

**AN EXAMINATION OF THE LEGAL, INSTITUTIONAL  
AND SOCIAL ASPECTS OF OIL EXPLORATION  
IN UGANDA**

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In Partial Fulfillment of the Requirements for the  
Degree Master of Laws

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BY:

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October, 2011



## DECLARATION A

"This thesis is my original work and has not been presented for a degree or any other academic award in any university or institution of learning".

*Mpagi Alosious Zorozi*

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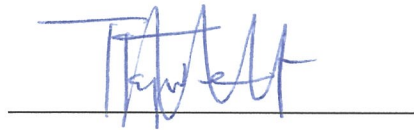
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### **DECLARATION B**

"We confirm that the Work reported in this dissertation was carried out by the candidate under our supervision".

A handwritten signature in blue ink, appearing to read 'Tajudeen Sanni', is written over a horizontal line.

Mr. Tajudeen Sanni


(Supervisor)

Date


1-11-11

## APPROVAL SHEET


This Thesis entitled "An Examination of the Legal, Institutional and Social Aspects of Oil Exploration in Uganda" prepared and submitted by Mpagi Alosious Zorozi in partial fulfillment of the requirements for the award of a degree of Masters of Laws has been examined and approved by the panel on oral examination

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## **DEDICATION**

I dedicate this work to my Mother Mrs.Ssewanyana Nhangonzi, my son Kigongo Kajubi Mpagi Emmanuel , my Twins Babirye and Nnakato and my wife Tukamushaba Plaxed , who have worked tirelessly to look after me during this period of study.

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Lastly I thank the faculty of Law, my Lecturer who introduced me to Oil and Gas Course Mr Isaac Kabuye, Our Cordinator LLM progamme Madam Kisubi Esther, School of Post Graduate Kampala International University for the support given to me through guidance and Materials relevant in this study.

## **ABSTRACT**

Uganda oil discoveries gain Uganda a lot on the world map when commercial quantities of oil were reported in the Albertine Graben in the western Arm of the great East African Rift Valley.

Preparations were made to get revenues from the discoveries and contracts were signed with the Tullow Oil Company and Heritages Oil Company, Gas Ltd and Dominion Petroleum limited which is presently enlisted in the London Stock Exchange for the exploitation, development and production of the oil.

In the year 2008, the National Oil and Gas policy was brought in force as a legal instrument to direct the activities. This was followed with the tabling of the petroleum exploration. Development production and value addition bill of 2010 as part of the legal oil require.

With all such development the relevant picked up the interest to undertake a study under the title "An Examination of the Legal Institutional and Social Aspects of Oil Exploration in Uganda".

This study fundamentally examines whether the legal and the institutional frame works available or trapped to be brought in force shall enable Uganda avoid the resources curse commonly known the "Dutch Disease" and harmonize the social aspects through oil exploration production and development of the oil sector.

Throughout this study the researcher employed numerous research techniques, methodologies and philosophies in a bid to collect relevant information for the research. All that was relived upon under the methodology of resource was fully expounded under Chapter One of the research where in, the researcher gave

information on the history of Uganda oil discoveries the related literature on oil production and exploitation among others.

The research further expands Uganda's history and background information in relation to oil exploration, the journey under taken and future implication of oil exploration not only to the people who are predominantly Banyoro, But also the entire population of Uganda.

The thesis further touches on the respondents' view on the oil exploration in Uganda, the anticipation of the Uganda's future, what ought to be done to ensure that the best comes to all the Ugandans.

The thesis contains the recommendation as brought forward by different stockholders and the future of Uganda's legal oil regime.

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## **ACRONYMS**

PAU	: Petroleum Authority of Uganda
U NATOIL	: Uganda National Oil Company
AB	: Afro-Barometer
ACHRPR	: African Charter on Human Rights and People's Rights
ACODE	: Advocates Coalition for Development and Environment
APSR	: American Political Science Review
AT	: Africa Today
CNOOC	: China National Offshore Company
CP	: Comparative Politics
CPS	: Comparative Politics Studies
DB	: Doing Business
DPI	: Database of Political Institutions
DRC	: Democratic Republic of Congo
EER	: European Economic Review
GCR	: Global Competitiveness Report
ICESCR	: International Convention on Economic, Social and Cultural Rights
IEA	: International Energy Agency

EJ	: Economic Journal
IEF	: Index of Economic Freedom
IIAG	: Ibrahim Index of American Governance
ILO	: International Labour Organisation
IMF	: International Monetary Fund
IOCs	: International Oil Companies
JCR	: Journal of Conflict Resolution
JDE	: Journal of Development Economics
JPE	: Journal of Political Economics
JPR	: Journal of Peace Research
MEMD :	Ministry of Energy and Mineral Development
MNCs	: Multi-National Companies
MNOCs	: Multi-National Oil Corporations
NOC	: National Oil Companies
NPE	: New Political Economy
OECD	: Organization for Economic Corporation and Development
PEPD	: The Petroleum Exploration and Production Department
PIVP	: Polity IV Project

SOC : State Oil Company

UDHR : Universal Declaration of Human Rights

UNRP : United Nations Declaration on the Rights of Indigenous People

WCS : Wildlife Conservation Society

WD : World Development

WGIs : Worldwide Governance Indicators

WP : World Politics

WSJDN: Wall Street Journal Digital Network

## **List of Statutes and Laws**

### National Laws and Policies

1. The Uganda Constitution of the Republic of Uganda (as Ammended by 2005)
2. The Petroleum (Exploration and Production) Act Cap 150 of 2000.
3. The petroleum supply Act of 2003 Cap 13.
4. The mining Act Cap 148.
5. The Land Act Cap 225
6. The Access of Information Act of 2005
7. Investment Code Act Cap 92
8. Penal Code Act Cap 120.
9. Income Tax Act of 2003
10. National Environment Act of 2003
11. Wildlife Act Cap 200
12. National Forestry and Tree Planting Act of 2003
13. Public Health Act Cap 281
14. Water Act Cap 152
15. Public Procurement and Disposal of Assets Act.
16. National Land use policy 2004
17. National Oil and Gas Policy 2008
18. The Petroleum (Exploration Development Production and Value Addition Bill 2010
19. Law of the Sea of 1982 (UN Convention on the Law of the sea)

20. UN Resolution on Permanent Sovereignty over National Resources  
(UNGA) Resolution No 1803 (xviid)

21. The International Convention on Civil Liability and Compensation for  
Oil Spills (1992)

22. The UN Convention on Cultural and Political Rights (UNCCPA) UNGA  
Resolution No. 2200A (XXI) of December 1996.

## List of Cases

1. North Sea Continental Study Cases (Federal Republic of Germany V Denmark. Federal Republic of Germany V. The Netherlands)ICT 20<sup>TH</sup> February 1969.....pg 23
2. Standard oil Co of New Jersey v. United States of America 221 US 1 (1911)..... 30
3. Kelly V . Ohoi. Oil Co. 49 NE 399(Ohio 1897).....31
4. Barnard V. Monongatida Natural Gas Co. 65.A 801 (p a 1907).....31
5. DR. Congo V. Uganda ICT 19<sup>TH</sup> December 2005.....32
6. Ogoniland Case ( the Social and Economic Rights Action centre for economic rights V. Nigeria, ACHPR Communication 155/96 (2002).....33
7. Unocal Netter Lands B. v. Continental Netherlands. Oil Companies supreme court of Netherlands No 4127HR LJN AT 537 14<sup>TH</sup> October 2005.....69
8. Meintosti V. Leckie (1906) 13 OLR 54.....77
9. BERKHEISER v. Berktueiosir (1957) SCR 387..... 77

## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.0 Background of the Study**

The hunt for oil in Uganda dates back to the early 1920's when significant oil exploration was done by E.J. Wayland, a government geologist who documented substantial amounts of hydrocarbons in the Albertine Graben.<sup>1</sup> This discovery was later to be followed by the first ever drilling of wells in 1938, in which some hydrocarbons were encountered, but no testing was done on this new discovery. However the hunt did not stop there as later on in the 1940's and 1950's further exploration was carried out and several shallow wells were drilled mainly for stereographic purposes. Despite having vivid signs of the country acquiring its newly found wealth, Uganda was affected by World War II. The war had an adverse impact on the oil discovery; its impact was greatly felt as the next sound of oil in Uganda was not going to occur till the early 1980s, which saw the acquisition of aeromagnetic data across the entire Graben.<sup>2</sup>

The constitution of Uganda<sup>3</sup> is the basis on which all that is legal in the country is hinged. The constitution empowers parliament to enact laws regulating the exploitation and development of mineral and such exploitation shall take into account the interests of the individual land owners, local governments and the government. The constitution further states that all minerals are held by the government on behalf of the people of Uganda.

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<sup>1</sup> *Htp/www.Oil Uganda.info.com accessed 23<sup>rd</sup> August 2011*

<sup>2</sup> *Ibid, Note 1*

<sup>3</sup> *Article 2 of the 1995 Constitution of the Republic of Uganda*

Since oil exploration is new, Petroleum law is also new in Uganda, and also its applicability is new. That is why this research will generally focus on the examination of the legal, institutional and social aspects of Uganda's oil discovery bearing in mind that it can potentially turn out to be a liability for the country despite people's expectations and right to social justice and economic benefit from the resource. The study particularly covers the Albertine oil and natural gas areas in Uganda. This potential inconsistency can otherwise be perceived as a resource curse which analysts in legal and policy processes and academics have argued is associated with natural resource wealth such as oil and natural gas especially in the developing world. Essentially, the resource curse refers to the inverse association between development and natural resource abundance.<sup>4</sup> Despite the abundance of point-source non-renewable resources; oil, natural gas and minerals, a number of developing countries tend to experience poorer development outcomes than countries with fewer natural resources.<sup>5</sup> Such export oriented natural resources in a country may generate large revenues for government but lead paradoxically to socio- economic instability and stagnation.<sup>6</sup> This can be attributed to poor government control and public mismanagement of resources; weak or corrupt institutions, and social rivalry.<sup>7</sup> Locally, similar adversity is likely if there is ambiguity in Uganda's policy; particularly the legal and institutional framework for the oil discovery.

The relationship between policy and law cannot be overemphasized. While policy formulation lays down the ideals and intentions, in this case, of the Government, legal provisions actualize those aspirations by laying down the rules and institutional framework that ought to facilitate the implementation of the policies and realization of the goals and objectives underpinning them. Put differently,

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<sup>4</sup> African Development Bank (ADB), *Maximizing the benefits from Africa's oil and gas resources; African Development report 2007*

<sup>5</sup> P. Veit & Others, "Avoiding the Resource Curse; Spotlight on oil in Uganda" (2011) 01

<sup>6</sup> Overseas Development Institute (ODI, 2006) in AFDB (n1) 79

<sup>7</sup> Ibid



legal provisions ought to be developed out of policy positions.<sup>8</sup> Thus; an effective legal regime underpins successful management of Uganda's oil wealth prospects.

Consolidating the socio-economic viability of the oil and gas wealth for shared benefit and promoting fundamental human-rights<sup>9</sup> is encouraged in international and regional law.<sup>10</sup> Article 22 of the 1948 Universal Declaration of Human Rights (UDHR)<sup>11</sup> enjoins that, 'everyone, as a member of society is entitled to realisation, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. The UN also developed other protocols, based on the UDHR; to address similar and specific human rights principles.<sup>12</sup> Among these includes the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>13</sup>

There are also international instruments that protect indigenous people's rights to development. Particularly, the United Nations Declaration on the Rights of Indigenous Peoples (UNRIP) and International Labour Organization (ILO) Convention No. 169 direct that states and the private sector must obtain the free, prior and informed consent of indigenous peoples in any planned projects, exercise good

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<sup>8</sup> A. Bainomugisha, H. Kivengyere & B. Tusaire, "Escaping the Oil Curse and Making Poverty History: A review of oil and gas policy and legal framework for Uganda (2006)" pg 22

<sup>9</sup> Human rights, in their broadest definition are the basic liberties allowing a person freedom to live a dignified life, freedom to express independent beliefs, and freedom from abuse and violations.

<sup>10</sup> B. Tamara, "Human rights policy implementation in the oil and gas sector; translating policy to practice" (2004) pg 4

<sup>11</sup> Although the UDHR does not form binding international human rights law, some legal scholars cite it as customary international law and more broadly it has become an authoritative human rights reference. UDHR was established in 1948 in the UN General Assembly.

<sup>12</sup> The International Bill for Human Rights (UNOHCHR, 1996)

<sup>13</sup> ICESCR is a multi-lateral treaty adopted by the UN General Assembly on December 16<sup>th</sup> 1966, put in force on 3<sup>rd</sup> Jan 1976

faith, and guarantee their full and effective participation and share in the benefits arising from such projects.<sup>14</sup>

The UDHR has also been used as the model for regional human rights laws such as the African Charter on Human Rights and People's Rights.<sup>15</sup> This is aimed at protecting and promoting similar human rights in the African continent particularly in individual states. This provides the basis for other specific regional efforts including the African Union's New Partnership for Africa's Development (NEPAD) that identifies good governance as a basic requirement for peace and sustainable growth and development.<sup>16</sup>

The Albertine Graben in which oil has been discovered in Uganda is located in the western part of the country, mainly in Masindi, Kibale and Hoima district around Lake Albert which forms the northernmost part of the western arm of the East African Rift Valley. It is situated at the Uganda and Congo border further stretching to the border with Sudan.

According to the petroleum geologists, the Albertine Graben is greatly enriched with oil. They assert that the Maputa and Waraga oil fields have approximately 100 to 400 million barrels of oil, whereas the Giraffe 1 is expected to total at least 400 million barrels.

Paul Atherton, chief financial officer of Heritage Oil, stated that, the wider field his company was developing, dubbed Buffalo-Giraffe, and had several "billions of barrels of oil in place", although it was unclear how much of this would be recoverable. Additional exploration findings have estimated that there exists approximately 500 million barrels of oil at the Kingfisher well in Hoima. These oil

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<sup>14</sup> UN Economic and Social Council, "Study on indigenous people and corporations to examine the existing mechanisms and policies relating to corporations and indigenous people to identify good (2011)

<sup>15</sup> B. Tamara, Note 10 above

<sup>16</sup> African Development Bank (ADB), Note 4 above

discoveries have led the government of Uganda into signing contracts with international companies to exploit the oil. This has seen four out of the six exploration areas identified to have good potential for petroleum production in the country being licensed to international oil companies with the remaining areas waiting for licensing by government to prospective applicants.

The companies that have been licensed to carry out the exploration in Uganda are: Heritage Oil and Gas Ltd in partnership with Energy Africa (now Tullow oil), it was licensed on the 1st July 2004 and they are expected to carry out exploration activities on exploration area, 1 that is Pakwach basin. The Northern partnership with Energy Africa Ltd (Now Tullow Oil), licensed on the 8th October 2001, while the southern Lake Albert basin was first licensed to Heritage Oil, but was later jointly licensed to Tullow and Heritage on the 8th September 2004. The Rhino camp basin was licensed to Neptune Petroleum (u) Ltd, on 27th September 2005. The exploration companies that were licensed have made significant investment, and have moved forward in

identifying specific areas for exploration. An evaluation of these places led to the discovery of petroleum in; Waraga, Nzizi, Mputa and Kaiso Tonya, (exploration area two). The Kingfisher prospect in exploration area 3A is being undertaken and flow testing of the shallow zones of this prospect has been carried out. It's expected that more discoveries are yet to be made given the expanse of the area yet to be tested for prospective development.

The government of Uganda has tried and is keen to develop an enabling legal framework for energy resources including petroleum. The basic laws governing the petroleum and natural gas sector are the 1995 Constitution and the Petroleum (Exploration and Production) Act, Cap 150. Besides, other laws of general application do apply to the sector, for example the National Environment Act, the Local

Governments Act, and the Land Act.<sup>17</sup> Following the recent exploration of huge oil reserves, and the draft Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 has been made. This bill makes several critical changes to the legal regime, with potentially far reaching impacts on the Ugandan petroleum sector.<sup>18</sup> It is however not clear whether this, besides the existing legal framework, will effectively regulate the growing oil wealth prospects and particularly help the country escape the social surprises that have tended to come along with this economically significant resource.

In many cases, especially in the developing world, dreams of progress and prosperity from oil discovery have been shattered by destructive social conflicts and long-lasting Lake Albert basin was licensed to Hardman Petroleum Africa (PTY) Ltd in economic decline but this has majority depended on the legal and policy efficacy for the resource. Not all resource-rich states suffer equally from the curse; some countries have been able to successfully manage the resource revenues and have used them for the good of the country. Norway and Canada are examples of developed countries that have avoided the phenomenon, while Chile, Malaysia and Botswana lead the way among developing countries.<sup>19</sup>

Resource related development liability has been particularly visible in Africa, a resource-rich continent where, compared to other parts of the world, legal and institutional structures seem to be weaker and intra-national ethnic heterogeneity is higher. Corruption in Nigeria, civil strife in Angola, Sierra Leone and the Democratic Republic of the Congo and extreme income inequalities in Gabon

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<sup>17</sup> Ministry of Energy and Mineral Development (MoEMD), *"Petroleum potential of the Albertine graben in Uganda, 2006 pg 22*

<sup>18</sup> RD Langenkamp, *"Comments on Uganda petroleum Bill, 2010 pg 1*

<sup>19</sup> RM Auty, *"Industrial Policy Reform In 6 Large Newly Industrializing Countries; The Resource Curse Thesis (1994) 22 WD 11-26*

and Equatorial Guinea can all be linked to the presence of natural resources in the countries.<sup>20</sup>

In this light, the recent oil find in Uganda is particularly interesting. Uganda, a landlocked East-African country with around 33 million inhabitants<sup>21</sup>, is among the poorest countries in the world. This is mainly the result of decades-long economic mismanagement by military governments in the 1960s and 1970s, but since the Movement (now NRM) government came to power in 1986, it has acted to rehabilitate the economy and to decrease income inequality.<sup>22</sup> The NRM vision marked a fundamental departure from past leadership methods.

