AN ANALYSIS OF THE LAW GOVERNING COST RECOVERY IN UGANDA'S OIL AND GAS SECTOR

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DECLARATION OF AUTHORSHIP

I, Asamo Josephine declare that I am the author of this Dissertation and that any assistance I received in its preparation is fully acknowledged and disclosed in the paper. I have also cited any sources from which I used data, ideas or word either quoted directly or paraphrased. I also certify that this paper was prepared by me specifically for the partial fulfilment of the requirements for the award of the degree of Master of Laws of Uganda Christian University - Mukono.

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APPROVAL

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4th June 2025

ABSTRACT

This study analyzes the law governing cost recovery in Uganda's oil and gas sector, focusing on the efficiency of the Production Sharing Agreements (PSAs) regime. The research examines the benefits and challenges of cost recovery for both the host country and international oil companies, and provides a comparative analysis of different jurisdictions. The study reveals that while the PSAs regime has its benefits, it also has shortcomings, particularly in terms of cost inflations, overstating budgets, and transfer pricing by oil companies. The study uses a mixed research design, combining: Qualitative research examines the "why" and "how" of a phenomenon, providing in-depth understanding and Quantitative research: Seeks empirical support for research hypotheses. Additionally, the researcher used doctrinal and empirical legal research approach. The researcher used statutes, PSAs, academic literature and expert interviews. Analysis used thematic synthesis to extract legal and policy insights.

The researcher Key Findings included that the PSAs regime has benefits for both the host country and international oil companies, Cost recovery is a critical aspect of the PSAs regime, but it can be challenging to implement, the law governing cost recovery in Uganda's oil and gas sector is scattered and not comprehensive. There is need for Uganda to invest in training its citizens to negotiate better contractual terms. The research Recommends that Uganda should invest in training its citizens to negotiate better contractual terms, the government should ensure transparency in the oil and gas sector, the law governing cost recovery should be reviewed to address the shortcomings of the PSAs regime.

The research concludes that Uganda needs to invest in training its citizens to negotiate better contractual terms, monitor and evaluate oil company activities, and ensure transparency in the oil and gas sector.

DEDICATION

I dedicate this work to my parents Mrs. Kongai Cecilia Omongot and Mr. Omongot Qwirino, your belief in what I do throughout my life, has always been an anchor that I stand on. My late grandmother Akello Coronelia Koluo, whose love for education, even though she never went to school, was the best gift she left with us her grandchildren.

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ABBREVIATIONS

PSA	Production Sharing Agreement
PSC	Production Sharing Contract
NOC	National Oil Company
HC	Host Country
HG	Host Government
IOC	International Oil Company.
USD	United States Dollar
JVC	Joint Venture Contracts
PFS	Petroleum Fiscal System
PFR	Petroleum Fiscal Regime
UK	United Kingdoms of England
USA	United States of America
ROR	Rate of Return or the R- factor
STOIIP	Stock tank oil-initially in place
CEO	Chief Executive officer
MDTF	Multi-Donor Trust Fund
SSA	Sub-Saharan Africa
SEC	US Securities and Exchange Commission
DRC	Democratic Republic of Congo
OCDS	Open Contracting Data Standard
EITI	Extractive Industries Transparency Initiative

MSG	Multi- Stakeholder Groups
WBI	World Bank Institution

LIST OF POLICIES

The Constitution of the Republic of Uganda, 1995

The National Oil and Gas Policy for Uganda, February, 2008

The Energy Policy for Uganda September, 2002

The Oil and Gas Revenue Management Policy for Uganda, 2012

The National Content Policy for the Petroleum Sub- Sector for Uganda, 2017

LIST OF NATIONAL LEGISLATION

ACTS OF PALIAMENT

The access to Information Act, 2005

National Environment Act, Cap. 153

The National Audit Act, 7 of 2008

The Investment Code Act, 2019

The Income Tax Act, Cap. 340

Public Finance Management Act, 2015

The Petroleum Supply Act 13 of 2003

The Petroleum (Exploration, Development and Production) Act No. 3 of 2013.

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act No. 4 of 2013

STATUTORY INSTRUEMENTS

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016. No. 34

The Petroleum (Refining, Conversion, Midstream Storage) (Health, Safety and Environment, Transmission and Midstream Storage) Regulations, No. 36 of 2016

The Petroleum (Exploration, Development and Production) (National Content) Regulations No.44 of 2016

The Petroleum (Exploration, Development and Production) (Metering) Regulations No.45 of 2016

The Petroleum (Exploration, Development and Production) Regulations No.47 of 2016

LIST OF INTERNATIONAL TREATIES

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 1976) 999 UNTS 171 (ICCPR)

Declaration of the Rights of the Child (1959) *(Proclaimed by the General Assembly, Resolution 1386 (XIV), A/RES/14/1386, 20 November 1959)*

The UN Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007

African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982)21 ILM 58 (African Charter)

PRODUCTION SHARING AGREEMENTS

Production Sharing Agreement for Petroleum Exploration, Development and Production in the Republic of Uganda by and between government of the Republic of Uganda 2016.

Production sharing Agreement for Petroleum Exploration Development and Production in the Republic of Uganda by and Between the government of the Republic of Uganda and Tullow Uganda Limited in Respect of the Kanywataba prospect Area February 2012.

Production Sharing Agreement for Petroleum Exploration Development and Production in the Republic of Uganda by and between the government of the Republic of Uganda and Tullow Uganda limited in respect of exploration Area 1 February, 2012.

Uganda Model Production Sharing Agreement of August 1999 for Petroleum Exploration, Development and Production in Uganda.

Model Production sharing contract by the Republic of Kenya.

Model production sharing Agreement between the government of the United Republic of Tanzania and Tanzania petroleum Development Corporation and ABC LTD for any area 2013.

Production Sharing Contract among the government of India and oil & Natural gas corporation Limited and Reliance industries limited and Enron Oil and Gas India Ltd with respect to contract area identified as Mid and South Taptifield.

Uganda Model Joint Operating Agreement 2017.

LIST OF CASES

Tullow Uganda Limited & Tullow Operational Pty Ltd Vs Uganda Revenue Authority, Tax Appeal Tribunal, TAT Application No. 4 of 2011

Reliance Industries Ltd and another v Union of India [2018] EWHC 822

The Esso Exploration and Production Nigeria Limited & Anor v Nigerian National Petroleum Corporation, Doctet No 19-3159(L)19-3361

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CHAPTER ONE

GENERAL BACKGROUND

1.0 Introduction

Cost Recovery is the method of recovering an expenditure which a business takes on. it is simply recovering the costs of any given expense.[1] This can be:

> "the initial start-up costs of the business by meeting and exceeding the break-even point. the cost of an investment through evaluating the return on investment or even the cost of capital taken to finance the firm, specifically the cost recovery method of accounting gains backs the cost of an investment by relying on the certified depreciation schedule of the item."[2]

In the oil and gas sector:

> "cost recovery is an opportunity given to an oil company to recover the cost borne in commercial discovery. The International oil company is entitled to recover the eligible petroleum costs incurred under the production sharing agreement. This can be by taking and freely disposing off a certain maximum percentage per year, quarter or month of all crude oil and natural gas produced from the entire contract area, or such a lesser percentage of the year production as necessary to recover petroleum costs."[3]

Any balance if, unrecovered (costs) at the end of a given year, is carried forward for recovery purposes in subsequent years.[4] The costs that are recoverable under the PSAs by the International Oil Company (IOC) include exploration, development, production costs and expenses from the share of production or gross revenue inclusive of operation costs.[5]

This cost recovery will usually vary depending on the country and or the characteristics of the field in question. Some countries allocate a certain percentage

[1]J Wilkinson in WikiCFO July 23 2013, visited on 15th January 2019.
[2]Ibid.
[3]Claude *et al*; International Petroleum Exploration and Exploitation Agreements 2nd edition 2009.
[4]Ibid.
[5] Marcia.A; Cost Recovery in Production Sharing Contracts: opportunity for striking it rich or just Another Risk Not Worth Bearing? CEPMLP Annual Review 2010.

of production for cost recovery, sometimes known as the cost recovery limit or, cost ceiling.[6] In the PSCs, there are equally costs that cannot be recovered, like costs incurred before the signing of the agreement, bonuses, royalties, costs incurred due to transfer of interest, costs associated to provision of bank guarantee, incomes tax, fines and penalties, donations and charitable contributions.

In Uganda, a hybrid of Production Sharing Agreements' regime is run in addition to cost oil and profit oil. Uganda has signed several production sharing agreements with oil companies and all these agreements specify a cost recovery clause ranging from investment capital in exploration, development, production and operating expenditure, legal costs, interest from bank loans for example the Model PSA signed in 1999, Two Model PSAs signed in 2012 in respect of Kanywataba prospect area, and Exploration area 1 respectively, and the latest being the Model PSA signed in 2016. In order to recover these costs, the Uganda Petroleum Authority must approve and thereafter, the Auditor General's office, audits the approved costs.[7] Cost recovery management is based on the production sharing agreement, which allows the company to recover the exploration and development costs after a commercial discovery is made. If no commercial discovery is made, then the company stands to lose its investment costs.[8] In as much as the production sharing agreements and the laws exist, that define this relationship between the host country and the oil company, the mode and procedure of recovery is spelt out under the same laws. The oil companies have always found a way of circumventing these laws, and thus causing loses to the government and the citizens of Uganda.[9] The study analyses the law governing cost recovery in Uganda's oil and gas sector, its efficiency on the Host Country and international oil companies, international and national legal framework, comparative analysis.

1.1 Background

The countries that have oil and gas resources wish to exploit them and use revenues that accrue from these resources as a means for attaining sustainable economic development

[6] Blinn, K.W., et al., International Petroleum Exploration and Exploitation Agreements: Legal, Economic & Policy Aspects, 69 (2nd ed.2009).
[7] A. Ssekatawa; Understanding cost recovery in Uganda's Petroleum Sector, earth finds, accessed at earthfinds.co.ug. Visited on the 15th January 2019.
[8] ibid.
[9] A.Ssekatawa; Understanding cost recovery in Uganda's Petroleum Sector, earth finds, accessed at earthfinds.co.ug. Visited on the 15th January 2019.

(Bindemann 1999). The Host Governments (HG) in this regard want to achieve various objectives ranging from getting early economic rent, creation of jobs, expertise transfer, preparation of local workforce, commercial opportunities for indigenous suppliers (Pongsiri 2004, Meurs 2008). The exploitation of oil and gas resources entails huge investment, sophisticated technologies and capabilities required to manage the risks involved in their operations (Bindemann 1999).

According to Johnston (2003), most developing countries with oil and gas deposits, are compelled by the lack of the factors mentioned by Bindemann (1999), to issue exploitation rights/licenses to the International Oil Companies (IOCs). These companies possess adequate capital, required expertise and machinery needed to discover and develop the hydrocarbons on behalf of the HG (Kaiser 2007, Tordo 2007). The fiscal arrangements are divided into two; the concessionary arrangements and the contractual arrangements (Johnston 1994, Mazeel 2010, Mian 2010, Zahidi 2010, Theodoridou 2012).

Uganda is a new oil State, but the history of its oil industry is over a century old. Oil seepages along Lake Albert have been well known to local communities for generations.[10] In the late 1800s, British Explorers made the first formal references to oil in Uganda. Exploration began near the fishing village of Kibiro in the early 1900s, but was halted with the outbreak of World War II.[11] In 1925, Wayland mapped out indications of oil in the country to help re spark exploration interest.[12]As a geologist, he explored Lake Albert area in 1919 and recorded 52 hydrocarbon occurrences around Lake Albert.[13] In his 1920 paper and his 1925 report: he categorized the discovered substance as 'petroleum'.[14] Wayland's work did not determine the existence of commercial oil, but it generated great interest in Uganda's petroleum.[15] In 1920, five oil companies were granted exclusive rights to prospect for oil.[16] None of them

[10]Luke Patey, Oil in Uganda: Hard bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies.
[11]Ibid.
[12]Deloitte, 'The Deloitte guide to oil and gas in East Africa: Where potential lies,' Deloitte, 2013, 27; Tracing Uganda's oil Journey from 1913-2013.
[13] Kasozi, A.B.K; Uganda Oil: A legacy of searches and no conflict so far. 2010.
[14] Petroleum in Uganda, Wayland (2005)
[15] Ibid.
[16] The Companies included W.Brittle Bank, Chijoles Oil ltd, Lord Drogheda Sydicate, Messrs Bird & Co, and Messrs E.S Grogan & Co. extracted from Julius Kiiza et., al; Righting resource curse wrongs in Uganda: a case of oil discovery and the management of popular expectations. Research series No.78, Economic policy Research Centre, July 2011.

confirmed the existence of commercially viable oil, but interest in the oil industry grew and in 1936 and 1937, the Investment Company of Johannesburg was granted a license to prospect for oil over an area of 2,574 square miles.[17]

The company studied the rocks in the Albertine graben, drilled two Wildcats (potential oil wells) but failed to strike commercial oil.[18]World War II (1939-1945) interfered with oil exploration but the colonial technocrats scrutinized the geological data collected by the 'unsuccessful' companies which established the existence of commercially viable oil. The Geological Survey Department continued prospecting for oil and between 1947 and 1950, geologists R.C Pargeter, D.M Boyd, and F.R Wilson produced several reports on oil in Uganda unfortunately, the colonial state suspended oil exploration in 1951.[19] In 1983, under the government of Milton Obote II (1981-1985), an aeromagnetic survey was conducted over the Albertine Graben. This survey increased Uganda's stock of knowledge on the existing hydrocarbons. The Petroleum (Exploration and Production) Act, 1985 was enacted to regulate the upstream activities, particularly oil exploration and extraction. The overthrow of Obote in 1985 did not kill interest in the oil. President Museveni confesses that soon after capturing power in 1986, he learned about the Albertine oil when Shell BP and Exxon approached him. The two oil companies wanted exploration rights over the Lake Albert basin which he declined to grant.

Uganda established a Petroleum Unit in 1990, five exploration areas were designated and a production sharing agreement was signed with the Belgium company for the entire Albertine Graben region in 1991. The other PSA was signed in 1995 with an American company but still work was not done. In 1997 new agreements with significant tax incentives, were signed with two oil companies; Jersey-registered Heritage Oil (given block 3 which was later subdivided on the south end of the lake Albert), and Hardman Resources from Austria. Several other companies where awarded other block 1,2 3A to mention but a few.[20]After several discoveries

[17] Julius Kiiza et., al; Righting resource curse wrongs in Uganda: a case of oil discovery and the management of popular expectations. Research series No.78, Economic policy Research Centre, July 2011.
[18] Ibid.
[19] Julius.K. et., al; Righting resource curse wrongs in Uganda: a case of oil discovery and the management of popular expectations. Research series No.78, Economic policy Research Centre, July 2011.
[20] Luke Patey, Oil in Uganda: Hard bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies.

from 2006 to 2008 the value of Uganda's concessions grew, and the oil companies looked to consolidate their investments, while others, to cash in through selling its assets.[21] In 2014, the Ugandan government estimated, that there was 6.5 billion barrels of oil in place.[22] Recoverable oil is predicted to be between 1.8 and 2.2 billion barrels and it is expected to reach 200000 and 250000 bpd based on current discoveries.[23]

In light of the above discussion, Uganda finally passed a law on petroleum in 1985, the Petroleum (Exploration and Production) Act, Cap 150 and the Petroleum (Exploration and Production) (Conduct of exploration Operations) Regulations of 1993. These law provided the legal and regulatory framework under which the Ministry of energy and Mineral Development, through the Petroleum Exploration and Production Department (PEPD).[24] When NRM took over power in 1986, the 1995 Constitution of the Republic of Uganda was promulgated, which spelt out that the ownership and control of Minerals and Petroleum of the country is vested in the government.[25] In 2006, after confirmation of the existence of oil in Uganda, there was need to amend and or repeal the Petroleum Act of 1985, in order to take into consideration the global improvements in technology, together with the increasing concern for environmental conservation and sustainable development. Uganda then put in place Acts of parliament, statutory declarations and policies to regulate the oil and gas operations. These included the National Oil and Gas policy for Uganda 2008, which acknowledged the provisions of the Constitution under article 44. The Petroleum (Exploration, Development and Production) Act 2013, which provided that any transaction between oil companies and the government should be entered as an agreement, which takes the form of a PSA, and spells out the relationship between parties. The Petroleum Act 2013, as the mother law provides for the evaluation and monitoring of the international oil companies' expenditure and budgets to avoid excessive payment of costs incurred.

[21] Ibid.
[22] Ministry of Energy and Mineral Development, "the oil and gas sector in Uganda: Frequently asked questions" A report of January 2017.
[23] Ibid.
[24] National Oil and Gas Policy for Uganda, February, 2008. Pp 3.
[25] Article 44 of the Constitution of the Republic of Uganda, 1995.

The challenge with the law, is that, the time frame for recovery for the international oil companies is long, cost recovery is until production starts and even so, it is paid at an average of 60% for the earlier PSAs of 1991-2012, the PSA of 2016 cost recovery is set at 100% annually. **Secondly**, the regulatory framework is very weak as the oil companies are left to make decisions on the budgets and expenditure. **Thirdly** the provision of recoverable costs includes litigation fees, interest on bank loans, some operational costs like payment of office rent, salaries, allowances, transport costs which are a shortfall on the host government. In the end, the oil companies surely get to share the profit from oil and gas with the host country in addition to being paid the said costs. **Fourthly**, the cost recovery law is not found in one piece of legislation, there is no specific provision in the law, that provides for cost recovery save for the Production Sharing Agreements.

1.2 Statement of the Problem

Cost recovery protects host governments, as a fixed allocation per period, usually a percentage of production, guarantees the government a share in the initial production of fields. Similarly, through cost recovery oil and gas companies retain a specific portion of total production to recover their costs. Cost controls is paramount in determining what costs are deductible and the timing of such costs in order to arrive at a revenue tax base. Uganda has passed Policies and promulgated laws that govern the oil and gas sector and among these laws, is embedded directly or indirectly provisions on cost recovery. Uganda has also signed Production Sharing Agreements with different oil companies since 1991, which spell out the relationship between the oil companies and the host country and providing for recoverable and non-recoverable costs. The element of cost recovery is very important in determining net revenues. The contracts signed by Uganda and oil companies have not been made accessible to the public as they contain a clause of confidentiality in protection of commercially sensitive information. Contracts are a crucial element of the regulatory framework which governs the oil and gas industry, making them publicly available is key to good governance. Upstream laws require that information submitted by the companies to the government is kept confidential unless the parties agree.

Uganda was admitted as an EITI implementing country in August 2020. Uganda aims to use EITI membership to strengthen efforts in ensuring overall transparency in the sector,

strengthen tax collection, promote public debate, improve the investment climate, build trust and create lasting value from petroleum and mineral resources. UGEITI has contributed to advance both the oil framework and the mining reform. On the oil and gas sector, UGEITI has been particularly active in engaging stakeholders, debating issues such as contract transparency, beneficial ownership, fiscal justice, and local impact, and preparing companies for when material revenues will come to stream as the industry enters the production phase. The EITI process, including the production of two reports in the first reporting cycles, has served as a thorough diagnostic tool for extractive sector's data and processes

The reports have also revealed deficiencies in the quality assurances of information given the lack of full publicity of companies' audited statements including the state-owned company UNOC. UGEITI has also made little progress on the lack of full disclosure of contracts in the oil sector. the EITI process has served to identify a baseline of the state of transparency as demanded by the EITI. In turn, this sets solid basis for future disclosures of data with the required quality once the oil sector is in full operation, including transportation of crude through the East Africa pipeline and generation of significant revenues.

Outcomes and impact UGEITI have generated and promoted debate on key issues affecting the extractive industry. The EITI process in the first years of implementation has served to map the regulatory framework for both oil and mining and discuss progress on key transparency efforts in areas such as oil contracts and beneficial ownership. UGEITI has reached out especially to the oil industry's region to discuss local impact and fiscal regime. The UGEITI website is a focal point for information on the sector and EITI Reports have included thorough information on the institutional frameworks for both sectors.

The problem at hand is that, Ugandan citizens do not understand the contents of the agreements signed and further, the implementation of these laws is lacking due to political interference, corrupt systems, lack of capacity, expertise and experience in negotiating good and favorable terms for the country in the contracts, Ugandan legislators are not knowledgeable in matters of oil and gas and thus pass laws which are unfavorable in the management of cost recovery. Additionally, there is a lot of secrecy surrounding the oil

contracts which is costly to the citizens of Uganda as the aspect of transparency is neglected making it hard for the government nor the oil companies to be held accountable despite Uganda joining EITI, disclosure is still lacking. The law in this regard condones the manipulation of citizens' resources by the oil and gas companies in Uganda. If not addressed to provide for increased transparency in the negotiation and publication of cost recovery agreements in the oil and gas sector, will be detrimental to the country's economy.

1.3 Objectives of the Study

1.3.1 Main objective

The main objective of the study is to analyze the law governing cost recovery in the oil and gas sector of Uganda.

1.3.2 Specific Objectives

The specific objectives of the study are:

i. To provide a background to the cost recovery instruments in the oil and gas sector in Uganda.
ii. To examine the benefits of costs recovery on the host country and the oil companies.
iii. To discuss the international and national legal framework aimed at addressing the issue of cost recovery in the oil and gas sector in Uganda.
iv. To provide a comparative analysis of the law governing cost recovery in the oil and gas sectors in other countries.
v. To draw conclusions and make recommendations based on the findings of the study.

