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AN ANALYSIS OF FOREIGN DIRECT INVESTMENT REGULATION IN THE PETROLEUM SECTOR IN UGANDA

Submitted in partial fulfilment of the requirement of the degree of LLM

(International Trade and Investments in Africa)

By

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DECLARATION

I, Jacob Ssali, declare that **An Analysis Of Foreign Direct Investment Regulation In The Petroleum Sector In Uganda** is my own work and that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Signed: ___________________________ **Jacob Ssali** June 2014

Signed: ______________________________ **Dr Femi** June 2014

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DEDICATION

This work is affectionately dedicated to my parents, Mr and Mrs Semiivule and my guardians, Dr. and Mrs Lumu, who continue to nurture my dream. To my entire family that has been there for me through it all, my nephew and niece, Asha and Abigail, and to Prof. Frans Vileon, who gave me

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ACRONYMS

CMC	Common Man's Chatter
FDI	Foreign direct investment
FIA	Foreign Investment (protection) Act
IC	Investment Code
IMF	International Monetary Fund
LCRs	Local content requirements
MEMD	Ministry of Energy and Mineral Development
Midstream Act	Petroleum (Refining, Gas processing and Conversion, Transportation and Storage) Act of 2013
MOU	Memorandum of Understanding
NP	Nakivubo Pronouncement
OECD	Organization for Economic Co-operation and Development
PAU	Petroleum Authority of Uganda
PEPD	Petroleum Exploration and Production Department
PSA	Production Sharing Agreement
TICAF	Tororo Industrial Chemicals and Fertilisers
UDC	Uganda Development Corporation
UIA	Uganda Investment Authority
UNCTAD	United Nations Conference on Trade and Development
Upstream Act	Petroleum (Exploration, Development Production and Value Addition) Act of 2013
URA	Uganda Revenue Authority

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CHAPTER ONE

1.1 Introduction

Foreign direct investment (FDI) is one of the important tools that developing countries use to foster economic growth. FDI is the transfer of intangible assets from a natural person or company whose majority of shares are directly or indirectly held by natural persons of foreign nationality into a host country with the specific purpose of generating wealth under a total or partial control of the owner of the assets.[1]FDI comprises of not only the initial transactions establishing the relationship between the investor and enterprise but also all the subsequent transactions between them and among affiliated enterprises both incorporated and not incorporated.[2]

Governments in many developing countries are now giving new attention to the potential for private FDI in their economies. The main reason being the desire for those countries to extend their market- price, grow their private sector and mitigate the external debt problem by attracting more private foreign investment.[3]

Many African countries are now focusing on FDI attraction and trying to cut down on reliance on foreign loans. FDI has an advantage over foreign loans from a balance of payments standpoint.[4] Equity investment requires payment only when it earns profits unlike debt that requires payment irrespective of the status of the economy.[5] The host country can also control payments unlike the debts whose payment standards are set by international markets.[6] Whereas in servicing a debt, the interest paid is of no significant value to the country, the FDI earnings are usually reinvested and only part is repatriated. With FDI both commercial and exchange rate risk is passed on to the investor rather than it being borne by the host country.[7]

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[1]M Sornarajah *International law on foreign investment* (2004) 4.
[2]B Sodersten& G Reed *International economics* (1994) 501.
[3]MB Obwona 'Determinants of FDI and their impact on economic growth in Uganda' (2001) *African Development Bank* 47.
[4]Obwona (n 3 above) 47
[5]Obwona (n 3 above) 47.
[6]Obwona (n 3 above) 47.
[7]Obwona (n 3 above) 47.

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Uganda, like many developing African countries, in an attempt to accelerate growth and development, embarked on a campaign to attract foreign investment.[8] This has been done through massive advertising campaigns and creation of different incentives to attract investors. This is based on the perception that the current resource gap can be filled by the foreign private investment.[9]Ideally, some of the benefits of FDI to the Ugandan economy include; availability of foreign exchange, skills transfer, access to foreign markets, technology transfer, and diversity of goods and services on the market, among others.[10]

FDI in Uganda is regulated by the Investment Code (IC) of 1999, the Act governing Investment in Uganda.[11] It replaced earlier statutes that included the Foreign Investment Decree 1977 and the FIA. However the privileges and the property rights enjoyed under the previous laws by the licence holders was to continue with amendments reviewed under the Code.[12] The new law also provided for the creation of the Uganda Investment Authority (UIA) as the regulatory authority on investments in Uganda. It is the institution that creates procedures for investment in Uganda.[13]

Due to the above legal and structural reforms, Uganda has steadily been able to attract more FDI. In 2012, Uganda saw an increase in their FDI inflow to the tune of 1.7 billion dollars. This increase is mainly attributed to the discovery of oil and its subsequent exploration. With the establishment of the petroleum sector, more FDI is expected to flow into the country.[14]

While the petroleum sector is still in its infancy, the search for oil in Uganda dates back to the early 1920s.[15]Due to political instability over years, it stalled only resuming in 1992. Petroleum reserves were discovered in 2006, and it is estimated to produce approximately 200,000 barrels of oil per day at peak capacity.[16]

After the discovery of oil, the government embarked on legal reforms to regulate the new sectors in the petroleum industry. So far, the **Petroleum (Exploration, Development Production and**

[8] Obwona (n 3 above) 47.
[9] Obwona (n 3 above) 47.
[10]Obwona (n 3 above) 48.
[11]Obwona (n 3 above) 52.
[12]Obwona (n 3 above) 52.
[13]Obwona (n 3 above) 52.
[14] 'Uganda top investment destination in East Africa' *Daily Monitor* 4 July 2013.
[15] http://www.petroleum.go.ug/page.php?k=abthistory (Accessed 20 November 2013).
[16]See n15 above.

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Value Addition) Act 2013, Petroleum (Refining, Gas processing and Conversion, Transportation and Storage) Act 2013 have been enacted. More laws are being prepared like the **Public Finance Bill 2012.** These laws are to provide the principle legal framework governing the petroleum sector in Uganda.

1.2 Problem Statement

The significance of FDI in Uganda can not be understated. With the country attracting 1.7 billion dollars in 2012,[17] clearly it shows that FDI is important to the country's economic development. Uganda's current increase in FDI inflow coincides with the establishment of the petroleum sector and all the current holders of oil exploration licences are foreign investors. FDI poses potential risks especially in the petroleum sector if it is not well regulated. The issue of regulation of FDI in the sector has not been analysed as the regulatory framework is fragmented as opposed to a unified system. It is through this system that the government must find the right regulatory framework that can fully utilise the benefits that come with petroleum for the development of Uganda.

The above underscores the necessity to explore the efficacy of the current FDI regulations in relation to the newly established petroleum sector. This will be the point of focus of this mini dissertation.

1.3 Research Questions

In trying to analyse FDI regulation in the petroleum sector in Uganda the following questions are going to be dealt with in this study:

- What is FDI and why is it important in Uganda?
- How is FDI regulated in the petroleum sector in Uganda?

[17] See n 14 above

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- What are the current legal gaps in the FDI regulations in thepetroleum sector in Uganda and how can these gaps be plugged?

1.4 Thesis Statement

This study argues that the FDI inflow into the petroleum industry is regulated by a raft of rules which pose potential risks to the wellness of the new industry and the economy as a whole; the there are many critical gaps in the legal and regulatory framework in extant which must addressed to prevent Uganda from being vulnerable to the resource curse syndrome that may be difficult to reverse.

1.5 Justification

There is no doubt that encouraging FDI is of importance to the country as it increases real income resulting from the investment once the value added output by foreign capital is greater than the amount appropriated by the investor.[18] Social returns will exceed private returns. Given that foreign investment raises productivity and this increase is not completely appropriated by the investor, the greater product will be shared with others and some other income groups will benefit directly.[19] Domestic labour will benefit directly in form of higher real wages; consumers by way of lower prices and government will receive higher tax revenue. These arguments do not suggest there are no demerits to FDI.[20] There is a school of thought that FDI leads to the domination of the domestic economy by foreigners; creates distortions in the domestic labour market by paying higher wages; but most especially for Uganda due to the establishment of the petroleum sector and the subsequent high FDI investment into the sector, there is a fear that if

[18]Obwona (n 3 above) 48.
[19]Obwona (n 3 above) 48.
[20]Obwona (n 3 above) 48.

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FDI regulation is not well established and streamlined it may lead the country into a resource curse[21] or the famous Dutch disease[22].

The study will attempt to analyse this framework and attempt to address the gaps therein, which has not been addressed in any existing literature.

1.6 Literature Review

There has been considerable interest in the development of FDI in many developing countries and evidence of the role of FDI in the economic development of a country is well documented.

FDI has various definitions but the most widely accepted from the United Nations Conference on Trade and Development (UNCTAD) is:[23]

"*An investment made to acquire lasting interest in enterprises operating outside of the economy of the investor*"

Krishnan states that FDI is increasingly becoming an overwhelmingly important factor for international trade.[24] Most of the nations are doing their best to invite more and more FDI from the globe. And indeed the global flow of FDI is consistently increasing. In fact international economic bodies like World Trade Organizations (WTO) are encouraging FDI flow at all fronts. Many economic analysts held critical views about FDI in the past but latest trends in international trade have proved beyond doubts that FDI can be used by host economies as an effective tool to gain multiple benefits.[25]

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[21]The resource curse, also known as the paradox of plenty, refers to the paradox that countries and regions with an abundance of natural resources, specifically point-source non-renewable resources like minerals and fuels, tend to have less economic growth and worse development outcomes than those without those resources.
[22]Dutch disease is the negative impact on an economy of anything that gives rise to a sharp inflow of foreign currency, such as the discovery of large oil reserves.
[23] http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-%28FDI%29.aspx (Accessed 24November 2013)
[24] http://ssrn.com/abstract=1521590(Accessed 12 February 2014)
[25] See n 24 above

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Sun argues that there is ample evidence that FDI is a key ingredient to sustainable economic growth.[26] Going far beyond simple financing, FDI is instrumental in the rapid and efficient cross-border transfer and adoption of best practice ranging from technological, managerial, to environmental and social standards, which is the essence of economic development.[27] Even during economic crisis, which tend to happen more frequently in a globalizing world economy, FDI has proven to be more stable than other forms of investment and helps host countries ride out crisis and return to growth.[28]

Sun, however, contends that FDI does not come without pre-conditions, nor can host countries reap all the benefits of FDI automatically. Just like any other business people, foreign investors are driven by profits.[29] They go to places where the net profitability is highest, not inevitably where costs are lowest; and they transmit best practice when it is advantageous for them to do so, not necessarily when host countries need it.[30] Hence, national governments have an important task to create the pre-conditions for beneficial FDI to enter and play its catalyst role in the host countries' economic development.[31] This is particularly pertinent now, when the prospect of maintaining high levels of international investment is less certain than just a few years ago.[32]

Sun thus advises that a sound policy and regulatory framework and efficient supporting institutions to enforce the relevant laws and regulations are imperative for FDI to enter and thrive.[33] Sun argues that in a globalized competitive market, the difference between countries in how conducive their investment climate may be, including how an investor is received, how many administrative and regulatory obstacles an investor has to overcome to enter and operate, and how commercial disputes are handled through the judicial

[26] X Sun 'How to Promote FDI? The Regulatory and Institutional Environment for Attracting FDI' (2002) *Foreign Investment Advisory Service* 2
[27] Sun (n 26 above) 2
[28] Sun (n 26 above) 2
[29] Sun (n 26 above) 2
[30] Sun (n 26 above) 2
[31] Sun (n 26 above) 2
[32] Sun (n 26 above) 2
[33] Sun (n 26 above) 2

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system have a huge impact on where the investor will go and how much contribution the investment will make to the host economy.[34]

Parker adds that the aim of regulation is to establish a policy environment that sustains market incentives and investor confidence.[35] For this to be achieved, the regulator needs to be shielded from political interference, and the government needs to support a regulatory environment that is transparent, consistent and accountable.[36]

There have also been very many scholars that have made significant work on the regulation of the oil mining sector in many different countries. Many others have dealt with the different problems that come with poor regulation of the sector.

Humphreys contends that with oil prices becoming increasingly volatile, demand for energy rising in china and India, and instability affecting key oil producers in the Middle East, there is a wave of interest in new oil-producing countries especially in Africa.[37] So there is potential for these emerging producers to greatly benefit from the rising demand if well prepared.

Humphreys adds that, unfortunately, many African oil producers such as Sudan and several West African countries are often better known for poverty, civil conflict and political instability than for sound resources management policies.[38] For these countries, absorbing substantial new capital inflows without succumbing to civil disorder or corruption poses quite a challenge one made even more difficult by the set of economic and political distortions collectively known as the "resource curse.[39]

As many of the above authors have showed, there is a need to have a robust regulatory framework to deal with the demands of the petroleum sector. This is more so in African countries like Uganda as most, if not all, investment into the sector is being made by foreign

[34] Sun (n 26 above) 2
[35] D Parker; C Kirkpatrick & YF Zhang, 'Foreign direct investment in infrastructure in developing countries: does regulation make a difference?'(2006) 1 *Transnational Corporations* 15
[36] Parker et al (n 35 above) 15
[37] http://www.eisourcebook.org/515_HumphreysWhatistheProblemwithNaturalResourceWealth.html (Accessed 12 September 2013)
[38] See n 37 above
[39] See n 37 above

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companies. Thus, there is a need to analyze the efficacy of the regulatory framework of this FDI inflow in the petroleum sector as this issue has not been fully explored.

1.7 Research Methodology

The research is a library and desktop based research. It involves a descriptive and analytical exploration of primary and secondary sources. It relies on both published and unpublished material. The materials used include different laws, books, reports, newspaper clippings, conference and seminar reports, journal articles, websites and internet sources are used as an input in the research among others.

1.8 Chapter Overview

The work is divided into the following chapters as set out below:

1. Introduction and background

The chapter provides a general back ground to the research, the rationale for the research and what the research seeks to achieve. The chapter also details the questions this research attempts to answer and the difficulties that may be faced in answering those questions. The chapter also shows the proposed approach and methodology to answering the research questions.

2. Concept of Foreign Direct Investment and its relevance in Uganda

The chapter gives a clear understanding of FDI generally and its relevance to developing countries in Africa. It further goes to discuss the history and relevance of FDI to Uganda. It also discusses the progressive development of FDI and its current status in Uganda.

3. Regulation of FDI in Uganda's Petroleum Industry

This chapter discusses the current regulatory framework for FDI in the petroleum sector. The framework if segmented and it is an amalgamation of different laws and regulations. This chapter will systematically discuss the laws and regulations establishing the whole regulatory structure.

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4. Current important legal gaps in the regulatory framework of FDI in the petroleum sector in Uganda.

This chapter discusses important legal gaps that need to be dealt with and looks at solutions to these different legal gaps. These issues are an integral part of the regulatory framework and are ideal for a well functioning regulatory system in the petroleum sector.

5. Summary and conclusion

This chapter provides a summary of the discussions in chapter 2, 3 and 4. It concludes and makes recommendations on how Uganda can optimise FDI through a sound legal and regulatory framework.

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CHAPTER TWO

CONCEPT OF FOREIGN DIRECT INVESTMENT AND ITS RELEVANCE IN UGANDA

2.1 Introduction

This chapter gives a basic background of FDI as a concept, the importance of FDI to an economy, why there is a need to regulate FDI and the best practices in regulation thereof. It further discusses FDI in Uganda, looking at its historical background, the laws and regulatory framework and its current status in the country.

Foreign Direct Investment (FDI) as a concept is very important to a nation's economy. Although its impact and relevance to a nation has been a point of debate for decades, it is however undeniable that FDI plays a crucial role in the economic growth of developing economies like Uganda.[40]

FDI, however, does not come without concerns for a host country. It is argued by some scholars that FDI does not necessarily have a positive impact on a host country's economy.[41] Poor management of FDI inflow into a country may have a negative effect on a country's economy like environmental degradation, failure of local business due to crowding in, and investment flight all of which culminate into the host country not benefiting from the FDI. Thus, there is a need to have good regulation and proper institutional structures to deal with the inflow of FDI in the host country. Uganda too as a developing nation has over time created regulations to deal with FDI. In the past five years FDI inflow in Uganda has been on the rise. This is partly due to the discovery of petroleum and the establishment of the petroleum sector in the country.