The NRM reformulated the system of local government' and diffused the power of previous regimes among ten elected officials. In an attempt to prevent sectarian and divisive forces from becoming too powerful, the new government abolished the pluralist and competitive system of multiparty politics and instead introduced the "Movement" system under which elections have been held on the basis of individual merit: anyone could stand for office, but not on a party platform. At the same time, NRM restored the Kingdoms that had been abolished under the previous regime, albeit as cultural institutions without any political power. Except for hostilities between the Ugandan army and the Lord's Resistance Army (LRA), a religious paramilitary group that roamed around northern Uganda, the country has been relatively peaceful over the last decades.<sup>23</sup>

Alongside providing a reasonable level of internal peace, government has successfully reformed the economy by liberalizing the exchange rate (thereby

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<sup>20</sup> M. Basedau, "Context matters. Rethinking the resource curse in Sub-saharan Africa." (2005) *Global and area studies* 1/2005

<sup>21</sup> Uganda Bureau of statistics, *population estimates 2010: Uganda population secretariat report* (2010)

<sup>22</sup> Robert 1Kappe, Jann. L & S. Steiner, "Uganda's economic reforms and pro-poor growth (2004)

<sup>23</sup> J. Oloka-Onyango, "New Breed" leadership, conflict, and reconstruction of the great lakes regions of Africa" (2004) 29-52

removing massive implicit taxations on exports), ensuring fiscal discipline, keeping inflation in check and strengthening institutional structures such as tax collection service and the 'independent judiciary'. In addition, privatization and trade liberalization have been important pillars of Uganda's structural reform program. The results were impressive: between 1989 and 1999, agricultural production grew by 74%, poverty fell by 15% and the average real Gross Domestic Product (GDP) growth rate was 6.9%.<sup>24</sup>

Uganda's emergence from economic decline, conflict and oppressive governments to stability and economic growth has been achieved in absence of natural resource wealth. However, this may change over the coming decades. During the 2000s, large amounts of oil were found in the Albertine Graben of Bunyoro Kingdom, Western Uganda.<sup>25</sup>

In 2006, a joint venture consisting of an Irish oil Company, Tullow Oil and London-based, Heritage Oil successfully tested and confirmed the presence of commercially exploitable oil in the region. The field, which is 9000 square kilometres in size, holds an estimated 2 billion barrels of oil, a quantity that exceeded expectations. This is the largest onshore discovery made in sub-Saharan Africa ever.<sup>26</sup>

Tullow Oil and Heritage Oil acquired the necessary licenses for all exploration blocks by 2007, but Heritage soon sold all its assets in the country to Tullow for \$1.45 in order to invest in less challenging projects elsewhere.<sup>27</sup> Tullow, after searching for reliable partners, are in the process of finalizing a sale of two-thirds of the project, to be split equally between experienced French oil giant Total and the cash-rich and politically well-connected China National Offshore Oil

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<sup>24</sup> P. Collier, & R. Reinikka, "Introduction" 2001 pg 1-12

<sup>25</sup> See the sketch map below for the geographical scope of this study Section 1.5

<sup>26</sup> R. Pagnamenta, "Fresh Uganda oil fines: Africa's biggest, *The Times*, 2009 Jan 14<sup>th</sup>

<sup>27</sup> Herron, 'Uganda oil tax dispute turns nasty' (*Opgeroepen op*, WSJDN: 2010)

Company (CNOOC). This consortium plans to start a \$10 billion project to develop the reserves, which should allow commercial production to begin by the end of 2011.<sup>28</sup> All being well; Uganda can soon become a mid-sized producer. Conservative estimates predict -that the country will earn \$2 billion a year from oil by 2015.<sup>29</sup> The government insists that the oil revenues will not be used for the import of luxury goods or for well-paid sinecures, but to develop infrastructure and other sectors of the economy.<sup>30</sup>

If the likely social shortcomings that have famously been associated with the oil wealth can be avoided, this enormous windfall offers a genuine chance to lift most of Uganda's people out of poverty. The country's oil discovery will be significant and helpful for as long production enhances the welfare of all Ugandans. Nonetheless, the potential resource flaws that have been suffered elsewhere cannot be ignored. It is for this reason that this study investigated the legal, institutional<sup>31</sup> and social<sup>32</sup> aspects of Uganda's oil resource.

## **1.2 Statement of the Problem**

The government of Uganda has attempted to put in place a legal framework to regulate exploration, production, development and commitment of its Oil and Gas resources but the resource curse which has been seen in many developing countries is also likely to be in place. The resource curse is commonly used to

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<sup>28</sup> C Thompson, 'Tullow to Start SIObn Uganda Development' (Opgeroeopen op, the Financial Times.com 2010)

<sup>29</sup> As a reference point, government expenditures in the financial year 2009/2010 amounted to \$2.8 billion

<sup>30</sup> Y Mugerwa, 'IMF warns of Looming Oil Curse' Daily Monitor (July 12,2010)

<sup>31</sup> 'Institutional implications' as used in this study covers the likely management challenges for the recently discovered oil wealth in Uganda.

<sup>32</sup> "Social implications' has been used to symbolize socio-economic development challenges likely to result from this oil discovery.

describe resource triggered development shortcomings.<sup>33</sup> These are potential negative development outcomes that can result from Uganda's oil wealth. It has often been asserted that oil and/or natural gas, in particular, brings trouble; waste, corruption, debt overhang, deterioration, falling apart of public services, wars, and other forms of conflicts, among others. A common thread in explaining the resource liability, along with the other social explanations provided above, is the central role of government behavior. The key issue here is how governments administer resource wealth and how they use natural resource revenues.<sup>34</sup>

Oil and natural gas are a fundamentally valuable resource with which the current Uganda's political leadership has expressed readiness and the hope to deliver as reflected in a development promise, "we shall use this finite resource to create infinite capacity for Ugandans".<sup>35</sup> However, it can otherwise cause discontent. Experience shows that there are concerns even in the world leading oil producing societies; one of these is Saudi Arabia's regrets, ".....all in all, we wish we had discovered water"?<sup>36</sup> The gap between the promise of petroleum and the perversity of its performance in recent times is enormous. Countries dependent on oil as their leading export have performed worse than other developing countries on a variety of economic indicators; they have performed worse than they should have given their revenue streams and poverty within their borders has been exacerbated rather than alleviated over the past two decades.<sup>37</sup> In addition, the inconsistency between the expectations created by oil riches and the reality produced is a dangerous formula for disorder and war. Countries that depend upon oil exports over time are among the most economically troubled, the most authoritarian, and the most conflict-ridden states in the world

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<sup>33</sup> ADB, *Ibid* Note 10

<sup>34</sup> *Ibid*

<sup>35</sup> Yoweri Museveni, *The president of the republic of Uganda was emphasizing the good impact Ugandans can get from the recent huge oil explorations in the Albertine region.*

<sup>36</sup> Sheikh Ahmed Yamani, *Oil Minister of Saudi Arabia, 1962-86 decrying of their oil wealth*

<sup>37</sup> M. Basedau, *Note 20*



today.<sup>38</sup> If this predicament can occur elsewhere, then it is possible anywhere. Uganda is thus at a crucial crossroad- will it escape the oil related development drawbacks and embark on the road that will lift most of the 30 million plus inhabitants out of poverty, creating a "Norway on the Nile"? Or will the oil wealth invoke the curse, causing an "East African Niger Delta" whereby a small group will profit from the riches, leaving the majority of the population to live in a divided and poor country? Whether Uganda is vulnerable to suffer from the oil related shortcomings, is a subject of contention.

As such, this report examines the efficacy of the legal, institutional and social justice aspects put in place by Uganda to ensure that oil exploration in the land yields desirable results and to examine the loopholes which ought to be bridged if oil exploration in Uganda is to be an economic advantage in Uganda's development.

### **1.3 Purpose of the Study**

The study explored the implementation of the legal, institutional and social justice aspects of oil exploration in Uganda's Albertine Graben. Furthermore, this study identified the strengths and weaknesses/gaps in the existing law governing petroleum and its effectiveness.

### **1.4 Research Objectives**

- i. To analyze demographic characteristics of the respondents.
- ii. This study sought to determine the correlation between the selected legal institutions, social groupings and oil companies in urban and rural settings in relation with the legal framework relating to oil exploration in Uganda.
- iii. To determine the level of the implementation of the legal, institutional and

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<sup>38</sup> I Gary & TL Karl, *"Bottom of the barrel; Africa's oil boom and the poor; a case study by the Catholic relief service"*

social justice aspects of the oil exploration in Uganda.

### **1.5 Research Questions**

The research was based on the following questions;-

- i. To what extent has the oil and gas laws been developed in Uganda?
- ii. What are the institutional and social justice aspects of oil exploration in Uganda?
- iii. What are the available recommendations for the effective management of oil exploration through the legal and institutional framework?

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

This research sought to examine the legal and institutional framework as well as social and economic justice of the Uganda's oil and gas resources particularly the recently petroleum oil explorations in the Albertine Graben and how the legal and institutional framework was being implemented in the oil exploration in Uganda.

#### **1.6.1 Geographical Scope**

Geographically, the study covered the oil prospects in the Albertine region specifically in Waraga, Nzizi, Mputa and Kaiso Tonya and Kingfisher exploration area 3A as illustrated on the sketch map (See Appendix 1)

#### **1.6.2 Content Scope**

The study examined **the implementation** of the legal, institutional and social justice of Uganda's oil exploration, the strengths and weaknesses of these aspects, significant difference in the implementation of the legal, institutional and social justice between government (through the ministry of energy and mineral resources and the proposed Uganda National Oil Company (NATOIL)

Petroleum Authority of Uganda (PAU)) and the contractors Tullow and Heritage oil companies and cultures.

### **1.7 Significance of the Research**

The study will benefit the government of Uganda, the public and the International Oil Companies involved in exploration of oil in the Albertine graben to get a proper guidance on how best the legal framework and institutional framework can be applied for effective management of the oil exploration in Uganda.

The study is academic and shall be relied upon by the public for reference and other academic research activities.

The researcher's skills in research have been greatly strengthened and an award of academic excellence is expected by the researcher from this research.

### **1.8 Methodology of Research**

#### **1.8.0 Introduction**

This report sought to assess the extent to which Uganda will effectively manage the recently explored oil resource, as a legal responsibility, to enhance social development notwithstanding the potential resource curse usually associated with such natural resources. In order to accomplish this purpose a review of the perspectives and dimensions relating to the implications of the oil resource was made.

The legal framework and institutional perspectives as well as social justice and economic dimensions were analyzed as parameters for determining Uganda's preparedness to control the likely variation out of its oil discoveries. The legal framework that concerns regulation of this oil prospect was examined independently and firstly not only because it is supposed to promote transparency but it also underlies the success of all the other dimensions under review.

Each dimension was investigated using several indicators chosen in a conservative manner: only those indicators over which there is a reasonable consensus that they are linked to the resource curse were used. By analyzing each indicator, the dimensions of review can then be seen as a continuum on a scale ranging from "bad" to "good". The main question will then be answered by weighing all of the dimensions. The following section presents the relevant dimensions and the corresponding indicators. Subsequently, the sample population and data collection methods are described.

### **1.8.1 Research Design**

This study employed the descriptive survey design specifically the descriptive comparative and descriptive co-relational strategies. Descriptive studies are non-experimental researches that describe the characteristics of a particular individual, or of a group. It deals with the relationship between variables, testing of hypothesis and development of generalizations and use of theories that have universal validity. It also involves events that have already taken place and may be related to present conditions as to discover the causal relationship (descriptive correlation); differences (descriptive comparative) provide precise quantitative description

### **1.8.2 Dimensions and indicators**

The legal dimension was assessed first in respect of the indicators of the legal regime that can enhance transparency and effective regulation. Indicators here included the oil and gas legal framework, independence of the judiciary, transparency of the contracts, transparency of government revenues and press freedom.

The institutional perspectives present a dimension that is crucial in controlling the oil resource successfully. Without strong institutions technocratic and economic

solutions will not succeed. A government may set up a Sovereign Wealth Fund (SWF) in order to dampen price shocks, but if it is raided by rent-seeking individuals this will not prevent the resource curse. Therefore, the institutional dimensions will be assessed using the right indicators. The relevant indicators may include: democracy (political accountability); strength of the bureaucratic apparatus, the quality of property rights, and the opportunities for rent-seeking (corruption).

Then, the social justice and cohesion dimension will be assessed. Tensions are more likely to arise in countries that are already economically, politically, ethnically or religiously divided. Oil is a point based resource and is located in Bunyoro Kitara, a Kingdom that is situated at some distance from the powerful Buganda Kingdom which accommodates Uganda's capital, Kampala. Therefore, the prevention of horizontal and vertical inequalities was discussed. Furthermore, the likelihood of secessionist claims rather than rebellion, warlordism or state capture was investigated.

The economic dimension was assessed in the last part of the analysis. The discussion here focuses on 'what the money will be used for'. Will it substitute aid and will there be a SWF?

### **1.8.3 Sampling Technique**

For purposes of collecting primary data, a sample of the population likely to face greater effect and/or hoped to have reliable knowledge of Uganda's oil discovery in the Albertine Graben will be selected. Accordingly, 50 informants altogether was selected as the sample population. These were selected using the purposive sampling method. This means, respondents were eye-marked and sampled out-rightly by virtue of their knowledge and/ stake in the oil discovery in Bunyoro region.

In view of the nature of the target population where the number for both legal consultants in oil companies, administrators and expatriates in the ministry of mineral development are many, a sample was taken from each category.

#### **1.8.4 Data Collection Method**

##### **1.8.4.1 Documentary Review**

Documentary reviewed were used for collection of data from secondary sources. This was guided by the documentary review guide (Appendix I). Four types of secondary data were collected for this study. First, it was a range of academic literature that can be relatively easily accessed in libraries. The objective was to draw upon a wide range of sources so as to ensure that the story does not become one-sided. Second, it involved reports and briefings issued by authoritative NGOs and relevant government agencies were used to contribute to the analysis. Third, it involved the many local newspapers such as the New Vision and the East African which provided useful opinions, background information and references.

Fourth, governance indicators published by NGOs, think-tanks and risk-assessment companies were also used. These indicators rely on the opinions of experts, measure the outcomes of decision-making processes on the ground, or reflect the outcome of surveys. They are widely used for policy making as well as academic research purposes, and provide a good comparative measurement of Uganda's, quality of governance relative to other countries. The challenge here is the same as the academic literature: because different measurement methods are used, individual indicators are mainly useful when used in combination with, and complementary to each other. These indicators will be discussed here briefly. A well-

known indicator is the (Index of Economic Freedom (IEF) that is published by the Wall Street Journal and the Heritage Foundation, an American think-tank. The IEF covers 183 countries across ten component of "economic freedom" such as trade freedom, government size and freedom from corruption. It relies mainly on secondary sources such as Transparency International and other intelligence units, but also on official government publications. The Database of Political Institutions (DPI) and Doing Business (DB) are both developed by the World Bank. The former gives a more general overview of different democratic aspects, while the latter assesses 181 countries on ten different variables using more than 6700 surveys distributed amongst local experts such as consultants, lawyers and government officials. Another very useful indicator is the Afro-Barometer (AB). This indicator relies on individuals and firms as survey respondents.

Furthermore, the Polity IV Project (PIVP) published by Systemic Peace and Thomson Reuters and the Global Competitiveness Report (GCR) published by the World Economic Forum (WEF) will be used. In addition, The Worldwide Governance Indicators (WGIs), the largest aggregate governance indicator and maintained by the World Bank was also used.

Their database covers 212 countries over a period of 13 years (1996-2008) and bases its indicators on hundreds of specific and aggregated individual variables taken from 35 different data sources.

Finally, there is the HAG, published by the Mo Ibrahim Foundation. This index looks at several governance quality indicators, and measures the quality of the public goods and services that these governments provide. Their data comes from 29 sources, including think-tanks, several UN divisions, NGOs and the Bretton Woods institutions.

#### **1.8.4.2 Interviews**

In order to fill in any informational gaps, get additional expert opinions and to check some of the information against other sources, primary data in the form of interviews was collected. These interviews were conducted in Kampala. All the interviews were semi-structured in order to make sure that all topics of interest are discussed while at the same time avoiding steering the interviewee in a certain direction and giving the interviewee the time and opportunity to come up with additional topics. In order to avoid the problem of interviewer bias, questions were open and neutral as possible. Relevant information and a list of interview topics were provided at least 48 hours before the interview take place (See Appendix II for the Interview Guide). Anonymity was guaranteed to all participants in order to avoid response bias and in order to protect the privacy and security of the interviewees.

#### **1.8.3 Observation**

In order not to miss out any observable data, observation was also used for expel when observing the Environmental degradation around Lake Albert and the destruction on trees in Queen Elizabeth National Park. The researcher had to observe whether the waters of Lake Albert, GEORGE and Edward are at stake of pollution.

#### **1.8.5 Data Gathering Procedures**

1. An introduction letter was obtained from the School of Post Graduate Studies and Research, for the researcher to solicit approval to conduct the study from respective heads of different oil companies and ministries.
2. When approved, the researcher had to secure a list of the qualified respondents from I.O.C's and relevant ministry heads select through



systematic random sampling from this list to arrive at the minimum sample size.

3. The respondents were informed about the study and were requested to sign the Informed Consent Form (Appendix 3).

4. Reproduced more than enough questionnaires for distribution.

5. Select research assistants who would assist in the data collection; brief and orient them in order to be consistent in administering the interviews.

#### **A. During the administration Interviews**

1. The respondents were requested to answer completely and not to leave any part of the interview unanswered,

2. The researcher and assistants emphasized retrieval of the interviews within two weeks.

#### **B. After the administration of the interviews**

The data gathered was collated, encoded into the computer and statistically treated.

### **1.8.6 Data Analysis**

The data collected was analyzed and presented in form of a research report using qualitative analysis techniques. The open and axial coding processes were used for analysis of data from secondary sources. This was meant for effective organization and co-relation of secondary data variables of the parameters and/ or indicators used for this research. In addition, the descriptive method was used for qualitative interpretation of data, particularly the responses from the interviews. With this Descriptive method attempt will be

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reliability test was done to produce a credible measurement of the research variables.

3. Testing: The use of research assistants can bring about inconsistency in the administration of the interviews' in terms of time of administration, understanding of the items in the interview and explanations given to the respondents. To minimize this threat, the research assistants were oriented and briefed on the procedures to be done in data collection.

4. Mortality. Not all questions may be answered exhaustively or completely answered or even retrieved back due to circumstances on the part of the respondents such as travels, sickness, hospitalization and refusal/withdrawal to participate. In anticipation to this, the researcher reserved more respondents by exceeding the minimum sample size. The respondents were also reminded not to leave any item in the question unanswered and were closely followed up as to the date of retrieval.

5. Financial constraints also hindered the researcher to compile all the data in time as allocated in the time schedule.

## **1.9 Literature Review**

### **1.9.0 Introduction**

Primarily developed, industrialized countries and the transition economies of the former Soviet Union and Eastern Europe, in the countries of the Pacific Rim and in most of the developing world people generally think of oil and electricity as the principal sources of their energy needs. Increased because of new high breeds and the rise in use of natural gas, buses and cars primarily depend on gas (petrol), industry and homes depend on electricity.

According to geologists and other scientists<sup>39</sup> it is believed that nearly all hydro carbon (liquid and gas) deposits within the earth are strongly associated with sedimentary rocks. Furthermore, most geologists accept that petroleum was formed from organic substances though a competing theory that hypothesizes a non-organic origin exists.

Just after the Second World War and during the period of decolonization, much hope was placed on the promise that natural resources could assist in developing many of the newly independent states in the Third World. It was conventional wisdom that natural resource endowments would enable developing countries to make the transition to industrial "take-off", just as they had done for resource-rich countries in the Western world such as Australia, the United States and Canada.<sup>40</sup> During the 1950s and 1960s, a minority of scholars and radical economists-challenged these views but most of these early attempts were only moderately successful at explaining the relationship between natural resources and poor development results.<sup>41</sup>

Thus, this study assesses Uganda's readiness for a conscious, just and effective exploitation of the recent oil discovery. This literature can broadly be divided into three streams: legal and institutional perspectives; social dimensions, including concerns of social justice and cohesion, and the economic dimensions.

For the purpose of clarity, this literature review will follow this division. In reality however, there are strong interactions between the legal, institutional and socio-economic problems discussed in this literature review.

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<sup>39</sup> *Standard handbook of petroleum and natural gas engineering*, 242-256 (William C. Lyons, Editor 1996)

<sup>40</sup> A. Roser, "Escaping the Resource Curse, (2006) 557

<sup>41</sup> One of the more useful early theories was developed independently by Raul Prebisch (1950) and H. Singer (1950) and became known as Singer-Prebisch thesis. The hypothesis states that the structure of the global economy put developing countries that were dependent on natural resource exports at a serious disadvantage because the Terms of Trade between the Primary products and Manufactured goods tends to deteriorate over time causing the resource exporting country to be able to import less for a given level of exports.

### 1.9.1 General Legal and Institutional consideration:

The assertion of sovereignty over natural resources is widely accompanied by the creation of oil companies owned entirely by the state. The US is among the tiny minority of oil producing countries that has never had such NOC's. These national oil companies have been created as a vehicle for participating with new ventures with foreign companies e.g. China's National Offshore Oil Corporation (CNOOC) was created specifically to corporate with foreign companies that were being offered new licenses in China's off shore waters.<sup>42</sup>

In acquiring territorial sovereignty the following have to be observed, Occupation, Title (sovereignty to territory), Accretion, prescription, voluntary and involuntary cession by conquest. Having the above indicators, the state is believed to be owner of the mineral resource.

