

**THE FEASIBILITY OF ATTAINING SUSTAINABLE DEVELOPMENT OF
UGANDA'S OIL AND GAS INDUSTRY: AN ANALYSIS OF THE
FRAMEWORK ON ENVIRONMENTAL SUSTAINABILITY.**

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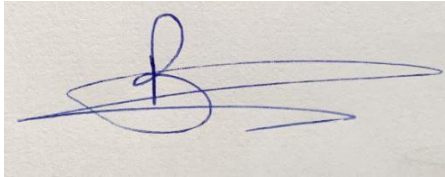
A DISSERTATION

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

MAY 2022

DECLARATION

I, Barbara Kawuma Bugembe. do hereby declare that this research dissertation is my original work and it has never been submitted before to any other institution of higher learning for fulfillment of any academic award.

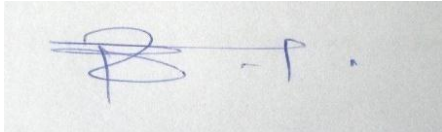
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Barbara Kawuma Bugembe

5th March 2022

APPROVAL

This is to certify that, this research dissertation titled: *-The feasibility of attaining sustainable development of Uganda's Oil and Gas industry: An analysis of the framework on environmental sustainability*, was done under my supervision and now it is ready for submission.

A rectangular box containing a handwritten signature in blue ink. The signature is stylized and appears to be 'E. Baguma Quensi'.

Mr. Edgar Baguma Quensi
Academic Supervisor

5th March 2022

DEDICATION

I wish to dedicate this work to my family, who have always encouraged and inspired me to take on new challenges. I would like to thank them for their prayers, love and support.

May the Almighty God reward them.

ACKNOWLEDGMENT

I thank the Almighty God for the gift of life, strength, wisdom, courage and the resources which have enabled me complete this L.L.M program.

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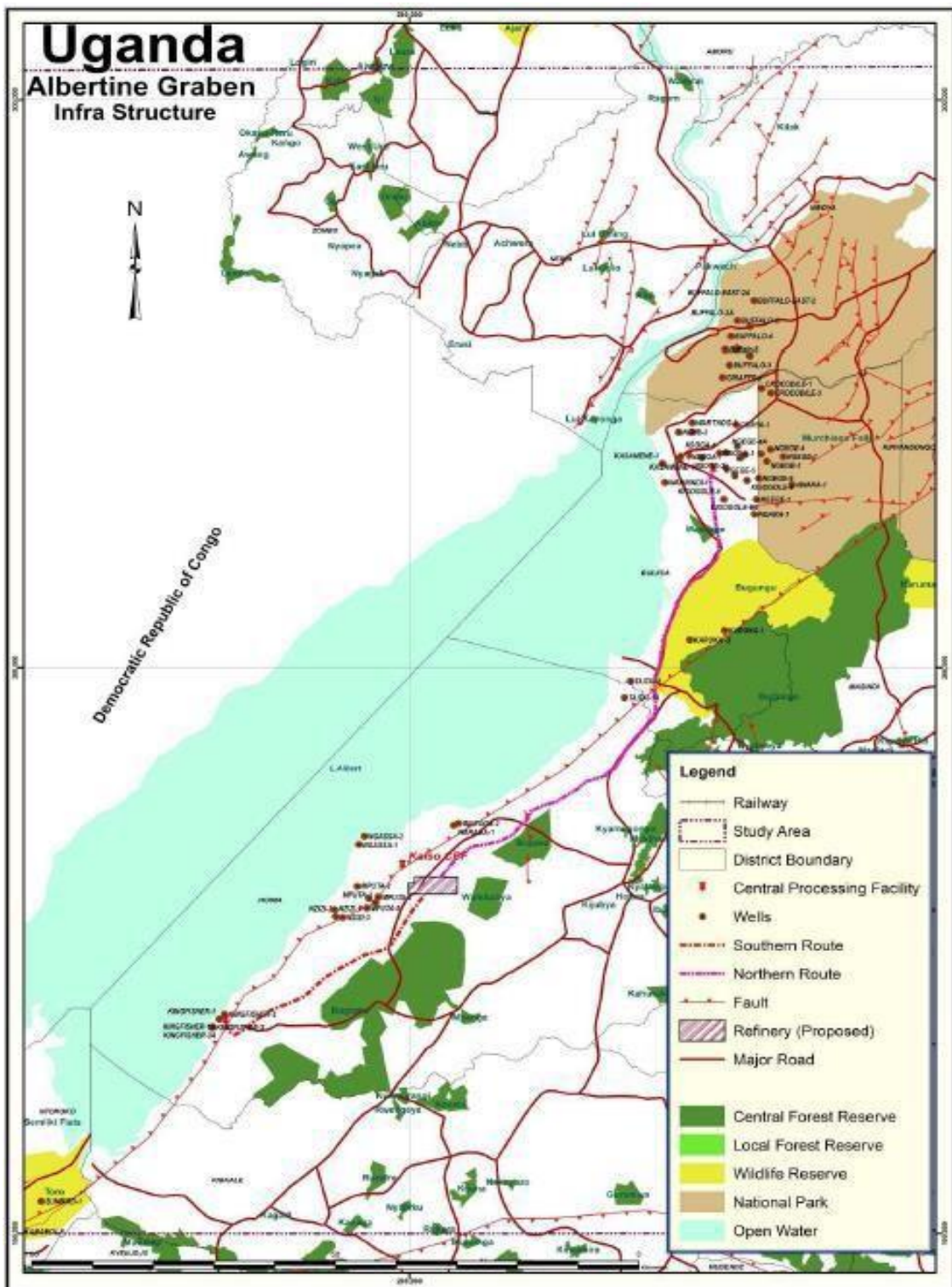
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Source: Petroleum Exploration Production Department, March, 2021

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LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
BOGA	Beyond Oil and Gas Alliance
CDM	Clean Development Mechanism
CFR	Central Forest Reserves
CNOOC	China National Offshore Oil Corporation
CO ₂	Carbon dioxide gas
COP26	26 th Conference of the Parties
CSOs	Civil Society Organisations
EA	Exploration Areas
EAC	East African Community
EACOP	East Africa Crude Oil Pipeline
EIA	Environmental Impact Assessment
ESIA	Environment and Social Impact Assessment
FEED	Front-End Engineering Design
HSE	Environmental Health and Safety
IET	International Emission Trading
IGAD	Inter-Governmental Authority on Development
JI	Joint Implementation
MEMD	Ministry of Energy and Mineral Development
MOLG	Ministry of Local Government
MoLHUD	Ministry of Lands, Housing & Urban Development
MoWT	Ministry of Works and Transport
MTWA	Ministry of Tourism, Wildlife and Antiquities
MWE	Ministry of Water and Environment
NCCP	National Climate Change Policy
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environmental Management Authority
NFA	National Forestry Authority
NGOs	Nongovernmental Organisations

NOGP	National Oil and Gas Policy
NWSC	National Water and Sewerage Corporation
PAP	Project Affected Persons
PAU	Petroleum Authority of Uganda
PEPD	Petroleum Exploration, Production and Development
PIL	Public Interest Litigation
PSA	Production Sharing Agreement
QHSSSE	Quality, Health, Safety, Security, Social Affairs and Environment
SD	Sustainable Development
SDG	Sustainable Development Goals
TEAN	The Environmental Action Network
TEPU	Total E&P Uganda
TOE	Tonnes of Oil Equivalent
UN	United Nations
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
UNOC	Uganda National Oil Company
UWA	Uganda Wildlife Authority
WCED	World Commission on Environment and Development

ABSTRACT

The feasibility of attaining sustainable development of Uganda 's oil and gas industry was carried out through an analysis of the policy, legal, institutional and regulatory framework on environmental sustainability. The current environmental practices and regulatory approaches in Uganda 's oil and gas industry have many shortfalls in comparison with regional and international framework on sustainable oil and gas exploration, development and production. The environmental sustainability in the oil and gas industry was studied based on the theories of sustainable development through environmental law involving the deterrence theory and the citizen enforcement theory which aim at protecting the nature, natural resources and total context within which they exist. The study examined the national, regional and international legal framework to ascertain the extent to which these theories are reflected and the shortfalls that need to be corrected to crystallize environmentally sustainable oil and gas exploration and production in Uganda. It is recommended that to provide environmental sustainability, Uganda should promote -smart growth through proper land use and alignment of the economy with nature's regeneration capacity by adopting appropriate production and consumption practices that are fully aligned with the environmental ecological processes; Uganda should adhere to and strictly implement the National Environment Act 2019; the law should provide for a compensation regime for victims of pollution or any losses resulting from poor management of petroleum operations, in particular the unforeseeable long-term damages on the environment and human health; and the law should promote international cooperation between Uganda and her neighbors in the field of the environment sustainability among others. Future research should be done on the sustainability of the new livelihood strategies adopted by the project affected persons and their effect on the environment as well as environmental compliance in Uganda 's oil and gas sector.

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction

Uganda is ranked among one of the least developed countries in the world according to Focus economics.¹ Uganda is therefore among the poorest countries in the world, and any attempt to address this would entail improving on access to quality health, education, environment and affordable, reliable and sustainable sources of energy,² among others.

International best practice has advanced the idea that investments in the oil and gas sector should be linked to a country's national development strategy. In 2007, Uganda developed a policy framework with a vision to transform the nation from a peasant economy to middle class economy by 2040. To accomplish this, a number of priority areas were earmarked as prospective drivers and key among these was the sustainable development of the oil and gas sectors,³ which has been defined as development that will meet the needs of the present generation without compromising the needs of future generations.⁴

This concept of sustainable development has become the theme of international environmental policy because it favours the continued development of the non-oil economy, while mitigating economic, social and environmental impacts of oil development.⁵

Uganda has also taken on the need to foster the growth of a green economy⁶ which was one of the themes at the Rio+20 conference, where Uganda reported that, her vision 2040 was one of her pathways to achieving the green economy.⁷ Hence, establishing the link between the sustainable development and the environment⁸ considering that the environment is where we live and development is what has been done and is still to be done to improve living

¹FOCUSECONOMICS, Uganda Economic Outlook. Economic Forecasts from the World's Leading Economists. © Copyright 2022- Uganda Economy.

² The United Nations Development Fund, Mapping the oil and gas industry to the sustainable development Goals: An Atlas [2017] page 11

³ The Government of Uganda, Vision 2040 pp. 3

⁴ The World commission on environment and development in its report to the United Nations General Assembly (Brundtland Report-1987)

⁵ Jessica Banfield & Frank Tumusiime, Oil and Gas Laws in Uganda: A legislators Guide, [2011] page 21

⁶ Ibid pp. 10

⁷ United Nations Conference on Sustainable Development, Rio + Conference June [2012]

⁸ Mukesh K, Mishra, Sustainable Development: Linking economy and environment In the Era of Globalization, [2020], <http://hdl.handle.net/10419/215793>, pages 1-2

standards. Thus, development which is environmentally sustainable, aims at increasing the well-being of current and future generations.

The environmental impacts of oil and gas sector include the production of large amounts of waste during the oil production process involving mud water, oil discharge and air pollutants which could turn out hazardous to the environment and neighbouring communities particularly where the waste accumulates to levels above what the environment can naturally assimilate.⁹ The mud water and other substances discharged during exploitation, include heavy metals, organic acids which contaminate the environment and water bodies, endangering human health and aquatic organisms as well as climate change.¹⁰ Therefore, mismanagement of sustainable development in oil and gas will result in effects associated with the oil curse, which include high levels of poverty, loss of livelihoods, poor health, landlessness and civil strife among others.

The recent trends in the oil and gas sector have seen oil prices surged over 7% to their highest since 2014, as a global agreement to release crude reserves failed to calm fears about supply disruptions from Russia's invasion of Ukraine.¹¹ The largest supplier of global oil, the Organization of the Petroleum Exporting Countries (OPEC) and allies, have not signaled any desire to boost production beyond their expected 400,000 barrels per day (bpd), despite entreaties from the United States and others. The oil and gas industry has the potential to impact all 17 sustainable development goals (SDGs) especially goal 13 on climate change action where the population have resorted to the use of natural resources like firewood.

This study will therefore, examine whether Uganda's current policy, legal, institutional and regulatory framework reflect her vision 2040 of sustainable development with a focus on protecting the environment from degradation and effects of global warming that may occur during the exploration, development and production of oil and gas.¹²

⁹ Subhes Bhattacharyya, 'Energy Economics, Concepts, Issues Markets and Governance' [2011] pp. 528-529.

¹⁰ Ibid pp. 528-529.

¹¹ Scott Disavino, 'Oil prices surge over 7% as global crude reserve release disappoints' March 1 2022 Reuters.

¹² Steve Kayizzi-Mugerwa, 'Uganda's Nascent Oil sector; Revenue generation, investor-stakeholder alignment, and public policy', [2020] Working Paper No.175 WIDER page 28

1.2 Background of the Study

The discovery of commercially viable oil deposits in Uganda was announced in 2006 and it has been professed as a potential game changer in the future economic and political landscape of Uganda. The journey has been long, it is now 2022 and oil production in Uganda has not started, yet Uganda's commercial oil discovery is almost fifty years behind other oil producing countries in Africa and the rest of the world. In Africa, the main oil producing countries are Sudan, Nigeria, Angola, and Algeria accounting for around 90 percent of Africa's oil production.¹³

The Oil and gas industry is one of the drivers of economic development throughout the world. It is however, a finite resource, which once depleted, it is done for good, yet it cause adverse environmental degradation on the quality of air, water, soil and noise pollution, as well as destruction of ecosystems and biodiversity and ultimately leading to climate change.¹⁴

In 2015, following Uganda's first licensing round, a total of four companies were granted exploration licenses and nine companies were granted production licenses.¹⁵ There are also plans for construction of a refinery that will be refining a portion of the oil produced from the Tilenga and Kingfisher projects. A percentage of this oil will be for the downstream segment, that is, it will be sold to Ugandans at gas stations,¹⁶ and the rest exported through a 1445 km East Africa Crude Oil Pipeline (EACOP) that will run from Kabaale in Uganda to Tanga port in Tanzania.¹⁷

Environmental and social impact assessments were conducted and certificates issued for the Tilenga, Kingfisher and EACOP projects in December 2020.¹⁸ However, the issuance of these certificates does not mean that the projects will not have negative effects on the neighbouring communities and the environment. Studies have been done that show that the discovery of oil does not guarantee sustainable development of states, considering that in some countries, oil discovery has turned catastrophic; due to oil spills, air and water

¹³ Joint Study by the African Development Bank and the African Union, (2019) Oil and Gas in Africa' Oxford University Press, Great Clarendon Street Oxford pp. 28

¹⁴ Ali Mojarad, 'Challenges for sustainable development strategies in oil and gas industries' [2018] <https://www.researchgate.net/publication/334444444> November 2018 page.1

¹⁵ J. Magona, State of Oil and gas in Uganda, [2017]

¹⁶ P. Mbabazi, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges', Leuven University Press [2020] pp. 34

¹⁷ Ibid

¹⁸ Petroleum Authority Uganda Website <pau.go.ug>

contamination, deforestation, carbon dioxide emissions due to gas flaring and the Dutch disease.¹⁹ The genesis of sustainable development of natural resources stems from one of the key principles embedded in the Rio declaration, which states that, countries have the right to develop; however, this must be fulfilled equitably so as to meet development and environmental needs of the present and future generations.²⁰

In 2015 a fifteen-year global consensus was set to address challenges related to economic, social and environmental well-being of the world by fostering the need for member states to use the sustainable development goals (SDGs), to frame their development agendas,²¹ of maximizing economic benefit from the oil and gas industry while managing the environmental and social challenges of environmental degradation and climate change. The development of these sustainable development goals was premised on the idea that for successful implementation, host governments would have to steer national development plans, by drafting, implementing and enforcing policies, legislation and regulations that align with the promotion of the sustainable development goals, particularly those ensuring environmental protection and establishing governance structures for the transparent management of oil and gas operations and revenues.²²

The SDGs are the UN's blueprint for a more sustainable future for all leaving no one behind and are vital to achieving a thriving economy that works for people and the planet. Goal 7 ensures access to affordable, reliable, sustainable and modern energy for all. Access to sustainable energy for sufficient and clean cooking, lighting and power remains a key challenge in Uganda where rural community households still depend on fuel wood energy for cooking.²³ Goal 13 takes urgent action to combat climate change and its impacts. SDG 13 focuses mainly on addressing the needs to adapt to both climate change and invest in low- carbon development. It improves awareness on mitigation, impact reduction, early warning, and adaptation to climate change. There are however, challenges of achieving SDG 13 in a country like Uganda. The lack of financial aid and proper legal framework are the biggest

¹⁹ Micheal Enyoghasim & Uwazie, 'Oil exploration and exploitation in Nigeria and the challenge of sustainable development, an assessment of the Niger Delta.' [2019] Vol.9/Issue 4, International Journal of Energy Economics and Policy

²⁰ United Nations Conference on Environment and Development, (1992), Rio Declaration, Principle 3

²¹ United Nations Development Fund, 'Mapping the oil and gas industry to the sustainable development Goals: An Atlas', [2017] pages 3 and 4

²² Ibid pp. 7

²³ The Second Voluntary National Review Report on the Implementation of the 2030 Agenda for Sustainable Development Published by: Office of the Prime Minister, Kampala.

challenges in achieving goal 13 including: the imbalance of population growth and resources utilization; the challenge of nationally determined contributions (NDCs); climate finance as recognized under the UNFCCC and the Paris agreement; lack of proper allocation of fossil fuels; and challenges in existing legal framework of Uganda.

It is therefore only prudent for Uganda to prepare as adequately as possible for the effects of this industry by assessing whether its policy, legal regulatory and institutional framework in place is conducive to ensure sustainable development of oil and gas in Uganda, from an environmental sustainability perspective.

1.3 Statement of the Problem

The World commission on environment and development in its report to the United Nations General Assembly (Brundtland Report-1987),²⁴ refers to sustainable development as that which meets the needs of the present without compromising the needs of future generations. It was from then on, that the concept of sustainable development became the theme of international environmental policy.

The nascent oil and gas industry in Uganda is being developed over fifty years after commercial oil production began in Africa and the world over. Oil production in Uganda is primarily governed by principles laid out in the Uganda Oil and Gas policy 2007 which was prepared to guide the development of the industry. The key goals of the policy were to ensure that oil and gas activities are conducted in a manner that ensures the efficient management and production of Uganda's oil and gas, valuable utilisation of the resource as well as conservation of the environment and biodiversity. As a result, there have been new enactments and amendments to existing laws and regulations over the last ten years to manage and ensure efficient and effective operation of the oil and gas industry.

²⁴ T. Hunter, 'The role of the regulatory framework in encouraging sustainable extraction of petroleum resources in Australia and Norway', (2012) pp. 4; Brundtland Report (1987), also called *Our Common Future*, publication released in 1987 by the World Commission on Environment and Development (WCED) that introduced the concept of sustainable development and described how it could be achieved. Sponsored by the United Nations (UN) and chaired by Norwegian Prime Minister Gro Harlem Brundtland, the WCED explored the causes of environmental degradation, attempted to understand the interconnections between social equity, economic growth, and environmental problems, and developed policy solutions that integrated all three areas

However, as the implementation of these laws commences, there are already misgivings on the adequacy of the policy, legal, regulatory and institutional framework in place to ensure sustainable exploration and development of the oil and gas industry in light of; the stringent data protection regime governing oil contracts, the direct control by the executive arm of government over the regulation and supervision of the operations of the industry, and the fact that the largest oil reserves are in the Albertine Graben; surrounded by lakes, Albert and Victoria which are main water bodies for Uganda and neighbouring countries, home to significant species of Uganda's wildlife- fauna and flora faced with extinction, yet it has been estimated that oil and gas exploration, production and development in Uganda will last not more than 30-40 years.²⁵

1.4 Significance of the Study

This study is important to Ugandans, particularly the government of Uganda that is mandated to ensure that citizens live in a clean and friendly environment, the government officers who include the minister of Energy and Mineral development whose duties include initiating, developing and implementing the oil and gas policy, the petroleum authority Uganda, whose function is to monitor and regulate the exploration, development and production of oil and gas in Uganda.

The study is also important to numerous government agencies, which include the National Environment Authority, which is the principal agency charged with coordinating, regulating, monitoring and supervising environmental management in Uganda, people living in communities neighbouring the exploration and productions sites, environment and wild life conservationists considering that the Albertine Graben is a home to numerous endemic wildlife flora and fauna.

This study will lay the foundation for policy, legal and regulatory amendments to protect the environment as Uganda strives for sustainable development of its oil and gas sector.

²⁵ Martin Muhangi and Pamela Mbabazi, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges,' [2020] Leuven University Press. pp. 45

1.5 Justification of the Study

The development of Uganda's oil and gas industry has over the years, attracted more players and this was shown by the competitiveness exhibited at the second bidding process for exploration licenses in financial years 2019- 2020.²⁶

This means there is going to be increased exploration, development and production activities in the Albertine Graben and in Uganda as a whole, yet oil exploration and production the world over have had both positive and negative effects, with a higher likelihood of negative impact on economies of the host countries, their environment and the livelihoods of the communities, particularly those surrounding the oil and gas operations.

The refining, transportation and promotion of energy intensive industries of refined oil products, steel making and cement making are prone to pollute the air, water bodies from petroleum waste which will and has already affected the health, fishing activities and general means of livelihood of the local communities surrounding the Albertine Graben.

There are also the effects of petroleum activities on the adverse species of fauna and flora in Murchison Falls National Park which is adjacent to the Albertine Graben, which have already and are likely to experience more negative effects from the extensive noise pollution during drilling and excavation, some have had to migrate, due to the disruption to their sleeping patterns. This will in turn have an effect on the tourism industry of Uganda,²⁷ which has of recent been one of our highest foreign exchange earners, before the Covid-19 Pandemic.

This study will therefore evaluate whether the current policy, legal, regulatory and institutional framework in Uganda is sufficient to protect the environment as we engage in full scale oil and gas development, production, refining and transportation. The information collected from the documentation reviewed during the course of this study as well as information sourced from interviews conducted with key stakeholders to discuss international best practice will gauge Uganda's current policy, legal regulatory and institutional framework and make recommendations for policy change and amendments to the laws in place.

²⁶ Steve Kayizzi-Mugerwa, 'Uganda's Nascent Oil sector; Revenue generation, investor-stakeholder alignment, and public policy', (2020), Working Paper No.175 WIDER pp. 6

²⁷ Steve Kayizzi-Mugerwa, 'Uganda's Nascent Oil sector; Revenue generation, investor-stakeholder alignment, and public policy', (2020) Working Paper No.175 WIDER pp.28

1.6 General Objective

To analyse the feasibility of attaining sustainable development of Uganda's Oil and Gas industry: An analysis of the policy, legal, institutional and regulatory framework to establish whether the likely effects of oil and gas exploitation, development and production on Uganda's sustainable development have been taken into consideration.

1.7 Specific Objectives

1. To evaluate Uganda's policy, legal, regulatory and institutional framework and their shortfalls in comparison to regional and international framework on sustainable oil and gas exploration, development and production.
2. To examine the regional and international policy, legal, regulatory and institutional framework on sustainable exploration, development and production of oil and gas.
3. To propose recommendations that will ensure sustainable development of Uganda's oil and Gas industry.

1.8 Research Questions

1. What is Uganda's policy, legal, regulatory and policy framework and their shortfalls in comparison to regional and international framework on sustainable oil and gas exploration, development and production?
2. What are the regional and international policies, legal, regulatory and institutional frameworks on sustainable development of the oil and gas industry?
3. What recommendations should the Ugandan government adapt to achieve sustainable development of its oil and gas industry?

1.9 Scope of the Study

This is comprised of the following: content scope, geographical scope, and time scope.

1.9.1 Content scope

The content of the study in particular examined the feasibility of attaining Sustainable Development of Uganda's Oil and Gas Industry in an analysis of the policy, legal, institutional and regulatory framework on environmental sustainability. It has defined and identified sustainable development generally and environmental sustainability in particular in

the oil and gas industry. It has explored Uganda's policy, legal, regulatory and institutional framework on sustainable oil and gas exploration, development and production as well as the regional and international policy, legal, regulatory and institutional framework on sustainable exploration, development and production of oil and gas. It then identified some of the shortfalls in Uganda's policy, legal, regulatory and policy framework in comparison to regional and international framework on sustainable oil and gas exploration, development and production. The study closes with a summary of the findings, conclusions and recommendations on the way forward for sustainable development of oil and gas in Uganda's Albertine Graben.

1.9.2 Geographical Scope

The Albertine Graben where oil and gas have been discovered is found in Western Uganda and part of Northern Uganda. The location of the region is shown on attached list of charts: Map of Uganda showing the Albertine Graben Region.

1.9.3 Time scope

The study's timeline will run from 2006 to date, beginning with the launch of oil and gas exploration. This timespan will assist the researcher in assessing and examining the sustainable development strategies of oil and gas exploration, development and production in Uganda.

1.10 Research Frameworks

The research frameworks are guided by two main types of research frameworks. One is the conceptual framework which is influenced by social behaviour and unique environmental settings of the area of study, the other is the theoretical framework, which is influenced by theories from scholarly works in the given field of study or discipline. For purposes of this research, the theoretical framework is the most suitable as explained here under.

1.11 Theoretical Framework

The study is based on the theories of sustainable development and environmental law.²⁸ Sustainable development (SD) law is a relatively new but rapidly growing and expanding field of law, which aims at protecting the nature, natural resources, and total context within

²⁸ K. Kakuru & I. Ssekyana, _Handbook of Environmental Law in Uganda_, Vol. 1. Environmental Law Institute, Feb, 2009

which they exist. It is also an approach to economic planning that attempts to foster economic growth while preserving the quality of the environment for future generations.²⁹ Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their needs.³⁰ Sustainability was the focus of the 1992 Earth Summit in Rio de Janeiro, Brazil, 3-14 June 1992, and later was central to a multitude of environmental studies. However, despite its enormous popularity in the last two decades of the 20th century,³¹ the concept of sustainable development has proved difficult to implement, primarily because the results of long-term sustainability analysis depend on the particular resources focused upon.

