THE WINDFALL TAX: BOON OR A BANE FOR UGANDA'S OIL AND GAS SECTOR?

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Declaration

I, Aketch Robina**,** hereby declare that this Dissertation entitled, **The Windfall Tax: Boon or a Bane for Uganda's Oil and Gas Sector?** is my work, and it has not been submitted before to any other institution of higher learning for fulfilment of any academic award.

Signature: .....……

Date: ……

Approval

This is to certify that this Dissertation entitled, **The Windfall Tax: Boon or a Bane for Uganda's Oil and Gas Sector?** has been done under my supervision and now it's ready for submission.

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Acronyms and Abbreviations

%	Percent
DRC	Democratic Republic of Congo
EAC	East African Community
EIs	Extractive Industries
EITI	Extractive Industries Transparency Initiative
EU	European Union
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
HG	Host Government
IMF	International Monetary Fund
IOCs	International Oil Companies
Km	Kilometer
MTEF	Medium-term Expenditure Framework
NDP	National Development Plan
OPEC	Organization of Petroleum Exporting Countries
PAU	Petroleum Authority of Uganda
PFM	Public Financial Management
PIMA	Public Investment Management Assessment
PIP	Public Investment Plan
PRIR	Petroleum Revenue Investment Reserve
PSAs	Production Sharing Agreements
RHS	Right Hand Side

SUV	Sport Utility Vehicle
UN	United Nations
UNOC	Uganda National Oil Company
US	United States
USA	United States of America
VAT	Value Added Tax

Abstract

The debate as to whether the windfall tax regime in Uganda's Oil and Gas Sector is boon or a bane has been on since its introduction in The Income Tax (Amendment) (No. 2) Act, 2021. The problem is that, levied at a flat rate of 15% per annum when the international oil price hits or exceeds US$ 75 per barrel on any day of the year of income, the windfall tax is actually a proportional tax contrary to expectation of a progressive tax type. This discrepancy in the tax design has generated fear of loss of revenue which would otherwise be used to finance delivery of public goods and services to the citizens of Uganda. The study assesses the windfall tax regime in Uganda's Oil and Gas Sector and analyzes the anticipated windfall tax revenue that would accrue to Government over the long-term. The study relied on the available secondary data that was obtained from official publications. The analysis generated results that included evidence of: a) weak institutional framework; b) inadequate policy analysis; and c) weak legislation process. The study concluded that the windfall tax regime was bane and recommended, inter alia, strengthening of institutions mandated to spearhead windfall tax policy formulation and revenue mobilization and amendment of relevant tax laws.

Chapter One

General Introduction

1.1 Introduction

Uganda is a resource-rich but income-poor land-locked independent State located in Sub-Saharan Africa. The discovery of oil and gas has presented the country an opportunity to transform the society from peasantry to middle income status.

In preparation for production of oil and gas, therefore, Government of Uganda has developed institutional frameworks, inclusive of a legal framework. In particular, The Income Tax (Amendment) (No. 2) Act, 2021 introduced windfall tax. The amendment, however, provided for a flat tax rate as opposed to a series of tax rates since windfall tax is a progressive type of tax. The problem, therefore, is the discrepancy in the type of windfall tax regime in Uganda's oil and gas sector that is actually proportional as opposed to being progressive in design.

1.2 Background to the Study

A century ago, the first ever recorded assessment of Uganda's oil and gas potential identified numerous hydrocarbon occurrences as oil seepage in the Albertine Graben. In 1938, the first exploration well was drilled in Butiaba, Bulisa District. And in 2002, the first discovery of natural gas resources took place in Turaco in Western Uganda. In 2006, the existence of commercial quantities of oil and gas was confirmed in the

Lake Albert Basin and to-date the country has so far made 21 discoveries as shown in Table 1.1 below.

Table 1.1: Oil and Gas Discoveries in Uganda

S/N	Discovery Location	District	Hydrocarbon Type	Date of Discovery
1	Turaco	Ntoroko	Gas (80% CO2)	Sep-2002
2	Mputa	Hoima	Oil	Jan-2006
3	Waraga	Hoima	Oil	Feb-2006
4	Kingfisher	Kikuube	Oil	Aug-2006
5	Nzizi	Hoima	Oil and Gas	Nov-2006
6	Ngassa	Hoima	Oil and Gas	Nov-2007
7	Taitai	Bulisa	Oil and Gas	May-2008
8	Ngege	Bulisa	Oil and Gas	Jun-2008
9	Karuka	Buliisa	Oil	Jul-2008
10	Kasamene	Buliisa	Oil and Gas	Jul-2008
11	Kigogole	Buliisa	Oil and Gas	Aug-2008
12	Ngiri	Buliisa	Oil and Gas	Sep-2008
13	Jobi	Nwoya	Oil and Gas	Nov-2008
14	Rii	Nwoya	Oil	Jan-2009
15	Nsoga	Buliisa	Oil and Gas	Apr-2009
16	Wahrindi	Buliisa	Oil	Jun-2009
17	Ngara	Buliisa	Oil	Jul-2009
18	Mpyo	Nwoya	Oil	May-2010
19	Jobi-East	Nwoya	Oil	Apr-2011
20	Gunya	Buliisa	Oil and Gas	Jun-2011
21	Lyec	Nwoya	Oil	Jan-2013

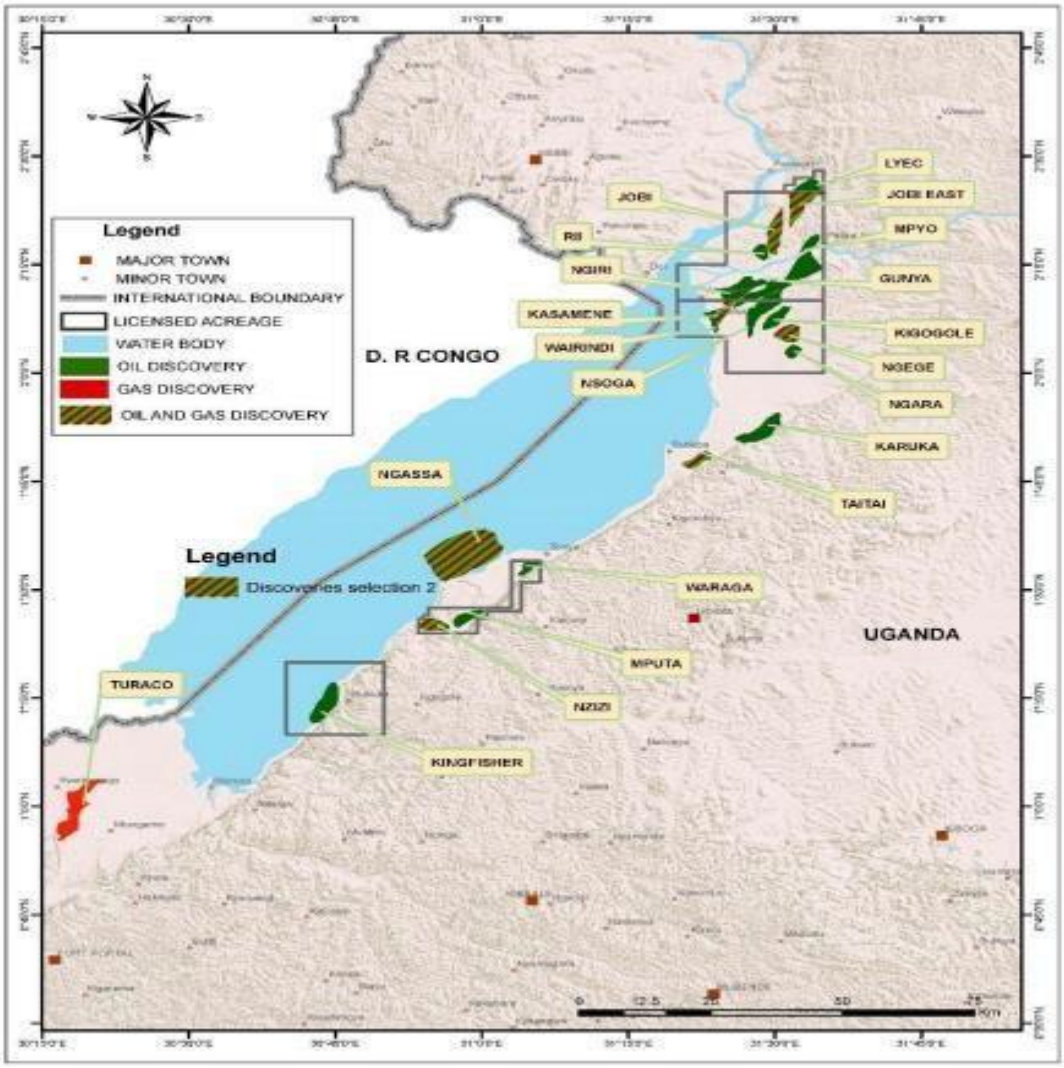
Source: Petroleum Authority of Uganda

Table 1.1 above shows that the main prospective area for petroleum in Uganda is the Albertine Graben. It forms the Northern most part of the Western arm of the Great East African Rift Valley, stretching from the border with South Sudan in the North to Lake Edward in the South, a distance of approximately 500 Km.

Uganda shares the Graben with the Democratic Republic of Congo (DRC). The part of the Graben that lies in Uganda covers an area of approximately 23,918 Km^2. Map

1.1 below shows geographical location of the 21 oil and gas discoveries in the Albertine Graben in Western Uganda.

Map 1.1: Map Showing the Oil and Gas Discoveries in Albertine Graben



Source: Petroleum Authority of Uganda

It is currently estimated that the oil deposit amounts to 6.5 billion barrels, of this, 1.4 billion barrels are said to be recoverable. Accordingly, the country estimates that the

recoverable oil will generate oil revenue that will amount to US$50.0 billion. On the other hand, the volume of gas is estimated at 500 billion standard cubic feet.

Since the time the oil and gas resources were confirmed to be commercially viable, Government of Uganda has been implementing a series of upstream and midstream prerequisite activities while getting set for production.

