

**PUBLIC-PRIVATE PARTNERSHIP (PPP) AND THE PROCUREMENT OF PROJECTS IN THE
OIL AND GAS SECTOR IN UGANDA**

SAMUEL MUSOKE

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GAS OF UGANDA CHRISTIAN UNIVERSITY**

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DECLARATION

I, **MUSOKE SAMUEL**, declare that the work presented in this dissertation is original. It has never been presented to any other University or institution. Where other people's works have been used, references have been provided. In this regard, I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of Master Degree of Laws (Oil and Gas) of Uganda Christian University.

MUSOKE SAMUEL



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Date: 02/05/2024

MAY 2024

APPROVAL

This dissertation has been submitted for examination with my approval as university supervisor.

MUGABI. K. IVAN

Signature:  Date.....02/05/2024.....

(Supervisor)

SUPERVISOR

Dedication

This dissertation is lovingly dedicated to my mother, Nagawa Pertua. Her constant love, encouragement and prayers have sustained me throughout my life.

Acknowledgement

Compiling this task was never a simple task. It involved a lot of sacrifice but more important it is a culmination of efforts by a number of people; to whom, I will eternally be grateful.

My sincere thanks to everyone who contributed towards the successful completion of this research study. I thank all government institutions who participated in this research.

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Lastly, I thank the Almighty God for enabling my efforts and indeed the efforts of all the individuals who have helped in this journey to bear fruit. Without Your Grace, all these efforts would have been in vain.

Abbreviation

MOFPED: Ministry of fiancé planning and economic development

PPDA: Public procurement and disposal of public assets

EITI Extractive Industry Transparency Initiative

NOC: National Oil Company

PPP: Public- Private Partnership

SPSS: Statistical Packages for Social Scientists

UNOC: Uganda National Oil Company

PAU: Petroleum Authority of Uganda

IOC: International Oil Company

ABSTRACT

The study aimed to evaluate Uganda's project procurement procedure for the oil and gas industry. The objectives of the study were; to assess the extent to which Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement, to examine the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda and to examine the factors that affect compliance to PPP procurement practices of oil and gas projects in Uganda. This study's conclusions indicate that the legal framework has omissions and commissions of significant details that have persisted in being unclear, which has limited the exercise's ability to be implemented. In order to have the effective and efficient operation of the national oil and gas sector, there are issues with governance, institutional, economic, and information sharing requirements. Additionally, there are concerns about having a minister draft contracts when they lack the necessary competencies, as well as consequences for failing to share information about aspects of the legal framework that are not specified in the law. The study's second objective revealed that many institutions had not performed their roles and responsibilities to a high standard. The study attributed this to a number of factors, including executive involvement in technical work, inadequate government funding, and a government unwillingness to provide information freely so that monitoring and evaluation could be used to identify and address shortcomings. According to the analysis, there are numerous occasions where excellent practices have not been followed. This is primarily due to the non-closure of information right from applications, the bidding, contracts. A key component of PPP that is essential for value for money is competition, and this has been undermined by the failure to uphold transparency as a good practice.

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CHAPTER ONE: INTRODUCTION

1.0 Introduction

In the past few decades, there has been an increase in the significance of the oil and gas sector in the development of states. Governments have the responsibility of providing services through executing complex projects which are aimed at improving the lives of citizens. In recent times, the scale at which the oil and gas industry has transformed is partly attributable to the changes in technology and the complexity in funding. The existing developments manifest the significance of procurement of projects and the part played by the private sector in the process of procurement. The use of Public-private partnership (PPP) as a procurement system for projects in the oil and gas sector is valuable and favorable in several ways. Embracing the PPP in the procurement of projects is thought to improve the execution of oil and gas projects bearing in mind the factors of success in the procurement strategies which guarantee the most beneficial results to citizens and countries. According to tradition, the execution of complex projects like infrastructure, oil and gas projects and provision of services has been known to be the responsibility of governments either under its agencies or ministries.¹ The governments' responsibility of executing complex projects and also the provision of services has proved to be a big burden and challenge to produce, provide and invest in the oil and gas projects. Regrettably, in many circumstances the governments' interventions in oil and gas projects has often been insufficient. In consideration of the huge amounts of money needed, particularly, in Least Industrialized States (LICs), which suffer from resources problems like finance and experts, there is often a search for solutions to execute oil and gas projects.² This has subsequently made such governments to fall back on PPP strategy which entails a partnership between the public and private sector.