One of the most important areas of the law on sustainable development in Uganda is, environmental sustainability which involves the Tourism Act³² and Uganda Wildlife Act of 2019.³³ Both acts provide for environmental sustainability. Although tourism poses the threat of environmental harm from pollution and the overuse of natural resources, it also can create economic incentives for the preservation of the environmental sustainability in developing countries and increase awareness of unique and fragile ecosystems throughout the world.

In 1995, the World Conference on Sustainable Tourism, held on the island of Lanzarote in the Canary Islands, adopted a charter that encouraged the development of laws that would promote the dual goals of economic development through tourism and protection of the environment. Two years later, in the Malé Declaration on Sustainable Tourism, 27 Asian- Pacific countries pledged themselves to a set of principles that included fostering awareness of environmental ethics in tourism, reducing waste, promoting natural and cultural diversity, and supporting local economies and local community involvement. Highlighting the growing importance of sustainable tourism, the World Tourism Organization declared 2002 the International Year of Ecotourism.

²⁹ Justice Mensah, ‘Sustainable development: Meaning, history, principles, pillars, and implications for human action’ Literature review Casadevall S.R. (Reviewing editor). Published online: 08 Sep 2019

³⁰ Ibid

³¹ J.C Enders J.C. & R. Moritz, ‘Theories of Sustainable Development. Publisher Routledge’, (2016) Seiko Z.M. (2018), ‘Theories and Practices of Sustainable Development in Africa: Handbook of Research on Sustainable Development and Governance Strategies for Economic Growth in Africa,’ pp. 29; Ethiopian Civil Service University & Addis Ababa University, Ethiopia

³² Uganda Tourism Act 2008

³³ Uganda Wildlife Act, 2019

The laws governing environmental protection and conservation in Uganda provide for the deterrence and citizen enforcement theories. The deterrence theory assumes that persons and businesses act rationally to maximize profits and only comply with the law, to the extent that the costs of noncompliance outweigh the benefits of noncompliance.³⁴ Thus, the need for the enforcement agencies to develop and enforce stringent penalties and ensure that the probability of detection is high enough so that it becomes irrational and/or unprofitable for the regulated entities to violate the law.³⁵ The theory imposes criminal sanctions to shape, regulate, and incapacitate the violator, deter the general public for preventive purposes and ensure rehabilitation of the damaged environment.³⁶ Under this theory, the most emphasized tools of enforcement are regular inspections and monitoring of activities to detect noncompliance.³⁷

The Citizen Enforcement Theory on the other hand presupposes the role of individual or corporate citizens in the enforcement of environmental health and safety compliance.³⁸ It allows citizens to sue companies or defiant individuals for violations when the government fails to do so subject to meeting various and often strict procedural conditions. The theory assumes that citizens can enforce environmental law compliance through their political behaviour, market behaviour and direct participation.³⁹

It is under this theory that people can sue for enforcement of their right to a clean and healthy environment and Civil Society Organisations (CSOs) are enabled to enforce environmental rights of voiceless victims through Public Interest Litigation (PIL).⁴⁰ The foundation of public interest litigation in Uganda is in Article 50(2) of the 1995 Constitution of Uganda which provides that, *-Any person or organization may bring an action against the violation of another person's or group's human rights.*⁴¹ Litigation is where a legal complaint is initiated before the court by a person who believes he/she has suffered, or is suffering, harm. For the litigation to be successful, that person must demonstrate to the court that he/she has been legally wronged (in other words, that person's legal rights have been breached).

³⁴ A. Heyes, 'Implementing Environmental Regulation: Enforcement and Compliance', (2013) at p. 2-4.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid (p. 6).

³⁹ Ibid.

⁴⁰ Constitution of Uganda of the Republic of Uganda, 1995 article 39; National Environment Act Cap.153 s.3 and National Forestry and Tree Planting Act No.8/2003 s.5.

⁴¹ Article 50(2) of the 1995 Constitution of Uganda

Therefore, this research has examined the national, regional and international legal framework to ascertain the extent to which these theories are reflected, how the operators of the industry have been controlled and how the shortfalls can be strengthened to crystallize environmentally sound oil and gas exploration and production in Uganda.⁴²

⁴² Emmanuel K, -Environmental Law Compliance and its Implications for Oil and Gas Exploration in Uganda [2011] p. 13.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

The literature to be reviewed in this chapter follows closely the objectives of this study, and in reviewing the literature the research questions are addressed. Areas that required more research are enumerated.

There is sufficient literature advocating for sustainable development of the oil and gas sector in Uganda, yet at the same time, oil drilling and exploitation activities have led to some of the most adverse effects on the environment, leading to climate change, infringements on the rights of the indigenous communities by displacing them, polluting their environments including, air, water sources and soil.⁴³

Sustainable development then explores the link between economic development and environmental quality and social equity, and thus sustainable development should not exhaust natural resources for future generations.⁴⁴

Studies have shown that, oil and gas development and production activities have come with effects of pollution and poverty in developing countries which particularly affect the local communities surrounding these projects.⁴⁵

It is therefore, without a doubt that failure by the international oil companies and host governments to adapt sustainable practices during exploration, development and production of oil and gas will lead to major disasters. Thus, the need to ensure that Uganda's oil and gas industry is governed by a policy, legal, regulatory and institutional framework that promotes sustainable development with emphasis on environmental sustainability.

⁴³ Anis Mohammed and Tauseef Siddiqui, 'Issues Impacting Sustainability in the Oil and Gas Industry Journal of Management and Sustainability,' Vol. 5, No. 4; (2015) page 3.

⁴⁴ Ibid pp. 3.

⁴⁵ Claude Duval & Ors, 'International Petroleum Exploration and Exploitation Agreements' Legal Economic & Policy Aspects, [1986] 2nd Edition page 381.

2.2 Summary of the Literature

2.2.1 Sustainable development of oil and gas framework in Uganda

The development of Uganda's oil and gas industry is premised on the principles espoused in the National Development Plans,⁴⁶ key among which is to harness and sustainably use Uganda's natural resources for socio- economic development for the current and future generations. In respect to the oil and gas sector, the framework guiding the management and control of oil in Uganda is the National oil and gas policy which highlights the development and effective management and regulation of the sector.

One of the measures to ensuring that activities and operations of the petroleum industry are carried out in a sustainable way, is by empowering the institutions established to provide oversight and supervision to the oil and gas operations including granting parliament the power to approve and veto extractive contracts. This is practiced in Azerbaijan and other countries like Egypt, where production sharing agreements are approved by their Parliaments.⁴⁷ Therefore, the decision to grant or revoke licenses for petroleum activities should be granted to parliament because as representatives of the people, they are most suited to grant licenses in the best interest of the people and the country at large.⁴⁸

However, there are also views that the effective management of the oil and gas sector in Uganda will not be attained merely by having Parliament taking up an active role in the negotiation and approval of contracts in Uganda, considering that the ruling party has an overwhelming majority of members of parliament, who owe their allegiance to their party.⁴⁹ Giving the Petroleum Authority Uganda (PAU) the power to grant and revoke licenses for petroleum activities would be the best choice for Uganda. However, this can only apply effectively where the PAU is left to conduct its business without receiving directives from the Minister of Energy and Mineral Development who is a member of the executive arm of government.⁵⁰

⁴⁶ Third National Development Plan (NDPIII) 2020/21 – 2024/25

⁴⁷ Pamela Mbabazi & Martin Muhangi, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges', (2020) Leuven University Press pp. 40- 41.

⁴⁸ Banfield & Tumusiime (2011). 'Oil and Gas Laws in Uganda: A legislators Guide', pp. 9.

⁴⁹ Pamela Mbabazi & Martin Muhangi, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges', (2020) Leuven University Press pp. 42

⁵⁰ Terrell Manyak, 'Oil and Governance in Uganda' [2015], Vol.5, No.1 Journal of Public Administration and Governance page 7.

There is no direct statutory requirement for holders of reconnaissance and exploration permits to prevent environmental destruction as they conduct their activities. Hence, a holder of a reconnaissance permit is not required to execute any form of contract with the government of Uganda, they only apply for and are given a permit,⁵¹ yet reports have shown that a lot of drilling and excavating is done at this stage of exploration which causes air and noise pollution, deforestation, disruption of birds and animals leading to migration of some of these animals and birds from their natural habitat.⁵²

The notion that the management of revenues from the oil and gas industry in Uganda will go a long way in securing the future of both present and future generations has been advanced by many studies.⁵³ This will foster sustainable development, whereas, mismanagement will result in effects associated with the oil curse, which include high levels of poverty, loss of livelihoods, poor health, landlessness and civil strife among others. Reports have been made that by January 2020, there was no petroleum investment framework to guide the investments to be undertaken with the funds in the petroleum revenue investment reserve.⁵⁴ There is need for strict compliance to the laws when it comes to spending the petroleum revenues otherwise the indiscriminate spending of these revenues may turn out catastrophic for the country.⁵⁵ A clear example is the over one hundred fifty billion shillings that was withdrawn out of the petroleum fund, which according to *Onyango 2020*,⁵⁶ was used for activities that are not supposed to be funded by the petroleum fund.

The direct involvement of the minister of energy and mineral development in the appointment and/ or recommendation of the board members to the petroleum authority of Uganda makes the members not able to adequately conduct their oversight function over the activities of the petroleum sector without being influenced by the minister who represents government.⁵⁷ This is followed by the view that the board members of the PAU may be constrained from adequately monitoring, reviewing and regulating operations/ activities of

⁵¹ Oloka Onyango J, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges,' [2020] Leuven University Press page 57.

⁵² Moses Isabirye, 'Environmental Sustainability: An Afterthought or a Key Objective for Uganda's Oil Sector?' [2020] page 226.

⁵³ Oloka Onyango J, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges,' [2020] Leuven University Press page 57

⁵⁴ www.independent.co.ug January 2020

⁵⁵ Oloka- Onyango J, 'Courting the Oil Curse or Playing by the Rules? An Analysis of the Legal and Regulatory Framework Governing Oil in Uganda, (2020) pp. 61

⁵⁶ Ibid pp. 63.

⁵⁷ Akello J, 'Slippery oil boards. [2014] The independent. <<http://www.independent.co.ug>.

the oil and gas sector, where government of Uganda is a partner.⁵⁸ A case in point is the Uganda National Oil Company (UNOC), a company incorporated to handle Uganda's commercial interest in the oil and gas industry, with a 15% shareholding in the East African Crude Oil Pipeline project. The fact that UNOC was incorporated under the company's act of Uganda as a private company, it in principle is answerable to its shareholders, thus a high likelihood that it will be more inclined to uphold the interests of the government as compared to those of the rest of Ugandans and that its management and operations will be solely controlled by government.⁵⁹

Further still, UNOC is subject to directives from the minister of energy and mineral development on which operations/ activities to undertake,⁶⁰ yet the same minister is a member of the executive that appointed the board members. This is a clear manifestation of the absence of checks and balances in the management and operations of Uganda's participating interests in the oil and gas sector. It is most probable that if this status quo is maintained, there is bound to be minimal accountability for the highly anticipated petroleum revenues.⁶¹

The oil and gas sector in Uganda is regulated by the country's laws, policies and practices which also defines the sector's relationship with the environment. The most common legislations being the 1995 Constitution of Uganda, the National Environment Act,⁶² with its attendant regulations, the Mineral Act,⁶³ the Land Act⁶⁴ the Uganda Wildlife Act⁶⁵ the Water Act,⁶⁶ the National Forestry and Tree Planting Act,⁶⁷ the relevant Land Use Policy and lastly the PSAs and their models.

The law regulates discharging effluent into water under the National Environment (Standards for Discharge of effluent into Water or on Land) Regulations.⁶⁸ Other environmental

⁵⁸ Ibid

⁵⁹ Terrell Manyak, 'Oil and Governance in Uganda' [2015], Vol.5, No.1 Journal of Public Administration and Governance page 8.

⁶⁰ Oloka Onyango J, 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges,' [2020] Leuven University Press page 59.

⁶¹ Ibid

⁶² Cap 153.

⁶³ Act No 9 of 2003.

⁶⁴ Cap 227.

⁶⁵ Cap 200.

⁶⁶ Cap 152.

⁶⁷ Forestry and Tree Planting Act No. 8/2003.

⁶⁸ National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations 1999

protection legislations include controlling waste management, noise pollution and soil quality.⁶⁹ Under the NEA, Environmental Impact Assessment (EIA)⁷⁰ is compulsory to most projects associated with upstream activities.⁷¹ Such projects include construction of storage facilities, transportation of waste, carrying out projects in wildlife protected areas, dredging, construction over roads and road reserves, obstruction and diversion of water or interfering with water through pollution or waste disposal and using radioactive materials.⁷²

Other regulatory mechanisms at the upstream stage intended to protect and preserve the environment are conditionally granted construction permits, excavation permits and licenses to construct in a forest reserve.⁷³ Under the model 2016 production sharing agreement (PSA), article 30.5 introduces a new condition that states that renegotiations under article 30.2 of 2016 that shall not cover issues of health, safety and environmental standards.

It cannot be understated that Uganda's oil and gas industry is nascent, considering that no commercial crude oil has been drilled out of the ground to-date even after discoveries were made in 2006. Uganda therefore, has to ensure that the development of this industry meets the needs of the present generation without compromising the ability of future generations to meet their own needs.⁷⁴ One of the key theories is that oil and gas are some of the key sources of energy in the world.⁷⁵ Therefore, sufficient reliable and affordable energy is key to foster sustainable development, the absence of which, would hinder the attainment of the sustainable development goals.⁷⁶ At the same time reports have also shown that the oil and gas industry is globally one of the main causes of environmental degradation for sustainability.⁷⁷ From the above therefore, there has to be a balance between environmental

⁶⁹Ibid

⁷⁰ACODE, 'Comments on the EIA for the proposed Early Production System (EPS) at Kaiso-Tonya Area, Block 2, Lake Albert, Uganda' [2008] at www.acode-u.org/documents/oil.docs/oil&gas_policy.pdf.

⁷¹ The National Environmental Act 2019.

⁷² Ibid

⁷³ Ibid

⁷⁴ The Government of Uganda, 'The National Environment Act', [2019] Section 2

⁷⁵Ali Mojarad, 'Challenges for sustainable development strategies in oil and gas industries' [2018] <https://www.researchgate.net/publication> accessed 04 November 2018 page 3

⁷⁶Ibid

⁷⁷ For example, the Deep-water Horizon oil spill in the Gulf of Mexico (Macondo Disaster) that lasted three months, it is estimated that around 3.9 million barrels of crude oil were spilled in the Gulf of Mexico. See Pallardy R, 'Deepwater Horizon oil spill' Environmental disaster (2010), Gulf of Mexico [2010] < encyclopaedia Britannica, Inc.

sustainability and economic/social development because the more integrated environmental and economic policies, the more likely that sustainable economic growth will be attained.⁷⁸

In conclusion, this study establishes whether Uganda's current policy, legal, regulatory and institutional framework has adequately addressed the fact that the likely adverse environmental effects of oil production in Uganda can support the nation's sustainable development. This study will further interrogate whether Uganda's policy, legal, regulatory and institutional framework fits in with, or diverts from the international outlook on sufficient control and management of the oil and gas sector to attain sustainable development. The findings from this study will go a long way in influencing policy for the sustainable development of Uganda's oil and gas industry.

2.2.2 Sustainable Development of oil and gas in International and Regional Framework

Sustainable development has become an unavoidable paradigm that should underpin most, if not all, human action(s).⁷⁹ It pervades the environmental, social, political, economic, and cultural discourses from the local through to the 'global' level by both the public and private sectors.⁸⁰ Sustainable development has also widely penetrated the legal domain. This emblematic 'concept'⁸¹ has found its way into an ever-increasing number of international legal instruments. Promoted by the United Nations, it is central to a vast number of Resolutions, Declarations, Conventions, and international judicial decisions. Sustainable development unsurprisingly interests international lawyers, but the uncertainty surrounding its nature also sparks their perplexity.⁸²

The concept of sustainable development in terms of skills transfer as a component of local content requires that high level management and technical skills transfer is done from experts

⁷⁸ Mukesh M, 'Sustainable Development: Linking economy and environment: In the Era Globalization [2020] <<http://hdl.handle.net/10419/215793>, pp. 11

⁷⁹ Virginie Barrell, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012). *European Journal of International Law*, Volume 23, Issue 2, May 2012, pages 377–400.

⁸⁰ Mensah Justice, 'Sustainable development: Meaning, history, principles, pillars, and implications for human action' (2019): Literature review. *Journal of Cogent Social Sciences Vol. 5 Issue 1 of 8th Sep 2019*

⁸¹ Cordonier Segger M.C. & Khalfan A. (2004). *Sustainable Development Law. Principles, Practices and Prospects*, 2004

⁸² Rieu-Clarke A. 'International Law and Sustainable Development: Lessons learned from the Law of International Watercourses' September 2005. *Water Intelligence Online* DOI:[10.2166/9781780402673](https://doi.org/10.2166/9781780402673)

hired by the international oil companies to the local employees of the Host governments.⁸³ In Norway, the concept of *-Ghost training* of local staff for every technical expatriate and manager was developed,⁸⁴ which requires that for every individual skilled expatriate or at the very least sets of expatriates, at high managerial and technical levels, there must be local employees with the qualifications, competence to be trained to attain the skill sets of the expatriates.

In the DRC, there is legislation that provides for the specific number of employees in the oil and gas sector at managerial and technical levels that should be trained and employed after a period of 10 years from when the international oil company is granted exploration and production licenses.⁸⁵

In the United Kingdom the rights of the fishing communities cannot not be unjustifiably interfered with by oil and gas operations.⁸⁶ This is a progressive legislation in as far as it seeks to protect, first the environment, water sources and the communities with fishermen to continue sustaining their livelihood as oil and gas activities go on. Studies have shown that in the United Kingdom, the restoration of the environment after the oil and gas operations have shut down is of paramount importance, in a bid to protect the present and future generations from effects of environmental degradation and contamination from abandoned facilities and sites.⁸⁷ It has been reported that in addition to the legislation in place, there are guidance notes on decommissioning that provide for the different parties who can be held accountable for a particular development area; an operator, an assignee of interest in the oil and gas development area among others.⁸⁸

The oil and gas sector without a doubt produces large amounts of waste during the oil production process, some of the waste generated which could turn out hazardous to the environment and neighbouring communities particularly where the waste accumulates to levels above what the environment can naturally assimilate.⁸⁹ The mud water and other substances discharged during exploitation, include heavy metals, organic acids which

⁸³ Mensah Justice, 'Sustainable development: Meaning, history, principles, pillars, and implications for human action' (2019): Literature review. *Journal of Cogent Social Sciences Vol. 5 Issue 1 of 8th Sep 2019*.

⁸⁴ The Association of International Petroleum Negotiators, 'Model Secondment Agreement.'

⁸⁵ Claude Duval & Ors, 'International Petroleum Exploration and Exploitation Agreements' Legal Economic & Policy Aspects, [1986] 2nd Edition pages 383-384

⁸⁶ Greg Gordon & Ors, 'Oil and Gas Law; Current Practice and Emerging Trends' [2011] 2nd Edition page 236-239.

⁸⁷ Ibid pp. 312

⁸⁸ Ibid pp. 312.

⁸⁹ Subhes Bhattacharyya, 'Energy Economics, Concepts, Issues Markets and Governance' [2011] pp. 528-529.

contaminate the environment and water bodies, endangering human health and aquatic organisms as well as climate change.⁹⁰ Extensive literature has discussed the effects of flaring on human health, water, the ozone layer and soil – all affecting plant yields as reported in Nigeria.⁹¹

Studies have gone further to show that for countries that highly depend on agriculture as the main source of livelihood for rural communities, there should be plans to leverage between development of infrastructure for the oil and gas industry as well as, mitigating the negative impact of these operations on agriculture.⁹² There is need therefore, for policy directives that require international oil companies to continually support the local communities by designing infrastructure to support energy access for irrigation, build reservoirs for water storage, among others.⁹³ Other avenues of support can take the form of what has been done in Nigeria for over a period of twenty years, where Eni, an international oil company, developed a program to support farmers living along the Niger River Delta with vocational training and guidance in modern agricultural techniques and entrepreneurial skills. This has gone a long way in helping members of these communities, particularly women secure economic empowerment.⁹⁴ This shows that host governments like Uganda can ensure the co-existence of the indigenous agricultural sector as well as the nascent oil and gas industry.

Sustainable development (SD) has become the buzzword in development discourse, having been associated with different definitions, meanings and interpretations.⁹⁵ Taken literally, SD would simply mean –development that can be continued either indefinitely or for the given time period.⁹⁶ Structurally, the most often cited definition of the concept of SD is the one proposed by the Brundtland Commission Report.⁹⁷ The Report defines SD as development

⁹⁰ Ibid pp. 531.

⁹¹ Inomiesa Oghenemarho, ‘Sustainable exploration of oil and gas in the United Kingdom (Partial Fulfilment for the Degree of Doctor of Philosophy) Liverpool John Moores University [2015] and Nigeria’ Page 52

⁹² The United Nations Development Fund, Mapping the oil and gas industry to the sustainable development Goals: An Atlas [2017] page 16.

⁹³ The United Nations Development Fund, Mapping the oil and gas industry to the sustainable development Goals: An Atlas [2017] page 16.

⁹⁴ Ibid.

⁹⁵ Dernbach JC, ‘Sustainable development as a framework for national governance. *Case Western Reserve Law Review*’, (1998) 49(1), pp. 1–103; Dernbach JC, ‘Achieving sustainable development: The Centrality and multiple facets of integrated decision making’, (2003) *Indiana Journal of Global Legal Studies*, 10, pp. 247– 285; H. Stoddart, ‘A pocket guide to sustainable development governance’, *Stakeholder Forum* 2011

⁹⁶ Ibid

⁹⁷ Schaefer A & Crane A, ‘Addressing sustainability and consumption’ (2005) *Journal of Macro-marketing*, 25(1), pp. 76–92.

that meets the needs of the current generation without compromising the ability of future generations to meet their own needs.

Acknowledging the pervasiveness of World Commission on Environment and Development (WCED) definition, Cerin⁹⁸ as well as Abubakar⁹⁹ argued that SD is a core concept within global development policy and agenda. It provides a mechanism through which society can interact with the environment while not risking damaging the resource for the future. Thus, it is a development paradigm as well as a concept that calls for improving living standards without jeopardising the earth's ecosystems or causing environmental challenges such as deforestation, water and air pollution that can result in problems such as climate change and extinction of fauna and flora species.¹⁰⁰

Looked at as an approach, SD is development which uses resources in a way that allows them (the resources) to continue to exist for others,¹⁰¹ while meeting human development goals and at the same time sustaining the ability of natural systems to provide the natural resources and ecosystem services upon which the economy and society depend. Considered from this angle, SD aims at achieving social progress, environmental equilibrium and economic growth.¹⁰² Exploring the demands of SD, Ukaga et al,¹⁰³ emphasized the need to move away from harmful socio-economic activities and rather engage in activities with positive environmental, economic and social impacts.

⁹⁸ P. Cerin, 'Bringing economic opportunity into line with environmental influence: A discussion on the Coase theorem and the Porter and van der Lind hypothesis', (2006) *Ecological Economics*, 56, pp. 209–225.

⁹⁹ Abubakar IR, 'Access to sanitation facilities among Nigerian households: Determinants and sustainability implications', (2017), *College of Architecture and Planning, University of Dammam, Saudi Arabia; Sustainability*, 9 (4), pp. 547.

¹⁰⁰ Benaim CA, & L Raftis, 'The Social Dimension of Sustainable Development: Guidance and Application: Thesis submitted for completion of Master of Strategic Leadership towards Sustainability, (2008), Blekinge Institute of Technology, Karlskrona, Sweden; Browning M., & Rigolon A, 'School green space and its impact on academic performance: A systematic literature review' (2019). *International Journal of Environmental Research and Public Health*, 16(3), pp. 429.

¹⁰¹ M. Mohieldin, 'The sustainable development goals and private sector opportunities (2017) EAFIT University of Medellín; Evers BA, 'Why adopt the Sustainable Development Goals? The case of multinationals in the Colombian coffee and extractive sector' (2018), Master Thesis Erasmus University Rotterdam

¹⁰² J Gossling-Goldsmiths, 'Sustainable development goals and uncertainty visualization (2018), Thesis submitted to the Faculty of Geo-Information Science and Earth Observation of the University of Twente in partial fulfilment of the requirements for the degree of Master of Science in Cartography; Zhai TT, & ChangYC, 'Standing of environmental public-interest litigants in China: Evolution, obstacles and solutions (2019) *Journal of Environmental Law*, 30, 369–397

¹⁰³ Ukaga, C Maser, & M Reichenbach, 'Sustainable development: principles, frameworks, and case studies' (2011). *International Journal of Sustainability in Higher Education*, 12(2), Emerald Group Publishing Limited.

It is argued¹⁰⁴ that the relevance of SD deepens with the dawn of every day because the population keeps increasing but the natural resources available for the satisfaction of human needs and wants do not. Hák et al.¹⁰⁵ maintain that global concerns have always been expressed for judicious use of the available resources so that it will always be possible to satisfy the needs of the present generation without undermining the ability of future generations to satisfy theirs. Hence, SD is an effort at guaranteeing a balance among economic growth, environmental integrity and social well-being. This reinforces the concept of SD as intergenerational equity, which recognises both short and the long-term implications of sustainability.¹⁰⁶ According to Kolk¹⁰⁷, this is achievable through the integration of economic, environmental, and social concerns in decision-making processes. According to Diesendorf¹⁰⁸ sustainability is the goal or endpoint of a process called sustainable development. Gray¹⁰⁹ reinforces the point by arguing that, while –sustainability‖ refers to a state, SD refers to the process for achieving this state.