Thus, the necessary policy, legal and institutional frameworks as well as infrastructure have been put in place to support the sectoral activities. For instance, Government approved the National Content Policy for the sector in 2018. The policy aims at, *inter alia*, increasing participation of Ugandans in the oil and gas activities, provides principles for capacity building for national enterprises and skills development. In addition, the Petroleum Authority of Uganda (PAU) and the Uganda National Oil Company (UNOC) were operationalized to regulate the sector and manage the business and commercial interests, respectively.

Upon discovery of commercially viable petroleum deposits in Uganda, Government also envisaged windfall tax in the gas and oil sector. The tax was, however, not buttressed in the law.

In 2020, Uganda ratified the Extractive Industries Transparency Initiative to ensure that benefits from the sector are managed in the most transparent and accountable

manner. This will require the country to publicly disclose information on aspects such as Production Sharing Agreements (PSAs), beneficial owners, revenue and payments.

In 2021, Government observed that the existing laws did not cater for volatility in oil prices. There was, therefore, need to legalize the windfall tax in the sector; hence, The Income Tax (Amendment) (No. 2) Bill, 2021. The intention of the amendment was to, *inter alia*, introduce windfall tax to capture the additional revenues arising in the event that the international oil price equals US$ 75 per barrel or more on any day of the year of income.

Subsequently, Parliament considered and unanimously passed The Income Tax (Amendment) (No. 2) Bill, 2021, which provided for introduction of a windfall tax in the oil and gas sector. The Bill, which the President of the Republic of Uganda assented to in December 2021, is now law.

1.3 Statement of the Problem

Windfall tax is a progressive tax that is imposed on taxpayers not only to generate Government revenue but also redistribute excess profits earned in one sector for the greater social good (Okuja, 2020). In Uganda, however, windfall tax in the oil and gas sector is a proportional tax applicable on oil companies at a rate of 15% if international oil price reaches, or exceeds, US$ 75 *per* barrel (Government of Uganda, 2021). In light of this discrepancy in the type of tax, it is not clear whether the

Ugandan society will, or will not, benefit from this windfall tax regime in the long-run.

The policy and legal frameworks ought to have introduced windfall tax that is progressive. This would ensure distribution of excess profits away from the oil companies to the citizens of Uganda.

1.4 Purpose and Objectives

1.4.1 Purpose

The purpose of this study is to ascertain whether the Ugandan citizens will, or will not, benefit from the windfall tax regime in the oil and gas sector through the utilization of the proportion of the petroleum revenue that will accrue to Government of Uganda for provision of public goods and services over the long-term period. This will, in effect, suggest whether the tax regime is boon or a bane for improvement of welfare of the Ugandan citizens.

1.4.2 Objectives

In fulfillment of the purpose stated in Section 1.4, Sub-section 1.4.1 above, the study pursued the following research objectives:

i) To assess the main factors which explain the adoption of windfall tax regime in Uganda's oil and gas sector.
ii) To analyze the anticipated windfall tax revenue over the long-term.

iii) To suggest policy recommendations to enhance windfall tax revenue in Uganda's oil and gas sector over the long-term.

1.5 Research Questions

Consistent with the objectives of the study stated in Section 1.4, Sub-section 1.4.2 above, the researcher answered the following research questions:

i) What are the main factors that explain the windfall tax regime in Uganda's oil and gas sector?
ii) What is the anticipated windfall tax revenue over the long-term?
iii) What policy measures can be recommended to enhance windfall tax revenue in Uganda's oil and gas sector over the short- to long-term?

1.6 Rationale of the Study

The study has been conducted at a time when Government has just developed a taxation instrument that legalizes levying of windfall tax. It is, therefore, a timely appraisal of the law to ensure that the oil and gas resources are exploited to the benefit of Ugandans today and the posterity.

1.7 Significance of the Study

To the extent the study finds internal weaknesses in the policy, legal and institutional frameworks and proposes appropriate measures to enhance Government revenue from the windfall tax in the oil and gas sector, the study is significant.

1.8 Scope of the Study

The study is limited to the windfall tax that will be imposed on corporations that are operating in Uganda's Oil and Gas Sector now and in the future *vis-à-vis* revenues projected to be remitted to the Government of Uganda accounts at Bank of Uganda.

1.9 Conceptual Framework

When international oil price is equal to or rises over and above the set threshold, the oil companies realize a windfall gain, *ceteris paribus*, which may attract a windfall tax that Government imposes not only to generate revenue but also smoothen income distribution. Otherwise, when the price fluctuates within the threshold, Government imposes corporate income tax, value added tax, amongst other taxes. Thus, Government oil revenue is enhanced by the windfall tax whenever international oil price hits, or bursts, the price ceiling. It is the collected revenue that Government uses to finance its expenditures.

Pictorially, Flow Chart 1.1 below illustrates the interrelationships and interdependence amongst variables of interest in Uganda's oil and gas sector, namely: international oil price, profits and tax revenue.

Flow Chart 1.1: Linkage between International Oil Price and Windfall Tax

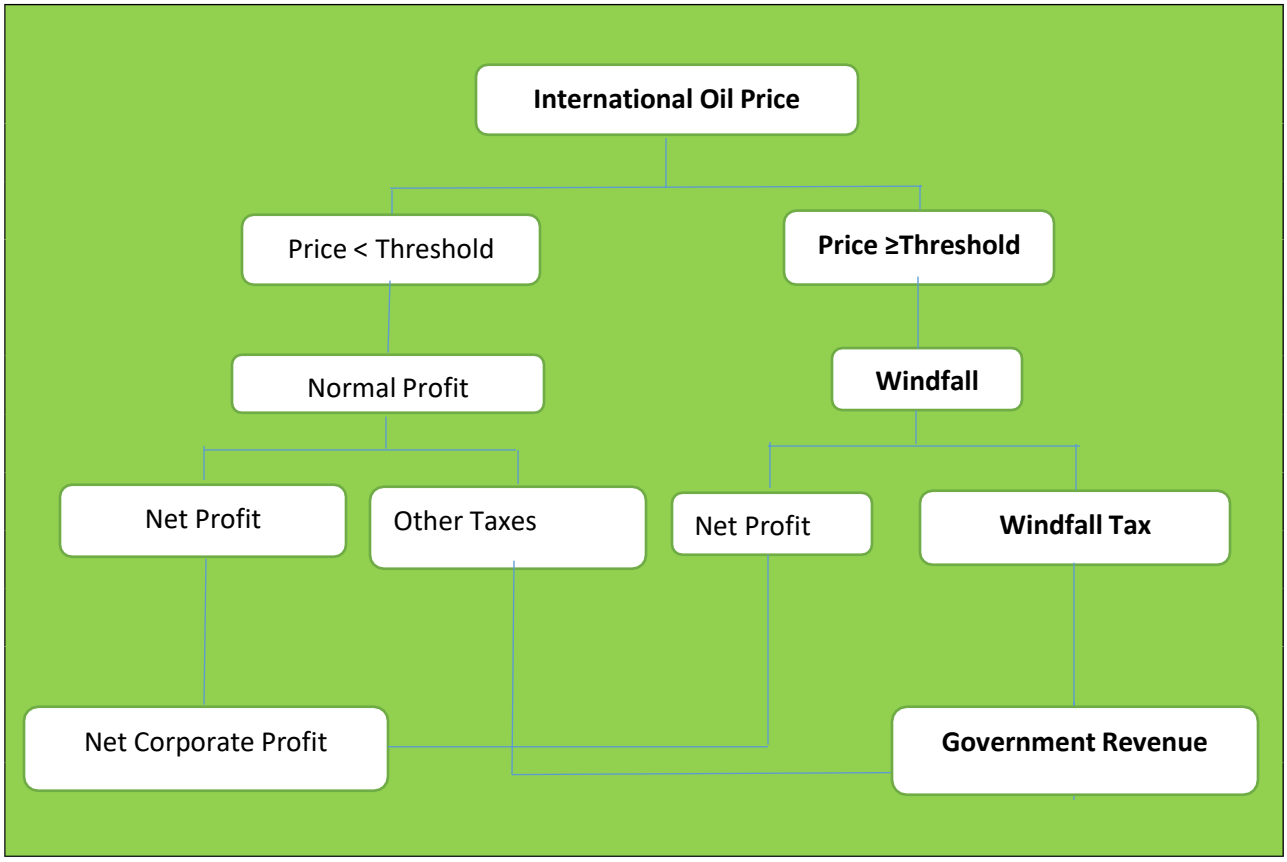


Chart 1.1 above shows that windfall tax is a share of the total Government resource envelop which, through the budgeting process, can be allocated to finance strategic priority activities in a given fiscal year. It is, therefore, of particular interest to the citizens in the delivery of public goods and services through the National Budget.

1.10 Structure of the Research Report

The rest of this Dissertation is organized as follows: Chapter Two presents a discussion of the relevant literature that guided the study, highlighting theoretical and empirical literature as well as the gap in the existing body of knowledge which the study set out to address. In Chapter Three, the methods, tools, techniques and procedures

adopted in the study are discussed and the limitations envisaged. Chapter Four and Five is concerned with the analysis of data and presentation and interpretation and discussion of results. The conclusions and recommendations of the study are drawn in Chapter Six. The Dissertation ends with documentation of references.

1.11 Conclusion

This Chapter identified discrepancy in levying windfall tax in Uganda's oil and gas sector. Whereas windfall tax is a progressive tax, The Income Tax (Amendment) (No. 2) Act, 2021, has categorized it as proportional tax; hence, the risk of petroleum revenue loss and, ultimately, fear of minimal benefit to the Ugandan society from the oil and gas sector.

Chapter Two
Literature Review

2.1 Introduction

The introductory Chapter put into context the discrepancy in levying windfall tax in Uganda's oil and gas sector as the problem under investigation. It observed that, whereas windfall tax is a progressive tax, The Income Tax (Amendment) (No. 2) Act, 2021, has categorized it as a proportional tax. Thus, the study sought to clarify whether the citizens of Uganda will, or will not, benefit from the windfall tax regime in the oil and gas sector.

Thus, this Chapter concerns itself with evaluative assessment of the existing body of relevant literature on taxation, in general, and windfall tax, in particular. The literature guided the study, highlighting theoretical and empirical literature as well as the knowledge gap of the Ugandan case that existed in the literature.