Cases in relation to the above indicator include;

1. *The Eritrea Ethiopia Boundary Commission Decision Regarding Delimitation Of The Border Between The State Of Eritrea And The Federal Democratic Republic Of Ethiopia (The Hague) 13<sup>th</sup> April 2002.*<sup>43</sup>
2. *The Special Case of Antarctica*
3. *North Sea Continental Shelf Cases (Federal Republic of Germany V. Denmark: Federal Republic of Germany V. The Netherlands)*<sup>44</sup>

Following the discovery of substantial oil deposits in Uganda, expectations are high that oil revenues will lead to economic prosperity and improved standards of living. However, if not handled properly, oil revenues can exacerbate negative development outcomes. Overcoming this resource liability requires laws and

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<sup>42</sup> Zhiguo Gao, "A new star among state oil companies" Pg. 12

<sup>43</sup> [Http://www.un.org/new links/eebcarbitration](http://www.un.org/new links/eebcarbitration)

<sup>44</sup> International court of justice, judgment of 20<sup>th</sup> February 1969

institutions that foster transparency and accountability.<sup>45</sup> It is for this reason that the review covers the legal dimension, particularly the international and regional legal framework and efforts as a notion that not only underpins this study but also provides a yardstick for analyzing Uganda's preparedness to constructively exploit its delicate but precious oil discovery.

All countries require that an international oil or service company operating in its territory function through a subsidiary created under the laws of that country, in other instances, the dispute will involve issues of private or public international law. A sale of crude oil may be subject to the UN Convention for the International Sale of Goods rather than the law of a specific country.

Petroleum law, like any other international transactions can primarily be governed by a number of laws like domestic law such as common and civil law, Islamic law, treaties and related agreements, law of civilized nations and related sources of international law may be used to govern petroleum transaction.

In the US for example the extra territoriality of domestic laws in commercial law, the US Tax Code, Federal Antitrust Laws, the Foreign Corrupt Practices Act, Federal Anti-Boycott Court Law, various federal trade sanctions laws, federal security laws, including the Sarbanes-Oxley Act of 2002, the Alien Tort statute and others are some of the domestic laws regulating the oil exploration and production.

### **A. International regulations of offshore petroleum operations**

Technology in the drilling of oil after second world war had progressed to the point where drilling offshore beyond the shallow coastal waters became feasible, this

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<sup>45</sup> F. Tumusiime, 'Is Uganda Ready for Oil Revenues? Governance of Africa's Resources Programme' (2011)

means petroleum operations had moved beyond the limits of territorial sea and coastal state jurisdiction.

In 1945 the US tried to solve the problem by simply unilaterally claiming the sovereignty over the resources of sub soil and the sea bed of the continental shelf beneath the high seas but contagious to the costs of the US.<sup>46</sup>

## **B. Preparatory work on convention**

The Truman proclamation triggered a series of similar unilateral statements and open doors to many of the following conventions. And it was further adopted by other coastal states, Latin America and Middle East Gulf in particular.

The 1958 convention provided the legal basis for undertaking the offshore petroleum operation beyond territorial waters of the coastal state within the limits of its continental shelf.<sup>47</sup>

*1. The 1970 UN general assembly resolution 2749(XXV), where the 1958 convention was meant to regulate the natural resources operation carried out on the continental shelf.*

*2. The 1982 convention on the law of the sea which was the outcome of the third UN conference of the law of the sea (UNCLOSIII)<sup>48</sup>*

*3. The 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping*

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<sup>46</sup> The 1945 Truman proclamation

<sup>47</sup> Article 1 of the convention

<sup>48</sup> The conference had been convened for the purpose of giving effect to the principals contain in the UNGA 2749(XXV)

*from Ships and Air Crafts*

### **C. Charters and inter-state agreement related to petroleum**

Under national petroleum legislation the ownership of petroleum resources in situ within the land territory and territorial waters of the state is vested in the state concerned, except where mineral rights are acknowledged observed are the following agreements and charters;

- 1. The European Energy Charter treaty<sup>49</sup> signed at The Hague on 17<sup>th</sup> December 1991 by the European community and forty-nine countries to undertake the in the fields and investment in Energy production.*
- 2. The 1994 Energy Charter Treaty as observed in article 1, 3, 6 (1) ,7,8, 9, 10 and other articles.*
- 3. The interstate joint agreement included the 1959 treaty of Antarctica and the 1991 protocol in article I, IV and other ascending articles.*
- 4. The 1962 agreement between Netherlands and Germany , the 1989 agreement between Indonesia and Australia and the 1974 Stafford agreement between the government of United kingdom of Great Britain and Northern Ireland.*

The above international legal framework provides a basis for effective international and domestic regulation of developments that may arise in the exploitation of national resources such as oil and gas. It is therefore relevant for local legal systems designed for controlling relationships between government and multinational oil companies in a host country, and preserving inter-territorial harmony, social cohesion and human rights in the event of oil discovery and/or production.

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<sup>49</sup> *The 1991 European energy charter*



The fact that international oil companies are obliged to work within a number of legal regimes to exploit oil resources largely 'internationalizes' the legal requirements of oil exploitation, as companies are required to comply with multiple legal systems in numerous jurisdictions.<sup>50</sup> International Oil Companies (IOCs) are Multinational Corporations (MNCs) usually preferred for oil exploration, production and sometimes development especially in the developing world.<sup>51</sup> Like most other mining projects, oil and natural gas projects are highly capital intensive and require a significant up-front investment yet developing countries often lack this to develop their oil resources. Therefore such countries look at foreign oil organizations which can provide the capital, technology and trained personnel required.<sup>52</sup>

Uganda has contracted several MNCs for oil exploration and these include Heritage Oil and Gas Ltd of the United Kingdom, Hardman Petroleum Africa (pty), a subsidiary of Hardman Resources Ltd of Australia, Tullow Oil of Ireland, Neptune Petroleum (Tower Resources) of U.K and Dominion Oil of United Kingdom.<sup>53</sup> Among the companies still mainly active is Tullow Oil and others like Total France and CNOOC are in the process of being incorporated in the ongoing oil discovery in the country including the Albertine basin.<sup>54</sup>

Oil exploration and development companies need to comply with the legal regime and regulatory framework within the country of activity, as well as the legal

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<sup>50</sup> Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources: A Critical Functional Analysis* (2010) " E E Smith and others, *International Petroleum Transactions* (2010)

<sup>51</sup> E Smith and others, *International Petroleum Transactions*(2010)

<sup>52</sup> *Ibid*

<sup>53</sup> E Kasimbazi. *Legal and Environmental Dimensions of Oil Exploration in Uganda Licensed companies to explore oil in Uganda' Analysis of Uganda's Oil discovery* (2010) 5

<sup>54</sup> C Thompson, *Tullow to Start \$10bn Uganda Development'* (Opgeroepen op, the Financial Times.com 2010)

regime operational within the country of corporate registration. The level of regulation in oil activities for many countries is influenced by the interaction between the state and large international oil companies that wield considerable power. The regulation of oil is largely related to the relationship between the international oil companies and the State. This relationship exists in all petroleum producing states, and influences the regulatory system in those states.<sup>55</sup>

Of great concern in the relationship between government and such companies are the transactions between the two parties and the extent of public interest promotion in a producing or host country. This is because IOCs have traditionally preferred direct equity investment in petroleum and gas reserves because it assures the multinational of a significant degree of control over management of the enterprise in the foreign country.<sup>56</sup> In many cases such Multinational Oil Corporations (MNOCs) are preferred in contract arrangements that mainly involve production sharing arrangements. This calls For Production Sharing Agreements (PSA) with host countries.

In a production sharing arrangement, the MNOC typically finances all exploration and development costs. If no oil is found in commercial quantity, the MNOC bears all the risks associated with exploration and development. If oil production commences and profitable extraction is achieved, the profit is shared between the company and the State Oil Company (SOC)/government according to an agreed formula. That is why this option is much preferred by MNOCs. This arrangement gives them significant autonomy in operations and there is rapid recovery of upstream investment. Increasingly, oil-, prospecting or oil-producing countries favour PSA's since this arrangement eliminates the need for the

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<sup>55</sup> T Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources: A Critical Functional Analysis*(2010)

<sup>56</sup> E. Smith & Others, *International Petroleum Transactions* 2010

government to commit scarce funds upfront for the exploitation of its oil and gas resources.<sup>57</sup> Uganda has adopted a similar arrangement.

The PSA is a complex contractual structure. In theory, the state has ultimate control over the oil, while a private company or consortium of companies extracts it under contract. In practice, however, the actions of the state are severely constrained by stipulations in the contract. Particularly the first proportion of oil extracted is allocated to the company, which uses oil sales to recoup its costs and capital investment - the oil used for this purpose is termed 'cost oil'. There is usually a limit on what proportion of oil production in any year can count as cost oil. Once costs have been recovered, the remaining 'profit oil' is divided between state and company in agreed proportions. The company is usually taxed on its profit oil. There may also be a royalty payable on all oil produced. The PSA leaves the oil legally in the hands of the state, while the foreign companies are compensated for their investment in oil production infrastructure and for the risks they have taken in doing so.<sup>58</sup>

When first introduced in Indonesia in the 1960s, many in the oil industry were initially suspicious of Indonesia's move. However, they soon realized that by setting the terms the right way, a PSA could deliver the same practical outcomes, with the advantage of relieving nationalist pressures within the country.<sup>59</sup> However it is not clear if Uganda has purposefully negotiated a PSA in public interest. Whether there are gaps in existing legal and regulatory framework visa-a-viz state-MNC oil contracts is a question of contention.

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<sup>57</sup> African Development Bank (AfDB), *Maximizing the Benefits from Africa's Oil and Gas Resources: African Development Report (2007)*

<sup>58</sup> L. Taimour & M. Minio, *Contracts curse, Uganda's oil agreements place profits before people*, report by platform 2010

<sup>59</sup> *Ibid*

Proper regulation is imperative to avoid contract related legal battles as has been witnessed elsewhere. States and Oil companies have had disputes leading to legal court cases, for example; ***Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911)***.<sup>60</sup> This was a case in which the Supreme Court of the United States found Standard Oil guilty of monopolizing the petroleum industry through a series of abusive and anticompetitive actions. The court's remedy was to divide Standard Oil into several competing firms.<sup>60</sup>

Public international law specifies territorial sovereignty regimes,<sup>61</sup> which are significant for promoting independence, the right to resource development or exploitation and peace amongst states. One of such regimes is territorial sovereignty. This is the most common among countries including Uganda. Territorial sovereignty extends over land territory, the territorial sea appurtenant to the land, and the seabed and subsoil of the territorial sea.<sup>62</sup>

In case of trans-boundary natural resource wealth, such as the Uganda- DRC cross border oil reserves, the international law provides that countries can adopt cooperative measures in case of resource development. This can be done through either unitization agreements or Joint Development Zones (JDZ). As practical matter, states must cooperate with each other if they are to accomplish certain resource objectives and this normal because nature does not respect boundaries.<sup>63</sup>

Suppose Petroco, the national oil company of Petroland, has drilled wells into an oil reservoir that straddles the boundary between and its neighbouring state, Oilstan. Although the wells are bottomed beneath Petroland's territory, some of the oil production is being drilled from beneath Oilstan. Should Oilstan have the

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<sup>60</sup> A.H Walker, *The unreasonable obiter-dictum of the Chief Justice White of the standard oil case, a critical review* (New York 1911)

<sup>61</sup> Ian Brown, *Principles of Public International Law*, 1990

<sup>62</sup> E. Smith, *Ibid* Note 56

<sup>63</sup> E. Smith, *Ibid* Note 56

right to share in the oil being produced by Petroco?-If countries adjudicate their dispute over the oil produced, how should the tribunal rule?<sup>64</sup>

In the US, a similar circumstance among neighboring petroleum rights owners would be resolved by the common law "Rule of Capture".

See, for example, *Kelly v. Ohio Oil Co.*, 49 N.E. 399 (Ohio 1897) and *Barnard v. Monongahela Natural Gas Co.*, 65 A. 801 (Pa 1907). This rule provides that land owners are entitled to all oils or gas produced by a well bottomed on their own land, regardless of the oil's original location. In other words, in the above example, Petro would have no liability for drilling oil from Olistan, and Olistan's remedy would be self-help- drill of wells on the side of its border in an effort to prevent the drainage and perhaps to drain oil from Petro-land.<sup>65</sup> Considerate neighborly and resource sharing efforts are imperative for preserving regional cohesion and cordial relation among neighboring states and for internal peace and development.

If international law does not recognize the Rule of Capture, what options are available to a state wishing to authorize development on its side of the trans-boundary oil reservoir? The most obvious option is unitization. Unitization is the cooperative exploitation of a reservoir by all interest owners so that the reservoir is developed as if it were owned and controlled by a single entity. Trans-boundary unitization requires a treaty agreement between the affected host governments as well as an agreement between the IOC investors and a program of cooperative development, both of which must be approved by the respective government.

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<sup>64</sup> E. Smith, *Ibid* Note 56

<sup>65</sup> I. Brown, *Ibid*

Host countries usually reach separate agreements for each trans-boundary reservoir, but in 2005 Norway and UK entered into a framework treaty to facilitate future utilizations of trans-boundary reservoirs.<sup>66</sup> The I.C.J in DRC V. Uganda,<sup>67</sup> the Ugandan government was held liable for armed conflicts and violation of international humanitarian law and international human rights in the areas of Ituli-Eastern DRC and was compelled to pay damages to Congo. Whether Uganda has considered adopting an appropriate procedure to avoid unnecessary confrontations with the neighboring DRC oil exploration is a question of research.

Natural resources such oil enable the local people to ensure a material foundation for their well-being<sup>68</sup> which is understood to be a full, integral life based on their identity, dignity and wisdom in harmony with Mother Earth. It is a balanced life based on a world view of equality that incorporates human, ethical and holistic dimensions and a vision of human beings living in harmony with nature.<sup>69</sup> Thus, the UDHR sets precedence for this development right among others and has provided the basis for subsequent international human rights instruments that form binding international human rights law.

Relevant to social expectations from natural resources such as oil and gas include; the International Covenant on Economic, Social and Cultural Rights.<sup>70</sup>

The ICESCR commits its parties to work toward the granting of economic, social, and cultural rights to individuals, including the right to health, the right to

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<sup>66</sup> JW Lang, DF Asmus, *"Unitizing oil and the gas fields around the world; A comparative analysis of national laws and private contracts"*, (2008) 14-15,

<sup>67</sup> Judgment passed on 19<sup>th</sup> December 2005

<sup>68</sup> The notion of "well-being" is a translation of the expression *Sumak kasway* from Kichwa language

<sup>69</sup> United Nations Economic and Social Council, 'Study on indigenous peoples and corporations to examine existing mechanisms and policies related to corporations and indigenous peoples and to identify good practices' Follow-up to the recommendations of the Permanent Forum: economic and social development (2011)

<sup>70</sup> R Provost, *"International Human rights and humanitarian law"* (2002) pg 8

education, and the right to an adequate standard of living.<sup>71</sup> Other specific international normative frameworks that could also affirm the rights of people to socio- economic justice and benefit from such a natural resource include the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107)<sup>72</sup>

The state of the environment is a major worldwide concern. Sustainable development in a global economy requires a delicate balance between industrial development and preservation of the environment to ensure continued economic growth whilst preserving ecological stability for the benefit of future generations. The exploitation of oil and gas reserves has not been without ecological side effects. Oil spills, damaged land, accidents, fires and incidents of air and water pollution have all been recorded at various times and places.

Environmental issues such as contaminated soil, air and water are seen as serious threats in industrialized countries.<sup>73</sup> In recent times the social impact of operations, especially in remote communities, has also attracted attention as reflected by many disputes such the *Ogoniland case*.<sup>74</sup>

Environmental issues rarely respect geopolitical boundaries and as such require international solutions. However, global demands for more comprehensive environmental regulations, such as the United Nations Framework Convention on Climate Change and its Kyoto Protocol to address global warming are often perceived by states as inappropriate interference with sovereign authority; as

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<sup>71</sup> UN, "UN treaty collection: International covenant on economic, social and cultural rights

<sup>72</sup> *Ibid*, Note 68

<sup>73</sup> L Stirling & G. Crowhurst, "Environmental laws and Disputes in the oil and gas Industry: Decommissioning in the North sea" (2008)

<sup>74</sup> *The Social and Economic Rights Action Center for Economic Rights VS. Nigeria*, ACHPR, Communication 155/96 (2002)

interference with efforts to monetize natural resources and alleviate conditions of poverty; or as a potential hindrance on economic development.<sup>75</sup>

Notwithstanding, the increasing awareness about the risks of groundwater contamination, deforestation, soil erosion, global climate change and depletion of stratospheric ozone, species extinction and other changes impacting our environment, has led to a dramatic, albeit somewhat uncoordinated expansion of international agreements and treaties to address the environmental problems that are global in effect. From an international perspective, states may be bound by these conventions, depending on their adoption and implementation into national legislation and customary law. Conventions create obligations and norms of behaviour for the states which are party to them. In principle conventions are binding only on the signatory states but where a large number of influential states sign a convention, their explicit acceptance of certain rules of behaviour may have a strong law making effect. Rules of customary international law arise where there is a general recognition among states that certain practices and norms of behaviour are obligatory.<sup>76</sup> Uganda's compliance of its oil and gas legal regime to universal environmental preservation standards also deserves scrutiny.

People's relationship with their lands and territories, especially among the indigenous peoples, is profound; it constitutes a fundamental part of their identity and is deeply rooted in their culture and history, transcending the material to become a relationship that is spiritual and sacred in nature. For indigenous peoples, land is the source of all life. This relationship extends to; inter alia, their natural resources, bodies of water and forests and biodiversity. In the mindset of

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<sup>75</sup> *Bernie & Boyle, International law and the environment, The Oxford Univ. Press, 2009*

<sup>76</sup> *Ibid* Note 72



indigenous peoples, land and territory are "the vital space" and guarantee the existence of present and future generations.<sup>77</sup>

Besides land rights, indigenous attach importance to their cultural values. Thus, proper and appropriate regulation is imperative especially in case of extension natural resource exploitation that most times attract foreign companies; international oil companies. Large-scale industrial projects involving natural resource exploration, which determines economic development, are elaborated and realized in nearly every state in the world.

These projects affect indigenous peoples by reducing their traditional management systems, sacred places, pastures and hunting and fishing grounds, thereby undermining their economic, cultural and spiritual life. The well-being and future of indigenous peoples depend directly on the policies and practices of states and of international institutions and organizations which incorporate sound legal regulation and the environmental protection.<sup>78</sup>

Transnational corporations that engage in resource exploitation therefore need to consider applying international standards such as social responsibility and the rights of indigenous peoples in their projects. The United Nations Declaration on the Rights of Indigenous Peoples (UNRIP) and International Labour Organization (ILO) Convention No. 169 direct States to recognize the inherent rights of indigenous peoples to their lands, resources and culture and do not limit these rights to the spheres of traditional economy and culture. These instruments recommend that states cooperate with indigenous peoples and that they undertake genuine consultations with them regarding any project affecting their ancestral lands, territories and resources.<sup>79</sup> Whether the Uganda government has provided legally

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<sup>77</sup> *Ibid*, Note 68

<sup>78</sup> *Ibid* Note 68

<sup>79</sup> *Ibid*

incorporated the inherent interests of the local and traditional communities such as the Banyoro in areas of oil and gas exploration is still an issue of debate and not well documented.