1.4 Research Questions

i. How efficient is the law governing cost recovery in Uganda's oil and gas?
ii. What is the background for the cost recovery instruments in the oil and gas sector in Uganda?
iii. What are the benefits of costs recovery on the host country and oil Company?
iv. How can international and national legal framework address the issue of cost recovery in the oil and gas sector in Uganda?
v. How have other jurisdictions handled the law governing cost recovery?
vi. What are the conclusions and recommendations, based on the findings of the study?

1.5 Significance of the study

Fundamentally, the researcher desires to avail information, knowledge and an outlook on the efficiency of the law governing cost recovery, international and national legal framework on the same and a comparative approach on how other jurisdictions have handled the issues of cost recovery. The Government of Uganda, IOC managers, policy makers will benefit from this study, for they will be informed on cost recovery benefits and challenges facing the oil and gas industry in terms of cost recovery. This study shall be of interest to academicians and future researchers, who will undertake other related researches. This research shall increase their knowledge, stimulation, motivation and encourage them to analyze and conceptualize more information in the sector.

1.6 Scope of the Study

1.6.1 Content Scope

The study focuses on cost recovery in PSA, examining the international and national legal framework, the efficiency of law on cost recovery.

1.6.2 Time Scope

The study focuses on the PSAs signed by Uganda and related laws as exploration works are under way and now Uganda awaits production by 2020.

1.6.3 Geographical Scope

The study was conducted at the Petroleum Authority of Uganda (PAU), also known as the Uganda National Petroleum Authority. The Authority is situated at Amber House Ministry of Energy and Mineral Development Building, third Floor (Level), Opposite Worker's House Building Kampala, Uganda. The Petroleum Authority is a governmental organization that regulates the petroleum industry in Uganda. The Authority is responsible for licensing, regulation, supervision of exploration, harvesting, refining, marketing, and disposal of petroleum products in the country. The office of the Auditor General, which audits and approves the payment of recoverable claims submitted by the IOCs including Ministry of Finance which effects the payments to the IOCs.

1.7 Arrangements of Chapters

The dissertation is organized in six chapters. Chapter One provides the general background, statement of the problem, objectives of the study, research questions, significance of the study, Chapter Two reviews existing literature and provides the theoretical framework for the study, Chapter Three, provides the methodology to be relied on in the study, Chapter Four discusses international legal framework, Chapter Five discusses national legal framework, and Chapter Six gives a summary of findings, conclusion and recommendations.

1.8 Chapter Conclusion

1.8.1 Findings

The researcher established that oil was discovered in Uganda as early as 1800s by the natives but there was no specific literature written about the same. Exploration started before the colonial error but no discovery was made. It was also established that there were no laws that governed the oil sector by then save for the Petroleum Act of 1985 Cap 150 together with its regulations that where promulgated in 1993. This was the only law that regulated the oil and gas sector until major oil discoveries were made in 2006 other laws were promulgated and these included; the Petroleum (Exploration, Development and Production) Act No 3 of 2013.

1.8.2 Conclusion

The researcher by the end of the next five chapter shall have tackled the main objective to this research and availed literature that shall be useful to further research, academicians, government, and policy makers.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Literature review according to Hart, is defined as the selection of available documents on the topic, which contain information, ideas, data and evidence written from a particular standpoint to fulfil certain aims or express certain views on the nature of the topic and how it is investigated.[26] This chapter presents empirical evidence available on the efficiency of Uganda's fiscal regime in light of cost recovery issues, examines the available literature on who benefits from cost recovery arrangement, looks at the available literature on fiscal regimes.

2.1 Petroleum Fiscal Systems

Johnston defines the petroleum regime of a country as a set of laws, regulations and agreements which govern the economic benefits derived from petroleum exploration and production, the regime regulates transactions between the political entity and the legal entities involved.[27] Mazeel classifies PFS as systems whereby the owner of the mineral resources receives levies from the extraction company, they include concessionary systems and contractual systems.[28] He (Mazeel) continues to assert that in the USA, the owner of the mineral resource is the government, owners are private individuals or companies that pay taxes on production, however worldwide, every country has developed its own petroleum system.[29] For example, in the concessionary system, government will transfer title of the oil and gas to a company if they are produced, IOC then pays royalties and taxes, contrary to this, is the contractual system, which is in most cases PSA or service contracts where the IOCs has the right to receive a share of production or revenues from the sale of the oil and gas in accordance with a PSA.[30] In the contractual systems, the facilities installed by the contractor within the host government's territory become the property of the state either as soon as

[26]C Hart, (Doing a Literature Review, Releasing the Social Science Research Imagination, London, Sage publications,1998.
[27] D Johnston, International Petroleum Fiscal systems and production sharing agreements, PenWell Books, 1994.
[28] M Mazeel Petroleum Fiscal Systems and contracts-Diplomica verlag, (2 September 2010).
[29] ibid.
[30] S Edward Production Sharing or Concession agreement, which is optimal for the exploitation of Uganda oil and gas resources? Robert Gordon University Aberdeen.

they are landed or upon start up or commissioning.[31] Daria *et al* affirms that incompatibility of the fiscal system is the result of a large number of valid contracts and different conditions of certain activities that are influenced by political and economic parameters.[32] There is a high degree of uncertainty in the calculation of economic or technology parameters associated with some exploitation fields, it is necessary for each project to have calculated income, expenses and profit or loss of the specific project.[33]

The **Esso Exploration and Production Nigeria Limited & Anor v Nigerian National Petroleum Corporation Docket 19-3159 (L)**, the contractor alleged that the federal tax authority (FIRS) had changed its policy in relation to the application of certain fiscal incentives and that this change had materially and adversely affected the contractor's rights under the PSC. The NOC denied that there had been any such change. The arbitral tribunal agreed with the contractor and ordered the modification of the PSC, so as to add a new contractual provision that "in the event that the change in policy by the FIRS with respect to the determination of investment tax credit, capital allowances and the tax deductibility of the signature bonus, sole costs or disallowed costs results in a future difference in the determination of tax oil (for example a difference between the tax oil resulting from the application of the policy as it existed upon the effective date of the PSC and the tax oil resulting from the application of the policy as it exists as of 24 October 2011), then, until such time as the profit oil thereafter recovered by the contractor is sufficient to generate proceeds in the amount of such difference, profit oil shall be allocated to the contractor.

2.2 Classification of the fiscal system

Daria *et al.,* state that the national government during the preparation for offering exploration blocks, can choose between three hydrocarbon exploration possibilities[34] as elaborated below:

> "Establishing a state-owned company for exploration and production and keeping most of the revenue for themselves. This system can be found in

[31]Hart, (note 26).
[32] Daria *et al;* types of fiscal regime in hydrocarbon exploration and production. The mining Geology-petroleum engineering bulletin. 2017.
[33] Daria *et al;* types of fiscal regime in hydrocarbon exploration and production. The mining Geology-petroleum engineering bulletin. 2017.
[34]Ibid.

Saudi Arabia, Mexico, Venezuela and Iran. Bid round opening for a rising international company. The highest bidder shall be entitled to exploration in a given area, and the profit is divided according to the type of contract which are seen in the US, UK, Canada and the republic of Croatia."

This is normally reserved for developing countries which are extremely rich in hydrocarbon reserves. It combines the two previous cases but a national company participates in the project as a partner. Countries like Indonesia, Nigeria, Kazakhstan and Uzbekistan use this kind of system.[35]Palantir states that government sets different critical standards related to the contracts as a standard part of the contract.[36]

2.2.1. Concessionary System

The history of the concession petroleum agreements began when the international oil companies entered the Middle East, starting with the D'Arcy.[37] The D'Arcy arrangement opened the era of concessions and was shortly followed by a number of other concession agreements. In the wake of this concession, there was a fast-following proliferation of concession agreements between producing states and foreign oil companies all over the world. An example is the concession from Iraq in 1925, concession from Saudi Arabia in 1933 and a concession from Kuwait in 1934.[38] The terms of concession give a number of concepts, it is used to be relevant to both the privileges and rights approved by government to carry out the operation. It is difficult to define the word concession, in its legal sense as it is mostly in relation to the phenomenon of foreign participation, which deals with permits or licenses, especially exclusive ones from authority.[39] A variety of definitions were given for concessions agreement, Denis Guirauden stated that, under the concession agreement, the state grants the contract holder exclusive exploration rights as well as an exclusive development and production right for each commercial discovery.[40]Cotula Lorenzo, contended that concessions

[36]Country Analysis, Palantir Economic Solutions.
[37]Z Gao; International petroleum contracts: Current trends and new directions, London, United Kingdom: Graham and Totman ltd. (1994).
[38]Ibid.
[39]Z Gao; International petroleum contracts: Current trends and new directions, London, United Kingdom: Graham and Totman ltd. (1994).
[40] D Guirauden; legal, fiscal and contractual framework. In J-P.F.-R.- Denis Babusiaux; and N.F.-p.Bret-Rouzaut (ed), oil and gas exploration and production; reserves, costs and contracts (3rd ed pg 170-210)Paris France: editions technip. (2004).

are contracts where the government grants the investor the exclusive right to exploit natural resources in a given area for a specified period of time in exchange for payment of royalties, taxation and fees.[41] Under the concession contracts the mining right of the concessionaire will be transposed into a mere authorization to explore and produce.[42] The counterpart of the rights so granted to the holder of the concession consists an obligation for the latter to pay the granting authority a royalty which is agreed upon as a percentage of production.[43]

2.2.2. Contractual system

Under the contractual system, the host government retains ownership of the reserves and only grants the IOC the right to explore, develop and produce the reserves. Contractual systems are either service contracts, or PSA which are the most common forms of agreement as concluded by Nichols.[44] They are used in countries like Indonesia, Egypt, Angola, India and recently adopted by Uganda. The major difference between the PSC and the service agreements is on how the IOCs get compensated, either in kind or cash form as elaborated by Johnston 2003.[45]Under the PSA the contractor is compensated in kind for recovery of costs as well as profits.[46]

2.2.2.1. Production Sharing Agreements

The first contemporary PSA was signed in Indonesia in 1966 between the national oil company of Indonesia then called PERMINA and the independent Indonesia Petroleum Company (IIPCO).[47] The concept of PSA is ancient and widespread, farmers in the USA and Venezuela had been practicing it for decades.[48] It's an agricultural concept where the landlord allows

[41]Lorenzo Cotula; Investment Contracts and Sustainable Development: How to make contracts for fairer and more sustainable natural resource investments, IIED Natural Resources Issues series, 2010.
[42] Blinn, *et. al.*, international petroleum exploration and exploitation agreements: legal, economic and policy aspects (2nd ed) New York: Barrows, 2009.
[43]Blinn, et al international petroleum exploration and exploitation agreements: legal, economic and policy aspects (2nd ed) New York: Barrows, 2009.
[44] N. M., Linda (2010), "accounting implications of petroleum sharing contracts", petroleum accounting and financial management Journal, vol 29, No 2.
[45] Johnston, D., (2003), "International petroleum Fiscal System and Production Sharing Contracts", Penn Well Books, Tulsa, Oklahoma USA.
[46] "Win-win Upstream fiscal systems: what they are and how to achieve them", SPE Hydrocarbon economics and evaluation symposium, Dallas, Texas, 8-9 march 2010, society of petroleum engineers.
[47] Johnston, D., (2003), "International petroleum Fiscal System and Production Sharing Contracts", Penn Well Books, Tulsa, Oklahoma USA.
[48] Johnston, D., (2003), "International petroleum Fiscal System and Production Sharing Contracts", Penn Well Books, Tulsa, Oklahoma USA.

the tenant to use his land in exchange for a specified share of production.[49] Under the PSA, the HG retains the ownership of oil and gas, allows the IOC to carry out the exploration activities and produce the oil and gas resources.[50] The IOC bears the exploration risks, provides the necessary investment which is essential for exploitation of the hydrocarbons in return for a share of petroleum produced.[51]

Mazeel and Theodoridou, argued that HGs have an edge over IOC in splitting oil and gas production, they end up getting a bigger share needed to meet their sustainable development and other economic needs.[52] In situations when the IOC fails to find commercial discoveries of oil and gas, it would not claim any reimbursement from the HG as elaborated by Bindemann.[53] Tordo Al-Emadi, noted that when commercial discovery is done, oil and gas produced, the contractor gets a share of oil and gas produced as specified in the contract.[54] Richards established that although the allocation ratios are stated in the contracts, disagreements still arise between the HG and the IOC, because each party pursues maximum share of revenue.[55] These disagreements have been driven by price volatility when IOCs register losses when prices fall which encourages them overstate costs in order to recover all costs sustained throughout the exploitation of oil and gas resources.[56] In this regard Zahidii stated that all this was happening because both the HG and the IOC are all striving to achieve a common objective of maximizing rewards from the exploitation of the petroleum resources.[57] Consequently, Tordo, Johnston and Onyeukwu argue that, the IOC seeks for opportunities that result in an adequate return for the investment risk undertaken, while the

[49] K Bindemann, (1999), "Petroleum Sharing Agreements: An Economic Analysis," Oxford England, Oxford Institute of Energy Studies.
[50] S Tordo, "Fiscal System for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper (2007).
[51]K Bindemann; Petroleum Sharing Agreements (n 34).
[52] M Mazeel Petroleum fiscal systems and contracts- Diplomica Verlag, (2nd September 2010).
[53]Bindemann; Petroleum Sharing Agreements (n 36).
[54] Tordo Fiscal Systems for Hydrocarbons (n 35).
[55]A F Richards, "securing the take: petroleum litigation in Alaska", in S Tsalik, Caspian oil windfalls: who will benefit? Caspian Revenue watch, Chapter 3, pp 53-69 (2003).
[56]Ibid.
[57]S Zahidi, Comparative analysis of upstream petroleum fiscal systems of Pakistan, Thailand and other countries with medium ranked oil reserves. Energy and sustainable development: issues and strategies (ESD), 2010 proceedings of the international conference on IEEE pp.1-14.

HG aims at achieving sustainable development as stipulated in their national development plans and Macro fiscal frameworks.[58]

2.2.2.2. Service agreements

In the case of service agreements, the IOC acquires a portion of profits and not production as the case for PSAs which may take the form of risk service agreements or pure service.[59] Pure service agreement; the IOC explores and produces the oil and gas for a fee and the HG bears the exploration and development risks.[60] This arrangement is used by capital rich countries that only lack technology and expertise like the Middle East. Risk service agreements; are where the IOC provides the capital and bears all exploration risks and it is paid a fee from the services rendered.[61]Gudmestad *et al* stated that the contractor accepts to share exploration risks by linking his pay to the success of the project.[62] If exploration is successful, the contractor is allowed to recover the costs through sale of oil and gas and also receive a fee based on the percentage of the remaining revenues.[63] A form of risk service contract was developed by the Iranian government, known as Iranian Buyback Agreement, where the IOC invests until when production begins and the field is handed over to the government or its NOC.[64] The contract terms allow compensation based on oil and gas revenues, contractors do not acquire any rights to oil and gas unless is its fees are paid in kind.[65]

2.2.2.3. Technical service agreement

The IOC is always paid in cash for the rehabilitation, enhancing oil and gas recovery and redeveloping services performed for surveying fields which reduces the technical and expertise risk for IOC.[66] In most emerging oil and gas economies the profit allocation

[58]Tordo Fiscal system for Hydrocarbon (n 35), D Johnston; Changing Fiscal Landscape, 31, Journal of world energy law & Business, 1, H Onyeukwu, Fiscal regime in a volatile oil price era: what options exist for balancing the interests of the resource country and investor company? International oil and gas conference and exhibition in China. Society of petroleum engineers.2010.

[59]A Zuhairah, .and K Sabah; Types and feature of international petroleum contracts 2014.

[60]ibid.

[61]F Demirmen; "Win-win Upstream Fiscal System: What they are and how to achieve them," SPE Hydrocarbon Economics and Evaluation Symposium, Dallas, Texas, USA, Society of Petroleum Engineers.(2010), D Tordo; international petroleum fiscal systems and production sharing contracts", Penn Well Books, Tulsa, Oklahoma USA (1994), M A Mian ; designing efficient fiscal systems. Society of petroleum engineers 2010.

[62] Gudmestad, et al; Development of petroleum resources with emphasis on offshore fields" WIT press 2010.

[63] Muhammed Mazeel, Petroleum fiscal systems and contracts- Diplomica Verlag, 2nd September 2010.

[64] Cluade Duval et al: International Petroleum Exploration and Exploitation Agreement, legal, economic & policy aspects, 2nd edition, Barrows 2009.

[65] ibid.

[66] Johnston Petroleum Sharing Agreements (n35), Zahidi (n 42).

contractual systems are preferred, government sets different critical standards related to the contractors as a standard part of the contract.[67] The task of the government representatives is to strictly follow the law and protect public interests. On the other hand, government should create a positive climate for investors in order to achieve economic growth.[68]

2.3 Terms of PSA

Different countries design terms of a PSA based on their objectives and negotiability skills and these terms include:

2.3.1. Bonuses

Signature bonuses are normally paid by the contractor to the HG at the signing of the contract before making any investment.[69] Production bonuses are paid to the HG when agreed production levels are achieved by the contractor. There may be other key milestones like new commercial discovery and this may necessitate a discovery bonus.[70]Most countries in developing economies prefer signature bonuses because they guarantee early economic rent with minimum management controls. They equally increase operational costs for the contractor and as a result contractor may be discouraged from further investment in that country.[71]

2.3.2. Royalty

Johnston claimed that royalty are paid from the initial oil production and then paid to HG by the IOC, this is the compensation for the exploitation privileges of natural resources extended to the contractor.[72] Royalties are fixed proportion of production but can vary basing on sliding scale of production either daily or monthly.[73] Royalties guarantees that the government obtains its share of revenue regardless of whether the IOC earns a profit out of the venture

[67] Palantir, 2015.
[68]Ibid.
[69]A Mazeel; Petroleum fiscal systems and contracts (n 37).
[70]S. Wadood; Production sharing agreements-an initiative to reform. Society of petroleum engineers 2006.
[71] Tissot, R.; Challenges of designing an optimal fiscal model in Latin America. Energy working paper. Inter- American Dialogue. Washington, DC: Inter-American development bank, 2010.
[72]Johnston; petroleum sharing agreements (n35).
[73]Nichols, Linda, "accounting implications of petroleum sharing contracts", Petroleum Accounting and financial management journal, vol 29, No.2, 2010.

or not, they are between 8-15% of total revenue,[74] Tordo argues that royalties offers early economic rent, they are also easy to forecast and mange as rent paid by the IOC for exploitation of the natural resources, therefore royalties should not be included in IOCs cost recovery because the essence of paying the resource owner for accessing natural resources would be lost when the contractor recovers this cost.[75] When the exploration activities are not profitable or when the fields are marginal, royalties would be a disincentive for additional investments in the project.[76]

2.3.3. Profit oil and taxation

Bindemann, Johnston and Ravagnani *et al.,* contended profit oil is the balance when the royalties and cost oil are deducted from gross revenue.[77] This balance is apportioned between the HG and IOC as per the agreement; the portion of the IOC is taxed at the rate approved in the agreement. Johnston 2003 alleged that it ranges between 15 and 55 percent for the contractors; these percentages may change once exploration costs have been recovered and again when development costs are recovered or when milestones in daily or cumulative production are reached.[78] Income tax is paid at the rate similar to what other businesses operating in that host country pay after deducting all allowable expenses, depreciation, finance costs.

2.3.4. State participation

PSAs may provide rights for government to back-in and become a joint working interest partner through its NOC by participating in oil activities, usually at the development stage. Governments are usually carried through the exploration. In Uganda the government may choose to enter into a joint venture agreement with the licensee thereby allowing for state participation for no more than fifteen percent (15%).

[74]M A Mian 2002 as quoted in Ravagnani *et al.,* 2012.
[75] Tordo (n 35).
[76]Radon; ABCs of petroleum contracts: License-concession agreement, joint ventures and production sharing agreements open society institute, p 63.
[77]K Bindemann; "petroleum sharing agreements: an economic analysis," oxford institute of energy studies 1999, Tordo, S., (2007), "Fiscal systems for hydro carbons: Design issues" Washington, D.C, World Bank paper.
[78]Ibid.

2.3.5. Maximum term and work commitment

PSAs have a specified maximum time, usually 25-35 years, divided into periods like exploration and production period at the end of which, even if the field is still producing, the contractor is not entitled to future production unless contract extensions have been approved. During the time of contract, the contractor is obliged to perform a minimum amount of seismic work, surveys, drilling of pre-agreed number of wells, minimum investment.[79]

Randon claimed that IOCs prepare the work programs which are murky by hiding their intentions into technical consideration. It is intended to slow down projects they consider expensive and execute those they consider to be cheaper and profitable.[80]HGs should always specify the circumstances under which a task could be delayed in the contracts.[81]

2.4 Cost Recovery

Cost recovery also known as cost oil when the IOC recoups the operating and capital expenditures incurred during the exploitation of oil and gas before sharing the production between the HG and the IOC.[82] The PSA outs a boundary on how much can be recovered for a given financial year the balance above the recovery limit would be moved over to the following period.[83] Costs that are allowed for recovery purposes include operating costs and capital costs as emphasized by Johnston and Ravagnani.[84]

Ashong argues that under most PSCs, the cost oil regime is usually designed to allow the IOCs to recover exploration, development, production costs and expenses from the share of production or gross revenues. The share usually depends on the country and or the characteristics of the field in question, according to her the Indonesian Model PSA allocates a certain percentage of production for cost recovery, sometimes known as the cost recovery

[79] Kaiser, M.J and Pulsipher, A.G; Fiscal System analysis: Concessionary and contractual systems used in offshore petroleum arrangements. US Department of interior, Minerals Management service, Gulf of Mexico OCS region, New Orleans, LA.OCS study MMS, 16, pp 78, 2004.

[80] Randon, J; The ABCs of petroleum contracts: License Concession agreements, joint ventures, and production sharing agreements. Covering oil: A reporter's guide to energy and development. Open society initiative New York, 2005.