2.2 The Literature

In public finance, tax is understood as a *non quid pro quo* compulsory payment made by individuals, or legal entities, to the State to enable it finance the delivery of public goods and services to its citizens over a given period of time, usually one fiscal year. It may be direct or indirect tax.

An indirect tax is imposed upon goods and services and collected by manufacturers or retailers from consumers. These include: sales tax, value added tax and excise tax. A

direct tax, on the other hand, is imposed by Government directly on a taxpayer, and is applicable on income or wealth. It includes: property tax, pay as you earn, capital gains tax, corporate tax, surtax and windfall tax. Any failure to pay tax in a timely manner, or evasion of tax, is punishable by law.

Windfall tax is a surtax which Government imposes on businesses, or economic sectors, that have benefited from economic expansion such as: unexpected financial gain arising from inheritance, lawsuit settlement, property sale, salary bonus, winning a lottery and price surge. The objective of the tax is to redistribute the excess gains in one area for the greater social good. Thus, it is classified as a progressive tax, with multiple tax rates each of which is assigned to a corresponding income band in an ascending order (Obone, 1987).

According to Yale (1999), a windfall is economic gain independent of work, planning or other productive activities that society wishes to reward.

The term windfall is used to describe extra ordinary and unexpected profits or the fruits of chance and luck.

So, in a world with stable economic environment and normal or flat prices, windfall tax cannot be obtained. Windfall tax therefore operates like a safety valve within a tax system to cater for situations when prices significantly increase.

It should be clear from the outset that windfall tax is not intended to increase taxation when prices are normal. So, it must be designed in such a way that it does not cause higher taxation when prices are normal, only when prices rise very high should the windfall tax apply. Windfall tax acts to supplement other regular taxes to provide additional income.

There are divided opinions on the merits and demerits of windfall taxes on oil and gas and mining companies across the globe.

Tax authorities of host governments (HG) and some commentators stress that windfall taxes are necessary as an important source of revenue for resource-rich countries by ensuring that governments and indeed citizens benefit from exploitation of their finite resources. Using such resources, governments can invest in health, education and other sectors for the benefit of their citizens.

Just like state participation, imposition of windfall tax is viewed as a form of resource nationalism in oil and gas-rich countries. Those in favor of imposition of windfall taxes argue that it is fair to impose the tax as a means of clawing back some of the excess profits IOCs get when prices rise too high.

They also stress the fact that since windfall is imposed on unanticipated revenue, it does not hurt an investor in any way.

Furthermore, that taxing unearned income does not in any way discourage investments or distort economic planning.

It is also argued that commodity price surge that brings about excessive profits is always not allocated to the HG at the time international oil companies (IOCs) are executing the investment contract or production sharing agreement. This is why windfall tax becomes a necessary tool to enable the HG to benefit as well.

Similarly, multinational companies are known for transferring profits to their home countries, rather than reinvesting within the host country. This leads to a permanent loss to HGs and yet if such profits were deployed in other projects, forward and backward linkages would be realized. It is conduct like this that render the argument that tax such as windfall ought to be progressive valid, such that the higher the profits, the more government earns through taxation

Investors also facilitate capital flight through tax evasion and corruption. IOCs take advantage of weak or poorly designed tax systems to remove from the host country all untaxed revenue which is stashed away in tax havens. Termed free riders, these IOCs

simply seek profits from resource rich countries but are unwilling to pay a fair share of taxes to host countries.

Asia, Africa and South America are the countries with the highest tax loss related to evasion of resource taxes.

The counter argument is that although windfall tax may lead to short term gains, in the long run, the tax income of a HG will decline as a consequence of windfall tax being a disincentive for investors to deploy resources in high risk projects. Therefore, to tax a substantial amount of windfall profits of an investor is to frustrate its legitimate expectation of benefiting from such profits, which may be the reason they undertake the investment in the first place.

Those who oppose windfall tax on oil and gas or mining companies argue that the excess profits obtained by those companies as a result of price increase cannot and should not be regarded “fruits of chance or luck,” nor as unexpected but rather have to be treated as earned rents or rewards for the risks they have undertaken by investing capital and other factors of production.

That such profit should not conceptually be categorized as windfall for taxation purpose, for to do so, would result in a very broad definition of windfalls leading to

taxation of income arising from efforts and enterprise and not just surprise income alone. The ultimate consequence would be that investors with the capacity to create wealth would be dissuaded.

The opponents of windfall tax further argue that such taxes were more relevant during the oil price shocks of the 1960's -1970's because the world was experiencing it for the first time. With time, the dramatic price increases and falls in international oil and gas prices have become a common or even inevitable occurrence, factored in the investment decision making process by investors and HGs. So, the surprise element originally quoted to justify windfall taxes in the 1960's and 70's is no longer valid.

It is, therefore, not expected that in the modern day, one should continue to advance the argument regarding unforeseen price increases as justification for imposing windfall taxes on private investors, because, as already stated, price increases are a matter of common knowledge in the oil and gas industry and ought to be taken into account during the negotiations stage of production sharing agreements or other form of agreement executed between an investor and a host government.

Furthermore, the argument that it is society, and not private investors, that own the oil and gas resources and must, as of right benefit from any price increase is blind to the fact that it is the private investor, and not the state, that bears the risk of

exploration and development of the resource and without them, the likelihood that the resource would remain underground without benefitting the resource rich but poor country, is high.

It is reported that when the Mongolian government enacted the windfall profits tax law on gold mining in the year 2006, 93 gold mining companies, representing about 50% in the industry, closed shop. Similarly, in Venezuela, major foreign investors in the oil industry exited the country between 2005 and 2008 as a result of an increase in taxes thereby affecting the country's production output.

It is also believed that windfall taxes can encourage wasteful spending (gold-plating) by oil companies with the aim of reducing their profit margins subject to tax.

In summary, opponents of windfall tax argue that although windfall taxes appear very attractive to politicians, they pose the risk of undermining a country's attractiveness to foreign and local investors. No risk averse investor is willing to invest his time, energy and capital into any commercial venture if all that they make will be taken away in proportions that make investment not worthwhile.

From the investment promotion policy perspective, protecting private investors' rights and industry investment is a good economic tool for attracting investment.

What is key is that the tax regime must counterbalance the need to protect the property rights of the private investor, which includes the right to enjoy profits earned and or legitimate expectation of enjoying the same against deprivation by the state.

The design of a windfall tax regime is key in determining its success as well as the volume of revenue that a HG will obtain from that tax head. Experience from the countries below show that if the windfall tax is not properly designed, it fails;

The USA

In the period between 1980 and 1988, the United States managed a windfall tax system which was designed to allow a loss carry forward. Companies took advantage of this and when prices were below the base price, they built up a loss carry forward, which was then used when prices shot up above the base price. As time went by, the loss carry forward grew so big that the government began to view windfall tax as an insignificant revenue source and the law was repealed.

Mongolia

In 2006, Mongolia introduced windfall tax intended to tax copper concentrate and gold profits when their prices reached or surpassed $ 2600 per ton and $ 500 per troy ounce respectively. It was hoped that in doing so, companies would be encouraged to establish smelters in Mongolia instead of exporting unprocessed copper and gold. The tax failed, forcing the Mongolian government to repeal it three years later. Clearly,

this tax was introduced in bad faith because the price base was not windfall prices but rather normal profits.

Zambia

In 2008, Zambia introduced windfall tax but repealed the same one year later. By its design, it seemed as though windfall tax would be deducted although it never really was. The marginal rate rose up to 100% which was unsustainable and the same had to be repealed immediately.

Frian Aarsnes and Olav Lundstol(2013) state that almost all countries have introduced windfall taxes with design flaws and because of this, this kind of tax has lost its place in most jurisdictions to the disadvantage of HGs and to the benefit of multinationals.

For a successful execution of windfall tax, Frian et al propose the following guiding principles:

a) Windfall taxes are gross taxes and should not leave room for loss carry forward.

b) Windfall tax acts as safety valve. The threshold must be set high enough so that even the highest cost extraction company within the country should be able to first secure normal profits before the windfall tax kicks in. It is only when this happens that the ability-to-pay principle will be achieved.

c) For introduction of this tax not to be in vain, it should only be introduced in a sector that experiences either volatile prices or consistently high prices, otherwise the tax will be rendered nugatory.

d) Furthermore, the targeted industry should have capacity to contribute significant amounts of revenue through windfall taxes otherwise it will not make economic sense

e) Windfall taxes should not at all target by-products but rather the main products

Frian et al observe that tax regulation abuse is a result of poor tax regulation processes which is often times determined by among others the absence of a neutral framework for analyzing tax mechanisms; the lack of a comprehensive catalogue of tax systems that work; failure in understanding how inequalities between the private and the public sector leads to suboptimal tax systems; and the lack of understanding that major loopholes are created through lobbying by multinational companies.

Every country must therefore ensure optimum taxation which shields businesses when income and profits are low but at the same time gives room for the state to generate sufficient revenue to fund public goods when profits and income are high

It is, therefore, clear that Introducing new windfall taxes in a country is not enough. The overall tax level in a country has to be well calibrated if the desired effects are to be achieved. Windfall taxes should not and cannot be viewed as a sustainable revenue source but rather as a tool for collecting substantial amount of revenue for a HG during periods of price surges.

A good tax system is one that safeguards businesses and individuals from paying excessive taxes in seasons when income and profits are low due to changing economic tide but at the same time, gives room to collect high revenues when profits and income are high. To create balance, a tax need not be too high or too low, but rather optimal.

Frian et al argue that windfall tax, just like royalties, are premised on the ability to pay principle, which requires that taxes levied upon an entity should increase when its ability to pay increases, that is to say, when prices or profits rise way above expectations; at the same time, the tax should decrease when ability to pay decreases, that is to say, when prices or profits decease. It is no wonder therefore that windfall tax should be progressive, so that the higher the international price of crude per barrel, the higher the tax rate.

Lundstøl and Isaksen (2018) trace adjustments in Zambia's mining tax regimes since 1964 when she gained independence from the British colonial rule and calculate effective tax rates and the revenue sharing between Government and copper

companies. The evidence shows the 2008 mining windfall tax regime was fair from an economic point of view, considering the nature of the State and the copper companies.