Besides the international legal process that promote the people's rights socio-economic development in local states, similar regional efforts have been made to promote similar interests either through regional legislation or appropriate institutions.

The UDHR is not culture-specific and thus regional systems of international human rights law, such as the African Charter on Human Rights and People's Rights (ACHRPR), that supplements and compliment national and international human rights law have been established. The ACHRPR is aimed at protecting and promoting similar human rights in the African continent particularly in individual states. This is very relevant to natural resource exploitation; Uganda' soil discovery, which should fairly and sufficiently benefit all in the country.<sup>80</sup> The ACHRPR is also supplemented by regional efforts such as NEPAD.<sup>81</sup>

One of the "immediate desired outcomes" of NEPAD is that "Africa adopts and implements principles of democracy and good political, economic, and corporate governance, and the protection of human right becomes entrenched in every African country." For this purpose, NEPAD set up the African Peer Review Mechanism (APRM), an innovative tool aimed at peer review of governance benchmarks and design of action plans for improvement. The APRM process is designed to help participating countries develop and promote the adoption of laws, policies, and

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<sup>80</sup> B Tamara, 'Human Rights Policy Implementation in the Oil And Gas Sector: Translating Policy to Practice' (2004)

<sup>81</sup> African Development Bank (AfDB), *Maximizing the Benefits from Africa 's Oil and Gas Resources: African Development Report* (2007)

practices that lead to political stability, high rates of economic growth, sustainable development, and continental economic integration.<sup>82</sup>

With proper regulation some countries have been effective in managing their natural resource exploitation and thus provide good example for Uganda that is soon to emerge a new entrant in the oil producing world. One of such countries is Norway. The Norwegian regulatory framework is exemplary for a number of reasons; its regulatory framework has been developed over short time, but Norway is a state with record experience in regulating exploitation of natural resources and foreign investments in natural resource exploration in the country.<sup>83</sup>

Norway's system of oil resource management has been recognised by a number of institutions as best practice.<sup>84</sup> It is acknowledged by the International Energy Authority (IEA)<sup>85</sup> and scholars<sup>86</sup> that the Norwegian system of petroleum regulation for sustainable development of resources represents best practice.

Norway represents a 'potent example of the successful development of the petroleum sector and surrounding industry'<sup>87</sup>, since it successfully exploited petroleum resources through State participation in the exploitation of petroleum. It has exerted State control over petroleum licensing, activities and

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<sup>82</sup> *Ibid* Note 80

<sup>83</sup> **T Hunter**, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources'. A Critical Functional Analysis*(2010)

<sup>84</sup> Organization for Economic Cooperation and Development, 'Economic Survey: Norway'(2QQ5) 11

<sup>85</sup> International Energy Agency (IEA), *IEA Commends Norwegian Energy Policy For Exemplary Management of Resources and Wealth, but Outlines challenges on Climate change and Energy Security'* (2005)

<sup>86</sup> R Gordon and T Stenvoll, *Statoil: A Study in Political Entrepreneurship*, James A Baker III Institute for Public Policy, Rice University (2007)

<sup>87</sup> *Ibid*

oil companies, whilst transforming the economy and creating a new petroleum industry.<sup>88</sup>

If there are cases of good practice Uganda has considered or is to espouse and that comply with international and national norms and are in line with the principles and norms of corporate social responsibility, that's encouraging. This however remains contentious since there is no clearly documented evidence. More so there is still concern because the codes of conduct are designed to focus on the interests and rights of the corporations, which use global normative frameworks to protect their interests and consolidate their rights within national legislation. This reflects the inclination of States to protect the interests of corporations investing in their countries.<sup>89</sup> The extent to which Uganda's existing laws and legislation will bring transparency and accountability to Uganda's oil industry is unclear.

#### **D. Institutional Dimension**

The 1974 Paris convention for the prevention of marine pollution from land based sources as amended by the protocol of 1986 where petroleum operations, from offshore mining have been achieved by treating.

In Uganda's Oil and Gas Policy of 2008 are not yet in place and whether the proposed institutions will function effectively and independently is not clear. Moreover, as oil extraction is new to Uganda, insufficient capacity exists among key stakeholders generally. The Oil and Gas Policy of 2008 provides for the establishment of institutions to manage oil activities: an oil and gas policymaking and monitoring body (Directorate of Petroleum in the Ministry of

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<sup>88</sup> *Ibid*

<sup>89</sup> *Ibid*

Energy and Mineral Development), a regulatory agency (the Petroleum Authority of Uganda, a transformed Petroleum Exploration and Production Department) and a separate commercial entity (the National Oil Company -NATOIL).<sup>90</sup>

The policy still recognizes the relevance and importance of other government agencies and ministries: The Ministry for Justice and Constitutional Affairs (MJCA); Ministry for Finance, Planning and Economic Development (MFPED); Ministry of Local Government (MLG); The Bank of Uganda (BoU); Uganda Revenue Authority (URA), and The National Planning Authority (NPA).<sup>91</sup> A new regulatory authority will be set up, along with a national oil company to handle the state's commercial interests. The policy describes in some detail the role of different government authorities in the implementation of the oil and gas policy.<sup>92</sup> However, the involvement of civil society and cultural institutions that can contribute to holding the different players accountable and participate in getting the voices of the poor into the design, monitoring and implementation of programmes is not well documented under the national laws. More so it is not clear whether there is enough explanation of the forms of participation or management systems of conflict envisaged in the oil exploitation process.

Analysis of the institutional framework for public resource development; oil exploitation is necessary as natural resource wealth comes along with management challenges and negative temptations. Early research on the resource mischief focused heavily on economic dimensions, but in the 1990s attention shifted to

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<sup>90</sup> F Tumusiime, 'Is Uganda Ready for Oil Revenues?' *Governance of Africa's Resources Programme* (2011) Policy Briefing 28/2011

<sup>91</sup> *Ibid*

<sup>92</sup> C Schwarte, 'Public Participation and Oil Exploitation in Uganda: Key highlights in sustainable agriculture and natural resource management' (2008) *gatekeeper* 138/2008

institutionalism as it was increasingly recognized that governments and state officials play a large role in the resource sectors of almost all developing countries.

Although this dimension is harder to study empirically because of the lack of institutional and political quantitative indicators,<sup>93</sup>

The related literature contains several studies that indicate that there are institutional shortcomings, mainly political, of resource liability.

According to empirical evidence, there is a strong negative impact of natural resource dependence on democratic governance, especially when state institutions are already weak and budget procedures lack transparency. Based on a dataset containing 141 countries over the period 1950-1990 and controlling for GDP, human capital, geography and other possible determinants, it was found out that a 1% increase in the ratio of primary exports to GDP increases the probability of authoritarian government by nearly 8%.<sup>94</sup> In another article that empirical evidence suggests a robust negative correlation between the existence of a sizable natural resource sector and the level of democracy in Africa.<sup>95</sup> Similarly from a panel study of over 100 countries from 1960 to 1995, it was found out that for a given standard of living the propensity for democracy tends to fall with a greater reliance on natural resources.<sup>96</sup>

Analysis of data from 113 countries between 1971 and 1997 reveals that the claim that 'oil and democracy do not mix' is both valid and statistically robust: "oil does greater damage to democracy in poor states than in rich ones, and a given rise in oil exports will do more harm in oil-poor states than in oil-rich ones".<sup>97</sup> This

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<sup>93</sup> D. Ledarman, & W. Maloney, *Natural Resources neither curse nor destiny*, (2007)

<sup>94</sup> L. Wantchekon, 'Why do resource dependent countries have authoritarian governments?' (1999) 99

<sup>95</sup> L. Wantchekon & N. Jensen, *Resource wealth and political regimes in Africa* (2004) 816-841

<sup>96</sup> RJ Barro, 'Determinants of Democracy (1999) 158-183.

<sup>97</sup> M Ross, 'Does oil hinder democracy?' (2001a) 356

harmful influence is not restricted to the Middle East and holds for non-fuel mineral exporters as well. In what was coined the First Law of Petro-politics, it was figured out that "the price of oil and the pace of freedom always move in opposite directions in oil-rich petrolist states".

During the mid-2000's, considerable disagreement arose over whether this relationship is really causal. Some scholars<sup>98</sup> argued that there is a problem of endogeneity because exports depend on domestic consumption and both income and consumption may be correlated with democracy. However, after controlling for this effect Tsui affirms the causality and estimates that discovering 100 barrels of oil pushes the democratic level (as measured by Thomson Reuters' Polity IV Index) 30 percentage points down.<sup>99</sup> Furthermore, roughly speaking, a permanent increase in oil price by \$1 implies -1 percentage point decrease in democracy.

These adverse political effects of mineral resources are not limited to developing countries; a recent study found that even in the United States, an increase in state dependence on coal of one percentage point is associated with a rise of around half a percentage point in the governor's margin of victory in these states.<sup>100</sup> Finally, it

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<sup>98</sup> M Alexeev and P. Conrad, *The Elusive Curse of Oil* (2005) and M Herb, 'No Representation without Taxation?

*Rents, Development and Democracy*' (2005) 297-317.

<sup>99</sup> KK Tsui, 'More oil, Less Democracy. Evidence from Worldwide Crude Oil Discoveries' (2010) 251-284

<sup>100</sup> E Goldberg, E Wibbels and E Mvukiyehe *Lessons from Strange Cases: Report on Democracy, Development and the Resource Curse in the U.S. States, 1929-2002*. (2005).

was found out that resource-rich countries spend between 2 and 10 times more on their militaries than do other countries, even in the absence of (civil) war.<sup>101</sup>

Not only are governments in resource-rich countries more likely to be authoritarian and unaccountable, they are also more likely to be corrupt. Evidence shows that in oil-producing countries, the oil booms of the 1970s were generally associated with a sharp drop in the efficiency of public investments.<sup>102</sup> This indicates a rise in corruption levels. A similar conclusion reached after investigating a wide range of commodity booms in developing states.<sup>103</sup> It was also found out that there is remarkable correlation between a widely used measure of corruption and natural resource abundance.<sup>104</sup> Evidence showed that natural resource abundance creates opportunities for rent-seeking behavior and is therefore a major determinant of corruption.<sup>105</sup> Rent-seeking has been defined as "the activities of people who reap what they do not sow".<sup>106</sup>

Considering this empirical evidence, it is possible that the discovery and/or production of natural resources, especially in substantial amounts is not only potentially significant for social development but may actually compromise

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<sup>101</sup> M Humphreys, JD Sachs and JE Stiglitz, *Escaping the Resource: What is the Problem with Natural Resource Wealth?* (2007)

<sup>102</sup> A Gelb, *Oil windfalls: Blessing or curse?* (1988)

<sup>103</sup> P Collier and J Gunning, *Trade shocks in developing countries: Africa* (Oxford University Press, Oxford 1999).

<sup>104</sup> J. D., Sachs, & A. M. Warner, 'Natural resource intensity and economic growth' In J Mayer, B Chambers, & A Farooq, *Development policies in natural resource economics* (W9) 13-36

<sup>105</sup> CA Leite and J Weidmann, 'Natural Resources, Corruption and Economic Growth' (1999) 99/85

<sup>106</sup> A Smith, *An inquiry into the nature and causes of the wealth of nation* (The Modern Library, New York 1994)



democracy and transparency. In this case the rule of law in an institutional sense may be at jeopardy and so is social justice. Bearing in mind this resource curse elsewhere, the institutional implication Uganda's recent oil discoveries in the Albertine region is a subject of debate.

Nonetheless, the natural resource treasure can be constructively managed for sound ethical considerations as regard institutional or political commitment in the interest of society. There is a wide variety of suggestions on how to overcome the political dimension of the resource curse. One of these includes good governance based on the rule of law, transparency and a well-functioning civil society. These are prerequisites for the effective utilization of resource wealth to alleviate poverty and prevent conflict.<sup>107</sup>

Although "it is much faster and easier to build a pipeline than an efficient and representative state"<sup>108</sup> and corporations, it is possible to address the basic historic deficits that lead to resource management inconsistencies. Particularly, this is likely by overcoming formational, monitoring and participation deficiencies. Only then, more technocratic and economic reforms can function appropriately. Monitoring and participation are only possible when information is available and regulation is strictly adhered to. Transparency is thus the single most important step in successfully counteracting the institutional liability of a resource.<sup>109</sup> However, whether Uganda has prepared for this is a question of research.

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<sup>107</sup> TL Karl, *Ensuring Fairness: the Case for a Transparent Fiscal Social Contract* in M Humphreys, JD Sachs, & J E Stiglitz (Eds), *Escaping the resource curse* (2007) 257

<sup>108</sup> TL Karl, *Ibid*

<sup>109</sup> *Ibid*

## E. Social Justice Dimensions

Numerous studies also suggest that natural resource abundance is associated with social tensions, unrest or even outright civil war. Certainly natural resources are never the only source of conflict. It was pointed out that tensions are brought about by a complex set of factors; often ethnic or religious grievances, poverty and unstable governments play major roles. Despite the impact of these factors, studies consistently find that the presence of natural resources significantly heighten the danger that social tensions will arise, civil wars break out and, once they break out, conflicts will be more difficult to resolve.<sup>110</sup>

In study of 98 countries and 27 civil wars and similar subsequent assessments it was found out that natural resource abundance is a strong and significant determinant of the onset of civil war. Countries that export hydrocarbons are more likely to suffer from civil wars.<sup>111</sup> It should however be noted that natural resources are an important variable in explaining non-ethnic civil wars, but not in explaining ethnic civil wars.

Natural resources also play a role in the duration of civil wars. Peace-keeping initiatives are less successful in ending civil wars in countries that are resource-abundant.<sup>112</sup> The presence of contraband resources such as narcotics or gemstones tends to occasion longer civil wars.<sup>113</sup> These contraband resources are "lootable" as compared to point based resources such as oil and gas.

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<sup>110</sup> M Ross, 'The Natural Resource Curse: How Wealth can make you Poor' in I. Bannon, and P Collier, *Natural resources and violent conflict* (2003a). 17-42

<sup>111</sup> P Collier and A Hoeffler, 'On Economic Causes of Civil War' (1998) 563-73 and 'Greed and Grievance in Civil War' (2000)

<sup>112</sup> M Reynal-Querol, 'Ethnicity, Political Systems and Civil Wars' (2002) 29-54.

<sup>113</sup> JD Fearon, 'Why do some civil wars last so much longer than others?' (2004) 275-301

Lootable resources are resources that can be easily exploited by a small number of workers with little training and with little or no investment.

Relevant examples have been cited such as rebel groups that have financed themselves by selling this kind of resources - the most notable example being Angola's UNITA that sold billions of dollars' worth of diamonds over the course of the 1990s.<sup>114</sup>

Tensions arise out of either "grievances" of rebel groups (such as limited political rights, ethnic and religious divisions, wealth inequalities) or out of "greed" (based on the rational actor perspective that emphasizes the economic incentives and opportunities of rebel groups) but majority of civil wars are particularly facilitated by the incidence of natural resources: natural resources offer rebel groups extraordinary funding opportunities because they generate large rents and are usually location specific. Even non-lootable resources can provide incentives for the greed argument because rebels can extort money from the extracting firms who cannot relocate.<sup>115</sup> In addition; the population of resource-rich areas sometimes demands a large share of the revenues, especially when there is a disproportionate rise in expected income. No matter how large the actual income is, people are dissatisfied with their income if it falls short of their expectations. When their share of revenue is not large in enough in their view, it might provide an economic incentive to form a separate state.<sup>116</sup> These revelations show that natural resource wealth can otherwise be detrimental to social harmony if not effectively

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<sup>114</sup> **M Ross**, 'Oil, Drugs and Diamonds: The Varying Role of Natural Resources in Civil War' in K Ballentine and J Sherman, *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (2003b) 47-69

<sup>115</sup> Collier and A Hoeffler, 'Greed and Grievance in Civil War' (2000). **JS Frey** and A Stuetzer, *Happiness and economics. How the economy and institutions affect well-being* (2002)

<sup>116</sup> B.S Frey and A Stuetzer; *Happiness and economics, how the economy and institutions affect well-being* 2002

managed or fairly owned up as a social resource in the interest of all. It is indeed not clear if Uganda is ready to counteract similar shortcomings to peace and harmony.

Social harmony can be achieved out of the oil resource recently discovered in the Albertine region as long efforts are made to address the potential curse in that regard. Social tensions might be hard to avoid but they are not inevitable. Ross stresses the role of preventive diplomacy in averting social tensions to arise. Governments can actively narrow the gap between rich and poor populations (vertical income inequalities) and between mineral-rich and mineral-poor regions (horizontal income inequalities).<sup>117</sup> A lot more be done including an enabling legal framework that can provide the basis for justice and tranquility in resource utilization such the fresh petroleum oil prospects in Uganda.

## **F. Economic Dimensions**

The discussion about the negative relationship between resource abundance and economic growth rates in the mainstream academic literature took off in 1988 when it was found out oil-exporting countries experienced severe terms of trade shocks during the oil crises of the 1970s.<sup>118</sup> The term "resource curse hypothesis" was subsequently coined with the use of multiple case studies to illustrate how natural resources could lead to accelerating economic weakness.<sup>119</sup>

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<sup>117</sup> M Ross, 'The Natural Resource Curse: How Wealth can make you Poor' in J Bannon, and P Collier, *Natural resources and violent conflict* (2003a). 17-42

<sup>118</sup> A Gelb and others, *Oil Windfalls. Blessing or Curse?* (1988)

<sup>119</sup> RM Auty, *Sustaining Development in Mineral Societies: the Resource Curse Thesis* (1993)

These findings have been validated and extended in numerous large-scale empirical studies. The existence of the curse was confirmed on the basis of a worldwide comparative study of economic growth. Ninety seven countries were over a time period of 19 years and it was concluded that there exists a statistically significant and robust inverse relationship between the ratio of natural resource exports to GDP and GDP growth rates.<sup>120</sup> More recently it was found out that between 1960 and 1990 the per capita GDP of resource-poor countries grew two to three times faster than that of countries abundant in natural resources.<sup>121</sup> Around the same time, statistically the low growth in resource-rich countries could not easily be explained by other variables such as climate, geography, income distribution or regional factors.<sup>122</sup>

The enclave tendencies of the natural resource sector are the main problem. The wealth derived from natural resources does not need to be produced, like other sources of wealth. It just needs to be extracted, and therefore the creation of this type of wealth can take place quite independently of other economic or political processes in the sense that it can occur without the participation of the domestic labour force, without linkages to other industrial sectors and regardless of whether the citizens of the state approve it.<sup>123</sup> In a similar way, the sector's production function (the ratio of capital to labour) is the foremost problem. Often, there is only a very small fraction of the domestic labour force involved in the extraction of the resource, and when the large amounts of capital

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<sup>120</sup> JD Sachs and AM Warner, *'Natural Resource Abundance and Economic Growth'* (1995)

<sup>121</sup> RM Auty, *'Introduction and overview'* in RM Auty, *Resource abundance and economic development* (2001) 3-15

<sup>122</sup> T Gylfason, *'Natural Resources, Education and Economic Development'* (2000) Pg. 17-25

<sup>123</sup> AO Hirschmann, *The Strategy of Economic Development*. (1958)

are completely in foreign hands the positive economic impact will be very modest at most.<sup>124</sup>

More recent economic explanations also tend to focus on what came to be known as the "Dutch Disease". This term was coined by the Economist (1977) to describe the relationship between the increase in natural resource exports and the decline in the domestic manufacturing sector, which had occurred in the Netherlands after the discovery of a large natural gas field in the North Sea in 1959. The underlying theory is that an increase in revenues from natural resources will raise demand for the domestic currency on international currency markets and thus raise the exchange rate of the exporting country.<sup>125</sup> This in turn makes the manufacturing sector less competitive.