[81] Bindemann (1999), N Pongsiri; partnerships in oil and gas production sharing contracts, (centre on regulation and competition) university of Manchester OGEL 3 (2005), Nichols (2010).

[82]Nichols, M., Linda, "accounting implications of petroleum sharing contracts" (n 53).

[83]Wadood 2006 (n 51).

[84]Johnston 1998 and Ravagnani et al 2012.

limit or cost ceiling.[85] Blinn, K. W *et al.,* stated that the Indonesia cost ceiling was 40% of production but this was later increased to 80%, at the time it could go as far as 100%.[86] Muchmud affirmed that PERTAMINA only started to receive a share of production whenever the PSC reached a point where less than 100% of production was needed for cost recovery.[87] Johnston concluded that cost ceiling, if they exist, typically range from 30%-60%. Daniel alleged that in the Egyptian model agreement exploration expenses could only be recovered at the rate of 20% per annum, whereas operating expenses can be recovered in their entirety. Johnston shared that the IOC will usually be allocated a share of the total production as the sole payment to cover costs incurred and the share ranges from 44%-50% which would usually depend on the size of the production and the contract area.[88]Ashong added that this Model became unpopular for HCs because of the fixed share of production, unrelated to the price of petroleum nor to production costs or expenses would give an unfair bonus to the IOC in the form of windfall, she emphasized that for the IOC a large government percentage take had the same consequence as payment of high royalties similar to that under the concession agreements, if fixed the result would be the same irrespective of economic results of exploitation. [89] Nichols states that the PSAs specify the costs and the order in which they are recovered. Unrecovered costs for the previous year are considered first, and then current costs if they were incurred in the process of exploration for oil and gas.[90]

In Uganda for example Global witness concluded that although the cost oil allowances in the contracts (at 60%) are at the high end of the international spectrum. This is not in itself a problem, while the companies will recoup their costs more quickly the HC has guaranteed an early revenue stream through royalties which are paid on 100% of production even before the company has recovered its costs.[91] Ashok contended that cost recovery of 100% is rare except

[85]A Marcia, "Cost Recovery in production sharing contracts: opportunity for striking it rich or just another risk not worth bearing?" Centre for energy, petroleum, mineral law and policy (CEPMLP), University of Dundee, 2010.
[86]K Blinn, Duval, C., Le Leuch, H., Peruzio, A., Weaver, J; International petroleum exploration and exploitation agreements: legal economic and policy aspects (2nd ed) New York: Barrows, 2009.
[87]T N Machmud., the Indonesian production sharing contracts: an investors' perspective, (the Hugue: Kluwer, 2000).
[88]Johnston; International petroleum fiscal systems and petroleum sharing agreements", Penn Well Books, Tulsa, Oklahoma USA. (1994).
[89]A Marcia, "Cost Recovery in production sharing contracts: opportunity for striking it rich or just another risk not worth bearing?" Centre for energy, petroleum, mineral law and policy (CEPMLP), University of Dundee, 2010.
[90]Nichols, M., Linda, "accounting implications of petroleum sharing contracts" (n 59).
[91]Global Witness; a good deal better? Uganda's secret oil contracts explained September 2014.

for the case of concessionary system, typical limit of cost recovery ranges from 30 to 60%, limit of cost recovery can make a lot of difference in the cash flow calculations.[92]

Ashok further alluded to the fact that, cost recovery normally comprises of unrecovered costs carried forward from the previous year, operating costs, expensed capital coasts, interest on financing, investment credit and abandonment costs.[93] He goes ahead to explain methods used to select the cost recovery limit using different jurisdictional comparison, such as:

> "Fixed cost recovery limits: most of the countries opt for fixed cost recovery limit; few examples are Croatia, Vietnam, Equatorial, Ukraine, China, and Tanzania. Sliding cost recovery limit based on production: North Korea has a sliding scale which starts at 60% up to 50,000 BOPD and ends at 50% over 100,000 BOPD, Syria has a sliding scale of 25% up to 50000 BOPD and 20% over 50000 BOPD. Sliding scale cost recovery limit based on price: Oman has a cost recovery limit that starts at 50% when the oil price is less than $ 17 per bbl and ends at 30% once the oil prince is $21 per bbl or more. Cost recovery based on deprivation without cost recovery limit."

In the case of ***Reliance Industries Ltd and another v Union of India*** **[2018] EWHC 822**, the relevant PSCs entitled the contractor to recover development costs by lifting and selling cost petroleum but subject to a cap referred to as the cost recovery limit (CRL). Development costs were one of the inputs in calculating the investment multiple and the respective shares of profit petroleum which each party was on the basis of that multiple entitled to lift and sell. The parties disagreed regarding which costs constituted development costs for these purposes. The contractor contended that the correct input was all development costs as defined by the PSCs, namely "*those costs and expenditures incurred in carrying out development operations, as classified and defined in section two of the Accounting Procedure and allowed to be recovered in terms of section three thereof*". In contrast, India contended and the arbitral tribunal agreed that the correct input was only the development costs below the CRL cap, not those in excess of that cap, the latter costs therefore falling to be borne by the claimants. The effect of this decision was that in calculating the investment

[92]K B Ashok; international petroleum fiscal system- a primer.
[93]ibid.

multiple, the amount of net profitable production was greater, because the cost deduction amount was capped and therefore smaller, with the result that India was entitled to a greater share of profit petroleum than under the contractor's interpretation.

In light of the discussion and arguments of several writers on the nature of petroleum fiscal regime, most countries especially the developing have adopted the contractual systems which place the risk on the oil companies but the host country would still retain control over the discoveries and even participate through its NOC. Concessionary systems on the other hand, place all the control on the IOC which Is not a viable kind of regime for developing countries save for developed countries. Uganda adopted the contractual system, through PSAs which gives the government and the people of Uganda an early revenue through the signature bonuses, royalties, economic rent, which are paid even before the IOC starts the contract.

2.5 Host Country or International Oil Company, who benefits?

Bindemann, Pongsiri, Nichols abridged the benefits of a PSA to the HG which include the delivery of risk capital, economic rent, royalties, bonuses, taxes and local content benefits.[94] Ravagnani explained that Brazil changed from concessionary arrangement to PSA in a bid to realize more economic returns which would change the social economic wellbeing of its citizens.[95]Meurs argued that the purpose of placing the upper limit on cost recovery is to defend HGs particularly in emerging economies from corrupt managers.[96] For example if costs are permitted in surplus the IOC would only take the approved percentage of cost recovery and balance could be mismanaged.[97] Limiting the cost recovery at a defined ratio is no longer vigorous to HG. Governments prefer cost recovery limits that fluctuate with price changes, this system is chosen when prices go down, the recovery boundaries are greater when prices upsurge and the recovery limits are reduced to enable the HG to earn stable income from royalties.[98]

[94]Bindemann (1999), N Pongsiri; partnerships in oil and gas production sharing contracts, (centre on regulation and competition) university of Manchester OGEL 3 (2005), Nichols (2010).
[95]Ravagnani 2012.
[96] Meurs, "Maximizing the value of government revenues from upstream petroleum arrangements under high oil prices" 2008.
[97]Ibid.
[98]Meurs, "Maximizing the value of government revenues from upstream petroleum arrangements under high oil prices" 2008.

Johnston explained that cost oil shields the HG from having to put their limited resources at risk while at the same time benefiting from any potential revenues to be generated where there is successful exploration.[99] He further argued that, oil companies provide capital and technology which is an over simplification. Johnston further states that as long as there is production, a cost recovery limit forces some form of profit sharing.[100] Marcia states that for companies, although cost oil provides some cushion for cost recovery others view it as a synonymous to bad oil considering that a firm's major objective is an acceptable pay-out time to recover their original investment, a growing point of view sees cost oil as adding no benefits to the IOC.[101] Nakhle adds that it is bad, because of the time value of money, costs being paid at a later stage in most cases a year or two after, do not take into account the depreciation of money over time will never accurately reflect true costs. Few PSCs offer the opportunity for the recovery of financing costs or interest expenses.[102] Marcia concludes that interest is usually not recoverable. Sunley *e.t al.*, argues that, some PSCs do allow unrecoverable costs to be uplifted by an interest factor to compensate for delay in cost recovery. If interest expense is allowed to be recovered, then there should be no uplift for unrecoverable costs,[103] Marcia goes ahead to clarify how cost oil system works from the contractors perspective, if for instance, the contractor spends $100 on recoverable costs, the contractor will have to get a negative impact of $0.15 after cost recovery. Essentially there is no value, as not all costs can be recoverable and even those recovered are subject to time value depreciation, for example PSC with a cost ceiling and carry forward rights. This is more of a detriment to the IOC who will see his costs spread out over several years, further adding to the negative impact of the recoverable amount.

Based on the benefits discussed above, cost recovery is more beneficial to the host country than the oil company that invest their capital and bear the risk. The host country on the other hand gets to benefits from payment of economic rent, royalties, bonuses, taxes and local

[99]D Johnston; Changing fiscal landscape, 31, journal of world energy law and business, 2008.
[100]D Johnston; international petroleum fiscal systems and production sharing contracts.1994.
[101]A Marcia, "Cost Recovery in production sharing contracts: opportunity for striking it rich or just another risk not worth bearing?" Centre for energy, petroleum, mineral law and policy (CEPMLP), University of Dundee, 2010.
[102]C Nakhle; Petroleum taxation: Sharing the oil wealth: a study of petroleum taxation yesterday, today and tomorrow, 36 Routlege 2008.
[103]Sunley, E.M., Baunsgaard, T., Simard, D.; Revenue from the oil and gas sector: issues and country experience, in Davis, J.M., Ossowski, R., Fedelino, A., Fiscal policy formulation and implementation in oil producing countries (Washington D.C: international monetary fund, 2003).

content benefits. It further gets to receive the oil discoveries, and all the equipment, infrastructural developments placed on sites by the oil company.

2.6 Efficiency of the fiscal regime

According to Oxford English Dictionary:

> "efficiency is the level of performance that describes a process that uses lowest amount of inputs to create greatest amount of outputs."

Whereas cost efficiency is maximizing productivity with minimum expenses or effort. In petroleum fiscal regimes, many researchers have attempted to define efficiency through a variety of ways. Kemp studied the efficiency of petroleum fiscal systems in UK, Norway, Denmark and Netherlands in collecting the prospective economic rents from the development of new fields, where there are uncertainties regarding development costs and oil prices.[104] Using financial modelling, he observed that fiscal system in UK and Denmark are progressive in relation to development cost variations and oil price changes. In Norway, the system is regressive and produced a significantly high level of take, with little incentives for small fields. In the Netherlands, the system is moderately progressive in current money terms but regressive in present value. He opined that this was the consequence of the gross royalty plus the modest pace of depreciation permitted.[105]Earlier studies by Johnston also studied the Papua New Guinea, Tunisia and Peruvian PSC systems and found their progressiveness through the use of Rate of Return of R-Factor as revenues rose.[106]

Kaiser and Pulsiper using meta modelling to determine whether a particular fiscal regime (concession or Contract) is Progressive or regressive for Angola and Gulf of Mexico offshore projects, showed that increase in royalty rate impacts IOC take, present value and rate of return slightly more than increase in taxation.[107] Using the same methodology Iledare and Kaiser analyze Petroleum Fiscal regime in E& P offshore and observation that contractor take increases with an increase in commodity price and profit oil and falls with the royalty and

[104]A G Kemp, An Economic Analysis of petroleum exploitation terms in Ireland, UK Norway, Denmark and Netherlands (with A.W.Gray), Price Waterhouse (1988).
[105] Ibid.
[106]D Johnston; international petroleum fiscal systems and production sharing contracts.1994.
[107]M J Kaiser and A G Pulsipher. 2004, Fiscal system analysis concessionary and contractual systems used in offshore petroleum arrangements Lousiana: Center for energy studies pp.78.

tax rate.[108]They further showed that the value of profit oil spilt is a more significant parameter than cost recovery.[109]Isehunwa *et al* found that government take in Nigeria is more sensitive to tax than to royalties and the proposed sliding royalty rates calculated based on both oil prices and volume of production yield higher government take than those based on either volume of production or price of oil alone.[110]

Demirmen describes efficient systems as those that encourage exploitation, promote development of both small and large reserves, and allow special incentives for difficult to exploration and enable equitable sharing of economic benefits.[111]

Johnston's study on effective PSCs, using 24 PSC options, concluded that the inclusion of sliding scales, based on production levels alone does not maximize governments' benefits in all environments.[112]Leonard also noted that dispute rising oil prices, industry well-being depends on both risk management and cost control. He further argues that with increased cost efficiency, there is little fear of low prices.[113]That efficiency comes through well designed cost control processes and institutional monitoring. Later Osmundsen in a two-period model of taxation of non-renewable natural resources showed that specific cost characteristics of non-renewable natural resources extraction could distort both extent and pace of extraction hence affecting revenues.[114]

2.6.1. Progressiveness and Efficiency

Progressive regimes refer to fiscal systems where, as profitability of the project improves, government shares increases.[115] Whereas, under regressive regimes government's share

[108]O Iledare & M. Kaiser, "offshore E & P project economics and take statistics: results from a Meta modelling analysis of production sharing contracts," Society of Petroleum Engineers (SPE) (2006).
[109]Ibid.
[110]Isehunwa et al evaluation of true government takes under fixed and sliding royalty scales in Nigerian oil industry. Australian journal of basic and applied sciences, 5(3) pp. 735-741 (2009 and 2011).
[111] F Demirmen., "a win-win upstream fiscal system: what they are and how to achieve them," SPE Hydrocarbon economics and evaluation symposium, Dallas, Texas, USA, 8-9 march 2010. Society of petroleum Engineers.
[112] C J Johnston., "Considering in establishing an effective production sharing type tax regime for petroleum," Resources policy vol. 2 proceedings of the second ASCOPE conference and exhibition, October 7-11, 1981, Manila, Philippines.
[113] Le Blanc, "Cost efficiencies in oil drilling," offshore database business source complete, Trade publication, Vol 56, issue 12, p28 (1996).
[114] Osmundsen, Evaluation of True Government Take under fixed and Sliding Royalty Scales in Nigerian Oil Industry, Australian Journal of Basic and Applied Sciences (1998), 5(3): 735-741.
[115]A Kimuli, Is Uganda's petroleum fiscal system efficient? (2013)

relative to the IOC declines when profitability increases most front end loaded systems tend to be regressive as they concentrate so much on government getting upfront revenues from bonuses, royalty and limiting cost oil and are production based.[116] On the other hand progressive regimes tend to defer government share and base it to profitability. Tordo suggests that a tax system should provide for a minimum number of front–ended loaded non-profit- sensitive taxes because in most PSCs government share depended on daily production, these were found to be regressive; most scholars and analysts recommended various measures to make fiscal systems more progressive by using either the internal Rate of Return (ROR) or R factor.[117]ROR is a basis of rent tax calculation under which the government' share is set by reference to the cumulative contractor rate of return; no tax being levied if that falls short of some benchmark rate. R factor is the rate of contractor's undiscounted cumulative revenues to contractor's cumulative costs. Government's profit share increases as the ratio increases. This improves on the Rate- of Production system by being more direct measures of profitability. Single or multiple tiers can be used whereby at different ROR/R factor, different tax rates apply.[118] As noticed in the definitions, in determination of profitability, the level of costs incurred is as important as the revenue. Improved profitability will also mean reduced costs. The tax rates are dependent on the contractor achieving a certain profitability (ROR, R- Factor) threshold; it is possible for the contractor not to achieve that level of profitability, so as not to attract a higher tax rate. The IMF paper 2012on extractive industries states that Companies can reduce Profit- related taxes by increasing deductible costs.

Indeed, Pedro notes that R- factors and IRR based systems increase significantly the risk of not collecting the appropriate government share, cost control has to be of high quality and rigorous[119] confirming Johnston's 1981 study. Tordo further noted that if taxation is high, R factor may not be the best because there is an incentive to spend additional cash flow rather than seeing it go to governments through royalties and taxes which improve no tangible benefit to the contractor.[120] Sliding scales based on profitability have to be carefully balanced which have to achieve a higher government take, while they should also encouraged

[116] Ibid.
[117]S Tordo, (2007), "Fiscal systems for hydro carbons: Design issues" Washington, D.C, World Bank paper.
[118]A Kimuli, Is Uganda's petroleum fiscal system efficient? (2013).
[119] Pedro (2011).

efficiency.[121] It is interesting to note that Uganda applies the regressive norm as it concentrates more on receiving Bonuses, royalties and other earlier revenue payable by the companies.

2.6.2. Types of inefficiencies

2.6.2.1. Gold Plating

The practices of making unreasonably large expenditures due to lack of costs cutting incentives,[122] it is a situation in which the fiscal regime creates an incentive to spend more than is necessary and Profitable, or bring forward investment.[123]

2.6.2.2. Inflating of costs and budgets

Is the artificial inflation of reported costs, this affects government take by reducing the reported profits to be split between government and industry. The oil companies do this a lot to enable them recover more costs which were never spent in the first place.

2.6.2.3. Transfer Pricing

Transfer pricing concerns the act of pricing of goods and services given for use or consumption to related party. Governments try to discourage transfer pricing manipulation which occurs when a company fixes the transfer price on a non-market basis resulting in saving the total tax liability of the company by shifting accounting profits from high tax to low tax jurisdictions. Most countries have explicit provisions in their tax laws enabling a price adjustment to be made where under or over pricing between related companies results in a lowering of taxable profits. Passing value to associate companies by contracting out work or purchase of goods or services to associated companies at rates higher than arm's length prices.

2.6.2.4. Gaming of entitlements

Overstating the cost recovery budget or estimates will of course end up with higher contractor's entitlement nomination, justifying more share of crude lifting. At the end of the period, when actual entitlement based on actual volumes, actual prices, and actual cost recovery has been calculated, the contractor will be settled, the contractor will at least have

[121]Richard Masson, Bryan Remillard, Alberta's new oil.
[122] Johnston and Johnston 2010.
[123] Svetlana et al 2003.

gained with regards to getting the cash earlier (time value of money). This is equivalent to getting an interest free loan. The effect is even more pronounced if lifting is done in periods of high oil prices and the over lift is settled in periods of lower prices. This does not aim to prove the existence of such inefficiencies by companies, it will aim to identify any possible risks or avenues that can lead to such practices.[124]

2.7 Institutional framework

Mian argued that for efficient management of resources it is not only important to have an institutional framework in place but the fiscal system should be simple and flexible.[125] Pedro and Johnston alluded to the fact that, differences in what parties share from a given contract is not attributable to the type of fiscal regime, but rather to the design and structuring of arrangements.[126] Tordo noted that good fiscal design without complementary institutional structures may still not achieve the desired goals. Design needs to be within the administrative and audit capacity of the relevant institutions.[127] Mian while defending the contractors, further reasoned that, no contractor will try to spend an excessive amount of money in an effort to reduce government take in a properly designed fiscal system. Contracts today call for maintain strict corporate governance policies and that most decisions have to be approved by technical committees, audit committee, contract committee and management committees.[128]

Many developing countries lack the capacity or the will to undertake cost audits to ensure costs being charged are valid. Nigeria went for years without conducting regular cost audits of companies; the risk is then that a company or contractor makes unreasonably large expenditures due to a lack of cost cutting measures. Over the past two decades various disputes emerged between the Alaskan government and the IOCs and more than one sixth of its revenues has been obtained through legal challenges to the industry's original payment. These disputes involve incorrect industry reporting of the value of the oil produced and the

[124] A Marcia, "Cost Recovery in production sharing contracts: opportunity for striking it rich or just another risk not worth bearing?" Centre for energy, petroleum, mineral law and policy (CEPMLP), University of Dundee, 2010.
[125] M A Mian, 2010; designing efficient fiscal systems. Society of petroleum engineers.
[126] Pedro V.M, "Maximizing the value of government revenue from upstream petroleum arrangements under high oil prices," (2008) and Johnston D., international Petroleum fiscal systems and production sharing contracts, Penn Well Books, Tulsa, OKla USA (1994).
[127] Tordo S., fiscal systems for hydro carbons: designs issues, Washington, D.C World Bank. (2007).
[128] Mian (n 110).

cost of production and transport[129] India disputes arising between the government and IOCs on matters of cost recovery are not uncommon, from the government's point of view in Kazakhstan, Disputes arose after IOCs released a statement of project costs to be higher than they had envisaged and that the ultimate costs (amounting to a projected loss of over $20 billion dollars0 would thereby be borne by the HG through cost recovery.[130] Kazakhstan PSCs on the other hand are flexible ((allow companies 100% cost recovery), they penalize the host government heavily if the project profitability is low.

In the event that costs are not controlled, state revenues are affected.[131] The conclusion from the above is that although the type of fiscal system doesn't matter (R/T or PSC), the design matters.[132] It is not only the exogenous factors like oil prices, production volumes, revenues that determine efficiency but endogenous too.

Johnston argues that different countries can have different tax rates and systems for example Indonesia 85% (PSC) and Spin 40% (R/T0, yet both are extracting their resources rent efficiency. Although the type of efficiency was not defined, it is evident that tax/royalty rates alone don't ensure efficiency.[133] Bridge Group asg[134] discussed and concluded that there are different types of institutional arrangements which include: -

2.8 Conclusion

Having studied writings of different authors on the PFS and cost recovery, it should be noted that there is empirical evidence written on the topic and several attempts to provide answers to the questions of the study in other jurisdictions. Uganda has little empirical evidence written save for the agreements signed, the petroleum laws; this is an area that few authors have written about in Uganda if not, none at all. it is evident that research on efficiency of PSCs has dwelled mainly on optimality, flexibility, neutrality, stability of fiscal regimes in the lens of only increased oil prices, volumes, taxation rates, reserves.