Adam and Simpasa (2010) estimate that the windfall in the mining sector from 2002 to 2008 was equivalent to 66% of Zambia's 2002 Gross Domestic Product (GDP) and conclude that:

> The income from the windfall accrued overwhelmingly in the form of rents to the mine owners which, net of investment, has in turn been almost entirely remitted offshore in the form of profits[1].

According to Robert (2012), these developments justify imposition of windfall tax on the mining companies on a variable rate system based on a measure of one type of average margin as a way of redistributing excess profits away from the mining companies to the State for the general public good.

2.3 Existing Knowledge Gap

It was evident from the evaluative assessment of the literature on tax and oil and gas in Section 2.2 above that there were case studies of windfall tax regimes but no clear case study report on the windfall tax regime in Uganda's oil and gas sector. Since Ugandans expect to derive enormous benefits from exploitation of the petroleum

deposits in the country, it is important that a forward-looking study of the potential oil revenue implications is conducted at this material time; hence this study.

2.4 Conclusion

This Chapter found a knowledge gap in the public finance literature and, in particular, lack of literature on windfall tax regime in Uganda's oil and gas sector. This revelation set the launch pad for the study to address the *lacuna*.

Chapter Three

Methodology

3.1 Introduction

The previous Chapter carried out an evaluative assessment of the existing literature on taxation, in general, and windfall tax, in particular. It subsequently identified lack of case studies on windfall tax in Uganda's oil and gas sector as the existing gap in the body of literature on windfall gains and taxation, which the study addressed.

This Chapter, in particular, discusses and describes the research methodology that involves a multi-step approach employed in execution of the study.

This research has been done using a qualitative approach by way of library and desk research methods. A review of government published data such as laws and policies was done. Textbooks and articles were reviewed to obtain and contextualize scholarly opinions which guided this paper. The research also relied on some internet sources for secondary data to support the study especially in ascertaining current global trends in taxation of windfall revenue.

Doctrinal legal research method

The study was conducted through mainly doctrinal legal research method by conducting a systematic exposition of the law governing imposition of windfall tax in Uganda's oil and gas sector

Doctrinal legal research was a suitable research design for this study because this study was concerned with analyzing the Income Tax Act as amended to provide for

windfall tax in the oil and gas industry in Uganda as this allowed the researcher to adequately address the question whether the tax is boon or bane for Uganda's oil and gas sector.

Furthermore, the qualitative doctrinal legal research methodology enabled the researcher to analyse the literature reviewed. Articulating the legal aspects of this research such as laws, policies and other secondary data from publications and articles in the literature review did not require undertaking data collection as this knowledge could be acquired satisfactorily through desk and library research. Hence, being of legal nature, the researcher chose this as the best method to analyse the literature involved.

3.2 Approach

The researcher dealt with the research questions in a systematic manner. First, to assess the factors that explain the windfall tax regime in Uganda's oil and gas sector, the researcher analysed the Income Tax Act as amended and related legal documents which are deemed relevant to the study. Thus, the assessment has helped in the identification of key factors that were responsible for the adoption of the proportional tax regime as opposed to the desired progressive tax regime.

Second, to analyze the anticipated windfall tax revenue over the long-term, the researcher used the technique of ratio analysis to ascertain whether, or not, the windfall tax regime fulfills certain characteristics of a good tax system. In other words, the ratio analysis technique was used to analyze the tax regime against the conditions of fairness, adequacy, simplicity, transparency and administrative ease. Thus, the results reveal whether the windfall tax regime will, or will not, lead to

equitable distribution of petroleum income in Uganda's oil and gas sector for improvement of the citizen's welfare as desired.

Finally, to strengthen the windfall tax system in Uganda, the researcher recommended appropriate policy measures over the short-, medium- and long-term horizons. Thus, the recommendations will ensure that the citizens' welfare is improved, over the long-term, through provision of public goods and services to the public financed, in part, using proceeds from the windfall tax in the oil and gas sector.

3.3 Data Sources

The researcher used primary data comprised in Income Tax (Amendment) (No. 2) Act, 2021 in addition to secondary data and information recorded in official publications of Government of Uganda, and other institutions, as well as internet sources.

The key variables of research interest included: daily international oil price, daily quantum of oil supplied in the international market, annual net income earned by oil companies from the international oil market and annual windfall tax revenue from the oil and gas sector.

3.4 Methodological Constraints

This study has been constrained by the confidentiality clause in the signed Production Sharing Agreements which limited access to petroleum and petroleum-related data and information to authorization by the parties.

3.5 Conclusion

In this Chapter, the methodology adopted was discussed and described as doctrinal research methodology.

Chapter Four
Factors which Explain the Adoption of the Windfall Tax Regime

4.1 Introduction
The previous Chapter discussed and described the research methodology that was adopted in this study. The methodology entailed a multi-step approach in execution of the analysis.

Using the adopted research methodology, this Chapter assessed the windfall tax regime in Uganda's oil and gas sector in the context of the global experience.

4.2 Windfall Tax Regime and Revenue
The windfall tax in Uganda's oil and gas sector is proportional and not progressive as expected in theory. This undermines the effort of Uganda's migration from the category of least developed countries to that of middle income countries. This development necessitates the conduct of legal and financial analyses of the windfall tax regime in the country.

4.2.1 Legal Analysis
In Uganda, Section 89GDA (1) of The Income Tax (Amendment) (No. 2) Act, 2021 provides for levying of windfall tax in the oil and gas sector. The tax is imposed at a flat rate of 15% on licensees whenever the international oil price equals US$75 per barrel or more on a day of a financial year. It is based on net income generated from

petroleum operations in Contract Areas 1 and 3A and License Area 2, calculated using the formula that is presented in Box 4.1 below.

Box 4.1: Formula for Calculation of Windfall Tax

WT = 15% * (A/B) * (C-D), where:

WT is windfall tax;
A is the number of calendar days in the year of income `in which the international oil price equals US$75 per barrel or more;
B is the total number of calendar days in the year of income;
C is the net income generated from petroleum operations by the licensee in the year of income; and
D is the corporate income tax payable by the licensee for the year of income.

Source: *The Income Tax (Amendment) (No.2) Act, 2021*

In a hypothetic case, if the international oil price exceeds the threshold for a cumulative 30 days in a financial year and, as a result, the licensees earn a net profit amounting to US$100,000 in that particular year of income, Government of Uganda will collect US$ 1,232.88 as windfall tax, calculated as follows:

US$ 1,232.88 = 0.15 * (30 days/365 days) * US$100,000

Thus, this tax is not only proportional, levied at a flat rate of 15%, but also regressive. It is regressive in that it takes a larger proportion of net income when the international oil price is slightly above US$ 75 than when it tends to infinity.

From the analysis of the law conducted above, the following diagnostics have been generated for interpretation:

a) Tax Policy Formulation

Ministry of Finance, Planning and Economic Development is the tax authority in Uganda. It is the Ministry responsible for formulation of tax policies in the country. It is expected that it is endowed with officials with technical expertise in tax policy formulation.

It is, however, regrettable that rather than enact a progressive tax, the government proceeded to pass a proportional tax, a type of tax system that is regressive in nature. In so doing, the Ministry erred in practice either by design or by omission.

The policy decision of levying 15% windfall tax rate has negative implication on domestic revenue mobilization effort. This development may not be adequately explained by technical incompetence in the Ministry concerned. The fear of rent-seeking behavior cannot be ruled out in a country that is inhabited by corrupt members of the society. It is highly likely that the technocrats could have negotiated the applicable tax rate with the licensees and agreed on a sharing-deal at the expense of the citizens of Uganda.

b) Contract Negotiations

Unlike pre-2008 contracts, the 2012 contracts empower Government to impose additional taxes on revenues that are more than predicted, such as if international oil

prices are high. This is unique because, as with the pre-2008 contracts, ‘stabilisation provisions' generally prevent Governments from imposing more taxes on the licensee, preventing them from fully benefiting from higher-than-expected revenues as business profits rise. The two PSAs from 2012 clearly exempt a windfall tax from the stability provision and simply guarantee that changes in the law would not ‘substantially and adversely' damage the project's value.

By imposing additional taxes on the excess profits created, Government is able to take a larger portion of higher-than-expected revenues, which are most likely related to high worldwide oil prices.

Overall, the 2012 contracts offer a very high Government take, especially when a new windfall tax is implemented. The imposition of a windfall tax, as permitted by the 2012 contracts, would assure that the government's revenue would climb in tandem with rising oil prices.

Whereas Government is driven by social well-being of the citizens, the oil companies are driven by profit motive. In that context, as Government negotiated for a share of the windfall gain, the companies, on the other hand, wondered why Government wanted a stake in the windfall gain. Since neither of the two worked for the windfall gain, an agreeable position had to be reached and that was a flat tax rate of 15% whenever international oil price hit or exceeded the US$ 75 mark in a year of income.