The results are de-industrialization and loss of jobs in the industrial sector.<sup>126</sup> This loss of competitiveness can become permanent and irreversible if the shift in competitive advantage has a sufficiently long duration.<sup>127</sup> In addition, a stronger currency will lead to increased imports which in turn will lessen demand for domestic products.<sup>128</sup> Empirical evidence suggests that a stronger currency leads to higher relative price levels in resource-rich developing countries, which in turn renders their non-resource based goods uncompetitive. Therefore they miss out on the benefits of export-led growth from which many other developing countries

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<sup>125</sup> M Bruno and .ID Sachs, 'Energy and Resource Allocation: A Dynamic Model of the "Dutch Disease"' (1982)

<sup>126</sup> WM Corden, & J Neary, 'Booming Sector and De-Industrialization in a Small Open Economy'(1982) 825-848

<sup>127</sup> P Krugman, 'The Narrow Moving Band, the Dutch Disease and the Competitive Consequences of Mi's. Thatcher: Notes on Trade in the Presence of Dynamic Scale Economies (1987) 41-55.

<sup>128</sup> S van Wijnbergen, and J Neary, *Natural resource and the macroeconomy.* (1986)

have benefited.<sup>129</sup> This empirical evidence shows that natural resource wealth otherwise presents shortcomings to economic development. Like the institutional and social concerns, the economic expectations of Uganda from her oil reserves discovered lately can be compromised by the potential curse often associated with such a resource, as seen elsewhere, if not accordingly regulated.

Notwithstanding this likely mischief, Oil as a prospectively significant development engine can be objectively committed to propel people's welfare. Besides the emphasis and relying on an enabling legal framework, among other possible solutions to the oil curse, the IMF points to the importance of investing in different infrastructural projects such as ports, irrigation, roads and electricity. Investing the resource earnings in these projects can minimize the risks of the Dutch Disease because they increase productivity in non-resource based sectors. It can also ensure short to medium term economic growth and makes policies aimed at growth in the longer term (such as educational and health programs) more feasible and efficient because they the country can now effectively absorb higher income levels.<sup>130</sup>

Alongside investments in infrastructure, it is pivotal to invest in education in order to build up a diversified and skilled workforce that is able to support the economy once the resource wealth has dried up.<sup>131</sup> Thus, it is in the interest of this study to assess the preparedness of Uganda to legitimately, honestly and efficiently produce and utilize the oil prospects particularly in the Albertine Graben for more effective economic growth and/or poverty reduction

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<sup>129</sup> JD Sachs and AM Warner, 'Natural Resources and Economic Development: the Curse of Natural Resources' (2001) 827-838.

<sup>130</sup> S Gupta, R Powell and Y Yang, *Macroeconomic challenges of scaling up aid to Africa, A checklist for practitioners*. (IMF Publication services, Washington 2006)

<sup>131</sup> M Humphreys, JD Sachs and JE Stiglitz, *Escaping the Resource: What is the Problem with Natural Resource Wealth?* (2007)

## **G. Theoretical Perspectives**

### **I. Stalin And Abiotic Oil**

The challenge was taken up by a wide range of scientific disciplines, with hundreds of the top professionals in their fields contributing to the body of scientific research. By 1951, what has been called the Modern Russian-Ukrainian Theory of Deep, Abiotic petroleum Origins was born. A healthy amount of scientific debate followed for the next couple of decades, during which time the theory, initially formulated by geologists, based on observational data, was validated through the rigorous quantitative work of chemists, physicists and thermodynamicists. For the last couple of decades, the theory has been accepted as established fact by virtually the entire scientific community of the (former) Soviet Union. It is backed up by literally thousands of published studies in prestigious, peer-reviewed scientific journals.

The modern Russian-Ukrainian theory of Deep, an Abiotic petroleum origin is not new or recent. This theory was first enunciated by Professor Nikolai Kudryavtsev in 1951, almost a half century ago, (Kudryavtsev 1951) and has undergone extensive development, refinement, and application since its introduction. There have been more than four thousand articles published in the Soviet scientific journals, and many books, dealing with the modern theory.

The modern Russian-Ukrainian theory of deep, Abiotic petroleum origins is not the work of any one single man - or of a few men. The modern theory was developed by hundreds of scientists in the (now former) U.S.S.R., including many of the finest geologists, geochemists, geophysicists, and thermodynamicists of that country. There have now been more than two generations of geologists, geophysicists, chemists, and other scientists in the U.S.S.R. who have worked upon and contributed to the development of the modern theory. (Kropotkin 1956;



Anisimov, Vasilyev et al. 1959; Kudryavtsev 1959; Porfir'yev 1959; Kudryavtsev 1963; Raznitsyn 1963; Krayushkin 1965; Markevich 1966; Dolenko 1968; Dolenko 1971; Linetskii 1974; Letnikov, Karpov et al, 1977; Porfir'yev and Klochko 1981; Krayushkin 1984)

The modern Russian-Ukrainian theory of deep, Abiotic petroleum origins is not untested or speculative. On the contrary, the modern theory was severely challenged by many traditionally-minded geologists at the time of its introduction; and during the first decade thereafter, the modern theory was thoroughly examined, extensively reviewed, powerfully debated, and rigorously tested. Every year following 1951, there were important scientific conferences organized in the U.S.S.R. to debate and evaluate the modern theory, its development, and its predictions. The All-Union conferences in petroleum and petroleum geology in the years 1952-1964/5 dealt particularly with this subject. (During the period when the modern theory was being subjected to extensive critical challenge and testing, a number of the men pointed out that there had never been any similar critical review or testing of the traditional hypothesis that petroleum might somehow have evolved spontaneously from biological detritus.

## **II. Peak oil and Hubbert Peak Theory**

The Hubbert Peak-Theory (also known as peak oil) puts it that future petroleum production (whether for individual oil wells, entire oil fields, whole countries, or worldwide production) will eventually peak and then decline at a similar rate to the rate of increase before the peak as these reserves are exhausted. The peak of oil discoveries was in 1965, and oil production per year has surpassed oil discoveries every year since 1980.

Hubbert applied his theory to predict the peak of U.S. oil production at a date between 1966 and 1970. This prediction was based on data available at the

time of his publication in 1956. In the same paper, Hubbert predicts world peak oil in "half a century" after his publication, which would be 2006

It is difficult to predict the oil peak in any given region, due to the lack of knowledge and/or, transparency in accounting of global oil reserves. The scientist and researchers from Oxford University argue that official figures are inflated because OPEC members over-reported reserves in the 1980s when competing for global market share. Based on available production data, proponents have previously predicted the peak for the world to be in years 1989, 1995, or 1995-2000

The International Energy Agency (IEA) says production of conventional crude oil peaked in 2006. Since virtually all economic sectors rely heavily on petroleum, peak oil could lead to a "partial or complete failure of markets

**As a researcher and a scholar of master of Laws at Kampala International University, I have come out with the following Theories.**

1. Oil exploration has only brought wars to those countries with it, killing the owners of the resource, in this way their nationals are displaced and others become refugees in their own countries. Those that remain seek refugee to other countries.
2. Petroleum trade has brought income inequality because the rich and the first class are the ones involved in the whole process. The poor only remain consumers of the products and a higher price. This leaves the poor to remain poor and the rich continue to become rich.
3. If petroleum law is properly enforced, oil would be the best resource whatsoever because it fosters development since it contributes on trade

and investment determining the prices of goods and services because the higher the prices of oil the higher the transport cost hence hiking the prices of goods and vice versa. 4. Super powers play a vital role in the extraction of oil, determination of prices and they are the ones fighting for the contracting of the oil exploration. Those that fail to enter into contract supply arms to rebel groups and in this way, oil is stolen through black market causing a loss to the nation and the contracting company. Oil makes nations poor because countries with such a resource are in fact performing badly in international development compared to those that contract and explore the resources.

6. Natural resources including petroleum products seem to be more expensive to the nations compared to the prices found in the foreign states. For example cement, electricity and other resources seem to be cheaper in foreign countries exhausting the producing state. For example resources such as electricity seem to be cheaper in Kenya and Tanzania because of the agreements signed by colonial masters, crude oil is cheaper compared to the prices of petrol that bears the same quantity.

7. Countries that explore oil and other resources get nothing or get little from their own resources. If they benefit they only get little compared to the foreign countries.

Those countries with natural resources only get residues. Foreign countries get the best hence the latter receive duplicated goods from their own natural resources because of the failure to import the very expensive refineries which are bought in millions of dollars that poor states cannot afford.

### **III. Related studies**

Studies of Amaechi David Nwokolo such as, "is there a legal and functional value for the stabilisation clause in international petroleum agreements?" will be proved right or wrong, where he argues that

International petroleum Agreements are an attempt to (IOC) to neutralize the Host State's power to unilaterally change the terms of an already concluded agreement.

Xin, Kelei's Study will also be included in the research "The Role of law and policy in the offshore petroleum development of China", whose thesis examines the legal and policy regime applicable to the petroleum activities on the continental shelf of China. He looks at the distinguishing characteristics of this regime as revealed by way of a comparative analysis of the salient features of the offshore petroleum laws of China, the United Kingdom and Canada

Other studies on Maritime law for example in Uganda the Albertine Graben is situated on the shores of Lake Albert. Fishing and agriculture may be affected. In Agriculture irrigation may not take place because hydrocarbons may not work well with agricultural crops.

Further the researcher will include studies on Environmental law for example prohibits the destruction of the natural environment. It is observed that the Albertine Graben is situated in National Parks and on the shores Lake Albert which is observed as an obstacle to environment.

Pollutant emissions from the industrial sector and electric utilities contribute greatly to environmental problems in the United States. The transportation sector (particularly cars, trucks, and buses) is one of the greatest contributors to air pollution.

The study on the law of mineral resources rather than petroleum such as Gold, zinc, Mercury, diamonds and others are observed as related studies to petroleum law. The researcher will also cite out studies on geology and science since they the core studies in the foundation of petroleum.

## CHAPTER TWO

### GENERAL BACKGROUND

#### 2.0 Introduction

This chapter presents the history of oil exploration in Uganda the general institutional dimensions in Uganda the general institute dimensions for oil exploration in Uganda the social institute dimensions economic dimensions environmental dimensions as well as the theoretical perspectives of ownership and permanent sovereignty.

#### 2.1 The History of Oil Exploration in Uganda

Uganda has been described by the oil industry press oil Africa's hottest inland exploration frontier.<sup>132</sup> If current estimates of the oil potential of the country from the exploration date are correct, Uganda can potentially produce around 1 to 5 billion barrels of recoverable reserves with which can put Uganda among the foremost Africa oil productions or among the worlds the foremost African oil production or among the world top 50 producers.<sup>133</sup>

The confirmation of Uganda's ability to produce oil of 1000 barrels per day was made by Hardman resources, an Australian drillings company working in conjunction with Tullow oil from united kingdom,<sup>134</sup> Simon poster, Hardman chief executive officer noted that oil found at Waraga 1 well is light but waxy, with a low gas to oil ratio, and then pressure build up tests also showed the petroleum has good permeability.<sup>135</sup> Potter contended that although the oil field does not

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<sup>132</sup> Uganda: Testing threshold; *Energy Intelligence* 31<sup>st</sup> October 2008

<sup>133</sup> Brian Glover, Tullow Oil company country manager for Uganda quoted in Tullow Oil "New drilling could put Uganda in top 50 producers" AFP 20<sup>th</sup> Feb 2009

<sup>134</sup> Rulekere G, "Oil production in Uganda. Is the nation Ready?" September 15<sup>th</sup> 2006

<sup>135</sup> Ibid, Rulekere G

seem connected between various wells, it is still an extensive and significant resource.<sup>136</sup>

Reuben Kashambuzi, the Commissioner for Petroleum Exploration and Production Department at Entebbe noted that companies were licensed by the government to drill and prospect for oil. These are Neptune resources now Tower Resources in Rhino Camp Basin, Heritage oil in Semliki Basin, Hardman resources Ltd, Energy Africa in Lake Albert basin and Tullow Oil Company. The Four companies are exploring Waraga I, Turaco II, Turaco III Mputa, and Mputa II as the current oil exploring sites. The oil exploration in Uganda started in early 2000's having been discovered since 1920's.<sup>137</sup>

## **2.2 GENERAL INSTITUTIONAL FRAME WORK**

There are a number of institutions charged with different responsibilities in the oil exploration, production and development in Uganda. Among them includes these following;-

### **A) MINISTRY OF ENERGY**

The ministry of energy is charged with overseeing the development of oil exploration, production and development. The main roles of this ministry in relation to oil and gas exploration, production and development in Uganda include policy making and implementation, the regulation of the sub-sector and managing the commercial business perspective.

The ministry of energy undertakes the following roles;-

- a. licensing of oil exploration development and production

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<sup>136</sup> *Ibid, Rulekere G*

<sup>137</sup> *Interview held on 15<sup>th</sup> September 2011*

- b. promotion of the country's oil potential to investors together with data, acquisition
- c. initiating , developing and implement oil gas policy
- d. submitting draft legislation to parliament
- e. issuing petroleum regulations
- f. proposing petroleum administration
- g. approving plans for field development<sup>138</sup>
- h. participating in the formulation of a law to regulate collection , use and management of oil and gas revenues
- i. promoting and sustaining transparency in the oil and gas sector
- j. approving data management systems
- k. recommending the option to exercise state participation in development; and
- l. In ensuring dissemination of information on oil and gas activities

## **B) MINISTRY OF WATER AND ENVIRONMENT**

This Ministry is charged with the duty of ensuring that environment is not put at stake by the petroleum exploration and development exercise. Among the specific duties includes the following;-

- 1. ensuring that oil and gas activities conform to the requirements of the policies regarding the protection and utilization of water bodies and aquifers

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<sup>138</sup> Oil and Gas Policy of Uganda 2008

2. management of any potential impact of any potential impact of toxins from oil and gas activities and development of infrastructures like laboratories to handle toxins
3. participating in formulation and monitoring policies regarding protection of the environment , oil and gas activities with these policies
4. Monitoring the impact of oil and gas activities on the quality of ground and surface water bodies, surrounding flora and atmosphere.
5. regulating water use and pollution load into water bodies through issuance of water permits
6. ensuring compliance with conditions provided for in the water permits
7. Ensuring protection of water catchments and drainage areas
8. Ensuring respect of Uganda's commitment towards cooperative frameworks for basing wide trans-boundary water resource management.
9. Ensuring self-monitoring by the oil companies for compliance with waste water effluent standards together with ground and surface water quality standard.
10. Participating in ministering and management of oil spill emergency.<sup>139</sup>

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<sup>139</sup> Oil and Gas Policy of Uganda 2008



### **C) MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

The ministry is charged with the legal mandate in all legal issues of oil and gas exploration, production development. Its specific roles include

- i. guiding the formation and drafting of petroleum legislation
- ii. guiding the formation drafting of law on management of petroleum revenues
- iii. participating in oil and gas policy formulation
- iv. participating in petroleum licensing
- v. participating in the negotiation of and administration PSA's<sup>140</sup>

### **D) MINISTRY OF FOREIGN AFFAIRS**

The ministry is charged with the following

- i. Ensuring cordial bi-lateral relations with neighboring countries
- ii. Advocate for the joint exploration and exploitation of any oil and gas resources along the countries common boarder<sup>141</sup>

Other ministries are charged with many roles in development of the petroleum industry include the ministry of Labour, ministry of works and transport , ministry of local government , ministry of finance , planning and economic development among other ministries.

Other institutions that regulate, direct and promote the oil and gas development in Uganda includes the following;-

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<sup>140</sup> Ibid Cap 4

<sup>141</sup> Ibid Cap 4

## **E. THE PETROLEUM AUTHORITY OF UGANDA (PAU)**

PAU is an authority that shall be put in place to regulate the different players in the sub-sector. The specific roles of this regulatory body will include;-

- i. Monitoring and regulating petroleum operations including reserve estimation and measurement of the produced oil and gas
- ii. Proposing and implementing regulations
- iii. Monitoring expenditure on licenses
- iv. Managing petroleum data
- v. Assisting in proposing and implementing petroleum legislation
- vi. Assisting in proposing and implementing oil and gas policy
- vii. Assisting in negotiating and administering PSA's
- viii. Assessing plan for field development
- ix. Assessing tail – end production and abandonment
- x. Assisting in the measurement estimation / assessment of royalties and profit oil due to the state
- xi. Ascertaining the cost oil due to licenses.
- xii. Ensuring that licenses uphold laws, regulations, rules and contract terms
- xiii. Ensuring health safety and environmental standards in oil and gas operation
- xiv. Ensuring optimal levels of resource exploitation

- xv. Promoting planned well executed and cost –efficient operations
- xvi. Ensuring optimal utilization of existing and planned infrastructure
- xvii. Contributing to national (budgetary ) planning and control
- xviii. Providing information relevant to the collection of taxes and fees from oil and gas activities
- xix. Ensuring appropriate implementation of petroleum legislation
- xx. Assisting in the acquisition of data for use in promoting unlicensed areas<sup>142</sup>

#### **F) THE UGANDA NATIONAL OIL COMPANY (NATOIL)**

The state will require an entity to handle its commercial interests in the sub sector e.g. state participation in the licenses and marketing the country's share of oil and gas production received in kind although this entity will become more relevant when production begins the period before production shall be used to build its capacity so that it is able to play its role when production starts

The specific roles of NATOIL shall include

- (a) managing the business aspects of state participation
- (b) developing in depth expertise in the oil and gas industry
- (c) optimizing value to its shareholders
- (d) administering contracts with co-ventures
- (e) participating in contractor /operator meetings

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<sup>142</sup> Ibid Cap 4

- (f) investigating and proposing new upstream midstream and downstream ventures initially locally but later internationally<sup>143</sup>

## **2.2 SOCIAL JUSTICE DIMENSIONS**

Oil exploration in Uganda has already started being a point of concern to many Ugandans and it is mainly stems from the anticipated revenue and how Ugandans are to benefit from the oil expiration exercise.

There are many countries that are involved in oil production that are faced with social injustice and unrest as a result of oil production, the same is notably in consideration of oil development. Is Uganda ready for oil production? Will it be in a position to avoid all these social problems in the future? It is not known yet.

Oil and mineral dependant countries are exceptionally vulnerable to boom and bust cycles. Oil is a finite non-renewable resource and as such, its benefits are for a limited period of time but the impacts it poses can last for centuries. Paul Collier noted that "politically managing the resource curse is very difficult because there are a lot of pressures that mean that at best the assets are wasted and at worst a fight for control of the honey-pot destroys the country."<sup>144</sup>

Developing countries with inadequate institutional frame work that become reliant on oil and minerals can see a deepening of a range of political, economic, and social challenges including a likelihood of civil war and social instability.<sup>145</sup> Nigeria is sub-Saharan largest oil producer is a classic illustration of the resource

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<sup>143</sup> Ibid Cap 4 therein

<sup>144</sup> Paul Collier's recent interview on Uganda;" Preparing for Africa's boom" the Guardian 25<sup>th</sup> May 2009

<sup>145</sup> Paul Collier (1990); *On the economic consequences of a civil war*, oxford university papers 51, Oxford university Press

curse and social injustice. The Niger delta where most oil is produced witnessed political decay, a rise in oil related human rights violations and violence.<sup>146</sup>

There is a cycle of activism, militancy and repression linked to oil, as spills and other environmental problems result in the loss of livelihoods for many residents. The international outcry at the hanging of Ken Saro Wiwa and other Ogoni activists protesting the despoiling of their Niger Delta lands and other events have impacted the industry's bottom line.<sup>147</sup>

While the benefits from oil exploration in Uganda are obvious, the prime Minister of Bunyoro Kitara kingdom , Byenkya Erisa Wagoro appealed to the government to extend adequate social services to the mid – western Uganda kingdom as a pro-active measure against oil related clashes. He further noted that people in the area may choose to antagonize the oil business as happens often in the Niger Delta in Nigeria if adequate social services like health, education and infrastructure are not extended to the region which is still relatively underdeveloped.<sup>148</sup>

To this, the interim speaker of Bunyoro-Kitara Kingdom Supreme Council (Omukurato) Kiiza Alibankoha Emmanuel noted that the kingdom is concerned over the recent reports that the discovery of oil wells in the Albertine Graben is likely to displace many people inhabiting the area because the government plans to construct an oil city in Hoima District.