[40] Sun (n 26 above) 2
[41] Sun (n 26 above) 2

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2.2 Definition of FDI

Foreign Direct Investment (FDI) does not have a lone definition, but rather different definitions that are widely accepted. According to United Nations Conference on Trade and Development (UNCTAD),[42]FDI can be defined as:

An investment made to acquire lasting interest in enterprises operating outside of the economy of the investor

The International Monetary Fund (IMF) defines a foreign direct investment enterprise as:[43]

an incorporated or unincorporated enterprise in which a foreign investor owns 10 per cent or more of the ordinary shares or voting power of an incorporated enterprise or the equivalent of an unincorporated enterprise.

The Organisation for Economic Co-operation and Development (OECD) defines FDI as[44]:

Cross-border investment by a resident entity in one economy with the objective of obtaining a lasting interest in an enterprise resident in another economy. The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the direct investor on the management of the enterprise. Ownership of at least 10% of the voting power, representing the influence by the investor, is the basic criterion used.

Apart from international organisations, some scholars too have come up with a definition of FDI. According to Sornarajah FDI is defined as[45]:

The transfer of intangible assets from a natural person or company whose majority of shares are directly or indirectly held by natural persons of foreign nationality into a host country with the specific purpose of generating wealth under a total or partial control of the owner of the assets.

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[42] See n 23 above

[43] http://www.imf.org/external/np/cmcg/2003/eng/091803.HTM(Accessed 24 November 2013)

[44] http://www.oecd-ilibrary.org/sites/factbook-2013-en/04/02/01/index.html?itemId=/content/chapter/factbook-2013-34-en(Accessed 24 November 2013)

[45] Sornarajah (n 1 above) 4

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A foreign direct investor as defined by OECD is an individual, an incorporated or unincorporated public or private enterprise, a government, a group of related individuals, or a group of related incorporated and/or unincorporated enterprises which has a direct investment enterprise that is, a subsidiary associate or branch operating in a country other than the country or countries of residence of the foreign direct investor or investors[46]

2.3 History of FDI

The concept of FDI can actually be said to be as old as trade itself, for it dates back to the ancient ages from the inception of trade between nations.[47] This is evidenced by trade routes in history between Europe, Asia and North Africa like the Silk route (mainly connecting Changan of Modern China with Asia Minor and the Mediterranean), Spice route (mainly between the Indian subcontinent and Europe), Incense route (mainly between Arabia and Greco-Roman region)[48]and the Trans Mediterranean trade during Biblical times[49].

During the twentieth century with the European scramble for colonial territories, the colonial masters of the day took initiative to invest in the colonies. In East Africa, the British invested in infrastructure like roads and a railway connecting Mombasa to Nairobi and Kampala to make it easy to move raw materials like cotton, coffee and metals like copper and tin for export to Britain.[50]

On attaining independence, many countries were faced with a daunting problem of where to source the funding to sustain their development projects as many colonial masters pulled out their funding, and thus got involved in international trade and later FDI. The rapid growth of Asian nations is testament to this evolving phenomenon. The emergence of South Korea,

[46]'OECD Benchmark Definition Of Foreign Direct Investment' *Organisation for Economic Co-Operation And Development (OECD)* (1999) 8
[47] See n 24 above
[48]http://www.metmuseum.org/toah/hd/trade/hd_trade.htm (Accessed 14 January 2014)
[49]Temin 'Mediterranean Trade In Biblical Times'(2003) *Massachusetts Institute of Technology Department of Economics Working Paper Series*03
[50]http://en.wikipedia.org/wiki/Uganda_Railway (Accessed 14 January 2014)

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Taiwan, and Singapore, among others, brought added advantages for investments, both inwards as well as outwards.[51]

In recent years, FDI inflow has increased exponentially in Africa. This has mainly been due to relative peace in many of the nations on the African continent and the emergence of more sources of FDI with China investing aggressively in Africa.[52] The largest amount of FDI inflow into Africa goes to the countries with natural resources and has boosted their economies and elevated their place on the international market, while in others it has plunged them into socioeconomic disaster.

2.4 Importance of FDI to the economy

The significant impact of FDI to the economy of a host country is a point of contention for many a time because it is hard to compute. Some scholars argue that FDI inflow does not necessarily have a positive impact on a host country's economy and the level of FDI into a country's economy does not equal to its economic growth rate.[53]In recent years a view is evolving which suggests that FDI is positively correlated with growth, reinforced by the developments in growth theory which indicates that FDI promotes improvements in technology, efficiency, and productivity in stimulating growth.[54]

From this perspective, FDI relates with positive growth rate through its role as a conduit for transferring technologies from industrialized to developing economies.[55] On the other hand, opponents of FDI have argued that FDI would increase dependency and, subsequently, vulnerability of the host countries on the FDI-exporting developed countries.[56]

There is no universally accepted criterion for choice of factors that determine economic growth in a country but for the purposes of this research, different parameters will be considered: The

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[51]See n 24 above
[52]http://www.eurekalert.org/pub_releases/2010-09/adb-cat091310.php (Accessed 19 January 2014)
[53]M Busse& J L Groizard 'Foreign Direct Investment, Regulations and Growth' 10 (2008) *The World Economy journal*862
[54]Sun (n 26 above) 2
[55]EG Lim 'Determinants of, and the Relation Between, Foreign Investment and Growth: A Summary of the Recent Literature' (2001), *IMF Working Paper* 3
[56]I Yussof& R Ismail, 'Human Resource Competitiveness And Inflow Of Foreign Direct Investment To The Asean Region' (2002) 9 *Asia-Pacific Development Journal* 1

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major parameters of an economy which are affected by FDI flow are: Trade and investment; Technology transfer; Human capital enhancement; Competition; Enterprise development. [57]

2.4.1 Trade and investment

Inward FDI contributes greatly to the integration of the host country into the world economy through import and export. In a globalised world with a high level of interregional, intercontinental and world trade foreign investment creates an avenue for a country to indulge in import and export. This in the long run improves the country's import export margins thus creating benefit to the host nation. [58]

FDI may however adversely affect local markets. The foreign investors may prefer to buy out local businesses, collapsing them or leading to asset stripping.[59] In some cases the host country may not gain value as FDI inflows equal to outflows. Many foreign investors usually prefer to import all their raw materials and equipment and thus ignore locally made products.[60] This creates not only the exhaustion of foreign exchange reserves but a negative trade imbalance in the economy.[61]

2.4.2 Technology transfer

This does not merely refer to the technology itself but includes the organizational and management skills.[62] The foreign investors share their technology with the host country as the parent companies support their subsidiaries with human resource, infrastructure, and training, among others. In cases of a new sector it helps the host country establish a business infrastructure for the sector.

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[57]'Foreign Direct Investment for development maximizing benefits, minimizing costs: Overview' (2002) *Organisation for Economic Co-Operation And Development*(OECD) 9
[58]I Yussof& R Ismail, (n 56 above) 10
[59]See n 24 above
[60]See n 24 above
[61]http://www.tearfund.org/webdocs/Website/Campaigning/Policy%20and%20research/Investment%20and%20development%20paper.pdf (Accessed on 20 February 2014)
[62]'Trade and foreign direct investment' , *WTO News Press/57*, October 1996

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Such developments can have a positive impact on a country's socioeconomic structure only if there are spillovers from the investment. In terms of FDI, spillovers means benefits from the technologies of investor's enterprise to the local economy.[63]

There are some concerns about technology transfer issues. Many times there arise disputes pertaining to intellectual property rights violations. To keep the technological edge, many enterprises demand stricter laws for protecting intellectual property rights.[64] Some governments prohibit their enterprises from transferring some dual use sensitive technologies to strategically hostile nations for the fear of proliferation of destructive technologies.

2.4.3 Human capital enhancement

This involves creating employment and intellectual assets by imparting training and education by the investor in the host nation through training and on-the-job learning.[65] Those investors may also have a positive influence on human capital enhancement in other local enterprises with which they interact and develop links which have positive effects on human resource development of the host economy.[66] FDI can compensate for critical management gaps, facilitating employment of local labor and transferring skills to local managers and entrepreneurs.[67]

2.4.4 Competition

It must be noted that there is no universally accepted way of measuring the level of competition in a given country's market. However, inward FDI may lead to an increase in competition in the host country's market. The subsidiaries of foreign enterprises can catalyze economic development by inspiring domestic competition and thereby leading eventually to higher productivity and competitive prices.[68]

At the same time, inward FDI might be a threat to the local enterprises. Foreign technology or organizational techniques may actually be inappropriate to local needs, capital intensive and

[63]See n 24 above.
[64]P Nunnenkamp & J Spatz, 'Intellectual Property Rights and Foreign Direct Investment: The Role of Industry and Host-Country Characteristics' (2003) 1167 *Kiel Working Paper* 37.
[65]See n 24 above.
[66]I Yussof & R Ismail, (n 56above) 14.
[67]See n 44 above.
[68]I Yussof & R Ismail, (n 56 above) 16.

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have a negative effect on local competitors of the host economy, especially smaller business who are less able to make equivalent adaptations to compete with bigger and advanced subsidiaries of foreign investors[69]

2.4.5 Enterprise development

Inward FDI has the capacity to positively influence enterprise development in host countries.[70] Especially in the mergers and acquisitions FDI, the acquiring foreign investor makes efforts to raise efficiency and reduce costs in the acquired enterprise of the host economy.[71]Also, efficiency gains may occur in unrelated enterprises through demonstration effects and other spillovers similar to those that lead to technology and human capital spillovers.[72]

There are some possible negative impacts on growth of national economy as well. Large amount of FDI, in the absence of proper holistic strategy, can create the problems of "*Crowding out*" in the host economy.[73] "*Crowding in*" and "*Crowding out*" are two very critical phenomena associated with FDI in host economy. When FDI companies enhances the competitiveness within the local economy and produces overall results which are good for economy, it is called "*Crowding in*".[74] "*Crowding out*" occurs when the FDI company is too big and powerful for the local businesses and aggressive tactics of FDI company dominates the whole market, strafing the local competitors[75] Hence, FDI may become threat to local businesses and it can seriously jeopardize the nations' native local companies.

2.5 FDI and regulation

For an investor to invest in a host country, they have to be sure of guarantee on return on investment as they are fully motivated by profit. On the other hand, the host country must ensure that FDI inflow does not create a distortion to the local economy. The government of the host country needs to look for a balance between these two important aspects. For the government to

[69]'Foreign Direct Investment: A lead driver for sustainable development?' (2002) 1 *Economic Briefing Series* 3.
[70]See n 24 above.
[71]See n 24 above.
[72]See n 24 above.
[73]See n 24 above.
[74]See n 24 above.
[75]'Foreign Direct Investment: A Lead Driver for Sustainable Development?'(2002) 1*Economic Briefing Series, Towards Earth Summit* 4.

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create the balance it must invest in a sound and efficient policy and regulatory framework that have political and macroeconomic stability and a diligent physical and social infrastructure to compliment the policies that are created.

A sound policy and regulatory framework as well as efficient supporting institutions to enforce the relevant laws and regulations are imperative for FDI to enter and thrive.[76]Especially in a globalized competitive market, the difference between countries in how conducive their investment climate may be, including how an investor is received, how many administrative and regulatory obstacles an investor has to overcome to enter and operate, and how commercial disputes are handled through the judiciary system, have a huge impact on where the investor will go and how much contribution the investment will make to the host economy.[77]

An adequate physical and social infrastructure complements a good policy and regulatory framework to create the necessary environment for attracting FDI.[78]These include the quantity and quality of roads and communication systems, skilled labor, as well as the efficiency with which public services are delivered.[79] They are also important if the full potential benefits of FDI presence are to be realized.[80]

Therefore, a sound policy, regulatory and institutional environment for FDI is one part of the larger investment climate that affects all private investors, both foreign and domestic.[81] To encourage investment, the policies and practices should aim to reduce investor costs and the perceived risks associated with the investment, as well as creating an investment climate conducive for the domestic economy to benefit from such investments.[82]Over the last decade or two, more and more developing countries have liberalized their economic policies. Lower tariffs, fewer quantitative restrictions, and currency convertibility have helped to encourage trade flows, and the importance of FDI in GDP has risen almost everywhere, thanks to fewer sectoral

[76]Sun (n 26 above) 2.
[77]Sun (n 26 above) 2.
[78]Sun (n 26 above) 2.
[79]Sun (n 26 above) 2.
[80]Sun (n 26 above) 2.
[81]Sun (n 26 above) 3.
[82]Sun (n 26 above) 3.

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restrictions to foreign investors or the percentage of foreign ownership allowed, and a more favorable outlook towards FDI in general.[83]

Although the issue has generated considerable interests among policy analysts in recent years, there remains an empirical lacuna to link the suitable regulatory policy framework to a country's socioeconomic reality. In the absence of such theoretical guidance, solutions are sought for in best practice examples of what have worked on the ground.[84]

2.7 FDI in Uganda

The story of FDI in Uganda goes back to colonial era when the country was a British protectorate. During that time as was the norm, all development projects in the country were financed by the British government. On attaining independence in 1962, Uganda was left with a dilemma of how to fund the on-going development projects as the British withdrew their funding gradually.[85]The new government took on the task of sourcing funding for the development projects. One of the ways in which it hoped to gain funding was through attracting FDI into the country.

The government's intentions were clearly demonstrated by the passing of the Uganda Industrial Act of 1963 with the main aim of attracting both local and foreign investors. [86]The government invested in efforts to shift economic dependence from agriculture to industrialisation. This was a strategic move considering the backward and forward linkages that would be created by the industrial sector and the economic diversity as it would encourage potential markets for other sectors and further create employment. [87]The government went on to acquire the Uganda Development Corporation (UDC) initially formed in 1952 to enhance industrialization by the British.[88]The state and a few Asian private investors like Madhivani and Mehta groups championed economic growth post independence through huge investment into the

[83]Sun (n 26 above) 3.
[84]Sun (n 26 above) 2.
[85]Obwona (n 3 above) 49.
[86]Obwona (n 3 above) 49.
[87]Obwona (n 3 above) 49.
[88]Obwona (n 3 above) 49.

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economy.[89]The legal protection for FDI against compulsory acquisition by the state and rights to repatriate capital, interest and dividends was provided under the Foreign Investment Protection Act of 1964 (FIA). [90] However in subsequent yearswith the government of the day looking to nationalise the industrial sector, the UDC was used to slowly grab private investments by it being given a legal right to control 51% of most of the projects it had started like Nyanza Textiles Industries Limited (NYTIL) and Uganda Cement Industries (UCI), Tororo Industrial Chemicals and Fertilisers (TICAF) among others.[91]

Later, in 1968 the government made its biggest step towards nationalisation by the passing of the Common Man's Charter of 1968(CMC) which was viewed as a socialist stand. At that time the economy was being controlled by a few British-Asian investors who owned most of the commercial and industrial sectors of the country.[92] This was seen by the government as unsustainable and risky to the long term growth of the country. The government then went ahead and followed on to the CMC by passing the Nakivubo Pronouncement of 1970 (NP) that outlined the strategy for implementing the CMC.[93]The NP increased the control of government in the major private industries from 51% to 60% and further excluded private companies from external trade, Foreign investors were unsettled and the political environment was so tense leading to the overthrow of the civilian government and beginning of one the most interesting and controversial era in Uganda's history, the Amin Era. [94]

2.6.1 The Amin Era

This was a period of 'economic war'. It all started in 1972 with the expulsion of British-Asians from the Uganda. This led to the expropriation of all assets and businesses of foreign investors and the eventual collapse of the industrial sector in Uganda.[95] Although at ascension to power Amin revoked the NP, he later went on to nationalise most of the foreign investors' businesses even those not in the industrial sector.[96]The nationalised businesses were given to Ugandans

[89]Obwona (n 3 above) 49.
[90]Obwona (n 3 above) 49.
[91]Obwona (n 3 above) 49.
[92]Obwona (n 3 above) 49.
[93]Obwona (n 3 above) 50.
[94]Obwona (n 3 above) 50.
[95]Obwona (n 3 above) 50.
[96]Obwona (n 3 above) 50.