The negotiation was obviously tilted in favor of the oil companies. Could it, again, be an outcome of weak negotiation skills in Government or evidence of corruption? The latter is more likely than the former given that Uganda is home to competent Public Servants, demoralized by low remuneration, a recipe for corruption.

c) Legislation

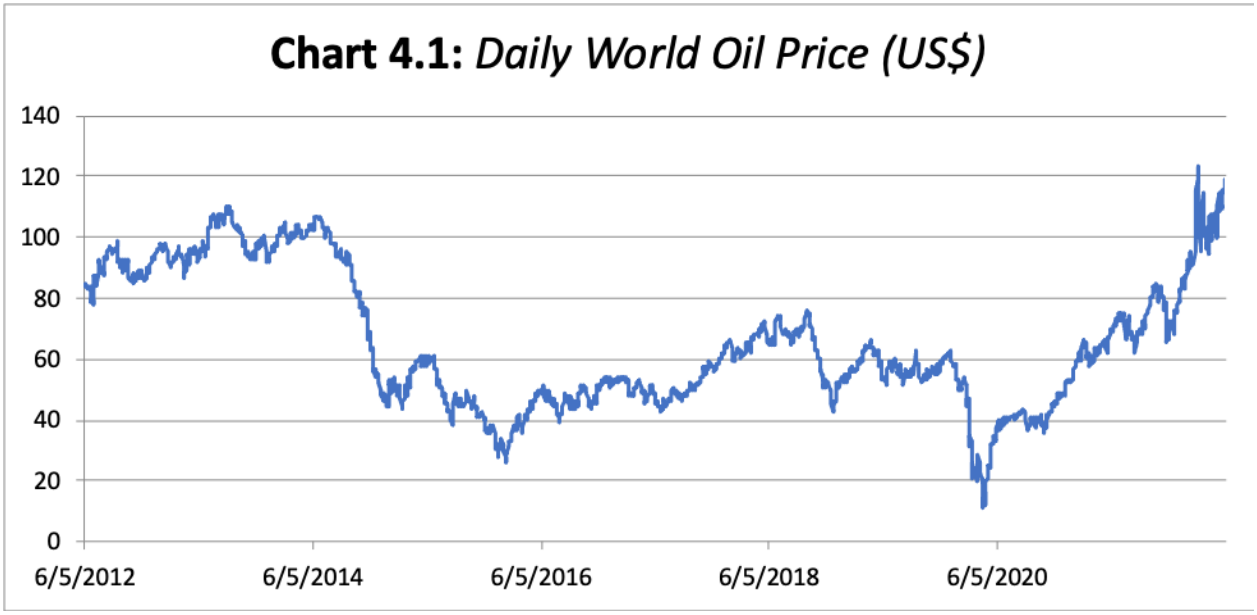
The Ugandan Legislators designed the law to account for oil price volatility and to collect any additional income that may arise if worldwide oil prices rise. The law provides for an annual windfall tax in the law. The levying of windfall tax on an annual basis, as opposed to monthly basis, is likely to cause Government to lose revenue due to oil price volatility.

The payment of windfall tax ought to be effected on a monthly basis, as it is done in Algeria, China, and Venezuela, to avoid revenue loss for the Government and the accompanying negative impacts of oil volatility.

The US$ 75 minimum threshold is too high. Countries such as Algeria, Israel, and Pakistan, levy a windfall tax on oil prices between US$ 30 and US$ 60. The windfall tax ought to be imposed in bands at increasing tax rates per barrel.

d) Oil Price Surge

The price of crude oil in the international oil market is volatile. The West Texas Intermediate (WTI) benchmark for the United States crude, the world most actively traded commodity, shows volatility in oil price over time. Chart 4.1 below presents the trend of the daily world oil price over the past decade:



Source: *http://www.macrotrends.net*

The licensees, singly or collectively, have no control over the oil price. Together, they are price-takers. Therefore, they partake of the economic gains from the oil price surge. Do they need all the windfall gain aware that they did not work for it? Thus, the gain invites Government to impose a tax on them for the common good of the Ugandan citizens.

e) Oil Supply-side

The developments in the international market determines the behavior of the oil companies. In accordance with the law of supply postulated in economic theory, when the oil price rises, the profit-motivated oil companies increase their supplies and vice versa, *ceteris paribus*. In so doing, the companies sell more and correspondingly earn more, as well. The abnormal surge in oil price culminates in realization of windfall gain, hence the trigger for windfall tax.

According to the Ugandan law, when the oil price peaks at, or even exceeds, US$ 75, a windfall tax rate of 15% will be imposed on the licensees. It is expected that the revenue realized will finance provision of public goods and services in the country.

f) Petroleum Revenue

The realization of windfall tax is data-intensive. It is largely dependent on comprehensive daily financial statements. Thus, full disclosure of licensees' financial

operations will act as a source document for petroleum revenue distribution and taxation, as well.

It is critical that oil companies provide real time data and information on petroleum outputs, international oil price, supply in the international market, sales income, expenses, gross profits, deductions (including corporate tax) and net profits. This practice requires financial discipline on both parties.

In conclusion, the legal analysis has found that the windfall tax is buttressed in a relatively weak law. In a no change scenario, it is a bane tax regime.

Chapter Five

The Anticipated Windfall Tax Revenue

5.1 Introduction

The previous Chapter analyzed the legal provisions enacted to guide the assessment of the windfall tax in Uganda's oil and gas sector. It identified the key factors that explained the adoption of the tax regime in the sector.

This Chapter applied the Ratio Analysis technique in the analysis of the anticipated windfall tax regime in Uganda's oil and gas sector. The Chapter also analyzed the petroleum revenue stream anticipated to accrue to the Government of Uganda over the long-run. The analysis established the financial health of the tax regime in the sector.

5.2 Windfall Tax Revenue

5.2.1 Ratio Analysis

The law provides for windfall tax at a flat rate of 15% imposed on the net profit earned by the licensees in Contract Area 1, Contract Area 3A and Licence Area 2 when the international oil price equals US$75 per barrel or more on any day in a year of income. In effect, if the price hits the threshold, Government levies a 15% tax on the realized net profit; otherwise 0%.

Table 5.1: An Illustration of Anticipated Windfall Tax Revenue

Price Level (***US$***)	**Tax Rate** (***%***)	**Frequency** (***Number***)	**Expected Profits** (***Normal/Windfall***)
0	0	I	*N/A*
1	0	I	*Normal profit*
2	0	I	*Normal profit*
.	0	I	*Normal profit*
.	0	I	*Normal profit*
.	0	I	*Normal profit*
73	0	I	*Normal profit*
74	0	I	*Normal profit*
75	**15**	**I**	***Windfall profit***
76	15	I	*Windfall profit*
77	15	I	*Windfall profit*
.	15	I	*Windfall profit*
.	15	I	*Windfall profit*
.	15	I	*Windfall profit*
P_n	15	I	*Windfall profit*

According to the windfall tax law, windfall tax is imposed on the windfall profits, moreover after deducting the corporate tax. This means the probability of Government realizing windfall tax revenue from the contract areas is 0.5, *ceteris paribus*. The tax regime is, therefore, a game of chance.

5.2.2 Conditions of a Good Tax System Test

According to Obone (1987), a good tax system should meet five basic conditions, namely: fairness, adequacy, simplicity, transparency and administrative ease.

In that light, therefore, the design of the windfall tax must have a bearing on these conditions and maximize them to the greatest extent possible. The windfall tax system in Uganda was tested against these conditions and the diagnostics tabulated below.

Table 5.2: Windfall Tax Design Checklist

Conditions	Main Features	Complaint/Non-complaint
Fairness	▪ Flat rate of 15% ▪ Horizontal equity ▪ Proportional tax system ▪ Net income is taxable income ▪ Payable once in a year of income	Compliant
Adequacy	▪ Probability of realizing revenue is 0.5 ▪ Flat rate of 15% ▪ Proportional tax system	Non-compliant
Simplicity	▪ Financial statements ▪ Filing of returns ▪ Real-time data on developments in: o International market price o Supply of oil in the international market o Company income o Payment of corporate income tax	Non-compliant
Transparency	▪ Windfall tax is provided for in Income Tax Act as amended ▪ Treasury single Account System is used ▪ Windfall tax revenue not ring-	Non-compliant

	fenced ▪ Budget statements show how priorities of Government are financed with all revenue, grants and loans ▪ Budget performance reports periodically published	
Administrative Ease	▪ High collection cost: o Not easy for Government to impose on licensees o Not easy for licensees to comply with either o Easy for licensees to avoid payment	Non-compliant

a) Test of Fairness

The condition of fairness requires the tax burden to be equitably distributed amongst the licensees. The diagnostics show that the windfall tax is levied at a flat rate of 15% per annum on the net income earned by the licensees in a year of income. It promotes horizontal equity whereby all the licensees believe Government is treating them equally. However, it falls short of vertical equity in that it is not progressive because of the applicable flat tax rate regardless of the price levels beyond the threshold of US$75 per barrel. Overall, it is compliant with the condition of fairness.

b) Test of Adequacy

The condition of adequacy requires the tax system to generate enough revenue to finance basic needs of the society. The levying of a flat rate of 15% per annum on net

income when the price hits or exceeds US$75 per barrel is a game of chance. Thus, the probability of Government realizing oil revenue in a year of income is 0.5 and, even if Government realizes the revenue at the flat rate of 15% per annum on the net income of the companies, it will not be substantial. In this respect, therefore, the windfall tax is booked as non-complaint.

c) Test of Simplicity

The condition of simplicity requires Government to make tax procedures easily understandable by taxpayers. However, the windfall tax is data intensive and time-consuming, requiring, therefore, establishment of a dedicated Secretariat to manage the tax system. Thus, the windfall tax fails the test of simplicity; hence, declared non-compliant.

d) Test of Transparency

The condition of transparency requires that taxpayers and leaders easily access data and information on the tax system and utilization of the tax receipts. In this case, however, it is known that the taxpayers are the licensees, charged at 15% per annum, but what Government uses the windfall tax revenue for is not clear because it is not ring-fenced but rather pooled together with all other petroleum revenues to finance priority activities. In that regard, therefore, the windfall tax is non-compliant.

e) Test of Administrative Ease

This condition requires Government to design a tax system that is not too complicated. In essence, the tax system should not be costly to either the taxpayers or the tax collectors; the rules of the game should be well known and fairly simple; the forms should not be complicated either; Government can tell if the taxes are paid on time and correctly; and Government can conduct audit in a fair and efficient manner. In short, the cost of collecting should be minimal relative to the amounted collected.

In this case, the design of the windfall tax calls for a dedicated desk responsible for windfall tax on a day-to-day basis, operating 24-hour surveillance service to monitor and analyze developments in the international oil market. This institutional arrangement is costly. Thus, the windfall tax regime is non-compliant

It is imperative from the above diagnosis that the windfall tax does not meet most of the conditions of a good tax system. If there are no tax policy changes, it is a bane tax regime.

5.3 Emerging Issues

Within the windfall tax regime, in particular, and the Government of Uganda petroleum revenue, in general, there are salient issues that require redress in order

for the windfall tax revenue to qualify as fair and the society to benefit from the oil production.

a) Flat Windfall Tax Rate

At a rate of 15% *per annum* of net income, revenue yield from the windfall tax is insignificant. It is expected that Government would realize more revenue from the windfall gain but the law has put a cap on the yield.

b) Corporate Tax Rate

The corporate tax reduces the taxable income by tax rate imposed. The low tax base further reduces the windfall tax yield.