[129] Svetlana Tsalik, Joseph E. Stiglitz; Caspian oil windfalls: who will benefit? Caspian revenue watch 2003.
[130]Kazakhstan PSCs.
[131]Kazakhstan PSCs.
[132] Pedro Van, Meurs, "Maximizing the value of government revenue from upstream petroleum arrangements under high oil prices," (2008).
[133] Johnston (1994).
[134] Bridge Group asg. https://www.thebridgegroup.com accessed on 19th November 2018.

The PSA fiscal regime has its shortfall especially in terms of cost inflations by the oil companies, overstating budgets, gaming entitlements and transfer pricing. This in the end affects the amount of revenue that is paid to the host country, the oil companies end up benefiting more from the oil production. Some countries have actually had their share of the negative aspects of PSA, and they have ended up recovering from legal mechanism. In relation to Uganda, given the fact that, it is new in the oil industry, oil companies tend to take advantage of its lack of expertise to tackle such issues.

In as much as the fiscal regime adopted by Uganda benefit the country in so many ways i.e. it is able to receive early payments through bonuses which are paid even before exploration works start, royalties, economic rent and income tax. There is need for Uganda to invest in the training from professional that shall monitor and evaluate the activities of the oil companies and equally negotiate good contracts. At the moment, the fiscal regime chosen by Uganda no doubt has its shortcoming, and being a developing country, it lacks the resources to tackle these issues, as more resources shall be needed. Uganda oil production is anticipated in the 2023, the production of the oil would boost its revenues and in turn it would equally be in position to make laws based on knowledge and expertise.

Uganda should invest in the training of its own citizens to boost and enable the negotiation of better contractual terms for the country, monitor and evaluate the activities of the IOC. Ensure that more research is carried out in the area of the fiscal regime adopted by the country which will create more knowledgeable and informed decision making during the enactment of the laws on cost recovery, and negotiating PSAs.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

The study's ultimate objective is to analyze the law governing cost recovery Uganda's oil and gas sector. Analyze the efficiency of Uganda's fiscal system in addressing cost recovery in relation to the host government and the international oil companies while mindful of the provision of the international and national legal framework. A comparative study has to be done on other jurisdictions that have a similar fiscal system like Uganda. This chapter discusses the methodological procedures that were used in data collection and analysis. These are; legal context setting, research design, area of the study, population of the study, sampling procedure and sample size, instrumentation; data collection, data analysis and the methods of analyzing data collected.

3.1 Study Design

The Study adopts a mixed research design. Fundamentally, research may be qualitative, quantitative or mixed research.[135] Qualitative research is a broad methodological approach that encompasses many research methods. The aim of qualitative research may vary with the disciplinary background, such as a psychologist seeking to gather an in-depth understanding of human behavior and the reasons that govern such behavior.[136]Qualitative methods examine the why and how not just what, where, when, or who, and have a strong basis in the field of sociology to understand government and social programs. Qualitative research is popular among political science, social work, special education and education research. [137]

In the conventional view of statisticians, qualitative methods produce information only on the particular cases studied (for example ethnographies paid for by governmental funds which may involve research teams), and any more general conclusions are considered propositions (informed assertions).[138]Quantitative methods can then be used to seek

[135]R Bogdan; S Taylor. (1987)."Looking at the Bright Side: A Positive Approach to Qualitative Policy and Evaluation Research". Qualitative Sociology13 (2).

[136]Denizen, K Norman .; Lincoln, Yvonne S., Eds. (2005). The Sage Handbook of Qualitative Research (3rd Ed.). Thousand Oaks, CA: Sage.

[137]Bogdan, R.; Taylor, S. (1987)."Looking at the Bright Side: A Positive Approach to Qualitative Policy and Evaluation Research". Qualitative Sociology13 (2)

[138]Denizen, Norman K.; Lincoln, Yvonne S., Eds. (2005). The Sage Handbook of Qualitative Research (3rd Ed) Thousand Oaks, CA: Sage. ISBN0-7619-2757-3.

empirical support for such research hypotheses.[139] In contrast, a qualitative researcher holds that understanding of a phenomenon or situation or event comes from exploring the totality of the situation for example Phenomenology, symbolic interactions. With this submission, the researcher adopted a mixed research design, because it brings on board validation.[140]The method also uses the strength of one method to enhance another, it also enables the researcher to archive complementary results.[141]

3.1.2. Area of Study

The researcher analyzed the law governing cost recovery in Uganda's oil and gas sector, the efficiency of Uganda's fiscal system in addressing cost recovery in relation to the host government and the international oil company. It further looks at the international and national legal framework on fiscal regimes and draw a comparative approach while comparing Uganda's fiscal regime in addressing cost recovery and its efficiency, monitoring, implementation and evaluation that is already in place.

3.1.3 Sample and Sampling Techniques

Key officers from different departments of Ministry of Energy, Uganda Petroleum Authority, Office of the Auditor General, which audits the claims of the IOCs and sends the same to ministry of finance for payment. These included top officers and managers from different departments which include; Administration, Legal, Finance, Planning. This is because the Ministry of energy is responsible for the oil and gas industry and in most cases spearheads the negotiating, drafting and signing of the PSA which governs the relationship with the IOC. On the other hand, Uganda Petroleum Authority approves the claims for cost recovery and forwards them to the office of the Auditor General for further management and thereafter payment is approved or rejected. The purposes of interviewing two IOCs is to establish the nature of claims and whether the monitoring measures put in place by government are efficiency and if not why? The study analyzed the PSAs signed by Uganda from 1999, 2012 and 2016 to establish the efficiency of Uganda's fiscal system in addressing cost recovery, study

[139]R Stake. (1995). The Art of Case Study Research. Thousand Oaks, CA: Sage.
[140]Denizen, Norman K.; Lincoln, Yvonne S., Eds. (2005). The Sage Handbook of Qualitative Research (3rd Ed) Thousand Oaks, CA: Sage. ISBN0-7619-2757-3.
[141]Stake, R. (1995). The Art of Case Study Research. Thousand Oaks, CA: Sage.

the international and national legal framework and different jurisdiction to better understand the effectiveness of cost sharing in a PSA.

3.1.4 Population

The Researcher used random sampling criteria to select about 15 key informants from a population of 30 people. At least 5 Respondents were chosen from each institution especially from the departments of Administration, Finance, legal and CEOs. The selected groups were stratified according to their interests and key responsibilities in Ministry of Energy, and company. The PSAs where sampled based on the time they were signed and also with whom they were signed with.

3.2 Data Collection Strategy

The study employed three data collection methods and data collection instruments and these are; Interview, questionnaire, library research and internet research. Secondary data such as books, journals, manuals, magazines and newspaper articles related to the study and primary data were also considered in the study.

3.2.1 Questionnaire

A questionnaire is a research instrument consisting of a series of questions for the purpose of gathering information from respondents. Questionnaires can be thought of as a kind of written interview. They can be carried out face to face, by telephone, computer or post. Questionnaires provide a relatively cheap, quick and efficient way of obtaining large amounts of information from a large sample of people. Data can be collected relatively quickly because the researcher would not need to be present when the questionnaires were completed. This is useful for large populations when interviews would be impractical. Accordingly, the Researcher collected data from ministry of energy, Uganda Petroleum Authority and Office of the Auditor General, using by delivering questionnaires to key officers in different departments.

3.2.2. Face-To-Face Interview

It is a data collection method where the interviewer directly communicates with the respondent in accordance with the prepared questionnaire.[142]Telephone interviews were employed to collect data from the ministry, Uganda Petroleum Authority and office of Auditor General. The researcher also interfaced with some officer who were available and gathered the information needed through a face to face interview.

3.2.3. Documentary

The researcher relied on the PSAs signed by Uganda with the IOCs and equally PSAs from comparative jurisdictions. The researcher also used the Acts of Parliament, statutory Instruments, case law, international treaties and Bilateral agreement to gather the required data. The researcher relied on library research to establish the empirical evidence on the topic reading several Journal articles, text books, Laws and cases written on the topic.

3.3 Instruments

The interview guide was used in the study as a data collection tool. The researcher organized questions that were used as a guide for the interview. This turned out to be successful as the researcher was able to collect the necessary data using this method.

3.4 Data Analysis Plan

3.4.1 Response Rates

The interview guide was presented to key respondents and the respondents were requested to indicate whether they are willing to supplement their questionnaires with either face to face or telephone interview which some accepted but others did not have the time but were able to fill in the questionnaire. This is what the researcher used to assess and analyze the data to come up with conclusions of the respondents.

3.4.2. Analysis of the Main Findings

Basically, this section used the analytical frame work and the data collected using the questionnaires and Interviews conducted to assess, analyze the effectiveness of cost recovery and applicability on PSA. Fundamentally, the frame work was based on key issues like,

[142]M J Smith, contemporary communication research methods (Belmont, CA, Wadsworth Inc., 1988).

benefits to IOC and HC, challenges as set out in research questions and objectives. In order to analyze the effectiveness of cost recovery in PSAs, the researcher engaged the Respondents for their opinion basing on the PSA already signed benefits and challenges and the law governing cost recovery in the oil and gas sector of Uganda.

3.4.3. Validity and Reliability of Data Collection Instruments

An instrument can be validated by proving that its items or Content and construct validity was established to determine if the items are a representative sample of the skills and traits that comprise the area to be measured.[143] Validity and reliability are cornerstones of the scientific method.[144]They are relevant in defining and measuring bias and distortion. Validity and Reliability is considered below.

3.4.3.1 Validity and Reliability

In this study validity ensured by consulting key officers from Ministry of energy, Petroleum Authority and Office of the Auditor General. This was to ensure correcting any ambiguities in measurements as well as capturing correctly the concepts used in this study. Moreover, construct validity is ensured by considering the usage principle. The Researcher used standard questionnaires and respondents were given reasonable time to fill the questionnaire, the researcher collected the questionnaires to ensure that they are not stressed and burdened and also to catch up with a face to face interview which was successful. The Respondents were given an opportunity to supplement those questions with interviews.

3.5 Ethics Consideration

Ethical standards to promote the values that are essential to collaborative work, such as trust, accountability, mutual respect, and fairness. In this study, ethical considerations were observed in safeguarding discipline and this enabled the researcher to acquire rightful data.[145]Before conducting the research, an introduction letter explaining the researcher was obtained from the Institute of petroleum studies and presented to data collection centers mentioned earlier for permission to conduct the study. The identity of people who

[143]N.K. Denzin the Research Act: Theoretical introduction to sociological method.
[144]Smith MJ, contemporary communication research methods (Belmont, CA, Wadsworth Inc., 1988).
[145]Stake, R. (1995). The Art of Case Study Research. Thousand Oaks, CA: Sage.

participated in the study obtained and kept strictly confidential. The consent form read and signed by the respondents before conducting the Research. Protecting the dignity and rights of every individual who is actively involved in this research project was taken into consideration by the researcher. No information has been disclosed, before any one until the research work is done and ready for everyone to read. Privacy of the respondents has been observed and respected.[146] To ensure confidentiality, the subjects were assured, that the information they give is solely for academic purposes and data obtained on private matters is treated strictly confidential.[147]

3.6 Methodological Constraints

In view of the study, the researcher encountered the following problems; -

Extraneous variables were beyond the Researcher's control such as respondents' honesty, personal biases and uncontrolled setting of the study. Some respondents did not honor the interviews, due to differing circumstances and reasons like travels, sickness, hospitalization and the busy schedules of the participants, the researcher missed to interview some respondents. This affected data collection process and procedures. The research was costly as it involved purchasing relevant materials, fuel expenses to deliver questionnaires and conduct interviews as well as telephone interviews. Limited Access to Academic Materials was difficult especially access of the PSAs signed, was so hard and in most cases, authorization was required from so many officers before getting that information. These PSAs are not even posted on the internet which made it hard for the researcher to collect data. Other officers declined to avail the information.

3.7 Conclusion

The biggest constraints were collecting data from key offices, as the technocrats rejected to avail relevant information in as much as it was for academic purposes. The researcher had to follow several officers; at times some officer would request for money to get such information. It is crucial that the people entrusted with the mandate to manage Uganda's natural resources should be sensitized on the issue of access to information law.

[146]Ibid.

[147]Smith MJ, contemporary communication research methods (Belmont, CA, Wadsworth Inc., 1988).

The mixed research method used and adopted by the researcher was very helpful as the researcher was able to apply the interview methods, documentary research was very useful in data collection including the internet which was rich in data. The research was able to research key officers through the use of questionnaires, colleting them and taking advantage to gain a face to face interview. In as much as the researcher faced a lot of challenges in data collection, she was able to overcome the same through the use of her introductory letter from the institute, articulation of confidence and knowledge in the topic of research, this interested the respondents who in turn opened up with the assumption that the research was already aware of what was happening. The researcher equally promised confidentiality to the respondents who availed the information required.

Ministry of energy should publish the legal materials on the fiscal regime of the oil and gas sector to enable future researcher carry out research that would add knowledge and evidence for future references. There is also need for the ministry of energy to educate its officers on how to manage information especially if the information required is for purposes of academics. A data base should be created on all the research that has ever been done on the topic, and other topics in oil and gas to avail the same to the public for purposes of research.

CHAPTER FOUR

INTERNATIONAL LEGAL FRAMEWORK

4.0. Introduction

International legal framework basically depends on each country as each country has adopted its own fiscal regime and national laws to govern its oil and gas sector. The oil and gas sector in oil producing countries is marred with the presence of international oil companies. This chapter discusses the international legal framework and further continues to discuss the comparative analysis of fiscal regimes of other countries.

4.1. Treaty Based Protection

Investment treaties are international agreements between governments that create obligations on states as to how they treat investors from the other treaty party.[148] Instruments such as bilateral and multilateral investments treaties are also used to protect investors. Bilateral Investment Treaties (BITs) concluded between capital exporting and importing countries set out substantive principles on investment protection, as well as the procedures of investor state arbitration.[149]The umbrella clause, the fair and equitable treatment (FET) standard and the principle of utmost good faith embedded in BITs ensure the provision of additional protection. The wording of an umbrella clause in a BIT is broad and can be interpreted as elevating every single contractual obligation entered into by a state to the status of a treaty obligation.[150] Premising on the FET standard, it can be argued that if a stabilization clause has been included in an agreement, there is the expectation that the law will not be changed or that if changed, a renegotiation will follow to rebalance the fiscal position. Uganda has signed BITs with 17 countries which include China, United Kingdom, Nigeria, Zimbabwe, South Africa, Italy, Germany, Eritrea, Netherlands, Denmark, Egypt and Switzerland.[151]

Some of these are related to double taxation which cut across all sectors including the oil and gas. These BITs once adopted create a binding relationship between the parties that sign

[148] IISD, Research Report June; Bilateral Investments Treaties, Mining and National Champion: Making it Work, June 2014.
[149] Cameron, Peter, "International Energy Investment Law: the pursuit of stability" OUP Catalogue 2010 pg 62-65
[150] Ibid.
[151] UNCTAD Investment Policy, https://investmentpolicy.unctad.org accessed on the 10th July 2019

it. In most cases it includes investment ventures by the nationals or companies of the said countries (parties to the contract), these agreements if not negotiated and addressed well can be a hindrance to the cost recovery as oil companies can easily manipulate the terms, by dodging to pay taxes based on transfer pricing which in return affects the economy and the people of Uganda, it is important that these treaties signed have favorable terms that ensure to protect the people of Uganda.

4.2. Access to Information

It is a fundamental human right recognized by international human rights instruments including Article 19 which provides that:

> "everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and seek, receive and impart information and ideas through any media and regardless of frontiers." [152]

The right to information is also recognized by article 19, of the International Covenant on Civil and Political Rights , article 13(1) and 17, of The Declaration on the Rights of the Child, article 15.[153] In 2012, the United Nations recognized access to the internet as an important tool for the promotion of the right of access to information while 2016 was the first year that UNESCO marked September 28 as the International Day for Universal Access to Information.[154]

At regional level, the right to access to information is enshrined in article 9 of the African Charter on Human and people's Rights (ACHPR) which states:

> "that every individual shall have the right to express and disseminate his or her opinion within the law."[155]

The above International Covenants all talk about the right to access to information which amounts to a universal right. It has to be respected by everyone including oil companies and host governments which negotiate and sign the agreements. The agreements bear a confidentiality clause and yet the terms of the agreement by right have to be accessed by

[152] Universal Declaration of Human Rights
[153] United Nations Declaration on the Rights of Indigenous people and the United Nations General Assembly Resolution
[154] UNESCO, International day for Universal access to information, https://en.unesco.org/idual 2016/about-day
[155] https://www.achpr.org/files/instruments/achpr/bnjul-charter.pdf, accessed on 9th July 2019

anyone who chooses to use the right. Uganda has not published and or has kept the PSAs a secret from the public and its citizens, who own the natural resources under which these PSAs are drawn. It simply means that the oil companies and the government cannot be held accountable to the people in the event that the agreements signed are bad.

The above instruments clearly stipulate the incense of access to information, which is equally enshrined in the Ugandan Constitution, and should be adopted by the IOCs and HG in the oil and gas sector in the implementation of the cost recovery clause in the PSAs, and the revision and or removal of the clause on confidentiality of PSAs should be implemented to enable the citizens access the agreements signed by the government on behalf of the people of Uganda.

4.3. Extractive Industries Transparency Initiative (EITI) Standard, 2019

The EITI Principles are part of the EITI standard, and what is now known as the EITI evolved from the first statement of the EITI Principles agreed at the Lancaster House Conference in June 2003. Today, the EITI Standard contains all the requirements for implementing the EITI. These beliefs and aims are endorsed by all EITI stakeholders. The EITI Principles provide the cornerstone of the initiative. They are:

> "the use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts, affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interest of their national development. the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent. A public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development. Underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability. That achievement of greater transparency must be set in the context of respect for contracts and laws. Believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public

expenditure. encourage high standards of transparency and accountability in public life, government operations and in business: believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use; and that payments' disclosure in a given country should involve all extractive industry companies operating in that country."

In EITI, companies disclose the payments they make to governments and governments reveal the income they receive. Identifying discrepancies between the two can be a powerful deterrent to corruption and vital step towards accountability. Countries implementing EITI work to implement the standards set by EITI to deepen transparency of the sector and bring together stakeholders from the government, private and civil society sectors to work together toward strengthening governance of extractive industries.[156] The Extractive Industries Transparency Initiative (EITI) Multi-Donor Trust Fund (MDTF), which is administered by the World Bank, provides grants and technical assistance to countries to implement the EITI principles. Currently a total of 51 countries are implementing EITI, of which 31 are compliant. Five years after the EITI began encouraging contract disclosure; multi-stakeholder groups (MSG) around the world have considered or taken up the encouragement to publish contracts. The EITI began encouraging contract transparency in 2013. According to research undertaken by NRGI in 2017, contract disclosure has now become the norm among EITI member countries. Given that the EITI encourages contract disclosure, many countries have adopted the practice of disclosing contracts because of the global and national debates facilitated by EITI. By providing a space where citizens, companies and governments can share experiences and lessons learned across stakeholder groups and national boundaries. EITI has helped these actors share concerns and potential benefits, and discuss possible approaches and ways of achieving contract transparency.

Uganda joined EITI in August 2020, and since its entry, a lot has changed in terms of transparency. On the oil and gas sector, UGEITI has been particularly active in engaging stakeholders, debating issues such as contract transparency, beneficial ownership, fiscal justice, and local impact, and preparing companies for when material revenues will come to

[156] www.eiti.org. Standard set by EITI visited on the 4th July 2019.

stream as the industry enters the production phase, UGEITI has made little progress on the lack of full disclosure of contracts in the oil sector.

4.4. Natural Resources Charter

It is a global initiative designed to help governments and societies effectively harness the opportunities created by natural resources. It sets out 12 overarching principles, with related guidance, on how this can be done. First launched in 2010 at the annual meetings of the International Monetary Fund and the World Bank, the charter was written by an independent group of practitioners and academics under the governance of an oversight board composed of distinguished international figures with experience of the challenges faced by resource rich countries. A second edition was launched at the Natural Resources Charter Conference 2014 in Oxford, England.[157] Uganda needs to be in such charters, since it is new in the oil and gas industry, this will help the country in its relations with the IOCs and in so doing avoid being exploited by the IOCs in terms of cost recovery.

4.5. World Bank Model

The World Bank recognizes that proper stewardship of revenue from extractive industries has potential to lift people out of poverty and contribute to sustainable development. It provides an integrated and comprehensive approach to managing the full extractive industry value chain, including EI development and impact. The approach aims to support countries in their efforts to translate mineral and hydrocarbon wealth into sustainable development.[158]

This is vital for the Ugandan oil and gas sector, as it helps the policy makers in making informed decisions on how to manage, monitor and evaluate the activities of the oil and gas industry. In terms of negotiating agreements, then the World Bank guide shall be an instrument of guidance especially in managing, monitoring and evaluating the aspect of cost recovery and its audits. The world bank model equally helps in the event that Uganda decides to adopt a specific and independent law governing cost recovery.

[157] Natural Resources Charter, 2nd edition, Natural Resource Governance Institute. Also accessed from Https://resourcegovernance.org/approach/natural-resource-charter on August 9, 2019.
[158] www.worldbank.org/en/research accessed on August 9, 2019.

4.6. World Bank Institution's (WBI) Parliamentary Strengthening Learning Program

The WBI's Parliamentary Strengthening Learning Program has developed a series of 13 learning modules for Parliamentarians and its staff which can be used in self-paced, online and face to face learning platforms.[159] The main objectives of these module are to strengthen the capacity of Parliaments to oversee the allocation and use of public funds, reduce poverty, improve public participation in the policy process and reduce corruption among others issues of extractive industries governance are included in the series.