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while others were put under the UDC. This led to Uganda's isolation by the Western world and further hostilities and economic turmoil[97].

With the fall of the industrial sector came a whole lot of economic issues. There were shortages of products in the market and this led to hikes in prices of almost everything. Due to the isolation by the West the country lacked foreign currency or credit worthiness and this led to inflation.[98] With the government faced with economic meltdown it realised the importance of FDI and passed the Foreign Investment Decree of 1977 that exempted a foreign investor from import duty, sales tax on plant and machinery in an investment in an approved enterprise.[99]The decree was not retrospective and applied if investments exceeded US$571,000.[100] Theinvestors were reluctant to take the risk on their money in such a hostile political and economic environment.[101]

Even after the overthrow of Amin in 1979 the issues that had been created in the economy coupled with the hostile political climate made investment into the country a very risky business. FDI reduced significantly during this period until 1986.

2.6.2 The period from 1986 to 2013

In 1986, after a long period of political turmoil and civil war the National Resistance Army (NRA), a rebel group, finally won the war and swiftly took steps to re-establish a government in Uganda. This has been followed by a period of relative peace and economic growth and stability.

When the new government took over, it realised the important and urgent need for FDI in the economy. With this realisation, the government undertook steps to revive the depleted FDI inflow and also market Uganda as an investment destination. [102]In 1990, the government started by implementing the law passed by the 1985 parliament to return properties of foreign investors to their rightful owners.[103]This was followed by different reforms to enhance investment on a macroeconomic level. The government through the advice of the IMF and World Bank undertook structural adjustment programmes to improve the economy, these included: foreign

[97] Obwona (n 3 above) 50.
[98] Obwona (n 3 above) 51.
[99] Obwona (n 3 above) 51
[100]Obwona (n 3 above) 51.
[101]Obwona (n 3 above) 51.
[102]Obwona (n 3 above) 51.
[103]Obwona (n 3 above) 51.

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exchange reforms, market liberalization, simplification of administrative procedures and privatisation and acceding to different regional and international treaties.[104]

The government also enacted the Investment Code of 1999 (IC) the Act governing investment in Uganda.[105] This Act replaced the earlier statutes that included the Foreign Investment Decree of 1977 and the FIA. However the privileges and the property rights enjoyed under the previous laws by the licence holders were to continue and be reviewed under the Code.[106] The Investment Code also provided for the creation of the Uganda Investment Authority (UIA) as the regulatory authority on investments in Uganda. It is the institution that creates procedures for investment in Uganda.[107]

According to a joint survey between UIA, Bank of Uganda and Uganda National Bureau of Statistics about which investments have come in for the period between 1991 and 2012, FDI had grown tremendously to about $2 billion by 2008, with over 3500 projects licensed.[108] With the discovery of oil and the government decision to invest and exploit the oil, came unprecedented amounts of FDI inflow. In 2012 Uganda saw an increase of FDI inflow to the tune of 1.7 billion dollars. This increase is mainly attributed to the discovery of oil and its subsequent exploration. With the establishment of the petroleum sector, more FDI is expected to flow into the country.[109]

2.7 Conclusion

It goes without question that FDI is a very important concept in world economics and has been since the inception of trade itself. As has been clearly shown in this chapter, FDI is not just limited to the money that gets invested but also comes in different forms with other advantages like technology transfer, skilling of labour, employment opportunities, increased competition locally and exposure to international markets among others.

[104]Obwona (n 3 above) 52.
[105]Obwona (n 3 above) 52.
[106]Obwona (n 3 above) 52.
[107]Obwona (n 3 above) 52.
[108]http://www.ugandaeconomy.com/invest-uganda/uganda-investment-authority (Accessed 12 January 2014)
[109] 'Uganda top investment destination in East Africa' *Daily Monitor* 4 July 2013.

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This FDI does not come without conditions as investors also seek for profit for their investment. If not handled well, FDI inflow may be detrimental to the growth of the host country's economy. So, there is a need for a country to find a balance between investors' interests and those of the nation. There is therefore a need for the government to create regulations supported by the right regulatory framework to regulate FDI.

In Uganda, like many other African nations, FDI has played an important role in economic development. Although FDI in Uganda has had a volatile history the government has over the past 20 years worked towards mending it. This has led to the steady rise of FDI inflow into the country. With the new petroleum sector the amount has increased to unprecedented amounts. Although there has been the Investment Code of 1999 complimented by other laws there is no unified legislation that deals with FDI in Uganda. The rapid increase in FDI means that there is need for caution regarding FDI itself.

The next chapter will critically analyse the current regulatory structure of FDI in the petroleum sector in detail. It will start by giving a historical background of the petroleum sector and progression to its current status. The chapter will also further look into the different relevant laws in the regulation of FDI in the petroleum sector including the ones that are pending to be passed by parliament.

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CHAPTER THREE
REGULATION OF FDI IN UGANDA'S PETROLEUM INDUSTRY

3.1 Introduction

This chapter is going to discuss the petroleum sector in Uganda, its history and current developments, the legal framework of the petroleum sector, the different industrial sectors in the petroleum sector and their regulation. It will further discuss the regulatory framework for foreign investment into the petroleum sector including the regulators and important legal aspects in regulation of foreign investment in the petroleum sector.

The petroleum sector is a very important sector in all petroleum producing nations around the world, and revenues so huge that if well managed the sector has the potential of drastically improving a country's socioeconomic development.

With the discovery and exploitation of the petroleum resource in Uganda come the questions on whether the country has a ready and efficient regulatory framework in place to deal with the new developments in the sector as the laws in place at time of discovery only dealt with the lower stream areas of the petroleum sector.

In light of the discovery and exploitation of the petroleum resource in the country the Ugandan government has taken steps to establish a regulatory and institutional framework to deal with the new demands in the petroleum sector.

It should however be noted, that since the petroleum sector is dominated by international companies, the regulation of these companies and foreign investment in the sector is not done by a single law regulatory framework. Since the petroleum sector affects so many aspects from environment, wildlife, health, revenue to labour among others, there are different laws and regulators involved in the regulation of the petroleum sector. This creates a segmented regulatory system in the petroleum sector.

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3.2 The Petroleum Industry

The petroleum industry includes the processes of exploration, extraction, refining, transporting and marketing petroleum products.[110] The largest volume products of the industry are fuel oil and petrol. Petroleum is also the raw material for many chemical products, including pharmaceuticals, solvents, fertilizers, pesticides, and plastics.[111] The industry is usually divided into three major components: upstream, midstream and downstream. Midstream operations are usually included in the downstream category.[112]

The world consumes 30 billion barrels of oil per year, with developed nations being the largest consumers. The United States consumed 25% of the oil produced in 2007. The production, distribution, refining, and retailing of petroleum taken as a whole represents the world's largest industry in terms of dollar value.[113]

Petroleum and the petroleum industry play such a vital role in the world as most world economic production depends on petroleum products. This is thus a very vital and important sector in any country's economy. This is more so for an oil producing developing country like Uganda.

3.3 History of the Petroleum Sector in Uganda

The hunt for oil in Uganda dates back to the early 1920s, when E.J. Wayland a British geologist documented the presence of hydrocarbons in the Albertine Graben. These findings were documented in the publication "Petroleum in Uganda" 1925.[114]

This initial discovery was followed by preliminary well-drilling in1938 but no testing was done on this new discovery. Despite the country having vivid signs of oil, Uganda was affected by World War II and its aftermath[115]mainly because the British who were the colonial masters of Uganda at that time were participating in, and later recovering from the World War II.

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[110]http://en.wikipedia.org/wiki/Petroleum_industry (Accessed 11 April 2014).
[111] See n 110 above.
[112] See n 110 above.
[113] See n 110 above.
[114] http://www.acode-u.org/ugandaoil.html (Accessed on 20 September 2013).
[115]http://www.ugandaoilandgas.com/ugandaoilandgas_003.htm (Accessed 20 November 2013).

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In the years following the independence of Uganda in 1962, the political turmoil that engulfed the country rendered the pursuit of oil dormant until the 1980s.[116]Between 1983 and 1992geologists in Uganda's Petroleum Exploration and Production Department (PEPD) engaged in extensive subsequent ground surveys of the Albertine Graben region.[117] The findings revealed the Albertine Graben located in western Uganda as the basin most primed for oil exploitation.[118]

These subsequent petroleum discoveries prompted the Ugandan government to sign contracts with a number of international companies to engage in preliminary exploration and testing.So far four out of the six exploration areas identified to have good potential for petroleum production in the country are being licensed to international oil companies with the remaining areas awaiting licensing by government of the prospective applicants.[119] The most visible of these firms is Tullow oil, which recently consolidated its hold over a handful of oil-rich concessionary blocks in the Graben.[120]In March 2011, Tullow signed contracts with Total S.A. of France and CNOOC Ltd. of China, each of which acquired a one-third interest in exploration areas 1, 2, and 3A.[121]

While oil production is still a couple of years away, petroleum geologists assert that the Albertine Graben has huge oil reserves. It is estimated that at peak capacity the combined areas are expected to produce approximately 200,000 barrels of oil per day.[122]

So far five Production sharing agreements (PSA) have been signed by the government with different oil companies all of which are foreign companies and more than four production licences have been issued. The government in 2014 issued a production licence over the Kingfisher Field operated by CNOOC. CNOOC has now commenced the development of this field which is expected to take a period of four years before production can commence.[123]The Ministry of Energy and Mineral Development (MEMD) is also reviewing applications for

[116] See n 110 above.
[117]See n 15 above.
[118]See n 15 above.
[119]See n 110 above.
[120]See n 15 above.
[121]See n 114 above.
[122]See n 15 above.
[123] 'Government signs Memorandum of Understanding with the Licensed Oil Companies'*Ministry Of Energy And Mineral Development Press release* 6February 2014

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production licenses over eight discoveries in Exploration area 2 operated by Tullow and another application has been submitted by Total for a field in Albertine Exploration Area[124]

In February 2014, the Ugandan government signed a Memorandum of Understanding (MoU) on the Sustainable Development of the Discovered Petroleum Resources in the Albertine Graben with the Licensed Oil Companies operating in the country, namely; CNOOC Uganda Limited (CUL), Total E&P Uganda B.V. (TOTAL), Tullow Uganda Operations Pty Limited (TUOPL) and Tullow Uganda Limited (TUL).[125]

The purpose of the MoU is to provide a framework for achieving a harmonized commercialization plan for the development of the discovered petroleum resources in Uganda.[126] The plan includes the use of petroleum for power generation, supply of crude oil to the refinery to be developed in Uganda by the government and export of crude oil through an export pipeline or any other viable options to be developed by the oil companies.[127]

The MoU requires the oil companies to support the Ugandan government in its efforts to develop the refinery including public endorsement of the project.[128] It also requires the government to provide support to the oil companies in acquiring approvals for studies and surveys for an export pipeline and to initiate discussions with neighboring countries in relation to cross border frameworks for the pipeline.[129]

The government is currently in the process of developing Uganda's oil refinerywith six firms shortlisted to submit proposals for the developmentit has also acquired 29 Square kilometers of land in Hoima district for the project through implementation of a Resettlement Action Plan.[130]

[124]See n 123 above.
[125]See n 123 above.
[126]See n 123 above.
[127]See n 123 above.
[128]See n 123 above.
[129]See n 123 above.
[130]See n 123 above.

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3.3.1 History and current developments of the legal framework in the petroleum sector

Prior to the discovery of oil reserves and subsequent exploration, the legal framework that was governing the operations of the petroleum sector included: **The Petroleum Exploration and Production Act of 1985, The Petroleum Exploration and Production Regulations of 1993, The Uganda Oil Board Act Cap 328, of 1991 And the Petroleum Supply Act of 2003**.[131]However with the discovery of the oil reserves and the government's push to start petroleum production, these laws were found to be inadequate to deal with the new developments in the sector as they did not cover the midstream petroleum operations, environmental protection and conservation in addition to the new emerging challenges created by the discovery of commercial petroleum resources.[132]

From 2008, the government of Uganda embarked on legal reforms in the petroleum sector to cater to the new demands of the sector. These included the enactment of new laws and policy, amendment of complimentary laws and creation of a new institutional framework among others.

The government began by creating the National Oil and Gas Policy for Uganda of 2008 (NOP). The NOP superseded the Energy Policy for Uganda published in 2002 in matters of exploration, development, production and utilization of the country's oil and gas resources.[133] The aim of the NOP is creating a conducive environment for petroleum exploration in the country and the anticipated development, production and utilization of any discovered resources, the policy also seeks to put in place a framework for the efficient management of the oil and gas resources as well as revenues accruing there from.[134] The NOP put in place the guidelines for the creation of the legal and institutional frameworks in the petroleum sector, financial policy, impact assessments from environmental to human monitoring and evaluation guidelines for implementation of the policy.

The NOP was followed by the drafting and enactment of new legislation for the petroleum sector. The new legislation is intended to cover the upstream, midstream and lower stream

[131]See n 114 above
[132]See n 114 above
[133]National Oil and Gas Policy For Uganda of 2008, ii
[134]See n 133 above, iv

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sectors. On 7 December 2012, Parliament passed the **Petroleum (Exploration, Development Production and Value Addition) Act of 2012** (Upstream Act)**.** This Act replaced **the Petroleum exploration and production Act of 1985.** The aim of the Act is o regulate the upstream sector**.** Under the new Act, the Government has powers to enter into agreements relating to petroleum activities with any person. The Minister of Energy and Mineral Development will be responsible for granting and revoking of licences.[135]

The new Act also establishes the Petroleum Authority of Uganda (PAU) whose major function will be to monitor and regulate petroleum activities in Uganda.[136] The PAU replaces the PEPD and takes over its functions.[137] The PAU will give directions to licensees on best petroleum industry practices to ensure proper and optimal production of petroleum and encourage best conservation practices in licensed areas.[138] Other functions of the Petroleum Authority of Uganda will include: monitoring and regulation of petroleum activities including reserve estimation and measurement of the oil and gas produced; reviewing and approving proposed exploration operations contained in the licensee's work program, reviewing and approving budgets submitted by the licensee; advising the Minister in the negotiation of Production sharing Agreements (PSAs); assessing production and cessation of petroleum activities, decommissioning and ascertaining cost oil or gas oil due to licensees and administering petroleum agreements.[139]

The new Act also provides for the formation of a National Oil Company (NOC).[140] The NOC shall be a wholly state owned enterprise incorporated under the Companies Act and managed in accordance with the Companies Act, the Petroleum (Exploration, Development and Production) Act as well as other laws governing state enterprises.[141]

In February 2013 the **Petroleum (Refining, Gas processing and Conversion, Transportation and Storage) Act of 2013** (Midstream Act) was passed by parliament. This Act regulates the midstream activities of the petroleum sector. The objectives of the Act are; to regulate, manage,

[135]Petroleum (Exploration, Development and Production) Act of 2012. Section 8.
[136] See n 135 above, Section 9.
[137] See n 135 above, Section 10.
[138] See n 135 above, Section 15.
[139] See n 135 above, Section 10.
[140] See n 135 above, Section 42.
[141] See n 135 above, Section 42(2).

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coordinate and monitor midstream operations; to enable the construction, placement and ownership of facilities; to provide for third party access to facilities, and to regulate tariffs for facilities.[142]

The law also provides for an open, transparent and competitive process for licensing by the Minister; provide for additional and particular health, safety and environment regulations not sufficiently regulated in other laws; provide for cessation of midstream operations under this Act and decommissioning of facilities; and regulate any other matters related to midstream operations.[143]Most importantly it created guidelines for the building of the oil refinery as planned by the government of Uganda.

