating interests in the licenses. Such minister is appointed by the President. This creates a risk that the oversight function of Parliament over the Petroleum Authority and the National Oil Company is negated, and that management roles in such institutions could be given out on the basis of personal connections, loyalties and state patronage, rather than on merit.

3.4.5 Transparency, Access to information and Whistle Blowing

Guiding Principle 3 of the NOGP is about transparency and accountability which entailsopenness and access to information. This information enables stakeholders to assess how their interests are being affected. The NOGP seeks to promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations, aswell as in the management of revenues from oil and gas. Both the Upstream and Midstream Acts allow for public access to information relating to petroleum activities such as the announcement of new areas for petroleum exploration, the publication of application notices and biddingprocesses, and access to some information/reports from the Petroleum Fund and the Petroleum Revenue Investment Reserve (PRIR)[131]

In contrst The Upstream Act severely limits public access to key pieces of information. For instance, section 33 (Duty not to disclose information) prohibits members of the Petroleum Authority from disclosing any information which they may have obtained in the course their employment whereas,

> *section 157 (b) (Obstruction of an authorized officer), provides that: "any person who knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the authorized officer engaged in carrying out his or her duties and functions under this Act" commits an offense and is liable to be convicted to a fine or to imprisonment. The Act does not require any public disclosure on the amounts of oil extracted from the ground, or the revenue generated by theindustry.*[132]

Other data such as the licenses themselves, the field development plans and assignments can be revealed to the public only if disclosure doesn't violate "confidentiality of the data and commercial interests". Unfortunately, the Act does not define the scope of confidentiality, leaving it subject to interpretation, and posing the risk that this interpretation could prevent disclosure in many cases. The Act also requires payment of a fee to access the information, but does not state how much should be paid.

[131] Sections 57–75 of the PFMA
[132] Upstream Act 2013

Under Section 148 of the Act, the Minister may, subject to confidentiality of the data and commercial interests, and in accordance with the Access to Information Act, 2005, make available to the public- details of all agreements, licenses and any amendments to the licenses or agreements whether or not terminated or valid; details of exemptions from, or variations or suspensions of, the conditions of a license; licenses; the approved field development plan; and allassignments and other approved arrangements in respect of the license. This is in line with the right to Access to Information under ***Article 41*** of the 1995 Constitution. However section 148(2)[133] gives the minister powers to prescribe fees for access to information in the Oil sector. Although this provision is subject to the Access to Information Act 2005, it sets a standard higher than that envisaged under ***Article 41*** of the 1995 Constitution of the Republic of Uganda which guarantees the Right to Access to Information in the hands of the State save for cases where such access to information contravenes, *inter alia*, State security. It is on this basis that theAccess to Information (A2I) Act, 2005 was enacted. The Act was also designed to promote an efficient, effective, transparent and accountable government and to empower the public effectively to scrutinise and participate in government decisions that affect them.[134]

In addition, Section 148 of the Act restricts access to information to consent agreements made between the government and the licensee. The reference to Access to Information Act in the Section is to the effect that person accesses information depending on the nature of the agreement signed between government of Uganda and the licensee. This violates the constitutional guarantees on access to information. Uganda's legal regime on access to information does not subject it to any form of agreement. The Access to Information Act also hasenough guarantees to protect information.

Similarly Under section 151 of the Upstream Act, the Minister may make available to the public details of all agreements and licences or approved field development plans upon payment of a prescribed fee. However, use of the word 'may'rather than 'shall' implies that the availability of such information is provided at the discretion of the Minister, who may choose to disclose only selected information while withholding other such. Section 153 goes on to prohibit the disclosure of information furnished or in a report submitted by a licensee, to any person who is not a

[133] ibid
[134] Section 2 Access to Information Act, 2005

minister or an officer in the public service except with the consent of the licensee. Government employees are even subjected to an oath of secrecy and strict penal sanctions are imposed for its breach.[135] Wher has recentlly in July 2020 honoured its commitment to join the EITI it remians to be seen if it will make an open policy to publish all the contracts on the ministry's website, the public als awaits to see transnational oil companies publicly disclose the information they have. This will increase public trust in government and bring about enhanced transparency and accountability in Uganda's petroleum industry.

So far as whistle blowing is concerned, the right to access information is fundamental benchmark of our Bill of rights as enshrined in the 1995 Constitution of the Republic of Uganda.[136] The Access to Information Act 2005 and the subsequent Access to Information Regulations 2007 were enacted to operationalize this Constitutional provision. It is also important to note that access to information is a great tool in the promotion of transparency and accountability in the oiland gas sector. For example, whistleblowers wishing to reveal information related to alleged abuses of power, corruption or other illegal acts should be properly protected and encouraged to come forward. The Petroleum (Exploration, Development and Production) Act, 2012, raises concerns in this regard, especially as it will get in conflict with the Whistle Blowers Protection Act which is the main law for the protection of whistleblowers. These provisions of this new oil legislation could be used to prosecute whistleblowers who come forward with allegations of wrong-doing that either stem from information received in the course of their employment, orthat are insufficiently documented. Whistleblowers are in reality the active conscience of a society as well as the government. Already serious concerns have been raised after whistle blowing Legislators tabled before Parliament damming documents accusing Tullow Oil of bribing Ugandan cabinet ministers to gain better concessions in the Ugandan oil and gas sector. "M.Ps maintain that the oil company paid 17 million pound sterling to the minister of Foreign

Affairs Sam Kutesa as a bribe for his services in acquiring oil contracts in Uganda."80 Moreover, public attention has been focused on the lack of transparency surrounding the oil contracts between private companies and Uganda's government. These deals, known as Production Sharing Agreements (PSAs), are now public documents but are still not freely

[135] (Oloka-Onyango, 2018)
[136]

accessible by the public.81 The Whistleblower Protection Act of 2010 offers procedures for Ugandan citizens to report corruption or improper conduct. The Inspectorate of Government Act, the Leadership Code Act, and the Anti-Corruption Act also provide protection for whistleblowers. The Oil laws should be harmonized with these regulations to provide protection for whistleblowers in the oil sector as well.

3.5.6 Sharing Revenues from Royalties

On 31st May 2012, the King of Bunyoro Kitara Kingdom, *Omukama* Gafabusa appeared before the Parliamentary Committee on natural resources where he presented a petition asking government to consider his subjects in the management of oil resources which were discovered in the Bunyoro sub-region. Although oil may be a national resource and there would be no need of a special provision for oil revenue allocation to Bunyoro region, it is important to consider the fact that these are the indigenous communities where this oil has been discovered and who will be greatly affected by oil activities, areas that depict scenes of immense poverty and least levels of socio-economic development. "For the first time am doing this during my 17 years on the throne of Bunyoro-Kitara," he told the Committee. "I am presenting this petition as a stake holder the Draft Petroleum Bill has ignored in spite of the fact that the Uganda Constitution recognizes my mandate as a trustee for my subjects."[137] This oversight by legislators is breeding ground for conflict reminiscent of least development oil-states

Although sections 151- 156 of the Petroleum (Exploration, Development and Production) Act, 2013, provides for the payment of royalties to government from oil activities, the Act has no clear provisions on how oil revenues will be shared. Of course it's a correct assertion that since the Act was intended to cater for upstream activities of the petroleum industry – that is to say the exploration, and extraction portion of the oil business it would be unfair to criticize it for not dealing with downstream activities, not to mention the broader macro-economic and social implications of the oil boom and its aftermath of oil revenue sharing. That notwithstanding, one aspect that needs to be immediately addressed, in clear and unambiguous terms is the issue of benefit sharing and to bring this Act in harmony with other revenue related laws such as the Income tax Act and PFMA. According to the current law, the Central Government is to retain

[137] https://www.africa-uganda-business-travel-guide.com/bunyoro-region-wants-125-per-cent-of-uganda-oil-funds.html Accessed on 1st/March/2020

94 per cent of the revenue from petroleum production, while 6% will be shared among local governments located within the petroleum production areas. 50 per cent of the revenue from the royalties due to the local governments will be shared among the local governments involved, based on the level of production of each local government. The balance of 50 per cent due to the local governments shall be shared among all the local governments based on population size, geographical area and terrain. Government shall grant 1 per cent of the royalty due to the central government to a gazetted cultural or traditional institution.

Several observations can be made about the manner in which the issue of revenue-sharing is formulated in the law. First of all, there is no individual reporting line for these payments to enable local communities and subjects to hold their local governments accountable for such monies. Using local government budget lines makes it complicated for ordinary stakeholders within the districts to know if the local governments are getting a fair share[138]. Secondly, the percentages allocated to the local government and cultural institutions are peanuts compared to what the central government retains, yet it is the local governments that interact directly with the people and bring services directly to them. This also runs counter to the expressed principles of devolution and decentralisation embedded in the 1995 Constitution, aside from providing more avenues for corruption at the centre. Finally, because these provisions are not enshrined in the Constitution but are merely ordinary legislation, they can easily be changed to the detriment of the local actors. There is thus a need to achieve consensus on the sharing formulae, especially with the communities based within the production areas and a sufficiently entrenched codification of the same in order to avoid disruptive and illegitimate tampering. It is in the best interests of the nation that this be done to avoid even the remotest possibility of any forms of conflict that usually arise from revenue/royalty-sharing arrangements as is the case with Nigeria [139].

3.5.7 Land acquisition in the oil region

The ***Land Act Cap 227*** provides for the tenure, ownership and management of land and amends and consolidates the law relating to tenure, ownership and management of land and other related

[138] Avocats Sans Frontières (2015), *Business, Human Rights and Uganda's Oil and Gas industry: A Briefing of Existing Gaps in the Legal and Policy Framework*. Kampala: ASF. p.48

[139] Oyefusi, A. (2007), 'Oil-dependence and Civil Conflict in Nigeria'. *CSAE Working Paper Series 2007–09*. Retrieved from: https://core.ac.uk/download/pdf/6250435.pdf.

or incidental matters. In pursuance of the Constitution, the law vests all land in Uganda in the citizens of Uganda and recognizes four land tenure systems under which land is held in Uganda including; customary tenure, freehold, mailo and leasehold tenure. The Act defines the rights and powers of lawful occupants and bonafide occupants. It also places natural lakes, rivers, groundwater, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological or touristic purposes for the common good of the citizens of Uganda under trust of Government or a local government. In relation to prospecting or ascertaining suitability of land for public works, the Act provides a mechanism for entering on land- which may follow mutual agreement between the undertakers or following an order by the minister where no agreement is reached.

Uganda's recent legislative and policy reforms, combined with a rapidly evolving economic situation, are raising new land and resource governance issues that need to be resolved and which are not adequately addressed by the new oil legislation. This legal framework should have facilitated foreign investments in resource-based enterprises while assuring a fair and adequate return for all Ugandans and avoiding "land grabbing" and "speculation. It is clear that under ***Section 40 and 41 of the Land Act cap 227***, ordinary occupants of land in which petroleum is discovered can be bullied out of their land rights against their will, as long as they are offered compensation, which need not be determined by them but by arbitrators. The history of the practice of arbitration in this country has not been a rosy one and, indeed, arbitrators in Uganda rarely satisfy all parties involved. Ultimately, not only do these provisions create the potential for conflicts, but they do not cater for other "non-surface" rights which ordinarily accrue to a land owner. Of course the holder of a Petroleum Production License can avoid all this by acquiring an exclusive right to use the land (i.e. a lease). It is suggested that, as with the mining law, petroleum production license holders should be required to obtain leases.

A comparative analysis of the other resource-rich nations especially in developing countries reveals that issues of access to land and related resources, and forced displacement are a major reason of conflict. By providing for just and equitable practices around land, Uganda can avert similar problems:

> *The consideration of land acquisition and compensation in the oil producing areasshould take cognizance of the range of customary land ownership patterns and the land*

rights of the people, which are recognized by the 1995 Constitution, that exist in the affected areas. This should further be translated into physical land surveying on the part of the government and awarding of land titles to people-a process that remains prohibitive in terms of financial, legal and social resources and therefore cannot be undertaken by the common Ugandan – a significant barrier in protecting himself or herself from exploitation and land alienation and something which the GOU needs to seriously examine and address.[140]

Another part of the strategy would be to resolve the long-standing land dispute posed by the Bunyoro Kingdom. A possible consequence of not acting aggressively is the further dissolution of the political fabric that holds Uganda together as a nation-state.

3.5.8 Conclusion.

The discourse above indicates that whereas Uganda has in place legislations to govern oil and gas revenue these perpetuate centralisation of authority in the cabinet of a quasi-democracy. The Upstream Act 2013 has many loop holes that can exercabate political risk tp turn into oil curse. The concerns of revenue and royalty sharing, access to information, Land right in the oil field among other discussed are not resolved by our laws. Unless there is immediate legal reform to intervene and regularise prevailing anxieties Uganda's expectation from oil resource is farfetched and could instead havest an oil curse for generations to come.

[140] Report of the Parliamentary Committee on Natural Resources on the Draft Petroleum (Exploration, Development and Production Bill) 2012, p.16

CHAPTER FOUR

ANNALYSIS OF INSTITUTIONAL CAPACITY TO MITIGATE POLITICAL RISK THROUGH IMPLEMENTATION OF OIL AND GAS POLICY AND LAW IN UGANDA.