5.4 Other Salient Issues

a) Vulnerability to Price and Political Shocks

The Public Finance Management (PFM) Act allows government to apply oil revenue to meet expenditure but does not address how the Government intends to protect itself from the volatile nature of oil earnings if they are used to pay the deficit. While the fiscal anchor is an effective instrument for protecting the economy from major year-to-year variations in Government expenditure, it only works if receipts are continuously higher than those required to finance the fiscal anchor's non-oil non-grant deficit. In order to smooth revenue volatility, avoid disruptions in public

spending and investments, it would be prudent to maintain a medium-term credit line by maintaining a balance in the Petroleum Fund, amongst other measures.

b) Narrow Focus on Development Spending

The PFM Act limits how petroleum proceeds can be spent. Money from the Petroleum Fund can be used for the national budget or for investing in the PRIR, according to Section 58 of the Act; and Section 59 (3) of the PFM Act further states, "For the avoidance of doubt, petroleum revenue shall be used for the financing of government infrastructure and development projects and not for government recurrent expenditure." Although it looks to be a well-phrased adage, it is questionable what constitutes infrastructure and development projects—does spending on security, which is a component of the NDP, count as infrastructure building?

This restriction appears to be unlawful because the consolidated fund does not specify its sources for specific distributions and money is fungible. Another source of worry is that the existing PFM Act definition ignores the need to budget for operations and maintenance costs at the time development projects are financed, and even forbids paying for them using petroleum revenue. According to the World Bank (2016), inadequate operations and maintenance budgets are already contributing to rapid depreciation and inadequate returns on public investments. Another difficulty is that 6% of royalties' money is to be earmarked as transfers to local governments for development purposes, but it's unclear whether this is to be done when the royalties are collected or whether the transfers might be deferred to future fiscal years.

c) Mitigating the Risk of Dutch Disease

The insidious impacts of Dutch disease on Nigeria's economy, notably its agriculture sector, throughout the 1970s form the paradigm of natural resources preventing development advances. Given the predicted extent of the boom, studies done by Lassourd, T., and A. Bauer (2014) which assessed Uganda's exposure to Dutch disease show that the disease's detrimental consequences are likely to be minor. Spending at a sustainable level established by the fiscal rules (contained in the Charter of Fiscal Responsibility) is one strategy to reduce any potential impact of the above situation. Uganda's fiscal planning has shown a commitment to using sound and predictable planning approaches in the past. The Ministry of Finance, for example, was an early adopter of the Medium-Term Expenditure Framework (MTEF).

The Government should take a similarly progressive approach on Petroleum Fund commitment procedures, perhaps enshrining a fiscal norm in the PFM Act. Another way to protect the economy against Dutch disease is to sterilise the effect of exchange rate swings by investing abroad. The effects of exchange rate appreciation can be avoided and tamed by withholding oil earnings from the domestic economy. This technique can stop substantial cash inflows and subsequent currency appreciation because the Government's investment absorption capacity is in dispute.

d) How Much to Spend: The Choice of Fiscal Rule

Wolf and Potluri (2018) show how different fiscal rule choices affect Government spending and conclude that the Government's preferred option (assuming the non-oil deficit is set at the EAC deficit norm of 3% of GDP) is a relatively conservative

spending scenario, especially in the early years and when compared to hand-to-mouth spending. Adam, C., D. Bevan, and T. Ohlenburg (2014) postulate that hand-to-mouth spending not only exposes the Government to oil price volatility, but it also delays investment, resulting in major operations and maintenance issues as well as negative macroeconomic consequences.

So far, this part has concentrated on the administration of oil revenues and the limitations that come with it. However, the management of expenditures that will be funded by oil earnings is equally critical. The lack of a fiscal strategy to define a long-term development expenditure plan raises worries as Uganda moves closer to oil production. Only once considerable revenue from oil exports begins to flow into the Petroleum Fund will the PFM Act's governance measures be put to the test. Because the Government's commitment to wise management of these resources has yet to be verified, very limited amounts of money have been collected in the Petroleum Fund through taxes, signature bonuses, or tax settlements with oil corporations.

e) Poor Quality of Public Investment Management

The Government intends to use public investments to turn oil reserves into assets. Over the previous five years, it has dramatically increased its public investment programme (led by NDPs that prioritise infrastructure, energy, and transportation). As more development projects are supported through the national budget rather than through donors and development partners, the Government's oversight and skill in managing these investments becomes increasingly important. However, the Government's existing capacity to significantly grow its public investment portfolio

without further decreasing its already low rate of return is questioned due to its very low Public Investment Management Assessment (PIMA) scores. According to9 the Ministry of Finance, Planning and Economic Development (2017), Uganda presently loses approximately 60% of resources invested in public projects owing to inefficient management, according to the Ministry of Finance.

Numerous flaws in the existing project management system have been found in recent diagnostic investigations by the Ministry of Finance, the World Bank, and the IMF (2018), all of which require reconsideration and modification. Ex ante analysis performed at the project's development and evaluation stages was poor and limited. Project preparation often begins after they have been included in the budget, obviating the need for any assessment or feasibility study to guide investment decisions. The Development Committee (the Ministry of Finance's clearance committee for projects) is 'not comprehensive and faces difficulty in standing up to political orders on incorporating projects,' according to an internal diagnostic report. Furthermore, external costs of investments such as environmental deterioration or pollution, which can have severe effects on sectors such as tourism and agriculture, are rarely considered in project evaluations. As a result, some investments' profitability may rise at the expense of growth in other areas.

Ministry of Finance, Planning and Economic Development (2018), project under-execution has also been a problem. In 2017/18, 47 of the 69 projects in the Public Investment Plan (PIP) that were scheduled to be completed needed extensions.

Although the energy sector, which has the most investments, has witnessed an increase in its absorption rate (from 19% in 2015/16 to 25% in 2016/17), it is still low enough to be of concern. Institutional issues are to blame for some of the delays. According to the IMF (2017), the PIP is medium-term over-committed, which is impacting budget releases. Although the Medium-term Expenditure Framework (MTEF) contains initiatives indicated in the PIP, the link between the Public Investment Management Assessment (PIMA) and the MTEF still requires improved feedback mechanisms to effectively capture progress and then move funding to regions with higher absorption. Furthermore, changes in stock take systems within the Ministry of Finance can allow for a more systematic identification of medium-term commitments for monitoring purposes. Because Government-supported and externally funded projects are not coordinated in the same data systems, the Ministry of Finance is implementing an 'Integrated Bank of Projects,' which is supposed to alleviate the problem.

The World Bank (2016) observed that project plans rarely contain an asset management strategy in the final stages. They also have ineffective monitoring and evaluation mechanisms for assessing service quality, which leads to a lack of maintenance and assistance during operational stages. This problem is exacerbated by a general lack of maintenance culture in asset management. Despite the fact that the government has raised budget allocations for operations and maintenance over the years (from 3.4 percent in 2004/5 to 8.4 percent in 2012/13 to 2016/17) they remain well below the

global best-practice threshold of 20% of total budget. Better feasibility studies and a stronger monitoring and project evaluation process are needed to enhance this.

5.5 Conclusion

In the 2030s and beyond, Uganda's oil sector is expected to deliver a considerable boost to the country's economy. This inflow of funds might help Uganda achieve middle-income status and bring millions of people out of poverty. Oil revenues, on the other hand, if mismanaged, can lead to corruption, economic stagnation, poor government, and even conflict.

Chapter Six

Conclusions and Recommendations

6.1 Introduction

This study set out to assess the windfall tax regime in Uganda's oil and gas sector to ascertain whether it will be to the benefit of the citizens, or not. It employed qualitative doctrinal legal research method by conducting a systematic exposition of the law governing imposition of windfall tax in Uganda's oil and gas sector and found the sector not potentially beneficial to the citizens. In as much as opportunities were noted, some constraints and challenges too emerged that required redress.

6.2 Recommendations

To reap the benefits of the windfall tax, Government of Uganda will have to keep meticulous records of output and the worth of its petroleum, as well as maintain effective tax collection mechanisms. To do this, Government and its Development Partners should make resources available to improve institutional capacity.

As a result, it is critical that the government establishes strong and open rules to control the sector. These include;

i) Amend the Public Financial Management Act and related rules to require that all future payments to Government be revealed project by project and payment type disaggregated according to EITI and EU/US reporting standards. The corporate and Government data reporting deadlines should be in sync.

ii) Make all other critical information, such as contracts and sales data, publicly available so that citizens may understand their oil industry and efficiently track incoming earnings.

iii) Give Parliament a bigger role in supervision.

iv) Create a multi-stakeholder group to manage the sector's income, akin to Ghana's Public Interest and Accountability Committee.

v) Establish regulations to ensure that the national oil company is administered in a transparent and independent manner.

vi) Given the predicted revenue from the industry and the reality that some years would have significantly more revenue than others, it is prudent that saving and spending restrictions contained in the Charter of Fiscal Responsibility be adhered to. This will assist the government in responsibly managing incoming revenue, avoiding revenue politicization and effects of the dutch disease which include economic stagnation associated with overreliance on oil revenue at the expense of other sections of the economy.

6.3 Conclusion

Firstly, the assessment of the main factors which explain the adoption of windfall tax regime in Uganda's oil and gas sector led to the conclusion that the need to finance poverty reduction strategies in the country was the main factor that influenced Government of Uganda to adopt windfall tax regime in the sector. For the 2016/17 household survey, the Uganda Bureau of Statistics detected an increase in poverty for the first time since its inception in 1998. Over the years 2012–2016, real per capita growth remained flat, averaging around 1%, while the government's tax takes increased just little, reaching just over 13% of GDP. Debt levels have rapidly increased. Because of the limited fiscal space available, infrastructure has been prioritized over service delivery, and service delivery quality has stalled or worsened. Large sections of the service delivery system are being funded by development partners, which the government is becoming less interested in. In light of these trends, windfall profits from natural resource extraction could provide Uganda with much-needed fiscal relief.

However, Government developed weak policy, legal and institutional frameworks that undermine windfall tax revenue mobilization effort. Windfall tax is a progressive tax type but applying it on oil companies at a rate of 15% if international oil price reaches, or exceeds, US$ 75 *per* barrel renders it proportional; hence, potential low revenue yield.