This is very crucial in Uganda's oil and gas industry.

The Parliament is responsible for enacting laws that govern the oil industry as such WBI initiative shall programs helps the parliamentarians understand the nature, activities of the oil and gas industry. This shall enable them be objective while deciding and enacting laws for the oil sector. The laws governing cost recovery shall be better organized.

4.7. Comparative Analysis of Fiscal Regimes

Comparison of fiscal systems is always a difficult exercise. Fiscal systems are multi-dimensional, reflecting the diversity in political economy and political risks, in costs and reserves potential, whether offshore or onshore, as well as the time when contracts were negotiated. Features of fiscal regimes for newly emerging producers are likely to be more investor friendly than fiscal regimes in well- established petroleum producing economies. Comparative analysis shall equally look at countries that have published their PSCs.

4.7.1. General Comparison

4.7.1.1 Nigeria

In the early 1990s, when Nigeria sought to increase its petroleum production through the exploration and development of the offshore and inland basin, the government adopted PSC as the appropriate upstream petroleum contract that would be suitable for the award of acreage.[160] On the cost recovery and allocation of available crude oil, it was set at 40% for cost oil for reimbursement of the contractors' allowable costs which include rents, royalties

[159] www.worldbank.org/WBI/Resources/wbi-brochure08-5pdf accessed on August 9, 2019.

[160]Taiwo Adebola Ogunleye; A legal analysis of production sharing contracts arrangements in the Nigerian petroleum industry, Journal of Energy Technology and Policy Vol 5.2015.

and operating costs. The allocation was revised in 1986 at 50%, tax oil at 55% and profit oil at 35%, and 65% for NNOC. The 2000 and 2005 PSCs distinctly circumscribed cost recovery, in order to avoid the ambiguity in the 1993 PSC which appears to permit the consolidation of costs from OPLs particularly where the PSC covered several OPLs. Disputes have arisen on whether the provision of the 1993 PSC allows for consolidation of cost in PSCs covered several OPLs. The arbitral tribunals found in favour of the contractors but enforcement of the wards have been challenged by the NNPC on ground that the subject matter of arbitration is taxation which is within the exclusive jurisdiction of the Federal High court.[161]

Nigeria equally enacted the Deep Offshore and Inland Basin Production Sharing Contracts (PSC) Act, 1999, specifically to cater for Deep Offshore and Inland Basin PSC. The Act provides for fiscal incentives to oil companies operating the Deep Offshore and Inland basin areas. It applied to all PSC in respect to Deep Offshore and inland exploration and operations. The Act did not exempt the contractor from payments of other due obligations like tax, royalties. In as much the Nigerian PSCs provide for audits, this should be reviewed and properly couched so as to enable the NNPC use it in the cost recovery process.[162]

Uganda on the other hand, just like Trinidad and Tobago, use the audit provision in the PSA to assess and determine the cost that can be recovered by the contractor. This is seen in the mandate granted to the Uganda Petroleum Authority to monitor and approve all cost recovery claims and the Office of the Auditor General through its Constitutional mandate has to audit all cost recovery claims submitted by the oil companies.[163]

4.7.1.2 Ghana

There are five oil companies operating in the jubilee field with a reported US $ 4.2 billion spent on exploration and development between 2007 and 2010. Government revenue secured through royalties and payments from the National Oil Company exceeded Ministry of Finance projections in both 2011 and 2012. But (almost 50% below expectations in 2011) because none of the companies paid any income tax. Concerns have been raised that the exploration and development costs may have been artificially inflated in order to reduce tax payments. The

[161] Ibid.
[162] Ibid.
[163] An interview with KI_{11}, Office of the Auditor General on the 12th June 2019, Kampala.

costs of interest on the financing of projects are also a potential area for abuse. As with transfer mispricing, affiliated companies often provide the financing. This raising the risks that interest rates are not based on arm's length "market "prices but are rather designed to minimize tax payments. There are examples of invoices submitted for goods that were never actually acquired and for services that were never actually delivered.

Ghana's PSA allow for, a) the deduction of capital expenditures, including development costs on a straight- line basis beginning in the year the expenditure is incurred or the year of commencement, which is later; b)losses to be carried forward indefinitely for tax purposes although the internal Revenue Act allows only a 5- year loss carry forward deductibility of royalties as expense in determining chargeable income; and (d) exemption of duties and applicable taxes on imports of capital and machinery. The deductibility of royalties in determining chargeable income remains a pernicious provision since "royalty is not paid out of the contractor's share of petroleum".[164] Moreover, there are no sunset clauses in the exemption's regime.[165] In some countries though, these exemptions are limited to the exploration and development phase. There are, however limitations on ring-fencing that do not permit companies to consolidate income and expenses across activities, but there are no provisions or limitations on transfer pricing, excessive deduction of interest expense or thin capitalization.[166]Royalties may be negotiable as in Ghana and Cameroon, fixed as in Ivory Coast and Equatorial Guinea, or set between a specified range in other countries based on production capacity in Uganda or water depth

Uganda on the other hand, relies on progressive sliding royalty between 5 and 12.5% which adjusts acts as proxy for resources quality.[167] Ghana's rate is also lower than Nigeria's 20% for onshore production, 10% for inland basins and depending on water depth from 8% to 18.5% for offshore production.[168]

4.7.1.3 Indonesia

Indonesia is one of the most active countries in South-East Asia for nearly 130 years after the first oil discovery in North Sumatra and continues to be a significant player in the global oil

[164] Mcpherson et. Al 2009 at pg 22.
[165] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[166] Ibid.
[167] Uganda's Model PSA of 2012.
[168] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.

and gas sector. Indonesia is also a pioneer of the production sharing agreements, as the first contract was signed in the early 1960s.[169] The issue that the industry is facing is declining oil production over the last decade. The decline is explained by mainly a lack of exploration and other investments due to weak government management, bureaucracy, an unclear regulatory framework and legal uncertainty regarding contracts. The petroleum fiscal regime consists of production sharing agreements that are contracted between oil companies and the executive body for oil and gas upstream activities on behalf of the Indonesian government. Ring-fencing rule is applied, restricting companies to offset working interest in one area against income of another area. Indonesian PSA system does not charge a royalty, but instead includes fiscal term 'first tranche production' (FTP) or 'branch profits tax' (BPT). There is no limit for cost recovery; however, 20% FTP act as a cap by reducing the available gross revenue for recovery, 80% of gross revenue is the actual cost recovery limit. Contractors are allowed to carry forward their losses. Contractors are also permitted an investment credit 15.5% after tax. Annual depreciation on capital expenditures is 25% using the declining balance method with undepreciated amount written off in year five.[170] the general split of profit oil and FTPs between the government and the contractor is 64/36 respectively. That means that the company gets 36 cents more on every dollar saved in costs before tax and 27 cents after the tax. Even though this figure is much higher now, in combination with no limit for cost recovery, it may be still seen as a potential incentive for companies to inflate costs. Declining balance method for depreciation allows receiving a higher post-tax cash flows in the beginning, thus, increasing the net present value for a contractor. This increase is insignificant and does not provide noticeably different incentives.[171]

The Indonesia government had long believed that oil companies were inflating cost recovery expense claims in order to maximize revenue.[172] The government was particularly concerned in the years prior to 2010, when oil production was declining yet cost recovery claims were

[169] Nakhle, C. Petroleum Taxation. Sharing the oil wealth: a study of petroleum taxation yesterday, today and tomorrow. (T. &. Francis, Ed.) London/New York: Routledge. 2008.
[170] Dina Serova; Petroleum Fiscal System design and cost related incentive in oil and gas projects: a comparative study of UK, Norway, Indonesia and China. Master thesis, Norwegian School of Economics Bergen, Fall 2015.
[171] Dina Serova; Petroleum Fiscal System design and cost related incentive in oil and gas projects: a comparative study of UK, Norway, Indonesia and China. Master thesis, Norwegian School of Economics Bergen, Fall 2015.
[172] Centre for Public Integrity, Rovuma revenues at risk, Inflated costs undermining future governance revenue, good governance, transparency and integrity-edition No 05/2014.

increasing significantly. As a result, and significant disputes following the auditing of expenses, Indonesia put in place the Government Regulation concerning cost Recovery and Provisions on income Tax in oil and Gas Activities (Government Regulation No. 79/2010).[173] The regulation sets out a relatively standard three-part test for costs to be treated as recoverable. They must be related to oil and gas operations within which the contract area, they must be based on the arm's length principles if between affiliated companies, and they must be approved in advance by government authorities in the work program and budget. The regulation explicitly excludes 22 categories of expenses that are neither cost recoverable nor tax deductible, for example Expenses for personal interests of executives, expatriate employees and families, Incentives, pension and insurance for executives, expatriate employees and families, Expenses incurred before the signing of the contract, Excessive material surpluses due to mistakes in planning and/ or purchases, Tax and legal consultant fees unless directly related to oil operations, Contractors' oil and gas marketing fees, Expenses for the technical training of expatriates, Expenses for mergers, acquisitions or transfers in participating interests, Procurement of goods and services exceeding approved value, While removing some uncertainty around the eligibility of cost recovery claims, major disputes continue.

4.7.1.4 Timor – Leste

Timor – Leste is the most oil dependent economy in the world. In recent years, petroleum revenues have accumulated at a rate of more than $ 250 million per month. The money has flowed so fast that for many years Timor- Leste devoted little effort making sure that they received what they were actually owed. It is alleged that the accounting company contested few if any of the company expense claims. In 2011, Timor Leste initiated a series of tax audits covering the years 2005-2010.[174] In the course of undertaking the audits, tax authorities encountered a hurdle that they had not anticipated: company documents were held in Australia not Timor Leste. When auditors requested documents, they were informed that tax confidentiality laws in Australia prohibited their return. One early impact of the audit process was to require companies to keep copies of all relevant documents inside the country.

[173] Centre for Public Integrity, Rovuma revenues at risk, Inflated costs undermining future governance revenue, good governance, transparency and integrity-edition No 05/2014.

[174] Council of Minister's Press release: "Timor- Leste Improves Domestic Revenue Collection for 2011," 14 May 2011.

The audit process had an immediate short-term impact on revenues with a reported $ 79 million being recovered in the first round. The longer-term implications could be even more significant with the government reporting that it is continuing to pursue a further 28 assessments against the oil companies that could amount to hundreds of millions, even billions, of dollars in back taxes.[175] Government tax audits generated results and The Timor Ministry of Finance reported that,

> "during 2012 alone, it had received more than $ 400 million from audit-related activities. The government was engaged in legal action against multinational oil companies ConocoPhillips and others to recover substantial monies it believes are rightfully owed the people of Timor- Leste under legal obligations stemming from production contracts."[176]

This comparison is good for Uganda in terms of audits, as the cost claims submitted by the oil companies may seem genuine but need to be screened to determine the right costs to be recovered.

4.7.1.5 India

Cost recovery has been a major source of controversy between oil companies and the Government in India. Through the end of 2012, India had allowed more than two -dozen oil companies to recover more than $ 24.5 billion in expenses.[177] Concerns over the scale of these expenses led the comptroller and Auditor General (CAG) to conduct a detailed audit of the claims of three companies Reliance, Cairn and BG, in order to assess whether the revenue interests of the Government (including royalty and share of profit) were properly protected.[178]The audit experience demonstrated how difficult it can be to conduct effective oversight on extractive sector companies. The request for company documents by state auditors were at first refused on ground that they were not relevant for the review of "accounting procedures" and would be needed only for a review of "performance" which was

[175] Council of Minister's Press release, "Timor- Leste confirms action underway to reclaim taxes," 10 July 2012.
[176] Council of Minister's Press release: "Timor- Leste Improves Domestic Revenue Collection for 2011," 14 May 2011.
[177] Ministry of Petroleum and Natural Gas; Report of the Committee on the Production Sharing Contract Mechanism in Petroleum Industry, December 2012.
[178] Centre for Public Integrity, Rovuma revenues at risk, Inflated costs undermining future governance revenue, good governance, transparency and integrity-edition No 05/2014.

not provided for in the contract.[179] Documents for most, but not all, of the companies were finally provided more than a year after the initial request only after a direct order from the minister of petroleum and natural gas. Finally, on completion of the audit, one company claimed that confidentiality provisions in the contracts prohibited the government from sharing the audit even with the parliamentary committee responsible for overseeing the petroleum sector.

The audits concluded that the existing fiscal regime contained incentives for companies to front- load and inflate the expenses included in their cost recovery claims. Specifically, the audit stated that:

> "it is inconceivable that the private contractor would fail to protect its financial interests, and assess operational proposal to see whether it would result in incremental revenues from him both in terms of cost recovery and contractor's share of profit petroleum."

The auditors also criticized the oil Ministry for not enforcing the terms of the contracts effectively and for not catching abuses that hurt the state's share of profit. In the wake of the controversy, the Indian government struck a high- level a panel to review existing contracts and explore:

> "various contract models with a view to minimize the monitoring of expenditure of the contractor without compromising firstly, on the hydrocarbons output across time and, secondly, on the government's take."

The Panel concluded that the system of cost recovery encourages the contractor to inflate costs to the detriment of Government's share in profit petroleum. Its main recommendation, therefore, was that India should adopt a new contractual system and fiscal regime based on a post- royalty – payment revenue- sharing the overcome the difficulties in managing the existing model based the cost- recovery mechanism.[180]

4.7.1.6 Kenya

[179] Report No. 19 Of 2011 – Performance Audit of Hydrocarbon Production Sharing Contracts Of Union Government, Ministry Of Petroleum And Natural Gas. Also accessed at https://cag.gov.in/content/report-no-19-2011-performance audit. Visited on 9th august 2019.
[180] Ibid.

Interest in the petroleum sector has grown in Kenya since a series of onshore oil and offshore gas discoveries in 2012. The government has explicitly recognized that:

> "costs incurred under the exploration stage will in future be submitted to the government for cost recovery." [181]

As a result, in August of 2013, the National Oil Corporation of Kenya invited firms to compete for a contract to audit selected oil and gas exploration companies. The term of reference call for the audit:

> "to examine and verify all charges and credits relating to the petroleum operations such as books of account, accounting entries, material records and inventories, vouchers, payrolls, invoices, and any other documents, correspondence and records necessary to audit and verify the charges and credits."

Kenya had to get prepared on time to avoid any future challenges with the oil companies. Uganda is bound to face this challenge when production starts, it is prudent that the, it starts preparing its audit teams, monitoring and devaluation team to safe guard Uganda's revenue, when the companies inflate costs. In 2017 Uganda rejected 70m USD claim on cost recovery by oil companies because the companies had inflated the costs by claiming more.[182]

4.8. Comparison based on Information Disclosure

4.7.1. Peru

Contract transparency is provided through the Law on Transparency and Access to Public Information. This law requires that public entities disclose contract information. Peru's 2014 EITI Report includes a list of hydrocarbon contracts with the links to where full text of the contracts is publicly accessible. It also provides an overview of the mining projects that have signed 'Contracts of Guarantees and Investments Promotion' also known as Mining Stability Contracts. These contracts aim to reduce uncertainty concerning tax policy for investors and

[181] Centre for Public Integrity, Rovuma revenues at risk, Inflated costs undermining future governance revenue, good governance, transparency and integrity-edition No 05/2014.
[182] URN; Recoverable costs: Government rejects $ 70m claim by oil Companies, Oberver September 16th 2017.

were signed at a time when Peru required private capital to recover from the 1980s crisis and sought to attract foreign direct investment.

4.7.2. Philippines

The 2014 EITI Report includes in-depth discussion of the government's policy on contract transparency. The full text of standard contracts is included in Annex L-N of the PH-EITI Report. In 2015 PH-EITI launched an open database where the contracts of most companies participating in the EITI reporting process are disclosed. Using the open source Resource Contracts platform, the Philippines and NRGI worked together to assign unique IDs, which followed the Open Contracting Data Standard (OCDS). The OCDS enables data to be disclosed in a way that in interoperable at all stages of the contracting process and was created to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users. It involves step-by-step disclosure, creation of summary records for an overall contracting process and common open data publication patterns.

4.7.3. Cote d'Ivoire

Article 82 new 2012 Petroleum Code modification. Contracts for the exploration and exploitation of petroleum resources as well as the revenues paid by the oil companies to the State are fully published in the Official Journal of the Republic of Ivory Coast.[183]Other examples include; DRC, 11 contracts disclosed by the government on a resource contracts disclosure site.[184]Honduras: Law of Official Secrets and Declassification of Public Information passed on 14 January 2014. In Liberia; as per the 2009 LEITI Act, all contracts in Liberia are public and posted on the LEITI website.[185]Don Hubert, reviewed contract disclosure practice and policy in more than 50 countries and was intrigued to find that 29 governments well over half were disclosing at least some of their extractives contract or licenses. An additional 10

[183] EITI Brief, Contracts Transparency in EITI Countries: A review on how countries Report on Government's Contract Transparency Policy, EITI International Secretariat, August 2015. Also accessed http://droit-afrique.com/upload/doc/cote-divoire/RCI-Ordonnance-2012-369-modification-Code-petrolier.pdf accessed on the 9th July 2019 and translated to English for research purposes.

[184] EITI Brief, Contracts Transparency in EITI Countries: A review on how countries Report on Government's Contract Transparency Policy, EITI International Secretariat, August 2015. Also accessed https://www.mine-rdc.cd/resourcecontract visited on the 9th July 2019.

[185] EITI Brief, Contracts Transparency in EITI Countries: A review on how countries Report on Government's Contract Transparency Policy, EITI International Secretariat, August 2015. Also accessed www.leiti.org. visited on 9th July 2019.

governments that were outside the scope of our review are also disclosing, raising the global figure to an impressive 39 countries.[186] The number of countries that have passed laws requiring contract disclosure has also increased. The fact that so many governments and companies are choosing to disclose demonstrates that the benefits of disclosing contracts and licenses outweigh confidentiality concerns commonly cited.

It is unfortunate to note that Ugandan laws provide for a right to access to information under an Act of parliament but still does not disclose its contracts due to the clause in the PSA that prohibit the same from doing so. It is prudent that Uganda starts disclosing its contracts to the public to enable the public scrutinize them for their benefit as the natural resources belong to the people of Uganda.

4.8. 2010 US Wall Street Reform Act

In 2010 US president Barrack Obama signed into law the Wall Street Reform Act. Towards the end of this 2,300-page Act, there is a provision requiring extractive industry companies registered with the US Securities and Exchange Commission (SEC), to produce annual reports detailing payment made to any foreign government. Companies must be registered with SEC in order to trade on US Stock Exchanges.

Twenty-nine of the world's thirty-two largest multinational oil companies and eight of the world's ten largest mining companies are registered and must file annual reports with SEC- meaning that this provision represents a major victory for campaigners who have long argued for better information disclosure by the corporate sector.[187] The information disclosed about payments to governments will help Parliamentarians; media and civil society track these funds and promote accountability in the sector.[188]

4.9. Comparison based on the terms of PSA

4.9.1. Signature Bonuses and Front –Loading Fees

[186] Don Herbert, how many governments are disclosing oil, gas and mining licenses and contracts? Natural Resources Governance Institute, March 2017. Also accessed on www.resourcegovernance.org visited on the 9th July 2019.
[187] International Alert, Oil and Gas, Laws in Uganda: A Legislators' Guide, oil discussion paper No.1 May 2011
[188] Ibid.

Fiscal regimes in some countries provide for a number of front- end bonuses to be paid to the state at different stages of project development. There are three main types of bonuses, namely; signature bonuses, production bonuses and commercial discovery bonuses. The major oil- producing countries- Nigeria, Angola, Congo and Equatorial Guinea levy some form of bonuses.[189]In Nigeria and Angola, signature and production bonuses are water depth dependent, and in Equatorial Guinea bonuses are linked to some predetermined level of production. what is good about bonuses, is that they serve to bring forward revenue receipts for the state and shift risks to the investor; Less desirable however, is that they tend to be regressive especially as in Ivory Coast where signature bonus is not tied to any level of activity.[190]

4.9.2. Cost Recovery and Cost Containment Provisions

The ability of investors to recover their investments and the ability of the state to control and contain costs are important elements of the fiscal regime. Given the complexity of the industry, African governments are particularly vulnerable to the problems of cost verification, cost overstatement and profit stripping as noted earlier. [191]The challenges range from the monitoring and verification of capital expenditures, loss carryover provisions, transfer pricing mechanisms, ring-fencing, and the range and limits of expenses that may be considered deductible for tax purposes. Some fiscal regimes provide limits on the percentage of crude oil production (after deduction of royalties) that can be used to recover costs. If costs exceed the cost recovery ceiling, the difference is carried forward for recovery in subsequent periods. In our sample, the ceilings range from 40% to 100%. Higher cost recovery limits allow the contractor to achieve payback of its investment faster and therefore serve as incentive for investments.

But it also means that the contractor is unlikely to pay corporate tax in the early years of production.

This concern may be offset partly by royalty payments which takes effect as soon as production begins.

[189] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[190] Ibid.
[191] Ibid.

Uganda provides limitations on cost recovery up to 60% with no uplift on capital expenditures.[192]

Cote d'Ivoire's recovery ceiling ranges from 40% [193]of gross production on shallow water to 75%- 80% in deep water. Congo's recovery ceiling is up to 70%. Angola allows up to 65% of its production to be expensed including a 40% uplift on capital expenditures as tax allowances. It is debatable whether cost recovery limits are necessary in Ghana's case once the competition for blocks has been judged on work program bidding which presumably already considers the overall profit maximization prospects of a particular block.