4.1 Introduction

The institutional framework is responsible for implementation of policy and laws. Experience from successful countries in the oil industry and those that have been a failed, shows that the success or failure of a country's oil industry is dependent on the quality of its oil and gas institutions.[141] Enforcement of oil and gas policy and law in Uganda is done through governmentinstitutions such as ministries, agencies and departments. The capability of these institutions willbe put to the test as the country begins explore commercial oil reserves. Oil development brings many economic, social, political and environmental risks, all of which will need to be met head- on through the adoption of comprehensive policies and laws. Ensuring that these laws will be adequately enforced may prove to be Uganda's most difficult challenge. This chapter annalyses capacity of oil and gas insititutions to mitigate political risk through enforcement of policy and law.

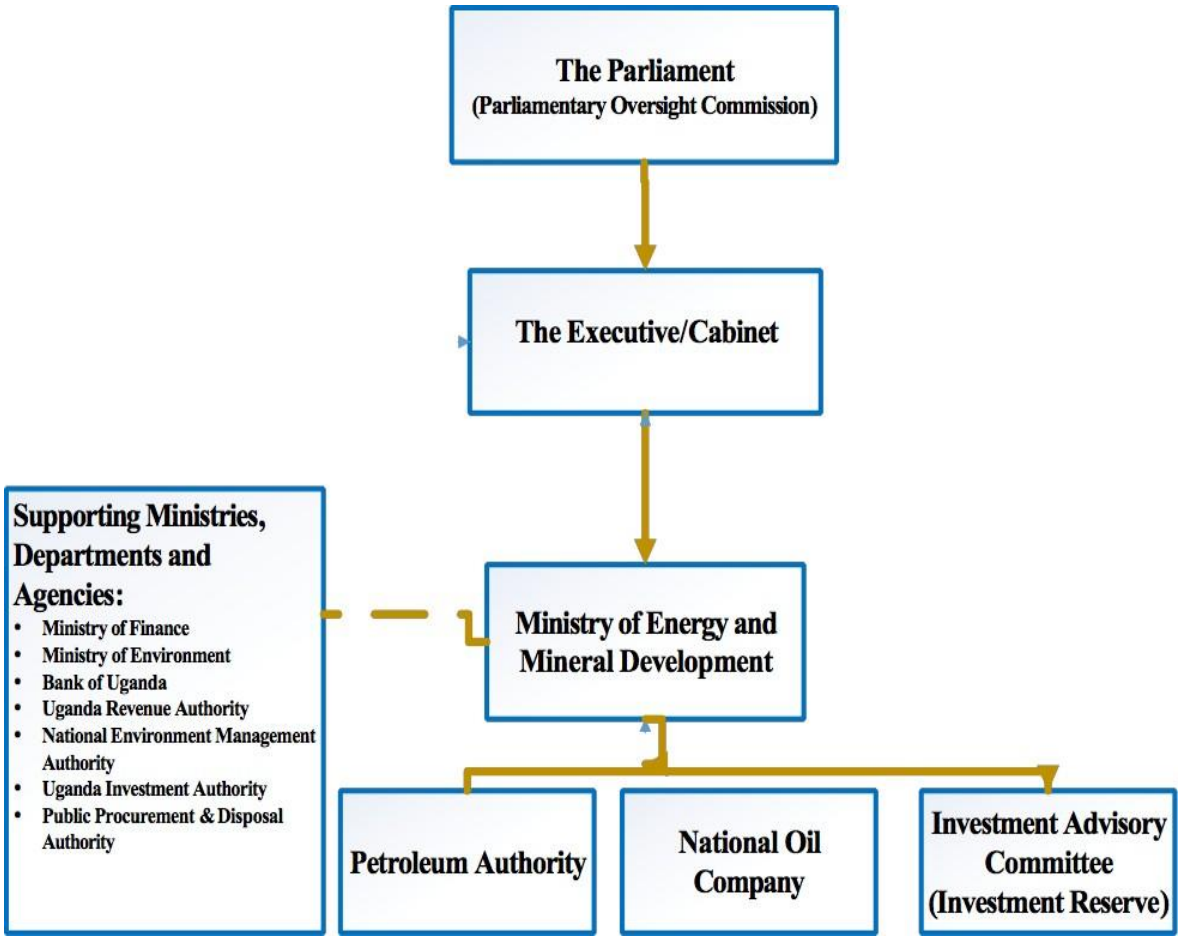
4.2 Institutional Framework for Oil and Gas in Uganda.

The institutions governing oil governance were established under the ***Petroleum (Exploration, Development and Production) Act, 2013.*** The institutional model of oil governance in Uganda is similar to those of successful oil producing countires such as Norway, Trimor lester and Botswana with major difference being Uganda has delibarately suppressed Civil Society Organization to be part of its oil and gas governance institutional model, which according to many critics is major weakness in oil governance.[142]

[141]Ibid (n,90) (Mehlum, Halvor, Karl Moene and Ragner Torvik, 2006)

[142] Kendra Dupuy, Lise Rakner, Lucas Katera. (2019). *Civil Society's Role in Petroleum Sector Govevrnance: The Case of Tanzania* (Vol. CMI & REPOA BRIEF NO. 2). (:. I. Hestad, Ed.) unpublished. Retrieved from www.repoa.or.tz

Figure 2: Institutional Framework of Oil and Gas Institutions in Uganda



Source: Adopted with modifications fromPamela Mbabazi & Martin Muhangi[143]

[143] Mbabazi, P & Muhangi, M. (2018). *Uganda's Oil Governance Institutions: Fit for Purpose?* (Vol. CRPD Working Paper No. 60). Leuven, Belgium: Centre for Research on Peace and Development (CRPD). Retrieved August 25th, 2020, from http://www.kuleuven.be/crpd

4.3 The Parliament

The Constitution of the Republic of Uganda mandates Parliament to provide oversight role in the management and exploitation of resources and other operations of the state of Uganda. Parliament of Uganda is accordingly the apex institution mandated to make regulatory laws for the management and exploitation of the minerals and natural resources such as Oil and Gas in the country and the sharing of royalties arising from petroleum exploitation and other related activities. section 7.2.1(c) of the NOGP reiterates that Parliament should be in charge of "monitoring performance in the petroleum sector through policy statements and annual budgets approval process".

Uganda's Parliament passed the first of three oil bills relevant to the oil industry in December 2012. The bills, tabled earlier in the year, moved slowly through parliament even though the National Resistance Movement (NRM) government maintains a strong hold over the legislative assembly. The law, entitled The Petroleum (Exploration, Development and Production)2013, was passed by a margin of 149–39. While the vote was not close, much of the frustration and negative perceptions from mostly the opposition stems from the perceived corruption surrounding the Government.[144] A reported 5 NRM members (MPs of the current NRM government) voted against the bill, and approximately 100 MPs skipped the vote, further evidence that even members of the governing NRM regime were hesitant to support seemingly authoritative powers.[145]

The legal regime in Uganda is however not as strong as say in Liberia or Egypt, where the international agreements or investment contracts are only given effect after Parliamentary approval/ratification. In Uganda, the Minister responsible for petroleum (Minister of Energy) negotiates and enters into petroleum agreements (**Section 9 of Upstream Act and Section 8 of the Midstream Act**) and only informs Parliament. Although there is a National Resources committee of Parliament, the oversight role of parliament is not visible. As a result, parliament has no control of the negotiated contract terms and appears to be merely a bystander or spectator in the process. The Minister in essence is an extension of the executive and as such this processis prone to political interference and direction. The only way this can be avoided is to allow the

[144] Mbabazi, P. K. (2013). The Oil Industry in Uganda; A Blessing in Disguise or an all Too Familiar Curse? The 2012 Claude Ake Memorial Lecture. *CURRENT AFRICAN ISSUES, 1*(54). Retrieved August 27, 2020
[145] ibid

Petroleum Authority to negotiate and enter petroleum contracts instead of the Minister. This was the view held by several legislators during the discussion of the petroleum bills in 2012. In addition, government ought to open up to public scrutiny by providing full disclosure of the contracts, signature bonuses, royalty fees and other payments the government receives from companies. Parliament as well, should be empowered to exercise its oversight role in this sector.

The major impedement to parliament's oversight role is that terms of production sharing agreements are a closely guarded secret between the executive and the oil companies. Lacking transparency, it is difficult for parliament to make a reasoned judgment as to equity[146]. The executive argues that agreements have proprietary information that would be inimical to the interests of the investor if placed in the public arena. This is a contentious matter and is part of the general point of contention of access to information. For example, when Parliament passed a resolution requiring executive to submit Production Sharing Agreements, the members of parliament were only allowed a glimpse of the signed PSA's. This is an indicator of limited capacity on the part of parliament to oversee agreements in the oil sector.

Sections 151 and **152** of **The Petroleum (Exploration, Development and Production) Act (2013)** seem contradictory. Whereas Section 151 avers that the Minister may provide information about petroleum agreements to the public, Section 152 restricts access to information provided by a licensee to the Minister. The Uganda legal regime is weak due to the fact that it limits parliaments access to oil contracts. In the execution of its legislative function, the Parliament of Uganda has enacted a number of laws, as highlighted above, to guide Oil operations in Uganda. The significant slip-up mentioned in this regard is that most of the laws passed by Parliament concentrate powers in the hands of the Executive (the Minister of Energy and Minerals Development), and this has implications on ensuring accountability and transparency in the Oil sector.

In execution of its oversight role, the Natural Resource Committee of Parliament noted the following issues that have implications for the quality of governance of the Oil and Gas sector in Uganda[147] .

[146] Ibid (n, 4) Manyak, T (2015).
[147] (Parliament of Uganda, 2016).

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

These parliamentary observations have however not led to desired changes because the Parliament only makes recommendations while the Executive is charged with implementation. Moreover, the limited influence of Uganda's Parliament is largely attributable to the political system in which Cabinet Ministers who are Members of Parliament are selected from themajority party. In such a scenario, where the ruling party has an overwhelming majority, Parliament will have no firm basis to develop independent capacities;. No wonder therefore thatit is a common practice in the Ugandan Parliament for the ruling party, the National Resistance Movement, (that controls 293 out of 400 members of Parliament) to have critical Parliamentary

decisions made based on prior deliberations and commitment agreed on in the NRM party caucus. Parliament has generally become a rubber stamp of the NRM party decisions, as all Parliamentary institutions are under the control of the NRM which is the dominant party.Therefore parliament cannot mitigate the prevailing oil and gas political risk under existing political system and legal frame work faning it. Unless reforms are made to oil and gas governance in Uganda the dutch disease will become a reality.

4.4 The Cabinet

The Cabinet is the Executive arm of Government that directly supervises the Ministry of Energy and Mineral Development. The Cabinet is responsible for approving policies and administrative mechanism to guide governance and operations. It also approves draft legislation that is submitted to parliament, and gives consent to production sharing agreements (MEMD, 2014). The Cabinet approved the National Oil and Gas policy and model production sharing agreement that have been used in the negotiation by MEMD with potential investors (MEMD, 2008, 2014).

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

4.5 The Ministry of Energy and Mineral Development

The Ministry of Energy and Mineral Development is the parent ministry under which the oil sector is managed and regulated[148]. ***Section 8 of the Upstream Act, 2013***, spells out the functionsand powers of the Minister in this Ministry to include issuing and revoking licenses, submitting draft legislation to Parliament; developing policies and regulations; negotiating and approving

[148] (MEMD2018)

agreements and field development plans; and promoting and sustaining transparency in the petroleum sector.

The Act gives the Minister of Energy unlimited powers to negotiate, grant and revoke oil licenses. The Minister of Energy in Uganda has evidently been given unusually strong powers to manage the sector and this has raised some eyebrows in many sections of the population[149].The concentration of powers and responsibilities in a single person may breed political risks. For instance, ***Section 47 of the Upstream Act*** gives power to the Minister of Energy and Mineral Development to open up areas for petroleum activities. The Act stipulated the process as follows: An assessment must be made of the impact of petroleum activities on trade, industry and environment, possible risks of pollution and of the economic and social effects that may result from the petroleum activities. A report is then submitted to Parliament and the Minister makes a public announcement of the new areas to be opened, while impact assessments are made available to the public. Within 90 days, interested parties may present to the Minister their written views on the intended petroleum activities. Where the views are positive, the areas will be opened but where the views are negative. The Minister has the authority to determine whetheror not to open the area. This evidently presents an opportunity for public involvement with one hand, but takes it away with the other by giving the Minister total discretion to decide whether ornot to open the areas.

The Minister is also mandated to develop a model Production Sharing Agreement, which has to be approved by Parliament. Once approved, this model is supposed to guide future agreements. The Act has been criticized for not having any provision for disclosure of the contents of the agreements that Uganda has made over the years in the oil sector. The Ugandan public has been left in the dark regarding the details of all production sharing agreements, which is contrary to the International norms of transparency in the sector and the local access to information act. This matter became a point of public interest[150] when in 2005 a Member of Parliament and two journalists took Government to Court over the restriction of access to information on Oil contracts on account of public transparency. The Court ruled in favour of Government as the

[149] Ibid (n, 19)
[150] "Uganda: Govt to Take 80 Percent of Oil Profits" http://allafrica.com/stories/201006300153.html and "MPs Refuse to Keep Oil Agreements Confidential" http://allafrica.com/stories/201006291150.html , as cited in WBI, 2012.

petitioners failed to show "the public benefit of disclosing the information to the public."[151] In 2010, Government conceded and tabled parts of the Oil contracts in Parliament with a caveat that the matter cannot be subject to parliamentary debate.