The other main factor that influenced the decision to adopt the windfall tax regime in the oil and gas sector was the political will. Due to the modest size of the private

sector, Government spearheaded extraction of profits from the natural resource boom.

However, the technocrats did not translate the political pronouncements to formulation of strong policy, legal, regulatory and institutional frameworks that would guarantee economic and financial gains to Ugandan citizens from the oil and gas sector.

Secondly, the analysis of the anticipated windfall tax revenue over the long-term led to the conclusion that the stream of revenue will be determined by the proportional tax applicable on oil companies at a rate of 15% if international oil price reaches, or exceeds, US$ 75 *per* barrel over the long-term.

Overall, the study concludes that the windfall tax regime in Uganda's oil and gas sector is not a boon but bane to the citizens. It, therefore, recommends review of the tax regime for the general good of the Ugandan society.

REFERENCES

- Abuka et al. (2007). Uganda's Oil Bonanza: The Opportunities And Risks in the March to 2050, Working Paper.
- Adam C, and Simpasa, AM (2010). 'Harnessing Resource Revenues for Prosperity in Zambia'. OxCarre Research Paper 36. Oxford: Oxford Centre for the Analysis of Resource Rich Economies.
- Adam, C., D. Bevan, and T. Ohlenburg (2014). 'Public Investment and Growth in Uganda'. Working Paper S-43203-UGA-1. International Growth Centre.
- African Development Bank (2014), Equatorial Guinea Economic Outlook, Available at http://www.afdb.org/en/countries/central-africa/equatorial-guinea/equatorial-guinea-economic-outlook/ [Accessed July 4th 2015]
- African Parliamentarians Network Against Corruption (APNAC) (2006), End of Project Report: Sensitisation on the domestication of the AU Convention on Preventing and Combating Corruption, 2006
- African Union, African Union Convention on Preventing and Combating Corruption (CPCC) http://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf
- Aguemon H and Pambou Y, Equatorial Guinea, Accessed http://fic.wharton.upenn.edu/fic/africa/Equatorial%20Guinea%20_2_.pdf [July 4th 2015]
- Al-Kasim F, Søreide T, Williams A (2008), Grand corruption in the regulation of oil, U4-Anti-Corruption Resource Center, Issue 2:2008
- Associated Press, Rodney Muhumuza, Politics, bribery charges swirl around Ugandan oil, May 18th 2013, http://bigstory.ap.org/article/politics-bribery-charges-swirl-around-ugandan-oil [November 14th 2014],

- Asuni JB (2009), 'Blood Oil in the Niger Delta', United States Institute of Peace, Special Report
- Ayodele-Akaakar FO, 'Appraising the Oil & Gas Laws: A Search For Enduring Legislation For The Niger Delta Region'
- Bac, M. (2001), "Corruption, connections and transparency: Does a better screen imply a better scene?", Public Choice, 107, 87-96
- Bannon, I and Collier, P. (2003). Natural Resources and Conflict: What We can Do? Chapter 1. The International Bank for Reconstruction and Development/ The World Bank.
- BBC News, Equatorial Guinea country profile – Overview, January 23rd 2015, Available at http://www.bbc.com/news/world-africa-13317174 [Accessed July 4th 2015]
- Collier et al. (2005). Conflict, Available at http://users.ox.ac.uk/~econpco/research/conflict.htm [Accessed July 16th 2015]
- Colón MC (2014), Oil and Gas regulation in Equatorial Guinea: Overview, Rights to Oil and Gas, Practical Law, Available at http://us.practicallaw.com/5-565-2347?source=relatedcontent [Accessed July 4th 2015]
- Davis Wesley Tusingwire V the Attorney General, Constitutional Petition No. 2 Of 2013, Available at http://www.ulii.org/ug/judgment/constitutional-court/2013/15 [Accessed July 16th 2015]
- East African Community, Protocol on Preventing and Combating Corruption (2012), Available at http://federation.eac.int/index.php?option=com_docman&task=doc_download&gid=133&Itemid=70 [Accessed July 16th 2015]East African Community, Treaty for the Establishment of the East African Community

- Ernst and Young (2014), 'Managing bribery and corruption risks in the oil and gas industry', Available at http://www.ey.com/Publication/vwLUAssets/EY-Managing-bribery-and-corruption-risk-in-the-oil-and-gas-industry/$FILE/EY-Managing-bribery-and-corruption-risk-in-the-oil-and-gas-industry.pdf [Accessed July 4th 2015]
- Frian Aarsnes and Olav Lundstol (2013): "The Case for Windfall Taxes; A Guide to Optimal Resource Taxation". Available at https://www.publishwhatyoupay.no
- Gaspar A, 'The Management of the Angolan Oil Revenues: Are there any Chances to Change Course of the Resource Curse?' University of Dundee
- Gelb, A et al. (1988). **Oil Windfalls: Blessing or Curse?** Oxford University Press.
- Global Witness (2014). **A Good Deal Better? Uganda's Secret Oil Contracts Explained**. Global Witness Limited. United Kingdom.
- Government of Uganda, Office of the President, Cabinet Secretariat, The Cabinet Handbook, p.18, http://www.cabinetgovernment.net/docs/addis-ababa/4b-uganda-the-cabinet-handbook.pdf [Accessed November 18th 2014]
- Hepkema, S. and Booysen, W. (1997), "The Bribery of Public Officials: An IBA Survey," International Business Lawyer, Vol. 25 (9): 415-416, 422.
- https://www.parliament.go.ug/news/5498/parliament-passes-income-tax-amendment-bill-2021
- https://www.wider.unu.edu/publication/zambia%E2%80%99s-mining-windfall-tax-0
- Human Rights Watch (2010), 'Transparency and Accountability in Angola: An Update'
- Human Rights Watch (2012), Equatorial Guinea: DC Meeting Set as Corruption Details Emerge, Available at

http://www.hrw.org/news/2012/06/15/equatorial-guinea-dc-meeting-set-corruption-details-emerge [Accessed July 4th 2015]

- Human Rights Watch, Letting the Big Fish Swim, Failures to prosecute High Level Corruption in Uganda, http://www.hrw.org/sites/default/files/reports/uganda1013_ForUpload_0.pdf [Accessed November 15th 2014]

- Ikoja- Odongo R & Kawooya D (2006), An Examination of Recent Developments, East African Journal of Peace and Human Rights Vol. 12 (2) 2006

- IMF (2017). 'Enhancing the Performance of Public Investment Management'. Country Report 17/269. Washington, DC: International Monetary Fund.

- IMF (2018). 'Initiating the Stock-taking of the Public Investment Program'. Country Report 18/180. Washington, DC: International Monetary Fund; World Bank (2016). 'From Smart Budgets to Smart Returns: Unleashing the Power of Public Investment Management'. Uganda Economic Update Seventh Edition. Washington, DC: World Bank; Ministry of Finance, Planning and Economic Development (2016). 'Public Investment Diagnostic Study'. Kampala.

- Inspectorate of Government, Report to Parliament, January – June 2013, http://www.igg.go.ug/static/files/publications/Report_to_Parliament_2013.pdf [Accessed November 15th 2014], Inspectorate of Government, Report to Parliament, July – December 2013, http://www.igg.go.ug/static/files/publications/IGG_REPORT_DEC_2013_2.pdf [Accessed 15th November 2014]

- Inspectorate of Government, Report to Parliament, January – June 2011, http://www.igg.go.ug/static/files/publications/IGG_2011.pdf [Accessed November 15th 2014]

- Isaksen, J., Amundsen, I., Wiig, A., with Abreu, C. (2007). Budget, State and People. Budget Process, Civil Society and Transparency in Angola. July 2007

Bergen: CMI, Available at http://www.africa-union.org/Official_documents/... [Accessed on Monday November 16, 2009]

- John Ken-Lukyamuzi v Attorney General and Another (Constitutional Appeal No. 2 of 2007)
- Kar D and Cartwright-Smith D (2008), "Illicit Financial Flows from Africa: Hidden Resource for Development", Global Financial Integrity
- Katsouris C and Sayne A (2013), 'Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil', Chatham House
- Kolstad I, Wiig A, and Williams A (2008), Tackling Corruption in Oil Rich Countries: The Role of Transparency, U4 Brief-Anti-Corruption Resource Center, February 2008-No.3
- Lambsdorff JG and Nell M (2006), Corruption: Where We Stand and Where to Go. Published in Kreutner, M. (Editor): "The Corruption Monster: Ethik, Politik und Korruption", Vienna, 2006.
- Lambsdorff, J. Graf (2002), "Making Corrupt Deals: Contracting in the Shadow of Law", Journal of Economic Behavior and Organization, Vol. 48 (3): 221-241.
- Lassourd, T., and A. Bauer (2014). 'Fiscal Rule Options for Petroleum Revenue Management in Uganda'. Policy Paper. Revenue Watch Institute.
- Mehlum, H., Moene, K. and Torvik, R. (2006), "Institutions and the resource curse", The Economic Journal, 116, 1-20
- Menachem, K et al. (2004). Lifting the Oil Curse: Improving Petroleum Revenue Management in Sub-Saharan Africa, IMF, Washington D.C.
- Ministry of Energy and Mineral Development (2007), Petroleum Exploration and Production Department. (2007), Licensing Status and Progress of Petroleum Exploration in Uganda

- Ministry of Energy and Mineral Development, Mandate & Mission, http://www.energyandminerals.go.ug/index.php?id=3 [Accessed November 18th 2014]
- Ministry of Finance, Planning and Economic Development (2017). 'National Budget Framework Paper FY2018/19–FY2022/23'. Kampala.
- Ministry of Finance, Planning and Economic Development (2018). 'Background to the Budget Fiscal Year 2018/19'. Kampala.
- National Planning Authority (2020). **The National Development Plan (NDP III), 2020/21 – 2024/25**. Republic of Uganda.
- Nigeria Environmental Action Study Team (NEST), Nigeria's Threatened Environment, Ibadan, 1991.
- Obone, AE (1987). **Monetary Theory, Banking and Public Finance**. Uganda Printing and Publishing Corporation Limited, Entebbe.
- Okuja, Joseph O (2020). **Domestic and International Taxation in Uganda: The Law, Principles and Practice**. Second Edition. Uganda Printing and Publishing Corporation Limited, Entebbe.
- Olaniwun Ajayi LP (2013), 'Nigeria Oil and Gas', Freshfields Bruckhaus Deringer LLP, March 2013
- Olken. B. A. (2004), Monitoring corruption: Evidence from a field experiment in Indonesia, Washington D.C.: National Bureau of Economic Research, November 2004
- Olters, J.P. (2007). Old curses, new approaches? Fiscal benchmarks for Oil – producing countries in Sub-Saharan Africa. IMF working Paper, WP/07/1077
- Oluduro O (2012), 'Oil exploitation and human rights violations in Nigeria's oil producing communities', Department of Public Law, Ghent University, Belgium, Afrika Focus — Volume 25, Nr. 2,