4.9.3. Profit Oil Split

In production sharing contracts, profit oil is the revenue that remains after deduction of royalty and cost recovery. The profit oil is spilt between Government and the contractor on a pre- determined basis.[194] The alternative to profit- sharing is the gross –production sharing (or Peruvian type PSC as in Nigeria, Cote d'Ivoire and Congo all of which are on a sliding scale.[195] Tordo asserts that fiscal systems that use sliding scales based on daily or cumulative production targets are intensive to changes in prices and costs.[196] Given the price volatility of the oil industry, these systems are more likely to produce a misalignment of interests between host governments and contractors leading to renegotiations.[197] On the other hand, these systems are relatively are relatively easy to administer and may prove reasonably efficient in sharing the rent between the contractor and the government when project uncertainty is low.[198]

For PSCs before 2005, profit oil share in Nigeria is based on cumulative production with government share ranging from a minimum 20% to 60%.[199] After 2005, Nigeria's profit oil share is based on ROR factor as in Angola, Equatorial Guinea and Ghana. Angola's structure appears to be more progressive than Ghana's. Angola 's minimum profitability threshold is 10% for

[192] Uganda's Model PSA 1999 and 2012.
[193] Cote d'Ivoire's Model PSA.
[194] Duval et. Al, International Petroleum Exploration and exploitation Agreements: legal, economic and Policy Aspects, Barrows Company Inc., New york 2009.
[195] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[196] Tordo, S., "Fiscal systems for hydro carbons: Design issues" Washington, D.C, World Bank paper, 2007.
[197] Ibid.
[198] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[199] Nigeria's Model PSA.

government take of 15% and minimum threshold of 45% at a share of 80%. Ghana's minimum threshold for Tullow deep (shallow) is 19% (18%) for government take of 5% (10%).[200] For Kosmos the minimum threshold is 25% for share of 7.5 %. Unlike Angola and Equatorial Guinea, Ghana's maximum profitability threshold for both Tullow and Kosmos is 40% for share of 25% state. ROR based fiscal systems introduce flexibility in fiscal package to suit the profitability of the particular project. This makes projects under such systems more attractive to contractors and less risky as candidates for project financing. On the down side however, it is relatively more demanding to administer.

4.9.4. Government Take

Government take, (defined as the undiscounted revenues that accrue to government from all sources as a percent of total undiscounted gross or net revenues of a project) is often taken as a measure of the fairness or attractiveness of a fiscal regime. On the surface, Ghana's 38-50% government take based on jubilee phase 1 at a price of $65 per barrel may be judged too low compared to the government take of 64-70% for Nigeria, 64 for Angola, and 74-78% for Cameroon. However, as Johnstone[201] points out, government take can be a misleading statistic "because it does not take into account factors such as the timeframe for payouts to government and the level of government participation".[202] For example, fiscal regimes with more front – loaded taxes and charges such as Angola and Equatorial Guinea are likely to yield higher government take than a regime with back- end loaded taxes.[203]

4.9.5. Stability

A "Stable" fiscal regime is one that does not change over a certain period of time, or whose changes are predictable.[204] Perceptions of Fiscal stability influence investor decisions about undertaking production in a country, given the long-term nature of petroleum projects; the fiscal stability over the life time of the project is an important consideration for potential investors. With high volatility of oil prices, it is undesirable for a host government to

[200] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[201] Johnston, Daniel. International Petroleum Fiscal Systems and production sharing contracts. (Tulsa, Okla: Pennwell Books) 1994.
[202] Ibid.
[203] Joe Amoako- Tuffour and Joyce Owusu-Ayim; An evaluation of Ghana's Petroleum Fiscal Regime, The Ghana Policy Journal 2010.
[204] Tordo, S., "Fiscal systems for hydro carbons: Design issues" Washington, D.C, World Bank paper, 2007

continuously adjust fiscal regimes based on short – term price movements. For government, a stable fiscal regime is also desirable since it allows for better planning for expected oil revenues. Contractors have tried to achieve stability of contract terms by negotiating for stability clauses in their agreements with host governments. Stability clauses are of two types: freezing clauses that maintain the fiscal terms unchanged typically for the duration of the contract or for a certain period of time, and "equilibrium clauses" that allow for some adjustment that do not have asymmetric benefit or damages to one party. The most important argument for those who favour freezing clauses is that it eliminates arbitrary changes in the fiscal regime to the detriment of contractors. Stability clauses therefore manage political risks, restrain potential "legislative mischief" and guarantee that contractual terms will remain constant throughout the life of a project, or that any change would require an agreement between both parties before it may be effected.[205]

4.9.6. Flexibility

Flexibility refers to the responsiveness of fiscal instruments to change in future market conditions- that is the capacity of fiscal instruments to collect a reasonable share of the resource rent over time under a range of future market outcomes (both better d worse than expected outcomes). In general, flexibility fiscal instrument limits the need for renegotiation when market conditions change. Profit based taxes such as the corporate income tax offer more flexibility. This is because the rate is stable over time (the proportion or percentage of income does not change) as market and project conditions which affect profitability change. With this type of tax, the government take varies with project profitability. The flexibility provision in Ghana's fiscal regime lies in the AOE as explained above. Reviewing the provisions in the relevant legislations that weaken the progressivity of the fiscal regime therefore deserve attention for at least two reasons: to limit the adverse impact of fiscal stability clauses, and to pre-empt the inevitable pressures to modify the original fiscal regime in the event of sustained price increases.

4.9.7. Neutrality

[205] Amaechi, D (n.d). Oil and Gas Law: Is there a legal and functional value for the Stabilisation Clause in International Petroleum Agreements?

A fiscal instrument is neutral is an action or project that is assessed to be financially visible in the absence of the fiscal instrument remains viable after the instrument is applied. In other words, a "neutral" fiscal regime neither encourages over investment nor deters investments that would otherwise occur.[206] The neutrality criterion is useful for determining the extent to which the fiscal instruments may negatively affect exploration, development, production and closure decisions. In general, signature bonuses that are independent of profitability score poorly under this criterion. Output- based royalties can affect extraction decisions and if investors anticipate their impact on profitability it can also affect their decisions on exploration and development. Profit- based taxes and state equity investments instruments rank more highly under the neutrality criterion. This is because the government take from these instruments varies with project profitability.

4.9.8. Risk Sharing

In the exploration and development phase, the investor bears all risk and during this phase the state has no direct financial risk but it is obliged to monitor the investor' progress in fulfilling the agreed work programme. The state, however, shares in the project risk by virtue of the fact that during the production phases it grants tax deductions for investor's capital costs. Risk is not limited to the exploration phase and even during production, the project is subject to price risks. Nakhle defines price risks as occurring when there are sudden significant changes in petroleum prices, Contractors and the state, by virtue of its equity share, also face cost risk in the production phase.[207] These risks can be catered for with cost recovery mechanisms in the fiscal regime. With these potential risks facing the investor, an attractive fiscal regime is one that provides some assurance that there will be sufficient cost recovery allowances to cater for its costs and risks during the exploration and production phases.[208]

On the part of the government, it faces a risk of revenue delay. Hogan and Goldsworthy explain revenue delay as;

> "a situation in which the government does not start to collect revenue until sometime after the project commences, for example, revenue collection can

[206] Tordo, S., "Fiscal systems for hydro carbons: Design issues" Washington, D.C, World Bank paper, 2007.
[207] Nakhle, C; Petroleum taxation: Sharing the oil wealth: a study of petroleum taxation yesterday, today and tomorrow, 36 Routlege 2008.
[208] Ibid.

be delayed due to cost recovery mechanisms that give generous capital allowance to investors. The government can also face a risk of fiscal loss. A fiscal loss occurs when the government receives lower than expected returns due to adverse market outcomes."[209]

4.10. Conclusion

The research established that there is equally no specific law governing cost recovery in the international levels, save for the agreements signed between parties. The world bank principles on accountability and transparency which guide the extractive countries. Several countries have had their fair share on the issue of cost recovery and oil companies, many countries have lost revenue due to the inflation of costs by the companies.

As discussed in the comparative analysis, some countries enacted specific laws to regulate the cost recovery, other had to review the PSAs signed the exclude some recoverable cost. Other countries to employ audit firm to run the audits of the oil companies. There are countries that have benefited from the cost recovery scheme through receiving royalties, income tax, bonuses. On disclosure of the PSAs through the EITI, countries have gained more investment opportunities from the oil companies.

The international legal framework in the area of cost recovery is majorly governed by the world bank programs. Different countries have different fiscal regime managing its oil and gas sector. EITI simply promotes the issues of accountability and transparency, but unfortunately the PSAs are signed with confidentiality clauses. A country would have to be a member of EITI to be able to disclose their agreements. In terms of world Bank, which works hand in hand with IMF, which equally promotes accountability and transparency in the extractive industry. These should be adopted by all extractive industry players. There is much to be desired and improved in the international legal framework in the monitoring and regulation of the extractive industry through a country's national laws.

[209] Hogan, L., and Goldsworthy, B, International Mineral taxation: experience and issues. In P Daniel, M. Keen, & C. Mcpherson, The taxation of Petroleum and Minerals: Principles, Problems and Practice (pp. 122-162), 2010, New York: Routledge.

Uganda should publicize its Production Sharing agreements to promote accountability and transparency. Ugandan citizens who are owners of the natural resource should be knowledgeable on what terms are in the agreements as of right. It joined EITI whose principle are based on accountability and transparency of the extractive industry. Many countries have published their contracts through EITI upholding the principle of transparency in the extractive industry.

It is necessary for the country to borrow a leaf from other jurisdiction like Indonesia, Nigeria, Timor-Leste, who for a long time had been manipulated by the oil companies who inflated the cost claims, budgets to serve their interests. The countries promulgated a specific law to cub the problem, Uganda should be able to enact a specific law to manage, and regulate the issue of cost recovery.

CHAPTER FIVE

NATIONAL LEGAL FRAMEWORK

5.0 Introduction

Countries where petroleum industries have contributed to sustainable development usually have comprehensive and effective regulatory framework, with laws that are tailored to address the challenges of the extractive industries in the respective jurisdiction. The laws in these countries clearly specify among others: the ownership of the natural resource; How Foreign Direct Investment (FDI) can be invited to contribute to the development of the resources; the roles of the state institutions that will regulate industry operations; Comprehensive Health, Safety and Environment protection requirements; A clear framework for fiscal terms; Institutions with the requisite knowledge, organization and strength; The law, regulations and contractual framework that reflect the government's key policy decisions; Provisions that may need periodic adjustments such as technical requirements, administrative procedures, and administrative fees are set in regulations; and Equally important is the need for effective enforcement of these laws through effective institutions. Uganda has a legal regulatory framework that it follows in the governance of its natural resources, these enables the government to manage all affairs in the oil and gas industry. To ensure that the Citizens of Uganda benefit from the resources that belong to them. This chapter thrives to identify and discuss the legal and fiscal framework adopted by Uganda in its Oil and gas sector.

5.1. The Constitution, 1995

The constitution of the Republic of Uganda, the supreme law of the country spells out several principles and rules that govern the management of affairs in the country. It states under Article 1 (1) that:

> "all power belongs to the people of Uganda who shall exercise their sovereignty in accordance with the Constitution."[210]

Further under Article 2 (1) and (2), it states that:

[210] Article 1 (1) of the Constitution of the Republic of Uganda 1995.

> "the Constitution is the supreme Law of Uganda and shall have binding force on all authorities and persons throughout Uganda and if any other law or any custom is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency be void."[211]

The same Constitution protects the natural resources of the country and it states:

> "the State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda."[212]

Based on the above constitutional provisions, all that the State exercises is on behalf of the people, and that includes all contracts signed with the international oil companies. It should be noted that all offices shall be held in trust for the people and all persons placed in leadership and responsibility shall, in their work, be answerable to the people.[213]In essence, while negotiating oil and gas contracts the leaders or negotiators should bear in mind that, they are accountable to the people of Uganda. That whatever terms that are negotiated in the contracts should be for the benefit of the people and not the oil companies. The people should at all times be aware of the terms and conditions of these oil contracts.

One should equally consider the fact that, the same Constitution establishes the Parliament, whose mandate is, the authority and power to make laws on any matter for peace, order, development and good governance of Uganda.[214] This means that, the laws that are made by parliament include the governance of natural resources. Several Acts of parliament where recently passed in an effort to manage the oil and gas industry, which have been very helpful and instrumental in guiding the oil and gas industry regulators and stakeholders. The only challenge is that parliament only makes the laws, it does not participate in the negotiating of oil contracts which adopt a fiscal regime that infringes on both the rights of the people on

[211] Article 2 of the Constitution of the Republic of Uganda, 1995.
[212] National Objective and Directive Principle of State Policy No. XIII, of the Constitution of the Republic of Uganda
[213] National Objective and Directive Principle of State Policy No. XXVI (i)(ii)(iii)
[214] Article 77 and 79 of the Constitution of the Republic of Uganda, 1995

information and at the same time inconsistent with the constitution of the republic of Uganda in as far as the right to access to information is concerned.

The Constitution further establishes the office of the Auditor General whose function is to audit and report on the public accounts of Uganda and all public offices. Additionally, it conducts financial value for money audits in respect of any project involving public funds.[215]These constitutional provisions are geared towards the protection of natural resources which are held in trust for the people. The oil projects involve huge amounts of money, which is invested by the oil companies and in turn recover them through cost recovery mechanisms. This means that laws governing cost recovery should be strong and sound not to leave any gap for the oil companies to exploit the public funds.

Additionally, ownership and control of mineral and petroleum in, on or under any land or waters in the country is vested in the Government.[216] The Constitution equally empowers parliament to make laws regulating the exploration and exploitation of minerals and petroleum, the management of accruing revenues, payment of indemnities, and the conditions for the restoration of derelict lands.[217]

In 2005 the Constitution was amended to the effect, that control of all minerals and petroleum in or under any land or waters in Uganda is vested in government on behalf of the Republic of Uganda.[218]Even with this new amendment, the Constitution still re-echoes the public trust doctrine, whereby natural resources are held by the government in trust for its people. In other words, envisaging people as the principals appointing the government to manage resources on their behalf. This relationship obliges the government to account to its people as principals and owners, ensuring they participate in the management to account to its affairs either by themselves or through elected representatives. The Constitution does not specifically provide for the cost recovery law, but it does provide for the ownership, management and monitoring of the oil companies through the Office of the Auditor General.

[215] Article 163, (3) of the Constitution of the Republic of Uganda, 1995.
[216] Article 244 (1) of the Constitution of the Republic of Uganda, 1995
[217] Article 244 (2) of the Constitution of the Republic of Uganda, 1995
[218] Article 244 of the Constitution was wholly replaced by section 43 of the constitution Amendment Act number 1 of 2005.

5.2. Policies

The National Oil and Gas Policy for Uganda, 2008

The Policy goal is to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society. The policy recognizes many of the challenges associated with natural resources wealth, including the need to mitigate the potential for negative economic and fiscal impacts that often stem from a sudden influx of revenue in the extractive industry.[219] The policy outlines internationally recognized mechanisms for managing such impacts, with the aim of turning finite oil wealth into sustainable development outcomes. It also highlights the need for a long-term national strategy to ensure optimal impacts from oil and gas exploitation by maximizing benefits to Ugandans along the industry value chain.[220]

In particular the policy concurs with emerging global consensus on the critical importance of transparency in handling all aspects of natural resource management, with transparency and accountability towards stakeholders enshrined as a guiding principle in Uganda's future governance framework.[221] Openness and access to information are fundamental rights in activities that may positively or negatively impact individuals, communities and states.[222] It is important that information that will enable stakeholders to assess how the people's interests are being affected is disclosed. This policy recognizes the important roles different stakeholders have to play in order to achieve transparency and accountability in the oil and gas activities.[223] This shall therefore promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas. The policy also supports disclosure of payments and revenues from oil and gas using simple and understood principles in line with accepted national and international financial reporting standards.[224]

[219] National Oil and Gas policy 2008
[220] Section 5.1.1, National Oil and Gas Policy for Uganda, February 2008.
[221] Section 5.1.3, National Oil and Gas Policy for Uganda, February 2008.
[222] Section 5.1.3, National Oil and Gas Policy for Uganda, February 2008
[223] Section 5.1.7, National Oil and Gas Policy for Uganda, February 2008.
[224] Section 5.1.3, National Oil and Gas Policy for Uganda, February 2008.

The Policy under its Strategies and actions to achieve the Objectives outlines and explains key objectives which include among others, ensuring efficiency in licensing areas with potential for oil and gas production in the country.[225]Establish and effectively manage the country's Oil and gas resource potential.[226] Efficiently produce the country's oil and gas resources by undertaking independent evaluations where necessary, with a view of identifying any points of divergence from the plans presented by oil companies; ensure that the country's oil and gas resources are produced optimally through cost effectiveness and where necessary enhanced recovery.[227] This objective takes note of the aspect of cost recovery, through cost effectiveness, it introduces the aspect of monitoring and evaluation of the oil companies to ensure that, they spend effectively for the benefit of the country.

The policy equally recognizes national participation in oil and gas activities especially in Production Sharing Agreement with a view of providing better opportunities for the state to understand the basis for decisions in exploration, development and production, together with acquiring the skills necessary for commercial management of the sector.[228]

5.3. Oil and Gas Revenue Management Policy for Uganda, 2012

This Policy looks at many aspects on revenue collection. It recognizes that, the current regime for the petroleum sector is based on a production sharing agreement.[229] It states that:

> "under this arrangement, the oil companies are contracted by Government and are rewarded an agreed share in the production. In its simplest form, the fiscal provisions of a production sharing agreement constitute four main components: royalties, cost recovery oil, profit oil and income tax."[230]

The Policy elaborates on how the income tax can be paid usually after deducting royalties, cost recovery oil and profit oil share, then the government taxes the contractors profit oil. Taxation cannot take place, unless the cost oil has been deducted. This was enunciated in the case of **Tullow Uganda Limited & Tullow Operational PTY ltd versus Uganda Revenue Authority** and it was stated:

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[225] Section 5.4, Objective 1, National Oil and Gas Policy for Uganda, February 2008.
[226] Section 5.4, Objective 2, National Oil and Gas Policy for Uganda, February 2008.
[227] Section 5.4, Objective 3, (b & c), National Oil and Gas Policy for Uganda, February 2008.
[228] Section 5.4, Objective 7, National Oil and Gas Policy for Uganda, February 2008.
[229] Clause 2.1, Oil and Gas Revenue Management Policy, February 2012.
[230] Clause 2.1, Oil and Gas Revenue Management Policy, February 2012.

> "in order to apply the provisions of the ITA, one needs to understand how oil and gas sector works and the stages at which the oil Operation in Uganda had reached at the time of the transfer of interest. It was an agreed fact that oil had been discovered in Uganda. There is no evidence that oil production had started. Oil exploration and production are upstream activities. Once oil is discovered, the consideration risk involved in oil exploration is removed. The costs involved in exploration are carried forward in the future where they can be recovered from revenue derived from production reserves. Hence the income tax provisions have to consider the costs carried forward and to avoid a situation where there may be double deductions, losses incurred and excess costs."[231]

This case explains the stages and time when tax can be deducted, again a piece of interpretation of the cost recovery law, that the courts have to interpret. It does bring light to the fact that cost recovery law should be compiled in one Act of Parliament for easy interpretation and analysis. The revenue policy simply interfaces with cost recovery, due to the fact that, income tax cannot be deducted before all the costs incurred have been calculated.

5.4 The Investment Code Act, 2019

This Act revised and modernized the Investment Code Act, Cap. 92. It was purposely made to conform to the Constitution and to accommodate the Uganda Investment authority together with its functions. To provide for the registration of the board and for the registration of investors and investment licenses, to facilitate the monitoring and evaluation of investment and investors.

This Act is the first-place investments start inclusive of oil companies. The oil companies are provided with investment licenses and the investment authority continues in monitoring and evaluating their activities in the country. Together with the mandate granted to Uganda

[231] Tullow Uganda Limited & Tullow Operational Pty Ltd Vs Uganda Revenue Authority, Tax Appeal Tribunal, TAT Application No. 4 of 2011.

Petroleum Authority, in monitoring the activities, yet again this is another piece of regulation which indirectly makes mention of the cost recovery law.

5.5. The Income Tax Act, Cap. 340

This Act has several amendments but the interest of this research is on taxation of petroleum operations in part IXA of the Act inter alia deals with the transfer of an interest in a petroleum agreement. S.89G reads

> "Where in any year of income, the total deductions of a contractor in relation to petroleum operations undertaken in a contract area exceed the cost oil for that year of income arising from those operations in the contract area, the excess shall be carried forward to the next following year of income and is deductible for that year of income against the cost oil for that year of income arising from petroleum Operations in the contract area until the excess is fully deducted or the petroleum operation in the contract area cease."[232]

It is in dispute whether excess costs are deducted only when oil production starts. The Act does not define excess costs. S.89C (2) merely refers to them when it states that:

> "where in any year of income the total deductions of a contractor in relation to petroleum exceed the cost oil for that year of income."

The Act goes ahead to define cost oil to mean a contractor's entitlement to production as cost recovery under a petroleum agreement. Section 89A (1) defines recoverable costs to mean a cost of a contractor that is recoverable under a petroleum agreement. Article 10 of the EA2 PSA and Article 12 of the EA1 and EA3A PSA, state that the licensees shall carry forward to subsequent years all unrecovered costs until full recovery is completed according to the PSAs, is any unrecoverable costs excess costs? Once again, the PSAs are also silent as to when the right to cost recovery becomes absolute.