The oil and gas industry requires functional legal regimes for the activities to be regulated. The regulations serve many ends including resource moderation, resource optimization, appropriate taxation, environmental conservation, profit assurance and security maintenance among others.¹¹⁰ Notwithstanding the above, it is being increasingly recognised that modern regulation is targeted at finding the right balance which is proportionate, laden with risk- based responses, aimed at driving environmental improvements, seeking to reward good performance, but still able to provide the vital reassurance that tough action will be taken on those who fail to meet acceptable standards.¹¹¹ Regulations define wider relationships

¹⁰⁴ Hák T, Janoušková S. & Moldan B , ‘Sustainable development goals: A need for relevant indicators’ (2016), *Ecological Indicators*, 60(1), 565–573.

¹⁰⁵ Ibid pp. 565–573.

¹⁰⁶ JC Dernbach, ‘Sustainable development as a framework for national governance. *Case Western Reserve Law Review*’ (1998), 49(1), 1–103; Stoddart H, Schneeberger K, Dodds F, Shaw A, Bottero M, Cornforth, & White R, ‘A pocket guide to sustainable development governance’ (2011) *Stakeholder Forum 2011*.

¹⁰⁷ A Kolk , ‘The social responsibility of international business: From ethics and the environment to CSR and sustainable development’ (2016) *Journal of World Business*, 51(1), 23–34.

¹⁰⁸ M. Diesendorf, ‘Sustainability and sustainable development’ (2000). In D. Dunphy, J. Benveniste, A. Griffiths & Sutton P, (Eds.), *Sustainability: The corporate challenge of the 21st century* (pp. 2, 19–37). Sydney: Allen & Unwin.

¹⁰⁹ R Gray, ‘Is accounting for sustainability actually accounting for sustainability ... and how would we know? An exploration of narratives of organisations and the planet’ (2010), *Accounting, Organizations and Society*, 35(1), 47–62.

¹¹⁰ Ibid.

¹¹¹ RM Harrison, ‘Introduction to Pollution Science’ (2006), (RSC Publishing, 2006) p. 311.

concerned with the environment and the minerals beneath, and generally, the necessary permissions required to explore and produce.¹¹²

¹¹² PSAC, Industry Overview.

CHAPTER THREE: METHODOLOGY

3.1 Introduction

Research Methodology can be explained as the different procedures, schemes and techniques used to gather information. The study used the qualitative research method where data was collected from available documents and laws, policies, institutional and regulatory framework as well as respondents.

3.2 Legal Context and Research Setting

The study used doctrinal legal research method,¹¹³ which offers a systematic assessment of the principles that regulate the legal category.¹¹⁴ It rigorously examines the link between laws, and explains and identifies sources of shortfalls in Uganda's policy, legal, regulatory and policy framework. Because this study is based on legal concepts¹¹⁵ and rules of justice, statutory law and regulations regarding the established legal/ non-legal structure guiding oil and gas development in Uganda, doctrinal legal research¹¹⁶ was the suitable research setting. It allowed the researcher to effectively analyse and explain the legal/ non-legal principles pertaining to the policy, legal, institutional and regulatory framework on environmental sustainability.

The research was conducted using the qualitative research method considering that this research was based on legal concepts¹¹⁷ and rules of justice, statutory law and regulations regarding the established legal/ non-legal structure guiding oil and gas development in Uganda. Some data was also collected from respondents.

3.2.1 Area of Study

The Study was conducted in Uganda, who's oil and gas industry is the focus of the study and particularly the policy, legal and regulatory framework which includes: The 1995 constitution of the Republic of Uganda; The Petroleum (Exploration, Development and Production Act

¹¹³ Mvgalakwa M, 'The Use of Documentary Research Methods. Social Research Reports African. *Sociological Reviews*' [2006] Vol. 10 Issue 2 pp. 221.

¹¹⁴ Desmond Manderson, 'Law: The Search for Community' in Simon Marginson (ed), *Investing in Social Capital* (University of Queensland Press, [2002] pp. 152.

¹¹⁵ Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) *Law Text Culture* 159, 161.

¹¹⁶ Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment*, Wiley-Blackwell, (2008) pp. 37.

¹¹⁷ Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) *Law Text Culture* 159, 161.

2013; The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013; The Public Finance Management Act 2015; The National Environment Act 2019; The National Environment (Waste Management) Regulations; The Occupational Safety and Health Act, 2006; The National Environment (oil spill preparedness and response) regulations); The petroleum (waste management); The Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016; and The Environmental Standards and Best Petroleum Industry Practices among others.

3.2.2 Population Size

The target population comprised Ministry of Energy and Mineral Development, Ministry of Justice and Constitutional Affairs, Ministry of Water and Natural Resources (Directorate of water), Ministry of Local Government, National Environment Authority, Petroleum Authority Uganda, Uganda National Oil Company, National Forestry Authority, Uganda Wild Life Authority, Uganda Law Society among others, as listed in table 3.1.

3.2.3 Sample size and Sampling Techniques

The sample size for this study was determined using the Krejcie and Morgan¹¹⁸ method.

¹¹⁸ Krejcie & Morgan, ‘Determining Sample Size for Research Activity, Educational and psychological Measurement’ [1970] 30(3) pp. 607-610.

Table 1: Showing the distribution of the sample size.

Category	Population	Sample	Sample Technique
Ministry of Energy and Mineral Development.	10	7	Purposive Sampling
Ministry of Justice and Constitutional Affairs.	6	5	Purposive Sampling
Ministry of Water and Natural Resources.	5	5	Purposive Sampling
Ministry of Local Government	4	4	Purposive Sampling
National Environment Management Authority.	8	6	Purposive Sampling
Petroleum Authority of Uganda.	5	5	Purposive Sampling
Uganda National Oil Company.	4	3	Purposive Sampling
Uganda Wildlife Authority.	5	4	Purposive Sampling
National Forestry Authority.	5	3	Purposive Sampling
Uganda Law Society.	5	5	Purposive Sampling
Uganda Law Reform Commission	5	4	Purposive Sampling
Representatives of International Oil Companies (Total E&P and CNOOC)	5	5	Purposive Sampling
Representatives of NGOs and CSOs	5	4	Purposive Sampling
Academia	5	5	Random Sampling
Total	77	65	

Source: Primary data (2021)

3.3 Data Collection Strategy/ Methods

Qualitative research methods were used to describe a set of non-statistical inquiry techniques and processes to gather data about phenomenon.¹¹⁹ It further refers to a collection of words or other non-numerical records, materials or artefacts that were collected by a researcher. This is data that has relevance to the study.¹²⁰ Qualitative research methods also deal with observations, impressions and interpretations of data. Furthermore, qualitative researchers believe that knowledge is constructed symbolically based on conventions broadly held within the community.¹²¹ Qualitative research may involve field studies, interviews, and direct observations.

¹¹⁹ D.E McNabb, ‘Research methods for political science’ New York. (2004) M.E Sharpe

¹²⁰ Ibid

¹²¹ Mason EJ, & Bramble WJ, ‘Research in education and the behavioral sciences: Concepts and methods. Madison’, (1997) WI: (Brown & Benchmark

This study collected data using two methods. Data was collected through interviews and documentary review of legal concepts¹²² and rules of justice, statutory law and regulations regarding the established legal/ non-legal structure guiding oil and gas development in Uganda.

3.3.1 Interviews

Interviews were used during face-to-face interactions to obtain information from the relevant officers in the institutions mentioned table 3.1 above. Interview helped to solicit much more information from the respondents. This was because from the face-to-face interaction, the interviewer was able to establish the demeanour of the respondent who in most cases volunteer more information on their views on the subject at hand whether they agreed with the status quo or otherwise. An in-depth and semi-structured interview were carried out with concerned officials in relevant institutions in the framework of purposive sampling.

3.3.2 Documentary Review

In order to identify and review the existing policies and laws on the extractive industry in Uganda, a desk review data collection method was used. The 1995 Constitution was reviewed to identify the articles that deal with natural resources, extractive industries and the bill of rights. Statutes, policies/session papers on extractive industries including Vision 2040 were all reviewed. A list of all statutes and subsidiary legislation on natural resources and oil and gas industry were identified and reviewed. Various ministerial documents, previous studies and reports obtained from the Ministry of Energy and Mineral Development (MEMD) and district officials were also analyzed. A list of some of the documents that were reviewed are shown in the report.

Desk research forms the bulk of this study, it being a primary and leading source of content on the subject. The researcher focused on Laws and policies (both national and international), books, articles, magazines, and other publications by reputable scholars to give a detailed insight into the research.

¹²² Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) *Law Text Culture* 159, 161.

3.4 Data Analysis

A comparative analysis of Uganda's policy, legal, institutional and regulatory framework on environmental sustainability relating to attaining sustainable development was made with regional and international standards. The analysis compared the policy, legal, institutional and regulatory framework on environmental sustainability mandate relating to the attainment of environmental sustainability in oil and gas exploration, development and production.

The research being qualitative, the researcher has analyzed interview responses from key informant. Some data was collected by documentary search method and qualitatively analyzed by textual exposition, outlining the salient provisions and strengths in the laws. These highlights gave shortfalls in Uganda's policy, legal, regulatory and policy framework in comparison to regional and international frameworks on sustainable oil and gas exploration, development and production.

3.5 Ethical Considerations

It is also important to address the ethical issues regarding the anonymity of participants' identity and confidentiality of the information provided.¹²³ Anonymity was achieved when neither the researcher nor the readers can identify a given response with a given respondent.¹²⁴

In order to comply with the code of ethics, the researcher obtained consent from the participants to ensure the sanctity and basic right of their self-determination.¹²⁵ Because of this right, the participants had not only the choice to refuse to involve in the study but also the freedom to withdraw their participation from an investigation. Consent from prospective participants can be obtained by the means of written explanation about the nature of the study.¹²⁶ Informants were assured of the confidentiality of the information provided for this study because the researcher can identify a given person's responses but promises not to do so publicly.¹²⁷ Confidentiality of all data and the anonymity of persons consulted has been preserved confidential and not disclosed in the report. The researcher clarified to the

¹²³ Mainion L, Cohen, L. & K. Morrison, K, *'Research Methods in Education'* (2007) Oxon, Routledge,

¹²⁴ Earl. R. Babbie, *'The Practice of Social Research'* (2009) Cengage Learning

¹²⁵ Cohen et al., *'Research Methods'*, (2007) Oxford, Routledge, p.52

¹²⁶ Ibid.

¹²⁷ Babbie E, *'The practice of social research'*, (2009) (Cape Town: Oxford University Press, p.67

respondents the purpose of the study, risks that could be involved and guaranteed them confidentiality and anonymity to help achieved truthful information.¹²⁸

3.6 Methodological Constraints

One of the key limitations of this study was that the Covid-19 Pandemic was still ongoing which limited access to some key respondents and access to documents. In addition, some respondents did not feel confident enough to volunteer information that would become public as a result of being used in this study. This was solved by using the necessary research skills and ethical issues. Time Constraint was another limitation. The time specified for the completion and submission of the project was considered inadequate by the researcher. The researcher mitigated this through use of efficient research assistants and a work plan which stipulates milestones and roles.

¹²⁸ Bryman A, and Bell E, 'Business Research Methods', (2015), 2nd Edition. Oxford University Press Inc.

CHAPTER FOUR: RESEARCH FINDINGS, ANALYSIS AND DISCUSSION

4.1 Introduction

The legal regime governing the oil and gas industry in Uganda is constituted by locally tailored policy¹²⁹ and legislative compliance requirements.¹³⁰ The major policy and legislative environmental law compliance requirements were developed after 1994 with the formulation of the National Environment Action Plan,¹³¹ which led to the development of the National Environment Management Policy and the National Environment Act.¹³² It is under these that subsequent sectoral policy and legislation have developed. Legislation covered in this study analysis includes the 1995 Constitution, major oil and gas laws and other relevant environmental laws.

Compliance with these policy and legislative aspirations and standards will enable Uganda attain sustainable development through an environmentally sustainable oil and gas sector. These findings are organized into three sections. The first section discusses the compliance standards under Uganda's policy, legal, regulatory and institutional framework on sustainable oil and gas exploration, development and production. The second section discusses the compliance under the regional and international policy, legal, regulatory and institutional framework on sustainable exploration, development and production of oil and gas and the third section discusses the shortfalls in Uganda's policy, legal, regulatory and policy framework in comparison to regional and international framework on sustainable oil and gas exploration, development and production.

4.2 Compliance standards under Uganda's policy, legal, regulatory and institutional framework on sustainable oil and gas exploration, development and production.

4.2.1 Legislation

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

The 1995 Constitution of the Republic of Uganda has elaborate provisions regarding environmental management. In the National Objectives and Directive Principles of State Policy, the Constitution requires the Government of Uganda to take measures to protect

¹²⁹ It is not our intention to delve at great length in issues of policy generally. However, the readers may be referred to additional readings in this regard. For example, they may wish to look at: Kasozi, GWKL, *Human Rights and Public Policy: A Holistic Analysis of the Right to Life in Uganda* [2009] UCU Law Review 2009, Vol. 01 No 2, 2009, p. 33 – 86.

¹³⁰ Monday, J. *Oil and gas exploration and environmental protection in Uganda: An appraisal of the policy and legal framework* (2014) Unpublished Master's Thesis, Makerere University Kampala, Uganda.

¹³¹ The National Environment Action Plan for Uganda (Ministry of National Resources)- Uganda 1995

¹³² The National Environment Act Cap. 152, 2019.

important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.¹³³ The government is also required to promote and implement energy policies that will ensure that people's basic needs and those of sustainable environmental preservation are met. It is further required to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. The Constitution also requires government to promote a good water management system at all levels;¹³⁴ promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations and to prevent or minimize damage and destruction to land, air and water resources resulting from the pollution or other causes.¹³⁵

In the substantive provisions, the Constitution has a specific provision for the right to a clean and healthy environment under Article 39 reiterated under section 3 of the National Environment Act,¹³⁶ and section 5(2) of the National Forestry and Tree Planting Act¹³⁷ and the Occupational Health and Safety Act.¹³⁸

The above provisions imply that a person whose right to clean and healthy environment is violated due to oil exploration and production may take the company responsible or government to court to seek redress.¹³⁹ The constitution vests the ownership of all minerals and petroleum in the government which is to hold the same in trust for the people of Uganda. This introduces the public trust doctrine in the management of oil and gas resources.¹⁴⁰

This Amendment Act¹⁴¹ has significant implications for oil and gas management and control, and sharing of royalties from oil and gas. This is however, subject to article 26 of the Constitution which emphasizes the need to fairly and adequately compensate surface land

¹³³ Principle XIII: It should be noted though that these principles are not justifiable, that is they cannot be enforced through litigation in courts of law in the context of Uganda. They can be realized through progressive development.

¹³⁴ Principle XXI.

¹³⁵ Principle XXVII.

¹³⁶ Cap 153

¹³⁷ No. 8 of 2003.

¹³⁸ Occupational Health and Safety Act 2006.

¹³⁹ In the case of *Environmental Action Network v. British American Tobacco*, the applicant brought an application under article 50(2) of the 1995 Constitution and rule 3 of the Fundamental Rights and Freedoms (Enforcement Procedure) Rules, for a court order compelling the respondent, a manufacturer of –dangerous products (cigarettes), to fully and adequately warn consumers of the health risks associated with its products. Although the order was ultimately denied, the court did confirm the *locus standi in judicio* of the applicant, that article 50(2) enabled individuals to bring public interest matters to court on behalf of those who were not in a position to do so.

¹⁴⁰ Article 244.

¹⁴¹ Constitutional (Amendment) Act 2005

owners before the Government can take over the petroleum rich lands. Parliament is mandated to make laws regulating the exploitation of minerals and petroleum; the sharing of royalties arising from mineral and petroleum exploitation; the conditions for payment of indemnities arising out of the exploitation of minerals and petroleum and conditions regarding the restoration of derelict lands. Some of the laws hereinafter have therefore been enacted under this amendment.

Petroleum Exploration, Production and Development (PEPD) Act 2013

The Petroleum (Exploration, Production and Development) Acts¹⁴² came into force in 2013 and it is the primary law responsible for the management and regulation of oil and gas activities in Uganda. The major purpose of this Act is to operationalize the National oil and gas Policy and to achieve this, many strategic approaches are identified: establishing an effective legal framework and institutional structures to ensure that the exploration, development and production of petroleum resources is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations and creating a conducive environment for the efficient management of petroleum resources. The Act lays down a number of environmental, health and safety standards which include; All players are to conduct petroleum activities in a manner that ensures a high level of safety and maintain that level in accordance with technology developments, best industry practices, Occupational Health and Safety Act.¹⁴³

In addition, the licensee is required to identify the hazards and evaluate the risks associated with any work performed in the course of petroleum activities and steps that need to be taken to comply with provisions of the Act¹⁴⁴ as far as reasonably practicable to prevent the exposure of the persons to hazards. The operator has the duty to take necessary precautions to ensure the safety of any person employed or otherwise present at or in the vicinity of any installation in accordance with Occupational Health and Safety Act¹⁴⁵ and to protect the environment and natural resources, including taking precautions to prevent pollution and ensure that persons are duly informed of those precautions.¹⁴⁶ All participants in petroleum

¹⁴²Petroleum (Development and Production) Act 2013 Cap153; Petroleum (Exploration, Development and Production Act 2013; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013; Transmission and Midstream Storage Act 2013; and Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, No. 2.

¹⁴³Occupational Health and Safety Act No. 9 of 2006.

¹⁴⁴ Ibid.

¹⁴⁵Occupational Health and Safety Act 2006.

¹⁴⁶ Section: 141.

activities have an obligation at all times to maintain efficient emergency preparedness with a view to dealing with accidents and emergencies that may lead to personal injury, pollution or major damage to property.¹⁴⁷ The licensee also has a duty to ensure that necessary measures are taken to prevent harmful effects and environmental restoration.

The Acts call upon all actors to carry on their operations in compliance with environmental principles. In this vein, a licensee or any other person who exercises or performs functions, duties or powers under the Act in relation to petroleum activities shall comply with environmental principles and safeguards prescribed by the NEA and other applicable laws.¹⁴⁸ A licensee is obliged to ensure that the management of production, transportation, storage, treatment and disposal of waste arising out of petroleum activities is carried out in accordance with environmental principles prescribed under the NEA and other applicable laws. To effectuate this, a licensee is required to contract a separate entity to manage the transportation, storage, treatment or disposal of waste arising out of the petroleum activities.

The Act also mandates NEMA to make regulations for the management of production, transportation, storage, treatment and disposal of waste arising out of petroleum activities. These regulations shall prescribe, in case of contravention, penalties not exceeding a fine of five thousand currency points or imprisonment for a term not exceeding ten years or both, and may also prescribe that the court which convicts the person shall order the forfeiture of anything used in the commission of the offence. However, these regulations shall have to first be laid before parliament for approval. A person shall not be granted a petroleum production licence unless their development plan takes proper account of best petroleum industry practices and safety factors.¹⁴⁹ This is however largely vague because the Act does not satisfactorily define what amounts to —best petroleum industry practices.¶¹⁵⁰

The petroleum production licence granted under the Act must expressly require the licensee to undertake Environmental Impact Assessment prior to commencing production activities.¹⁵¹ The minister is also empowered to make regulations relating inter alia to the conservation and

¹⁴⁷ Section: 142.

¹⁴⁸ The National Environment Act, 2019; Petroleum waste management regulations, 2019.

¹⁴⁹ Section: 74 (1) (B).

¹⁵⁰ The Act merely defines –best petroleum industry practices¶ to mean the best available practices that are generally accepted as good, safe, transparent and efficient in carrying out petroleum activities and that can be applied globally under similar circumstances, something which leaves a lot to be desired since environmental compliance is best achieved through strong local regulation.

¹⁵¹ Section: 76 (1) (f).

prevention of the waste of natural resources, whether petroleum or otherwise, and the carrying out of environmental impact assessments for that purpose.¹⁵²

The National Environment Act 2019

The National Environment Act (NEA) 2019 is Uganda's framework environmental law and its central tenet is sustainable environmental management.¹⁵³ It prescribes a set of environmental management principles which include:¹⁵⁴ to assure all people living in the country the fundamental right to an environment adequate for their health and well-being; encourage the maximum participation by the people of Uganda in the development of policies, plans and processes for the management of the environment; use and conserve the environment and natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources.

Conservation of the cultural heritage and use of the environment and natural resources of Uganda for the benefit of both present and future generations; maintain stable functioning relations between the living and non-living parts of the environment through preserving biological diversity and respecting the principle of optimum sustainable yield in the use of natural resources and reclaim lost ecosystems where possible and reverse the degradation of natural resources.

Further principles include, to establish adequate environmental protection standards and to monitor changes in environmental quality; publish relevant data on environmental quality and resource use; require prior environmental assessments of proposed projects which may significantly affect the environment or use of natural resources; ensure that environmental awareness is treated as an integral part of education at all levels; ensure that the true and total costs of environmental pollution are borne by the polluter; and to promote international cooperation between Uganda and other states in the field of the environment.

It establishes the National Environment Management Authority (NEMA)¹⁵⁵ as a body responsible for coordinating, monitoring and supervising all environmental matters in

¹⁵² Section: 183 (3) (f).

¹⁵³ The National Environment Act, 2019 Cap153.

¹⁵⁴ The National Environment Act, Cap153 Laws of Uganda, 2019 Section 2.

¹⁵⁵ National Environment and Management Authority.

Uganda.¹⁵⁶ The NEA confers on every person a right to a healthy environment and obligates every person to maintain and enhance the environment, and where need arises inform the authority or the local environment committee of all activities and phenomena that may affect the environment significantly.¹⁵⁷

In furtherance of the right to a healthy environment and enforcement of the duty to maintain and enhance the environment, the authority or the local environment committee is entitled to bring an action against any other person whose activities or omissions have or are likely to have a significant impact on the environment to prevent, stop or discontinue any act or omission deleterious to the environment; compel any public officer to take measures to prevent or to discontinue any act or omission deleterious to the environment; require that any on-going activity be subjected to an environmental audit or require that any on-going activity be subjected to environmental monitoring or request a court order for the taking of other measures that would ensure that the environment does not suffer any significant damage.

National Environment Management Authority (NEMA) or the local environment committee is entitled to bring an action notwithstanding that the person cannot show that the defendant's act or omission has caused or is likely to cause any personal loss or injury. The Act further requires that Environmental Impact Assessment be undertaken by a developer where the lead agency, in consultation with the executive director, is of the view that the project may have an impact on the environment; is likely to have a significant impact on the environment; or will have a significant impact on the environment.¹⁵⁸

The NEA prescribes the requirement to observe environmental quality standards. In this vein, it prohibits any person from carrying out any activity which is likely to pollute the air, the water or the land in excess of standards or guidelines prescribed or issued under Act. Thus, a person requires a pollution licence to carry out a polluting activity. A pollution licence cannot be issued unless the licensee is capable of compensating the victims of the pollution and cleaning the environment in accordance with the –polluter pays principle.

¹⁵⁶ Ibid Sections: 4, 5 and 6.

¹⁵⁷ Section: 3.

¹⁵⁸ Section 19 (3).

National Environment Act (NEA) requires NEMA to establish standards for air quality,¹⁵⁹ water quality,¹⁶⁰ the discharge of effluent into water,¹⁶¹ the control of noxious smells,¹⁶² the control of noise, vibration and pollution,¹⁶³ soil quality¹⁶⁴ and standards for minimisation of radiation.¹⁶⁵ Section 35 prohibits any activity not being a traditional activity, in a wetland without the prior written approval of the Authority given in consultation with the lead agency responsible.

Section 49 of the National Environment Act provides for the protection of natural heritage sites. It provides that NEMA, with the assistance of Local Environment Committees, District Environment Committees and the lead agency, identify those elements, objects and sites in the natural environment which are of cultural importance to the various peoples of Uganda.

Occupational Safety and Health Act 2006¹⁶⁶

The Act was intended to consolidate, harmonize and update the law relating to occupational safety and health; repeal the Factories Act¹⁶⁷ and provide for matters related. The Act makes provisions for the protection of the health and safety, welfare, and provision of appropriate training of persons employed in work places. Section 18 (1) of the Act requires the employer to monitor and control the release of dangerous substances into the environment.

Thus, where there is an activity that involves the manufacture or development of large quantities of chemicals or any dangerous substance which are likely to be airborne or to be released into environment, rivers or lakes or soil and which are a danger to the animal and plant life, it shall be the duty of the concerned employer to arrange for equipment and apparatus to monitor the air, soil, and water pollution and to arrange for the actual monitoring of these mediums, with a view of rendering them safe from the dangerous undertaking.

Subs. (2) states that the records of monitoring in subsection (1) shall be kept and made available to the inspector. These provisions are applicable to all Oil Companies and Mining

¹⁵⁹ Ibid Section 24.

¹⁶⁰ Ibid Section 25.

¹⁶¹ Ibid Section 26.

¹⁶² Ibid Section 27.

¹⁶³ Ibid Section 28.

¹⁶⁴ Ibid Section 30.

¹⁶⁵ Ibid Section 31.

¹⁶⁶ Occupational Safety and Health Act 2006.

¹⁶⁷ Cap220.

Companies in respect of Oil and Gas exploration and mining because of the danger they expose to the environment and human safety.

Land Act, 1998

This is an Act to provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other related or incidental matters. This Act makes provision with respect to a wide variety of matters regarding land in Uganda such as land tenure, customary ownership, grant of land in freehold, management of communal land, management of land by the Uganda Land Commission, land-use control and functioning of land tribunals. Section 2 declares all land in Uganda to be vested in its citizens and divides land tenure systems into 4 categories: customary; freehold; mailo; and leasehold. Section 44 provides for the holding in trust of land of environmentally sensitive areas including wetlands, forest reserves, national parks, by the Government or local government.

Mining Act 2003 (Cap. 148) Section 98 (1) – (4).

This is an Act to repeal and replace the Mining Act, Cap. 148, with a new legislation on mining and mineral development which conforms, and otherwise gives effect, to the relevant provisions of the Constitution; to vest the ownership and control of all minerals in Uganda in the Government; to provide for the acquisition of mineral rights; and to provide for other related matters.