The government has tabled the **Public Finance Bill of 2012.** This bill seeks to regulate government revenue and expenditure regarding all revenue received by the government and its subsequent expenditure for all its activities in the country. The bill is aimed at creating and improving transparency in the government which is one of the major requirements for the success of oil production and the petroleum sector in any country. There are other laws in complementary sectors like tax, labour, and environment among others that are being amended to cater for the new changes in the petroleum sector.

3.4 Key Legal Aspects of the Petroleum Sector

The regulatory framework in the oil sector as earlier discussed is not a single regulatory system but rather a multiplicity of different legal systems that complement each other to create a working system. This is mainly due to the many different aspects and stages involved in the petroleum sector in Uganda. These include the following:

[142]http://www.petroleum.go.ug/page.php?k=regacts&id=5(Accessed on 25March 2014)
[143] See n 142 above.

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3.4.1 Capital investment regulations.

All investments in Uganda are regulated by the investment Code Act of 1991. The Act requires any investor operating a business in Uganda to be in possession of an investment licence issued by the Uganda Investment Authority (UIA) in accordance to the Act.[144]

A foreign investor is defined as a person who is not a citizen of Uganda or a company in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda or a partnership in which the majority of partners are not citizens of Uganda.[145]

A foreign investor is required to incorporate a company with the Registrar General as is required by law and deposit a sum of one hundred thousand United States dollars or its equivalent in Uganda shillings at the Bank of Uganda (BoU).[146]

The Act protects any licensed investor from their enterprise, right or interest over property forming the enterprise from compulsory acquisition unless it is in accordance with the constitution of Uganda.[147] Where any acquisition takes place, the investor is compensated in respect to the fair market value of the enterprise or interest at the time of the acquisition.[148] The compensation is freely transferable out of Uganda.[149]

3.4.2 Petroleum licensing

Following the acquisition of an investment licence and tax reference number, an investor is required to apply for a licence before commencing with any activities in the petroleum sector. Petroleum licences in Uganda are issued in accordance with the Upstream Act and the Midstream Act. These Acts confer the powers to issue a licence to the Minister of Energy and Mineral Development.[150] There are two types of licences issued in this regard so far. The petroleum exploration licence and the petroleum production licence.

[144]Investment Code Act of 1991 section 10(1).
[145]See n 144 above , section 9(1).
[146]See n 144 above, section 10(5).
[147]See n 144 above, section 27(1).
[148]See n 144 above, section 27(2).
[149]See n 144 above, section 27(3).
[150]See n 135 above, Section 8(a).

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3.4.2.1 Petroleum exploration licence

Petroleum exploration is the search by petroleum geologists and geophysicists for hydrocarbon deposits such as oil and natural gas beneath the earth's surface.[151]Petroleum resources are typically owned by the government of the host country, in which case oil companies must negotiate terms for a lease of these rights .In most nations the government issues licences to explore, develop and produce its oil and gas resources, which are typically administered by the oil ministry.[152]

In Uganda like many other countries the issuing of licences is done by the Minister of the MEMD. Under the Upstream Act the minister with the approval of cabinet, announces areas open for bidding in exploration licensing rounds, to be published in The Gazette and national and international newspapers.[153] Any party affected by the proposed exploration activity shall have an opportunity to object to the grant of the exploration licence.[154]

The minister, however, may receive direct applications for exploration licences in exceptional circumstances where: Invitations for bids have been sent out three times and no application has been received; the application for reservoir within a licensed block which extends into an unlicensed block; or to promote national participation and interest.[155]

The licensee has the exclusive right to carryout both the primary explorations and any subsequent extensions; explore the licensed area, using acceptable methods of exploration for the purpose of identifying prospects; and carry out any other exploration activity necessary.[156]

Under the Act, a petroleum exploration licence remains in force for a period not exceeding 2 years after the date of the grant of the licence, subject to renewal for a period not exceeding two years.[157] Holders of petroleum licences can apply for renewal of the petroleum exploration licence, not later than ninety days before the licence is due to expire.[158] The petroleum

[151]http://en.wikipedia.org/wiki/Hydrocarbon_exploration(Accessed on 29March 2014).
[152]See n 151 above.
[153]See n 135 above, Section 52.
[154]See n 135 above, Section 55.
[155]See n 135 above, Section 53.
[156]See n 135 above, Section 65.
[157]See n 135 above, Section 61.
[158]See n 135 above, Section 62 (1) &(2).

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exploration licence can not be renewed more than twice to the same holder or if the holder is in default regarding the required conditions set in the licence.[159]

Upon discovery of petroleum, a licensee must immediately notify the Petroleum Authority of particulars of the discovery and evaluate the discovery, [160]and in that regard, may apply for a grant of a petroleum production licence.

3.4.2.2 Petroleum production licence

The application for a petroleum production licence must generally be made within two years from the date on which the technical evaluation of test results was submitted to the Petroleum Authority.[161]

A petroleum production licence is granted to the holder of a petroleum exploration licence, who has made a discovery of petroleum in an exploration area over any Block or blocks in the areas which, following appraisal, can be shown to contain a petroleum reservoir or part of a petroleum reservoir.[162]

However, a person may apply for the grant of a petroleum production licence for an area or a block that contains a petroleum reservoir or part of a petroleum reservoir eventhough they do not hold a petroleum exploration licence in respect of that block.[163]

The licence may also be granted jointly to the applicant and the National Oil Company, with the interest granted to the National Oil Company being such percentage as is specified by the minister with the approval of the cabinet.[164]

The Minister may in consultation with the Petroleum Authority and upon the approval of cabinet, grant to the applicant a petroleum production license.[165] A petroleum production licence is granted for a period of twenty years, extendable by five years.[166]

[159]See n 135 above, Section 64(4).
[160]See n 135 above, Section 66(1).
[161]See n 135 above, Section 66(2).
[162]See n 135 above, Section 69(1).
[163]See n 135 above, Section 69(4).
[164]See n 135 above, Section 75(2).
[165]See n 135 above, Section 75(1).
[166]See n 135 above, Section 77(1).

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A petroleum production license confers on the licensee exclusive rights to carry on petroleum activities in the license area; to sell or otherwise dispose of the licensee's share of petroleum recovered in accordance with the field development plan; and to carry on operations and execute works in the development area in line with the Act.[167]

3.4.3 Production sharing agreements

A Production sharing agreement (PSA) is a common type of contract signed between a government and a resource extraction company or group of companies concerning how much of the resource (usually oil) extracted from the country each will receive.[168] Production sharing agreements were first used in Bolivia in the early 1950s, although their first implementation similar to today's was in Indonesia in the 1960s.[169]

In PSAs, the country's government awards the execution of exploration and production activities to an oil company.[170] The oil company bears the mineral and financial risk of the initiative and explores, develops and ultimately produces the field as required.[171] When successful, the company is permitted to use the money from produced oil to recover capital and operational expenditures, known as "cost oil".[172] The remaining money is known as "profit oil", and is split between the government and the company, typically at a rate of about 80% for the government and 20% for the company.[173] In some PSAs, changes in international oil prices or production rate can affect the company's share of production.

The government of Uganda used the Production sharing agreements as their basic form of petroleum agreements with international oil companies. This was mainly due to the absence of laws to regulate the then new developments that had occurred in the petroleum sector.[174]

The licensees will be permitted to use the money from produced oil to recover capital and operational expenditures, known as "cost oil". The remaining amount known as "profit oil" will be split between the government and the licensees.[175]

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[167] See n 135 above, Section 78.
[168] http://en.wikipedia.org/wiki/Production_sharing_agreement#cite_note-1 (Accessed on 20 April 2014).
[169] http://www.rulg.com/documents/The_Concept_of_Production_Sharing.htm (Accessed on 20 April 2014).
[170] See n 168 above.
[171] See n 168 above.
[172] See n 168 above.
[173] See n 168 above.
[174] http://www.pwc.com/en_TZ/tz/pdf/pwc-oil-and-gas-tax-guide-for-africa-2013.pdf (Accessed 20 September 2013)

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The PSAs include royalty and tax payment to be made by the contractors as well as profit sharing with the government.[176] Royalties will be computed on the basis of gross daily production. Such royalty is to be in kind or cash at the government's election. The percentage can be on an escalating scale as production increases. Royalty rates are biddable and will be set out in the license or petroleum agreement.[177] The contractor is required to pay income tax at the standard corporation rate tax of 30 per cent on the proceeds of the sale of their share of profit oil under the petroleum agreement.[178]For purposes of cost recovery, a ring fence applies around each contract area. This means that if a contractor has more than one contract area, then cost recovery shall apply on a contract area by contract area basis.[179]

All the contractor's exploration, development, production and operating expenditure as defined in the Income Tax Act, are recovered as a percentage of the total gross oil production. The PSAs have a limit to the amount of costs that a contractor can recover. If the actual costs incurred exceed the allowed limit, the balance is carried forward and recovered in future years against profits from that same contract area until they have been fully recovered.[180] The cost recovery limit ensures that the government gets a share of the profit in all circumstances where there is oil production. As a result of the cost recovery limit, the Contractor will always pay tax on their share of the profit oil as long as there is oil production.[181]

After deduction of royalty and cost recovery the remaining production is split between the government and contractor on a sliding scale as set out in a petroleum agreement, with the government's percentage increasing as daily production increases.[182]

Typical contract terms in the PSAs include bonuses (such as signature bonus), work commitments, time lines (such as exploration and production periods, extension provisions, etc), relinquishments' and decommissioning rules at the end of exploration and production,

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[175]See n 174 above.
[176]See n 174 above.
[177]See n 135 above, Section 154.
[178]See n 174 above.
[179]See n 174 above.
[180]See n 174 above.
[181]See n 174 above.
[182]See n 174 above.

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guarantees, national content and participation by Ugandans, training and skill transfer, ring fencing, contract stability, and investment incentives among others.[183]

3.4.4 Transfer of interests

An investor may wish to sell off their interest in a business or company. The process of doing so is transfer of interests. In the petroleum sector this interest may be in the form of a licence. Under the Upstream Act, no licence issued under the Act may not be transferred without the minister's consent.[184]The minister may not unreasonably withhold consent to a transfer of a licence unless he or she believes that public interest or safety will be prejudiced by the transfer.[185]

This transfer is subject to taxation under the Income Tax (Amendment) Act of 2010 at a rate of 30 per cent on capital gain arising on a disposal of a depreciable, intangible or other asset used in petroleum operations under a petroleum agreement, including the contractor's interest in the agreement to another person and on a gain arising from a transfer of an interest in a petroleum agreement.[186] The buyer is allowed to continue to depreciate any allowable contract expenditure attributable to the interest at the date of the disposal of an interest in the same manner and on the same basis as the seller would if the disposal had not occurred. The price paid for the interest forms the cost base for any future disposal.[187]

3.4.5 Local content requirements

Local content requirements (LCRs) are imposed to regulate investments with the intention of promoting growth of domestic manufacturing and creating local employment for the host country.[188] LCRs are an integral part of performance requirements imposed on foreign investors by the host country which could include export obligations, location of an industry in a less developed region and mandatory technology transfer.[189]

[183]See n 174 above.
[184]See n 135 above, Section 87(1).
[185]See n 135 above, Section 87(5).
[186]Income Tax (Amendment) Act of 2010, section 89G.
[187]See n 186 above, section 89G(e).
[188]http://www.twnside.org.sg/title2/resurgence/2013/269-270/econ3.htm(Accessed on 20 April 2014).
[189]See n 188 above.

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Essentially, local content is about securing direct and indirect opportunities for employment and procurement to home nationals, at the same time as fostering the development of local skills, technology transfer, and use of local manpower and local manufacturing in capital projects. [190]

Before the discovery of oil and gas in Uganda, there was no specific legislation or deliberate policy drive to promote local content. And this is not peculiar to Uganda. Local content has, therefore, almost become synonymous with oil and gas, though it should be broader in coverage for it to be meaningful and create real in-country value for all stake-holders.[191]

According to the NOP, national participation through shareholding in licensing, and provision of goods and services in the oil and gas sector is one of the key avenues for achieving the desired value creation in Uganda.[192]All companies in the petroleum sector are required to facilitate participation of Ugandans in sectors of the economy which are necessary to support the petroleum sector.

The Upstream Act requires contractors and subcontractors to give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies.[193] Contractors and subcontractors are required to notify Ugandan citizens and companies on the quality, health, safety and environment standards required, and notify Ugandans of the upcoming contracts as early as practicable.[194]

The Act also provides for technology transfer according to which, oil companies are required to train local people either in Uganda or abroad through[195]a clearly defined training programme for the Ugandan employees of the licensee, may include scholarships and other financial support for education.[196] The Licensees are also required to commit to maximization of knowledge transfer

[190]http://www.independent.co.ug/cover-story/8375-ugandas-local-content-and-the-contradiction-of-self-empowerment#sthash.cOIwlqRV.dpuf(Accessed on 20 April 2014).
[191]See n 190 above.
[192]See n 133 above, ix.
[193]See n 135 above, Section 125 (1)&(2).
[194]See n 135 above, Section 125 (3).
[195]See n 135 above, Section 127(1).
[196]See n 135 above, Section 127(2).

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to Ugandans and to establish in Uganda, management and technical capabilities and any necessary facilities for technical work, including the interpretation of data.[197]

3.4.6 Taxation

The taxation of petroleum operations in Uganda is based on the concept of economic rent.[198]Economic theory focuses on the produce of the earth derived from labour and capital and landowners through wages, profit and rent.[199]Therefore, economic rent in the petroleum industry is the difference between the value of production and the costs to extract it.[200]

Taxation in Uganda is handled by the Uganda Revenue Authority (URA). The URA was set up in 1991 by Uganda Revenue Authority Act of 1991 as a central body for the assessment and collection of specified tax revenue, to administer and enforce laws relating to such Revenue and to account for all revenue to which those laws apply.

In Uganda, broadly income tax is charged on every person who has chargeable income for the year of income under the Income Tax Act of 1997 (ITA).Chargeable income of a person for any given year of income is defined as the gross income of a person for that year less total allowed deductions.[201] The gross income of a person for a year of income is defined as total amount of business income, employment income and property income derived by a person during the year of income, other than income exempt from tax.[202] Business income is further defined as any income derived by a person in carrying on a business.[203] Therefore on the basis of the above, provided a Contractor and, or, Subcontractor is carrying on a business in Uganda, the income they will derive from these operations will be subject to tax in Uganda in accordance with the above provisions of the Uganda tax law.[204]

[197]See n 135 above, Section 127(3)&(4).
[198]See n 174 above.
[199]See n 174 above.
[200]See n 174 above.
[201] Income Tax Act of 1997 Section 15.
[202] See n 202 above, Section 17.
[203] See n 202 above, Section 18.
[204] See n 174 above.

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Taxation of petroleum operations

Petroleum revenues in the petroleum sector include; tax charged on income derived by a person from petroleum operations, government share of production, signature bonus, surface rentals, royalties, proceeds from sale of government share of production, and any other duties or fees payable to the government from contract revenues under the terms of a petroleum agreement.[205]

Royalties and cost oil are deducted from gross production in arriving at profit oil which is shared between the government and the contractors according to the terms of the PSA.[206] Contractors are then taxed on their share of the profit oil in accordance with the ITA. The rate of tax applicable to the contractor's share of the profit oil is standard corporation tax of 30%.[207]

Part IXA of the ITA contains special provisions relating to the taxation of petroleum operations and the taxing provisions contained in this part of the ITA together with those contained in the PSAs prevail over other parts of the ITA, in case of any inconsistency.[208]

Tax allowable contract expenditures which are deductible from cost oil consist of the sum of: the petroleum operating expenditures for the year of income; the allowable deductions for depreciation of petroleum capital expenditure for theyear of income; andthe amount of any operating loss from previous years of income, determined in accordance with the ITA.[209]

Petroleum operating expenditures are the contract expenses which qualify as exploration expenditure and operating expenses while Petroleum capital expenditures' are the contract expenses which qualify as development and production expenditures.[210]

Principle of ring fencing

Each contract area of a contractor is taxed as if it is a separate taxpayer, that is, it is ring fenced. Ring fencing puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects, undertaken by the same taxpayer.[211]Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and development

[205] See n 186 above, section 89A(f).
[206] See n 186 above, Section 154.
[207] See n 174 above.
[208] See n 186 above, Section 89B(4).
[209] See n 186 above, Section 89A(f).
[210] See n 174 above.
[211] See n 174 above.