According to the law, the minister granted the power to appoint members of Boards of Directors for the Uganda National Oil Company (NATOIL) and the Petroleum Authority of Uganda (PAU) for four years, with the approval of Parliament, and can remove members for "incompetence." However, no provision is made for justifying a claim of incompetence before the Uganda Public Service Commission[152]. Interestingly, Parliament rejected the nominee for theChair of the Board for the Petroleum Authority on account of lack of requisite knowledge and exposure to the Oil and Gas industry[153]. Similarly the Petroleum Acts intended that agencies (NATOIL and PAU) supra to be politically independent in overseeing the exploration, development and production of oil and gas. Under the Acts, the Minister of Energy and Mineral Resources issues instructions to the authority regarding government policy. The authority is then expected to carry out these policies as an independent agency. The concern raised by this arrangement is whether the ministry can undermine the authority‟s independence because the appointees are totally dependent on the ministry for their jobs[154].

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

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

[152]Ibid (n,5) Manyak, T (2015)

[153]

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

Centralisation of power poses a major polical risk to the oil sector and undermines the authority of the oil governance institutions[155]. There is evident political interference in the management of Uganda's oil and gas sector. Several newspaper reports have revealed the President's role in the management of the sector. The President has insisted on maintaining a firm control over the oil industry, reportedly stating: 'In the case of petroleum and gas, I direct that no agreement should ever be signed without my express written approval of thatarrangement'[156]. The powers vested on the Minister of Energy and Mineral Development in Uganda are excessive and create a conducive milieu for possible misuse and abuse.

4.6 The Petroleum Authority of Uganda

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

In addiiton, ***Section 33*** of the ***Petroleum (Exploration, Development and Production)*** Act imposes on the Petroleum Authority's board members and former board members a duty not to disclose information. This section neither encourages nor protects whistle blowers. Section 148 allows the minister to make information available to the public, but there is no legal requirement for this to occur. Moreover, ***section 149*** creates a blanket requirement for confidentiality of all data submitted to the minister by a licensee. In effect, there is little scope for the public to compel the minister to release information that can help them understand how their resources are being allocated. In order for the government to adequately evaluate the performance of licensees and, for the public to determine how well the government is monitoring the operations of licensees, both the government and the public must be provided necessary information—the

[155] Ibid (n,4)
[156] Eric Watkins, (2020) 'Uganda's president wants final approval of all oil, gas deals', The Oil and Gas Journal, Vol. 108, Issue 32.

government, information about each licensee and its operations, and the public, information about government regulatory activities. Deliberate concealment of oil and Gas exploration information to the public implies that preserving the oil resource to benefit future generations may be myth in Uganda.

The legislation lays down some important rules for ensuring the impartiality of the Petroleum Authority, intended to 'monitor and regulate' petroleum activities. However, there are also significant ambiguities like the relationship between that body and the Minister. The Petroleum Authority is set up as an independent body but in practice it may play more of an advisory role. It is required by law ***(Section 13(1) of the Act)*** to comply with written instructions from the Minister and this poses risks of political interference in its decision-making. This means the lines of authority are unclear and therefore blurring the lines of accountability. The fact that oil exploration is ongoing now this conflict of role places Uganda in a serious risk of oil curse due tounregulated political interference in decision making

There is growing recognition that governance institutions such as the Ministry of Energy and Mineral Development and more specifically the Directorate of Petroleum is simply too lean to fully execute its role in the Petroleum sector[157] .The effort to reorganise and strengthen the Ministry has been constrained by limited funding. Funding has also affected both strategic and operational business activities of fully developing the oil and gas sector in the country. These political fasctors issues if not addressed.

4.7 Uganda National Oil Company (UNOC) – The Business Arm

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

UNOC was officially incorporated on June 12, 2016 as a company limited by shares, under the Companies Act 2012, but wholly owned by government. The company has two shareholders namely; the Minister of Energy and Mineral Development who holds 51 percent shares and the

[157] (MEMD, 2016; Parliament of Uganda, 2016).

Minister of Finance, Planning and Economic Development who owns 49 percent shares on behalf of the Ministry. Upon its incorporation, the company became a separate and distinct legal entity from its subscribers and it can sue or be sued in its own name, enter into legally binding contracts and own property. The PSAs also provide for government participation through carried interest of up to 15 percent in licensed oil fields (MEMD, 2014). The Governing Board for NATOIL has already been put in place by government and a number of top managers have also been recruited (New Vision, August 18,2015).

(MEMD, 2017). UNOC is also expected to hold a substantial interest in the East African Crude Pipeline through its subsidiary the National Pipeline Company. The Act provides high standards for appointment to the Board of Directors of both PAU and NATOIL. The power to appoint the members of the Board lies with the President and subject to approval of Parliament. The high standards (or vigilance of parliament) resulted in nonconfirmation of some of the nominees that the President had submitted to Parliament[158] (NewVision July14,2014).

The Act stipulates that the Petroleum Authority will focus on regulation, while the National Oil Company will actually engage directly in the industry on behalf of the government. The standard model for the organization of oil regulation is one that sees a 'separation of powers' between a petroleum authority, national oil company and Ministry (Shephard, 2013). This is the kind of model that was adopted by Norway, which brings the major advantage of separating licensing and monitoring functions from the day-to-day pressures of government,and allowing an independent national oil company to develop technical capacity. The same cannot be said for Uganda due to cenetralisation of authority in the executive under the Petroleum Act 2013.

4.8 The Investment Advisory Committee

In the spirit of transparency and accountability, section 66 of the Act creates the Investment Advisory Committee to advise the Minister on the investments made under the reserve. The committee is to consist of seven members with representatives from the Ministry of Finance and the ministry in charge of petroleum activities, one from the National Planning Authority, and four who are not public officers, all to be appointed by the Minister, who will consider gender representation in the appointment. All members must have substantial experience, training and

[158] NewVision July14,2014

expertise in financial investment. Again, the terms of appointment of the committee members are left to the Minister for determination, although the Act requires all the names of those appointed to be published.[159]

Section 68 sets out the functions of the committee as being to include advising the Minister on the performance of the PRIR as well as other related issues. In giving its advice, the committee must take into account the economic conditions, opportunities and constraints in the investment markets and the constraints under which the BoU operates.[160] The committee is also tasked within 30 days of the end of each period of three months with submitting a report on its performance to the Minister. This will enable the Minister to keep track of the committee's performance and provide accountability. However, there is no stipulation requiring these reports to be presented to Parliament or shared with the public.

Section 62 of the PFMA provides that funds to be invested in the PRIR will be appropriated annually from the Petroleum Fund by Parliament. The red flag on this matter has been raised by the Parliament's Natural Resource Committee which has indicated that in line with the subsisting legal framework, Government is obliged to remit Oil and Gas revenue to the Fund (***Section 57 of the Public Finance Management Act, 2015***) which can easily be misappropriated if the regulatory framework in weak. Government for instance received funds from the Tullow Operations Uganda that was assessed by Uganda Revenue Authority to the tune of USD 36,058,521 or UGX. 119,323,709,754 and this was supposed to have been remitted to the Fund (Parliament of Uganda, 2016). It is not clear today where this money is now. The notable omission and challenge to Government is that it currently does not have clear guidelines and procedures for managing the oil revenue (2016/17 Committee report). This is an indictment ofthe Governance institutions responsible for the Oil and Gas sector. It is also important to note that if the Petroleum Fund is not credited with the inflows, then the Reserve will be non- functional.

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

[159] Public Finance Management Act, section 67(1)-(8).
[160] Ibid., section 68(3).

4.9 Civil Society

The legal context in Uganda provides a mixed outlook for the operational performance of CSOs. The 1995 Constitution of the Republic of Uganda provides for and protects the freedoms of expression, speech and assembly. Article 29 of the Constitution guarantees protection of these rights, which include freedom of the press, media practitioners, CSOs and political parties. Additional laws have also been enacted to further guarantee and specify how these civil liberties are supposed to be exercised. These include:

(i) The 2006 Labour Union Act, which provides the right for employees to organise and employers not to interfere with their associations.

(ii) The NGO Act, which was first enactedin 1989 and amended in 2006 and 2016.

These laws have provided the legal in many CSOs today, both old and new, is the failure to perceive and subsequently clearly communicate to their members why they exist and what they seek to achieve.This has inhibited their ability to attract the necessary resources to facilitate their growth and performance. cultural contexts in Uganda have affected the performance of old and new CSOs. framework for CSOs to exist, although some of them, particularly the NGO Act 2016, have been criticised as attempting to curtail the freedoms of certain types of CSOs, especially those of NGOs.The law now mandates all NGOs to be registered with the NGO Bureau, domiciled at the Department of Immigration, as well as ensuring they declare all the donations they receive, both local and foreign. Many civil society activists see this move as intended to curtail the ability of CSOs to independently execute their function of holding government to account.

Whereas nation successful with oil and gas such as Norway and Timor Leste have involved the civil society in oil governance, Uganda has deliberately ignore CSOs in its institutional model. This was the point of modification of the instutional model adopted from[161]. The suppression of CSOs in oil and gas governance exercabates risk of mismanagement of oil by politicians[162].

Due to the various vested interests involved in the oil and gas sector, civil society is often able to provide the most objective situational analyses. Civil society also acts as an important

[161] Ibid n, 148 (Mbabazi, P & Muhangi, M., 2018)
[162]Ibid (Kendra Dupuy,Lise Rakner,Lucas Katera, 2019)

representative and organizing force for the citizens of Uganda. This is crucial in order to balance the interests of the private sector and governmental actor active in the development of the country's oil sector. CSOs have therefore been at the forefront of ensuring that all activities carried out in the oil and gas sector are done in a transparent manner driven foremost by the citizens' interest for equitably shared national benefit.

CSOs have been instrumental in influencing the enactment of laws, the adoption of statutory instruments and the making of government policies that help create mechanisms for transparency and accountability in the country. For instance, in 2003, CSOs fronted the effort to develop the internationally praised Access to Information Act, 2005 (ATIA). The ATIA aims to foster government openness, transparency, accountability, and good governance by operationalising citizens' right to information.

CSOs have also organised to espouse these values in the development of the oil and gas sector. Civil society has worked hard to influence the development of all oil and gas legislation including the Petroleum (Exploration Development and Production) Act, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, and the Public Finance Act. CSO coalitions like the Civil Society Coalition for Oil in Uganda (CSCO), the Coalition on Freedom of Information and the Anti-Corruption Coalition of Uganda play an important role in the effort to create a just and accountable oil and gas sector free of any form of corruption. Good governance demands accountability in the key sectors that affect livelihood and survival of the populace. It is thus important that multi-stakeholder involvement takes course at all levels of the oil exploitation process. In the bid to promote transparency in the oil sector, the Government of Uganda has joined the Extractive Industries Transparency Initiative. Nevertheless, accountability can only be achieved if the Government accepts joint collaboration with CSOs.

In the wake of the developing oil and gas industry, civil society has many important tasks. CSOs provide the objectivity critical to ensuring that all activities relating to oil production and refining are carried out in accordance with the established environmental procedures. CSOs also play a role in the protection of human rights related to the developing oil and gas sector as well as in the monitoring of oil revenue collection. Revenues from the oil production represent a major potential vector for high-level corruption and embezzlement. Again, as an actor without explicit financialstake in the sector, civil society holds a unique position as an independent monitor and

watchdog. Hence, civil society must be able to represent the rights and views of the citizens of Uganda on these issues vis-à-vis the Government and companies in order to ensure that revenues are managed lawfully.

Despite the utility and importance of input from CSOs, overtime CSO advocacy and activity has been branded as being oppositional and attempting to sabotage government initiatives. Relations between the Government and civil society first became tense around the issue of oil during the debate on the Petroleum (Exploration and Development) Bill (now the Petroleum Act, 2013). The Government developed measures to curtail the space within which CSOs were operating. The Government thus fronted the Public Order Management Bill (now the Public Order Management Act, 2013- POMA) with the aim of restricting the enjoyment of freedom ofassociation for example POMA limits public political debate and as a result transparency, accountability and democracy are no longer assured. This law is also contrary to international human rights laws to which Uganda is a state party, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights because it limits the space within which civil and political rights, economic, social and cultural rights can be enjoyed

The Government of Uganda went so far as to label CSOs working on the ground with local communities in the Albertine Region as "rebels" and "saboteurs" set on dismantling the government project[163].This was especially true for organisations working to represent the rights of local communities during the refinery resettlement and compensation process. According to reporter Edward Ssekika, "enthusiasts within security agencies, government and SFI [Strategic Friends International] have now resorted to the use of coercive tools to silence the affected people who try to complain or even civil society organizations championing their cause…Hangi [Bashir Hangi, the communication officer in charge of the oil refinery project in the Petroleum Exploration and Production Department] castigates some civil society organizations like

[163] Ibid (Oloka-Onyango, 2018)

AFIEGO as saboteurs who are merely inciting locals to reject the process and ultimately slow down the refinery project."[164]

Thus the conditions of operation for CSOs are quite tense. There is little doubt that the relationship between CSOs and government will continue to sour as the country moves closer to commercial oil production unless an agreement or resolution is reached. To the end of visualizing where such restrictive measures by the Government could

potentially lead, one can look to the case of Nigeria. The Ogoni people in Nigeria have had a bitter experience. When the writer and activist Ken Saro-Wiwa acted out against local injustice, he was hanged along with eight others by the military regime in 1995. The crime was campaigning for equitable distribution of revenues from oil and for sustainable and environmentally sensitive exploitation[165]

In light of the inverse effects that oil has had on the strength of democracy in other countries, the current government crackdown on civil society organizations working in the oil sector and the dismissal of vital rights is very troubling. In these circumstances, it must be noted that these are indicators of oil curse being perpetuated by sitting regime.