The Constitution (1995) was silent on the ownership of minerals, but the 2005 constitutional amendment declared that –[t]he entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government...l (Section 244[1]). The Mineral Policy (2000) objectives are to: 1) stimulate private investment; 2) ensure that mineral wealth supports national development; 3) regularize and improve artisanal and small-scale mining; 4) minimize and mitigate the adverse social and environmental impact of exploitation; 5) encourage female participation in the mineral sector and discourage child labor; 6) strengthen national manpower and institutional capacity; and 7) increase mineral trade and exports.¹⁶⁸

¹⁶⁸GOU, ‘Ministry of Energy and Mineral Development’ (2009). Website. <http://www.energyandminerals.go.ug> (accessed December 2021).

The Mining Act (2003) provides for the granting of mineral rights, and establishes that 80% of state revenue from mining goes to central government, 17% to local governments, and 3% to landowners. Other relevant legislation includes: the Mining Regulations A and B; National Environmental Management Act (1998); Energy Policy; and Power Sector Strategic Plan (1999).

National Forest and Tree Planting Act, 2003

An Act to provide for the conservation, sustainable management and development of forests for the benefit of the people of Uganda; to provide for the declaration of forest reserves for purposes of protection and production of forests and forest produce; and to provide for the sustainable use of forest resources.

This Act makes provision for the conservation, management and development of forest resources in Uganda and establishes the National Forestry Authority and a fund for tree planting. The purposes of the Act include the creation of an integrated forest sector, conservation of biological diversity, the devolution of functions and powers in the forest sector and the sustainable development of that sector.

Uganda Wildlife Act, 2019

Uganda Wildlife Act, 2019 is an Act to provide for the conservation and sustainable management of wildlife; to strengthen wildlife conservation and management; to continue the existence of the Uganda Wildlife Authority; to streamline the roles and responsibilities of institutions involved in wildlife conservation and management; to continue the existence of the Wildlife Fund and for related matters.

"Wildlife" means any wild plant or animal of species native in Uganda and includes wild animals which migrate through Uganda (Sect. 2). The purpose of this Act is to provide for—

- (a) the conservation of wildlife throughout Uganda so that the abundance and diversity of their species are maintained at optimum levels commensurate with other forms of land use, in order to support sustainable utilisation of wildlife for the benefit of the people of Uganda and
- (b) the sustainable management of wildlife conservation areas; (c) the protection of rare, endangered and endemic species of wild plants and animals; (d) ecologically acceptable control of problem animals among others (Sect. 2).

A body corporate, the Wildlife Authority, is established under section 5. Functions of the Authority are outlined in section 6 to including (a) to ensure the sustainable management of wildlife conservation areas; (b) to propose policies on wildlife management to the Minister; (c) to implement Government policies on wildlife management; and (d) to identify and recommend areas for declaration as wildlife conservation areas and for the revocation of such declaration among others.

Water Act, 1997 (Cap. 152)

This is an Act to provide for the use, protection and management of water resources and supply; to provide for the constitution of water and sewerage authorities; and to facilitate the devolution of water supply and sewerage undertakings.

The objectives of the Act are - (a) to promote the rational management and use of the waters of Uganda through - (i) the progressive introduction and application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources; (ii) the coordination of all public and private activities which may influence the quality, quantity, distribution, use or management of water resources; (iii) the coordination, allocation and delegation of responsibilities among Ministers and public authorities for the investigation, use, control, protection, management or administration of water resources; (b) to promote the provision of a clean, safe and sufficient supply of water for domestic purposes to all persons; (c) to allow for the orderly development and use of water resources for purposes other than domestic use, such as the watering of stock, irrigation and agriculture, industrial, commercial and mining uses, the generation of hydroelectric or geothermal energy, navigation, fishing, preservation of flora and fauna and recreation in ways which minimise harmful effects to the environment; and (d) to control pollution and to promote the safe storage, treatment, discharge and disposal of waste which may pollute water or otherwise harm the environment and human health.

4.2.2 Policies

Compliance standards under the National Policy Framework for Oil and Gas

Policies refer to a set of guidelines developed to inform or give direction to the planning, managing, implementation and monitoring of government plans, programs and work plans.

In Uganda a policy was developed to guide the development of the country's oil and gas sector.¹⁶⁹

In addition to the international and regional compliance requirements, legal regime governing the oil and gas industry in Uganda is also constituted by locally tailored policy and legislative compliance requirements.¹⁷⁰ The major policy and legislative environmental law compliance requirements were developed after 1994 with the formulation of the National Environment Action Plan.

This saw the development of the major National Environment Management Policy¹⁷¹ and the National Environment Act as Uganda's framework legislation. It is under these that subsequent sectoral policy and legislation have developed. Legislation covered in this chapter includes the Constitution, major oil and gas law and other relevant environmental laws. Compliance with these policy and legislative aspirations and standards will enable Uganda develop an environmentally healthy, safe, sound and sustainable oil and gas sector.

In her study, *Monday*¹⁷² noted that the policy framework also makes provision for environmental protection and further provides for the creation of institutions to govern and manage the petroleum sector and also the adoption of international policies that are expected to strengthen Uganda's policy, legal framework.

The National Oil and Gas Policy (NOGP) for Uganda¹⁷³

This is a policy whose main goal is to ensure the use of the country's oil and gas resources to contribute to early achievement of poverty eradication and to create lasting value to society. The policy has principles that are relevant to the protection of the environment and conservation of biodiversity. It requires that the environment, human development and biodiversity should be neatly balanced for mutual benefit and survival. The policy seeks to promote sustainable development. It imposes on the oil companies the responsibility to protect the environment where they work or any areas in the country impacted by their operations and Government to regulate and monitor compliance.

¹⁶⁹ Ministry of Energy and Mineral Development, 'The National Oil and Gas Policy for Uganda' [2008] pp. 3.

¹⁷⁰ Kayihura F, 'Assessing national environmental law in compliance with international and regional environmental legal standards; a case study of the oil and gas industry of Uganda' (2018), UCU LL.M thesis. See also Atukunnda A, 'Analysis of the legal regime on compliance with environmental standards in the oil and gas sector in Uganda' (2018), UCU LL.M thesis.

¹⁷¹ National Environment Management Policy- 1995.

¹⁷² Monday J, 'Oil and gas exploration and environmental protection in Uganda: An appraisal of the policy and legal framework' (2014), Unpublished Master's Thesis, Makerere University Kampala, Uganda.

¹⁷³ The National Oil and Gas Policy for Uganda.

Objective 9 of the NOGP says that the policy is to ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity.¹⁷⁴ The Ministry of Water and Environment together with the National Environment Management Authority (NEMA) continue to play a leading role in the implementation of this policy objective. Environment and Social Impact Assessments (ESIAs) are conducted prior to undertaking each activity in the oil and gas sector as required by the National Environment Act Cap 153 and National Environment (Environment Impact Assessment) Regulations, 1998. During the EIA process, consultations are undertaken with stakeholders at community and national levels to ensure a harmonious interface between petroleum activities, communities, the environment and the biodiversity of the Albertine Graben. In addition, routine Environmental Inspections are carried out by the respective responsible arms of Government to assess compliance with environmental requirements and to investigate impacts which may not have been predicted at the time when ESIA approval was granted.

The policy has a specific objective dealing with the environment and biodiversity. The policy is designed to ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity. To achieve this objective, the policy enumerates a number of strategies which include: ensuring availability of the necessary institutional and regulatory framework to address environment and biodiversity issues relevant to oil and gas activities; ensuring presence of the necessary capacity and facilities to monitor the impact of oil and gas activities on the environment and biodiversity; promoting environmental protection in oil and gas activities; requiring oil companies and their contractors/subcontractors to use best practices in ensuring environmental protection and biodiversity conservation and requiring oil companies and any other operators to return all sites on which oil and gas activities are undertaken to their original condition as an environmental obligation.

To achieve the above strategies, the Policy proposes the following actions: upgrading the relevant Environment and Biodiversity legislation to address oil and gas activities; strengthening the institution with a mandate to manage the impact of oil and gas activities on the environment and biodiversity and developing master plans for the oil and gas producing region (Albertine Graben).¹⁷⁵

¹⁷⁴ NOGP pages 28-29

¹⁷⁵ Objective 9, at p.28-29.

Monday¹⁷⁶ concludes that Uganda being new in the oil and gas industry has policies such as the National Oil and Gas Policy in place, which provides for environmental matters and the institutional framework to manage and govern the petroleum sector in Uganda. However, the legal framework has weak provisions as regards penalties to be given to the culprits and especially because a number of these provisions are not up to date as pointed out in her study.¹⁷⁷

The National Environment Management Policy¹⁷⁸

The National Environment Management Policy is an output of the National Environment Action Plan (NEAP) process. The overall goal of the policy is to establish sustainable social and economic development, which maintains or enhances environmental quality and resource productivity on a long-term basis that meets the needs of the present generation without compromising the ability of the future generation to meet their own needs.¹⁷⁹ Specifically, the policy seeks to meet the following objectives:¹⁸⁰

To enhance the health and quality of life of all people in Uganda and promote long-term sustainable, socio-economic development through sound environmental and natural resource management and use; integrate environmental concerns in all development policies, planning and activities at national, district and local levels, with full participation of the people; and conserve, preserve and restore ecosystems and maintain ecological processes and life support systems, especially conservation of national biological diversity. This is geared at ensuring that there is adequate environmental health and safety.

The policy also seeks to optimize resource use and achieve a sustainable level of resource consumption; raise public awareness to understand the appropriate linkages between environment and development; and ensure individual and community participation in environmental improvement activities. Underlying these broad policy objectives are certain key principles which guide policy development and implementation strategies.¹⁸¹

¹⁷⁶Monday J, 'Oil and gas exploration and environmental protection in Uganda: An appraisal of the policy and legal framework' (2014) Unpublished Master's Thesis, Makerere University Kampala, Uganda.

¹⁷⁷ Ibid.

¹⁷⁸The National Environment Management Policy.

¹⁷⁹Chapter 2 part 2.1 of the policy.

¹⁸⁰ Part 2.2.

¹⁸¹ Part 2.3.

Every person should have a constitutional right to live in a healthy environment and the obligation to keep the environment clean; the development of Uganda's economy should be based on sustainable natural resource use and sound management; security of land and resource tenure is a fundamental requirement of sustainable natural, resource management; and that the utilization of non-renewable resources should be optimized and where possible their life extended by recycling.

Environmentally friendly, socially acceptable and affordable technologies should be developed and disseminated for efficient use of natural resources; full environmental and social costs or benefits foregone as a result of environmental damage or degradation should be incorporated in public and private sector planning and minimized where possible; priority should be given to establishing a social and economic environment which provides appropriate incentives for sustainable natural resource use and environmental management; and an integrated and multi-sectoral systems approach to resource planning and environmental management should be put in place.

Regular monitoring and accurate assessment of the environment should be carried out and the information widely publicized; increased awareness and understanding of environmental and natural resource issues by Government and the public should be promoted; social equity, particularly when allocating resource use should be promoted; and sub-regional, regional and global environmental interdependence should be recognized.

The National Water Policy¹⁸²

The overall objective of the policy is to manage and develop the water resources of Uganda in an integrated and sustainable manner. This is to be done in a manner that ensures and provides water of adequate quantity and quality for all social and economic needs of the present and future generations, with the full participation of all stakeholders. The water policy requires application of Environmental Impact Assessment in all water related projects and for integration of the water and hydrological cycle concerns in all development programs.

With respect to oil exploration the policy provides for: upstream and downstream water use relationships; regulation of industrial discharges of effluents to water; use and sharing of water resources by various stakeholders; and international cooperation of trans-boundary

¹⁸²National Water Policy- 1999

water resources. This policy is crucial for oil exploration and production because it emphasizes water quality and quantity. Hence in light of the policy the operators should ensure that their activities do not lead to pollution of neighboring waters for example through discharge of aqueous wastes.

Uganda Forestry Policy¹⁸³

The objective of the Uganda Forestry Policy is to establish an integrated forest sector that achieves sustainable increases in the economic, social and environmental benefits from forests and trees by the people of Uganda, especially the poor and vulnerable. The policy provides for: the protection of Permanent Forest Estate under government trusteeship and the development and sustainable management of natural forest on private land and a wider cross section of stakeholders' participation in the management of the forest estate and in the conservation and sustainable use of forest biodiversity.

Maintenance of the forest cover is crucial for oil exploration and development. This is more so because it is already reported that a number of forests have been destroyed during site clearing operations. Some of the affected or at least threatened forests include Budongo Forest Reserve, Itwara Forest Reserve, Kagombe Forest Reserve and many others.

Uganda Policy Framework for Industry Sector¹⁸⁴

The vision of the policy is to build the industrial sector into a modern, competitive and dynamic sector fully integrated into the domestic, regional and global economies. The policy objectives include the exploiting and developing natural domestic resource-based industries such as petroleum and promotion of competitive industries that use local raw materials.

The main features of this Policy Framework, drawn in line with objectives of Poverty Eradication Action Plan (PEAP), Plan for Modernization of Agriculture (PMA) and Strategic Exports Programme (SEP), among others are to: create a business friendly environment for private sector-led industrialization in which industries will develop, improve productivity and the quality of products through, inter alia, creativity and innovation and become more competitive in the global economy; improve infrastructure development for effective and efficient industrialization program; promote environmentally healthy and safe sustainable

¹⁸³Uganda Forestry Policy- 2001.

¹⁸⁴Uganda Policy Framework for Industry Sector-2008.

industrial development to reinforce national goals of long-term growth and development and promote safe work place practices in all industry sub-sectors.

In this regard it is instructive to refer to *Monday's*¹⁸⁵ recommendations to the effect that more emphasis is made in ensuring that the policy, legal framework in place is effective by adopting provisions that apply directly to the oil and gas industry and environmental issues at hand, and also amend those provisions that are lacking in some of the acts given the fact that they were enacted at a time when there was no oil and gas exploration in Uganda.

National Climate Change Policy 2015

Climate change will affect us all, through its impacts on different crucial aspects of our lives.¹⁸⁶ Uganda's 2010–2015 and 2016-2021 five-year National Development Plans as well as the Country's vision 2040 already recognise that addressing the challenges of climate change is key to enhancing sustainable economic and social development.

Climate change is a global challenge that requires a concerted effort by all nations. The National Climate Change Policy (NCCP) is Uganda's integrated response to climate change. It has been prepared and designed within the context of the country's vision and national development priorities; it provides a clearly defined pathway for dealing with the challenges of climate change within the socio-economic context of Uganda, and looks ahead to the opportunities and benefits of a green economy.

The goal of the policy is to ensure a harmonised and coordinated approach towards a climate-resilient and low-carbon development path for sustainable development in Uganda and the overarching objective of the policy is to ensure that all stakeholders address climate change impacts and their causes through appropriate measures while promoting sustainable development and a green economy.

4.2.3 Regulations

Petroleum Regulations 2016¹⁸⁷

¹⁸⁵Monday, J. 'Oil and gas exploration and environmental protection in Uganda: An appraisal of the policy and legal framework' (2014), Unpublished Master's Thesis, Makerere University Kampala, Uganda.

¹⁸⁶Uganda National Climate Change Policy, 'Transformation through Climate Change Mitigation and Adaptation' (April, 2015) Ministry of Water and Environment- Kampala.

¹⁸⁷Petroleum (Exploration, Development and Production) Regulations 2016; Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016; Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016; Petroleum (Exploration, Development and Production) (National

These Regulations may be cited as the Petroleum (Exploration, Development and Production) Regulations, 2016. They are made under sections 48(2), 69 (6), 78, 81 (5), 86 (3), 92, 93(1), 93(2), 94(2), 95 (1), 96 (3), 121(2), 123, 128(1), 155(1), 168(2) and 183 of the Petroleum (Exploration, Development and Production) Act, No. 3 of 2013. Section 3 gives the responsibilities of the licensee as (1) The licensee and other parties participating in petroleum activities in Uganda are responsible for operating in accordance with the Act, these Regulations and any other applicable law and (2) The licensee shall ensure that a person carrying out work for him or her, either personally or as an employee, contractor or subcontractor, complies with the Act, these Regulations and any other applicable law and administrative decisions issued under the Act.

4.2.4 Institutional Framework

The Parliament of Uganda

The Parliament of Uganda, in view of its mandates and functions, has a major influence on the environmental regulatory system and therefore the sustainability of petroleum activities. Parliament by working through the committees on natural resources has the opportunity to influence agencies to operate according to statutory mandate. Parliament has powers to amend the statute, criticize agencies and agency officials including punishments through the reduction of budgets. Furthermore, encouragement of allocation of more funds to address an environmental concern at hand can greatly motivate the performance of agencies.

Article 244(2) (a-d) of the 1995 Constitution further mandates parliament to make laws to regulate the exploitation of minerals and petroleum, the sharing of royalties arising from petroleum exploitation, conditions for the payment of indemnities arising out of exploitation of petroleum and minerals, and the restoration of derelict lands. Consequently, various pieces of legislation have been enacted by Parliament to give effect to the relevant constitutional provisions. Section 4 of the Petroleum (Exploration, Development and Production) Act and Chapter 4 of the Oil Gas Revenue Management Policy, 2012 respectively affirm the position of the Constitution that government shall hold petroleum rights on behalf of and for the benefit of the people of Uganda. As at the time of writing this paper, the Petroleum

Content) Regulations 2016; Petroleum (Exploration, Development and Production) (Metering) Regulations 2016; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Regulations 2065; and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Regulations 2016; Statutory Instrument No. 150—1.

(Exploration, Development and Production) Act (Chapter 150 Laws of Uganda) is the major legal regime governing the oil industry in Uganda.

The Parliament, which has overarching responsibility to provide checks and balances to the Executive, is critical in preventing the occurrence of the resource curse through judiciously using its power of the purse.¹⁸⁸ The National Oil and Gas Policy¹⁸⁹ provides that the role of Parliament is to enact –petroleum legislation including legislation on petroleum revenues and monitoring performance in the petroleum sector through annual policy statements and budget approval processes.¹⁹⁰ The role of Parliament can be exercised across the Oil and Gas value chain, starting from Upstream activities of exploration, development and production; to Midstream activities, of refining, storage and conveyance through pipelines, to Downstream activities of processing, marketing and distribution.¹⁹¹

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

¹⁸⁸ World Bank Institute (WBI) –Parliamentary Oversight of the Extractives Industries Sector (2012)

¹⁸⁹ The National Oil and Gas Policy (2014).

¹⁹⁰ Ministry of Energy & Mineral Development (MEMD) – Ministerial Policy Statements, Government of Uganda, Kampala (2014) (www.energyandminerals.go.ug)

¹⁹¹ Tordo S, Tracy BS, & Arfaa N, –National Oil Companies and Value Creation (2011), (World Bank working paper; No. 218) ISBN: 978-0-8213-8832-7 extracted from www.worldbank.org on December 9, 2021; and World Bank Institute (WBI) 2012: –Parliamentary Oversight of the Extractives Industries Sector

One of the major challenges for the sector is that the agreements that the executive enters into have always been shrouded in secrecy. The executive argues that agreements have proprietary information that would be inimical to the interests of the investor if placed in the public arena.¹⁹² This is a contentious matter and is part of the general point of contention of access to information.¹⁹³ For example, when Parliament passed a resolution requiring executive to submit Production Sharing Agreements, the members of parliament were only allowed a glimpse of the signed PSA's. This does not auger well for the future developments in the oil and gas sector.

Sections 151 and 152 of The Petroleum (Exploration, Development and Production) Act (2013) seem contradictory. Whereas Section 151 avers that the Minister may provide information about petroleum agreements to the public, Section 152 restricts access to information provided by a licensee to the Minister. In some countries such as Timor-Leste, information on contracts for the exploration, development and production of natural resource is in the public arena.¹⁹⁴ The Ugandan legal regime is accordingly weak on accountability¹⁹⁵ and is not even comparable to the regime in Sierra Leone where Parliament has access to resource contracts but with its obligation restricted to providing advisory role that can be accepted or otherwise.¹⁹⁶

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.

¹⁹² Veit P, Excell C. & Zomer, A. 'Avoiding the Resource Curse: Spotlight on Oil in Uganda' (2011), WRI Working Paper. World Resources Institute, Washington DC. Available online at <http://www.wri.org/project/equity-poverty-environment>.

¹⁹³ Ibid

¹⁹⁴ World Bank Institute (WBI) -Parliamentary Oversight of the Extractives Industries Sector (2012)

¹⁹⁵ Veit, P., Excell C. & Zomer, A. 'Avoiding the Resource Curse: Spotlight on Oil in Uganda' (2011), WRI Working Paper. World Resources Institute, Washington DC. Available online at <http://www.wri.org/project/equity-poverty-environment>.

¹⁹⁶ World Bank Institute (WBI) -Parliamentary Oversight of the Extractives Industries Sector (2012)

A. Ministries and Departments

Ministry of Gender, Labour and Social Development

This Ministry takes the lead as coordinating agency for the social development sector in collaboration with other stakeholders, the Ministry is responsible for community empowerment, protection and promotion of the rights and obligations of the specified vulnerable groups for social protection and gender responsive development.¹⁹⁷ The Ministry is further tasked with ensuring that occupational health and safety standards are maintained in working environments in Uganda. This covers the workers in the Oil and Gas rigs in the Albertine region.

The Ministry ensures this by carrying out inspections in the Oil and Gas exploration and production areas and engaging the employees within the Oil and Gas industries in discussions on the various health and safety problems they encounter while working as seen in the previous chapters for example lack of safety or protective gear, exposure to dangerous chemicals such as crude oil and gas, lack of adequate health services and the like. Through this the Ministry has powers to order the Oil and Gas companies such as Tullow Oil to ensure that necessities are in place for a healthy and safe working environment.

Ministry of Energy and Mineral Development

The Ministry of Energy and Mineral Development (MEMD) is responsible for the Energy and Minerals sector in Uganda. This is the Ministry responsible for management, regulation and development of the Oil and Gas industry in Uganda.¹⁹⁸ One of the main functions of the Ministry is to issue petroleum licenses to Oil and Gas companies to enable them carry out Oil and Gas exploration and production in Uganda.

These licenses are issued subject to fulfilment of the mandatory requirements as indicated in the Petroleum (Exploration, Development and Production) Act¹⁹⁹ for example the Oil and Gas company applying for the license ought to have carried out a complete Environmental Impact Assessment (EIA). This plan must be presented in accordance with other requirements in the Act to ensure that there is a plan to deal with the inevitable environmental health and safety impacts that result from oil and gas exploration and production for example

¹⁹⁷<http://www.mglsd.go.ug/> accessed on 8th/March/2017.

¹⁹⁸<http://www.energyandminerals.go.ug/> accessed on 8th/March/2017.

¹⁹⁹Petroleum (Development and Production) Act 2013 Cap153.

the Minister of Energy and Mineral Development,²⁰⁰ granted eight petroleum production licenses to Total E&P Uganda B.V (3 licenses) and Tullow Operations Uganda Pty (5 licenses) following conclusion of the evaluation of the applications for Production Licenses submitted by the two companies respectively.

Ministry of Agriculture, Animal Industry and Fisheries

Ministry of Agriculture, Animal Industry and Fisheries is a Government Ministry charged with creating an enabling environment in the Agricultural Sector. It carries out its role by enhancing crop production, improving food and nutrition security, widening export base and improving incomes of the farmers. The Ministry is the overseer of the Agricultural sector where it formulates, reviews and implements national policies, plans, strategies, regulations, standards and enforces laws, regulations and standards along the value chain of crops, livestock and fisheries.

Ministry of Agriculture, Animal Industry and Fisheries is mandated to: Formulate, review and implement national policies, plans, strategies, regulations and standards and enforce laws, regulations and standards along the value chain of crops, livestock and fisheries; Regulate the use of agricultural chemicals, veterinary drugs, biological, planting and stocking materials as well as other inputs for environmental sustainability; and establish sustainable systems to collect, process, maintain and disseminate agricultural statistics and information among others.

Ministry of Works and Transport

The Mandate of the Ministry of Works and Transport (MoWT) is to: Plan, develop and maintain an economic, efficient and effective transport infrastructure. Plan, develop and maintain economic, efficient and effective transport services by road, rail, water and air. The Ministry of Works and Transport exists to formulate policies, plans, set standards, build capacity, carry out advocacy, regulate, monitor and evaluate the Works and Transport sector.

Key functions of MoWT include: Initiate, formulate and develop National Policies, Plans and Programs for safe and efficient Public Transport Infrastructure and Services; Monitor and Evaluate the Implementation of National Policies, Plans and Programs for safe and efficient Works, Public Transport Physical Infrastructure and Services; Initiate new and review

²⁰⁰Hon Eng. Irene Muloni on August 30th, 2016 granted eight licenses.

existing Laws and Regulations on Works and Transport Infrastructure and Services; and Enforce compliance to national policies, laws regulations and guidelines on transport ways infrastructure and services among others.

Ministry of Lands, Housing and Urban Development

Ministry of Lands, Housing & Urban Development (MoLHUD) is responsible for all matters concerning lands, housing and urban development and putting in place policies and initiating laws that ensure sustainable land management promotes sustainable housing for all. The ministry is also tasked to put in place policies and initiate laws responsible for sustainable land management aimed at promoting sustainable housing for all and fostering orderly urban development in the country.

The Vision is –Sustainable Land Use, Land Tenure Security, Affordable, Decent Housing and Organized Urban Development and the mission is –To ensure sustainable land management, planned urban and rural development and decent housing for all. The mandate of the Ministry is –To ensure a rational: sustainable and effective use and management of land and orderly development of urban and rural areas as well as safe, planned and adequate housing for socio-economic development. Key functions of the Ministry are: Set national standards for matters regarding sustainable use and development of land and provision of safe, planned and improved housing/human settlements; and Monitor and coordinate initiatives in the Local Governments as regards the lands, housing and urban development sub sectors among others.