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expenditure in one contract area or block or oil field are only deducted from income derived from that contract area only.[212]Losses arising from activities in one contract are only carried forward and offset against future income derived from petroleum operations of that contract area only.[213]

3.4.7 Environment and wildlife impact issues

Environment and wildlife conservation is very important in Uganda. Not only is it an integral part of Uganda's culture and traditions it is also a source of income for many people and the nation as a whole through tourism.

This issue is even more important in the petroleum sector as the Albertine Graben sits along major wildlife conservation areas in the form of national game parks but also the Lakes Albert, George and Edward which are not important water bodies for the country but for the whole Nile river basin. Any damage caused to these important areas may have a huge negative impact on the environment and livelihood of the people. This irreversible damage will in turn have a big impact on the nation as a whole.

In light of the above the government of Uganda showed their intention of controlling and preventing such damage from occurring in the petroleum sector by making it an objective in the NOP. It intends *"To ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity"*.[214]

The issues as regards to the environment like in the petroleum sector are regulated by a multiplicity of regulatory systems and monitored by different institutions that work together holistically to manage the biodiversity of the country. It is these same institutions that are mandated to monitor all aspects of the environment in the Albertine Graben. These institutions are tasked with carrying out the objectives of the NOP.

It is important to note that Uganda is still at the exploration phase and field development plans for some of the discoveries are under review. No production has yet taken place. During the

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[212] See n 174 above.
[213] See n 174 above.
[214] See n 133 above, ix.

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ongoing exploration phase, the operations are closely monitored and the following key actions are in place to ensure environmental protection both in the current and future phases;[215]

Environment Impact Assessment (EIA) Studies

The third schedule of the National Environment Act of 1997 requires environmental impact assessments to be carried out for oil exploration and production activities before implementation.[216] EIAs identify, predict, evaluate and propose mitigation measures for the likely adverse impacts on the environment due to planned activities/projects. The obligation to carry out environmental impact assessments lies with the developers, however the National Environment (Conduct and Certification of Environmental Practitioners) Regulations of 2003 provides for registration and certification of environmental practitioners who carry out environmental impact studies on behalf of developers.[217]

The study is done in consultation with the different stakeholders including the district environment officers, local leaders, community members, PEPD and other relevant government lead agencies. NEMA oversees the review process in consultation with relevant lead agencies.[218] If the studies conform to the required standards, a decision is taken by NEMA and a conditional approval is granted to the oil company. Oil exploration activities are closely monitored to ensure compliance with mitigation measures and their effectiveness, as well as approval conditions and any other issues of concern that were not anticipated at the time of approval but become significant during implementation.[219]

NEMA has also created an Environmental Sensitivity Atlas for the Albertine Graben with the objective to display, identify and provide the ability to analyse the relative sensitivities (environmental, biological, geographical, and socio-economic) to oil spill and oil development within the exploration areas in the Albertine Graben region of western Uganda.[220]

[215] Environmental Management in Uganda's Oil and Gas Sector, 5
[216] See n 215 above, 5
[217] See n 215 above, 5
[218] See n 215 above, 5
[219] See n 215 above, 5
[220] See n 215 above, 6

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Restoration of Drilling and Camp Sites

Oil companies are required to restore oil well sites and oil camp sites with indigenous vegetation as close as possible to their original status before the operations.

Hazardous Waste Management

Close monitoring of waste management systems of the oil companies is being done in this area. Wastes generated as a result of ongoing operations are being containerized at specific sites in the short-term as proper methods of disposal anda long lasting strategy for waste management are being explored. Waste disposal must be done appropriately and plans are underway to establish central waste treatment facilities to be located away from water bodies, settlements and fragile ecosystems.[221]

3.5 Conclusion

To regulate FDI inflow into the petroleum sector the government of Uganda has gone ahead and not only enacted new laws to regulate the new developments in the sector but has also taken steps to amend the complimentary laws that regulate different aspects of the petroleum sector. It must be noted that the petroleum sector is not regulated by a single law but rather a multiplicity of laws that are supposed to work harmoniously together to create a single working framework.

Although the government of Uganda has taken steps to regulate the petroleum sector there is a lot of sceptism that the new regulations as they stand can effectively regulate the petroleum sector to efficiently benefit the people of Uganda. There are a lot of important legal gaps that need to be dealt with in order for the country to fully benefit from the petroleum resources. Failure for the country to deal with these important legal issues will lead the country into the resource curse direction that many resource rich nations in Africa are experiencing.

It is these important legal gaps that will be dealt with in the next chapter. Further elaboration will be made about the resource curse and its effects and an example of an African country that can ideally teach Uganda some lessons in good governance in the resource sector.

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[221]See n 215 above, 7

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CHAPTER FOUR

IMPORTANT LEGAL GAPS IN THE FDI REGULATORY FRAMEWORK IN THE PETROLEUM SECTOR IN UGANDA.

4.1 Introduction

This chapter analyses the critical legal issue that need to be dealt with for the success of the petroleum sector in Uganda. It will also look at the solutions to the current critical gaps in the legal framework. It will also briefly elaborate on the "resource curse" phenomenon and the potential disaster it may cause to Uganda's economy giving reference to the experience of the failed resource rich African nations, and the exception to the rule in form of Botswana.

The discovery of petroleum in Uganda elevated the country to one of the resource rich countries in Africa. If well managed petroleum production has the potential of boosting the economy of the country. It can also be a curse if its governance framework is flawed and its management is not transparent and open. As such, the governments of resource-rich countries face the daunting but surmountable challenge of devising institutional and legal frameworks that ensure maximum benefit for its citizens.

The experience from oil and mineral producing African countries such as Nigeria, Chad, Cameron and Angola show that benefits arising from the discovery of oil and minerals is intuitively linked to the quality of governance in the country which also defines the quality of governance of the oil and minerals sector.

Since the discovery of petroleum resources in Uganda the government has taken steps to create a regulatory and institutional framework to govern the new sector. There is however a lot of sceptism regarding the efficiency of the current regulatory framework. Many believe that the current framework will not only fail to efficiently regulate the petroleum sector but it may not now fully allow the country to benefit from the petroleum resource.

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4.2 Production Sharing Agreements

After the discovery of oil, the government of Uganda went ahead and negotiated and further signed a number of PSAs with different international oil companies. Most of the PSAs were signed by the government under unclear circumstances. This brought into question the benefit that the PSAs have for the country. Many believe the government sold the country short in the PSAs and that the oil companies will benefit more from them than the country itself. A couple of issues have been sighted regarding the current PSAs in place. These include the following:

4.2.1 Secrecy in the Oil Sector

Despite the existence of Article 41 of the 1995 Constitution and the Access to Information Act of 2005, that provide for the right of all Ugandans to access information in the hands of government, the government has to date continued to be secretive on all oil development processes including licensing, PSAs, EIAs, signature bonuses, tax collection and revenue utilization.[222] The parliament of Uganda tried to make oil PSAs a priority topic of discussion but due to the existence the of confidentiality clauses in the PSAs they could not be discussed. This secrecy has resulted in speculations, over expectations, conflicts, mistrust, suspicions in the public and subsequent loss of revenues for the country.[223]

4.2.2 Capital Gains Tax (CGT)

Despite the existence of the Income Tax Act of 1997 that provides for the payment of CGT, the government has continuously failed to use such laws and its sovereign powers to collect CGT from the oil companies that have refused to pay the said taxes despite making billions of dollars in profits through sale of capital assets. As a result, Ugandans are already losing their oil money to the companies.[224]

This is evidenced by the recent cases that the government is involved in regarding tax claims against Heritage oil an international oil company that sold its stake in different oil fields in the Albertine Graben to Tullow Oil. It all began on July 26, 2010 when one of the major players in Uganda's petroleum sector, Heritage Oil, sold its exploration licenses in the Albertine Rift to

[222] http://www.publishwhatyoupay.org/resources/key-oil-governance-issues-uganda-need-urgent-attention-parliament (Accessed 15 April 2014).
[223] See n 222 above.
[224] See n 222 above.

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Tullow Oil.[225] Heritage and Tullow together owned a 50 percent stake in two lucrative exploration blocks.[226] With the sale, Tullow became the sole company licensed to operate in those areas. Tullow purchased Heritage's stake for US $1.45 billion, after which Heritage ceased to operate within Uganda.[227]

In the aftermath of the deal, however, URA which was acting on behalf of the government of Uganda requested $434 million or 30 percent of the sale in CGT.[228] Heritage disputed the tax, saying that its lawyers believed that the sale was not taxable, given that the PSAs which the company signed with the government failed to mention such a payment.[229] Heritage further argued that the sale of its assets to Tullow Oil was not taxable in Uganda because the sale itself took place outside Uganda in the Channel Islands off the coast of France and because the company itself is not incorporated in Uganda being domiciled in Mauritius.[230] The government of Uganda, meanwhile, has argued that the assets sold were located in Uganda, and that their sale was done with the consent of the Ugandan government, making the transaction taxable under Ugandan law.[231] Given these disputes, the government of Uganda is currently locked in a row with Heritage Oil over the legitimacy of the CGT.[232]

4.2.3 Signature Bonuses:

A signature bonus is a payment made up front to the host country for the right to develop a block commercially before work commences.[233]The Ugandan government has signed PSAs with signature bonuses but there is a lot of secrecy regarding signature bonuses that were given in the PSAs signed so far. The signature bonuses are supposed to be accounted for and are meant to form part of government revenue. The Ugandan government has over the years since signing the first PSA failed to account for the signature bonuses received from all the signed PSAs.

[225]A Izama & H W Mulangwa'Understanding the tax dispute: Heritage, Tullow, and the government of Uganda'(2011) 1 *Advocates Coalition for Development and Environment(ACODE)*16.
[226]Izama & Mulangwa (See n 225 above) 16.
[227]Izama & Mulangwa (See n 225 above) 16.
[228]Izama & Mulangwa (See n 225 above) 16.
[229]Izama & Mulangwa (See n 225 above) 16.
[230]Izama & Mulangwa (See n 225 above) 16.
[231]Izama & Mulangwa (See n 225 above) 16.
[232]Izama & Mulangwa (See n 225 above) 16.
[233]http://wiki.answers.com/Q/Did_the_bonus_army_get_their_bonus#slide=1 (Accessed 15 April 2014).

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4.2.4 Foreign arbitration and Uganda's sovereignty

The government of Uganda has been signing of PSAs which commit the country to arbitration in foreign jurisdictions. An example is the disputes between the government of Uganda and Heritage Oil whose arbitration is in London.[234]

Signing of oil agreements which commit the Uganda to arbitration in foreign jurisdictions undermines the country's sovereignty and are costly to the Ugandan taxpayers as can be seen with the Attorney General's demand for parliament to endorse 11.9 billion Ugandan shillings for settling tax conflicts in London.[235]

4.3 The Petroleum Laws

In line with their constitutionally mandated duty to "protect important natural resources on behalf of the Ugandan people, Uganda's legislators developed a regulatory framework for managing Uganda's petroleum sector in form of the Upstream and Midstream Acts and the Public Finance Bill of 2012 currently undergoing amendment. Together, these Acts create a three-pronged system for regulating Uganda's new petroleum sector. A Minister of Energy and Mineral Development, a Petroleum Authority, and a National Oil Company are tasked with the duty of overseeing the entire petroleum sector, from exploration and production through eventual sale on the international market.

Unfortunately, the framework the current legislation creates is full of glaring holes that invite long-term corruption and abuse which will in turn create irreconcilable consequences that may lead to the resource curse. The issues or gaps that need to be dealt with are as follows;

4.3.1 Institutional governance

4.3.1.1 Ministerial control and executive interference

The Ministry and Minister are given broad powers in the Acts. As above, the fact that the Authority receives direction from the Minister and that the Authority Board members are

[234] Izama & Mulangwa (See n 225 above) 16.
[235]See n 222 above.

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"appointed by the Minister with the approval of Cabinet" leaves the Authority susceptible to capture by the Ministry, threatening its independence.[236]

The Minister retains exclusive power to issue and revoke exploration and production licenses, and the President can remove a Board member from the Petroleum Authority at any time for a variety of reasons, including the undefined charges of "incompetence" or "misbehavior."[237]

The Minister also has the sole authority to determine whether or not to declare an area open for petroleum activities and to review and grant all exploration and production licenses requiring only the approval of the President and an after-the-fact report to Parliament.[238] Furthermore, the Minister is given the ability to receive direct applications for an oil exploration contract "in exceptional circumstances," including when the Minister decides that a secret deal would enhance "the participating interest of the State in the promotion of national interest."[239] The Minister must simply consult with the Authority and gain the approval of the President's Cabinet to award a license with any oil exploration or production company. Finally, any party wishing to file a grievance regarding an oil exploration or production contract can only lodge a complaint the Minister, who may review and either uphold or dismiss the objection at his/her discretion. [240]

There are neither provisions for a timeline for the introduction of these regulations nor are there specified timelines for the establishment of the two bodies created by the Acts. The total lack of substantive checks on the powers of the President and the Minister is also worrying considering the levels of corruption and political interference in Uganda

4.3.1.2 National Oil Company (NOC)

The NOC was created without sufficient detail on its relationship to the GoU or Parliament.[241] It is therefore unclear whether it will operate entirely as an independent entity, or under close political or administrative control.[242] The legislation does not provide for any corporate governance structures for the proposed NOC. Additionally, the Companies Act of 1961, under

[236]Uganda's petroleum legislation: Safeguarding the sector'(2008) 6 *Global Witness.*
[237]See n 135 above, Section 18.
[238]See n 135 above, Section 52.
[239]See n 135 above, Section 53.
[240]See n 135 above, Section 55.
[241]See n 135 above, Section 45-47.
[242]Global Witness (See n 236 above) 6.

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which the NOC is supposed to be established, does not have a Corporate Governance Code.[243]The Companies (Amendment) Act of 2009 provides for a Code of Corporate Governance. However, the Code does not sufficiently provide for the corporate governance needs of State Owned Enterprises.[244]

It is debatable whether the creation of a NOC is advisable for Uganda. The creation of a NOC is potentially a hugely costly venture which risks diverting revenue away from government budgets and public services, not just in the early years but potentially well into the future, if there is no transparency and strict parliamentary oversight of these bodies.[245]

Oil companies, whether state-owned or private, domestic or international, require huge amounts of capital to be competitive. This capital could arguably be much better spent in the Ugandan context for example with investments in infrastructure, education or healthcare.[246]The decision to create a NOC, which will presumably use state money at least initially, if not well into its future, is one of enormous financial consequence for a country. It should not, therefore, be taken without a broad-based consensus and strong evidence that there are petroleum reserves in Uganda that would give the NOC a strong basis on which to grow and be competitive and not a drain on state resources.[247] If such a decision is made, then a whole host of measures to ensure that the NOC does not become a locus of corruption or inefficiency are needed yet these are not laid out in the current law.[248]

Under the current Act, the Minister has the power to issue instructions in respect of the management of the NOC and to stipulate the 'rules relating to the duty of secrecy of elected representatives and employees' of the NOC.[249]Once again this gives the Minister a strong degree of control over another of the main petroleum institutions in Uganda. Most worryingly, it gives

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[243]T Kyepa'Integrating National Oil Companies In The Corporate Governance Discourse: A Comparative Analysis Of The Norwegian State Oil Company (Statoil) And The Proposed National Oil Company Of Uganda'Unpublished thesis, University Of The Western Cape, 112 2011.
[244]Kyepa (n 243 above)112.
[245]Global Witness (See n 236 above) 7.
[246]Global Witness (See n 236 above) 7.
[247]Global Witness (See n 236 above) 7.
[248]Global Witness (See n 236 above) 7.
[249]See n 135 above Sections 47.