- Onyekachi DWC, 'An Appraisal of the Legal Framework for the Regulation of Nigerian Oil and Gas Industry, with Appropriate Recommendations', p.5-6
- Open Society Justice Initiative (OSJI) (2010), 'Corruption and Its Consequences In Equatorial Guinea: A Briefing Paper', Updated March 2010, Available at http://www.opensocietyfoundations.org/sites/default/files/equatorial-guinea-20100317.pdf [Accessed July 4th 2015]
- Osei PD, Nwasike JN (2010) ,The Contract System of Employment for Senior Government Officials, Experiences from Africa, London : Commonwealth Secretariat, 2010.
- Owolabi T et al, (2014) 'Oil and Gas Regulation in Nigeria: Overview', Olaniwun Ajayi LP, Multi-Jurisdictional Guide, Energy and Natural Resources, Available at http://us.practicallaw.com/5-523-4794 [Accessed July 16th 2015]
- Palmer B (2012), Oil Regulation in 35 jurisdictions worldwide, Getting the Deal Through, Available at http://www.avm-advogados.com/wp-content/uploads/2012/07/OR2012-Angola.pdf [Accessed July 4th 2015]
- Petroleum Supply, Ministry of Energy and Mineral Development, http://www.energyandminerals.go.ug/index.php?id=25 [Accessed November 17th 2014]
- Pope, J. (2000), "The Transparency International Source Book 2000: Confronting Corruption: The Elements of a National Integrity System", Berlin: Transparency International. Online version at http://www.transparency.org/sourcebook/
- Public Interest and Accountability Committee [online]. Available from: http://piacghana.org/ . (Accessed 16 May 2022).
- Ramos ML (2012), 'Angola's Oil Industry Operations', Open Society Initiative for Southern Africa, Available at http://www.osisa.org/sites/default/files/angola_oil_english_final_less_photos.pdf [Accessed on July 4th 2015]

- Reinikka, R. and Svensoon, J. (2005) 'Fighting Corruption to Improve Schooling: Evidence from a Newspaper Campaign in Uganda', Journal of the European Economic Association 2 (2-3): 1-9.
- Republic of Equatorial Guinea, Ministry of Mines, Industry and Energy, Oil Production, Available at http://www.equatorialoil.com/Oil_production.html [July 4th 2015]
- Revenue Watch Institute, International Senior Lawyers Project, Skadden LLP (2012), Comments on Uganda Petroleum (Exploration, Development and Production) Bill, Available at http://www.resourcegovernance.org/sites/default/files/RWI_ISLP_Skadden_Analysis_of_Uganda%20EP_Bill.pdf [Accessed July 16th 2015]
- Rober, FC (2012). Zambwa's Fiscal Regime. Working Paper. International Growth Center.
- Robinson, J. A., Torvik, R. and Verdier, T. (2006), "Political foundations of the resource curse", Journal of Development Economics, 79, 447-468
- Ross, M. (2003). The Natural Resource Curse: How wealth Can Make You Poor. Chapter 2. The International Bank for Reconstruction and Development/The World Bank.
- Saro-Wiwa, Ken, Genocide in Nigeria, Port Harcourt: Saros International Publishers, 1989.
- Sentsho, J. (2006), Abundant Resource Endowment: A Basis For Successful Economic Diversification. BIDPA Policy Brief No.2
- Shaxson. (2007). Poisoned wells: The dirty politics of African Oil. Macmillan. ISBN1-4039-7194-3
- Smith, D. (2008) A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria, Princeton, Princeton University Press;

- Statement of the Catholic Bishops of Central Africa – (Association of Episcopal Conferences of the Central African Region), July 2002, issued in Malabo, Equatorial Guinea

- Tewksbury R (2009), University of Louisville, Qualitative versus Quantitative Methods: Understanding Why Qualitative Methods are Superior for Criminology and Criminal Justice, Journal of Theoretical and Philosophical Criminology, Vol 1 (1)

- The EITI Standard, Available at https://eiti.org/files/English_EITI_STANDARD.pdf [Accessed July 5th 2015]

- The Independent, Haggai Matsiko, Did Tullow Oil Bribe Museveni? March 22nd 2013, http://allafrica.com/stories/201303250813.html [Accessed November 14th 2013],

- The Law Society (UK), Anti-Money Laundering, http://www.lawsociety.org.uk/advice/practice-notes/aml/introduction/ [Accessed November 14th 2014]

- The New Vision, 11 June 2011, Moses Mulondo, Uganda: Who Runs Show, Minister Or Permanent Secretary?, Available at http://allafrica.com/stories/201106130846.html [Accessed July 16 2015]

- The New Vision, July 15, 2013, Moses Mulondo and Mary Karugaba, Parliament orders on removal of 3 permanent secretaries, http://www.newvision.co.ug/news/645060-parliament-orders-on-removal-of-3-permanent-secretaries.html [Accessed November 15th 2014])

- The New York Times, 'Oil Corruption in Equatorial Guinea', Mouawad J, July 9, 2009 7:01 am, Available at http://green.blogs.nytimes.com/2009/07/09/oil-corruption-in-equatorial-guinea/?_r=0 [Accessed on July 4th 2015]

- The Observer, Questions as Tullow settles $250m tax row, Jeff Mbanga, 24th June 2015, Available at http://www.observer.ug/business/38-business/38413-questions-as-tullow-settles-250m-tax-row [Accessed July 3rd 2015]

- The Public Investment Plan for 2017/18 consisted of 440 projects, of which 317 are funded by the GoU.
- The Society of Petroleum Engineers, Glossary of Terms Used in Petroleum Reserves/Resources Definitions, Available at http://www.spe.org/industry/docs/GlossaryPetroleumReserves-ResourcesDefinitions_2005.pdf [Accessed November 13 2014]
- The Telegraph, Harriet Dennys, Tullow Oil apologises to Ugandan government over bribery allegations, March 22nd 2013, http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9949319/Tullow-Oil-apologises-to-Ugandan-government-over-bribery-allegations.html [Accessed November 14th 2013]
- Tinyefuza MG (2013), Escaping the Oil Curse: The Role of Sound Legal, Policy and Institutional Frameworks in the Oil and Gas Sector in Uganda, Available at https://www.academia.edu/9420751/ESCAPING_THE_OIL_CURSE_THE_ROLE_OF_SOUND_LEGAL_POLICY_AND_INSTITUTIONAL_FRAMEWORKS_IN_THE_OIL_AND_GAS_SECTOR_IN_UGANDA [Accessed July 16th 2015]
- Transparency International (2002-2008) "Corruption Perceptions Index" Available at http://www.transparency.org/policy_research/surveys_indices/cpi [Accessed July 16, 2015]
- Transparency International Anti-Corruption Help Desk, Comparative Analysis of the UN CAC and the AU CPCC, http://www.transparency.org/files/content/corruptionqas/Comparative_analysis_of_the_UNCAC_and_the_AU_Convention_2014.pdf [Accessed November 15th 2014]
- Uganda V David Chandi Jamwa HC Criminal Suit No 87 of 2010
- United States Senate (2010), 'Keeping Foreign Corruption Out of The United States: Four Case Histories', Permanent Subcommittee on Investigations

Released in Conjunction with the Permanent Subcommittee on Investigations, February 4, 2010 Hearing, Available at http://www.hsgac.senate.gov/download/report-psi-staff-report-keeping-foreign-corruption-out-of-the-united-states-four-case-histories [Accessed July 4th 2015]

- Usman SO (2011), The Opacity and Conduit of Corruption in the Nigeria Oil Sector: Beyond the Rhetoric of the Anti-Corruption Crusade, Journal of Sustainable Development in Africa (Volume 13, No.2, 2011) ISSN: 1520-5509
- Van der Veen, P. (2006). Oil for development, strengthening good governance in Oil-Producing African countries: The role of the World Bank, Oil, Gas and Mining Policy Division, The World Bank.
- Watts M and Kashi E (2006), Curse Of The Black Gold: 50 Years of Oil in the Niger Delta, World Wildlife Fund Report
- Wiwa, Diana (1997), "The Role of Women in the Struggle for Environmental Justice in Ogoni," Delta website, <http://www.oneworld.org/delta/news4.html#1>, October 1997
- Wolf, S., and V. A. Potluri (2018). 'Uganda's Oil: How Much, When, and How Will It Be Governed?' WIDER Working Paper 2018/179. Helsinki: UNU-WIDER.
- World Bank (2000), Making petroleum Revenue Management work for the Poor: Transparency and Good Governance Dominate Discussion on Petroleum Revenue Management' Press Release, November 4, 2002
- World Bank (2016). 'From Smart Budgets to Smart Returns: Unleashing the Power of Public Investment Management'. Uganda Economic Update Seventh Edition. Washington, DC: World Bank.
- World Bank (2016). 'From Smart Budgets to Smart Returns: Unleashing the Power of Public Investment Management'. Uganda Economic Update Seventh Edition. Washington, DC: World Bank

- World Bank (2016). 'From Smart Budgets to Smart Returns: Unleashing the Power of Public Investment Management'. Uganda Economic Update Seventh Edition. Washington, DC: World Bank.
- Written Submissions of Tullow Oil plc for the purposes of the Ad Hoc Committee to Investigate the Regularisation of the Oil Sector and Other Matters Incidental Thereto 11 April 2012
- Yergin D (1991), The Prize, The Epic Quest for Oil, Money and Power (1991).
- Zivotofsky v. Clinton, 132 S. Ct. 1421, 1424 (S. Ct. 2012).