Ministry of Water and Environment

The Ministry of Water and Environment (MWE) was established in 2007, from the then Ministry of Water, Lands and Environment, following the cabinet decision taken on 15th April, 2007. It has the overall responsibility for the development, management, and regulation of water and Environment resources in Uganda. The Mandate of the Ministry is derived from the Constitution and the Local Government Act and includes initiating legislation, policy formulation, setting standards, inspections, monitoring, and coordination and back up technical support in relation to water and environment sub sectors.

The Vision of the Water and Environment Sector is ‘Sound management and sustainable utilisation of Water and Environment resources for the betterment of the population of Uganda.’ Its Mission is ‘To promote and ensure the rational and sustainable utilisation,

development and effective management of water and environment resources for socio-economic development of the country' and the Mandate of the Ministry is derived from the Constitution and the Local Government Act and includes initiating legislation, policy formulation, setting standards, inspections, monitoring, and technical support in relation to water and environment sub sectors.

Roles and functions of the MWE are: Developing legislations, policies and standards for management of water and environment resources; Provision of water for use in agriculture, rural industries, tourism and other uses; Coordinating the national development of Water for Production (agriculture, industry, aquaculture, tourism, trade); Providing sound and sustainable management of environment for optimum, social and economic benefits for the present and future generations; and Promotion of effective management of forests and trees to yield increases in economic, social and environment benefits for the current and future generation, especially the poor and vulnerable among others.

Ministry of Tourism, Wildlife and Antiquities

Ministry of Tourism, Wildlife and Antiquities (MTWA) is a Government Ministry with a responsibility to sustain tourism, wildlife and cultural heritage. This is aimed at contributing to transforming Uganda into a prosperous country. The Ministry has a mission to develop and promote tourism, wildlife and heritage resources for enhancement of Uganda as a competitive and preferred tourist destination, with accelerated sector contribution to the national economy.

The Ministry Mandate is: -To formulate and implement policies, strategies, plans and programs that promote tourism, wildlife and cultural heritage conservation for socio-economic development and transformation of the country. The mandate of the Ministry of Tourism, Wildlife and Antiquities (MTWA) is derived from Article 189 and Sixth Schedule of the Constitution of the Republic of Uganda (1995) and the Uganda Tourism Act, 2008. Ministry of Tourism, Wildlife and Antiquities is mandated to: Formulate, Implement Policies of Tourism, Wildlife and Cultural heritage; Sustain and manage wildlife and cultural heritage conservation areas; and Regulate and Quality Assure Tourism, Wildlife and Heritage programs and services among others.

Ministry of Local Government

The Ministry of Local Government (MOLG), is a cabinet- level government ministry of Uganda. It is responsible for the "creation, supervision and guidance of sustainable, efficient and effective service delivery in the decentralized system of governance. The ministry is responsible for the harmonization and support of all local government functions, to cause positive socio-economic transformation of Uganda".

Ministry of Local Government is a Government Ministry responsible for guidance and overall vision of Government in local Governments. The Ministry oversees the Government structures and operations at local levels in Uganda such that they are harmonized and supported to bring about socio-economic transformation of the whole country. The Ministry is composed of two Directorates of Local Government Administration and Inspection whose mandate is geared towards sustainable, efficient and effective service delivery in the decentralized system of governance.

Ministry of Local Government (MOLG) is mandated to:-inspect, monitor, and where necessary offer technical advice/assistance, support supervision and training to all Local Governments; coordinate and advise Local Governments for purposes of harmonization and advocacy; act a Liaison/Linkage Ministry with respect to other Central Government Ministries and Departments, Agencies, Private Sector, Regional and International Organizations; and research, analyze, develop and formulate national policies on all taxes, fees, levies, rates for Local Governments.

The Judiciary

Headed by the Chief Justice, appointed by the President, the Judiciary is one of the three arms of Government of Uganda charged with the responsibility to oversee justice in the country. Article 126 (1) of the Constitution of the Republic of Uganda, spells out the mandate of the Judiciary: "Judicial Power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people." The judiciary has the core role to promote the rule of law and contribute to the maintenance of order in society in Uganda. Its functions focus on administering justice through resolving disputes between individuals, and between the State and individuals.

The courts are the arbiters within the meaning of a particular statute or constitutional provision. What an agency can or must do is what the courts in interpreting the statutory or constitutional provisions say it can or must do. The judiciary may reverse an agency's decision if it finds that the agency has violated any of these sources of the law, including adherence to the originating statutory mandate, adherence to own rules and procedure, and adherence to the constitution.

In this study, the findings from Ministry of Justice and Constitutional Affairs, Uganda Law Society and Uganda Law Reform Commission, as listed in table 3.1, are collectively analysed in this subsection. It is indicated in the Constitution of the Republic of Uganda that judicial power is derived from the people and shall be exercised by the courts established in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.²⁰¹ Henceforth the judiciary is responsible for bringing to justice those who are guilty of breaching the environmental health and safety regulations and laws as above discussed. This is aimed at deterring people and oil and gas companies from violating these laws and regulations especially during the oil and gas exploration and production activities.

Moving forward, with effect from August 2017, perpetrators of environmental degradation are now prosecuted in a new specialised court called: Standards and Utilities Court, Standards. The Judiciary has established a specialized court to deal with prosecution of culprits involved in stealing of utilities like power, water, vandalism, killing of wildlife and the destruction of the environment among others. The court is housed at Buganda Road Court premises for the start before rolling out to other parts of the country. The creation of the court is a culmination of years of protracted negotiations between Judiciary and Ministry of Water and Environment. The creation of the specialised court rests on the allegations that the status quo has delayed cases and yet the environment is being degraded at a fast rate.²⁰² According to Kisawuzi²⁰³ the new court seeks to avoid any case of court backlog as it is in other courts. At the launch speakers from the various organizations that will have the culprits prosecuted in this specialized court, especially National Environment Management Authority (NEMA) and Uganda Wild Life Authority (UWA), asked the Judiciary to prioritize and fast track the

²⁰¹ Article 126 (1): The 1995 Constitution of the Republic of Uganda.

²⁰² Tajuba P. –Judiciary okays environmental court (2017), Saturday Monitor (Uganda February 18th, 2017).

²⁰³ Kisawuzi E. – 'The Judiciary spokesperson' (2017).

prosecution of the cases to save Ugandans from loss of revenue and save the environment. Chief Justice stated that the creation of yet another specialized court is a big step in saving the country's economy and environment from offenders who were talking advantage to steal and vandalized government utilities and the environment.

B. Authorities and Agencies

National Environmental Management Authority (NEMA)

The National Environment Management Authority (NEMA), is a creation of the National Environmental Act 1995, it has a statutory mandate to manage the environment through coordination, monitoring and supervision of environmental activities. While it is everyone's duty to maintain and enhance the environment, NEMA has a statutory responsibility of enforcing environmental regulations that may involve court suits. An Environmental Police Force unit was established to consolidate the enforcement mandate.

National Environment Management Authority (NEMA), a lead environmental agency spearheads environmental sustainability initiatives in the oil and gas sector. Section 10 of the Petroleum Act provides for the authority's cooperation with ministries, departments and agencies of government with related duties, aims or functions. This provision enables consistent implementation of all regulatory systems related to environmental management. As such environmental activity gaps arising from orphaned mandates or roles will be minimized or avoided all together.

National Environment Management Authority (NEMA) uses established environmental protection standards to monitor changes in environmental quality by comparing with data from waste originators who are obliged to publish relevant data on environmental quality and resource use. The polluter pays principle is upheld where there is need of compensation and covering of costs related to pollution by waste originators. Furthermore, a refundable performance deposit bond is levied to act as security for good environmental practice. The refund is made where the operator has observed good environmental practice to the satisfaction of the authority.

National Environment Management Authority (NEMA) is recognized as the principal agency responsible for environmental management within the petroleum sector. Therefore, NEMA

has a statutory mandate of issuance of licenses in consultation with the Petroleum Authority of Uganda. Accordingly, NEMA originates the National Environment Act (Section 107) giving regulations that are statutory instrument to the operationalisation and section 52 (3) that will manage and minimize waste during the production, transportation, storage, treatment and disposal of waste arising out of petroleum activities.

The National Environmental Management Authority is a tool for monitoring all activities that affect the environment in Uganda provided for in the National Environment Act (NEA). This Act defines environmental monitoring to mean the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long term. The general objective of monitoring is to establish the status of environment and to evaluate the impacts of various activities on the environment in general and natural resources in particular.

The specific objectives are: to understand the present levels of degradation by various agents so as to judge whether the abatement policies, projects and programs are succeeding; identify environmental risks and impacts not previously known so that they can be brought under control; follow the movement of harmful agents through the environment into living creatures and man himself; and to identify activities that are beneficial to the environment and ensure sustainable use of natural resources.

National Environment Management Authority (NEMA) is required, in consultation with a lead agency, to monitor all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; and the operation of any industry, project or activity with a view to determining its immediate and long-term effects on the environment. For this purpose, an environmental inspector appointed²⁰⁴ may enter upon any land or premises to monitor the effects upon the environment of any activities carried out on that land or premises.²⁰⁵ This is to ensure that there is proper use of the environment such that it is not depleted totally because there has to be sustainable development which enables future generations to use the same environment as well.

²⁰⁴ Section 79 NEA.

²⁰⁵ Section 23 NEA.

Petroleum Authority of Uganda

The Petroleum Authority of Uganda (PAU) is mandated to monitor and regulate the exploration, development and production, together with the refining, gas conversion, transportation and storage of petroleum in Uganda. The PAU's mission is to regulate and monitor the Petroleum sector in Uganda in order to create lasting value for Ugandans and to contribute to Uganda being a sound investment destination. The PAU is committed to ensuring that the regulatory environment for the sector supports the achievement of sustainable development of Uganda's oil and gas resources, and enables competitive return on investment for the private sector partners who are participating in the sector.

Section 9 of the Petroleum Act provides for the establishment of PAU. The Authority was established in 2015 as an independent body corporate with the following major functions (as defined in Section 9 of the Act): advising the Minister over the negotiation of petroleum agreements and in the granting and revoking of licenses; ensuring that licenses uphold laws, regulations, rules and contract terms; and overseeing compliance by oil licensees with the provisions of the Act and regulations made under it. The PAU is a potential source of public protection created under the Petroleum Development Act. The Petroleum Acts intend for this agency to be politically independent in overseeing the exploration, development and production of oil and gas. Although the mandate of the Petroleum Authority is laid out in the law, there is still potential for confused lines of authority.²⁰⁶ The legislation lays down some important rules for ensuring the impartiality of the PAU, intended to 'monitor and regulate' petroleum activities.

The mandate of the PAU is to monitor and regulate the exploration, development and production, together with the refining, gas conversion, transportation and storage of petroleum in Uganda.

The mission of the PAU is to regulate and monitor the Petroleum sector in Uganda in order to create lasting value for Ugandans and to contribute to Uganda being a sound investment destination. The PAU is committed to ensuring that the regulatory environment for the sector supports the achievement of sustainable development of Uganda's oil and gas resources, and enables competitive return on investment for the private sector partners who are participating

²⁰⁶ Shephard B. 'Oil in Uganda, International lessons for Success' (2013), Latimer Trend and Co Ltd, Chatham House, London.

in the sector. The Directorate of Environment, Health, Safety and Security is responsible for the Authority's mandate in the areas of Quality Health, Safety, Security, Social Affairs and Environment (QHSSSE).

The Directorates' corporate goals are as follows: (1) To ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity. Under this goal, the Directorate's strategic objectives are: (a) To ensure availability of the necessary regulatory framework to address environment and biodiversity issues relevant to oil and gas activities; (b) To ensure presence of the necessary capacity and facilities to monitor the impact of oil and gas activities on the environment and biodiversity; (c) To support self-regulation and use of best practices by operators in ensuring environmental protection and biodiversity conservation; and (d) To ensure operations are in line with regulations, standards and international best practices.

And secondly, to ensure that oil and gas activities are undertaken in a manner that preserves human health and installations. Under this goal, the Directorate's strategic objectives are: (a) To ensure licensees take the necessary measures to prevent incidents, hazards and accidents and limit their consequences to human health and the environment; (b) To ensure licensees take the necessary measures to prevent and reduce the number of accidents among employees that are likely to result into loss of time for work, disability or fatality to the employees; (c) To ensure licensees take the necessary measures to ensure that occupational safety and health in all petroleum activities is satisfactory for the health of employees and the environment; (d) To ensure licensees take the necessary measures to ensure that economic value which the facilities and vessels represent include operational availability; (e) To ensure licensees take the necessary measures to ensure that the level of safety and health is at all times concurrent with technological development; and (f) To ensure licensees take the necessary measures to comply with the requirements under the Occupational Safety and Health Act, 2006.

Uganda National Oil Company

Uganda National Oil Company Limited (UNOC) is a limited liability company wholly owned by the Government of Uganda. Its overall function is to handle the Government of Uganda's commercial interests in the petroleum sector and to ensure that the resource is exploited in a sustainable manner.

Section 42 of the Petroleum Act (2013) 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 and gas. According to Section 43 of the Act, the role of the National Oil Company (UNOC) will primarily include handling Government commercial and business interests and participation in the Oil and Gas sector.

The UNOC was officially incorporated on 12th June 2016 as a company limited by shares, under the Companies Act 2012, but wholly owned by government. The company has two shareholders namely; the Minister of Energy and Mineral Development who holds 51 percent shares and the Minister of Finance, Planning and Economic Development who owns 49 percent shares.²⁰⁷ 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.²⁰⁸ The Governing Board for UNOC has already been put in place by government and a number of top managers have also been recruited.

The National Oil Company, the second institution created under the Petroleum Act, is charged with promoting the government's commercial oil interests. It is unclear from the legislation how the shareholders will be selected and how the interests of citizens will be represented in policy development. Should the National Oil Company evolve as a private company, it would be answerable only to the shareholders.²⁰⁹ Another concern is the role of the Ministry of Energy and Mineral Development that has the power to issue instructions to the National Oil Company with respect to how its management tasks will be conducted and stipulating rules relating to secrecy. One option to ensure that state interests are being achieved is to make the National Oil Company a public company.²¹⁰ The National Oil Company could then be privatized when accountability systems showing a record of performance in the public interest is established.²¹¹

²⁰⁷ See: Oil in Uganda _Recruitment for Oil Institutions Commences' (2016).

<http://www.oilinuganda.org/features/companies/recruitment-for-oil-institutions-commences.html>

²⁰⁸ Ministry of Energy and Mineral Development, 2014.

²⁰⁹ Mawejje, J, & Bategeka L, _*Accelerating growth and maintaining intergenerational equity using oil resources in Uganda*' [2013] (No. 111). Kampala: Makerere University, Economic Policy Research Centre.

²¹⁰ Eller, S., Baker, J., Hartley, P., & Medlock III, K. _'Empirical evidence on the operational efficiency of national oil companies. *Empirical Economics*' (2011) 40(3), 623-643.

²¹¹ Magelapeter B, _'Why a government corporation and not private company should be in charge of Uganda's interests in the petroleum sector' (2012). *Legal and Policy Review* Retrieved from <http://lawuganda.wordpress.com>.

Uganda National Oil Company is set to manage the government's interests in upstream and downstream activities. It will manage the country's share of petroleum received in kind, as well as business aspects of state participation and develop in-depth expertise in the industry. The company is expected to boost energy security, improve revenue generation, and help reinvest profits in economic development and job creation. UNOC is also expected to hold a substantial interest in the East African Crude Pipeline through its subsidiary the National Pipeline Company. The Act stipulates that the UNOC engages directly in the industry on behalf of the government while PAU focuses on regulation. 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.²¹²

Uganda Wildlife Authority

Uganda Wildlife Authority (UWA) is mandated to ensure sustainable management of wildlife resources and supervise wildlife activities in Uganda both within and outside the protected areas. Their motto is: conserving for generations. Uganda Wildlife Authority is a semi-autonomous government agency that conserves and manages Uganda's wildlife for the people of Uganda and the whole world. This agency was established in 1996 after the merger of the Uganda National Parks and the Game Department, and the enactment of the Uganda Wildlife Statute, which became an Act in 2000.

With ten (10) national parks and 12 wildlife reserves under its jurisdiction, UWA's role in managing the country's tourism industry and attracting investors to the sector has been a significant one. It also manages five community wildlife management areas and 13 wildlife sanctuaries. The challenges facing the management and conservation of wildlife and biodiversity in Uganda are myriad, and they include poaching, competition in the regional tourism market, human wildlife conflict and wildlife crimes.

Stakeholders, partners and communities that live around these protected areas have been employed to help tackle some of these issues. The organization has also developed strategies within its management policies to help solve some of these challenges.

²¹² Shephard B, 'Oil in Uganda, International lessons for Success' (2013), Latimer Trend and Co Ltd, Chatham House, London.

Vision: "To be a leading wildlife conservation agency in the world". Mission: -To conserve, economically develop and sustainably manage the wildlife and protected areas of Uganda in partnership with neighboring communities and other stakeholders for the benefit of the people of Uganda and the global community. Core Corporate Values: Uganda Wildlife Authority upholds the following values that will be central to its operations. The values are inline with the organizational beliefs; culture and tradition that will help drive staff to achieve the organizational mission and realizing its dream.

The Uganda Wildlife Authority (UWA) is a semi-autonomous Uganda government agency that aims to conserve, manage and regulate Uganda's wildlife. "UWA is mandated to ensure sustainable management of wildlife resources and supervise wildlife activities in Uganda, both within and outside the protected areas". As of April 2020, UWA manages ten national parks, twelve wildlife reserves, and fourteen wildlife sanctuaries. UWA also provides guidance for five community wildlife areas. It is governed by a board of trustees appointed by the Minister of Tourism, Wildlife, and Antiquities.

The UWA was established in August 1996 by the Uganda Wildlife Statute, which merged the Uganda National Parks Department with the Uganda Game and Fisheries Department. In 2000, the Statute became an Act of parliament.^[1] The Act was amended in 2019 into the Uganda Wildlife Act, 2019.

National Forestry Authority

National Forestry Authority (NFA) is mandated to manage Central Forest Reserves on a sustainable basis and to supply high quality forestry-related products and services to government, local communities and the private sector. NFA has a vision of being a world-class, global leader in sustainable forest management.

Government of Uganda, in 1998 adopted a policy to restructure many government departments including the Forestry Department. It recognized an urgent need for a change in the policy, legal framework and institutions controlling forestry in the country. There was a sense of crisis about the state of the country's forests and a particular outcry at the state of the forest reserves, in the hands of the Forestry Department. The centralised Forestry Department was no longer appropriate for the task and therefore a need for it to be divested. It was decided that a new institutional arrangement was needed hence the Forestry Inspection

Division, the National Forestry Authority and the District Forestry Services were set up. Government of Uganda worked with Department for International Development (DFID)-United Kingdom, Norway, German Agency for Technical Cooperation (GTZ), United Nations Development Programme (UNDP), Food and Agricultural Organization (FAO) and the European Union (EU) towards this institutional change since 1999.

Having made the decision to close the Forestry Department, the Ministry pushed for a quick development and transition to NFA. So, the NFA was established in 2003 under section 52 of The National Forestry and Tree Planting Act and was launched on the 26th April 2004. Establishment of the National Forestry Authority was preceded by the development of the new Forestry Policy (2001) and the National Forest Plan (2002). These were to provide for a framework for distribution of roles and responsibilities amongst sector stakeholders and not just the Forestry Department. NFA has a mandate of managing 506 Central Forest Reserves (CFR's) totaling to 1,262,090 ha of the land cover, with objectives of improving management of the CFRs, expanding partnership arrangements, supplying forest and non-forest products and services and ensuring organizational stability.

The National Forest Authority is the body of the Ugandan central government that is responsible for managing the country's Central Forest Reserves. It was created as a semi-autonomous corporation through the National Forestry and Tree Planting Act of 2003 to replace the prior Forestry Department.

C. Representatives

International Oil Companies (Total E&P Uganda and CNOOC)

Total E&P Uganda (TEPU) is an oil and gas exploration company in Uganda. It is a subsidiary of Total S.A., the multinational oil, gas, and petrochemical conglomerate headquartered in Paris, France. TEPU was founded in 2010. It began operations on 21 February 2012 when Tullow Oil completed a farm down of two thirds of its interests to Total S.A. and CNOOC. TEPU, along with partners CNOOC and Tullow, continues to work with the Uganda Government on the development plan for the Albertine Graben, which will include an oil refinery in Uganda and an export crude oil pipeline. TEPU is working in Exploration Area 1 (EA-1) and Exploration Area 1A (EA-1A) within the Albertine Region. A significant portion of these areas lie within the confines of Murchison Falls

National Park.²¹³ TEPU is playing a leading role in coordinating the planning and execution of the export crude oil pipeline from Lake Albert to the Indian Ocean coast.

On 1st Feb. 2022, the Final Investment Decision (FID) was signed. This was after the French energy conglomerate Total Energies and the China National Offshore Oil Corporation - CNOOC reached a deal with Uganda and Tanzania to invest more than US\$10 billion in developing crude oil production between the two East African countries. This project according to HE President Museveni is a very important one for this region. According to the President, whereas Uganda discovered commercially viable crude oil reserves in 2006, oil exploration efforts in Uganda date back as far as 1920 by the British after seepage of oil was discovered at a place called Kibiro near Lake Albert. But their efforts to trace the origin of the seepage failed after 36 years of searching between 1920 and 1956. He resurrected the search for oil when he captured power in 1986.

The FID was announced on 1st Feb 2022 by Total Energies Chairman and Chief Executive Patrick Pouyanne in the presence of other joint venture partners in Uganda's Oil and Gas sector. He stated, "In the name of the joint venture partners and in the name of TotalEnergies, I declare the final investment decision for the Lake Albert development project; Tilenga, King Fisher and East African Crude Oil Pipeline (EACOP) project." The ceremony was also attended by a delegation from the People's Republic of Tanzania led by the Vice President Philip Isdor Mpango.

The FID announcement signifies the commitment of the oil companies to invest close to US\$ 10 billion to develop Uganda's oil and gas resources through the implementation of the Tilenga Project in Buliisa and Nwoya districts; the Kingfisher Project in Hoima and Kikuube Districts (approximately US\$6-8bn); and, the East African Crude Oil Pipeline (EACOP) that will cross the ten (10) districts of Hoima, Kikuube, Kakumiro, Kyankwanzi, Gomba, Mubende, Lwengo, Sembabule, Kyotera and Rakai in Uganda. -This officially marks the beginning of the detailed Engineering, Procurement and Construction (EPC) phase by the Joint Venture Partners and, therefore, a commitment to see first oil by 2025, a journey that started in 2006. It is during this phase that we expect Ugandans to accrue significant benefits

²¹³ TOTAL ["Total E&P Uganda: Pioneering new technology in East Africa](#) [21 March, 2016]

and opportunities from the sector through local content, remarked Hon. Dr. Ruth Nankabirwa Ssentamu, Minister for Energy and Mineral Development.

This is in addition to Government's consistent efforts in improving infrastructure required to support the oil and gas developments by constructing the Hoima International Airport (approx. US\$800m) with works currently at close to 70% completion of the first phase and 700 kilometres of oil roads (approx. US\$900m). Mr. Patrick Pouyanne, the CEO and Chairman of Total Energies who led the Joint Venture Partners (JVPs) in announcing the FID, said the development of Lake Albert resources is a major project for Uganda and Tanzania, and their ambition is to make it an exemplary project in terms of shared prosperity and sustainable development.

Mr. Chen Zhuobio, the CNOOC Uganda President, revealed that his company will invest USD 1.6 bn in the Kingfisher project and close to USD 400m will go to local service providers. CNOOC International is one of the largest oil and gas companies in Uganda's energy sector and owns one-third interests in each of Exploration Areas (EA) EA1/1A, EA2 and Kingfisher. CNOOC International operates the Kingfisher production license. These blocks, located in the Lake Albert Rift Basin, are in one of the most promising basins for oil and gas resources in Africa. In 2016, development and production licenses for eight oil fields in the EA 1 and EA 2 blocks were issued by the government. In 2017, the front-end engineering design (FEED) of the blocks was initiated and the intergovernmental agreement for an oil pipeline was signed and the FEED was completed. CNOOC International also completed the FEED for ground construction and drilling on block EA 3A in 2017.

Non-Governmental Organisations and Civil Society Organizations

Non-governmental organisations (NGOs) such as Advocates Coalition for Development and Environment (ACODE) and The Environmental Action Network (TEAN) have contributed massively to environmental health and safety standards. ACODE for example is an independent public policy research and advocacy think tank based in Uganda but working in Eastern and Southern Africa. One of the core pillars of ACODE is to transfer evidence-based research findings and alternative policy options from research papers and books into civic spaces that generate public debate to promote pro-poor policy making and effective policy implementation.

These organisations have gone to courts of law where there have been cases of violation of the environment and this has led to a plethora of cases such as Advocates Coalition for Development and Environment (ACODE) v Attorney General²¹⁴ where ACODE sought orders and a declaration that issuing a private company (Kakira Sugar Works) a 50 year forest permit by government in a forest reserve for the purpose of growing sugarcane was in contravention of the Constitution because there was no project brief provided by the private company and that the views of the communities were never sought. It was held in favour of the applicants and the license was revoked basing on the private company's failure to provide the project brief.

These NGOs however face a huge financial challenge and, in most cases, there is no proper mechanism to enforce court rulings, because they are limited in terms of resources and authority. A clear example, is from the above cited case where, although ACODE was successful they were unable to enforce the judgment as it was merely declaratory.²¹⁵ The permit was revoked but the developer, Kakira Sugar Works is still occupying the forest, which it cut down and planted sugar cane in blatant violation of the law.

This was also witnessed in the high-profile case of Greenwatch and ACODE v Golf Course Holdings,²¹⁶ where judgment was passed against the applicants. However, this had grave financial repercussions to the extent that Greenwatch ceased operating in Uganda as a result of the heavy financial burden incurred from the costs awarded to the respondents. Environmentalists (Greenwatch and (ACODE) sued Golf Course Holdings Limited in an attempt to secure a permanent injunction restraining the proposed construction of a hotel on Plot 64-84, Kitante Road. They claimed that the Environmental Impact Assessment (EIA) carried out by the defendants was irregular. Golf Course made the assessment that was approved by the National Environment Management Authority (NEMA).