5.6 The Petroleum (Exploration and Production) Act Cap 150 Laws Uganda 1985

This law by then provided the legal and regulatory framework under which ministry of energy and mineral development through the petroleum exploration and production department (PEPD), promoted and regulated the exploration of oil and gas in the country. This exploration

[232] Income Tax Act, 2019.

effort led to the discovery of commercial quantities of petroleum in the Albertine Graben, an area which runs along the entire western border of the country. It also vested all mineral and petroleum in the control of the government as reflexed under the constitution.[233]

This law and its regulation did not fully provide for all the necessary legal framework to regulate the industry. Due to that, it was the recommendation of the National oil and gas Policy that a new law and regulation be adopted to cater for the current treads of petroleum and accommodate the international oil companies. This was done as detailed under the laws and regulations to be discussed in the next section.

5.7 The Petroleum (Exploration, Development and Production) Act 3, 2013

The National Oil and Gas Policy for Uganda, 2008, made recommendation for new Petroleum Laws and regulations to be made which eventually gave rise to this Act. It gains its mandate from article 244 of the constitution. This Act operationalized the National Oil and Gas Policy of Uganda by establishing an effective legal framework and institutional structures to ensure that the exploration, development and production of petroleum resources of Uganda is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations.[234] It creates a conducive environment for the efficient management of petroleum resources of Uganda including promotion of reconnaissance and exploration for petroleum, evaluation of discoveries, development and production of petroleum resources.[235] The act establishes institutions to manage the petroleum resources and regulate petroleum activities.[236] Regulating petroleum activities, including licensing, development, exploration, production and cessation of petroleum activities, supporting the development of state participation and above all ensuring transparency and accountability in the conduct of all activities regulated under the Act.[237]

One should take note, that this is the current law managing petroleum activities in Uganda and most of the provisions of this law have already been implemented through the

[233] Section 2 of the Act cap 150 and Article 244 (1) of the Constitution of the Republic of Uganda, 1995.
[234] Section 1 (a) of the Petroleum (Exploration, Development and Production) Act 3 of 2013.
[235] Section 1 (b(i-iii)) of the Petroleum (Exploration, Development and Production) Act 3 of 2013.
[236] Section 1 (c) of the Petroleum (Exploration, Development and Production) Act 3 of 2013.
[237] Section 1 (d), (f) (g) of the Petroleum (Exploration, Development and Production) Act 3 of 2013.

formulation of Uganda national oil company, licensing of several oil companies for exploration, development and production works. The Act provides for transparency and accountability which is not the case when it comes to the PSAs signed. The Act defines the role of state institutions, and mandates the Minister with strategic issues of policy, legislation and licensing. Petroleum Authority is mandated to regulate operations and monitor compliance of the investors, comprehensively addresses technical, costs, auditing and health, safety and environment requirements of operations. Incorporates internationally recognized standards. The Act further Provides for regulation of production, export volumes and regular audits of these including cost of operations, provides for establishment of National Oil and Gas Resource Databank to facilitate better knowledge of the resource base and hence, reliability of government revenue estimate.

5.8 The National Audit Act, 7 of 2008

This Act gives effect to article 154 (3) and 163 of the constitution by providing for the office of the Auditor General. The appointment, tenure and removal of the auditor general, to provide for the auditing of accounts of central government, local government council, administrative units, public organizations, private organizations and bodies, to empower and give the auditor general right of access to documents and information relevant to the performance of his or her functions.

5.8.1. Mandate for Cost Recovery Audits

The Constitutional mandate of providing an independent assurance on the use of public resources is vested in the Office of the Auditor General and also created by the National Audit Act 2008.[238]Audits and Inspection Rights of Government in the contractual framework and in accordance with the Accounting Procedures described in the agreements

5.8.2. Purpose of Cost Recovery Audits

The Statutory Audits are undertaken to ensure that the costs of investments incurred by licensees are realistic so that the State and investor get fair shares from petroleum resources.

[238] Section 13 (1) and 19.

5.9 The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 4 of 2013

This Act gives effect to article 244 of the Constitution, to regulate, manage, coordinate and monitor midstream operations, to enable the construction, placement and ownership of facilities, to provide for third party access to facilities, to regulate tariffs for facilities, to provide for an open, transparent and competitive process for licensing by the minister; to provide for additional and particular health, safety and environmental regulations not sufficiently regulated in other laws, to provide for cessation of midstream operations under the Act and decommissioning of facilities and to regulate any other matters related to midstream operations.

In a way it regulates the activities of the oil companies and this helps in checks and balances between the government and the oil companies. The same activities and operation are part of the recoverable costs provided for in the PSAs.

5.10. Public Finance Management Act, 2015

This Act provides as follows;

"fiscal and macro-economic management, Charter for Fiscal Responsibility, Budget Framework Paper, roles of the Minister and the Secretary to the Treasury in the budgeting process. to provide for multi-year expenditures, supplementary budgets and excess expenditure, management of the Government debt, authority to receive monetary grants and assets management; to provide for the roles of Accounting Officers; to establish accounting standards and audit committees; to provide for in year reporting; to provide for the preparation of annual accounts and for the accounting for classified expenditure."

The Act to establish the Petroleum Fund, the collection and deposit of revenues, the withdrawal of revenue from the Petroleum Fund and for the management of the Petroleum Revenue Investment Reserve. It continues to lay emphasis on;

> "the role of Bank of Uganda in the operational management of the Petroleum Revenue Investment Reserve; the establishment of the Investment Advisory Committee; to provide for the financial reports, annual reports and annual plans of the Petroleum Fund and the Petroleum Revenue Investment Reserve; to

provide for the sharing of royalties; to provide for offences; to repeal the Public Finance and Accountability Act, 2003 and to provide for connected matters."

It further guides the oil and gas fiscal and macro-economic structure, budgeting regulates oil fund management, investment, accounting and auditing.

In summary this Act avails the monitoring and evaluation of cost claims as expenditures that were incurred during exploration, development and production of the oil and gas.

5.11. The Access to Information Act, 2005

Uganda was among the first African countries to enact a right to information Law, the Access to Information Act (ATIA), 2005 and later the Access to information Regulations, 2011. The objective of this Act is to provide for the right of access to information pursuant to Article 41 of the Constitution; to provide the classes of information referred to in that article, the procedure for obtaining access to that information and for related matters.

The right to, seek receive and impact information is recognized as a human right in the 1948 Universal Declaration of Human Rights and the 1969 International Covenant on Civil and Political Rights. At a regional level, the 1986 African Charter on Human and People's Rights, also ratified by Uganda, acknowledges that every individual has the right to receive information.

Since the enactment of ATIA and its enabling regulations the government has taken significant steps to promote the right to access to information through a number of programmes and initiatives by establishing ministry Information Computer Science and technology, Development of the Government Communication Strategy Government Citizens Interaction Centre (GCIC)

Despite all these initiatives, access to vital information by citizens remains a big challenge, the implementation of the Access to information Law faces various challenges for example noncompliance by Ministers, wide exemption to access to information, ignorance of the law and its relevance, bureaucracy, Tedious compliant mechanism limited scope of bodies obligated to given information.

Take for example the petroleum Act provides that the minister may, in accordance with the Access to information Act make available to the public details of all agreements, licences and any amendments to the licenses or agreements whether or not terminated or valid.[239]It further confirms that:

> the information above shall be available to any person upon payment of the prescribe fee.[240]

In the same spirit the PSA already signed by Uganda, all bear a clause on confidentiality and under such clause[241] they recognize and acknowledge the existing law but go ahead to say, the PSA cannot be made public due to business secrets which cannot be published unless with consent of the parties.[242] This is totally in contravention of the law.

5.12. Production sharing agreements

Uganda, like many developing countries, adopted the PSC, the government is mandated to enter into agreements relating to petroleum activities and consistent with the Act with any person in respect to grant of license, the conditions for granting or renewing a license, the conduct by person of petroleum activities on behalf of any person to whom a license is granted.[243] The minister is equally mandated to develop or cause to be developed a Model Production Sharing Agreement and the same submitted to cabinet for approval.[244] Under the previous law, government had developed a model PSC in 1999 which would be used as the official contract between the government and oil companies; however in 2006 another model PSC was developed.[245] The difference between the two is that, whereas in the 1999 model, all the percentage figures for cost of oil, profit oil and royalties were stated, they were excluded in the 2006 model.[246] Secondly, the basis of calculation changed from using the total daily production figures to incremental production. [247]

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[239] Section 151 (1)(a) of the Petroleum (Exploration, Development and Production) Act No 3 of 2013.
[240] Section 151 (2) of the Petroleum (Exploration, Development and Production) Act No 3 of 2013.
[241] Clause 10, 1999 Model PSA, Clause 36 Model PSA in respect of Kanywataba Prospect area February 2012 and Clause 11 2016 Model PSA.
[242] Clause 10, 1999 Model PSA. Uganda.
[243] Section 6 (1) of the Petroleum (Exploration, Development and production) Act, No 3 of 2013.
[244] Section 6 (2) of the Petroleum (Exploration, Development and production) Act, No 3 of 2013.
[245] The Petroleum (Exploration and Production) Act Cap 150 Laws Uganda 1985.
[246] A Kimuli, Is Uganda's petroleum fiscal system efficient? (2013), pp 32.
[247] Ibid.

The 1999 model PSA and the 2006 model PSAs have some similar terms that include, state participation of not more than 20%; ring fencing and gas terms to be negotiated on discovery of gas. It is not clear why the changes were made, but it's evident that government preferred to negotiate all the terms in the PSC instead of having standard fixed terms, although fixed terms are more transparent and preferred by NGOs and citizens, negotiation may be the only choice, especially for countries with less- exciting acreage and risks.[248] Negotiations to be efficient, it has to be available to many players (various proposals and offers) so that the Ministry or NOC become aware of what the market can bear as they carry out their negotiations. In Uganda four companies had signed PSCs by 2007 and all had negotiated terms different from each other than the 1999 model PSC. This study shall only review three model PSAs namely 1999, 2012, 2016, since all provide for confidentiality clauses that require the consent of both parties to be given before any information can be shared with any one.

Regarding cost recovery process, since production has not yet started, government is in the process of verification of exploration costs. the PSC is silent on which government institution is to undertake the cost audits, the Auditor General has undertaken the audits through the use of international accounting firms. The approved costs and reports have been passed on to the speaker of parliament and the ministers responsible for finance and energy.

5.12.1. Model PSA, 2016

Notably under this PSA, this agreement is an improved version of the former agreements, with it adopting most of the governing laws and equally beneficial to the host country. cost recovery is placed at 100% recovery[249] and there is emphasis on the law applicable. The agreement is governed by and interpreted and construed in accordance with the Laws of Uganda.[250] It is unfortunate to note that, the agreement has still not been publicized to the public or the citizens of Uganda.

The agreement spells out what costs should be recoverable and these include surface rights, labour and associated labour rights, transportation costs, charges for services, insurance and losses, legal expenses, training costs, general and administrative costs, communication

[248] Anderson, D.M and Brown, A.J: "the politics of oil in Eastern Africa", Journal of Eastern African Studies, Vol.5, No. 2, pp369-410. 2011.
[249] Article 11 of Uganda's Model PSA 2016.
[250] Article 30 of Uganda's Model PSA 2016.

charges.[251]The challenge with the recoverable costs is that there are costs that should actually be paid by the oil company like its general and administrative costs, legal costs, bank interest on loans, transportation; unfortunately all these are tagged on the host government. This simply means that the oil company recovers 100% of all the cost it injected in the project including profit oil which it has to split with the host country. There is need for Uganda to improve the way its agreements are negotiated, its effect; this agreement is the binding fiscal regime on the parties. At times, this agreement is in fact contrary to the constitution and acts of parliament, like the close on confidentiality which contradicts the Access to Information Act and the Constitution.

5.12.2. Model PSA 2012

5.12.2.1. Accountability

The principal host government and agent (oil company) relationship requires a component of accountability where the principal has rights to request the agent to give an account and reasons why operations were conducted in such a manner, this accountability may take a contractual perspective or communal context[252]. The Model PSA 2012 takes the contractual accountability form where the oil company is required to make formal documentation explaining and defining the actions, data and host country expectations. Alternatively, the communal accountability is where the oil company accounts and explains to the wider society especially regarding environmental management.

Article 8.1 of the Uganda's PSA 2012, requires the IOC to prepare, keep and maintain records of oil and gas operations pertaining to every exploration area, also to maintain accounting records that conform to the industry best practices and standards. In order to account to the general public, Article 31 of the Model PSA 2012 gave powers to the auditor general to audit these records within 24 calendar months and report to parliament. On the other hand, the IOC is required to submit to government records, reports and data in accordance with the Act and regulation[253] which have already been discussed.

[251] Section 3 of the Uganda's Model PSA 2016.
[252] Lawal 2009.
[253] Article 7 of the Model PSA 2016.

5.12.2.2. Transparency

The rise of transparency in the governance of oil and gas resources would minimize the secrecy always exercised in the implementation of most fiscal systems of developing countries.[254]The 2012 Uganda's Model PSA gives powers to the advisory committee to approve all work programmes and budgets for oil and gas exploitation this committee consists of four members, two are appointed by Ugandan government and two by the oil company. [255] This implies that all programmes, budgets and any amendments are done in a transparent manner. It is the contrary with the Model PSA of 2016 Uganda where such provision is unavailable save for the Confidentiality is detailed and information pertaining the said agreement can only be shared upon securing the consent of the parties to the contract and or may be when the other party relinquishes the area to which the information relates, this article totally disregards the law on access to information and the Constitution of the Uganda. [256]

The results in the research study regarding the cost recovery instruments, revealed that there are limits first of all to the amount of oil that can be retained as a cost in a given period. In order to recover the costs, there have been various measures that have been adopted by the government. For instance., one of the respondents from a renown legal firm that is involved in the legal framework for the oil sector, revealed that the government gets some rewards from the discoveries of the oil sector. It was revealed that:

> "The government gets some royalties and bonuses from the stakeholders while conducting her business in the oil and gas framework sector… Sometimes there are bonuses and taxes that the government imposes on the different stages of the entire process."[257]

Further information revealed is that, the other approach that has been adopted by the government has been to employ an efficient legal system which can help address some of the measures necessary to recover costs not only for the government but also for the companies such as are involved. The results from the interview further revealed that there is a good step to ensure that the costs are recovered. One key informant revealed that, there have

[254] Lawal 2009.
[255] Article 5 sec 5.3.1, 2012 Uganda's Model PSA.
[256] Article 33, 1,2 and 3 of Uganda's Model PSA 2016.
[257] An interview carried out with KI_1, from the Uganda Petroleum Authority, Amber House Kampala on the 10th of June 2019.

been some steps to make sure that there is consensus or participatory decision making so as to recover the costs that have been incurred by the stakeholders who have injected some of their resources.[258] The research results from the interview revealed this as evidenced by the vignette below

> "There has been serious nationalization of the industry through national context to lower costs on experts and supplies to the industry in terms avoiding expensive foreigners, floating basic operations like drilling and pumping oil."[259]

Another strategy that the government has undertaken has been the capacity to make sure that there is a critical review of all the contracts and the related documentation before papers are signed. The critical review in this case allows the firms involved and the different stakeholders to ensure that there is nothing left to chance. In this case, when there are breaches of contract, the government can easily conduct a thorough review of the documents and thus ensure that there is a greater likelihood that the parties involved will not be cheated in any way…. This was revealed by one of the key informants in the study indicated in that:

> "The government has ensured proper and critical analysis when negotiating the PSA regarding taxes, loyalties among other revenue aspects."[260]

A careful and critical presentation of the documents that have been used in the contracts and the obligations regarding the oil transactions, proves very important if the costs are to be recovered whether by the government or by the other stakeholders in the equation.

5.13. Non- Legal issues that hinder the performance and implementation of the law governing cost recovery

5.13.1. Political Factors

Political factors have proven more difficult for policy makers to address, a leading development economist noted:

[258] An interview carried out with $KI_{5,}$ from Ministry of Energy, Amber House Kampala on the 10th of June 2019.
[259] An interview carried out with $KI_{6,}$ from Ministry of Energy, Amber House Kampala on the 10th of June 2019.

"Much as the initial explanation for the resource curse, Dutch diseases was purely economic, it has gradually become evident that the key issues are political."[261]

Governments have not always been the best stewards of these resources, increasing the clamor for better governance and social accountability for natural resources use.[262] The centralizing authority of President Museveni in recent years helps to explain the government's hard position on regulatory issues. The obscure control over the oil industry by Museveni and a small circle of Ugandan officials and international advisors has played a divisive role across government and society. The lack of transparency in the oil industry has led parliament to demand greater oversight. As such the president's growing tendency to micromanage, presents a concerning political risk for oil companies.[263] Intervention by a quasi-authentication leader in dysfunctional democracy could very well lead to further delays in the industry's development. Oil has fallen into and reinforced the existing political pattern of neo- patrimonial and centralized one-man rule under president Museveni.[264] This has affected the oil industry as decision making is left to one man.

5.13.2. Institutional Weakness

When a State's primary revenue stream is coming from natural resources rents, tax revenue from other economic sectors becomes less important. There are likely to be few linkages with the rest of the resources, producing state's economy, due to the capital-intensive nature of the extractive industry sector industries and the fact that, in many cases this industry is dominated by foreign entities depending on the E1 sector for revenue can weaken state tax system.[265]

5.13.3. Corruption

The intermingling of business and politics in Uganda tends to require new investors to gain high level political acceptance to move forward with their plans. Rent seeking in Uganda,

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[261] Collier. P.; The Political Economy of Natural Resources, 2010 at PP 1105.

[262] Canulo, et., al; Rents to Riches? The Political Economy of Natural Resource- Led development Washington DC, World Bank, 2012.

[263] Luke Patey, Oil in Uganda: Hard bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies. B Smith & J Rose,' Uganda's Albert Graben due first serious exploration test,' the oil and gas journal, Vol.100; issue 23, 10 June 2002.

[264] Donor engagement is Uganda's oil and gas sector, Global witness; Briefing, 2010, 7.

[265] Luke Patey, Oil in Uganda: Hard Bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies. B Smith & J Rose,' Uganda's Albert Graben due first serious exploration test,' the oil and gas journal, Vol.100; issue 23, 10 June 2002.

from the central government to local authorities is under spread.[266] There are clear consequences for the oil industry from political corruption in Uganda shortly before the 2011 General Elections; the government passed a supplementary budget of $ 257 million, $ 34 million of which went directly to the state house.[267]

This coincided with EU representatives indicating that large sums of money and gifts were distributed in the lead up to polls.[268] Uganda also failed an IMF program review that year.[269] The oil industry feeds the political cultural in Uganda. The Heritage Capital gains tax case came a year before the elections this blocked the industry objective. Tullow's activities and sale to Total and CNOOC, were stopped by government interventions until Tullow agreed to pay 4 313 million to cover Heritage's charge until the case was pending.[270]More recently, the Tullow capital gains tax settlement and from its 2012 sale of stakes to total and CNOOC, comes a year before the next general election in 2016. The company already paid $ 142 million to bring the case to arbitration and will pay the remaining $ 108 million in even instalments over the next three years. Political corruption could very well widen in development stage of the oil industry. Supporting infrastructure such as roads and power plants may not be as corruption free as the core sectors of the industry.

5.13.4. Social Concerns

There is a dearth of responsibility in Uganda for the demands of local communities. At the same time, Uganda's politics can also transform into societal issues for the oil industry. The centralization of authority, in particular, is incubating grievances among local communities in the oil-rich Lake Albert region.[271] While international oil companies do not have direct responsibility for the equitable governance of the oil industry, they will be held partially accountable at the very least for the Ugandan government's management, or lack thereof, of oil's social and environmental impacts. Rather than central government officials, it is

[266] David Booth Brain Coosey, Frederick Golooba Mutebi, and Karuti Kanyinga, East African prospects, An update on the political economy of Kenya, Rwanda, Tanzania and Uganda, overseas Development institute, Report, may 2014, 56-8.
[267] Spending for victory, Africa confidential of Vol.56, No 7, 3 April 2015
[268] Katrina Manson, Uganda governor criticizes Museveni "Marxism" Financial Times, 13 June 2011.
[269] Ibid.
[270] Emily Gosden, "Tullow oil wins $ 313m from heritage in Uganda fat dispute; the telegraph, 14 June 2013.

[271] Luke Patey, Oil in Uganda: Hard bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies. B Smith & J Rose,' Uganda's Albert Graben due first serious exploration test,' the oil and gas journal, Vol.100; issue 23, 10 June 2002.

international oil companies and their contractors, working daily in local areas, which tend to be on the frontline of community responses. These societal grievances may lead to protest against an onshore oil industry, costly operational stoppages, and a persistent, and difficult to retract, negative relationship with local communities.

5.13.5. Insecurity

Insecurity if left unsettled, political and social instability brought on by the oil industry can degenerate into insecurity, Museveni has been in power for three decades, political change in Uganda has historically been accompanied by violence.[272]Political risk is one source of insecurity. If Museveni were to die in office with no clear successor in the National Resistance Movement in place, such political change could spark conflict. Social issues can also produce security dilemmas not to mention the increase in army personnel and police in the Lake Albert region may only serve to enflame the social grievances of local populations towards the oil industry. The militarization of the region by the Uganda People's Défense Force (UPDF) and personalization of security by Museveni should caution, rather than comfort, oil companies. Militarization of the Lake Albert region since serious prospecting work began; the Lake Albert region has seen the influx of military police, and other Ugandan government security personnel. When Heritage began its exploration in the late 1990s, it was well aware of the risk and cooperated closely with UPDF; a local brigade held daily briefings and weekly meetings with drilling teams.[273]

5.13.6. Community relations

When national governments are unwilling or unable to establish clear laws and regulations, marrying operational goals with the societal demands of local communities continues to be a challenge in the international oil industry.[274]The goal of 'managing expectations' tends to focus on how to sensitize local communities to the operational practices of international oil companies, from exploration to development and production, rather than company managers taking on a greater understanding of local politics and culture. Demands of local communities

[272] Joel D. Barkan, 'Uganda: Assessing risks to stability', A Report of the CSIS Africa program, Centre for Strategic and International Studies, Washington DC, 2011, 4.
[273] Raj Rajendran, 'Heritage delays maiden Uganda oil drilling to Sept.', Reuters, 30 August 2002.
[274] Luke Patey, Oil in Uganda: Hard bargaining and Complex Politics in East Africa, WPM 60 2015, Oxford Institute for energy Studies. B Smith & J Rose,' Uganda's Albert Graben due first serious exploration test,' the oil and gas journal, Vol.100; issue 23, 10 June 2002.

are often only taken seriously when social protest has already materialized. Even though it is a long-term business, oil companies and their contractors tend to exhibit short-term thinking tied to managerial goals and compensation, searching for quick fixes to overcome tensions with communities.[275] Long term problem that affect the communities should be addressed by the regulatory body to avoid the interruption of the works in the oil and gas industry. The central government is largely unwilling to find long-term solutions for social issues, for instance over land use, and the capacity of local government is weak across the district, country, and sub-county levels. Oil companies, and particularly their contractors, actually have the highest level of contact with communities compared to central or even local government.[276]This has essentially led to self-regulation of social and environmental practices becoming the norm.