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the post-holder the power to silence employees in an institution potentially responsible for managing huge state interests.[250]

4.3.2 Parliamentary oversight

Parliamentary oversight of government expenditure and transactions is a constitutional mandate and important in any democracy and yet the executive in Uganda, in respect of the oil and gas sector is undermining this role.[251]By continuing to enter into new agreements in spite of parliamentary resolutions halting the same, the government is undermining the mandate of the new institutions being created which will have to operate in an environment already constrained by exiting agreements.[252]

While the NOP recognizes inter alia the inadequacies of the legal framework and require the enactment of new laws to address these challenges, the government still went on to license companies and sign agreements in the absence of the required adequate laws.[253] Activities and transactions in the sector are moving ahead of the legal framework. A parliamentary moratorium for halting of any further licensing and signing of agreements until the new laws are enacted has been ignored by the executive.[254] The government entered into PSAs disregarding the parliamentary moratorium and before the enactment of the required legislations.[255] This disregard of parliament later became evident in the petroleum laws.

One notable aspect of the current Acts is the absence of a role for Parliament. Cabinet does have a few rights, for example the approval for exploration licenses.[256] Some limited information will be presented to Parliament. That said, Parliament does not seem to play a role in the most critical areas such as deciding upon the opening up of new areas for exploration, licensing, contract allocation, transfer of license among others.[257]

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[250]Global Witness (See n 236 above) 7.
[251]http://www.ccgea.org/downloads/CCG%20Oil%20and%20Gas.pdf(Accessed 15 April 2014).
[252]See n 251 above.
[253]See n 251 above.
[254]See n 251 above.
[255]See n 251 above.
[256]See n 135 above, Sections 59(1).
[257]Global Witness (See n 236 above) 7.

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4.3.3 Transparency of information

Although the petroleum laws have made some steps on transparency of information, they however, suffer from several major weaknesses therefore creates a potentially significant loopholes.[258]The lists of items to be disclosed are relatively good, and do go some way towards meeting best practice but they are not exhaustive and subsequent clauses in both petroleum Acts severely restrict information. Section 149 of the Upstream Act indicates that unless a disclosure is agreed to by the third party, the Minister must keep all information submitted to him/her confidential and cannot reproduce or disclose unless the category of information is specifically mentioned in the Act or Access to Information Act.[259]

The lack of a role prescribed for Parliament, already covered earlier, undermines parliament's abilities to play their part in the democratic process. It is not at all clear what information parliamentarians will have access to.[260] For example, it's unclear on whether they would be able to view documents like minutes from the Petroleum Authority Board meetings.[261]

There is no whistleblower provision in the petroleum laws. This is of particular concern in relation to Sections 33 and 150 in the Upstream Act and 78 in the Mid-stream Act which prohibit public servants from disclosing information about the sector even if it is in the public interest i.e. cases of corruption or negligence. Whistleblower protection is vital in ensuring that matters of public interest come to light.[262]

The Minister is allowed to demand information relating to the petroleum sector from anyone who has it. Whilst this has obvious advantages for the government, it could also be interpreted to obligate journalists or Non Government Organisations to hand over information which could jeopardize sources. It would be valuable to insert an exemption or safeguard.[263]

[258]Global Witness (See n 236 above) 11.
[259]Global Witness (See n 236 above) 11.
[260]Global Witness (See n 236 above) 11.
[261]Global Witness (See n 236 above) 11.
[262]Global Witness (See n 236 above) 12.
[263]Global Witness (See n 236 above) 12.

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4.3.4 Lack of clarity on financial management

Finances in the petroleum sector will be regulated by the Public Finance Bill currently under debate. The bill would establish a Petroleum Fund to handle the collection and investment of all oil revenues collected by the government of Uganda. The Minister would manage the Fund, overseeing "the transfer into and the disbursements from the Petroleum Fund."

This Bill has, however, doubts about the government's commitment to budget discipline. The Bill presents loopholes for government to spend without parliamentary scrutiny.[264] The Bill creates a Contingencies Fund and also gives the Finance Minister powers to create special funds, whose purpose is overlapping and ambiguous.[265] The contingencies Fund is supposed to finance supplementary budgets whose purpose will only be known after spending the funds.[266] This contingencies Fund will be replenished with an amount equivalent to 3.5 % of the approved annual budget.[267]The rationale of this Bill is to circumvent parliamentary scrutiny so that the government can spend as it chooses. This Bill also seeks to revise the ceiling for 3 supplementary budgets from 3% to 10%.

This Bill has also ring-fenced 25 districts and allocated them a share of 7% of revenue arising from petroleum production.[268]The same "OIL DISTRICTS" have been designated special planning areas in the country's new Vision 2040 which was launched on 28th April 2013; meaning that they are likely to be top beneficiaries of the government's plan to spend oil revenue on infrastructure development.[269]This Bill does not explain how the OIL DISTRICTS" were determined beyond their location within the petroleum exploration and production areas of Uganda. [270].

[264]See n 251 above.
[265]See n 251 above.
[266]See n 251 above.
[267]See n 251 above.
[268]See n 251 above.
[269]See n 251 above.
[270]See n 251 above.

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4.4 Corruption

As Uganda prepares to welcome oil into its economy, the country's efforts to create an effective regulatory framework for managing the petroleum sector are complicated by a deeply rooted culture of corruption in the country.[271]

A series of studies by international watchdog groups have exposed the rampant corruption that typifies Ugandan daily life. In Transparency International's 2012 East African Bribery Index, Uganda was named the most corrupt country in the region.[272] In the survey, nearly 50 percent of Ugandan citizens reported that bribes were either expected or demanded in normal interactions between private citizens and government service delivery institutions.[273]

More comprehensive surveys conducted by Afrobarometer in Uganda expose the extent of corruption in even greater detail.[274] Within the 2012, 16 percent of respondents reported paying a bribe to get access to water or sanitation services, 30 percent to get treatments at a local clinic or hospital, and 18 percent to get a place for their child in primary school[275] 86 % of Ugandans think that the president of Uganda is corrupt, with similar views of members of parliament (90 percent), local government officials and police (89 percent), and judges and magistrates (86 percent).[276]

All evidence from the study of resource-rich African states shows that the resource curse strikes most lethally at political systems unable to contain corruption and abuse of power even in the absence of valuable natural resources.[277] Unfortunately, all evidence points to Uganda as such a state. The regulation of resource markets must be viewed in a relative light: the more corruption and malpractice that is embedded in a society's political fabric, the more vigorous the regulatory framework will be required to stop corruption from infecting a new resource sector.[278]

[271] J Mosbacher 'Fighting the Resource Curse: Uganda's Pivotal Moment' (2013) 47 *The Washington Quarterly*.
[272] Mosbacher (n 271 above) 48.
[273] Mosbacher (n 271 above) 48.
[274] Mosbacher (n 271 above) 48.
[275] Mosbacher (n 271 above) 48.
[276] Mosbacher (n 271 above) 48.
[277] Mosbacher (n 271 above) 48.
[278] Mosbacher (n 271 above) 48.

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Because Uganda is so corrupt, the petroleum sector demands Africa's most comprehensive regulatory framework to successfully curb abuse and translate revenues into long-term positive outcomes.[279] So far, the efforts of Ugandan policymakers to create such a framework have fallen far short of this requirement. If policymakers fail to immediately address the obvious holes in this framework, Uganda is destined to be cursed by oil.[280]

4.5 Local Content

Lately, local content has become a topical issue, and many countries are enacting laws to make it mandatory for all stakeholders of specified industries. It has become a very important issue due to the fact that in this day and age, every country in theory would like its citizens to capture the commanding heights of its economy and in that way keep its wealth within its borders, as well as providing jobs to the ever-increasing populations in many of these resource-rich developing countries.[281] This can be achieved through capacity building; creating and supporting Small market enterprises (SMEs) as well as building a local products and services pool.[282]

Uganda does not have a standing legislation on local content. It is only stipulated in has come to legislating for local content is in Section 125 of the Upstream Act. Not only is the current legislation insufficient in regulating local content issues that arise in the petroleum sector but also in its current wording, the law may impose significant challenges and limits in the realization of the intended objectives of local content promotion.[283]The concept is vague and unclear; it has no definition in the Upstream Act. This already shows a lack of clarity on the concept.[284]

4.5.1 Local content as a company requirement

The Upstream Act does not define what constitutes a "Ugandan company". It can therefore be presumed that a company that is locally registered in Uganda is a "Ugandan company" rather

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[279]Mosbacher (n 271 above) 48.
[280]Mosbacher (n 271 above) 48.
[281]See n 190 above.
[282]See n 190 above.
[283]See n 190 above.
[284]See n 190 above.

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than taking into account the nature of ownership, the degree of control of such a company and the actual degree of in-country value addition plus the levels of participation by Ugandans.[285]

The Act does not state whether such a company must be a "citizen" within the meaning of the Land Act of 1998 or the Companies Act of 1961.[286]Within the strict interpretation of the law is any company locally registered in Uganda regardless of ownership or control is a "Ugandan company".[287] The effect of the current wording in the Upstream Act is that the company must be have a 48% local ownership or must be a joint venture. The reality is not many 'Ugandan companies' can afford to buy a 48% stake in a foreign company worth billions of dollars. In addition, many of these foreign companies are listed companies so entering such joint ventures would require jumping over complex, exhausting and expensive regulatory hurdles.[288]

The major obstacle in the realization of the local content policy is that the International oil companies have well established supply chain networks. They therefore prefer to deal with global suppliers or to award major service contracts to international specialist firms whose financial strength, reputation and technical capabilities have been time-tested and proven.[289] The petroleum industry is no place for taking a gamble with any service provider who comes along. This is counterproductive to the objectives of the laws that is to encourage local participation in the petroleum sector,

In order to realize the objective of the current laws, the best way is to create synergies through joint ventures with foreign companies that have the financial muscle. But the contradiction is that this would be promoting exactly what the spirit of the law seeks to stop. This is because joint ventures by their very nature are a synergy between "equals".[290] So the presumption that a "Ugandan Company" with no experience at all would enter into a venture with an international powerhouse like Halliburton for instance to provide a service that for all intents and purposes, is financed and technically-supported by Halliburton but the sharing is almost equal, is desirable

[285]See n 190 above.
[286]See n 190 above.
[287]See n 190 above.
[288]See n 190 above.
[289]See n 190 above.
[290]See n 190 above.

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but far from achievable.[291] This is because it would practically be difficult to have foreign investors who are willing to participate in a 'joint venture' where they contribute all the value inputs and at the end of the day cede nearly half of the rewards to a local partner who contributed nothing.[292]

4.5.2 Human capital empowerment

The local content regime's core objective is empowering Ugandans as the engine for their own wealth generation, the ultimate sustainable economic development model. Short of that, 'local firms' that are all but foreign in outlook save for their residence in Uganda, will continuously win local bids; have their foreign experts execute the work and earn proceeds under the pretext of being 'local.'[293]

There are already doubts about the current local content approach. For instance, one of the international oil companies operating in Uganda raised many eye-brows when it applied for over 5,000 work permits for its foreign nationals in 2013.[294] It is questionable that all these jobs cannot be done by Ugandans.

Uganda like most developing countries has over the years embraced the culture of "business cartels".[295] A few powerful and well-connected business players have taken the country an economic hostage in the sense that the same names appear in every public procurement and any "outsiders" stand virtually no chance against this oligopolistic cartel.[296] In a way, they have been the face of "local content" in Uganda and there is every indication that they will continue to be the major players in any "local content" regime for some time.[297] In instances where the interests of these cartels are threatened, where a genuinely robust local content law seeks to spread the

[291]See n 190 above.
[292]See n 190 above.
[293]See n 190 above.
[294]See n 190 above.
[295]See n 190 above.
[296]See n 190 above.
[297]See n 190 above.

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benefits of economic empowerment, they would block it if only to protect their privileges and sense of entitlement.[298]

The risk Uganda then faces due to the insufficient current local content regime is that, just to meet the legal requirement elect to offer "free stakes" of up to 48% to a "local trusted partner" complicit in the avoidance of the hard task of realizing local content requirements.[299] The locals and the foreign entities would effectively be subverting the law and engaging in "subversive compliance" but complying within the meaning of the law. This will undoubtedly enrich a few well-connected people at the expense of Ugandans. That would be counter-productive to the object and purpose of the law.[300]

4.6 Environmental Issues

As earlier established in the previous chapter, the upstream activities in the petroleum sector are all taking place in environmentally sensitive areas of the Albertine Graben.

The Albertine Graben is an ecologically sensitive region that is also rich in biodiversity. With 39 wildlife-protected areas, the region is a tourism hot spot rich in all sorts of animal, bird and plant life.[301] NEMA in 2012 stated that the region has 14 percent of all African reptiles (175 species), 19 percent of amphibians (119 species), 35 percent of butterflies (1,300 species), 52 percent of birds (1,061 species), 39 percent of mammals (402 species), 14 percent of plants and more than 400 fish species.[302] Yet, the oil and gas activities could result in habitat destruction, as well as, water and soil contamination that could lead to a loss of plant and animal life.[303] The biggest risks to biodiversity in the Albertine rift arise from four sources: seismic surveys, oil pad construction, drill waste and waste pits, and oil spills.[304]

Whereas the already existing legislation on the environment have capacities to control pollution during oil exploration, it is reported that local people are already affected by the strong bad smell

[298]See n 190 above.
[299]See n 190 above.
[300]See n 190 above.
[301]J Mawejje& L Bategeka 'Community expectations and environmental aspects in Uganda's oil and gas sector'(2013) 39 *The Economic Policy Research Centre(EPRC)Policy Brief* 2.
[302] Mawejje& Bategeka (n 301 above) 2.
[303] Mawejje& Bategeka (n 301 above) 2.
[304] Mawejje& Bategeka (n 301 above) 2.

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from the mud pits that are dug during oil exploration and moreover the mud pits have been deposed properly.[305]There are already cases of irresponsible dumping, for example, the Action Aid owned publication, *Oil in Uganda* (2012), reported in May 2012 that Heritage Oil illegally dumped, untreated waste in a farmer's garden for a nominal compensation of some U.S. $300.[306] Such irresponsible handling of waste has very serious implications for environmental sustainability and public health and does not auger well for intergenerational equity.[307]

Despite assurances by the Government of Uganda and the various private oil companies operating in the region that the environment will not be seriously compromised, communities in the Albertine valley continue to express fears regarding the potential environmental impacts of oil exploration and development.[308] In particular, the planned construction of a refinery raises major environmental concerns to the people of the area with regard to proper waste management.[309]

It is the mandate of NEMA to ensure environmental sustainability. However, the institution is faced with numerous capacity constraints, which hinder its efficiency in overseeing the activities in the Albertine Graben.[310] Such capacity to oversee all petroleum activities would require availability of people with the appropriate training and skills, and the right type of technology and equipment.[311] In addition, the agency must also be provided with enough financial resources so that it can perform its duties effectively. Of course, the staff must also be adequately constrained by the law so that they do not engage in behaviors like corruption) that compromise the agency's ability to carry out its functions.[312]

The current EIA reports have no mitigation measures and monitoring for the identified impacts. They lack comprehensive environmental management plans to deal with biodiversity, air quality, water, fisheries, wastes, oil spills and pollution, affected communities and tourism among

[305]See n 251 above.
[306]Mawejje& Bategeka (n 301 above) 1.
[307]Mawejje& Bategeka (n 301 above) 1.
[308]Mawejje& Bategeka (n 301 above) 1.
[309]Mawejje& Bategeka (n 301 above) 1.
[310]Mawejje& Bategeka (n 301 above) 2.
[311]Mawejje& Bategeka (n 301 above) 2.
[312] Mawejje& Bategeka (n 301 above) 3.