However, these non-governmental organisations remain relevant in ensuring that environmental health and safety standards are complied with especially through Article 50 of the 1995 Constitution of the Republic of Uganda which allows them to represent a large number of people that could be affected by the inevitable impacts of oil and gas operations that cause damage to people's environment, health and safety. Article 50 Enforcement of

²¹⁴HCMC No. 0100/2004.

²¹⁵ Ibid.

²¹⁶ HCMA No. 390/2001.

Rights and Freedoms by Courts (1) any person who claims that a fundamental or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a right and competent court for redress which may include compensation. (2) Any person or organisation may bring an action against the violation of another person's or group's human rights. (3) Any person aggrieved by any decision of the court may appeal to the appropriate court. (4) Parliament shall make laws for the enforcement of the rights and freedoms under this chapter.

The Civil Society Organisations (CSO's) and Cultural Institutions can play a role in advocating, mobilising and holding dialogue with communities; contributing to holding the different players accountable with regard to oil and gas issues; participating in getting the voices of the poor into designing, monitoring and implementation of programs in the oil and gas sector. CSOs may also be contracted in the delivery of various services, especially in the communities where oil and gas activities will be undertaken.

Academia

Kakuru and Ssekyana assert that environmental law touches on practically every facet of society. It seeks to protect human health, manage natural resources and sustain the biosphere.²¹⁷ This is frequently done, among other ways, through laws that set standards for environmental planning, wildlife, plant, mineral resources, land use management and other activities that can affect the air, water and soil. Given the wide range of human activities that can impact on the environment, environmental law increasingly utilises everything from tax law (which can provide incentives or disincentives) to criminal law (which punishes individuals or corporate bodies for actions that can harm human health or the environment), to corporate law (which increasingly recognizes the need to respect environmental priorities), to administrative law (setting the ground rules as to how government agencies make and implement decisions).

They conclude by asserting that Environmental law must be seen within the entire political, social, cultural and economic setting of the country. If the goal of environmental law is to achieve sustainable development, as we would all agree, then environmental laws must be geared towards each particular country's development vision. There are no universal models

²¹⁷ Kakuru K & Ssekyana I. _Handbook of Environmental Law in Uganda_ (2009), Vol. 1. Second Edition. Environmental Law Institute and Greenwatch.

of legislation, which are appropriate to all countries. Each country must, therefore, formulate environmental laws, which reflect its own realities for prosperity.

Justice Mensah²¹⁸ asserts that the concept of sustainability appears poised to continue to influence future discourse regarding development science. This, in the view of Porter and Van der Linde,²¹⁹ implies that the best choices are likely to remain those that meet the needs of society and are environmentally and economically viable, economically and socially equitable as well as socially and environmentally bearable. This leads to three interconnected spheres or domains of sustainability that describe the relationships among the environmental, economic, and social aspects of SD. Environmental sustainability therefore, intersects with both economic and social sustainability.

According to Oloka-Onyango²²⁰ the 2008 National Oil and Gas Policy (NOGP) was designed to ensure that the country's oil and gas resources contribute to the early achievement of poverty eradication and create lasting value to society.²²¹ The NOGP sets out its first objective as ensuring efficiency in licensing areas with the potential for oil and gas production in the country. The policy provides for initiation of gradual licensing *vis-à-vis* licensing all areas at once; open and transparent bidding; execution of due diligence on companies applying for licenses and avoiding the undesirable situation of a monopoly by licensing and maintaining several oil companies.

The petroleum production license is granted on the basis of technical competence, capacity, experience and financial strength; the applicants' understanding of the petroleum reservoir as well as other conditions as determined by the Minister.²²² Under section 75, the Minister may grant a production license after consultation with the Authority and approval by Cabinet in such manner as the Minister may determine. Government's policy in relation to the oil and gas sector is based on the following principles of using Finite Resources to Create Lasting Benefits to Society since Oil and gas resources are non-renewable and can be depleted.

²¹⁸ Justice Mensah 'Sustainable development: Meaning, history, principles, pillars, and implications for human action: Literature review' (2019), *Journal of Cogent Social Sciences* Vol.5, Issue 1 of 8th Sep 2019.

²¹⁹ Porter, M. E., & van der Linde, C. 'Toward a new conception of the environment competitiveness relationship' (1995). *Journal of Economic Perspectives*, 9, 97–118.

²²⁰ Oloka Onyango J. 'Oil Wealth and Development in Uganda and beyond, Prospects Opportunities and Challenges,' [2020] Leuven University Press pp. 57

²²¹ Oloka-Onyango J. 'Courting the Oil Curse or Playing by The Rules? An Analysis of the Legal and Regulatory Framework Governing Oil in Uganda' (2018), Centre for Research on Peace and Development (CRPD) Working Paper No. 58. Human Rights & Peace Centre (HURIPEC), School of Law, Makerere University.

²²²The Petroleum Exploitation Development Production Act [2013], Section 73.

Therefore, revenues from these resources need to be invested in areas such as skills development, infrastructure, technology and health which will benefit future generations. Finally, Oloka-Onyango asserts that protection of the Environment and Conservation of Biodiversity is very important since oil and gas activities can lead to grave environmental consequences if handled improperly. As a matter of principle therefore, the policy ensures strict environmental protection measures among others. This is stated under objective 9 as:
-To ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity.²²³

4.3 The international and regional policy, legal, regulatory and institutional framework on sustainable exploration, development and production of oil and gas

4.3.1 International law Standards

As already noted, the corpus of international environmental law is composed of legally binding (hard law) principles as well as non-binding (soft law) principles. Soft law refers to those non-binding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct.²²⁴ Obligations are, to a large extent, in the eye of the beholder. In a legal system in which enforcement relies on self-help by the law's subjects, those subjects' perceptions as to what an obligation requires effectively define the obligation. However, legal texts are often imprecise and ambiguous, and thus reasonable minds may differ over what a legal obligation requires.²²⁵

In practice, the development of soft law norms with regard to the protection of the human environment began immediately after the Stockholm Conference, one of the consequences of which was the creation of a special subsidiary organ of the United Nations (UN) General Assembly devoted to the promotion of both universal and regional environmental law. This body, the United Nations Environment Program (UNEP), has played a leading role in the promotion of regional conventions aimed at, for example, protecting the environmental sustainability against pollution, prevention of desertification, sound exploitation of natural resources for sustainable development among others.

²²³ Objective 9 of the NOGP

²²⁴ A. Guzman, *International Soft Law* at p.6.

²²⁵ *Ibid.*

Although it was not supposed to develop in such a manner, UNEP has also evolved into a standing structure for negotiating draft resolutions sent, after their elaboration, to the General Assembly, where their contents have been either passed as is or expressly referred to in resolutions. For purposes of this study, the following are considered:

The Stockholm Declaration²²⁶

Stockholm principles were adopted at the United Nations Conference on the Human Environment, at Stockholm.²²⁷ The conference was convened due to the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.²²⁸ The Declaration lays a number of principles relevant to the oil and gas exploration processes in Uganda. These principles provide guidance ranging from integrated planning, access to information and citizen involvement, application of environmentally sound technologies in oil exploration and production, control of pollution and the need to cater for future generations.

According to the declaration, man is both a creator and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself.²²⁹ This is what the Christian world view propounds regarding development of the earth by people as commanded by God.²³⁰

The protection and improvement of the human environment is a major issue which affects the well-being of all people and economic development throughout the world; it is the urgent desire of the whole world and the duty of all Governments.²³¹ It is recognized that man has experience and goes on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring benefits of development

²²⁶Stockholm Declaration 1072: Preamble.

²²⁷ This happened between 5th and 16th June, 1972.

²²⁸ Stockholm Declaration 1972: Preamble.

²²⁹ Ibid, Article 1.

²³⁰ See, Book of Genesis 1: 26-30.

²³¹ Ibid, Article 2.

and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment.

There is growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the manmade environment, particularly in the living and working environment.²³² In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment.²³³

International cooperation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, are regional or global to an extent because they affect the common international realm, require extensive cooperation among nations and action by international organizations for common interest. The Conference called upon Governments and the whole world to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

Accordingly, the declaration lays down the following principles: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations; natural resources of the earth, including air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate; capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved; he also has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat,

²³² Ibid, Article 3.

²³³ Ibid, Article 4.

which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

United Nations Environment Program (UNEP)

With regards to the environmental sustainability impacts management, exploration and production forum, UNEP²³⁴ has suggested that while host governments seek to understand the environmental impacts of the industry and put in place environmental laws to regulate the activities of the oil companies. The management of the oil companies must also do their part to institute an Environmental Health and Safety (HSE) management system.

Exploration and Production Forum and UNEP have also suggested that for effective application of environmental health and safety legislations, host governments are required to adapt appropriate international and national laws, regulations and guidelines, coherent procedures for decisions on projects/activities, with clearly defined responsibilities and appropriate liabilities, enforceable standards for operations, appropriate monitoring procedures and protocols, performance reporting, adequately funded and motivated enforcement authorities, existence of adequate consultation and appeal procedures, appropriate sanctions and political will for their enforcement.²³⁵

It is important that Exploration and Production Forum and UNEP identifies examples of arrangements needed for environmental protection. These could include the following: policy formulation and regulations, baseline environmental surveys, assessment and approvals, inspection, monitoring, enforcement, services, water, power, waste disposal, emergency response, logistics and transportation, external supplies/services, construction, materials, engineering, consultants, technical services, laboratories, laboratory supplies and equipment, training institutions, standards associations among others.²³⁶ In addition to risk assessment and risk management, provision of health insurance, occupational health services (in the form of medical care and rehabilitation), workplace counselling for accident victims, safety training, and relevant employee assistance programs are all needed.

Similarly, Factories Inspectorate, and the Free Zone Board together with the National Fire Service and National Occupational Health Unit should develop a Health and Safety

²³⁴United Nations Environment Program: environmental health and safety impacts management, 1997.

²³⁵ Op cit. 74: at 10.

²³⁶ Ibid: at 11.

Performance Framework for periodic workplace safety audits and inspections. This means host governments should include health and safety performance as one of the performance metrics they use to assess companies.²³⁷

The Rio+ 20 Sustainable Development Declaration²³⁸

This declaration originates from an Annex²³⁹ from the Permanent Mission of Chile to the United Nations, addressed to the Secretary-General of the United Nations Conference on Sustainable Development. It is important to note that generally speaking declarations in international law are not legally binding, except those that are specifically addressed to the UN Agencies.²⁴⁰

It is a Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development, championed by the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru and Uruguay. The declaration focuses on principle 10 of the Rio Declaration,²⁴¹ which has significant implications for oil and gas exploration and production in Uganda. It re-echoes Principle 10 of the Rio Declaration: environmental issues are best handled with the participation of all concerned citizens. To this end, each individual should have appropriate access to information, the opportunity to participate in decision-making processes and effective access to judicial and administrative proceedings.

The declaration thus affirms that to comply with this Principle, states should facilitate and promote education, awareness-raising and public participation by making information widely available and providing effective access to the proceedings outlined above. It also recognizes and affirms that the rights of access to information, participation and justice regarding environmental issues are essential for promoting sustainable development, democracy and a healthy environment.²⁴² These rights provide many benefits, such as helping to make better decisions and implement them more effectively; involving the public in environmental issues; furthering accountability and transparency in governance; and helping to change production and consumption patterns. Environmental challenges faced on a national, regional and global

²³⁷ Ibid.

²³⁸ United Nations A/CONF.216/13.

²³⁹ The note verbal dated 27 June 2012.

²⁴⁰ Get authority for this. This is the position in International Law.

²⁴¹ Rio Declaration, 1992.

²⁴² Ibid.

level require far more concerted, proactive and effective action from the government, civil society, international community and organizations with willingness to explore in detail various ways to enhance the exercise of principle 10 rights with the active involvement of the key stakeholders and society as a whole.²⁴³

Therefore, bearing in mind that the United Nations Conference on Sustainable Development calls for firm political will to enable us face existing and emerging challenges, it is declared that commitments must be made to ensure the full exercise of rights of access to information, participation and justice regarding environmental issues as enshrined in accordance with Principle 10 of the Rio Declaration.²⁴⁴ Therefore as provided in the declaration hereinbefore and indeed as one of the key pillars of sound environmental management recognised in the NOGP, all citizens in oil affected areas should participate in the making of decisions whose implementation will have an impact on their environment. The citizens should be given access to relevant oil related information especially on establishment of significant petroleum facilities such as refineries, storage tanks and pipelines, and their views should be taken account.

Kyoto Protocol of the United Nations Framework Convention on Climate Change²⁴⁵

Uganda ratified the Kyoto Protocol.²⁴⁶ This protocol sets binding numerical targets for the limitation and reduction of greenhouse gas emissions especially carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, per fluorocarbons and Sulphur hexafluoride for the industrialized and transitional countries during the period 2008-2012.²⁴⁷ No numerical targets for the reduction of emissions were set for the developing countries, but they are required to report on their emissions. The Kyoto protocol defines three international policy instruments (Kyoto mechanisms) which provide opportunities for annex 1 parties to fulfil their commitments cost effectively. These are: The Clean Development Mechanism (CDM); International Emission Trading (IET);²⁴⁸ and Joint Implementation (JI).²⁴⁹ From these three

²⁴³ Ibid.

²⁴⁴ Principle 10 of the Rio Declaration of 1992.

²⁴⁵ United Nations Framework Convention on Climate Change (2002): Kyoto Protocol, 25th March 2002.

²⁴⁶ Kyoto Protocol on 25th March 2002

²⁴⁷ Article 3 read together with Annex A to the Protocol.

²⁴⁸ IET allows annex 1 parties to exchange part of their assigned national emission allowances. IET implies that countries with high Marginal Abatement Costs (MACs) must acquire emission reductions from countries with low MACs. Under IET system, countries that have emissions units to spare can sell this excess capacity to countries that are over their targets. This mechanism of emission trade may be called carbon market because carbon dioxide is the most widely produced greenhouse gas.

²⁴⁹ Article 6 of the Kyoto Protocol provides for JI. JI allows industrialized countries to meet part of their required cuts in greenhouse-gas emissions by paying for projects that reduce emissions in other industrialized countries. The sponsoring

mechanisms, it is CDM that applies to developing countries like Uganda because JI and IET are meant for industrialized countries.

Therefore, the operators in the Albertine rift should follow the CDM to make plans to minimize greenhouse and ozone depleting emissions in the process of production due to start by 2020. Key emissions that should be minimized include inter alia carbon dioxide; carbon monoxide; nitrogen oxide and methane.

The African Charter on Human and Peoples Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is a regional human rights instrument that is intended to promote and protect human Rights and basic freedoms in the African continent.²⁵⁰ The African charter on Human and Peoples' Rights can be placed at the fore front in recognizing the right to environment in binding norms.²⁵¹ The Charter was adopted by the Head of state and Government of the African Union (AU).²⁵² The issue of human right to environment has been a subject of vigorous discussion.²⁵³ Today, it seems obvious that human rights and the environment are inherently interlinked. For one thing, the life and the personal integrity of each human being depend on protecting the environment. On the other hand, environmental protection can often be implemented properly when human rights are respected. However, international environmental law scarcely mentions the right to the environment as a human right.²⁵⁴ Therefore, the Charter endeavors to examine the recognition and coverage of the human right to environment under African Charter on Human and Peoples' Rights²⁵⁵ in pursuing its goal that –All human beings have the fundamental right to an environment adequate for their health and well-being.²⁵⁶

governments receive credits that may be applied to their emissions targets; the recipient nations gain foreign investment and advanced technology (but not credit toward meeting their own emission caps; they have to do so themselves).

²⁵⁰ African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981 Entered into Force October 21, 1986.

²⁵¹ International Journal of International Law: ISSN :2394-2622: Volume 2 Issue 1.

²⁵²The Charter was adopted by the Head of state and Government of the Organization of African Unity (OAU) on 27 June 1981 and came in to force on 21 October 1986.

²⁵³Malgosia, Fitzmaurice _Contemporary issue international environmental law (Edward Elgar Publishing Limited, (2009), p.1703A.

²⁵⁴This may probably be due to the fact that the big nations of the World, the majority of them are permanent members of the Security Council are also contributing to the degradation of the environment through industrialization.

²⁵⁵Universal Multidisciplinary Research Institute Pvt Ltd. (212), *International Journal of International Law: ISSN :2394-2622: Volume 2 Issue 1.*

²⁵⁶Zeleke D. _Lecture note on international environmental law' (2012), Addis Ababa University (2013)7LE.

In summary, to date, no such internationally binding environmental instruments have been created that explicitly recognized human right to a clean environment. So, while it would be premature to assert that international environmental law definitely recognizes a human right to a clean environment, there have been insufficient significant moves in this direction to support a prima facie case for African governments asserting that a right to a clean environment is a human right.

UN Conference on Climate Change, COP26, Glasgow Scotland (2021)

The delayed 26th Conference of the Parties (COP26) of the United Nations Framework Convention on Climate Change (UNFCCC), which binds over 190 Parties, took place in Glasgow from 1 to 12 November 2021 under the presidency of the United Kingdom. It was one of the pivotal events of 2021, with a focus on countries increasing the ambition of their commitments to tackle the climate emergency.

The following achievements were made during the conference: Leaders from over 120 countries, representing about 90 per cent of the world's forests, pledged to halt and reverse deforestation by 2030 which is the date by which the Sustainable Development Goals (SDGs) to curb poverty and secure the planet's future are supposed to have been achieved. The methane pledge, led by the United States and the European Union, by which more than 100 countries agreed to cut emissions of this greenhouse gas by 2030. More than 40 countries – including major coal-users such as Poland, Vietnam and Chile agreed to shift away from coal which is one of the biggest generators CO₂ emissions.

The private sector also showed strong engagement with nearly 500 global financial services' firms agreeing to align \$130 trillion, approximately 40 per cent of the world's financial assets – with the goals set out in the Paris Agreement, including limiting global warming to 1.5 degrees Celsius.

The United States and China pledged to boost climate cooperation over the next decade. In a joint declaration they said they had agreed to take steps on a range of issues, including methane emissions, transition to clean energy and decarbonization. They also reiterated their commitment to keep the 1.5 °C goal alive.

Regarding green transport, more than 100 national governments, cities, states and major car companies signed the *Glasgow Declaration on Zero-Emission Cars and Vans* to end the sale

of internal combustion engines by 2035 in leading markets, and by 2040 worldwide. At least 13 nations also committed to end the sale of fossil fuel powered heavy duty vehicles by 2040; and many ‘smaller’ but equally inspiring commitments were made, including one by 11 countries which created the Beyond Oil and Gas Alliance (BOGA). Ireland, France, Denmark, and Costa Rica among others, as well as some subnational governments, launched the first-of-its kind alliance to set an end date for national oil and gas exploration and extraction.

On Climate and Environment, governments need to show the necessary ambition on mitigation, adaptation, and finance in a balanced way, and they can’t settle for the ‘lowest common denominator’, the UN Secretary-General stated during crucial negotiations held in Glasgow. Meanwhile, a coalition of countries launched a new pledge to end gas and oil extraction. As the World Leaders Summit opened on day two of COP26, UN chief António Guterres sent a stark message to the international community. ‘We are digging our own graves’, he said, referring to the addiction to fossil fuels which threatens to push humanity and the planet, to the brink, through unsustainable global heating. The COP26 President Alok Sharma struggled to hold back tears following the announcement of a last-minute change to the pact, by China and India, softening the language circulated in an earlier draft about ‘the phase-out of unabated coal power and inefficient subsidies for fossil fuels’. As adopted on Saturday, that language was revised to ‘phase down’ coal use and the outcome document, known as the Glasgow Climate Pact, called on 197 countries to report their progress towards more climate ambition next year, at COP27 which is set to take place in Egypt. The above notwithstanding, the outcome document affirms the global agreement to accelerate action on climate change this decade.

Other Conferences on Sustainable Development²⁵⁷

Other International conferences on sustainable development include: New Delhi Conference on the Legal Aspects of Sustainable Development (2002); Berlin Conference on International Law on Sustainable Development (2004); Toronto Conference on International law on Sustainable Development (2006); The Hague Conference on International Law on

²⁵⁷ New Delhi Conference on the Legal Aspects of Sustainable Development (2002); Berlin Conference on International Law on Sustainable Development (2004); Toronto Conference on International law on Sustainable Development (2006); The Hague Conference on International Law on Sustainable Development (2010); Rio de Janeiro Conference on International Law on Sustainable Development (2008).

Sustainable Development (2010); Rio de Janeiro Conference on International Law on Sustainable Development (2008).

4.3.2 Regional Law Standards

The Treaty of the East African Community²⁵⁸

The members of the East African Community (now East African Cooperation) agreed to have a concerted effort in matters of development, law and enforcement, and environmental protection and conservation.²⁵⁹ The above objectives are encapsulated in the EAC Treaty one whose main objective is to promote sustainable utilization of the natural resources of the partner states. It calls upon state parties to ensure sustainable management of the environment for present and future generations²⁶⁰ and sustainable management of natural resources.²⁶¹ These objectives indeed tally with those emphasized by the Oil and Gas Policy.²⁶²

This treaty establishes the East Africa Community. It has important provisions for environmental management especially article 151(1) which provides that partner states undertake to conclude such protocols as may be necessary in each area of cooperation which shall spell out the objectives, scope of and institutional mechanisms for cooperation and integration. Article 111 and 112 of the EAC Treaty provide for conservation and management of environmental and natural resources.²⁶³ Uganda as a member of the EAC is therefore obliged to comply with the principles of sound environmental management as prescribed in the Treaty while undertaking all development activities, which include though not limited to oil exploration and production. For example, Uganda should ensure that there is consultation and cooperation on the technologies to be adopted and prevent trans-boundary disposal of oil related pollutants within the region.

The EAC Protocol on Wildlife Conservation and Law Enforcement²⁶⁴

The protocol notes that member states have the sovereignty to manage their wildlife resources and the corresponding responsibility to sustainably use and conserve these resources.²⁶⁵ Article 2(i) stipulates that each party is required to ensure the conservation and

²⁵⁸The East African Community Treaty: 1999.

²⁵⁹ E. Kaweesi: Op cit.

²⁶⁰ Article: 151.

²⁶¹ Article: 111.

²⁶²Oil and Gas Policy, 2008.

²⁶³ Article: 114.

²⁶⁴EAC Protocol on Wildlife Conservation and Law Enforcement, 1999.

²⁶⁵ The Preamble.

sustainable use of wildlife resources in its jurisdiction. Each State is also required to ensure that activities in its jurisdiction or control do not cause damage to the wildlife resources of other states or in areas beyond the limits of national jurisdiction. The observation of this protocol is very instrumental in assessing environmental law compliance of the oil activities in the Albertine rift because this is the place which harbours Uganda's major wildlife National Parks and game reserves,²⁶⁶ some of which are shared among member states.

The EAC Protocol on Environment and Natural Resources Management²⁶⁷

This is a protocol to the EAC treaty. It is a protocol that makes specific provisions for environmental and natural resources management in the East Africa Community (now East African Corporation). Article 2 provides for the application of the Protocol by partner states and cooperation in the management of the environment and natural resources within their jurisdiction, including trans-boundary ecosystems and natural resources. Article 39 provides that each partner state shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative and enforcement measures, to ensure compliance with this protocol. The Protocol under Article 19 requires the Partner States to promote the joint harnessing of hydropower and other potential renewable energy sources and petroleum, geology and hydrocarbon potential of the Community. This therefore means that the oil in Uganda should be exploited with the perspective of complying with the protocol since failure to take heed to the guidelines may cost not only Uganda but the entire East African community.

The Environmental Assessment Guidelines for Shared Ecosystems in East Africa²⁶⁸

These environmental assessment guidelines are intended to rationalize the management, exploitation and use of natural resources in shared ecosystems amongst the EAC Partner States. They apply to all activities within the context of a trans-boundary area or cross-border area between any or all of the five East African countries, which is considered as the potential impact area for a specified activity.

The IGAD Agreement²⁶⁹

²⁶⁶ These include Queen Elizabeth National Park, Semliki Valley National Park, Semliki Valley Wildlife Reserve, Rwenzori National Park, Mgahinga Gorilla National Park, and Murchison Falls National Park and others.

²⁶⁷EAC Protocol on Environment and Natural Resources Management, 2006.

²⁶⁸The Environmental Assessment Guidelines for Shared Ecosystems in East Africa, 1994.

²⁶⁹IGAD (Intergovernmental Authority on Development) Agreement, 2007.

The Inter-Governmental Authority on Development's (IGAD) ultimate goal is to achieve economic integration and sustainable development. It has the following objectives: to promote joint development strategies and gradually harmonise micro-economic policies and programs in the social, technological and scientific fields; harmonize policy with regard to trade, customs, transport, communications, agriculture and natural resources, and promote free movement of goods, services and people within the region; create enabling environment for foreign cross-boundary and domestic trade and investment; initiate and promote programs to achieve regional food security and sustainable development of natural resources and environmental protection to encourage and assist efforts of member states to collectively combat drought and natural as well as man-made disasters and their consequences, and to develop a coordinated and complimentary infrastructure in the area of transport, telecommunication and energy in the region.

The environment created by this agreement is very important for production in Uganda especially the midstream elements of distribution and marketing. For example, it is within the framework of this agreement that proposals are underway to construct a pipeline network connecting Uganda to East African markets of Rwanda and Tanzania, and development of a railway line connecting all the five countries.

Inter-Governmental Authority on Development (IGAD) Environment and Natural Resources Strategy,²⁷⁰ was developed because IGAD faces a myriad of sustainable development challenges in attempting to realize its vision, mission and objectives. One such challenge is the sustainable management of natural resources and environmental protection, the very foundation upon which the socioeconomic development of the region depends. The region experiences persistent economic crises, which to a large extent, have roots in severely degraded natural resources and the environment. This, is exacerbated by recurrent droughts and other natural and man-made disasters, resulting in perpetual poverty and under-development which in turn accelerates the degradation of natural resources and the environment, thereby causing a vicious cycle. An urgent need, therefore, exists for member states of the IGAD region to break the vicious cycle by specifically²⁷¹ ensuring environmental sustainability in their economic and social activities. Therefore, the Natural

²⁷⁰ Inter-Governmental Authority on Development- April 2007.