### **2.3 ECONOMIC DIMENSIONS**

The exploration of oil is expected to yield revenue for the country when production starts. Eunice Akello, a mineral consultant noted that the oil discovery in Uganda has a good chance of leading to the development of the country. "***Oil***

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<sup>146</sup> International Alert, "Harnessing oil for Peace and development in Uganda." Sept 2009.

<sup>147</sup> I Gary and T.K Karl; (2003) "Niger Delta; Violence creates human security crisis;" IRN 13<sup>th</sup> may 2009

<sup>148</sup> Rulekere G; "Oil Production in Uganda: Is the Nation Ready?" 15<sup>th</sup> September 2006

***being a rich natural resource, should be able to increase the returns in terms of Gross Domestic Products.***” Uganda’s returns from exports should be able to increase drastically.

However, the concern of many people is whether the proceeds will be evenly distributed among the population of the people of Uganda and whether those living within the areas of oil reserves will benefit at all.

Daudi Megereko, the Minister for Energy and Mineral Development dismissed reports that the oil companies shall take 70% of the oil revenues. *"The government will get a royalty, then the company shall recover a 50-60% and what is not recovered shall be carried forward in the subsequent years. The remaining profits from the oil shall be shared between the government and the oil company. All these sharing ratios and royalties are negotiations that are contained in the PSA between government and the oil company."* Migereko revealed.

However, a key recommendation from the international best practice in relation to all revenues from oil production is that all revenue streams and transactions be clearly traceable and accounted for in the state budget, independently audited and that there be regular public disclosure of revenues among the lives of the initiatives such as the extractive industries transparency initiative.

The reserves can be managed in the context of an over-arching macro-fiscal framework that recognizes both the volatility of oil prices and that oil is a non-renewable resource and links revenue management to national budget processes. The importance of transparent decision-making over the use of revenues- whether for current spending, expenditure smoothing or saving for future generations and of good governance criteria in the management of any saving or stabilization fund is also highlighted along with rule based and transparent criteria for sharing benefits between central and local governments.

Uganda's economy is at trying moments with oil proceeds expected by 2013. Will economic growth and development be induced by proceeds from oil production? These are some of the concerns of the many Ugandans hoping that their lives are fundamentally to change with oil exploration. Will the resource curse impact on Uganda's economy? Will the Uganda see the rich and poor difference widening and make the poor people poorer? These are what the institutions liable have to fundamentally concentrate upon.

## **2.4 Environment Dimensions**

The oil exploration in Uganda should put into consideration the environmental protection in its normal store. The primary oil prospecting area in Uganda is the Albertine Rift located in the north most part of the East African rift system. This area is the most species rich eco –region for vertebrates in Africa. It has high species diversity including 39% of Africa's manual species 51% of bird 14% of its plans and reptile species. It harbors more endemic species than any other region in Africa and also contains 79 threatened vertebrates.<sup>149</sup>

In order to attain sustainable development, the government there to balance the social needs for economic development and sustainable utilization of natural resources environmental services values and functions. This is achievable through Environmental Impact Assessments (EIAS)<sup>150</sup> which identify and assess the significance of impacts associated with developments considered likely to have significant impacts on the environment, and propose mitigation measures.<sup>151</sup>

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<sup>149</sup> P. B. Misamali T.R Ruzunda "Role of environment impacts assessment in addressing oil impacts in the Albertine Rift, Uganda , paper No. 170 pg 1

<sup>150</sup> Section 19 of the Environment Act, Laws of Uganda

<sup>151</sup> I big pager 2

National Environment Management Authority is the body charged with the duty of verifying and approving the EIAS to ensure that development through economic activities is not attained at the environment cost.

Oil and gas industry can co-exist with management of the sensitive eco system through sustainable development by government balancing the social needs for economic development and sustainable utilization of nature resources, environmental services, values and functions.<sup>152</sup>

It was noted by P B Musanali and T. R Rukundo that there is need to establish an oil and gas development forum so that the companies, lead agencies, EIA practitioners and NGO's can meet to discuss environment issues around hydrocarbons exploration and production, including EIA mitigation and monitoring.<sup>153</sup> This should lead to development of strategic communication plan that allow effective and co-coordinate communication withal stake holders and focus on negotiable issues relevant to decision making that promotes transparency.<sup>154</sup>

## **2.5 OWNERSHIP AND PERMANENT SOVEREIGNTY**

Related to economic, social justice and even environment issues are the issue of ownership and permanent sovereignty. In the late nineteenth and early twentieth century, development rights in petroleum in countries such as Mexico, Russia and throughout the Middle East were awarded by means of concession

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<sup>152</sup> *Heritage, august 2008 environmental and social impacts assessment of Buffolo-onshore oil exploration well in Murchison falls national park in Amuru district Uganda*

<sup>153</sup> *Ibid*

<sup>154</sup> *Ibid page 4*



with a thousand authorized foreign companies to explore, develop and market minerals for a specified period.<sup>155</sup>

The earliest such grants covered huge areas that lasted as long as seventy five years and transferred oil managerial and serial making rights over oil exploration and production to the company or concessions that received the grants . The company receiving the concessions typically claimed ownership of the oil, both in the ground and as produced.<sup>156</sup>

Where to explore and drill for oil was left entirely to discretion of the grantee the host country received only a fraction of the revenue as aren't or royalty e.g. in the 5 year period following the end of world war II, Britain collected more on taxes on the Anglo – Iranian concession than Iran itself that received royalties.<sup>157</sup>

The catalyst that led to the transfer of control over the world major oil reserves from private multi – national companies to the host country was the unilateral actions of the major companies to themselves. To obtain exploration and development to petroleum or other national resources, an investor must first determine who has the right to authorize this activity. In many countries, Uganda included, the state (sovereign) owns the minerals

Territorial disputes are, not surprisingly common in petroleum rich reserves along the border for example the oil rich Middle East, and the location to nation frontiers is frequently disputed.

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<sup>155</sup> E Smith , D S. Johns, Solo O.L Anderson and others “National Petroleum Transactions” Third edition page 31

<sup>156</sup> *supra* page 30

<sup>157</sup> *supra* page 30

## A. The Concept of Territory

In spatial terms, the law knows only four types of territorial regimes which include territories that are not subject to sovereignty of any state or states and which possess a state of its own (Mandated and trusted territories for example) the *res nullius* and *res communis* among others. Territorial sovereignty extends principally over land territory, the territorial sea appurtenant to the land the seabed and sub-soils of the territorial sea. The concept of territory includes islands, isolates, rocks and reefs.<sup>158</sup> A *res nullius* consists of the same subject matter legally susceptible to acquisition by states but not as yet placed under territory sovereignty. The *res communis*, consisting of the high seas is not capable of being placed under state sovereignty.

The territorial ownership and sovereignty was an issue of determination in the Eritrea – Ethiopia boundary dispute with the commission decision regarding determination of the border between the state of Eritrea and Federal Democratic Republic of Ethiopia on 13<sup>th</sup> 2002 (Hague).<sup>159</sup>

The other case involving ownership and territorial sovereignty involved in the Federal Republic of *Denmark and Federal Republic of Germany V. the Netherlands*<sup>160</sup> over the disputed coastal lands and also the case of *Romania V. Ukraine*. *Germany*

However in relation to the trans-boundary reservoir development, it can be affected either through unitization agreements or joint development zones. In the US however a matter like this evolved, it was resolved through a common law “rule of capture” as was noted in the cases of *Kelly V. Ohio Oil Co.*<sup>161</sup> and

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<sup>158</sup> *Ivan Brownlie principles of public international law 9<sup>th</sup> edition 1990 107*

<sup>159</sup> [http/ unit org/ Newhisnisl / enebecarbitrational](http://unit.org/Newhisnisl/enebecarbitrational)

<sup>160</sup> *International court of Justice , judgement of feb 20<sup>th</sup> 1969 (1969) ICS Reps. 4;81 I L M 6340 (1969)*

<sup>161</sup> *49 N.E 399 (OTUIO 1897)*

***Benard V. Monongahela Natural Gas Co.***<sup>162</sup> this rule provides that land owners are entitled to all oil or gas produced by a well bottomed on their own land regardless of the oil original location.

The same rule was applied in the case of ***Unocal Netherlands B. V. Continental Netherlands oil companies.***<sup>163</sup>

The location of Uganda's oil in the Albertine Graben leaves no doubt that the exploration exercise will result into boarder conflicts with neighboring DRC.

At their 43rd plenary assembly held in Kinshasha from 3<sup>rd</sup> to 7<sup>th</sup> July 2007 the Bishop of DRC discussed the haphazard and as yet un controlled exploitation of natural resources by elites on this topic concerning the Albertine rift they observed *"future exploration of petroleum in lake Albert in Ituni home to much tension, gives rise to concern regarding the advantages to the population. People are afraid of a petroleum war and will only feel appeased by the truth. In short, our country's security situation is worrying the authorities, the population and all those volunteering to save our Country from further hostilities are called upon to unite their efforts"*<sup>164</sup>

At this point in time, the way the Ugandan government and DRC are to iron out the issues of trans-boundary oil reservoirs is of great rationale to oil exploration in the Albertine Graben.

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<sup>162</sup> 65A 801 (PA.1907)

<sup>163</sup> The supreme court of Netherlands No 4/127HR LJN AT 537 14<sup>th</sup> October 2005

<sup>164</sup> Message delivered at the Congo National Episcopal conference to the catholic faithful and men of good will to mark the 47<sup>th</sup> anniversary of independence Kinshasa 7<sup>th</sup> July 2007

## **CHAPTER THREE**

### **THE LEGAL AND POLICY FRAMEWORK FOR OIL EXPLORATION IN UGANDA**

#### **3.0. INTRODUCTION**

This chapter examines the national and international law that regulates, governs and examines oil exploration in Uganda. This is analyzed as below:

#### **3.1. INTERNATIONAL LEGAL FRAMEWORK**

The international law regulating Oil exploration and development in any country ranges from conventions, concessions, product sharing agreements, concessions, declarations, legislation and contracts. These are as discussed below:-

##### **(A) LAW OF THE SEA 1982**

The UN convention on the law of the sea also called the Law of the Sea Convention is the international agreement that resulted from the 3<sup>rd</sup> UN conference on the law of the sea which took place from 1973 -1982. it defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for business the environment and the managements of the marine natural resources.

Part XI of the convention provides for a regime relating to minerals in the seabed outside any states' territorial waters on Exclusive Economic Zone. It establishes an International Seabed Authority to authorize seabed exploration and mining, collect and distribute the sea-bed mining royalties.

## **B) UN RESOLUTION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (UNGA RESOLUTION NO.1803 (XVIII))**

The resolution provides for the sovereignty of every state to dispose of its wealth and natural resources. It was based on the inalienable rights of all states to freely dispose of their natural wealth and resources in accordance with their natural interest and in respect for the economic independence of states.

The resolution spells that *"the right of peoples and nations to permanent sovereignty over their wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned."*<sup>165</sup>

The resolution further declares that the exploration, development and disposition of such resources as well as the import of the foreign capital required for the purposes should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.<sup>166</sup>

Clause 3 of the resolution provides for the laws to be regarded in the authorization of the exploration of the national resources as well as clause 4 of the same. Clause 7 therein provide for the violation of the rights of peoples and nations to sovereignty over their national wealth and resources is contrary to the spirit and principles of the charter of the UN and hinders the development of international cooperation and maintenance of peace.

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<sup>165</sup> Clause 1 the resolution

<sup>166</sup> Clause 2 of the resolution

The resolution further provides for the means of settlement of disputes either through arbitration or international adjudication.

The resolution was ratified by Uganda and other member states and binds all the countries that are party to it and hence international law applicable in such states.

### **C) THE INTERNATIONAL CONVENTIONS ON CIVIL LIABILITY AND COMPENSATION FOR OIL SPILLS (1992)**

The main features of the international regime which seems to have failed Europe are described in the article by Mans Jacobs, "The international liability and compensation regime for oil pollution from ships-international solution for a global problem."<sup>167</sup>

The convention imposes strict liability on registered owners of the ships causing pollution damage and requires all owners to carry liability insurance. Liability, while strict was limited. It was capped at maximum amounts.

Depending on the tonnage size, ship owners can limit their liability. Large tankers today can limit their liability to about \$140 million,<sup>168</sup> although the limit will not apply if the pollution damage resulted from the ship owner's personal act or omission "committed with intent to cause such damage, or recklessly and with knowledge that such damage will probably result."

By 2007, 117 maritime states had ratified the liability convention of 1992 with the notable absence of the USA.

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<sup>167</sup> 32 *Tulane Mar L.J* (2007)

<sup>168</sup> The protocols use special drawing rights of the IMF as monetary units of accounts, so conversion to dollars depends on the exchange rate.

## **D) UN CONVENTION ON CULTURAL AND POLITICAL RIGHTS (UNCCPR)**

The convention was adopted and opened for signature, ratification and accession by General Assembly Resolution NO. 2200 A (XXI) of December 1966 and entered into force on 3<sup>rd</sup> January 1976.

The preamble to the convention recognizes the inherent dignity and equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 9 of the convention provides that state parties to the convention recognize a right of every one to social security including social insurance.

Other key issues of concern include the following;-

### **a) Ownership**

According to the 1958, Convention On The Continental Shelf, it is provided that any coastal state has sovereign rights over its part of the continental sea, for the purpose of exploring it and exploiting its natural resources. These rights have been confirmed by the 1982 convention on the law of the sea<sup>169</sup>.

The same position is also found in chapter II of the UN Charter of Economic Rights and duties of the state which provides that *"Every state has and shall freely exercises full permanent sovereignty, including possession use and disposal, over all its wealth, natural resources and economic activities"*<sup>170</sup>

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<sup>169</sup> Petroleum, industry and governments by Bernard Tworing 2<sup>nd</sup> Edition pg 120

<sup>170</sup> Article 2 of chapter, III of the 1970s UN Charter of Economic Rights and Duties of states

### **3.2. The National legal and policy frame work relating to Oil exploration and production in Uganda**

Although Oil and gas exploration in Uganda are new concepts, Uganda has a legal and policy framework thus regulation and oversees oil exploration in Uganda. Although scattered in a number of laws, Uganda has the statutes on oil exploration and development in Uganda. These laws and national policies are as discussed below:-

#### **A) The National Laws**

##### **1) The 1995 constitution of the Republic of Uganda**

The Ugandan constitution of 1995 empowers the state to protect important natural resources including land, water, wet lands, minerals, oil, fan and flora on behalf of the people of Uganda. This position of the law has vests the store with the responsibility of managing and owning Uganda's oil on behalf of the people of Uganda.

The constitution establishes the parliament of the republic of Uganda, vesting the parliament with the responsibility of making laws on any matter for peace order, development and good governance of Uganda.

The constitution vests the land in Uganda in the people owning it in accordance with the land tenure systems provides for in the constitution. However, the government or local authority may, subject to Article 26 acquire land in the public interests.

The constitution of Uganda stipulates that subject to Article 26 the constitution, the entire property in, and the control of all minerals and petroleum in, or under, any land or waters in Uganda are vested in the government on behalf of the Republic of Uganda. The same Article empowers parliament to make laws regulating.



- a) The exploration of mineral and petroleum,
- b) The Sharing of royalties arising minerals and petroleum exploration
- c) The conditions for the payment of the indemnities arising out of exploration of minerals and petroleum and
- d) The conditions regarding the restoration of derelict land.

The constitution defines petroleum for include:

- a) Any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state,
- b) Any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or sold state, or
- c). Any naturally occurring mixture of one or more hydrocarbons and any other substances and includes any petroleum as defined in (a) and (b) or this paragraph that has been retaken a natural reservoir but does not include coal,shale, or any substance that may be refined from coal or shale.

The 1955 constitution of the Republic of Uganda contains provisions regulating the Oil exploration in regard to environmental protection and preservation. In this regard, the constitution stipulates that parliament shall by law provide for measures intended to:-

- a) Protect and preserve the environment for abuse, pollution and degradation.
- b) Manage the environment for sustainable development and a) promote environmental ownerless and in this regard, the exploration of oil in Uganda should put in regard the environmental protection and preservation as is regarded by the law.

## 2) THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT CAP 150 OF 2000.

The petroleum (exploration and production Act Cap 150 vests the property in, and the control of petroleum in its natural condition in or upon any land in Uganda in the government on behalf of the republic of Uganda. It further prohibits any person from exploration or development operations of petroleum in or upon any land in Uganda except under, and in accordance with, a license, issued under the Act.

The government may enter into an agreement with any person with respect to all or any these matters.

- a) The grant of a license
- b) Conditions for granting or recording the license

There are certain conditions that have to be put into consideration while granting exclusive licenses to oil companies for oil and gas exploration among them includes the following;-

### i) Ownership of petroleum if and when produced

The holder of an exclusive production license has the right to acquire the ownership of any petroleum they enter into any well than with all the terms and conditions of license. This confers the right to search for and produce the free minerals subscribed in the license within the *bewilligungsfeld* (licensed area) and the right to acquire the *eigentum* (the ownership) of the free minerals so produced.

In the case of *mcintosh v. Leckie*,<sup>171</sup> the Ontario courts of law classified licenses as a *profit a predre* terminable upon the happening of any of the contingencies for which it provides.

However, in the case of *Berkheiser V. Berkheiser*<sup>172</sup> the court of appeal in Alberta started the effect of the *Berkheiser's*<sup>173</sup> case to be then the lessee, while retaining an interest in the land in the nature *of a profit a prendre*, had no title to the oil or gas as long as they remained in the ground and uncaptured.

## **ii. Duration of the license**

The license must provide the licensee with a fixed period of exploitation with an option of extension or not. It may last for 30 or 40 years if development and production form part of the licensed operations. A license for exploration only should not extend beyond 10 years.

## **iii). Area relinquishment schedule**

At certain intervals, for instance, at the end of the initial period, part or parts of the original area of the license must be relinquished part or parts to be relinquished must of such a shape and size that they are suitable to be offered once more for licensing.

## **iv) Obligatory exploration work programme**

During the initial period of the license, an obligatory exploration work programme starts there to be license beyond the initial period still depend on the statutory implementation of this condition. The details of such a work program belong to

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<sup>171</sup> (1906) 13 OLR54

<sup>172</sup> (1957) SCR 3&7

<sup>173</sup> *Ibid*

the particular condition of a licence and usually form an element of the competitive bidding for the license.

**v). Development plan and production schedule**

The license should be obliged to prepare a development plan and corresponding production schedule with respect to any commercial discovery that has been made and shall submit such plan and schedule for the approval of the competent authority.

**vi) Disposal of production**

Under prevailing licensing conditions, the license is completely free in disposing of its production, except in the case of national emergency.

**ii) Liability for damages**

The license has to keep the competent authority indemnified against all claims and damages brought against the authority by any third party in connection with the licence, or the licensed operations. However, where the national law provides expressly for the liabilities for pollution, damage caused by the operational or any clause connected therewith, such provisions take precedent

**viii) Methods of working**

The license is obliged to execute all the operations in accordance with the provisions which prescribe the methods that have to be followed or applied in carrying out the authorized operations such as rules regarding drilling practices and the installation, use, operation and final abandonment of oil gas installations and pipelines.