Conclusion

The above discussion has highlight that though Uganda has in place laws to implement principles of intergenerational equity in oil and gas exploration, actual implementation of these laws is still the issue. The exception is judiciary which established that with effect from August 2017, the perpetrators of environmental degradation will be tried in a new specialized court called "Utility, Standards, Wildlife and Environment, Government has announced.[166] The rationale is need for Environmental related cases to be handled expeditiously. Although there yet to be any major decision relating to oil and gas conservation for future generation. Henceforth with thesestandards in place the Oil and Gas Industry in Uganda is better equipped to deal with threats to

[164] Ssekika, Edward. "Oil refinery: compensation rates get complicated." The Observer. August 13, 2013. Retrieved from:https://www.observer.ug/index.php?option=com_content&view=a%20rticle&id=26945:oil-refinery-compensation-rates-get-complicated&catid=38:business&Item%20id=68 on 28th/March/2020

[165]Ekhator, Rhuks Ako & Eghosa O. (2016). *THE CIVIL SOCIETY AND THE REGULATION* (Vol. 7: 1). AFE BABALOLA UNIVERSITY: J. OF SUST. DEV. LAW & POLICY. doi: http://dx.doi.org/10.4314/jsdlp.v6i2.9

[166] Ibid Kasimbazi

intergenerational equity by courts ensuring high degree of compliance with environmental laws, safety regulations among others in the Oil and Gas industry in Uganda.

However, NEMA still has challenges of institutional capacity to monitor and supervise oil and gas licensees. Bank of Uganda and Ministry of Finance have not committed to transparency and accountability as recommended by World Bank to Join the EITI. Similarly National petroleum Authority conceals a lot of public information concerning oil and gas activities. All together this implies implementations level of intergenerational equity principle in the nascent oil and gas sector in Uganda is not a reality. Uganda is at a risk of bequeathing the next generation an oil curse of bad environment, depleted oil resource and collapsed economy due to poor utilization of oil revenue.

CHAPTER FIVE

COMPARATIVE ANNALYSIS OF OIL GOVERNANCE ; UGANDA, BOTSWANA, NIGERIA AND NORWAY

5.1 Introduction

Oil producing and exporting States bear similar feautres of governance particularly as regards institutional capacities and macro economic performance, despite differences in types of political systems, and cultures. Oil exploration coincides with the process of modern State building, and therefore petro-states have peculiar characteristics that shape them. The fact that opportunities for exceptional gain coexist with risks for adverse loss arise from the possession of petroleum is unquestionable. Previous researchers have emphasized that insitituional management of oil is a major determinant of whether a nation will benefit or not from it oil and mineral resources[167]. Against this background this chapter compares Uganda's oil and gas institutional governance with two successful countries (Botswana and Norway) and one failed state (Nigeria) to draw lessons to avoid resource curse through mitigating politck risk associated with oil and gas.

5.2 Norway: The Story of Success

When it comes to oil—and investing— Norway is a classic example of a perfect story of success. The fact that Norway had a highly institutionalized apparatus and strongly entrenched routines prior to becoming an oil exporter provides an opportunity to demonstrate the advantages of a more highly institutionalized and less politicized administrative structure for handling bonanzas. While political and social upheavals in major oil producers—Venezuela, Nigeria, Russia, the Persian Gulf—dominate headlines, Norway since 1971 has quietly been pumping massive quantities of crude from the icy waters of the North Sea. Today, Norway is the world's third- largest oil exporter, behind only Saudi Arabia and Russia, and the seventh-largest oil producer.[168]

The Norwegians have proven that oil doesn't have to be an obstacle to stability and long-term growth. As I have already pointed out in the previous Chapter, Political Scientists, Social and Legal Scholars like to talk about the " 'curse' of oil." Over the past several decades, in many of

[167] Mehlum, Halvor, Karl Moene and Ragner Torvik (2006) "Institutions and the Resource Curse" The Economic Journal 116 (508): 1–20

168 Avoiding the Oil Curse: Retrieved from: https://slate.com/business/2004/10/norway-vs-the-oil-curse.html 3rd/April/2020

the oil producing countries, there has been a sorry economic state of affairs that ensues when tribal kingdoms, authoritarian regimes, kleptocracies, and left-wing dictatorships get their hands on national oil revenues. Easy oil cash entrenches corrupt establishments, discourages sound long-term economic planning, and is almost never channeled in ways that promote development. For Norway, this was not the path to follow. Uganda is on the verge of finding out whether it will succumb to the oil curse or defeat it. Norway offers an interesting model for the Ugandans to consider. Assuming commercial production ever begins, Uganda will decide how to use the nation's oil wealth to benefit its putative owners—the poverty stricken citizenry

Less than 20 years after they started producing oil, the Norwegians realized their geological good luck would only be temporary. In 1990, the nation's Parliament set up the Petroleum Fund of Norway to function as a fiscal shock absorber. Run under the auspices of the country's central bank, the fund converts petrodollars into stocks and bonds. But instead of paying dividends, it uses revenues and appreciation to ensure the equitable distribution of wealth across generations. Here's how it works.[169] Cash flow from the government's petroleum activities (the state owns 81percent of Stateoil) is funneled into the fund. Last year, the total came to 91.9 billion kroner (about $14 billion).[170] The fund then hires external managers to invest, generally using low-costindexing strategies. It's conservatively managed—more bonds than stocks, and investments divided equally between Europe and the rest of the world.

Of course, the fund's history reveals some of the pitfalls of having socialists manage oodles of cash. The fund didn't start to invest in stocks until 1998, thus missing out on a big chunk of the boom. In 2001, it started a sub-fund to make ecofriendly investments good social policy, dubious asset-management strategy.[171] But the huge balances mean Norway can happily continue to be heavily socialist without confronting the problems that its Euro-neighbors to the south face; unemployment, high inflation, and huge national debts. Yes, fiscal budget expenditures were a whopping 38.3 percent of gross domestic product in Norway last year. But

[169] Ibid Avoiding the Oil Curse
[170] Addressing Oil Related Corruption in Africa. Is the Push for Transparency Enough? By A. S. Adjibolosoo and Afeikhena Jerome 2005
[171] Ibid Avoiding the Oil Curse

the country still runs a surplus budget. Last year, per-capita GDP was a healthy $51,755 (PPP), and both unemployment and inflation are low.[172]

In Norway, the sudden increase in oil prices has meant larger inflows to the fund and enhanced long-term welfare for its citizens. That's not how it goes down in other big oil producing countries. In Russia, the oil boom has enriched oligarchs and increased foreign currency reserves. But the quality of life in Russia continues to deteriorate. Saudi Arabia has been pumping far more oil than Norway and for a far longer time. But its oil revenues tend to flow into the bank accounts of the royal family—not into a segregated account to benefit the public at large. As a result, the richest oil nation on earth still resembles a garden-variety poor country: a 25 percent unemployment rate, tremendous inequality of wealth and assets, a massive public debt, and an undiversified economy dependent on commodity exports.

The Norwegian economy remains heavily dependent on oil (though much less than the Saudi economy): Petroleum industries account for about 17 percent of Norwegian GDP and a hefty 45 percent of exports. But the rapid growth of the fund means Norway won't suffer massively if the oil market suddenly tanks or if production begins to dwindle. (In 30 years, Norway has pumped about 29 percent of its total reserves.) In a land of high taxes, the fund functions as a substitute for national savings. When the government runs deficits, it's allowed to transfer cash out of the funds. Unlike many other oil-dependent economies—like Russia and Saudi Arabia— Norway won't have to alter spending habits dramatically if revenues suddenly decline.

Norway's ability to avoid the resource-curse is attributed to the country's clear policies which were well implemented by the institutions that were put in place to manage its oil and gas activities. By the time the extraction of oil started in the early 1970s, Norway was not just a developed economy with per capita GDP of over US$10,000 (PPP); it was (and continues to be) 'a highly egalitarian society that prides itself on being that'. In other words, egalitarianism was socially embedded.[173] Second, Norway was a mature democracy. Norwegian politicians hardly posed any risk of wasting public resources on selfish political activities (such as bribing the electorate).

[172] Ibid (Avoiding the Oil Curse)
[173] Ibid (n, 10) (Kiiza, Bategeka, & Ssewanyana, 2011)

Third, Norway forged a tripartite social contract between capital, labour and state elites. This social contract, which is central to Scandinavian welfare capitalism, resulted in the institutionalization of equitable distribution of wealth as a societal norm. Norway's distributive justice was in turn made possible by national norms that protected citizens against the vagaries of free markets, or de-commodification. De-commodification refers to 'the degree to which individuals, or families, can uphold a socially acceptable standard of living independently of market participation'.[174] This system enabled Norway to avoid conflicts over distribution. As Larsen states:

> *When the public sentiment is one of satisfaction with and acceptance of the way society is organized, each individual feels less inclined to participate in conflicts such as strikes, sit-downs, or walk-slows. In Norway, laborers appeared content with the visible economic growth, knowing that profits would be ploughed back into growth. The perception was that resource revenues were used to the benefit of all, in investments, technological advance, and education. Laborers found support for this perception in evidence: real capital accumulated, economic growth was reported, and levels of education grew*.[175]

Fourth, Norway institutionalized the rule of law and developed a swift judicial system to detect, determine and deter theft of official resources. As a consequence, illegalities such as grabbing of collective wealth via corruption, theft or misreporting is relatively infrequent in Norway. Fifth, transparency in public affairs was emphasized, coupled with media scrutiny. This blocked illegal rent-seeking and left open only the possibility of accessing resource-revenues through legal channels (such as lobbying Parliament for tax relief, wage increases or subsidies). Seventh, Norway created a special Petroleum Fund and accumulated reserves abroad. These initiatives enabled Norway to avoid the negative expectations from oil abundance.

Norway also stands in a marked contrast to the other oil exporters in its ability to ward off the insidious rentier behavior that accompanied booms elsewhere. Its governments could thus retain the historically acquired flexibility that permitted them to limit lock-in and to engage in timely rather than postponed adjustments. Oil revenues were not dissipated through corruption and

[174] Terminology picked from Esping-Andersen (1990)
[175] Larsen (2006)

white collar projects. Although they were utilized to increase government borrowing rapidly, more than half of the external debt was used to develop the Petroleum sector 121 and once the dangers of over borrowing were apparent, even Statoil was no longer permitted to seek credit in its own name.[176] Unlike other exporters, Norway virtually halted borrowing as part of voluntary contraction efforts between 1978 and 1981. By 1983, when other oil exporters were sinking into a dangerous debt cycle, Norway's foreign debt had been largely paid.[177]

Perhaps most indicative of its different behavior, the Norwegian Government sought to protect the State's non-oil fiscal capacity. As corporate revenues from petroleum shot up, it resisted the strong temptation to permit oil revenues to replace its normal revenue base by lowering taxes. Unlike all other oil exporters, it managed to sustain its domestic tax base, although it did suffer some erosion. Taxes remained progressive, and they contributed to another unique outcome: petroleum revenues, which produced wider income disparities in most other exporters, contributed to a more equal distribution of income here.[178] Rather than replace non-oil taxation, Norway put much of its recent bonuses into a 'Petroleum Fund', set up to store wealth for the next century when its oil starts to run out. Take together, these factors cushioned the adjustment necessary in the face of oscillating oil prices and generally protected Norwegians from the tremendous swings that citizens in other exporting countries experienced.

The case of Norway yields two significant and somewhat contradictory lessons. On one hand, strong pre-existing institutions in both the state and the regime make a significant difference both for managing the entry into the petroleum industry and for handling subsequent booms. In Norway, where the State capacity was high, such institutions counteracted the temptation to accelerate development, defused potentially divisive political issues through the use of routine procedures, developed clear alternatives, corrected mistaken policy decisions, and controlled the spread of rent seeking behavior. On the other hand, the case of Norway is a powerful statement to the "overwhelmingness" of booms. Even a stable democracy that faced no immediate need to purchase the loyalty of its citizens and that was a blessed diversified economy and developed State was initially incapable of resisting the tremendous incentives to spend more than it should. Of course, Uganda isn't directly comparable to Norway. And I'm sure most Ugandans would

[176] Ibid n 19
[177] Ibid
[178] ibid

rather have a dividend cheque than see their oil wealth pile up in a vast investment pool. But Uganda has endured enough internal and external social, political and economic shocks in the past few decades. Maybe the nation needs a fiscal shock absorber more than a gift certificate.