²⁷¹ Ibid

Resource Strategy is based on four strategic objectives namely: To improve the framework for environmental and natural resources governance in the IGAD region; to develop information required for sound environmental and natural resources management in the IGAD region and make it readily available; to enhance capacity of member states for improved environmental and natural resources management in the IGAD region; and to enhance the capability for environmental and natural resources research and development in the IGAD region.

The IGAD Environment and Natural Resources Strategy derives directly from the IGAD Strategy of 2003 and its accompanying Implementation Plan (2004-2008). Efforts have also been made to link the strategy with other IGAD strategies and processes such as – those of food security, gender, peace and security and the Environment Outlook, among others. In addition, the strategy is significantly influenced by the regional and international development processes.

(i) Energy Resources

The most predominant source of energy in the IGAD region is biomass, mainly firewood and charcoal. There is an increasing trade in charcoal. Thus, governments of the member states have the opportunity to regularize the tax charcoal trade and put in place long-term plans for sustainable production. There are also opportunities for research into efficient charcoal kilns and cooking stoves. However, the current regional picture is one of increasing scarcity of biomass energy. There is thus an urgent need to look at alternatives.

With respect to other renewable energy sources, the IGAD region enjoys regular solar radiation round the year and there is substantial potential for the use of solar energy. For example, the potential for solar energy in Kenya is estimated at 4 to 6 kWh per m² per day of insolation which translates into about 250 million tons of oil equivalent (TOE) per day. Yet there is virtually no large-scale, commercial production of energy from solar radiation in the region.

Another significant potential exists with regards to geothermal energy where reservoirs suitable for the generation of power have been identified in the region. If developed, geothermal power can enhance grid reliability and member states can, to some extent, avoid

vulnerability to drought and oil price fluctuations. Kenya is the first African country to tap geothermal power in a significant fashion. On the other hand, the geothermal potential of Ethiopia has been estimated at about 4000 MW. Some of the geothermal reservoirs identified so far are thought to straddle national boundaries. The geothermal resources of the region need to be studied in detail and looked into in a coordinated manner. There is need for a complete geothermal energy assessment, and financial support to selected research institutions to pioneer development of geothermal power options within the region.

Oil and gas is another source of energy, which is already exciting the region. Sudan is producing it. Uganda has announced the discovery of oil and gas deposits of commercial quantities. Off-shore exploration of oil and gas is on-going in Djibouti, Eritrea, Kenya and Somalia. Significant discoveries of oil and gas in the region are likely to have profound effects on the economy, environment, peace and security. The tools required to deal with these challenges need to be developed.

(ii) Mineral Resources

From studies of geological formations and limited exploration work that has been carried out so far, there is evidence to suggest that the IGAD region has sizeable mineral deposits, which provide opportunities for sustainable development. Some minerals such as platinum, silver, soda ash, salt, limestone, phosphate, gold, wolfram, marble, copper and zinc are already being mined. Others are also known to occur across national boundaries, which call for regional cooperation in developing these deposits. Notwithstanding the foregoing, greater effort needs to be put into creating an inventory for the mineral resources of the region, building capacity by training mining engineers, and preparing modalities for transboundary mining operations.

EAC Climate Change Policy Framework

At the regional level, the climate change policy for the East African Community urges Partner States to develop consistent national policies to ensure harmonised action. The global consensus under UNFCCC is implemented according to each country's Green House Gas (GHG) emissions and ability to address the problems. In Uganda, the development of a

National Climate Change Policy and its implementation Strategy²⁷² enables the country to fulfil its obligations under the convention, and therefore to contribute to addressing the global problem. Uganda's five-year National Development Plan (2015/16-2019/20) already recognises that addressing the challenges of climate change is crucial to enhancing sustainable economic and social development. With support from the governments of Denmark, Belgium, as well as from the United Kingdom through the World Bank, the Ugandan Ministry of Water and Environment has coordinated the development of the Uganda National Climate Change Policy through extensive consultations with a wide range of national and local stakeholders. The policy is intended to guide all climate change activities and interventions in the country.

Comparative Analysis of Policy Framework with Nigeria Jurisdiction

The oil and gas industry remains the mainstay of revenue for Nigeria's economy. Oil generation accounts for over 90 per cent of foreign export earnings and about 80 per cent of the government's revenue, significantly increasing the gross domestic product (GDP) of Nigeria's economy.²⁷³ Sustainable management of oil wealth postulates efficiency in resource management and utilisation; it is a system of management that can satisfy present needs without depriving future generations.²⁷⁴ To achieve and remain committed to sustainability among the Nigerian extractive industry, proper efficiency and utilisation of oil resources is backed up by environmental regulation.

Legal framework in Nigeria

Environmental regulation involves the use of several techniques, ranging from criminal law to economic mechanisms. A regulatory system is said to be effective when it portrays the principles of prevention, 'polluter pays', precautionary and sustainable development. The prevention and precautionary principles are invoked through the use of licences and permits; in other words, the regulation prohibits the intended activity unless a permit is given. The regulatory framework also lays down stringent requirements and requires certain tests to be carried out to determine the sustainability and outcomes of the proposed activity. The

²⁷²Uganda National Climate Change Policy, 'Transformation through Climate Change Mitigation and Adaptation' (April, 2015), Ministry of Water and Environment- Kampala.

²⁷³ NP Nweze , and G Edame , 'An Empirical Investigation of Oil Revenue and Economic Growth in Nigeria' (2016) European Scientific Journal, 271

²⁷⁴ S Ekokoi, 'Sustainable Management of Nigeria's Oil Wealth: Legal Challenges and Future Directions' (2016) 7 J Sustainable Dev L & Pol'y 135.

rationale for the tests is to assess the likely effects of a proposed activity to prepare for and prevent environmental harm. An example of this is the environmental impact assessment. A regulatory system should prescribe punishment, usually in the form of fines, removal of licences and even imprisonment for more serious offences. This ensures compliance with the law and sends a warning to other would-be offenders. Finally, the regulation should align itself with the principle of sustainable development.

Environmental regulation has been effective in curbing environmental pollution, stimulating economic development and minimising over-dependency on natural resources.²⁷⁵ Environmental regulation promotes the use of clean energy sources, promotes technological innovation and attracts foreign investment and technology.²⁷⁶ Regulation is a solution to the mounting pressure for extractive industries to seek better operational strategies that are energy-saving and environmentally friendly. Furthermore, environmental regulation makes corporations accountable for their actions. It is easier to monitor compliance and enforce regulations through the use of permits and licences.

Legal and Regulatory Framework

The 1999 Constitution of Nigeria,²⁷⁷ section 20 of the constitution provides an underlying foundation for the protection of all wildlife, air, watercourses and environment in the Government of Nigeria.

The Petroleum Act,²⁷⁸ is the principal legislation governing the oil and gas sector in Nigeria. The Act vests sole regulatory power with the office of the Minister of Petroleum Resources. Even though the state has full ownership and control of all petroleum resources in Nigeria under section 1(1) of the Act, the minister administers regulatory powers and also does so at their discretion.

Environmental Impact Assessment Act (EIA),²⁷⁹ is one of the laudable regulatory enactments for sustainable oil and gas exploration. The Act shifts focus from maximising profits and

²⁷⁵ Stavropoulos S, Wall R, & Xu Y, 'Environmental regulations and industrial competitiveness: evidence from China' (2018) *Applied Economics*, 50(12), 1378–1394.

²⁷⁶ B Yuan B and Y Zhang, 'Flexible Environmental Policy, Technological Innovation, And Sustainable Development of China's Industry: The Moderating Effect of Environmental Regulatory Enforcement', (2019) 243 *Journal of Cleaner Production*, 118543.

²⁷⁷ Constitution of The Federal Republic of Nigeria [Nigeria], Act No. 24, LFN 1990.

²⁷⁸ Petroleum Act (2004) Cap. (P10), LFN 1990.

²⁷⁹ Environmental Impact Assessment Act (2004) E 12 Laws of the Federation of Nigeria.

gains, to paying attention to environmental impacts of the oil operation. The objective of the Act is to take into account all possible environmental risks and impacts of a proposed project before commencement.²⁸⁰

National Oil Spills Detection and Response Agency Act,²⁸¹ provides statutory backing for the Federal Ministry of Environment in Nigeria to optimize oil pollution control. The regulatory body for the Act is the National Oil Spills Detection and Response Agency (NOSDRA), which is charged with the responsibility for preparedness, detection and response to all oil spillages in Nigeria.²⁸²

Associated Gas Re-Injection Act,²⁸³ was enacted in a bid to curb the recurring environmental problems in Nigeria. The Act was first enacted in 1979 and has been subject to numerous amendments with little success on phasing out gas flaring in Nigeria. One of the reasons for the continuous environmental threat is the minimal penalties attached to the Act. Companies have found it more economically favourable to flare gas and then pay the fine as opposed to paying to switch to clean technologies.²⁸⁴

Petroleum Profits Tax Act,²⁸⁵ is the principal tax legislation for upstream petroleum operators in Nigeria. The Act provides a framework for the collection of taxes and royalties, as well as providing economic incentives to petroleum operators. On paper, the Act includes laudable provisions for penalising offenders,²⁸⁶ assessing payable tax,²⁸⁷ assessing deductibles,²⁸⁸ providing incentives for using associated gas²⁸⁹ and so on.

²⁸⁰ Section 1 EIA Act.

²⁸¹ National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act, CAP 157 LFN 2006.

²⁸² Section 1 NOSDRA Act.

²⁸³ Associated Gas Re-Injection Act (2004) Cap. (A25), LFN.

²⁸⁴ Ken I, and Aniche E, 'The Nigerian National Petroleum Corporation (NNPC) and Enforcement of Zero Gas Flaring Regime in Nigeria' (2015), 4(1) ANSU journal of Arts and Social Sciences, 48–74.

²⁸⁵ Petroleum Profits Tax Act Cap 13, LFN 2004.

²⁸⁶ Section 16 PPTA

²⁸⁷ Section 21 PPTA

²⁸⁸ Section 13 PPTA.

²⁸⁹ Section 11 PPTA.

Institutional framework in Nigeria

Institutional establishments are indispensable in the proper management of the natural resource industries.²⁹⁰ Nigeria has created several government ministries, agencies and departments with various functions to administer and manage the industry. These include: Nigerian National Petroleum Corporation (NNPC) 1977, was founded as a government institutional establishment with the responsibility of overseeing and managing government interest in the petroleum industries which includes the exploration activities, production, refining, transportation and marketing of crude oil and its products. The NNPC is empowered by the NNPC Act of 1997 to engage in all activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate Department.

Federal Government Enterprises (FGOs) are institutions present in the petroleum industry. They strengthen operational efficiencies, management, and accountability. This has a direct impact on the operations of NNPC, which remains the largest source of income for the Federal Government.

The Ministry of Petroleum Resources (MPR), is responsible for oversight of the overall sector, including all its agencies, and for policy making. It is also in charge of overseeing the sector and NNPC. The Minister of Petroleum is also the chairman of NNPC.

Department of Petroleum Resources (DPR), exercises regulatory powers on behalf of the MPR, and has licensing and monitoring powers for oil, gas, and downstream petroleum products. The DPR is legally founded in the Act that constitutes NNPC, which calls for an inspectorate Directorate within NNPC. An inadequate budget, limited human resources, and conflicting objectives limit the operational effectiveness of DPR.

The Petroleum Products Pricing Regulatory Agency (PPPRA) 2003 regulates petroleum products prices. It is an agency of the government of Nigeria established in 2003 to, among other responsibilities, monitor and regulate the supply and distribution, and determine the prices of petroleum products in Nigeria. Its headquarters is located in Abuja, Nigeria. Uganda

²⁹⁰ The Oil and Gas Sector Reform Implementation Committee (OGIC) was set up on 24th April 2000 by former President Olusegun Obasanjo with the responsibility of making recommendations for the restructuring of Nigeria's oil and gas industry.

will have to determine at what point after full blown production of oil and gas, that such an agency will be required

Petroleum Technology Development Fund (PTDF) 1973 is in charge of training. It is a parastatal of the Ministry of Petroleum Resources established by Degree 25 Of 1973 dedicated for the purpose of development, promotion and implementation of petroleum technology and manpower development through research and training of Nigerians as graduates, professionals, technicians and craftsmen in the fields of engineering, geology, geosciences, management, economics and relevant fields in the petroleum and solid minerals industry in Nigeria or abroad.

Petroleum Equalization Fund 1975 (as amended 1989) - The Petroleum Equalization Fund is responsible for the equalization of pricing of petroleum products countrywide. The Petroleum Equalisation Fund Management Board is a scheduled Parastatal of the Ministry of Petroleum Resources, established by Decree No.9 of 1975 (as amended by Decree No. 32 of 1989), mainly to administer Uniform Prices of Petroleum products throughout the country. This is achieved by reimbursing a marketer's transportation differentials for petroleum products movement from depots to their sales outlets (filling station), in order to ensure that products are sold at uniform pump price throughout the country. The source of the Fund is from majorly the net surplus revenue recovered from Oil Marketing Companies. This is also important for Uganda, considering that even as recent as January through to February 2022, when the country experienced shortages in fuel supplies, the price of fuel went up and even when supplies were the supply was back to normal, the market has still maintained high supplies and government does not appear in control regulating unfair pricing.

Lessons from the Comparative Analysis

- Over-reliance on the oil reserves has resulted in unsustainable economic growth. Oil prices from the year 2011 onwards have suffered a steady decline, leading to a corresponding fall of the country's economic growth.²⁹¹
- Regulations are usually born from market failures. It becomes imperative for a government to make a regulatory intervention because of several negative externalities, such as: the overuse of natural resources; an increase in environmental

²⁹¹ BP Statistical Review of World Energy [2017]

problems; maximization of individual profit against social welfare; and the absence of corporate responsibility towards environmental pollution.²⁹²

- There are several governance challenges hindering successful sustainable oil and gas exploration and development in Nigeria. Some of these include: inconclusive and vague legislative provisions; corruption; the duplication of responsibilities; inadequate penalties and sanctions; and weak monitoring and compliance mechanisms.

4.3.3 Application of International and Regional Environmental Laws in Uganda

Uganda recognizes the need to participate in International Environmental Law. The Constitution provides that the president or any other person authorized by the president may make treaties, conventions, agreements or other arrangements between Uganda and any international organizations in respect of any matter, and that parliament shall make laws to govern the ratification of any treaty, conventions, agreements or other arrangements.²⁹³

The National Environment Act operationalizes the above constitutional provisions by providing that where Uganda is a party to any convention or treaty concerning the environment, after the convention or treaty has been ratified under article 123 of the 1995 Constitution, the minister may, by statutory order, with the approval of parliament by resolution: set out provisions of the convention or treaty; give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given force of law in Uganda; amend any enactment other than the constitution for the purpose of giving effect to the convention; make such other provisions as may be necessary for giving effect to the convention or treaty in Uganda, or for enabling Uganda perform its obligations or exercise its rights under the convention or treaty.²⁹⁴

This section applies to any convention or treaty, whether adopted before or after the coming into force of the Act and whether Uganda became party to it before or after the coming into force of the Act.²⁹⁵ All treaties in Uganda are ratified according to the procedure laid down by the Ratification of Treaties Act.²⁹⁶ The Act provides for the following modes of ratification: ratification by cabinet; and ratification by parliament by resolution where the

²⁹² Stavropoulos S., Wall R. & Xu Y., (2018) 'Environmental regulations and industrial competitiveness: evidence from China' (2018) *Applied Economics*, 50(12), 1378–1394.

²⁹³ Constitution of the Republic of Uganda, 1995 article 123.

²⁹⁴ National Environment Act, Cap153 section 106(1).

²⁹⁵ Subsection (2).

²⁹⁶ Cap204 Laws of Uganda: 2000.

treaty has the effect of amending the Constitution, or where the treaty relates to armistice, neutrality or peace.²⁹⁷

In case the treaty requires amendment, the Attorney General has to certify in writing that the implementation of the treaty in Uganda would require amendment. The Attorney General's certificate is presented to cabinet and subsequently a motion is tabled in parliament. If satisfied, parliament passes a resolution for the ratification of the treaty. Where a cabinet ratifies a treaty, it must lay it before parliament as soon as possible. Instruments of ratification of a treaty concluded by cabinet or parliament are signed, sealed and deposited by the minister responsible for foreign affairs to the ministry in charge of all treaties and conventions. Therefore, it follows from the foregoing that all international and regional environmental law instruments which Uganda has ratified and domesticated are binding on her and should be complied with in all current and future oil operations.

The above compliance requirements set good international and regional binding and soft standards not only for the environment generally but also the oil and gas industry in particular. Therefore, Uganda should as much as possible aim at complying therewith. One of the major challenges of enforcing international law is its soft character. The law does not prescribe punitive reinforcements against violators.

Even where such sanctions are prescribed, there may be no clear and/ or affordable system of pursuing remedies. In addition, international and regional tribunals require that before one can approach them he/she should have exhausted all available local remedies yet in some cases these are inaccessible due to structural bottlenecks. However, all this can be overcome by domesticating those standards into local oil and gas legislation which should clearly highlight environmental standards, punishments for noncompliance and the procedures for pursuing remedies.

4.4 The shortfalls in Uganda's policy, legal, regulatory and policy framework in comparison to regional and international framework on sustainable oil and gas exploration, development and production

The Upstream Act²⁹⁸ charges the National Environment and Management Authority (NEMA) with the responsibility of making regulations for the management of the production,

²⁹⁷ See section 2.

transportation, storage, treatment and disposal of waste arising out of petroleum activities. However, the prescribed fine in respect of the contravention of the regulations, penalties not exceeding five thousand currency points²⁹⁹ or imprisonment not exceeding ten years or both in Section 3 (9) is not dissuasive enough. This should be harmonised with the fine for carrying out of petroleum activities without a licence or failing to comply with the terms and conditions prescribed in the licence not exceeding one hundred thousand currency points or imprisonment not exceeding ten years or both as prescribed in Section 3 (7) could guard against non-compliance by licensees.

It is also important to note that there is no legal requirement for the Minister of Energy and Mineral Development to publicly disclose the outcomes of an assessment of the impact of the petroleum activities on trade, industry and the environment and other risks such as pollution, or economic and social costs. Although an assessment is required under Section 47 (3)³⁰⁰ for new licensing areas, there is no provision for similar assessments provided for in the other stages of resource development for interested stakeholders to comment. We further note that even where the law provides that affected communities will be accorded the opportunity to express their views on new areas of exploration, their fate is left in the hands of the Minister who may choose to disregard their interests (Section 47 (6)).

The Upstream Act fails to make provisions for public disclosure of Environmental Impact Assessments (EIAs). This perpetuates lack of information and infringes on citizens' right of access to information regarding enjoyment of a clean and healthy environment (Article 39).³⁰¹ The Supreme Court of India in *Susethat vs State of Tamil Nadu*³⁰² held that there must be a balance between human rights and economic development, and as such, the oil and gas laws should be revised to include this precautionary principle in a bid to protect the right to a clean and healthy environment, and related rights alongside mineral development.

Liability for damage due to pollution (upstream and midstream laws)

Principle 4 of the Rio Declaration³⁰³ and Article 39 of the 1995 Constitution of Uganda recognizes on the right of every person to a clean and healthy environment. To protect this

²⁹⁸ Petroleum (Exploration, Development and Production) Act for the (Upstream), 2013.

²⁹⁹ One currency point is equal to twenty thousand shillings.

³⁰⁰ Ibid.

³⁰¹ The Republic of Uganda Constitution, 1995.

³⁰² Civil Appeal 3418 of 2006.

³⁰³ Rio Declaration, 1992.

right, the Petroleum Exploration and Production Department Act sets in motion provisions against pollution in Part X thereof. However, Section 131 of the upstream law is ambiguous on liability for pollution damage caused without a license: —...where pollution damage occurs during a petroleum activity and the activity was conducted without a licence, the party that conducted the petroleum activity is liable for the damage, regardless of fault.¶

Aside from finding companies liable for pollution, regardless of fault, both the upstream and midstream laws (Section 130 and Section 58 (1)) fail to provide for a compensation regime for victims of such pollution or any losses resulting from poor management of petroleum operations, in particular, the unforeseeable long-term damages that such activities may have on the environment and human health. It would appear that according to Section 131 there is no liability for pollution damages if caused with a licence, which legalizes pollution, yet liability for pollution damage should accrue with and without a licence. The above notwithstanding there are clearer and detailed provisions in the draft National Environment Management Bill currently under review (clauses 95-100). Clause 100 states that a person (including a legal company) who pollutes the environment, is strictly liable for the damage caused to human health or the environment regardless of fault. In time there will be need to harmonize the upstream legal provisions on pollution control with the principal legislation on environmental management once the proposed bill becomes law.

Compensation and displacements

Article 26 of the Constitution provides for the right to protection from deprivation of property and guarantees the right to everyone to own property individually or in association with others. It sets aside conditions for compulsory deprivation of property in public use or in the interest of defence, public safety, public order, public morality or public health. Article 26(2)(b) further provides that there must be prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of private property. A right to seek a court remedy for any aggrieved party is equally accorded. Noticeably, there are no specific provisions addressing surface access rights disputes between international oil companies and local communities, nor are there provisions for compensation and resettlement of displaced communities. This has exacerbated conflicts between government, transnational

oil companies, and local communities in the oil rich region culminating into court disputes among others.

Land conflicts and human displacements in the Albertine Graben

The government, transnational oil companies, and international service providers in the oil and gas industry have been faulted for the ever-increasing land conflicts in the oil rich region. The existing institutional and legal systems fail to recognize the legal interests and rights of communal land owners in the face of multinational business interests. This has led to an increase in land grabbing, violent evictions and displacement of thousands of communal land owners and consequently a spate of court cases against government.³⁰⁴ –Oil in Uganda, a local online newsletter reveals an increase in land grabbing, evictions and violent displacements of customary landowners by international business entities in collusion with local businessmen and elites from Kampala.³⁰⁵

In operationalizing Article 244 (1) of the Constitution³⁰⁶ on minerals and petroleum resources, the Uganda National Land Policy lays down strategies to be implemented by government in ensuring appropriate management and governance of strategic natural resources. The following strategies are set out in Clause 30 of the policy; government is required to: - i. Protect the land rights and land resources of customary owners, individuals and communities owning land in areas where mineral and petroleum deposits exist or are discovered; ii. Allow to the extent possible, co-existence of customary owners, individuals and communities owning land in areas where petroleum and minerals are discovered; iii. Provide for restitution of land rights in event of minerals or oil being exhausted or expired depending on the mode of acquisition; iv. Guarantee the right to the sharing of benefits by land owning communities and recognize the stake of cultural institutions over ancestral lands with minerals and petroleum deposits; and v. Adopt an open policy on information to the public and seek consent of communities and local governments concerning prospecting and mining of these resources.

³⁰⁴ Ssekika E. –Oil: A year of court battles, slow progress! Weekly Observer, [30th December, 2014] <http://observer.ug/business/38-business/35701--oil-a-year-of-court-battles-slow-progress>. (Accessed on December 5th, 2021).

³⁰⁵ Oil in Uganda, Oil and Land Conflicts in the Albertine. http://www.oilinuganda.org/wp-content/plugins/downloads-manager/upload/oil_in_uganda_newsletter_march.pdf (accessed on December 5th, 2021).

³⁰⁶ The Constitutional (Amendment) Act No.11 of 2005. Replacement of Article 244 (1).

These provisions appear sufficient to remedy the current injustices faced by customary landowners in the oil rich region and reinforce the right to protection from deprivation of property and to culture and similar rights. However, the decision of government to retain 93% shares from royalties, only relinquishing a paltry 6% to be shared between local governments in the oil producing region may be too little to guarantee the desired financial benefits optimization.³⁰⁷ Government rewards cultural institutions with a relatively insignificant 1%, while it completely ignores communal land owners and victims of violent evictions and displacements.³⁰⁸

There is no legal recognition of traditional mechanisms for dispute resolution or customary law as a framework for the processing of disputes under customary tenure. The government must demonstrate the political will to protect and remedy the violations faced by customary land owners. The government should reinstate district land tribunals suspended by the judiciary in 2006 for lack of adequate budgetary support.

The upstream law is explicit on surface rights. Section 135 provides that –a licensee holder cannot exercise any rights under their licence without the written consent of the landowner. Extensively, the provision attempts to provide for the co-existence of petroleum development with landowner’s rights; notably Section 136 enables landowners in an exploration area to retain the right to graze stock or to cultivate the surface of the land insofar as the grazing or cultivation does not interfere with petroleum activities or safety zones in the area.

However, Section 138 of the upstream law enables a petroleum production licence holder to acquire exclusive rights over a block in a development area. The law disarms the landowner’s opportunity to negotiate for an enhanced value of their property by subjecting it to the government valuer’s determination. This is because the government valuer is by law instructed to disregard the increase in the value of land as a result of the presence of petroleum. There is also a risk that some landowners may not be compensated for disturbance of their rights and for any damage done to the surface of the land as a result of oil and gas related activities, if complaints or claims are made four years after the fact (Section 139(2) of the upstream law.

³⁰⁷ The Public Finance Management Act No.3 of 2015. Section 75.

³⁰⁸ Ibid Section 35.

Security and militarization of the Albertine Graben

Security for the oil and gas development projects in the Albertine Graben is provided by an elite special government military unit and private security firms.³⁰⁹ The Uganda Human Rights Commission has reported the denial of district labour officers access to oil well pads in Buliisa District, while civil society organisations have complained of illegal detentions and harassment from the security and military in the region.³¹⁰

Currently the upstream and midstream laws are silent on human rights and there are no set parameters or codes of practice guiding military, police or private security firms in the oil region with respect to human rights. Oil companies are however duty-bound to provide for their own security detail under Sections 143 and 66 of the Upstream and Midstream laws respectively.