#### **ix) Joint exploration of straddling petroleum reservoir**

Where a single continuous petroleum reservoir extends across the boundary of a production license into the adjacent area, such petroleum reservoir is referred to as a straddling petroleum reservoir. If in respect of adjacent area production licenses have been granted each covering a part of the straddling reservoir, the joint exploration of such reservoir by all persons holding such licenses and by the license is usually of benefit to them all and in practice will be carried out on a voluntary basis.

The cooperation of the licensed personal has been developed and turned into help pulsations by many countries for example the UK off shore petroleum legislation (petroleum production) (seaward) Areas Regulations 1988 /1995/1996<sup>174</sup> as well as the Netherlands and Mining law of 31<sup>st</sup> October 2002<sup>175</sup> among others provide for such a position.

#### **x) Obligatory payments**

The license is or may be obliged to make payments to the start other them payments required to be made under the applicable rules of the corporation tax or any special petroleum income Tax.

#### **xi). Royalty**

The royalty is a payment expressed as a percentage of the oil and or natural volumes that are produced by the license and is payable in cash or kind. The royalty is paid to the owner of the petroleum in situ.

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<sup>174</sup> Schedule 4 Model Clause 28 (1)

<sup>175</sup> Article 23 (1) therein

## **xii). Area rentals**

An area rental is a levy that is expressed as an annual amount per square km. usually the amount increases the longer the license is kept.

## **xiii). Settlement of disputes**

Since a license creates a direct relationship with the government granting the license in its capacity as representative of the state, any dispute but when the license and the government should as a rule be health with in accordance with the rules of public administration law and in case no amicable resolution of the complicit appears possible be decided by a court of administrative law.

There are other conditions that may be part of the license which include state gross profit share state store of excess profits, state participation and well as stability of terms.

**There are other Principal provisions of the Production Sharing Agreement which include the following;-**

### **i) The practice**

Production Sharing Agreements (PSA's) are made and entered into on the one part by a state entity, here in after "state party" and on the other, the entity consisting of one or more mostly foreign oil companies from the private or public sector there in after 'contractor'.

### **ii). Integration into a specific exclusive license**

Where a licensing regime is in existence, production staining agreements so desired by the government may be integrated into specific exclusive licenses. Accounting to the intended petroleum operations and area, the integration can be made either by granting the required license to the state party who then in turn concludes a PSA with a contractor for the purpose of exploration and or

development and production, within and with respect to the licensed area, or by granting upon concluding the contract the required exclusive license to the contractor.

iii). **Contract Area**

The area of the PSA is described in the agreement in practice; it is described in terms of block in reference to a geographical grid system. The area of the agreement may organize of one or more blocks. If the PSA is integrated into a specific exclusive license, the area of the agreement coincides with the area of the underlying license, which is term is also described in terms of blocks with reference to a geographical grid system.

iv). **Duration of the Agreement and Area Relinquishment**

Distinction is made between an exploration phase and a development or production phase. Parts of the original agreement area may be surrendered as the end of the exploration phase. The contract may be terminated if at the end other exploration phase, no declaration of commercial discovery is made.

v). **Obligatory exploration work.**

With respect to each sub-period of the exploration phase, the contractor is obliged to carry out a minimum exploration work program and or to spend a specified amount of money on exploration work.

c). Conduct of the contractor of exploration or development operations on behalf of any person to whom a license may be granted and the arrangements in any such case of product standing.

Section 4 of the Act provides for the provisions relating to the licensing of the petroleum exploration and production in Uganda. The same is concerned under part II form section 9-19 of the Act.

The Act contains other provisions regulating the relationship of the licensee and the government and the duties of either partly in relation to the oil exploration and development in Uganda.

### **Ugandans and PSAs**

Different people in the country have mixed ideas on the nature of the PSA signed between Uganda and the oil companies. Ugandans are furious about the government's failure to disclose the Material Contents of the agreement.

An interviewer noted that the oil agreement so made only benefit the people in power and not the entire population of Uganda.<sup>176</sup>

Hon. Abdu Katuntu the Shadow Attorney General noted that some articles within the PSA are out rightly unconstitutional he noted that Article 33.2 of the PSA between Heritage and the government provides that if any change in the laws or regulations of Uganda which materially reduces the economic benefits for the licensed company, necessary modifications must be made to restore the company to the economic position it was before the laws affected its profits.<sup>177</sup>

It was further noted that the nature of awarding the contracts to the oil companies was against the law. It was alleged by Hon. Gerald Karuhanga, the Youth MP for Western Uganda that Hon Amama Mbabazi, Hon Sam Kuteesa and others that they received the bribes on the awarding of the contracts which is against the law.<sup>178</sup>

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<sup>176</sup> Interview held on September 20112

<sup>177</sup> Sunday Vision October 15, 2011 "We shall sue government over oil ..."

<sup>178</sup> Editorial Daily Monitor Sept- 14 b2011 page 4-5



Uganda truly believes that trials of the implicated person in the oil scandal should be commenced and if proven guilty be imprisoned and even compelled to return the monies they obtained in form of bribe to the government so made with the oil cancelled <sup>179</sup>

### **3) THE MINING ACT CAP 148**

The Act vests the entire minerals and petroleum in or upon any lands or waters in Uganda in the government unless otherwise provided.

The Act covers the compensation of private owners of the land or occupiers of the land upon or under which prospecting or mining operations are being or have been carried on by him or them.

Section 123 of the Act provides for a general penalty of imprisonment for a period not exceeding 3 years or a fine of not more than five hundred thousand Uganda shillings or both time and imprisonment to any person who contravenes any of the provisions of the mining Act. The Act provides for other offences and the penalty that can be imposed on the person who contravenes such provisions of law.

### **4) PETROLEUM SUPPLY ACT OF 2003 CAP 13.**

This Act provides for the supervision, and monitoring, the importation, exportation processing, supply, storage, distribution and marketing of petroleum products.

The Act provides for the licensing and control of the activities and installations, for the safety and protection of public health and the environment in petroleum supply operations and installations, to encourage and protect fair competition in

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<sup>179</sup> Resident responding in an un-structured interview around the Albertain Graben

the petroleum, supply market, to repeal contains related laws and to provide for connected matters.

The Act provides for the protection of public safety and there environment and it requires the license to comply with the guidelines of the National environment management authority (NEMA) through the environmental impact assessment report of the licensee.

Part X of the Act establishes the offences and sections for theme persons who are in breach of the section.

## **5) The Petroleum (Exploration, Development, Production and Value Addition) Bill 2010**

The draft Petroleum (Exploration, Development, Production and Value Addition) Bill 2010 makes several article changes to the legal regime with potentially far reaching impacts on the Ugandan Oil sector.

The bill however leaves many issues than are open for the government to negotiate during the contracting pleasure. The 1999 model contract Uganda has produced has however not been mentioned about in the new bill.

The Bill established the Petroleum Authority of Uganda. However, the jurisdiction and duties of the ministry and the authority are not thoroughly spelt out. Section 24 of the Bill describes the mandate of the Authority only in general terms and does not detail how it is to function in practice.

Sections 57 and 64 the Bill establishes that exploration and production licenses can be awarded via direct application to the minister. Sections that bring out state participation are adoptive of the 1999 Product Sharing contract model and it is for this that the Ugandans truly believe that the 1999 PSA model was relied upon in the contracting phase.

Section 42 of the bill brings forth with the National Oil Company though it does not detail its mandate or organizational structure, except to say that it is to be governed in accordance with Uganda's companies Act.

## **6) Other laws**

There are a number of other enactments that are relevant to oil exploration and development in Uganda.

Whereas the Land Act is referred to in the determination of the Land rights the National Environment Act regulates the exploration and development of the oil reach areas in a manner that does not leave a negative impact on the environment.

The Access to Information Act of 2005 contains provisions that relate to the access of the information that is in the hands of the state. It is thus under this land that the Oil agreements between Uganda and the contractors have been kept away from the public as was reported in the Monitor Newspaper.<sup>180</sup>

Other laws include Investment Code Act cap 92, Penal Code Act Cap 120, Income Tax Act 2002, Wild Life Act Cap 200, National Forestry and Tree Planting Act of 2003, Public Health Act Caps 281, water Act Cap 152, and Public Procurement and Disposal of Assets Act.

## **B) The Policy Framework**

### **7) National Oil and Gas policy 2008**

The National and gas policy addresses the entire oil spectrum of exploration, development and production of the country's oil and gas resources more comprehensively than the energy policy of 2002.

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<sup>180</sup> Daily Monitor Friday 16<sup>th</sup> September 2011

The policy provides a basis for putting in place the necessary legislation, regulations and other aspects of the institutional framework required for the efficient development of the sector.

The policy embodies the guiding principles which include the usage of finite resources to create lasting benefits to society, efficient resource making unrest, transparency and accountability, competitiveness and productivity, environmental protection and conservation of biodiversity, spirit of cooperation, capacity and institution building.

**The policy seeks to achieve the following objectives;**

- a) Ensuring efficiently in licensing areas with the potential for Oil and gas production in the country.
- b) Establish and effectively manage the country's oil and gas resource potential
- c). Effectively produce the country's oil and gas resources.
- d) Promote valuable utilization of the country's gas resources.
- e) Promote valuable utilization of the country's oil and gas resources
- f) Promote the development of suitable transport and storage solutions which give good value to the country's oil and gas resources.
- g) To ensure collection of the right revenues and rise them to create lasting value for the entire version.
- h) Consume optimum national participation in oil and gas activities
- i) Support the development and maintenance of national expertise.

- j) Ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity.
- k) Ensure mutually beneficial relationships between all stake holders in the development of a desirable oil and gas sector for the country

The policy recognizes the need to review the country's policy on guide to macro-economic stability to accommodate the challenges of dealing with oil and gas activities with the view of avoiding negative impacts on the economy like the 'Dutch Disease'.

The policy focuses on oil explorations impact on land ownership and usage in the Albertine Graben. The policy identifies Article 237, of the constitution section 16 of the Land Act 1998, the National land use policy 2004, together with the land sector strategic plan 2001- 2011 as the laws providing the basic legal status in relation to land ownership and usage for oil exploration and development in the oil rich a real of the country.

The policy considers environmental protection to include both the physical and social aspects and seeks to mitigate typical forms of environmental damage and improve associated with oil and gas exploration, development and production.

The policy lays down the institutional framework through which oil framework exploration and development in Uganda shall be managed and made a success. It lays down the roles charged with the state, the roles of the oil companies, the roles of parliament, the roles of the cabinet, the roles of the ministry of energy and mineral development, the roles of the Petroleum Authority Of Uganda, the roles of Uganda National oil company and the roles of other ministries and agencies towards oil exploration and development. It further spells out the roles of civil society and cultural institutions, and the financing of the institutional framework for the purposes of oil exploration and development.

### **The correlation of the institution for the oil exploration;**

There are many institutions charged with responsibility of ensuring oil exploration in Uganda a success. However despite each institution having defined roles, there are often other institutions tending to over ride it's mandated powers and influence other institution in the performance of its duties for example in point is when the ministry of energy ministry of foreign affairs and the ministry of internal affairs jointly influenced the Attorney general to consent to the oil agreement.<sup>181</sup>

It is yet to be known how these different institutions shall relate with each other perform their duties as spelt and ensure that there is proper monitoring in the works within the oil sector without interfering the works of another ministry.

### **3.3 Relevance of These Laws**

These laws and policies are quite relevant in institutionalising social justice vis-à-vis the oil sector. The Petroleum Act and the Bill<sup>182</sup> are relevant in determining the content and limits of parties to petroleum exploration. The Land Act is quite relevant in respect of land ownership and compensation issues, the Environment Act ensure environmental sustainability in the industry. The freedom of information ensures social accountability. The policy entrenches a general framework for effective utilisation of the petroleum resources for public good.

All the laws and policies are implemented in the context of the 1995 constitution in the spirit of good governance.

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<sup>181</sup> Daily Monitor Sept 14 201 "Wiki reveals claims of massive oil Bribes" Editorial pg4-5

<sup>182</sup> Ibid

## **CHAPTER FOUR**

### **ANALYSIS OF STUDIES**

#### **4.0 Introduction**

The prospect Uganda becoming an oil producing country soon has caused a lot of excitement among many Ugandan. However the success of their prospects is entirely incurred on the legal and institutional frame work towards oil exploration, production and development and how well the same shall be implemented.

As such the researcher carried out a study examining the legal institutional and social justice aspects of oil exploration in Uganda

The researcher in investigating this designed the objectives of the research then included the establishment of the extent to which and oil gas laws are developed in Uganda, embracing the institution frame work put in place to monitor, implement and direct the legal framework and to advance recommendations in regard to the study topic.

While prying such issues, a number of methods, techniques and theories as well as philosophies of research were relied upon by the researcher. In this, both quantitative and qualitative methods were put into consideration and both primary and secondary data sources were referred to with the collecting data. In the collection of the primary data, the researcher visited ministry of energy, petroleum institute of Uganda, Tullow Oil Company and Heritage Oil Company.

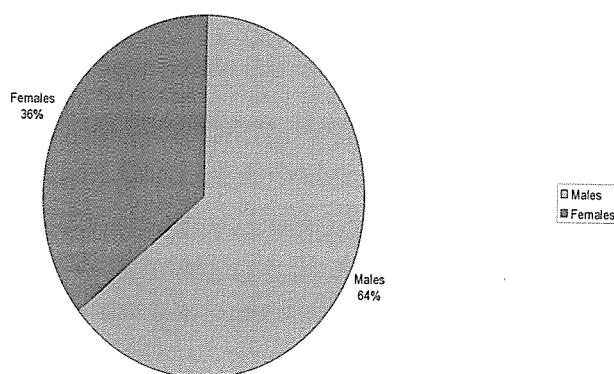
#### **4.1 DEMOGRAPHIC CHARACTERISTICS OF THE RESPONDENT**

The respondents there were question and interviewed about the research topic ranged from males to female of majority age with employment and different age distribution their demographics are discussed below;-

#### 4.1.1 SEX DISTRIBUTION OF THE RESPONDENTS

Of the respondent to this research 32 of them were males instituting 64% of them while 18 of the respondents were female constituting only 36% of the respondents. This is shown by the pie chart F1A below;-

Figure F1A: A pie-chart showing sex distribution of the respondents



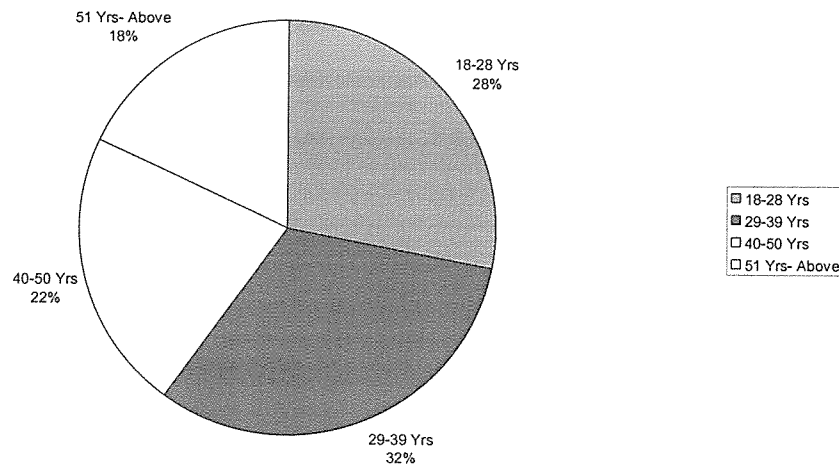
This shows them men who understand or are involved in oil exploration, production and development are more than the female.

#### 4.1.2 AGE DISTRIBUTION OF THE RESPONDENTS

The respondents there were interview belong to different age bracket but all of them were of majority age well as 14 respondents constituting 28% were between 18-28 years of age, 16 respondent male up 32 % were between 29-30 years with 11 respondents making up 22% between 40-50 yours and only 9 persons making 18% being 51 years of age and above. This is diagrammatically shown by figure F1B below;-



Figure F1B: A pie-chart showing the age distribution of the respondents



Basing on the above demographics, it was established that the youth have more knowledge and are more informed in oil developments in Uganda than the ageing and aged persons.

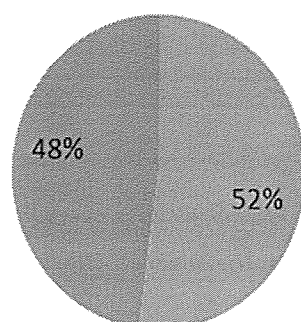
#### 4.1.3 RESPONDENTS' EMPLOYMENT STATUS

The researcher noted that the respondents fell in both the formal and informal sectors with the formal sector section being more involved with oil exploration than the informal sector.

In this regard the formal sector had 31 respondents totaling to 62% of the respondents compared to the informal sector the 29 respondents totaling to 58% of the respondents this is shown by the figure F1c below;-

**Figure F1C: A Pie-Chart Showing  
Employment status of Respondents**

■ Formal Sector   ■ Informal Sector



Basing on the diagram above, it was noted that majority of the respondents were in the formal section compared to the ones in the informal sector.

#### **4.2 AN ANALYSIS OF THE RESPONDENT'S KNOWLEDGE ON THE STATE OF LAW REGARDING OIL EXPLORATION IN UGANDA**

Much as the respondents acknowledged the constitution of the supreme law of land and a basis through which all the acceptable and allowable activities derive their authority from the legal status on the oil exploration was the least concentrated upon by the many Ugandan. A respondent who preferred authority was quoted saying the *"the oil exploration in Uganda is a permitted activity under the national laws and time laws provide a proper position in that regard."*

However, when asked about the laws that were providing for the oil exploration the constitution contained any provision in that regard.<sup>183</sup>

The researcher also established that Ugandans are concentrating on the Petroleum (Exploration, Development Production And Value Addition) Bill of 2010, very many people knew about the bill being before the parliament through only a few could tell about the true contents of the new proposed law.

A respondent at the Ministry of Energy when asked about the bill noted that *"though the public was unaware of the material contents of the proposed law, the public had faith that the proposed law will benefit Uganda and avert the resource curse common. In the many oil rich countries"*<sup>184</sup>

The main focus of the Ugandans on the proposed law is the proceeds of the oil exploration to the Ugandan government and how best the many Ugandans from poverty and unemployment that has had a profound impact on them.

The researcher on determining the knowledge of the respondents about the National Oil And Gas Policy 2008, the respondents were un aware of the policy, forming part of the frame work that directs, monitors and putting in place the institutions that oversee the affective exploitation production and development of Uganda's oil and gas resources

As regards the environmental protection and preservation in the Albertine Graben where oil exploration is being carried out the respondents were aware of the National Environment Authority (NEMA) through the National Environment Act (NEA) as the regulatory law that focuses on the environmental preservation and protection with the oil and gas exploration and production in Uganda.

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<sup>183</sup> Interview with the respondent on the 17<sup>th</sup> September 2011 from the Petroleum Institute of Uganda

<sup>184</sup> An interview with an interviewee at the Ministry of Energy held on 15<sup>th</sup> September 2011

Through an interview with the researcher John K. Lukyamuzi the Rubaga South MP and the shadow Minister for Environment, noted that the oil exploration in Uganda is of profound importance to Uganda's future in all aspects. However, the activity should not neglect environment protection and preservation in its natural state for the Uganda's tomorrow is dependent on the state of the environment today.<sup>185</sup>

The requirements of the law on environmental protection and preservation have often not been considered by many Ugandans as was noted in the interviews held with different stake holders in the oil and gas exploration in Uganda.