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others.[313]There is no Strategic Environmental Impact Assessment and yet a number of oil drilling sites have already been commissioned. There is limited public participation in the processes of EIA and most documents such as EIA reports are written in English an official language and yet some Ugandans especially in rural areas cannot read it.[314]

4.7 Land Rights and Compensation

The discovery of oil has largely been in conservation areas but has raised local community concerns in these areas about their involvement in the decision-making process and revenue sharing.[315]It has also escalated resource-based conflicts especially in land. Local district governments, landowners and traditional kingdoms in these areas are going to be impacted by the operations of the industry players in their areas. There are environmental concerns in these areas.[316]

4.7.1 Property rights

Property rights including land ownership and utilization in the Albertine region are being threatened and impacts on associated human rights like livelihood and sustainable development. Across much of Uganda, people do not see land as a mere commodity, property to be bought and sold, but as more deeply connected with their way of life, traditions and culture.[317] This is the same predicament that befalls the people in the Albertine Graben.

Along the Albertine area, large tracts of land were gazetted as forest or game conservation areas. In much of Bunyoro, people were left to meet their needs from a relatively narrow corridor between gazetted land to the east and Lake Albert to the west.[318] Combined with the fact that the kingdom was forced to cede land to Buganda as a penalty for resisting colonial occupation and as a reward to Buganda's leaders for their help in bringing Bunyoro and other areas under British

[313]See n 251above.
[314]See n 251 above.
[315]See n 251 above.
[316]See n 251 above.
[317]http://www.oilinuganda.org/features/land/land-oil-and-dispossession.html(Accessed 15 April 2014).
[318]See n 317 above.

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rule, this created a lasting sense of historical grievance.[319] The discovery of oil in Bunyoro could not help but bring those grievances to the fore.[320]

Uganda's 1995 Constitution and the Land Act of 1998 confirmed the four kinds of tenure instituted under British rule: *mailo*, freehold, leasehold and customary, but government policy has been to encourage a shift from customary to freehold.[321] A family that has inherited customary rights may apply to the local Land Board to have a freehold title issued. This, however, has proceeded only very slowly. The process involves significant costs, as the land must first be surveyed and demarcated, and other community members must recognise the family's claims.[322] Many families, in any case, cannot see point of obtaining a piece of paper to formalise their tenure. Yet this leaves them vulnerable to outside entrepreneurs, developers and speculators. This has been the case in the Albertine region as many people are being relocated from their homes without adequate compensation and yet they leave behind their ancestral land full of heritage and history.

The government of Uganda launched a Resettlement Action Plan in 2012 for the people being displaced on the land gazetted for the oil refinery.[323] However the process is moving slower than earlier anticipated and it has not put in place efforts to consult with those being evacuated about where to be relocated and their needs in order to cater for their lost livelihood. This current policy on compensation and relocation does not cater for such issues.

4.7.2 Land valuation and compensation

Land valuation and compensation are largely lacking and this could spark off discontentment and conflicts among various actors. This is still a thorny issue in the oil region mainly due to the slow process and the lack of clarity regarding the way compensation is calculated.

This issue of compensation has ended in a number of law suits by the people in the oil region. In Nebbi District on the shores of Lake Albert it is claimed that since Total E&P began exploring in

[319] See n 317 above.
[320] See n 317 above.
[321] See n 317 above.
[322] See n 317 above.
[323] See n 317 above.

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the area, many gardens and homesteads have been destroyed in the process of surveying, building access roads and constructing oil well pads.[324] Residents expected compensation but, according to some, what they received was not equitable. Some of the residents claim that the compensation given can not equate to the amount they would get from the sale of their farm produce.[325] They state that a grown mango tree can fetch up to 120,000 shillings but they are being given 80,000 shillings. Furthermore a cassava garden which is a source of food and income is being compensated at only 120,000. [326]

The lack of local engagement in the compensation and further lack of transparency and clarity in the process coupled with the slow process creates difficulty for the people who are directly involved in the process and who are most vulnerable, the local residents in the Albertine region.

4.7.3 Land grabbing

Land grabbing cases continue to rise, sparking off conflicts between the indigenous Banyoro and immigrants. Due to the discovery of oil in the area, naturally the value for land in that area increased. There have been claims that local business men in the area are working for wealthy political families to buy and grab local farmers land.[327] Without a proper government framework to control land grabs and protect the local population, many people have not been compensated or lost their land.

[324] http://www.oilinuganda.org/features/compensation-remains-thorny-issue-in-oil-regions.html (Accessed 15 April 2014).
[325] See n 324 above.
[326] See n 324 above.
[327] See n 324 above.

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4.8 SOLUTIONS TO THE OUTSTANDING LEGAL GAPS IN THE REGULATORY FRAMEWORK OF FDI IN THE PETROLEUM SECTOR.

Whether a country avoids the oil curse is largely dependent on how the sector is managed from the time of discovery, exploration and extraction. It is therefore important that at the very initial stages of the sector, the institutional and legal frameworks to manage the sector are strong enough to cater for all the critical issues in the sector such as environmental, economic, political governance and security concerns.[328]

Uganda's petroleum sector will force her policymakers down one of three paths. The first is to continue down the current road, likely dooming Uganda to a place among Africa's resource-cursed states.[329] Alternatively, Ugandan legislators could work immediately to shore up the many existing holes in the current regulatory framework and create a far more substantive series of checks on corrupt behavior in the oil sector.[330]

In its current form the regulatory framework is very shallow and has very critical legal gaps which must be addressed. To address these legal gaps the government must learn from international best practices and other countries experiences in establishing this sector. The current legal gaps can be corrected in the following ways:

4.8.1 Production Sharing Agreements

Transparency is an important aspect when a country is establishing the resource industry. Clearly Uganda is lacking in this regard. The solution for transparency of PSAs is twofold. It can follow the example of countries like Liberia where confidentiality clauses are omitted from the PSAs or follow Norway's lead by turning their PSAs into national laws that are accessible to the general public.[331]

The lack of clarity regarding CGT is costing the Ugandan government a lot of money not only in loss of revenue but in litigation fees. The government should clearly state that all transactions are subject to capital gains tax in the PSAs. It can further use a positive ruling in the Heritage case to

[328] See n 251 above.
[329] Mosbacher (n 271 above) 50.
[330] Mosbacher (n 271 above) 50.
[331] See n 222 above.

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enforce payment of capital gains tax on any subsequent transactions of the same nature in the petroleum sector.[332]

The government should have all PSAs subject to Ugandan law. Adjudication and arbitration should be done in Uganda to reduce on the costs. The government should also enact or adopt international arbitration and dispute resolution procedures to guide the parties in case of conflict as the case was with Heritage oil.

4.8.2 The laws

The current regulatory framework is deeply flawed, but a series of amendments would make the framework more likely to achieve its stated goals. These reforms would have to start by limiting the current powers of the Minister of Energy and Mineral Development[333], separation of powers and functions of the institutions, clarity of functions of those institutions, reducing executive interference among others in the following ways;

4.8.2.1 Ministerial powers and executive interference

The first step would be to abolish the discretionary ability of the Minister of Energy and Mineral Development to issue and revoke contracts for oil exploration, production, and export. This should be replaced by a formalized process for awarding contracts based on competitive auction overseen by an independent committee.

The government must provide a strong role for Parliament in the management of the petroleum sector by giving them the explicit power in the legislation to approve new acreage, regulations, licenses and contracts and play a greater oversight role.[334] There should be a parliamentary committee that makes the decisions and the minister only implements those decisions.

The appointment of the members of the board of the NOC and the National oil Authority must be vetted and approved by the parliament instead of the president and the minister. This will curtail the interference of the executive in the work of these different institutions.

[332] Izama & Mulangwa (See n 225 above) 16.
[333]Mosbacher (n 271 above) 50.
[334]Global Witness (n 236 above) 3.

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4.8.2.2 Petroleum Authority

The scope and function of the Petroleum Authority should also be amended to more closely resemble Botswana's auditing and investigatory body, the Directorate on Corruption and Economic Crimes (DCEC).[335] This would require disentangling the Petroleum Authority from the influence of both the Minister and the President by moving to Parliament the power to appoint and remove the Authority's Board of Directors.

The DCEC was created by Botswana's National Assembly and empowered to independently investigate and prevent economic and political malpractice.[336] Since that time, the DCEC has played a vital investigative role in protecting the diamond sector from corruption.[337] Botswana was rated the least-corrupt African country in Transparency International's most recent "Corruption Perceptions Index,"[338]and ranks fourth out of 46 countries in sub-Saharan Africa in the World Bank–International Finance Corporation's most recent "Doing Business" report.[339]

Just as notable as the DCEC's success at checking the powers of other government agencies are the ways in which the powers of the DCEC itself are in turn checked. The DCEC does not play a part in the prosecution of cases for which it collects evidence, leaving that power solely to the judicial branch.[340] This demonstrates Botswana's deep appreciation of the importance of separated and balanced government power.[341]

4.8.2.3 National Oil Company

A separate law needs creating that specifically describes how to structure the NOC in addition to a good corporate governance framework in order to establish the NOC in a proper and effective manner. It can do this by looking at OECD procedure on corporate governance that is widely accepted as the international best practices. The government can also learn from Norway whose

[335]Mosbacher (n 271 above) 51.
[336]Mosbacher (n 271 above) 51.
[337]Mosbacher (n 271 above) 47.
[338]http://cpi.transparency.org/cpi2012/results/ (Accessed 15 April 2014).
[339]http://www.doingbusiness.org/rankings (Accessed 15 April 2014).
[340]Mosbacher (n 271 above) 47.
[341]http://wbi.worldbank.org/wbi/document/anti-corruption-commissions-panacea-or-real-medicine-fightcorruption(Accessed 15 April 2014).

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corporate governance framework is similar to the OECD framework.[342] The Norway example will be explained in further detail later in this chapter.

4.8.2.4 Parliamentary oversight

The legislation should provide Parliament with a far more comprehensive oversight role in the major decisions in the petroleum sector, such as over licensing, as is the case in other petroleum producing countries.[343] Consideration should be given to whether there is a need for other oversight and monitoring bodies.

A number of countries, ranging from Azerbaijan, Bolivia, Liberia and Ghana, require parliamentary approval of major natural resource contracts, including petroleum agreements. Parliamentary approval would be a more robust check and provide a more directly democratic branch of government to be involved in the most important decisions.[344]

4.8.2.5 Transparency of information

The government should make all documents and information relating to the petroleum sector public unless they fall within a narrowly defined commercial confidentiality provision relating to bidding strategies or proprietary technology.[345]

The exemption for 'commercial confidentiality' should be clarified and sharply limited. The laws should also explicitly state that financial benefits to the government and the Ugandan people arising from these contracts must be disclosed to the public.[346] This can be done either through a yearly report by the Government, some other regular disclosure by a third party or, preferably, through the disclosure of the entire contract.[347]The laws would also benefit from a firm commitment to financial transparency which is currently missing.

In line with the government's commitment to transparency, there must be protection for whistle blowers. This must be encouraged as part of the checks and balances in the petroleum sector to prevent corruption and unscrupulous behavior by the executive.

[342]Kyepa (n 243 above)90.
[343]Global Witness (n 236 above) 7.
[344]Global Witness (n 236 above) 7.
[345]Global Witness (n 236 above) 13.
[346]Global Witness (n 236 above) 13.
[347]Global Witness (n 236 above) 13.

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4.8.3 Local content issue.

The government should create more comprehensive local content legislation like Ghana and Nigeria. It is very evident that the current legislation in place is insufficient to fully realize Uganda's local content ambitions. This legislation should clarify the local content policy of Uganda and clarify the ambiguities that are in the current legislation.

Uganda must adopt a local content model that can plausibly measure how much, in sustainability terms. The local content regime's core objective must be empowering Ugandans as the engine for their own wealth generation for ultimate sustainable economic development.[348] To guarantee the success of such a model it is paramount to encourage accountability, safeguard against bias and stave off tensions, there must be total visibility in the criteria for award of contracts, basis for the award, contract costs and itemization of activities. Closely following the guidelines of the Extractive Industries Transparency Initiative (EITI) will go a long way to meet this end.

The government of Uganda should create a separate agency responsible for enforcing local content. The proposed Petroleum Authority of Uganda, under Section 9 of the Upstream Act is responsible for the promotion and enforcement of local content provisions of the law.[349] The Authority under Section 13 of the Upstream Act, takes directions from the Minister responsible for Petroleum activities. An approach akin to Norway's Achilles organization, working outside of government, would be an ideal way to promote objectives without suffering from allegations of corruption and cronyism.

The government of Uganda can not boost local content unless the businesses are there to support it. The government should consult with all the stakeholders especially the small businesses on a framework of how they can benefit from the petroleum sector. The government can take lessons from Brazil. In Brazil, the national oil company Petrobras set up two funds to stimulate Small Market Enterprises, of which there are now 14 million, accounting for 21 per cent of the nations

[348]See n 190 above.
[349]See n 190 above.

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GDP.[350] To become a positive example in the African oil and gas sector, Uganda would benefit from doing the same.[351]

4.8.4 Environmental issues

The government of Uganda should take the issue of the environment more seriously. This will take a two way system to solve the impending risks and issues that arise in the petroleum sector in the Albertine region. It is important that the Government of Uganda set standards for environmental protection before actual drilling can begin. These standards must reflect generally accepted best practices, as well as provisions of the Universal Declaration of Human Rights.[352] This is in line with the fact that environmental and ecosystem degradation can have a significantly negative impact on health, reproductive integrity, access to clean water, food security, and other human rights-related concerns.[353]

The government must enact standard legislation and policy that deals with issues like EIAs, oil spill contingency plans, biodiversity, air quality, water, fisheries, pollution and waste management among others. This must create clarity regarding environmental management in the region.

Mere enactment of legislation is not enough. Consideration must be made regarding how the different institutions in charge of implementing the legislation will implement it. What is required, therefore, is for the Government of Uganda to strengthen the structure of these institutions by fully staffing them and providing them with enough resources to perform their jobs effectively.[354] Budgetary support could possibly be realized if a percentage of the revenues collected by URA on environmental levies are channeled to activities that promote environmental.[355] Of course, it is important to note that in addition to providing each of these public institutions with the resources to perform their functions, they must also be adequately

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[350]See n 190 above.
[351]See n 190 above.
[352]Mawejje& Bategeka (n 301 above) 4.
[353]Mawejje& Bategeka (n 301 above) 4.
[354]Mawejje& Bategeka (n 301 above) 3.
[355]Mawejje& Bategeka (n 301 above) 3.

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constrained by the law so that those who work in them do not engage in behaviors like corruption that conflict with their ability to serve the public.[356]

4.8.5 Land issues and compensation

The government must realize that without local people's involvement in land issues it is bound to create bigger problems that can escalate into regional conflicts. Land in Uganda has an integral historical attachment to the people in the area. The government can not continue to take over areas without adequate compensation.[357]

The government must acknowledge the significance of the local traditional rulers and involve them in important decisions regarding the land. The Albertine region is part of Bunyoro Kingdom, a kingdom with a very rich tradition and history and a strong patronage from the subjects.[358] The government thus needs the blessings of the king and other traditional rulers for the activities in this region to be successful.

The government must create a standard policy in consultation with the local communities and civil society regarding the way compensation will be given for land taken up for petroleum activities. This will create clarity regarding the compensation issue and reduce on the mistrust that the local communities have for the government in this region.

The government should take the initiative to look for the most suitable land that these communities that have been relocated for petroleum activities are to be situated. This reduces on the conflicts and dissatisfaction of the communities. It makes no sense moving a fishing community to an area where they can no longer continue with their traditional activities.

It must be a standard part of any oil company's commitment to production in the Albertine region to undertake development projects for the advancement of the local population in the area of production. These include development of various infrastructural projects in transport and energy sectors, health centers technical training institutions as part of the companies' corporate social responsibility

[356]Mawejje& Bategeka (n 301 above) 3.
[357]Mawejje& Bategeka (n 301 above) 3.
[358]Mawejje& Bategeka (n 301 above) 3.