4.5 Summary of Findings

The legal regime governing the oil and gas industry in Uganda is constituted by locally tailored policy³¹¹ and legislative compliance requirements.³¹² The major policy and legislative environmental law compliance requirements were developed after 1994 with the formulation of the National Environment Action Plan.³¹³ This saw the development of the major National Environment Management Policy and the National Environment Act³¹⁴ as Uganda's framework legislation.

A. Compliance standards under Uganda's policy, legal, regulatory and institutional framework on sustainable oil and gas exploration, development and production.

³⁰⁹ Matsiko, H. -Guns in the oil region (2012), The Independent <http://www.independent.co.ug/coverstory/5968-guns-in-oil-region> (Accessed on December 5th, 2021).

³¹⁰ Uganda Human Rights Commission, -*A Special Report on Oil in Uganda: Emerging Human Rights Issues. Special focus on selected districts in the Albertine Graben* [2013]

³¹¹ It is not our intention to delve at great length in issues of policy generally. However, the readers may be referred to additional readings in this regard. For example, they may wish to look at: Kasozi, G.W.K.L. (2009): *Human Rights and Public Policy: A Holistic Analysis of the Right to Life in Uganda*; *UCU Law Review* 2009, Vol. 01 No 2, 2009, p. 33 – 86.

³¹² Monday, J. (2014). Oil and gas exploration and environmental protection in Uganda: An appraisal of the policy and legal framework. Unpublished Master's Thesis, Makerere University Kampala, Uganda. URI: <http://hdl.handle.net/10570/5862>

³¹³ The National Environment Action Plan for Uganda (Ministry of National Resources)- Uganda 1995

³¹⁴ The National Environment Act Cap. 152, 2019.

Legislation

The 1995 Constitution of the Republic of Uganda has elaborate provisions regarding environmental management. The Constitution requires that government, among others, promotes sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations and to prevent or minimize damage and destruction to land, air and water resources resulting from the pollution or other causes.³¹⁵

The Petroleum Acts³¹⁶ of 2013, operationalizes the National Oil and Gas Policy and ensures that the exploration, development and production of petroleum resources is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations as well as creating a conducive environment for the efficient management of petroleum resources. The Acts call upon all actors to carry on their operations in compliance with environmental principles. The National Environment Act 2019 is Uganda's framework environmental law and its central tenet is sustainable environmental management.³¹⁷ It prescribes a set of environmental management principles³¹⁸ and establishes the National Environment Management Authority (NEMA)³¹⁹ as a body responsible for coordinating, monitoring and supervising all environmental matters in Uganda.³²⁰ Other existing legislations in this area include Occupational Safety and Health Act 2006, Land Act 1998, Mining Act 2003 (Cap. 148), National Forest and Tree Planting Act 2003, Uganda Wildlife Act 1996 and Water Act 1997 (Cap. 152).

Policies

Compliance standards under the National Policy Framework for oil and gas in Uganda is available. In addition to the international and regional compliance requirements, legal regime governing the oil and gas industry in Uganda is also constituted by locally tailored policy and legislative compliance requirements.³²¹ Compliance with these policy and legislative

³¹⁵ Principle XXVII.

³¹⁶ Petroleum (Development and Production) Act 2013 Cap153; Petroleum (Exploration, Development and Production Act 2013; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013; Transmission and Midstream Storage Act 2013; and Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, No. 2.

³¹⁷ The National Environment Act, 2019 Cap153.

³¹⁸ The National Environment Act, Cap153 Laws of Uganda, 2019 Section 2.

³¹⁹ National Environment and Management Authority.

³²⁰ Ibid Sections: 4, 5 and 6.

³²¹ Kayihura F. 'Assessing national environmental law in compliance with international and regional environmental legal standards; a case study of the oil and gas industry of Uganda' (2018), UCU LL.M thesis. See also Atukunnda A. 'Analysis of the legal regime on compliance with environmental standards in the oil and gas sector in Uganda', UCU LL.M thesis.

aspirations and standards will enable Uganda develop an environmentally healthy and safe, sound and sustainable oil and gas sector.

The National Oil and Gas Policy for Uganda³²² is the policy whose main goal is to ensure the use of the country's oil and gas resources to contribute to early achievement of poverty eradication and to create lasting value to society. The policy has principles that are relevant to the protection of the environment and conservation of biodiversity. The National Environment Management Policy³²³ has the overall goal to establish sustainable social and economic development, which maintains or enhances environmental quality and resource productivity on a long-term basis that meets the needs of the present generation without compromising the ability of the future generation to meet their own needs.³²⁴ Other relevant policies to this area include the National Water Policy³²⁵; Uganda Forestry Policy³²⁶; Uganda Policy Framework for Industry Sector³²⁷; and National Climate Change Policy, 2015.

Regulations

The Petroleum (Exploration, Development and Production) Regulations 2016, were made under sections 48(2), 69 (6), 78, 81 (5), 86 (3), 92, 93(1), 93(2), 94(2), 95 (1), 96 (3), 121(2), 123, 128(1), 155(1), 168(2) and 183 of the Petroleum (Exploration, Development and Production) Act, No.3 of 2013.

Institutional Framework

The Parliament of Uganda, in view of its mandates and functions, has a major influence on the environmental regulatory system and therefore the sustainability of petroleum activities. Article 244(2) (a-d) of the 1995 Constitution further mandates parliament to make laws to regulate the exploitation of minerals and petroleum in a sustainable way. The relevant Ministries and Departments studied include Ministry of Gender, Labour and Social Development; Ministry of Energy and Mineral Development; Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Works and Transport; Ministry of Lands, Housing and Urban Development; Ministry of Water and Environment; Ministry of Tourism, Wildlife and Antiquities; Ministry of Local Government; and The Judiciary that incorporates the

³²²The National Oil and Gas Policy for Uganda.

³²³The National Environment Management Policy.

³²⁴Chapter 2 part 2.1 of the policy.

³²⁵National Water Policy- 1999

³²⁶Uganda Forestry Policy- 2001.

³²⁷Uganda Policy Framework for Industry Sector-2008.

Ministry of Justice and Constitutional Affairs, Uganda Law Society and Uganda Law Reform Commission.

Authorities and Agencies

The National Environment Management Authority (NEMA), has a statutory mandate to manage the environment through coordination, monitoring and supervision of environmental activities. NEMA uses established environmental protection standards to monitor changes in environmental quality. The Petroleum Authority of Uganda (PAU) is mandated to monitor and regulate the exploration, development and production, together with the refining, gas conversion, transportation and storage of petroleum in Uganda. The Uganda National Oil Company Limited (UNOC) is a limited liability company wholly owned by the Government of Uganda with an overall function to handle the Government of Uganda's commercial interests in the petroleum sector and to ensure that the resource is exploited in a sustainable manner.

Other authorities, that have great influence on environmental sustainability, studied include Uganda Wildlife Authority (UWA) which is mandated to ensure sustainable management of wildlife resources and supervise wildlife activities in Uganda both within and outside the protected areas and the National Forestry Authority (NFA) which is mandated to manage Central Forest Reserves on a sustainable basis and to supply high quality forestry-related products and services to government, local communities and the private sector.

Representatives

Representative bodies and organizations included in this study are International Oil Companies (Total E&P Uganda and CNOOC); Non-Governmental Organisations and Civil Society Organizations; and the Academia.

B. The international and regional policy, legal, regulatory and institutional framework on sustainable exploration, development and production of oil and gas.

International Law Standards

The corpus of international environmental law is composed of legally binding (hard law) principles as well as non-binding (soft law) principles. The United Nations Environment Program, has played a leading role in the promotion of regional conventions aimed at

protecting the environmental sustainability against pollution, prevention of desertification, sound exploitation of natural resources for sustainable development among others.

The Stockholm Declaration principles³²⁸ were adopted at the United Nations Conference on the Human Environment at Stockholm.³²⁹ It lays a number of principles relevant to the oil and gas exploration processes including guidance ranging from integrated planning, access to information and citizen involvement, application of environmentally sound technologies in oil exploration and production, control of pollution and the need to cater for future generations. United Nations Environment Program have suggested that while host governments seek to understand the environmental impacts of the oil and gas industry and put in place environmental laws to regulate the activities of the oil companies, the management of the oil companies must also do their part to institute an Environmental Health and Safety management system. The Rio+ 20 Sustainable Development Declaration³³⁰ focuses on principle 10 of the Rio Declaration,³³¹ which has significant implications for oil and gas exploration and production.

Kyoto Protocol of the United Nations Framework Convention on Climate Change³³² sets binding numerical targets for the limitation and reduction of greenhouse gas emissions especially carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, per fluorocarbons and sulphur hexafluoride. Therefore, the operators in the Albertine Graben should follow the clean development mechanism to make plans to minimize greenhouse and ozone depleting emissions in the process of production due to start by 2025.

The African Charter on Human and Peoples Rights (also known as the Banjul Charter) is a regional human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.³³³ Today, it is obvious that human rights and the environment are inherently interlinked where the life and the personal integrity of each human being depend on protecting the environment and environmental protection can often be implemented properly when human rights are respected. The United Nations Conference on Climate Change, the delayed 26th Conference of the Parties (COP26) of the United

³²⁸Stockholm Declaration 1072: Preamble.

³²⁹ This happened between 5th and 16th June, 1972.

³³⁰ United Nations A/CONF.216/13.

³³¹Rio Declaration, 1992.

³³²United Nations Framework Convention on Climate Change, Kyoto Protocol, 25th March 2002.

³³³ African Charter on Human and Peoples Rights Adopted in Nairobi, Entered into Force October 21, 1986.

Nations Framework Convention on Climate Change (UNFCCC), took place in Glasgow from 1st to 12th November 2021, with a focus on countries increasing their commitments to tackle the climate emergency and limiting global warming to 1.5 degrees Celsius. Other International conferences on sustainable development include: New Delhi Conference on the Legal Aspects of Sustainable Development (2002); Berlin Conference on International Law on Sustainable Development (2004); Toronto Conference on International law on Sustainable Development (2006); The Hague Conference on International Law on Sustainable Development (2010); Rio de Janeiro Conference on International Law on Sustainable Development (2008).

Regional Law Standards

The Treaty of the East African Community (EAC)³³⁴ (now East African Cooperation) agreed to have a concerted effort in matters of development, law and enforcement, and environmental protection and conservation.³³⁵ The above objectives are encapsulated in the EAC Treaty. One of whose main objectives is to promote sustainable utilization of the natural resources of the partner states. It calls upon states parties to ensure sustainable management of the environment for present and future generations³³⁶ and sustainable management of natural resources.³³⁷

The EAC Protocol on Wildlife Conservation and Law Enforcement³³⁸ notes that member states have the sovereignty to manage their wildlife resources and the corresponding responsibility to sustainably use and conserve these resources.³³⁹ Article 2(i) stipulates that each party is required to ensure the conservation and sustainable use of wildlife resources in its jurisdiction. The EAC Protocol on Environment and Natural Resources Management³⁴⁰ makes specific provisions for environmental and natural resources management in the EAC. Article 2 provides for the application of the Protocol by partner states and cooperation in the management of the environment and natural resources within their jurisdiction, including trans-boundary ecosystems and natural resources while Article 19 requires the Partner States

³³⁴The East African Community Treaty: 1999.

³³⁵ E. Kaweesi: Op cit.

³³⁶ Article: 151.

³³⁷ Article: 111.

³³⁸EAC Protocol on Wildlife Conservation and Law Enforcement, 1999.

³³⁹ The Preamble.

³⁴⁰EAC Protocol on Environment and Natural Resources Management, 2006.

to promote the joint harnessing of hydropower and other potential renewable energy sources and petroleum, geology and hydrocarbon potential of the Community. The Environmental Assessment Guidelines for Shared Ecosystems in East Africa³⁴¹ are intended to rationalize the management, exploitation and use of natural resources in shared ecosystems amongst the EAC Partner States. Other regional law standards include the IGAD Agreement with an ultimate goal to achieve economic integration and sustainable development and the EAC Climate Change Policy Framework that urges Partner States to develop consistent national policies to ensure harmonised action. In Uganda, the development of a National Climate Change Policy and its implementation strategy³⁴² enables the country to fulfil its obligations under the convention, and therefore, to contribute to addressing the global problem.

Application of International and Regional Environmental Laws in Uganda

Uganda recognizes the need to operationalise the International and Regional Environmental Laws. The Constitution provides that the president or any other person authorized by the president may make treaties, conventions, agreements or other arrangements between Uganda and any international organizations in respect of any matter, and that parliament shall make laws to govern ratification of any treaty, conventions, agreements or other arrangements.³⁴³ The National Environment Act operationalizes the above constitutional provisions where Uganda is a party to any convention or treaty concerning the environment, after the convention or treaty has been ratified under article 123 of the 1995 Constitution.

C. The shortfalls in Uganda’s policy, legal, regulatory and policy framework in comparison to regional and international framework on sustainable oil and gas exploration, development and production.

The Upstream Act³⁴⁴ charges the National Environment and Management Authority with the responsibility of making regulations for the management of the production, transportation, storage, treatment and disposal of waste arising out of petroleum activities. However, the prescribed fine in respect of the contravention of the environmental regulations of penalties not exceeding five thousand currency points³⁴⁵ or imprisonment not exceeding ten years or

³⁴¹The Environmental Assessment Guidelines for Shared Ecosystems in East Africa, 1994.

³⁴²Uganda National Climate Change Policy ‘Transformation through Climate Change Mitigation and Adaptation’ (April, 2015). Ministry of Water and Environment- Kampala.

³⁴³ Constitution of the Republic of Uganda, 1995 article 123.

³⁴⁴ Petroleum (Exploration, Development and Production) Act for the (Upstream), 2013.

³⁴⁵ One currency point is equal to twenty thousand shillings.

both in Section 3 (9) is not dissuasive enough. This should be harmonised with the fine for carrying out of petroleum activities without a licence or failing to comply with the terms and conditions prescribed in the licence of penalties not exceeding one hundred thousand currency points or imprisonment not exceeding ten years or both as prescribed in Section 3 (7) could guard against non-compliance by licensees.

Although an environmental assessment is required under Section 47 (3)³⁴⁶ for new licensing areas, there is no provision for similar environmental assessments provided for in the other stages of resource development for interested stakeholders to comment. Even though the affected communities are accorded an opportunity to express their views on new areas of exploration, their fate is left in the hands of the Minister who may disregard their interests (Section 47 (6)). The Upstream Act fails to make provisions for public disclosure of Environmental Impact Assessments (EIAs). This perpetuates lack of information and infringes on citizens' right of access to information regarding enjoyment of a clean and healthy environment (Article 39).³⁴⁷

Liability for damage due to pollution (upstream and midstream laws)

Principle 4 of the Rio Declaration³⁴⁸ and Article 39 of the 1995 Constitution of Uganda recognize the right of every person to a clean and healthy environment. To protect this right, the Petroleum Act sets in motion provisions against pollution in Part X thereof. However, Section 131 of the upstream law is ambiguous on liability for pollution damage caused without a license and both the upstream and midstream laws (Section 130 and Section 58 (1)) fail to provide for a compensation regime for victims of such pollution or any losses resulting from poor management of petroleum operations, in particular, the unforeseeable long-term damages such may have on the environment and human health.

Compensation and displacements

Article 26 of the 1995 Constitution provides for the right to protection from deprivation of property including land and guarantees the right to everyone to own property individually or in association with others. Article 26(2)(b) further provides that there must be prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of

³⁴⁶ Petroleum (Exploration, Development and Production) Act for the (Upstream), 2013

³⁴⁷ The Republic of Uganda Constitution, 1995.

³⁴⁸ Rio Declaration, 1992.

private property. But there are no specific provisions addressing surface access right disputes, which affects the environment, between international oil companies and local communities, nor are there provisions for compensation and resettlement of displaced communities. This has exacerbated conflicts between government, international oil companies, and local communities in the oil rich region culminating into court disputes among others.

Land conflicts and human displacements in the Albertine Graben

The government, international oil companies, and international service providers in the oil and gas industry have been faulted for the ever-increasing land conflicts in the oil rich region. The existing institutional and legal systems failed to recognize the legal interests and rights of communal land owners in the face of multinational business interests. This has led to an increase in land grabbing, violent evictions and displacement of communal land owners and consequently a spate of court cases against government.³⁴⁹ In operationalizing Article 244 (1) of the Constitution³⁵⁰ on minerals and petroleum resources, the Uganda National Land Policy lays down strategies to be implemented by government in ensuring appropriate management and governance of strategic natural resources and the environment. These strategies are set out clearly in Clause 30 of the policy. Government's reward of cultural institutions in the oil and gas areas with a relatively insignificant 1%, while it completely ignores communal land owners and victims of violent evictions and displacements³⁵¹ are sources of conflict that inevitably affects the environment.

Security and militarization of the Albertine Graben

Currently the upstream and midstream laws are silent on human rights and there are no set parameters or codes of practice guiding military, police or private security firms in the oil region with respect to human rights and environmental protection. Oil companies are however duty-bound to provide for their own security detail under sections 143 and 66 of the Upstream and Midstream laws respectively. Security and environmental protection for the oil and gas development projects in the Albertine Graben is provided by an elite special government military unit and private security firms³⁵² but there are reports of denial of

³⁴⁹ Ssekika E. –Oil: A year of court battles, slow progress|| Weekly Observer, [30th December, 2014]

<http://observer.ug/business/38-business/35701--oil-a-year-of-court-battles-slow-progress>. (Accessed on December 5th, 2021).

³⁵⁰ The Constitutional (Amendment) Act No.11 of 2005. Replacement of Article 244 (1).

³⁵¹ Ibid Section 35.

³⁵² Matsiko, H. –Guns in the oil region|| (2012), The Independent <http://www.independent.co.ug/coverstory/5968-guns-in-oil-region> (Accessed on December 5th, 2021).

district labour officers access to oil well pads for environmental assessment while civil society organisations and NGOs have complained of illegal detentions and harassment from the security and military while on duty in the region.³⁵³

³⁵³ Uganda Human Rights Commission –*A Special Report on Oil in Uganda: Emerging Human Rights Issues. Special focus on selected districts in the Albertine Graben* (2013).

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter gives the conclusion and recommendations from the study. It also provides areas for further reading.

5.2 Conclusion

According to the 1995 Constitution of Uganda, every Ugandan has a right to a clean and healthy environment. The National Environment Act further empowers and encourages Ugandans to participate in the development of policies, plans and processes for the management of the environment. The Ugandan Parliament also has a crucial role to play in this regard. Although the Ugandan Parliament has an influential position with respect to the development of environmental legislation, the execution of these laws is nonetheless dependent on the Executive, which controls a lot of resources and can greatly influence the performance of individual members. It is further a sobering observation that so far, from an environmental point of view, the Ugandan Parliament has not been effective in legislating and monitoring the oil and gas sector. Similarly, statutory environmental agencies are vulnerable to interference and eventual conflict, as in most cases the direction favoured by the Executive has differed from the one propagated by the environmental agency. Moreover, the Executive is known to make informal directives that restrain technical agency officials from enforcing regulations. Consequently, this erodes citizenry confidence in the agencies and further curtails the enforcement of regulations meant to ensure environmental sustainability.

5.3 Recommendations

1. To provide environmental sustainability Uganda Government should promote –smart growth through proper land use and alignment of the economy with nature’s regeneration capacity. Uganda should adopt appropriate production and consumption practices that fully align with the environmental ecological processes. In this respect, the government should, for example, regarding pollution, enforce the polluter-pays-principle whereby government require environment-polluting entities to bear the costs of their pollution rather than impose those costs on others or on the environment.

2. The government should prescribe fines in respect of contravention of the environmental regulations or carrying out of petroleum activities without a licence or failing to comply with the terms and conditions prescribed in the licence, penalties that are dissuasive enough by harmonizing Section 3 (9) and Section 3 (7) of Petroleum (Exploration, Development and Production) Act, 2013.

3. In order to implement the African Charter on Human and Peoples Rights (also known as the Banjul Charter) which is intended to promote and protect human rights and basic human freedoms in the African continent, population growth should be checked through population policies backed by legal frameworks because today, it is obvious that human rights and the environment are inherently interlinked where the life and the personal integrity of each human being depend on protecting the environment but environmental protection can often be implemented properly when human rights are respected. Uganda needs to have population policies that seek to check unbridled population growth and environmental sustainability.

4. In connection with recommendation three above, the UN should have a global policy on population growth and ensure that member countries comply with the charter. Special action needs to be taken because population growth coupled with increased resource consumption beyond what the environment can accommodate, will lead to the decline in or the collapse of the environment, economy and society.

5. Uganda should adhere to and strictly implement the National Environment Act (NEA) 2019. The National Environment Act (NEA) 2019 is Uganda's framework environmental law which ensures that environmental awareness is treated as an integral part of education at all levels and the true and total costs of environmental pollution are borne by the polluter. The law should provide for a compensation regime for victims of such pollution or any losses resulting from poor management of petroleum operations, in particular, the unforeseeable long-term damages such may have on the environment and human health. The law should also promote international cooperation between Uganda and her neighbors in the field of the environmental sustainability.

6. There should be constant education on sustainable development and environmental management by government as well as civil society organisations and NGOs to the entire population. The sensitisation programs should be directed at

ensuring that residents understand the concept and principles of sustainable development and engage in responsible environmental, economic and social behavior as well as accountable environmental stewardship.

7. Sustainable development requires the generation and application of creative ideas and innovative design and techniques. For this reason, the United Nations Environment Program should partner with governments, private sector, development agencies and civil society organisations and NGOs to provide strong institutional and financial support for universities and other research institutions for research into education, agriculture, physical development planning and land use, information and communication technology and health systems. All these should be backed by appropriate legal frameworks and strict enforcement of regulations to ensure that all the stakeholders comply with the SD agenda of environmental sustainability.

8. In pursuance of the SD agenda of environmental sustainability, United Nations Environment Program (UNEP) should acknowledge and consider Uganda's national capacity and level of development and respect national policies and priorities. The UNEP should also ensure that Uganda emphasizes universality with country-specific approach to the global goals, and encourage the developed countries to support the developing ones in the implementation of the global agenda.

9. Global and national complex dimensions of environmental sustainability and climate change require very robust institutional and legal frameworks for addressing the growing challenges of climate change. This study recommends enactment of an overarching standalone legal framework for climate change to facilitate direction, coordination, policy setting and high-level political prioritization in order to mainstream climate change across government functions. The overarching legislative framework will need to take account of all necessary institutional and financial considerations for effective climate change response.

10. Although environmental challenges are currently low in importance in Uganda in the oil and gas sector, they remain key determinants of sustainable development of the oil and gas sector. It is, therefore, recommended to explore ways through which these challenges can be addressed before oil exploitation and production will actually take-off. A crucial policy

recommendation is to ensure that environmental laws and regulations are effectively monitored and upheld in the establishment of a legal non-partisan body of stakeholders, who will ensure that the oil sector will develop in a transparent and environmentally responsible way. Such a body could be constituted by representatives of the academia, the religious sector, the traditional leaders, the elder's forum and NGOs.

11. In connection with recommendation ten above, the legal non-partisan body of stakeholders should promote the right to know and be informed of environmental sustainability to an extent where communities are empowered enough to challenge pollution originators in and outside courts. The independence and non-partisan nature of this body will also enable close monitoring of the effectiveness of multi-institutional management of oil resources. Furthermore, the body can promote the establishment of a statutory institution that certifies waste management plans, access waste production inventories and supervision of waste management. Such institutions, semi-voluntary or voluntary in nature must be able to solicit support from government or other key stakeholders, be specialized, focused and independent and can-do impact research and also verify records of 'source' facilities.

12. The oil and gas exploration stages have reduced the yield of crops through land surface reduction since most farmlands were abandoned, also the yield from the existing crops reduced gradually over years compared to comparison areas far away and not affected. It is therefore, recommended that future research should focus on the sustainability of the new livelihood strategies taken by the project affected persons (PAPs). A government legal framework is needed to develop a working and enabling policy that will look into the sustainable livelihood of these PAPs both technically and financially. This should supplement the restoration of environment in form of depleted soils, trees, water treatment and ecosystem conservation.

13. Environmental impact assessment should be required for new licensing areas, as provided for under Section 47 (3) of Petroleum (Exploration, Development and Production) Act (Upstream) 2013, in all other stages of the resource development for interested stakeholders to comment and the Minister should take interest therein -Section 47 (6). The Upstream Act should make provisions for public disclosure of Environmental Impact Assessments (EIAs).

14. The government should fully implement Article 26(2)(b) of the 1995 Constitution which provides that there must be prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of private property. There should be specific provisions addressing surface access right disputes, which affects the environment, between international oil companies and local communities and there should be provisions for compensation and resettlement of displaced communities which has exacerbated conflicts between government, international oil companies, and local communities in the oil rich region culminating into court disputes among others.

15. The government should reduce land conflicts and human displacements in the Albertine Graben by enforcing the institutional and legal systems to recognize the legal interests and rights of communal land owners in the face of multinational business interests which has led to an increase in land grabbing, violent evictions and displacement of communal land owners and consequently a spate of court cases against government. Government should also review its rewards of cultural institutions, communal land owners, victims of violent evictions and displacements in the oil and gas areas with a relatively significant percentage to reduce this source of conflict that inevitably affects the environment.

16. The government should amend the upstream and midstream laws which are currently silent on human rights and set parameters or codes of practice guiding military, police or private security firms in the oil region with respect to human rights and environmental protection. Government should ensure that district labour officers access oil well pads for environmental assessment while civil society organisations and NGOs are not illegally detained or harassed by the security and military while on duty in the region.

17. Uganda should not over-rely on the oil reserves because it results in unsustainable economic growth. Oil prices fluctuate mostly a steady decline, leading to a corresponding fall of the country's economic growth.

5.4 Areas for further Research

Future research on the subject should be done in the following areas: -

1. The sustainability of the new livelihood strategies taken by the project affected persons (PAPs) and their effects on the environment.

2. Environmental Compliance in Uganda's oil and gas sector: A Regulatory Environmental Impact Assessment (EIA) Perspective in Uganda's oil and gas sector.

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