Social grievances can, however, grow over the small development benefits that the oil industry does provide. Tullow is on the forefront of community engagement in the international oil industry. It has pursued a transparent agenda by publishing the figures of its economic contributions in Uganda through taxes, local content expenditure, employment and social investment.[277] Tullow established liaison offices in Hoima and Buliisa, held dialogue and sensitization meetings with communities, provided basic services such as bore holes, mosquito nets, school materials, and invested in the construction of the Buliisa Health Centre IV, the first in the district.[278]The initial high expectations of local communities for the developmental impact of the oil industry has been soured by lack of information and little involvement in the planning of social investment projects of oil companies.[279]

The above factors can dearly hinder the progress of the oil companies in the country especially since the oil companies take the risk and invest in the oil industry. This capital has to be recovered, any hinderance to their activities affects the operations and in turn, the oil

[275] Ibid.
[276] James Van Alsteine et. Al., Resource governance dynamics: the challenge of new oil in Uganda. Resources Policy, Vol 40, 2014, 55-6.
[277] 'Creating shared prosperity in Uganda', Tullow Uganda Country Report, Tullow Oil, London, 2013, 2.
[278] International Alert, 'Governance and livelihoods in Uganda's oil-rich Albertine Graben', 2013, 33.
[279] Petrus de Kock and Kathryn Sturman, 'The power of oil: Charting Uganda's transition to a petro-state', Research Report 10, South African Institute of International Affairs, Johannesburg, March 2012, 22; Gabriella Wass and Chris.

companies shall end up inflating the costs in order to recover what they have lost to the detriment of the state.

5.13.7 Poor Bargaining Power

This is because Uganda is a new entrant in the oil and gas sector having recently discovered oil and gas. Unfortunately, this comes at a cost, because good contracts have to be negotiated, but because the country lacks skilled citizens in the area of oil and gas, it is left to relies much on the oil companies who then manipulate the contracts to suit their interests. Uganda should invest more on the training of its nationals if it has to fully benefit from its natural resources. Oil and gas investments are capital intensive, it requires huge amounts of money to invest, which Uganda being a developing country does not have. The oil companies on the other hand have this capital to invest, as such the bargaining power against Uganda would be manipulated by the oil companies. It would be hard for the host country to negotiate more favorable terms as the oil companies have the up hand.

5.14. Conclusion

There is no doubt oil was discovered in Uganda and the country has signed several agreements with oil companies. Right from the pre-colonial error today, there have been existing laws governing cost recovery in Uganda but they are scattered in different legislations, which one has to ensure to understand, what cost recovery is, in order to be able to discover which Law to apply. The production agreements on the other hand may not be taken as law, but it is notable to say, that Uganda adopted the same as the fiscal regime, which then, forms part of the regulatory framework in the oil and gas sector in Uganda. One cannot be seen to refer to the law without referring to the PSAs, which spell out the relationship of the parties i.e. the host country and the oil company.

Additionally, the PSA provide for the issue of costs recovery, recoverable costs and nonrecoverable cost, the procedure for recovery which no primary or secondary law provides for. Indonesia and Nigeria as discussed under chapter four, having lost a lot of revenue because oil companies used to inflate the costs, decided to enact a specific law to manage and monitor the cost recovery scheme. This has helped the two countries a lot. Uganda has a lot to learn from these countries, for example Kenya in anticipation of cost recovery in

future prepared itself by inviting audit firms to audit all activities of the oil companies to avoid future problems.

On the issue of access to information and transparency, in as much as the Constitution provides for the right to information, the same has not been implemented in the PSA which is contrary to the supreme law. It is important that the citizens of Uganda access these agreements and any other information relating to the oil and gas industry. This shall enable them put the government to account on the oil of the country.

The non- legal factors have a very big impact on the progress of the oil industry, political interference has for long been a problem and Uganda have a long way to solve the same. The lack of skilled experts in the industry has been a great contributor in the oil and gas industry as the oil companies take advantage of these to inflate any cost to their advantage and to the detriment of the country.

Put in place a law that specifically handles issues of cost recovery, what is recoverable and what is not, taking lessons from Indonesia which enacted regulations to manage the same.

Publicize all Production Sharing Agreements signed with Oil and Gas Companies in an effort to promote the principles already enshrined in the supreme Law of Uganda and the National Oil and Gas Policy for Uganda 2008.

Uganda should negotiate better PSAs next time especially on the issue of cost recovery which directly impacts on the profit oil to be recovered by government.

There should be an improved monitoring and evaluation system in terms of activities, right from bidding, licensing to the real operations being handled.

There should be a review of the current PSAs especially on recoverable costs which should not include general administration, housing, ticketing, legal fee unless directly touching the operations of oil and gas, insurance of employee of the oil companies like the expatriate and their family, travel allowances, transportation of employees, and interests from a bank loan. These should be paid by the contractor out of his profit and not at the expense of the state.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

6.0. Introduction

This chapter presents the summary of the dissertation, the findings and highlights the conclusions drawn from the findings. It further shows the recommendations for the Uganda government to consider while designing cost recovery laws and concludes the study.

6.1. Summary of Findings

Oil and gas operations in Uganda were started by Wayland James in the 1920s. Wayland managed to document some traces of oil and gas in Butiaba areas in 1938, however the evaluation of the commerciality of the reserves was not done. Exploration efforts were halted in late 1939 due to the first world war effects, but resumed later in early 1980s. Uganda promulgated its first law to regulate the oil and gas in 1985 which was the Petroleum (Exploration and Production) Act Cap 150 together with its regulations of 1993, this formed the regulatory legal framework for the petroleum industry. It also adopted the PSA arrangement, and the first PSA was signed between the Ugandan government and Profina Exploration Uganda in 1991.

The first commercial discovery was registered in 2006 and to date 116 deep well have been drilled out of which 106 wells encountered oil and gas. Uganda is estimated to have over 6.5 billion barrels of oil and out of these 1.4 billion barrels is recoverable. Uganda due to this discovery repealed its oil and gas laws and promulgated the Petroleum (Exploration, Development and Production) Act 3, 2013, subsequent regulations and statutory instruments that formed part of the new regulatory legal framework for the sector.

The study aimed at analyzing the law governing cost recovery in Uganda's oil and gas sector. In order to achieve this, it looked at the international and national legal framework on cost recovery in the oil and gas sector in Uganda to establish, whether they provide for cost recovery, the study further looked at the PSAs signed by Uganda from 1999 to 2016. The study equally looked at the comparative analysis of other jurisdictions to establish how they have dealt with the issues of cost recovery and the regimes adopted. These was done through

evaluating the PSAs provisions on cost recovery to establish the law governing cost recovery and its efficiency. The study looked at the different classifications of fiscal regimes to establish why Uganda adopted the current fiscal regime and the benefits of cost recovery on both the host government and the IOC.

The study adopted the mixed approach research method which constituted both qualitative and quantitative research methods approach. This method aimed to investigate the law governing cost recovery in Uganda's oil and gas. Qualitative methods examined the why and how not just what, where, when, or who, and have a strong basis in the field of sociology to understand government and social programs. Qualitative methods produced information only on the particular cases studied. Quantitative methods were used to seek empirical support for such research hypotheses. the mixed research design, adopted by the researcher was used for purposes of validation and enabled the researcher to archive complementary results.

The research analyzed agreements, petroleum websites, academic websites, Uganda ministry of energy resource database, text books, articles, documents, Journals, Ugandan petroleum laws, world bank website, regulations and statutory declarations. All these helped in analyzing the law governing cost recovery in Uganda's oil and gas sector.

6.1.1 The benefits of cost recovery

The research established that, through data collection using the mixed research method, sustainable development is a major benefit that can arise from the cost recovery efforts in the oil industry. The sustainable development will not only be realized at national level but also on a personal note. The Sustainable development will be partly realised through the increased capacity of the sector to attract investments which will inevitably boost the revenues and the taxes that are available from the oil sector. The other studies as discussed in chapter two, agree with the fact that cost recovery in the long run promotes sustainable development. The huge capital investment the oil companies inject in the oil and gas industry is for the benefit of the host country, who is the owner of the resource. When discovery is made, it benefits in terms of profit oil, economic rent, royalties, income tax and bonuses. The communities around, get to be employed in the oil field and companies, and there would be improved infrastructure in the communities, and district where the oil is discovered.

On a related note, the respondents in the study indicated that the recovery of costs in the oil sector, would ultimately ensure that, there is an improved level of security. The government would be in a better position to avail all the standard measures of security, not only in terms of the human resource, but also in terms of the technology that comes with the advanced security details. This was confirmed by other key informants from the ministry of energy that: "when there is adequate cost recovery in the oil and gas sector, then there is a greater likelihood that the companies will be able to make it very important.

The other respondents interviewed indicated that the benefits that come with the cost recovery can however be expressed in terms of the benefits for the country. Among these, the nation can realize improved infrastructure and improved welfare for the citizens. The infrastructure can be observed in terms of the improved housing and the infrastructure such as the road networks. On the other hand, there will be greater quality of the public services which will be realized timers of services such as reliable water and electricity for the nationals. This was confirmed by the vignette below which suggests that the benefits of recovering the costs, can be realized by the nationals in the entire country: "Once the industry costs are recovered, there will be an improvement in the quality of life that the people lead and the infrastructure as well. So, the development spans across the entire population… The development will also be realized on the national and the international level. …"

Based on the study, the HG starts to benefit a lot from cost recovery provided the IOC do not inflate costs.

6.1.2. Law governing cost recovery

The research on another note discovered that, there is no specific law governing cost recovery in Uganda. The law governing cost recovery is found in several pieces of legislation save for the PSAs that specifically provide for cost recovery, but this is merely an agreement that binds the parties. The Petroleum Act as discussed in chapter five, avails the regulatory framework for the oil industry by giving life to the PSAs. The Constitution on the other hand provides life to all the other Acts of parliament when it places the control of all the natural resources in the government for the people of Uganda. The National Audit Act avails the checks and balances when it runs audits on the cost claims of the oil companies to ensure

there is no inflation of costs. The Petroleum Authority that has to monitor and evaluate the activities of the oil companies. Uganda's institutional framework although adequate in encouraging efficiency through monitoring, the lack of necessary human and financial capacity may undermine and outweigh any would be gains made there from.

Under the PSA arrangement, the HG, the owner of the natural resource, grants rights to the IOC to exploit the oil and gas resources and endures the risks. The IOC provides the necessary capital, technology and the expertise required for the investment in return for a share of oil and gas produced. The concessionary arrangement is where the IOC is given rights by the HG to explore, develop, own and sale oil and gas produced from a particular area for a predetermined period of time. The HG then receives royalties in return. It was discovered that Uganda adopted the PSA arrangement and signed several agreements with different companies and the best agreement so far signed by Uganda is the Model 2012 PSA especially in respect of profit oil for example after deducting royalties and cost oil, Ugandan government receives a maximum of 68.5% and the IOC receives a maximum of 54%. In terms of cost recovery, it is the not a good agreement as the recoverable costs include litigation costs, general and administrative costs, bank interest in case the IOC take a loan, housing and transport allowance for expatriates and employees which is detrimental to the HG. The model 2016 PSA on the hand provides the cost ceiling at 100% which causes the government take to reduce and automatically improve IOC cashflows and profitability. The PSA benefits the IOC on increase in the percentage up to the point when all capital costs are recovered, thereafter any increase has no further economic benefit. In fact, because Uganda's profit oil split is high on average of 73% in favor of HG, during periods of high costs, some fields remain uneconomical even at 100% cost recovery limit.

6.1.3. International legal framework

The research discovered that most countries have their own fiscal regime, but most of them use the PSA Regime and that includes Uganda. Countries like Indonesia, Nigeria, Timor-teste, India, Ghana, and Kenya use PSA arrangement. Some of these countries like Nigeria and Indonesia enacted special law to manage cost recovery and production sharing agreements, and that is after discovering that the IOCs where manipulating the recoverable costs through cost claims, to the detriment of the HG.

The world bank equally has set rules and regulations for the extractive industry and that includes accountability and transparency which is reecho in EITI principles and the 2010 US Wall street Act, which requires that all companies should disclose their contracts in order to be considered in the US security exchange.

6.2. Conclusion

There is no doubt oil was discovered in Uganda and the country has signed several agreements with oil companies. In the exploitation programme for oil and gas resources, the fiscal regime adopted should cater for the interest of the HG and also give incentives to the IOC which was realized in the study. This research set out to analyze the law governing costs recovery in Uganda's oil and gas sector, establish who benefits, looked at the international and national legal framework and carry out a comparative analysis from other jurisdictions. Right from the pre-colonial error to date, there have been existing laws governing cost recovery in Uganda. The problem with these laws is that they are scattered in different pieces of legislation. Even then, one has to be able to understand, what cost recovery is, in order to apply the necessary law. The fiscal regime adopted by Uganda benefits the country in so many ways, it is a regressive system where payments like bonuses, royalties, economic rent and income tax are received by the host country before production starts. When production starts, the host country receives the profit oil and income tax from the oil companies. At the moment, the fiscal regime chosen by Uganda no doubt has its shortcomings like the inflation of costs by the oil companies, and being a developing country, it lacks the resources to tackle these issues. Uganda's oil production is anticipated in the year 2023, the production of the oil would boost its revenues and in turn it would equally be in position to make laws based on knowledge and expertise.

On the issue of access to information and transparency, in as much as the Constitution provides for the right to information, the same has not been implemented in the PSA which is contrary to the supreme law. It is important that the citizens of Uganda access these agreements and any other information relating to the oil and gas industry. This shall enable them put the government to account on the oil of the country.

The non- legal factors have a very big impact on the progress of the oil industry, political interference has for long been a problem and Uganda has a long way to solve the same. The lack of skilled experts in the industry has been a great negative contributor in the oil and gas industry as the oil companies take advantage of these to inflate any cost to their advantage and to the detriment of the country. On the international legal framework, countries adopt different fiscal regimes and some have signed Bilateral Treaties which strictly govern the parties to that Treaty. The world Bank and the IMF have set guideline on the extractive industry which have to be followed by all oil rich countries. In addition, most countries have adopted EITI principles which guide on the issue of transparency and accountability in extractive industry. The countries that have joined EITI have benefited more in terms of attraction of more investment in their extractive industry. The citizens of such countries have been better informed with how their oil and gas industry is being managed and the kind of agreements signed. Uganda joined EITI in 2020, and since then, efforts have been made to sensitize citizens and stakeholders on matters relating to oil and gas in the country, however, the issue of PSAs being put across to the public for transparency has not yet been achieved. UGEITI has also made little progress on the lack of full disclosure of contracts in the oil and gas sector, EITI process has served to identify a baseline of the state of transparency as demanded by the EITI, in turn this sets solid basis for future disclosures of data with the required quality once the oil sector is I full operation, including transportation of crude oil through the East Africa Pipeline and generation of Significant revenue.

The PSA provide for the issue of costs recovery, recoverable costs and nonrecoverable cost, the procedure for recovery which no primary or secondary law provides for. Indonesia and Nigeria as discussed under chapter four, having lost a lot of revenue because oil companies used to inflate the costs, decided to enact a specific law to manage and monitor the cost recovery scheme. This has helped the two countries a lot. Uganda has a lot to learn from these countries, for example Kenya in anticipation of cost recovery in future prepared itself by inviting audit firms to audit all activities of the oil companies to avoid future problems.

Basing on evidence of the findings above, the study concluded that, the law on cost recovery not sufficient in the management of cost recovery, it is found in different pieces of legislation. The Ugandan PSAs on the other hand are relevant as they provide for cost recovery save for the fact that, they have a confidentiality clause which does not allow either party

to disclose the terms of the agreements. The terms in the PSAs analyzed are good for the country save for the terms on cost recovery which are not favorable for Uganda in light of the recoverable costs. This has made it hard for the citizens of Uganda to access the information in the agreement and even hold their government accountable for their natural resources.

6.3. Recommendations

All relevant government agencies should develop technical capacity to perform their monitoring duties. These include Ministry of Energy, Finance, Tax authority, petroleum Authority, Audit offices and Environmental agencies. Technical capacity development should include independent verification of workplans and budgets, reserves appraisal and calculation, production and revenue monitoring and tax audits.

Uganda has to put in place a law that specifically handles issues of cost recovery, what is recoverable and what is not, taking lessons from Indonesia and Nigeria which enacted regulations to manage Production Sharing Agreements and the issues of cost recovery. This will help in better accountability by both government and IOCs.

It is very important to have clearly drafted and more precise provisions on recoverable and non-recoverable costs, like not meeting local content requirement. Likewise, general and administrative overheads should be capped, lack of proper definitions of costs may cause potential for various interpretations and misunderstanding in terms of accounting, reporting and auditing.

Uganda should undertake timely verification and cost recoverable audits at least quarterly instead of biannually.

The Ugandan government should Publish all Production Sharing Agreements signed with Oil and Gas Companies and sales data in an effort to promote the principles already enshrined in the Constitution of Uganda and the National Oil and Gas Policy for Uganda 2008. Making the agreements public shall promote accountability and transparency and the citizens can make sense of their oil sector.

There should be an improved monitoring and evaluation system in terms of activities, right from bidding, licensing to the real operations being handled.

The government should also put in place regulations to ensure that the national oil company is managed with the utmost transparency and independent oversight.

There is need to review the current PSAs on recoverable costs exclude; general administration, housing, ticketing, legal fee unless directly touching the operations of oil and gas, insurance of employee of the oil companies like the expatriate and their family, travel allowances, transportation of employees, and interests from a bank loan. These should be paid by the contractor out of his profit and not at the expense of the state.

Ministry of energy should publish the legal materials on the fiscal regime of the oil and gas sector to enable future researchers carry out research that would add knowledge and evidence for future references. There is also need for the ministry of energy to educate its officers on how to manage information especially if the information required is for purposes of academics. A data base should be created on all the research that has ever been done on the topic, and other topics in oil and gas to avail the same to the public for purposes of research.

Uganda should invest in the training of its own citizens to boost and enable the negotiation of better contractual terms for the country, monitor and evaluate the activities of the IOC.

The government should exclude litigation expenses from the list of recoverable costs in future contracts and development partners like world bank, should also consider providing additional support to help the government accurately assess cost recovery liabilities and avoid losses.

Additionally, development partners could assist the government by providing additional technical assistance for cost recovery and access to information from their home countries.

The study recommends that further research and investigations is carried out in the area of the fiscal regime adopted by the Uganda, which will create more knowledgeable and informed decision making during the enactment of the laws on cost recovery, and negotiating PSAs.

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Appendix I

UGANDA CHRISTIAN UNIVERSITY
A Complete Education for A Complete Person

Academic Research Interview

Dear respondent,

This research interview is intended to satisfy the requirements for a research study at Post Graduate level. The study is about **An Analysis of the Law Governing Cost Recovery in Uganda's Oil and Gas Sector**. You are kindly requested to fill in this research interview. The information provided will be treated with utmost confidentiality.

Section A- Background Characteristics

A1- Institution where you work .....

A2- Position of the Respondent.....

A3- Period of serving in that position.....

Section B: Addressing the Research Objectives

B1-What measures has the government of Uganda put in place to recover her costs that have been incurred in developing the Oil and Gas sector?.....

.....

.....

B2- What measures has the government of Uganda put in place to recover costs that are incurred

by the oil companies in the exploration, development and production of the oil and gas in Uganda? .....

.....

.....

B3- Do you feel these measures in **B2** are efficient? Yes..... No.....

B4. What costs are recoverable by the oil companies? .....

.....

.....

B5- Do you feel that the measures have been very efficient in helping the government to recover her costs in the Oil and Gas sector? Yes……. No……..

Please give a reason for your answer (*briefly*).....

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……

……

B6-What should be done to implement the recovery of costs in Uganda's oil and Gas Sector?

Oil and Gas sector?Yes……. No…….

Please give a reason for your answer (briefly).....

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……

……

C1- What benefits doyou foresee in the recovery of costs from the Oil and gas sector for the government and the people of Uganda?……

.....

……

……

C2- Do you feel that the recovery of these costs would benefit the majority of the Ugandans?Yes……. No…….

Please give a reason for your answer (briefly).....

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……

D1- What is your opinion of Uganda's legal framework regarding the Oil and gas sector?

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D2- How would you compare Uganda's legal framework regarding the Oil and gas sector with the International legal standards for the same sector?

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……

D3- What should be done to ensure Uganda's legal framework is more effective for the recovery of costs (recouping) that the government has incurred in the Oil and Gas sector?

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Thank you very much for your time