5.3 The Case of Uganda

Uganda is substantially different from Norway. Where Norway was an advanced economy with per capita GDP of over $10,000 in 1970, Uganda currently has $ 1000 (PPP). Where Norway was a stable democracy at the time of oil discovery, Uganda is a fragile democracy that only reintroduced competitive party politics in 2006 after 20 years of 'no-party democracy.' Where Norway forged a social contract between the rival claimants to the political economy, Uganda has not. Norway had institutionalized a system of welfare capitalism that guaranteed peoples' right to equitable growth, and to the basic necessities of life. By contrast, Uganda has institutionalized neoliberal economics characterized by rapid growth (estimated at 7.3 percent in 1992-2009). However, the rapid growth is highly inequitable signifying the exclusion of a substantialproportion of the people from the fruits of growth (Uganda, 2010).

Most importantly, Norway institutionalized the rule of law and minimized official corruption. By contrast, Uganda suffers deep-seated official corruption (with Transparence International naming the judiciary and Police as some of the most corrupt institutions in the country). While President Museveni has recently committed himself to fighting official corruption, Uganda's corruption scandals such as the theft of the Global Fund (for Aids, Malaria and Tuberculosis), the GAVI Funds, the alleged looting of resources from DRC – all suggest that a lot needs to be done to prevent the grabbing of oil revenues via corrupt practices.

Take the case of signature bonuses. DRC caused the oil companies to pay $3.5 million in bonuses upon signing a PSA for its Block 1 in 2008. Uganda got laughable bonuses of $200,000 and $300,000 for Block 2 and Block 3 respectively. According to Lay et al (2010: 6-7), Uganda's ministry for finance denies knowledge of where the signature bonuses went. This has fueled suspicion that the tiny signature bonuses were stolen. It raises questions over government's intention to use the larger oil revenues for national, as opposed to predatory, purposes.

However, not everything is negative. State officials reported that government will use the exhaustible oil resource to build inexhaustible economic capabilities. Three priorities were specified. First, the 'early production agreement' reached between Uganda and the oil companies (particularly Tullow) prioritizes the construction of a mini-refinery to generate 50-100 mega watts of thermal electricity using Heavy Oil Fuels (HOF). The electricity will be added on to the national grid. All Ugandans will benefit. However, electricity will remain costly and below the national requirements (Interviews, Tullow, 6 June 2008). The second priority is the financing of the *National Development Plan*, 2010/11 – 2014/15 (NPA, 2010). The third is the refining of 5,000 barrels of oil per day to produce diesel and paraffin. The aim is to cut Uganda's import billof paraffin and diesel by 50 percent. The ultimate goal is to improve the political economy

5.3.1 Oil and Political Economy in Uganda

Over the last 24 years of NRM rule, Uganda has made important economic strides (Kuteesa, et al, 2010). Between 1992 and 2009, GDP grew at a high rate of about 7.3 per cent. According to the Governor of the central Bank of Uganda, Tumusiime-Mutebile, 'Real output is now three anda half times greater than it was at the start of the 1990s. Private investment, in real terms, rose six fold in this period, while exports of goods and services, in dollar terms are now 16 times larger' (Monitor, March 30, 2010).[179] The proportion of income-poor people has declined from 56 percentin 1992/93 to 38 percent in 2002/03 and further down to 24.5 percent in 2009/10 (Uganda, 2010).

The devil is in the detail. While there is general improvement (with 7.5 million Ugandans below poverty line in 2009/2010 compared to 8.4 million in 2005/06 (see Table 2), the evidence shows that Uganda is still a poor agrarian economy. Over 80 percent of Ugandans live in the rural areas primarily as small-holder agriculturalists using primitive technology – the hand-hoe. Several stakeholders have been near-spectators in Uganda's 'impressive' economic growth. For example, about 46 percent of northern Ugandans are still below poverty, largely because of the 20-year civil war, which only subsided three years ago.

[179] The poverty-stricken people they represent do not 'feel' the rosy economic growth reported by technocrats. The MPs tasked the executive to prove that the figures are not 'simply cooked up' (Monitor, March 30, 2010).

In Bunyoro, income poverty in 1992/93 was comparable to that of northern Uganda. Poverty in Bunyoro decreased by nearly 35 percentage points between 1992/93 and 2002/03; and about 8 percentage points between 2002/03 and 2005/06. However, the people of Bunyoro perceive themselves as one of the poorest in Uganda. They have a poor road network, no railway line at all, poor social services, no quality polytechnic or government-funded University, no highvalueadded manufacturing industries and hardly any access to electricity. Most Banyoro are poorsmall-holder agriculturalists. Bunyoro's current scenario contrasts with the precolonial situation where the Banyoro were proudcattle-keepers or skilled artisans (annually producing and exporting over 1,000 iron implements in the interlacastrine region). The discovery of oil in Bunyoro has reignited hopes of restoring the glory of Bunyoro-Kitara.

5.3.2 Democracy Concerns

One of the greatest concerns is whether or not oil revenues will entrench authoritarian rule. When the NRM party captured power in 1986, it imposed restrictions on rival political parties. The claim was that multiparty competition was a virtue of Western industrial societies where parties represent distinct social classes. By the early 2000s, however, momentum for political pluralism was building up (Kiiza et al., 2008). In the run-up to the 2006 elections, the NRM re- introduced multiparty politics, thanks to sustained pressure from opposition parties, donors and some reformists among the ruling elite. The NRM apparently adopted multi-party politics only ina manner that would enable it to retain power.

The question is whether or not oil discovery will stifle Uganda's embryonic democracy. Skeptics argued that authoritarian rule is likely to be entrenched. The ruling elites are arguably unlikely to handle over power, even if they lose elections. Others hypothesize that competition for state power will increase as opposition groups 'seek their turn to eat'. Yet others claim that rival claimants to state power might make generous electoral promises (such as direct oil-cash transfers to households). While this seems to make sense in corruption-ridden countries (such as Uganda), the cash transfers are a disincentive to productive work. Cash transfers also riskentrenching a dependency mentality, which will be unsustainable when oil dries up (in 50 years or so). Clearly, then, governance is central to the different stakeholders' anxieties and expectations.

5.3.3 Concerns Over Unpublicised Production Sharing Agreements

In December 2009, PLATFORM (a UK-based environment and governance watchdog) published the draft copies of Heritage's 2004 Block 3A PSA, Dominion's 2007 Block 4B PSA, and Tullow's draft PSA for Block 2 (see Table 1). PLATFORM (2009) subsequently corroborated their evidence with off-the-record government interviewees and a loose minute signed on 2 September 2004 by Kabagambe Kaliisa of the ministry for energy. The conclusion was that the draft PSAs are 'indeed very close, if not identical, to the signed PSAs' (Lay et al, 2010: 4). Three categories of anxiety have emerged over the PSAs. The Uganda government willreceive 'between 47.4% and 79.5% of revenues, depending on the price of oil, size of fields, development costs and other factors.' This is 'below the 80+% regularly trumpeted by the government and the oil companies' (PLATFORM, 2009: 1). Second, the contracts promote corporate greed, not national development. 'In the most likely scenario, Tullow Oil could make a30-35% return on its investment,' which is rated as 'excessive profit-taking at the expense of the host government' (PLATFORM, 2009: 1). Third, Uganda is receiving a worse deal than, say, theKurdistan Regional Government in northern Iraq, which is not even a recognized state.

Most damagingly, the PSAs have a controversial 'stabilization clause.' Article 19 requires the Ugandan government to compensate oil companies for any future change in the law that affects company profits. In the wake of the damaging oil spills in the Gulf of Mexico, British oil giant BP (under pressure from President Obama) agreed to pay the $20 billion into a claims fund. The fund will compensate shrimpers, restaurateurs, and other local people affected by the oil-spill. Under Uganda's stabilization clause, government can neither demand for, nor enforce, environmental safeguards or clean-ups (precisely because these will reduce the companies'profits). Worst of all, the stabilization clause legislates against renegotiation of the oil contracts. This is an encroachment on Uganda's sovereignty. It is antithetical to the patriotism Commander Museveni exuded soon after capturing power in 1986.

For the skeptics, Article 19 seems to set the stage for an oil-curse in Uganda. The stabilization clause questions the patriotism and/or competence of the experts who negotiated the PSAs on behalf of Uganda. Some interviewees alleged that certain state elites have either acquired, or been promised shares, in the oil companies. If this happened, a good contract for the oil companies would be profitable for selected state elites (politicians). Skeptics also argue that the

high levels of official corruption (the Global Fund, the CHOGM loss of Shs 500 billion in shoddy deals, and several direct and indirect donations to the cronies of the ruling party) give little hope that the oil revenue will not be stolen.

According to Lay (2010), the ingredients of the resource-curse 'are all in place: contract secrecy, government corruption, commercial disinformation campaigns, with environmental protection ignored, and a simmering border dispute with the Democratic Republic of Congo frozen rather than resolved.' This echoes Karl's (1997: 213) view that 'the pre-existing political, social and economic institutions available to manage oil wealth' matter. In other words, the quality of governance matters.

Lay et al (2010: 33-34) seem to summarize the views of skeptics: 'The honest reality is that oil resource in Uganda is most likely to exacerbate poverty, distort the Ugandan economy … increase human rights violations, entrench the power of military forces, escalate tensions across the border with Congo, create new health problems for local communities, increase both international corruption and revenue mismanagement, reduce Uganda's wildlife stocks, andpollute the land, water and air.' In sum, the risk that bad political leadership could lead to oil- curse is real.

5.4 Nigeria: What went wrong?

"I have explored for oil in Venezuela and …Kuwait", said a British engineer, "but I have never seen an oil rich town as impoverished as Oloibiri". (Oloibiri is a town in Port Harcourt, Nigeria where the country's first crude oil was pumped out).

Nigeria has the largest population in Sub-Saharan Africa with 110 million people. It has a complex social and political history that has, for the most part, impacted adversely on the population and has worsened income distribution. The exploitation of the nation's oil resources, and the management of oil windfalls, have dominated the progress and decline of Nigeria's economy over the past two decades, and have significantly influenced evolution and perceptionof poverty. The economy is currently characterized by a large rural, mostly agricultural based, traditional sector, which comprises about two-thirds of the poor, and by a smaller urban capital intensive sector, which has benefited most from the exploitation of the country's resources and from the provision of services that successive governments have provided. The Uganda economy

is similar to Nigeria with majority of people rural small holder farmers. There is expectation that oil and gas resource will better livelihoods.

The first barrels of Nigerian crude oil destined for the World market departed from Port Harcourt on 17 February 1958.[180] It was shipped to the Shellhaven refinery at the mouth of river Thames in the U.K. Within a few weeks of its arrival, Nigerian gasoline was fueling cars in and around London, the new symbols of post-war British prosperity. The Nigerian Oil industry had been born. When the first helicopters landed in Oloibiri in 1956, near St. Michael's Church, to the astonishment of local residents, few could have predicted what was to follow. A camp was quickly built for workers; prefabricated houses, electricity, water and a new road followed. Shell-BP (as it was) sunk seventeen then more wells in Oloibiri and the field came to yield, during its lifetime, over twenty million barrels of crude oil before oil operations came to a close twenty years after its discovery. Misery, scorched earth and crapped wellheads are all that remain; thereis no running water, no electricity, no roads, and no functioning primary school; the creeks have been so heavily dredged, canalized and polluted that traditional rural livelihoods have been eviscerated. The Albert Graben where commercial oil is currently being explotated is similar to Oloibiri. There have been promises to build schools, roads, hospitals and improve access to electricity.[181] However if oil isnt managed responsibly by government the Albertine rift wont be any different from Nigeria's Oloibiri.

Nigeria is the largest crude oil producer in Africa and the tenth largest producer in the world. Nigeria's economy depends heavily on the oil sector, as it accounts for 95% of export revenues,76 % of government revenues, and about a third of GDP. Nigeria was one of the world's richest 50 countries in the early 1970s, but became one of the 25 poorest countries by the 21st century,129 mainly as a result of the poor management of its oil development. Nigeria is thus considered a classic example of the resource curse. One of the major reasons for this was institutional weaknesses. Although powers were separated among the executive, legislative and judicial branches of government, these institutions proved to be too weak to conduct effective checks on the executive and the decision made as to how to distribute

[180] Handbook on the Geographies of Energy edited by Barry D. Solomon, Kirby E. Calvert
[181] Ibid (n,5)

resource rents. In short, they were unable to prevent the government's poor policy choices, such as the dramatic increase in the size of public service, or its corrupt practices.