Another important aspect of the law relates to the access to Information Act which provides for the access to information in the possession of the government. Although the government officer is under this law permitted to withhold such information in public interest, the parliament by law is permitted to have access and decide how the oil exploration and development should be carried out in Uganda.

Theodore Ssekikubo the Lwemiyaga Mp noted that the country's oil and gas agreement should be made public.<sup>186</sup> However, then the respondents were asked about this law in relation to the country's oil and gas exploration, majority of the respondents were of the view that the access to information acts was there to protect the government officials who had sinful activities in oil deals. To this Theodore Ssekikubo said *"this country could have been introduced and we could*

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<sup>185</sup> Interview held on 9<sup>th</sup> September 2011

<sup>186</sup> Daily Monitor News Paper "AG Fails to Avail Oil Documents." By Sheila Natulinda Published on Friday 16<sup>th</sup> September 2011

*find ourselves having lost the case and the rights to own oil—there is something sinister the government is thinking*<sup>187</sup>

On the aspect of the knowledge of the respondents and the international law regulating oil and production in Uganda, majority of the respondents were unaware of the state of the international law being part of the regulatory legal frame work that has to be put into regard by Uganda in the oil exploration exercise.

In this regard a respondent who preferred anonymity said that *"if the count was a properly develop legal frame work why should international laws be consulted on matters that are of a concern to Uganda , unless the parliament is not effectively doing the work for which they were voted for making laws"*<sup>188</sup>

The same reaction was received from different people who could hardly identify a single international law. Those who had some little knowledge identified the model 1999 Production Sharing Agreement to which Uganda is believed to have relied upon in contracting private firms to be the international law. Uganda relies upon for oil exploration and development

#### **4.3 AN ANALYSIS RESPONDENT'S PERSPECTIVE ON THE IMPLEMENTATION OF THE LEGAL FRAME WORK REGARDING OIL EXPLORATION IN UGANDA**

The respondents had diverse notions on the implementation of law in oil and gas exploration in Uganda. These are as discussed below;-

The National laws relating to the disclosure of information which contravenes the Constitution has primarily caused commotion among the parliamentarians.

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<sup>187</sup> *Ibid*

<sup>188</sup> *Interview with the respondent at the Ministry of Energy held on 15<sup>th</sup> September 2011*

This stems from the desire by the state to withhold all the information relating to the agreements made with the oil companies in contravention of Article 41 of the Constitution.<sup>189</sup>

The legal regime relating to oil exploration has not been widely applied. The institutions have not properly ascertained their roles, as well as the state intervention in the institutional roles that are charged with the development on the oil industry in Uganda.

The application of the access to information Act in relation to the oil exploration contracts that was made between the government and the oil companies was noted to be unconstitutional as it contravened some provisions of the constitution whereas the constitution expressly provides them "every citizen has a right to information in the right of state or any other organ except where the release of the information is likely to prejudice the security or sovereignty of the state or interference with the security to the privacy of any other person."<sup>190</sup> However the access to information act for bids the people even accessing some information from the state or agencies or organs of the state. Many Ugandans have no faith in the nature of the contracts so made and their disclosure is in public interest. The question many Ugandans are posing is there a provision in the constitution be over their own by the provision of the access to information act?

It was also noted their where as the penal code act cap 120 condemns corruption and embezzlement of the public funds there is incriminating evidence which is however denoted that the law shall task its force on the implicated persons.

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<sup>189</sup> Which mandates people to access information in the possession of the public officer

<sup>190</sup> Article 41(1) of the 1995 constitution of Uganda

Much as the land act requires compensation of the owners and occupants of the land where oil development activities are undertaken the people so displaced in which the compensation exercise has been handled by the government. This raises complaints that the government undervalued their land and even some persons have not been compensated yet. This has damaged the livelihood of the displaced persons in the Albertine Graben.

The National Environment Act requires the making of the Environment Impact Assessment (EIA) report for mining purposes. Although the oil companies made such reports, the EIA reports so made were quite inadequate and deserve a lot to be desired. The means of treatment and disposal of the wastes so as to preserve the environment were lacking and could not have been relied upon in the PSAs

Another area of concern to many Ugandans is the protection of the economic rights<sup>191</sup> of the persons employed in the oil exploration. The employment, Act provided them employees have to be afforded satisfactory, safe and healthy conditions, non-discrimination while at work, enough resting hours and such other rights as due contained therein

Basing on the above the different institution charged with developing Uganda's oil industry are charged with the responsibility of ensuring that the laws put in place are effectual and strictly observed by all the players.

#### **4.4 Bunyoro's Contribution to oil exploration and development.**

Bunyoro Kitara, located in Western Uganda is one of the old Kingdoms in Uganda is history and it's leadership has lived to date. Under the leadership of Omukama

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<sup>191</sup> Article 40 of the 1995 Constitution of Uganda

the kingdom and its leadership together with the national demand compensation, for the efforts employed in the development of the oil industry in Uganda.

The Interim speaker of BUnyoro Kitera kingdom Supreme council Kiiza Alibano Emmanuel noted that in Bunyoro the discovery of oil is causing excitement over prospects for substantial economic development, but other people are concerned about the purchases of land mean the oil wells on the shores of L. Albert. Reports indicate their local council officials are gaining a lot from the illegal sale of land in the area and many top army officials are heading to the area to buy the land.<sup>192</sup>

The kingdom Minister of mining and Industry George Kyaligonza noted that the oil companies are expected to practice social responsibility.<sup>193</sup>

The woman MP for Hoima District Hon. Beatrice Byenkya noted that while the oil in any present good prospects to the people of the region the peoples of Bunyoro should continue their tasks and income generating activities instead of expecting to get money from the oil. She warned people in the area of the likely problems they will face if Bunyoro become lazy expecting they will be looked after by money from oil proceeds.<sup>194</sup>

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<sup>192</sup> G. Rulukule Oil Production in Uganda." Is the Nation ready Sept 15 2006"

<sup>193</sup> Supra

<sup>194</sup> Supra



The 2<sup>nd</sup> Deputy Prime Minister and Minister of public service Hon. Henry Muganwa Kajura noted that people in Bunyoro Kingdom should instead venture into business that will benefit them from the oil exploration in the area. He further noted that while in supports demands Bunyoro kingdom to be given a percentages of the oil revenues, which he believes the local people will benefit more from the presence of oil in the area by starting up service business to serve the oil sector.

With regard to the above, it is anticipated that the government harmonizes the interests of the Bunyoro and afford them a benefit from the oil proceed.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 INTRODUCTION**

While carrying out research examining the legal, institutional and social justice of oil exploitation in Uganda, the researcher summarized findings of the research, drew conclusions as well as making recommendations in that region which are all covered under this chapter.

#### **5.1 SUMMARY OF FINDINGS**

The researcher established that the national law with regard to the oil and gas exploitation in Uganda is not properly developed. However, the gaps so left can be made up with enactment of relevant instruments.

The researcher also realized that the national laws have conflicting clauses in respect to oil exploitation which cannot harmoniously be reconciled with Article 123 of the 1995 constitution of Uganda applied for oil and gas exploitation in Uganda. For example the parliament is mandated to access all national documents and yet the Access to Information Act provides otherwise. The Land Act also provides that title in land below and above it rests in the person who is the registered proprietor of the land yet the Mining Act provides that all the minerals are rested in the government of Uganda who shall hold it in trust for the republic of Uganda.

The distribution of revenue is linked to course unrest. The independent arguments thus " according to the Mining Act, 80% of oil goes to the local government 17 % percent goes to Local government , 3% to the landlords" but proceeds thus, Bunyoro Kingdom whose traditional territory cover the Albert region that has been insisting a 50% share of the oil revenue be given to the local government

Majority of the respondents were of the view that neither oil nor poverty are confined to one particular region, but instead cover the entire western rift of the country and given the perceived potential for oil to exacerbate regional and social divisions, the benefits from oil should be viewed at a national level. A respondent noted that "oil should be viewed as a national resource and not in tribal terms". When you observe very well tribal identity is still very strong in Uganda I think people should start to have national interest not regional interests though it is not easy to make people forget their identities.

It was also realized that majority of the respondents in the clarity of any legal basis for revenue sharing as Uganda awaits her new legislation, speculation and positioning around this issue shows that, in the oil affected regions is high among district elites and opinion leaders .In areas which have held difficulty in getting used to the industry, notably Bunyoro where leaders demanded between 15 – 50% of oil profits go directly to the region. Some emphasize the role of the district governments in managing others advocate including some percentage for the Bunyoro Kingdom itself.

There is every possibility that elite- led and counter claims regarding different shares of oil revenues due to different districts or institutions will escalate . In absence of a clear and proactive communication from government such claims

will influence more and more people. Overtime this dynamic could lead to a sharpening of divisions both within and between different sub- regions as well as conflict between oil affected regions and central government if expectations for an improvement in overall circumstances are not satisfied or not handled with sensitivity.

As regards to the relationship of Uganda and DRG in the oil rich Albertine Graben it is well-recognized that various combatants in Eastern DRC and their often powerful external backers have exploited the national resources of the country to sustain themselves and make profits from war over the worst years of conflict and that this remains a significant driver of instability in the region.

The possibility of conflict over the Albertine oil resources is seen to be very real by the citizens in Ituli adding a new source of competition to an already volatile situation. Immediate aspects of such competition over oil related to expectations about how the possible benefits from the industry will be considered.

As regards the application of the law relating to oil exploitation in Uganda, the researcher established that it has mixed blessings with the executive arm of government shielding the law from taking full operation, This manifested when the parliament called upon the Attorney General to publicize the oil agreements. Uganda signed with Heritage oil company and Tullow oil company and the president of the Republic of Uganda directed the Speaker of Parliament not to recall, the MPS from the holiday for the discussion of the oil agreements made.

## **5.2 FINDINGS**

From the research findings, the observations made and the literature reviewed, the researcher drew the following findings in regard to the research topic

- a) The state of law as it is cannot effectively be relied upon for the effective guidance and direction of the activity overall exploration in Uganda though it can be useful in the meantime.
- b) The law is not comprehensive enough on the social justice aspects in regard to oil exploration in Uganda and as such the interests of the Ugandans stand at stake in oil exploration lest the law is reviewed.
- c) The petroleum (exploration, development valued addition and production) Bill 2010 has been viewed as the legislation that will provide a sound legal position for oil exploitation in Uganda. However, it has been noted that the bill has a lot of loopholes which however, to be filled to Uganda legal regime regarding oil exploitation in Uganda.
- d) The researcher also conducted that much as the law provides and rule of law to check on the powers of each arm of government, the executive exercises a lot of powers in the determination of laws relating to oil and gas laws in Uganda.

e) The researcher also conducted that the knowledge of the Ugandans of the legal status relating to oil and gas exploitation in Uganda is still low and deserve a lot to be desired in this country relating to oil and gas exploration.

Basing on the above findings, the researcher made viable recommendations to guide the stake holders in the legal and institutional frame work relating to Oil exploration in Uganda.

### **5.3 RECOMMENDATIONS**

The researcher established that oil exploitation in Uganda in making the laws regarding the same needs further clarity if Uganda is to avoid the "Dutch Disease." The researcher hereby makes the following recommendations in regard to the research area.

a) The law should be left to operate without interference from external forces. The constitutional supremacy should not be jeopardized for the benefit of the operation of the statutes. The executive arm should not exceed its legal mandate in the oil and gas exploration.

b) The Petroleum (Exploration, Development Production and Value Addition) Bill 2010 should be reviewed and harmonized, the conflicting provisions of the law and bridge the gaps that were left unattended to by the existing laws in the oil and gas exploration before being passed if the resource curse is to be avoided.

- c) The laws should provide for the institutions involved in the oil exploration and the duties each institution is charged with reasonable details to avoid institutions acting outside / the powers provided for or mandated to them.
- d) The national oil agreements should be made public to avoid cases of anticipation, predicting or assuming. This can help preventing feeding the public with wrong information with its related problems since transparency in government activities is required by law.
- e) The public should be trained or educated in the various aspects of the Petroleum industry to encourage local participation as was in Nigeria among others.
- f) Uganda should fulfill the requirement of international oil bodies like OPEC and get affiliated to such bodies if the country is to properly manage its oil resources

Basing on the above recommendations the researcher advocates for further areas of research that will be vital to oil exploitation in Uganda

#### **5.4 PROPOSED AREAS OF FURTHER RESEARCH**

The researcher notes that the following areas are beneficial for research purposes in the field of oil exploration in Uganda;-

- i. The law and environmental protection and preservation in oil exploration areas.
- ii. The law regulating the oil exploration in Uganda and its impacts on Uganda economic development.
- iii. Rule of law. Is Uganda oil exploration a benefit or a resource curse? An analysis of the Uganda's current legal oil regime .
- iv. The Petroleum (Exploration, Development, Production and Value Addition) Bill 2010 and its impact on the legal and institutional frame work on oil exploration in Uganda.

## **5.5 CONCLUSION**

Basing on all that as is set out in this research, the researcher acknowledges the legal and institutional frame work and social justice aspects relating to oil exploration in Uganda as guidance to the attainment of economic development and national objects spelt out in the Preamble to National Objectives and Directive Principles of State Policy.

The lawmakers should have regard to the interests of the nationals and make laws that will promote proper accountability of the oil proceeds and to provide



for a proper mechanism through which the public will be involved in the oil exploration and development in the country.

From the social point of view, it will be unfair if the Banyoro are not consolidated in the oil proceeds. As the land owners in the region where oil exploration is undertaken their interest should be given priority and spur up development in the area by putting in place social services that can induce investment in the area to realize regional development.

Economically everything is possible should be done to ensure that the country avoids the resource if proper meant of distribution of the oil proceed are not put in place, the oil shall end up being a curse rather than a blessing to Uganda's development. The concentration of the country on oil exploration is likely to damage the agricultural sector where Uganda's production potential has been included upon for years.

Ugandans still hold their faith that the oil exploration in Uganda will take the country to another level of development if corruption does not take a stand upon the oil proceeds.

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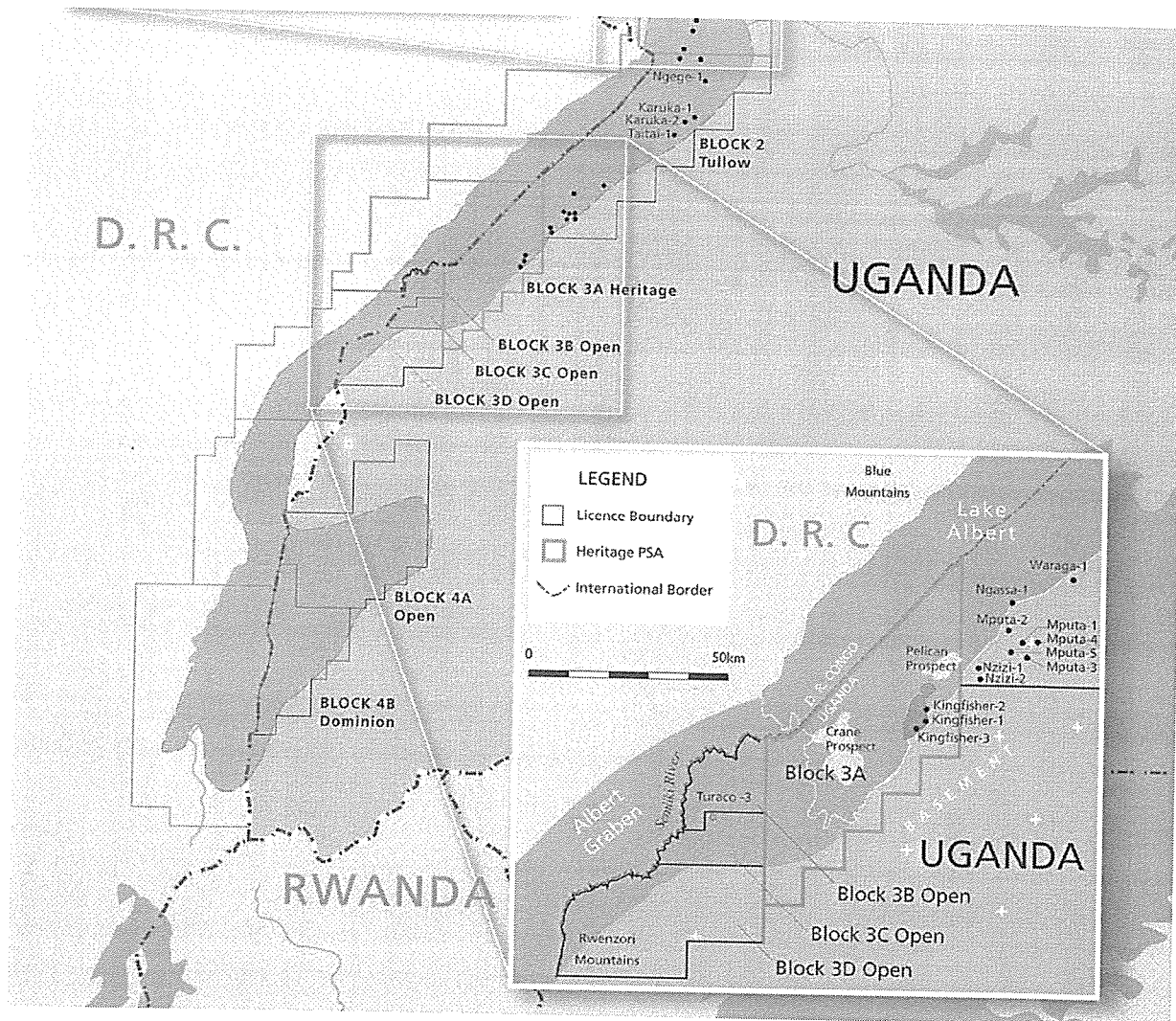
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## Appendix 1

**Figure 1.1: The Sketch Map of the Albertine Graben showing oil reserves**



Source: MEMD- *The Petroleum Exploration and Production Department (PEPD)*

## APPENDIX II

### Interview Guide

You are requested to fill this interview schedule of the study about an examination of the legal, institutional and social aspects of Oil exploration in Uganda. Please help and give the right information that applies to your experience in Uganda's energy sector and the recent oil exploration process.

The information you give will be used exclusively for academic purposes and shall be held confidential. You should tick in the brackets and fill in the blank spaces provided for any question, where possible.

#### *Effectiveness of the local legal framework for oil and gas exploitation*

1. Do you think International Oil Companies dealing in Oil exploration in Uganda have been sufficiently regulated?

Yes (    )

No (    )

Can't tell (    )

Please specify How.....

.....

.....

5. Is there an effective regulatory framework for environmental preservation in oil production and development

Yes ( )

No ( )

Can't tell ( )

Please specify how.....

.....

.....

*Equality and social content with distribution of Oil and gas benefits*

6. What are your expectations from Uganda's oil discovery for the people in your region and Uganda at large?

.....

.....

.....

7. Do you think Uganda's oil discovery is likely to cause any conflict in the country?

Yes ( )

No ( )

Can't tell ( )

i) Please specify how.....

.....

.....

ii) Why do you think so?

.....  
.....  
.....

8. To what extent will oil exploitation in Uganda address social interests of the people in Uganda?

Great extent (    )                      Less extent (    )

i) Please specify how.....

.....  
.....  
.....

#### *Economic development*

9. Has the environment been sufficiently preserved in the process of oil exploration in the Albertine region?

Yes (    )                      No (    )                      Can't tell (    )

i) Please specify how.....

.....  
.....  
.....

Do you think Uganda’s oil discovery will help reduce per-capita poverty in the  
coSignificantly ( )      Not significantly ( )      Can’t tell ( )

i) Please specify why.....  
.....  
.....  
.....

10. To what extent will oil production in Uganda promote economic development?  
Great extent ( )      Less extent ( )

ii) Please specify how.....  
.....  
.....