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4.9 Mineral Rich Africa and the Resource Curse

No African country of Uganda's level of political and economic development has ever seen the introduction of meaningful oil and gas sector translate into sustained development. Indeed, the examples of Uganda's closest oil-exporting relatives provide a grim perspective on the foreboding challenge ahead. Oil has been an unquestioned curse to the development stories of Uganda's three closest predecessors: Chad, Sudan, and the Republic of the Congo.[359]

In all three, the introduction of oil revenues has been strongly correlated with worsened political and economic outcomes. According to Freedom House, all three countries have seen their levels of civil and political freedom decay after discovering oil.[360] In addition, each country failed to translate an oil boom into sustainable development. All three experienced a similar surge in initial economic growth, only to see stagnation to below pre-oil levels within five years.[361]

None of these nations were able to establish control over the behavior of the executive branch and deter the corrupt behavior of well-connected elites.[362] In each country, oil revenues were diverted to the military, used to consolidate and strengthen the elite grip on political and economic power, and underwrote the lavish lifestyles of the best connected and most powerful.[363] For instance, during a 2006 UN General Assembly meeting in London, the government of the Congo was forced to foot a £130,000 hotel bill racked up by President Denis Sassou Nguesso and his entourage a bill that was £24,000 larger than the entire £106,000 aid package given to the Congo by Britain that year.[364] In Chad, President Idriss Deby was discovered to have siphoned $4.5 million of the country's first oil revenues for personal and military use and was later ruled to have done so legally under the country's porous legal framework.[365]

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[359]Mosbacher (n 271 above) 44.
[360]Mosbacher (n 271 above) 45.
[361]Mosbacher (n 271 above) 45.
[362]Mosbacher (n 271 above) 45.
[363]Mosbacher (n 271 above) 45.
[364]DT Rowlands, 'A New Scramble for Africa'(2010) 238 *Third World Resurgence*. 47
[365]S Pegg 'Can Policy Intervention Beat the Resource Curse? Evidence from the Chad-Cameroon Pipeline Project' (2005) 418 *African Affairs105* 1-25

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In the absence of the rule of law, multiple layers of checks on power, and other innovative institutions of accountability, an autocratic ruler and his elite can easily exploit and privately seize the oil sector and use their newfound wealth to squash competition and strengthen their already considerable power.[366] In addition, the near-total shift of capital investments to oil causes the new sector to dwarf the main drivers of healthy economic growth, crowding out agriculture and manufacturing.[367] Thus, oil revenues have ended up perverting any hopes of healthy economic growth while corrupting governance and severing any remaining ties of accountability between ordinary citizens and their government.[368]

4.9.1 The Oil Curse

"The oil curse is a shorthand expression that denotes a series of dysfunctions; political, economic governmental, and security, which are strongly associated with oil dependency. Oil dependent countries suffer from enclave industrialization, limited economic diversification and vulnerability to price shocks, decay in their manufacturing and agricultural sectors, declining terms of trade, misguided economic policies, and a fundamental neglect of human capital."[369]

These states have tended to neglect their human development because they are blinded by their resource wealth, which transforms them into oil-rentier economies. They also suffer from global patterns of domination and dependence, in some cases neocolonialism, in all cases multinational corporate exploitation, and meddling in their governance by international organizations.[370]

They are, furthermore, post-colonial states, already fragile, that have been weakened by the corrupting influence of oil money, with their leaders reduced to Kleptocrats, their civilian regimes transformed into brutal police states, and aggravating a regional tendency of military rule, their armed forces turned into praetorian cliques, personal despotism and veritable reigns of terror.[371]

[366] Mosbacher (n 271 above) 45.
[367] Mosbacher (n 271 above) 45.
[368] Mosbacher (n 271 above) 45.
[369] DA Yates The scramble for African oil; oppression, corruption and war for control of African natural resources (2012) 1.
[370] Yates (n 369 above) 1.
[371] Yates (n 369 above) 1.

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Beneath these aberrations of state power, live poor and deprived societies that have been traumatized by centuries of bloody exploitation, handicapped by low levels of education and health, primitive economies of accumulation, high rates of unemployment, limited capital and few opportunities for advancement.[372] Torn by violent conflicts based on ethnocentrism, unfair distribution, status frustration and internalized inferiority complexes, the people who live in these oil-rich countries are prone to rebellion, insurrection, and civil war.[373]

In all oil-endowed countries, management of the resource has been at the core of socio-economic and political governance.[374] For the curse to become a reality, local people are denied the opportunity to see how much money there is, where it is coming from and where it is going. It also becomes a reality in situations where such stats have failed to evolve credible structure to manage the resource in a way that will ensure fairness and to strike an acceptable balance between local claim and national interest. [375]

The presence of oil and its consequent exploitation creates "visions of hell on earth as environments, peoples, and lives are ravaged and destroyed".[376] The implications of oil exploration, extraction, transportation, storage and use on the environment are enormous. It is associated with spillages, explosions, oil leaks, injuries and death, be it in Nigeria, Gulf of Mexico, North Sea, Middle East, North Africa, or Alaska.[377] Inevitably, there is destruction of farmlands, fishing grounds and pollution of water sources.[378]

The "Horner-Dixon Hypothesis" suggests that the growth of human population and the economy will spur ones increasing demands for natural resources, which will create scarcity of such resources and that this will have profound negative social consequences such as insurrections, ethnic clashes, urban unrest, and other forms of violence.[379] This is in agreement with Sperling et al who hypothesized that oil-extracting societies often generate internal protest and sometimes terrorism and war.[380] Indeed, there have been violent protests in the Niger Delta[381] and Sudan;

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[372] Yates (n 369 above) 1.
[373] Yates (n 369 above) 1.
[374] A Alao *Natural resources and conflicts in Africa; The tragedy of endowment* (2007) 158
[375] Alao (n 374 above)158.
[376] Alao (n 374 above)136.
[377] Alao (n 374 above)136.
[378] Alao (n 374 above)175.
[379] Yates (n 369 above)201.
[380] Yates (n 369 above)121.

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Wars of Secession of Cabinda from Angola, South Sudan from Sudan, and the Niger Delta from Nigeria[382] and wars over oil-rich areas between countries such as Cameroon and Nigeria.[383]

Oil is also associated with massive corruption by the ruling elite at the detriment of the governed. Corruption is a behavior that flourishes when government agents have exclusive and wide discretionary powers, and are not accountable for their acts. Therefore, "it is a consequence of bad institutional design, because bad institutions create micro-economic inducements for corruption." [384]

Overall, an exceptional infusion of oil wealth undermines many existing social institutions within a country. If a society is not already democratic with a diverse and pluralistic set of institutions, then the exploitation of oil will often damage any movement towards democratization, lending credence to the saying that "oil and democracy are not great bed fellows."[385] Many leaders in these countries are authoritarian, dictatorial and praetorian kleptocrats whose only claim to fame is cowing their countries dry by ensuring that oil revenues flow into their wallets.

4.10 Lessons from Norway

Norway is the clearest illustration of how oil and democracy can be effectively combined. This seems to be because it possesses a 'deep democracy' with institution a listed patterns of non-violence resulting from being one of the most equal societies in the world in terms of class and gender[386] Norway remains a nation of stored away wealth, financial stability among Norwegians.[387]

Presently, Norway has the world's highest human development index (HDI) ranking, out of 169 countries with similar ranking- Saudi Arabia 56, Russia 65 and Nigeria 142.[388] On a per car pita basis, it is the world's largest oil and gas producer outside the middle east, it is the 9th largest oil

[381] Yates (n 369 above)202.
[382] Alao (n 374 above)164.
[383] Alao (n 374 above)171.
[384] Yates (n 369 above) 57.
[385] J Urry *Societies beyond oil; oil dregs and social futures* (2013) 139.
[386] Urry (n 385 above)149.
[387] Urry (n 385 above)151.
[388] Urry (n 385 above)151.

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and largest gas exporter in the world ,and its oil revenues are more than 20 percent of Norway's GDP.[389]

According to foreign policy magazine, Norway is second to the last in its listing of 'failed states index' for 2011.[390] Furthermore, it is judged to be more or less the world's best functioning and stable state; it is tenth best for its perceived lack of corruption, and is ranked the second wealthiest country in the world.[391] No wonder, then, that "Norway runs a 9 percent state budget surplus, being the only western country to do so as of 2009.[392] Additionally, it is the least country affected by the international economic crash of 2007/8 onwards, and it successfully maintains a social democratic welfare model with universal health care, subsidised higher education and comprehensive social security.[393] Not only because of the above but also because of the measures it has put in place to manage the oil revenues as mentioned below, Norway is an interesting development model being copied by many countries including Russia and Scotland.[394]

To achieve all the above Norway has over the years built institutions and implemented policies aimed at optimal utilisation of petroleum earnings to benefit all its citizens including its future generations.[395] To begin with, Norway had the advantage of starting its petroleum industry against the backdrop of a highly competent bureaucracy that was skilled in, among others, regulation of natural resource industries lie hydro power and mining.[396] Secondly, because the country was greatly concerned with the negative effects of oil wealth, Norway's policy goal was geared towards maintaining control of the oil sector and not revenue collection.[397] Because of this, the government controls the licencing of the exploration and production of petroleum field s through state ownership of the manager operators; sixty two per cent ownership in Statoil and a

[389] Urry (n 385 above) 151.
[390] Urry (n 385 above) 151.
[391] Urry (n 385 above) 149.
[392] Urry (n 385 above) 151.
[393] Urry (n 385 above) 151.
[394] Urry (n 385 above) 151.
[395] Kyepa (n 243 above) 90.
[396] Kyepa (n 243 above) 90.
[397] Kyepa (n 243 above) 90.

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hundred per cent in Petoro[398] which companies have been beneficiaries of good corporate governess structures existing in Norway.[399]

Lastly, to maximise benefit for everybody, Norway established the sovereign wealth fund in 1995, based on taxes, dividends, sales revenues, and licencing fees from the oil.[400] It was designed to reduce over heating in the economy; provide a cushion for aging population and to minimise uncertainty from volatile oil prices and deal with the inevitable the declining oil and gas reserves.[401] The fund invests in financial market outside Norway spending more than 4 per cent of then fund each year.[402] By 2010, the fund was the largest in Europe with assets of around USD$556 billion.[403] Globally it is the second only to Abu Dhabi investment authority before Saudi Arabia that comes in third place.[404]

4.11 Conclusion

It goes without saying that FDI is very important in Uganda's economy, more so in the emerging petroleum sector that needs a lot of money to set up in all the three sectors of petroleum production. FDI inflow in the petroleum sector in Uganda has been overwhelming. But with the high FDI inflow, comes a responsibility by the host country to efficiently regulate the sector in order to fully benefit from it.

Although Uganda has gone to great length to establish a regulatory and institutional framework to cater to the sector, there are so many critical gaps that have not been catered for including; unchecked minister's powers and discretion; interference of the executive; lack of transparency in the activities in the sector; land issue; lack or inefficient environmental management policies; lack of a clear and efficient fiscal regime to handle oil revenue and security concerns among others. The next chapter will give a general brief summary of all the previous chapters.

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[398] Urry (n 368 above) 150
[399] Kyepa (n 226 above) 90
[400] Urry (n 368 above) 150
[401] Urry (n 592 above) 150
[402] Urry (n 592 above) 150
[403] Urry (n 592 above) 150
[404] Urry (n 592 above) 150

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CHAPTER 5

CONCLUSION

5.1 Introduction

The chapter provides a conclusion and a summary of all the recommendations arising out of the substantive chapters, that is, chapters 2 to 4. It amalgamates all the recommendations therein, to provide a unified proposal on the way forward;

5.2 Conclusion

In this research it has been established that FDI is an important aspect to any country's economy, more so to the economy of a developing country like Uganda. Although its definition varies, FDI is not a new concept but is as old as trade itself and although the concept has evolved over years its significance is very important.

In the case of Uganda FDI can be traced back to colonial times when the colonial masters invested in their colonies. In Uganda the British invested in the country's socioeconomic infrastructure. On attaining independence, the country had to start sourcing for investment as the British stopped investing in the country. Since then the governments of Uganda over the years have been sourcing for FDI investment into the country. Due to the different changes in government FDI inflow into the economy of Uganda has been volatile and inconsistent.

Since 1988, after years of political turmoil and civil war, the newly established stable government took on the task to attract FDI into Uganda. That included creating policy and establishment of the Uganda Investment Authority. Since then FDI inflow has gradually increased, but over the past 5 years it has sky rocketed to unprecedented proportion and this is mainly due to the discovery of oil in the country.

In this research it has been established that although the discovery of oil in Uganda has been recent, its exploration dates back to the 1920s. The explorations slowed down and were only resumed in the late 1980s by the PEPD. Since the discovery of oil, the government has taken steps to accommodate the new developments in the petroleum sector. These have been in the

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form of the NOP, new laws like the Upstream and Midstream Acts and the amendments to the complementary legislation that regulates activities in the petroleum sector.

In this research it has been established that the petroleum sector in Uganda does not have one standing regulatory framework. Due to the different stakeholders in the sector, its regulatory framework is comprised of an amalgamation of laws and regulation that are supposed to work together harmoniously in regulating the sector. So in effect FDI regulation in the petroleum sector is regulated by a multiplicity of rules that form the regulatory framework. In this the government has gone a long way in creating a sufficient regulatory framework to regulate FDI in the petroleum sector.

It has also been established that although the government has created a regulatory framework to manage FDI in the sector, this research has shown that there are very important legal gaps that affect the efficacy of the current regulatory framework in the petroleum sector, these include; unchecked minister's powers and discretion; interference of the executive; lack of transparency in the activities in the sector; land issue; lack or inefficient environmental management policies; lack of a clear and efficient fiscal regime to handle oil revenue and security concerns among others.

The failure to address the issues above will plunge the country into a resource curse that is very hard to reverse. The resource curse tears the entire fabric of society and the result is that the same society that was supposed to benefit from the resources of the country ends up losing the benefit to a small elite group of people in the country, the effect of this is the high likelihood of the internal conflict mass irreversible environmental degradation, low socio infrastructural development among others. This is evidenced by the resource rich African countries that have witnessed slow socioeconomic growth while their dictatorial governments became richer.

In order to prevent the resource curse phenomenon from occurring in Uganda, the legislators in the country will have to make a positive step towards creating a system that is not only transparent but accountable. In order to do this there need to be checks and balances that need to be created and inserted into amendments of the laws that have been created; parliamentary involvement in the major decisions in the petroleum sector should be paramount; there must be clarity of the roles and duties of institutions involved in the sector; public involvement and

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discussion should be encouraged; PSAs should be made public; environmental issues should be resolved before production starts and land and local content issues should be resolved among others.

There have been countries with great resources and yet they have been failures economically like Equatorial Guinea and Republic of Congo. An example that Uganda can emulate in Africa is Botswana. This country was able to create a system that allowed for transparency and accountability and it has been able to greatly enhance growth of the country. With such an example Uganda has the potential of fully benefiting from the petroleum resource. Uganda can also learn from the international best practice of Norway.

In conclusion, the struggle to create a regulatory framework capable of fighting impending issues in Uganda's petroleum sector is quite literally a battle for Uganda's future. Furthermore, Uganda's future as an oil exporter will have implications that reach far beyond its own borders. As East Africa becomes a major player in the world's oil market over the next decade, Uganda's example will set a standard for how the region's citizens can expect their oil sectors to be managed. Structuring a new regulatory framework presents an opportunity for Ugandan legislators to steward the country away from its corrupt past toward a new era of democratic governance and unencumbered economic growth.

In the absence of earnest reform, Uganda's current regulatory framework is unlikely to stop corruption and abuse. The country's political leaders face a choice: they either boldly alters the structure of the current framework to separate and check the powers of actors within the system, or Uganda's future as an oil exporter will likely look very similar to that of her resource cursed African forbearers.

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