Perhaps the most important case study and evidence of Nigeria's poor oil governance is found in its Niger Delta region. Given Nigeria's position as Africa's leading oil producer and exporter, with a partly explored huge gas potential, the 'oil war' in the Niger Delta, Nigeria's main source of oil and gas is of critical importance to Nigeria's economic growth and political stability. Since2006, Petro-violence has for strategic, economic and political reasons brought the Niger Delta to the fore front of international energy and security concerns. It is therefore to unpack the complex drivers of the conflict. These show how the crisis is linked to Nigeria's poor oil and gaspolicies, internal contradictions and politics, as well as to the nature of the integration of the Niger Delta into the international political economy of oil in ways that have simultaneously enriched international oil companies and their partners national and local elites and contributedto the disempowerment and impoverishment of the local people, through direct dispossession, repression and the pollution of the air, lands and waters of the region. Similalry Ugandan policies and law reflect too much centralisation of authority in the cabinet regarding oil decisions. There is cross border tension with DRC over oil across Ugandan border that has resulted is skirmishes with UPDF (national guard).[182] The oil region is an area know for its biodiversity and risks to be impacted adversely if enironmental laws are not effectively enforced.

The Niger Delta is a vast coastal plain in the Southern coastal part of Nigeria, where one of West Africa's rivers empties into the Atlantic Ocean between the bights of Benin and Biafra, in the Gulf of Guinea. Estimated to cover about 75,000 sq kilometers, it is the largest wetland in Africaand one of the largest in the world, supporting a wide range of biodiversity. The swampy terrainand fragile ecology pose several challenges, including land scarcity and supporting a high level population density.[183] They also define the livelihoods of local people – as farmers, traders, fishermen, food processors and local manufacturers of items linked to the principle subsistence economies. The Niger Delta crisis has in the last decade attracted significant research attention and progressively expanding policy engagement. A lot of analysis has been carried out of the remote and immediate causes of the crisis and its recent escalation and equally many attempts at

[182] Ibid (n,4)

all levels - government, international development agencies and other stakeholders to implement interventions designed to end the crisis and put the region on the path of international development. Yet the crisis remains intractable. It is my contention as I will point out later that this is largely because of the larger national crisis of governance related to the acceleration in institutional implementation of sound oil and gas policies.

The Nigerian Government's failure to implement policies that resolve the resource control and ownership question and its increasingly violent character has been the most responsible factor for the oil crisis in the Niger Delta. The Niger Delta has endured a long history of economic exploitation. Since the early 1970s, it has produced several hundred billion dollars worth of oil and gas with its net oil revenues alone to Nigeria exceeding 45 billion dollars in 2005, and yet of its peoples and communities remain poor and unemployed while a few oil companies and individuals (predominantly from outside the region) have amassed and continue to amass stupendous wealth. Over 40% of the region's working population has no connection with the oil and gas industry, with low wage/low productivity informal enterprises as its primary source of livelihood. This situation has fostered a widespread sense of extreme relative deprivation. It is a significant factor in the growing resentment and increasingly militant demand for greater access and control over the oil resources of the region by it peoples and leaders. The increasing lack of response to this demand, and the widespread perception that it may never be peacefully met by government, seem to be increasingly fueling the violent insurgency within the Niger Delta. In Uganda there is similar concern that the quasi- democratic government lead by President Museveni could use the oil resource to entrench its self in power.[184] This evidenced by suppresion of CSOs, militirization of oil fields and secrecy with oil agreements that is likely to breed corruption by polticians in charge.

Lack of sound environmental protection policies to regulate oil activities has also been a reason for the Niger Delta's woes. There's no doubt that the Niger Delta is one of the most environmentally degraded regions in the world. Prior to the discovery of petroleum in commercial quantities in 1956 and the commencement of its exportation in 1958, the Niger Deltaregion had the most extensive lowland tropical and fresh forests, aquatic ecosystems and bio- diversity in West Africa. It supported a large percentage of Nigeria's fisheries industry, huge

[184] Ibid (n,19)

and diverse medicinal and forest resources, wood for energy and shelter as well as a stable fertile soil for farming and hospitable habitat for increasingly endangered wildlife such as the Delta elephant and the river hippopotamus. These resource endowments served to provide relatively sustainable means of livelihood for millions of people across the region. A recent study captures as follows the extent and impact of the degradation of the Niger Delta environment associated with crude oil exploration:

> *One million tons of oil has spilled into the Niger Delta over the past 50 years, making the region one of the five most polluted locations on earth. Oil slicks over the region; blowouts and leak effects affect creeks, streams and related traditional sources of livelihood, destroying mangrove forests, eroding soil and burning of associated gas…*[185]

In Uganda previous studies have found that inspite of good environmental laws and policies enforcement and compliance is low due to corruption, limited capacity to enforce and small punitive fines levied to offending oil companies. If the environmental legal regime isnt enforced to mitigate enviromental degradation in the Albertine Graben the threat of an environmental oil curse will become reality in Uganda.

Furthermore, Nigeria lacked political participation and democratic accountability in the management of oil in the Niger Delta. It is the case that during the long period of military rule in Nigeria especially between 1983 and 1999 and since the return to civil rule in May 1999, the people of the Niger Delta have experienced no real sense of political participation or responsiveness of the national, state, and local council leaders to their needs and concerns. The foregoing has been coupled with poor infrastructural development and despite the stupendous amount of the oil resource extracted from this region, it remains grossly underdeveloped andthe state of the infrastructural development can only be described as abysmally poor. Above all the relatively high levels of poverty in the Niger Delta amidst oil wealth due to the government Policy of neglect of local concerns have led to a large and growing proportion of theyouth population seeing violence as a solution to their problems. As such a potent cocktail of poverty, crime and corruption fueled a militant populace and a great threat to Nigeria's reliabilityas a major oil producer.

185 Oil exploration and spillage in the Niger Delta of Nigeria by A. A Kadafa 2012

The militant populace that grew in the midst of this quagmire was met with brutal repression perpetrated by both the Nigerian government supported and funded by oil companies. This led to massive human rights abuses committed against the people of the Niger Delta for example those against the *Ogoni* people of the Niger Delta that culminated into the famous *Ogoni Case.*[186]*Ogoni* is a name of a region in the Niger Delta as well as the name of the ethnic group that lives in that region. For the *Ogoni*, oil and oil companies have brought poverty, environmental devastation and widespread human rights abuses. The *Ogoni case* involved Nigerians who sued Shell in the US Supreme Court under the Alien Tort Statute of complicity in human rights violations committed against them in the *Ogoni* region of the Niger Delta between 1992 and 1995. These violations included torture, extrajudicial executions and crimes against humanity. Royal Dutch Shell, the respondents, began oil production in the Niger Delta in 1958 and had a long history of working with the Nigerian government to quell popular resistance to its presence in the region. At the request of Shell and with Shell's assistance and financing, Nigerian soldiersused deadly force and massive brutal raids against the *Ogoni* people throughout the early 1990sto repress the growing movement against the oil company. After 13 years of litigation, the case against Shell ended in a historic $ 15.5 million settlement for the plaintiffs. Similalrly Uganda has militarised and securitised the Albert oil field such as kingficer among others guarded by special forces and elite security companies Local are being deprived of their land rights and suppressed by the military. Bunyoro Kingdom officials expressed concern that the National Oil and Gas Policy does not define Bunyoro as a *direct* beneficiary of the oil wealth.[187] This state of affairs in oil governance appears to be a precursor for oil curse likely to happen in the future unless reforms are made sooner than later.

Therefore, with virtually no administratively capable State or authoritative regime arrangement in place to resist the problems associated with the oil boom, perpetual overspending and later over borrowing were more than probable; they were almost inevitable. Costly swings between military and civilian rule added to the inchoate nature of the State and the expense of governance. In a vicious cycle, as regime instability encouraged an increased reliance on petro- dollars to purchase royalties and fuel patronage, petro-dollars fostered an acute form of political

[187]Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). Righting Resource-Curse Wrongs in Uganda: The Political Economy of Oil Discovery and the Management of Popular Expectations. *The Journal of Humanities and Social Sciences, Makerere, 10*(3), 183-203. Retrieved August 28, 2020

rent seeking. Because instability was so high, regime maintenance (of whatever sort) had a surprisingly short horizon, which exacerbated the predatory character of a petro-State. In Nigeria, the wide spread corruption reached 'epidemic' proportions. It became the most viable expression of how the State was targeted and rendered dysfunctional by "pirate capitalists" who were especially venal because they believed they had little time to benefit from their links to the State. This was the foundation for the gross mismanagement of the Country's oil and gas sector–a launch pad to the "oil curse". This situation is similar to Uganda currently operating a quasi- democracy form of government charactersed by systemic corruption. Uganda suffers deep-seatedofficial corruption (with Transparence International naming the judiciary and Police as some of the most corrupt institutions in the country). While President Museveni has recently committed himself to fighting official corruption, Uganda's corruption scandals such as the theft of the Global Fund (for Aids, Malaria and Tuberculosis), the GAVI Funds, the alleged looting of resources from DRC – all suggest that a lot needs to be done to prevent the grabbing of oil revenues via corrupt practices.[188]

5.5 A Case of Botswana; The Success Story of Africa

Botswana has been referred to as a successful democratic developmental state in Africa. Once a poor nation, Botswana has, over the past four decades, become one of Africa's success stories. In order to account for how Botswana turned poverty into wealth and resources into blessings, we must ask three key questions. First, what are the key factors that account for Botswana'srelatively good performance? Second, with most of the other resource rich African Countries, like DRC, Angola, Nigeria, etcetera,experiencing poverty, failure of institutions and increasing corruption, what accounts for Botswana' positive trajectory? What are the characteristics of Botswana's institutions and leadership that have permitted the country to remain relativelyimmune to many of the predicaments affecting resource rich African countries? Lastly, what lessons can be learned from Botswanafor the benefit of Uganda?

According to Sebudubudu & Molutsi (2011), the nature, character and be- havior of the elite in Botswana have a lot to tell about the country's success. The unique politics and governance style of the ruling elite in Botswana has shaped coalition building and networking among the leaders of the country and led them to frame out a collective vision for national development. Several

[188] ibid

other scholars like Hillbom, 2008 and Mehlum et al, 2006 have also argued that the development of the ruling elite in Botswana has played a key role in shaping the country's development trajectory and contributed to the successful develop- ment of the state. Diamonds are undoubtedly the major reason (economically) behind Botswana's transition from one of the poorest countries in the world at independence to its current middle income status. But Botswana's experience is undoubtedly an anomaly on the continent especially when compared tocoun- tries with rich natural resources like Nigeria, Sierra Leone and the DRC, which have been plagued with weak institutions, corruption, neo-patrimonialism37 and conflicts to mention but a few. So what is unique about the elite in Bot- swana that seems to have evaded other African countries?

Paul Collier has tried to demonstrate the linkage between resource rich na- tions and conflicts (Collier and Hoeffler, 2004) and other authors, like Bates (2008) and Ron (2005) have provided more viable arguments focusing on the role of state institutions and the distributional choices made by the rulers/au- thorities or the elite which arguably triggers political instability and leads to violence and state failure. Among the many key reasons given for state failure are predatory behaviors of incumbent elites who embezzle public wealth, engage in nepotism, favoritism and authoritarianism. According to Bates (2008), incumbent political elite tend to turn into predators of their own people because of their perception of the risk of being overthrown. He argues and quite convincingly, that once a leader feels threatened of losing office, this creates a decisive incentive to prey while still in office. This could arguably explain the recent increase in state sponsored corruption witnessed in Uganda today[189]38.

Building on Bates' arguments to understand Botswana's success, the next sub-section takes a closer look at Botswana's development trajectory; the behav- ior of the state and its institutions as well as its actors and tries to analyze the socio-political and economic environment in which

[189] Corruption in Uganda has become very perverse. Recent statistics from Transparency Inter- national indicate Uganda as the 45th most corrupt country in the world. In August 2012, the East African Bribery Index conducted by Transparency International, Kenya ranked Uganda with the highest level of bribery in East Africa at 40.7 per cent. According to the report, to access most of the essential services in Uganda, you are more likely to fork out a bribe than in any other East African country. The report comes at a time when the country is awash with revelations of abuse of office and corruption in various ministries, the police investigation department currently probing cases of alleged cases in about five ministries. Most prominent is investigations into alleged corruption in the Office of the Prime Minister, where it is believed that more than Shs50 billion meant for peace recovery programmes in northern Uganda was embezzled during the period 2010–2012

the state was built. This, according to Bates, is what significantly affects the incentives and constraints faced by many leaders to develop their countries.

5.5.1 Botswana's Political Economy

Unlike the majority of African states, Botswana has never experienced any in- surgencies or civil conflicts in its post-colonial history. This African example has rendered Paul Collier's (2006) argument that *'exploiting massive amounts of mineral wealth, mechanically leads to chaos'* very debatable. The poor economic achievements of resource-rich countries like Sierra-Leone or DRC are increas- ingly seen as consequences of weak institutional design, lack of accountability and corruption rather than abundance of mineral resources. The country boasts a good human rights record and has been cited by many as Africa's model of good governance.

Botswana has also had unparalleled stability with its ruling party; the Bot- swana Democratic Party (BDP), which has enjoyed uninterrupted state power since independence. It continues to enjoy overwhelming support and although other political parties exist, they do not pose any serious challenge to the BDP. More importantly, not only has Botswana avoided political turmoil, it has also achieved outstanding economic and social progress39; again contradicting capita GDP has however grown from 60 USD$ in 1966 to 3600 USD $ in 2002 by which time the World Bank had classified Botswana as a middle-income country (Battistelli S & Yvan Guichaoua, 2012).

Colliers argument that resource rich countries often experience low economic growth patterns.When Botswana became independent it was one of poorest countries on the continent; the state relied heavily on foreign aid. Since the 1970s however, with the discovery of diamonds, Botswana began an aggressive and highly efficient government development policy of centrally managing the revenues from its mineral resources in a relatively benevolent and transparent manner. Botswana built strong institutions and policy frameworks that have turned what would have otherwise become a "resource curse" into a blessing.

To a larger extent, decision making is based on broader consultations, in- clusive participation and consensus rather than coercion, intimidation, bribery and decrees as seems to be the case in much of conflict prone Africa. Several scholars have therefore argued that it is the leadership's conscious effort to shape Botswana into what it is today – "a functioning democratic

developmental state" that largely explains the success of this country. Much as Botswana still faces many challenges, it has manifested itself as a Democratic Developmental state as described in the literature and in the next paragraphs I try to briefly discuss what characterizes a developmental state.

According to Chalmers Johnson (1982) the four segments of a developmental state include; the presence of a small but professional and efficient state bureau- cracy; a political milieu where this bureaucracy has enough space to operate and take policy initiatives independent of intrusive interventions by vested interests; the crafting of methods of state intervention in the economy without sabotaging the market and a pilot organization such as Chalmers found in MITI40. Left- wich, on the other hand, arrived at some defining characteristics of a typical de- velopmental state, which according to him, comprise of six major components: relative autonomy; a powerful, competent and insulated bureaucracy; a weak and subordinated civil society; the effective management of non-state economic interests; and legitimacy and performance (Leftwich, 1995: 405).

Leftwitch (1996) further describes how in a developmental state, the elite/ leader's deliberately decide to work together to achieve a particular developmen- tal vision for their society. He argues that such elite often have the ability to manage conflicts, devise strategies for cooperation, negotiation and compromise which are designed to avoid alienation and disgruntlement among large sections of the society. This, as we shall see in the next sections, is what largely explains Botswana's success.

5.5.2 Institutional Framework for Development in Botswana

Several scholars including Mehlum[190], More and Torvik and Easterly and Levine argue that the quality of a country's institutions determines its level of income per capita. They present that the main reason for diverging growth experiences of resource rich countries lies largely in the differences in the quality of institutions. Easterly and Levine[191] utilize an institutions index that takes into account such factors like voice and accountability, political stability and absence of violence, government effectiveness, regulatory burden, rule of law and freedom from graft.

[190] ibid
[191] ibid

Their main assertion is that institutional quality is a key determinant for a country's long term economic growth.

However, the most important flow of research focusing on the nexus be- tween Institutions and natural resources has revolved around what could be termed *"the rentier state argument* '. Ross contends that when governments gain most of their revenues from external sources, such as resource rents or foreign assistance, they are freed from the need to levy domestic taxes and become less accountable to the societies they govern. Not only is accountability towards citizens discouraged, but embezzlement of collective wealth by the leaders is also very likely to happen. As earlier discussed, Botswana's institutions evolved from both traditional (pre-colonial)Tswana culture and British influence. The traditional system provided for consultations between the chief and his people; the chief in Tswana culture was responsible for looking after the provision of goods and services including law and order [192](Leith 2005). This meant that at Independence, when the traditional institutions were integrated into the political system, the political elite were well aware of the constraints on their rule and knew that they were and had to be accountable to their people. In addition, a tradition of public participation and consultationwas embedded in the policy process as this had been the way of Tswana culture. According to Phillippe Martin (2008), these structural factors were to have a great influence in post- independence decision-making regarding the country's development and provided an environment conducive for growth-promoting policies. As one scholar has put it; relatively well institutionalized private property values, rule based governance and independent judiciary explain the good management that has taken place in Botswana and has contributed to encouraging the sustained inflow of foreign direct investment (Maipose, 2003). The next section looks at how Botswana has effectively managed its mineral wealth

5.5.3 Political Leadership & Centralized Planning

Scholars like Sebudube and Molutsi [193](2011) have argued that Botswana has been able to make advances in part, due to the economic prudence of the leaders at independence which prompted centralized planning. Apparently, one of the rea- sons Botswana developed a culture of economic prudence at independence was due to the tough economic situations it found itself in at the time.

[192] ibid
[193] ibid

Botswana gained independence in a period when the international community was not wholly averse to state involvement in the economy and as such, the leadership chose to pursue a strong central role in formulating, managing and administering aspects of economic change from Gaborone. The fact that the country was very poor, and relied heavily on South African aid, made it very vulnerable. The BDP pushed for adoption of careful and pragmatic policies with a preference to centralized planning (Battistelli & Guichaoua; 2011)[194]. This approach has never been relinquished by the state. The Ministry of Finance & Development Planning in Botswana today exerts extensive powers with respect to budgetary and financial affairs of the government and oversees all major decisions on economic growth and national plans. The rationale adopted by government at independence was such that since the nation lacked natural resources (diamonds were not yet a part of the economy), careful centralized planning would be required to put the limited resources to good use (Siphambe, 2007).

Botswana has used what has become known as rolling plans with regards to economic management, which are reviewed and updated on a six year basis. The level of public/private consultation as well as the level of strict rules governing the process has resulted in a very stable and effective system of national fiscal management. (Beaulier and Subrick, 2007)

5.5.5 Land Governance in Botswana & Issues of Public Private Sector Coalition

Another key action taken by the leaders of Botswana at independence that did go a long way in shaping the development of the country was the transfer of land ownership and control from the tribes to the central government. Legislation to that effect was introduced and the new Botswana state was very clear that land was a key resource which needed to be released from the control of chiefs and private individuals in order to be given to citizens to develop and improve the country´s agriculture and, where necessary, for use of the government for development projects.

On the issue of public and private sector coalition, the political elite in Bot- swana has also showed its commitment to attracting Foreign Direct Investment (FDI) not only by entering into partnerships with companies like De Beers but also ensuring that they create a conducive environment for the private sector. The government has gone out of its way to ensure a stable

[194] Battistelli S & Yvan Guichaoua, (2012) "Diamonds for Development? Querying Botswana's Success Story," in Thorp R, Stefania Battistelli, Yvan Guicaoua, Jose Carlos Orihuela & Maritza Paredes (2012) The Development Challenges of Mining and Oil; Lessons from Africa and Latin America, Palgrave Macmillan, NewYork

macro-economic and political environment that has attracted many FDIs. Company tax in Botswana for instance is one of lowest in the world at 12% (Sebudubudu & Molutsi 2011). The government also introduced a number of business initiatives in the 1980s and 1990s to finance both local and foreign business development in the coun- try. The Financial Assistance Policy (FAP) and its successor, the Citizen Entre- preneur Development Agency – (CEDA), have been established to boost private investment in different sectors of the economy which has seen the economy flourish.

Another factor worth noting is that of consultative decision making. The Government has institutionalized policy ownership between the state and private sector by ensuring that there is constant consultation between government and the private sector. The government discusses development issues, policies and strategies with the private sector.

5.5.6 The Role of Foreign Technical Assistance and Civil Society

One other aspect of Botswana's success worth noting is the fact that localization was not rushed and introduced at the expense of merit. While other African countries, including Uganda, rushed to Africanize their civil service at inde- pendence, Botswana decided to retain most of its expatriates who played a key role in the economy by providing much needed technical expertise (Parsons, Henderson & Tlou 1995). Senior Positions in the public service and parastatal organizations were occupied by persons of different ethnic and racial groupings over the years and qualified individuals from other countries were also recruited until only recently. To some degree, this gradual replacement process ensured the public service remained sufficiently competent until the technical skills of the locals were built up (Battistelli & Guichaoua; 2011).

On the role of civil society, analysts like Molutsi and Holm, (1990) have argued that because the state has curtailed activities of civil society in the past, civil society in Botswana is seemingly weak casting doubtson Botswana's democracy. However there are also observers arguing that in fact civil society in Botswana acts differently and prefers to engage in a non-confrontational approach with government through negotiation. Political and Social discontent tends to bemitigated by finding compromises which satisfy different constitutions without conceding the space that could challenge the ultimate authority of the state. The absence of experiences with popular struggles has lent society a less volatile and exploitative experience as seen elsewhere. This is a unique ap- proach that Uganda could perhaps learn from.

Similarly, the same political culture of non-violent negotiation is detectable on the government's side. Very few cases of state sponsored violence or abuse have taken place. The system in Botswana has arguably been responsive and has tried to accommodate the concerns of those affected by measures seen necessary to maintain centralized control. This offers lessons for many countries in Africa.

In conclusion to this section therefore, Botswana´s success can largely be traced to the evolution of a genuinely conscious elite leadership which has worked though consultation, consensus building and inclusive strategies to drive successful development. It has been the leader's conscious effort to create a particular type of politics and state that has made Botswana into what it is today.

The judicious balance between the various ethnic groups has also been a key factor and has ensured that no single group has dominated the political space. Both at independence up totoday, all tribes participate in national affairs. The mineral coalition that was crafted and the relative good use of the mineral proceeds for the benefit of all, has enabled the country to remain peaceful and ensure the continued steady economic growth. While Botswana is unique, there are some lessons that can be learned and applied to the case of Uganda.

5.6 Lessons for Uganda

In general, the Botswana model suggests that a form of *'state developmental management'* of a natural resource is indeed feasible, but this has to be of the right kind.[195]. Leftwitch's (2000) argument is of particular relevance here; i.e. that it is not the '*amount of state involvement'* in the market that matters, but rather the 'kind' of involvement. In this section the researcher compared Bostwana's model with Uganda's situation particulalrly how government is managing ethnic, racial and regional interests in Uganda in light of the emerging oil industry. The section focusses on lessons learned for Uganda in light of Bostswana's model and the policy implications following from the empirical insights discussed (supra) to mitigate political risk in oil and gas exploratation.

[195] Mbabazi, P. K. (2013). The Oil Industry in Uganda; A Blessing in Disguise or an all Too Familiar Curse? The 2012 Claude Ake Memorial Lecture. *Current African Issues, 1*(54). Retrieved August 27, 2020

One major lesson to learned from the Botswana example is the need to avoid personalisation of power and build strong state institutions to govern society. In Uganda, more still needs to be done to avert this. State power appears to be increasingly becoming personalized and because of endemic corruption, most of the institutions previously created to ensure effective management of the economy are arguably not functioning as would be expected. The government would do well to look to Botswana's example of benevolent leadership and creation of strong institutions and invest more efforts in promoting clean leadership and strengthening the governance institutions. If Uganda can put more efforts in combating corruption and strengthening its public institutions, it would be able to control the economic influences of oil. The leaders especially need to change the rules of the game and begin to act differently to avoid the grabbing of oil revenues via corrupt practices. Countries that have successfully transferred from corrupt to less corrupt systems seem to share the characteristic that actors at the very top of the system i.e the public officials at the high level, have served as role models[196]. The modus operandi for leadersin Uganda needs to change fundamentally.

Another lesson learnt from Botswana's example is the need to build social cohesion and create a common vision to transform society, a strategy that President Khama used and largely explains Botswana's success. It is evident President Museveni is recruiting mainly people from Western Uganda in the top positions of government, to try and achieve this. Perhaps his idea has all along been to create a caliber of leaders that can easily trust and speak to each other and develop a common political & social value system for the country. Many observers however note that this is noth- ing other than systemic nepotism. In a highly ethnically divided country like Uganda, with no historical connections of co-existence, such a project would not be feasible especially when seen in light of the key principles of a Democratic Developmental State. Throughout Uganda's history, the nation has experienced civil strife, internal conflict and numerous coup attempts. Grievances across the country remain high especially between the government and ethnic groups who feel they have been largely neglected. Oil has increased national expectationslargely due to the rhetoric used by President Museveni. However, as national expectations rise, group grievances still exist. Due to its highly fractionalized state, Uganda's leaders from the time

[196] In Hong Kong and Singapore for example, corruption was successfully fought from "above" implying that the members of the ruling elite themselves set an example by changing their behavior beyond rhetorical level (Root, 1996)

of independence, and up to today, would have done and could do well to scale up a model similar to what was developed by Botswana's post-colonial leaders.

In line with Francis Fukuyama's arguments about trust43, it is no surprise that Uganda which is a "low trust" country, has somewhat failed to form a broad coalition like the one in Botswana. Social cohesion around the right poli- cy framework to transform the economy and most especially on the emerging oil industry44 has failed to form in Uganda. Although the NRM did for sometime after the bush war attempt to build social cohesion in much of the country, this seems to have arguably dissipated with the revival of multi-party democracy in

1996 and the increasing personalization of power by President Museveni. One reason Museveni has arguably ended up with so many relatives in key positions is because he has limited the independent growth of state institutions in Uganda *(See Text Box 2)*. It is very difficult to govern without organized institutions un- less one has a force to rely on to counter challenges to ones authority. Perhaps that is why the security forces have became the bedrock of President Museveni's power45. What we see playing out on Uganda's political scene today is a myriad assortment of loose factions with unclear common objectives and no underpin- ning social valuesas seen in Botswana. Most coalitions work as patronage groups to the regime in power. Such loose factional leadership networks like the *"Young Parliamentarians"* and *"NRM caucus"* cannot form any *"Grand Coalition"* as was the case in Botswana because of the ethnic conflicts, intrigue and infightings which continuously destabilize government and hinder development. Uganda is in a unique position to learn from the mistakes of its neighbors and righting all the wrongs, more so, building a national coalition to transform the country.

Another lesson from the Botswana case is that there is need to devise the right strategies to diffuse social tensions. Botswana adopted an all- inclusive strategy to accommodate traditional institutions in the political setup after in- dependence and this enabled them build a grand- national consensus. The mate- rial circumstances of the country and the implications of this forits success as an independent state were crucial in promoting momentum for the formation of a grand coalition at political, public and economic levels. Uganda needs to devise strategies to accommodate the differing factions in order to build social cohesion. Although Ugandans might have a shared desire to see the country grow and prosper, the reality of a scattered and rural population means that many may feel remote from the process of decision making. President

Museveni, as well as Uganda's other civil servants have yet to demonstrate the level of prudence employed by Botswana's leadership. While many Ugandans have access to very limited social services, the government routinely mismanages public finances for personal profit.

Furthermore, although Uganda has improved its processes of formulating plans and has tried to implement a decentralization strategy, the country is still fraught with a lot of challenges. Different from Botswana, the lack of capacity in local governments has resulted in poor service delivery and wide-spread al- legations of corruption. Progress in dealing with corruption is urgently needed. In addition, the executive seems to have an upper hand in making decisions at times even by-passing parliament. No wonder the management of the emerging oil industry has raised a lot of debate especially with the recently passed petro- leum bill in parliament which gave a lot of powers to the Minister of Energy. This was arguably contrary to the perceptions of many Ugandans. While the government has a number of robust formal structures in many aspects, decision making often bypasses official channels. The purchase of fighter jets in 2011 – costing some USD $ 740 million withdrawn from the Central Bank without prior approval is one such case46. The risk is that resource falls from the oil sector could also be used in this pattern with little public consultation and this may precipitate a resource curse. The executive has on many occasions exercised strong influence over key policy areas relating to oil. This approach will need to be reversed if Uganda wants to avoid the resource curse.

The Botswana case also shows how the government was able to manage land governance challenges right from independence. In Uganda however, land is- sues are still a challenge. Land ownership for instance, especially in the oil rich Albertine region has been fraught with a lot of controversy due to the varying land tenure systems and failure to manage conflicts effectively due to weak in- stitutions. Lately, all kinds of actors are taking advantage of the corrupt institu- tional framework in the country to displace innocent civilians from their land without adequate compensation.

As discussed in the paper, one of the biggest threats to Uganda's emerging oil industry that the government needs to address is the lack of transparency. Allowing rumours and speculation to dominate the news and media can eas- ily create huge disharmony amongst the population especially given the latent divisions along ethnic, religious and regional lines. As noted in the first section of the paper, transparency is vital. With accurate and reliable information, the

government can turn the negative perceptions into optimism. Uganda can learn from countries like Ghana which has put in place a legally constituted Public Interest Accountability Committee which brings together representatives of academia, NGOs, churches and traditional authorities to monitor and report on the oil sector.

In addition, the Ugandan state has had numerous challenges in dealing with divergent views to government. Clashes between CSOs and government are very common and on the increase and these curtail harmony and social cohesion. The government has increasingly put civil society under pressure, par- ticularly those organizations that appear to be infringing upon the officials' po- litical and financial interests. Research and advocacy organizations in Uganda that deal with controversial topics are facing increasing harassment by the gov- ernment (Human Rights Watch, 2011) Groups have recently experienced forced closure of meetings, threats, harassment, arrest, and punitive bureaucratic in- terference. The government needs to change its approachand improve the op- erating space of civil society in order to build social cohesion. There is need to ensure that strong social actors emerge instead of considering any divergent view as opposition to government. There is need to provide space for the population to articulate alternative views and perspectives on the overall direction of the country, in many ways similar to what Botswana has been able to put in place. The government needs to listen to local voices especially with regard to spending priorities of the oil rents.

Furthermore, Botswana was able to integrate its traditional rulers in the main stream decision making process yet Uganda has failed to do this. Tradi- tional rulers in Uganda are undoubtedly extremely important and command both loyalty and respect. Unfortunately, their role in politics is rather limited and indirect, both by law and custom. Churches and religious leaders are also important but divided along regional and political lines. For Uganda to de- velop strong social voices that will enable the creation of a social cohesion which is necessary to manage natural resource effectively, civil society and especially the role of traditional leaders *(like the King of Bunyoro who presides over the oil region),* will have to be strengthened to play a vital role in the management of Uganda's oil.

Finally, although Uganda has taken steps to create competent capacity in the field with a number of qualified specialists in the oil industry, a lot more needs to be done. A competent bureaucracy is one of the factors that explains Botswana's success and should be adhered to by Uganda. Due

to the vibrant debate in the media, many Ugandans have been able to learn about oil and theNGO sector is well informed. The establishment of oil training facilities most importantly Uganda Petroleum Institute is worthy of note and a positive step in building technical skills and ensuring that oil related jobs are taken by Ugan dans. The focus however has been on the lower cadre technicians and training of more technical specialists at the higher levels is most urgently required.

5.7 Conclusion

The foregoing comparative annalysis of resourse rich and rsource poor nations clearly indicates that resource poor nations diversify their economies, have democratic governments, enforce policy and law, correct policy weakness, limit systemic corruption and engage public through CSOs, in contrast resource rich countries such as Nigeria have mismanage their oil due to poor governance(autocracy), failing to diversify the economy, secrecy and mismanagement of oil agreements, corruption with impunity, week policy and law and institutions to implement the same, suppression public participation through CSOs among other political related ill. Uganda is an oil prospective country and exploration is on oil there numerous lessons to learn from oil succesful nations like Norway and Bostwana to mitigata political induced oil curse.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the summary of the findings. The summary gives an overview of the research from which conclusions and recommendations are drawn in relation to the research. Thestudy was premised on three research objectives, findings are summarized in relation to the studyobjectives, These study objectives are stated below:

1. To critically analyse political risks associated with the oil and Gas exploration Sector in uganda.
2. To evaluate capacity of national policies, laws and institutional framework to mitgate political risks in the oil and gas exploration sector in Uganda.
3. To compare Uganda's political and insitutional governance of oil with successful and failed oil producing nations to draw lessons to mitigate political risks.

5.2 Summary of Findings

5.2.1 Political Risk Associated with oil and gas exploration

A review of political risk factors for oil and gas exploration in Uganda pointed mainly to oil governance issues, weak institutional framework to implement policy and law, geopolitics and cocncerns of tranparency and accountability. Past studies revealed that Uganda operates a hybrid system of government which is centralising authority relating to oil and gas governance. Centralising of authority also been manifested government practices such as militarising the oil fields a move which has repressed right of locals in regard to land ownership. Geopolitics of the region concerning the path of oil pipeline has created tensions. In a rlated concern Uganda has clashed with DRC over boundary issues in regard to discovered oil reserves. Such conflict can be discerned as precursor to oil curse conflicts if not managed. Political and legal schorlars unanimously agree that quality of our institutional framework is still in issue, resource rich countries such as Nigeria and Angola have succumbed to oil curse mainly due to week institutional governance systems for oil.

Transparency and accountability is a serious political risk highlighted in literatue and comfirmed in study findings. Our government is characterised by corruption with impunity among elite class. It is feared previous corrup tendencies could spill over to oil resource. The fact that policy and law limits access to information regarding oil and gas this is a major limitation for transparency and could exacerbate corrupt tendencies when the oil starts flowing. In a nut shell Ugandans fear that a combination of thes political factors if not mitigated could result into government using oil resource to entrench its self in power and preside over the the oil curse for manny years to come.

5.2.2 Capacity of National Policies, Laws and Institutional Framework to Mitgate Political Risks in the Oil and Gas Exploration Sector In Uganda

National oil and gas policy 2008 establishes laws and institutions for oil governance in Uganda. These include Petroleum (exploration, development and production) Upstream Act 2013, Petroleum Authority Uganda, National Oil Company among others. However the policy has concern to be ironed out if it is to mitigate political risk. There concerns of revenue management, petro fund management; the study revealed that issues of accountability and tranparency are still a challenge. Little is known of how the petro fund if managed and how much funds it has collected so far. The laws have perpetuated centralisation power in the cabinet in particular the mininister. Institutions like PAU and NOC have no independence from the minister. There is evidence of conflict of interest where the president has put the oil field securityin hands of a company of his younger brother and deployed special forces the elite presidential security force to guard the oil fields. These concerns are worsened by the fact that institutioanl framework is weak to enforce laws to mitigate the challenges. The parliaments oversight role is ursuped by the cabinet courtersy of National oil and gas policy 2008 and the the Upstream Act 2013 giving excessive powers to the minister. In light if such policy , law and institutional weakness the prevailing political risk in Uganda is likely to result into an oil curse if institutionalframework isnt strengthened to give parlaiment back its powere to regulate oil and allow CSOsto be part of oil governance structure in Uganda.

5.2.3 Lessons Learnt from Successful Oil Rich Nations and failed oil Rich Nations

A comparison with Norway and Botswana revealed the both nations have democratic governance with transparent and accountable functional institutions. The CSOs are participated in the oil

governance and aspects of land rights and ownership have been adressed by the law. In contrast Nigerial had an autocratic system of governance that was corrupt and characterised by rent seeking behavior. This delivered them an oil curse, for example there is chronic poverty in Oloibiri the place where oil was first discovered in the 1950s. the area has no functional school, limited electricity access and the worst road in Nigeria. Uganda's political governance is similar to Nigeria's so far a semi- democracy, like nigeria there is centralisation of authority andsystemic corruption pepetuarted by government official in charge of oil. If Ugandas is to mitigate the political risk factors to avoid the oil curse the government should make reform in the laws and policy to allow tranparent and accountable mechanism to thrive, allow participation of the public and above all deal with the problem of corruption immediately. Less than this I agree withshcorlars that :

> *'Uganda's political settlement suggests that the impressive levels of elite commitment and bureaucratic capacity displayed to date are unlikely to withstand the intensified pressures that will accompany the commencement of oil flows*[197].

5.3 Conclusion

It has been argued throughout the study that weak institutions responsible for the oil curse in much of the oil rich nations. This implies oil rich nations do not build sound institution that are transparent and accountable. Similarly in the case of Uganda the study findings suggest that Uganda is gradualy progressing towards the oil curse if gaps existing in policy and legal framework are not filled by refroming governance and establishing functional institutional framwork that is tranparent and accoutnable. It is not too late for Uganda to bench markBotswana and Norway in terms of governance. There is an urgent need to restore the oversight role of parliament for checks and balances. The excessive powere granted to the Minister of Energy should be revised. Whereas Uganda recently subcribed to Extractive Industries Transparency Index (EITI) we await to see reform in the Access to information Act allow publicing of production shairng agreements. Only such reforms will mitigate political risk in oil and gas sector to avoid the oil curse in Uganda.

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5.4 Recommendations

Following the finding that institutions are too weak to mitigate pravailing political risk from causin an oil curse, it is wise that recommendations are made for improving the oil and gas sectorin Uganda

a) There is need to set good practice in management and governance of the sector through giving effect to the institutions as defined in the legal and regulatory framework. The President's oversight role should be operationalized through Cabinet, and not through direct instructions on agreements and other operationalmatters. It is important that Governance institution's roles are clearly spelt out, and grey areas cleared out.
b) There is need to review the powers of the Minister to prevent abuses. The powers need to be tempered with clear lines of accountability and transparency.
c) There is need for enhancement of the powers of the parliament so it can effectively provide oversight to the Executive and other regulatory institutions in the sector.
d) The Executive needs to show greater transparency and accountability in its dealings with the oil companies. The Government should provide full disclosure of activities in the sector.
e) The contradictions in accessing information on Oil Governance need to be cleared to ensure transparency and accountability in the management of the Oil resources. The Government would do well to amend the Petroleum Act (2002) and enact laws for creating the environment for transparency, accountability and good resource management.
f) The Bank of Uganda should take an active role in influencing the policies and practices in revenue management and align with agents of restraint. A good starting point would be to encourage government to join the EITI.
g) There is need for active focus on ensuring that there isn't callous degradation of the environment especially in light of the rich bio-diversity in the Albertine Graben. The Oil is projected to flow for barely 25-30 years; it will be foolhardy to allow such a short stint non- renewable resource to run down the environment.

h) CSOs need to also build capacity for public to get involved in advocacy for accountsbility and transparency in oil and gas exploration. Where there a criticism by a CSOs the government should feel advised rather than insulted, and the recommendations should be implemented.

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APPENDICES

Appendix 1: Documentary Review Check List

- ✓ The Constitution of Republic of Uganda 1995 Amended
- ✓ Petreleum (exploration, development and production) Act 2013
- ✓ The National oil and Gas policy 2008
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Appendix II: Map of Albertine Region