¹ Lee, L.-F. (2009). Sovereignty over, Ownership of, and Access to Natural Resources. In A.D. Tarlock and J. C. Dernbach (Eds), *Environmental Laws and their Enforcement* (Vol. Encyclopedia of Life Support Systems). Oxford: EOLSS Publishers/UNESCO, pp. 1–31.

² Chan, A. P., & Cheung, E. (2013). *Public private partnerships in international construction: learning from case studies* (p. 209). Taylor & Francis.

From the early 1980s, PPP has received doubled consideration as a procurement method in the delivery of public services, infrastructure plus execution of the oil and gas projects.³ The attention given to PPP has led to the execution of projects through PPP as a contracting method to bridge the gap that exists in the oil and gas sector.

Governments often embrace PPP in projects because of two major reasons.⁴ There are those countries that use PPP for fiscal reasons considering the fact that the private sector is accommodating in relation to resource mobilization and funds acquisition. It is further argued that this occurs with less restrictions as is the case with the public sector. This is also advantageous considering the risks faced by governments. On the other hand, countries use PPP because of the wide-ranging know-how, efficiency with which the private sector functions, and the extreme quality of projects or interventions. In some other instances, other states, particularly, the Most Industrialized States (MICs) utilize PPP for improved efficiency of their economies. Comparatively, LICs consider PPP as an option for funds needed for complex projects.⁵

PPP as an action plan for project procurement has been utilized universally in several distinct projects and public services. These can be evidenced in transport, housing, infrastructure, health services and energy projects. PPP has been recognized as a major option for funding and delivery of infrastructure projects.⁶ Importantly also, is the fact that LICs and MICs have progressively utilized PPP as a procurement alternative, though the reasons differ given the required amount of investment and know-how for the dissimilar forms of projects.

It has been argued by Trebilcock and Rosenstock,⁷ that PPP as a procurement option method possesses an extreme ability for the realization of successful delivery of

³ Regan, M. (2012). Public private partnership units. Mirvac School of Sustainable Development, Paper, 96.

⁴ Miraftab, F. (2004). Public-private partnerships: The trojan horse of neoliberal development? *Journal of planning education and research*, 24(1), 89-101.

⁵ Akintoye, A., & Beck, M. (2015). An overview of public private partnerships. *Public Private Partnerships*, 21-38.

⁶ Osei-Kyei, R., & Chan, A. P. (2017). Implementing public-private partnership (PPP) policy for public construction projects in Ghana: critical success factors and policy implications. *International journal of construction management*, 17(2), 113-123.

⁷ Trebilcock and Rosenstock (2015) *Infrastructure public-private partnerships in the developing world: Lessons from recent experience*.

projects both in LICs and MICs. Subsequently, governments have gone ahead to focus on PPP as an important procurement option.⁸

Uganda like so many states in the world that have a vision of developing and improving the lives of its citizens using oil and gas projects has also used PPP in the procurement of oil and gas projects. The discussions on the oil and gas sector have often been shrouded in the financing of the immense projects when the government of Uganda does not have the necessary resources to execute the project to benefit the people of Uganda.⁹ The complex nature of the oil and gas project is reflected in the intensiveness of the capital, the risk that is high, the time in which to start attaining returns and the way the government has handled transparency over contracts.¹⁰ The issues of confidentiality, high technology required in the oil sector, the oil infrastructure like roads, environmental issues and the training requirement which is related to local content are also another reflection of the complexity.¹¹

The Ugandan government has been engaged in the search for international private companies for years and this has had successes and setbacks.¹² This research however assesses the PPP procurement strategy to deal with the complexity of the oil and gas problem faced by the government of Uganda. This encompasses getting international and local private companies involved in the funding side and experience side of the oil and gas sector.

The core of this study was therefore the assessment of the PPP for the procurement of oil and gas projects in Uganda. The purpose of this chapter was to lay the nature and scope of the study and outline the structure. The rationale for an effective and efficient procurement of projects in the oil and gas sector which was the reason for this study was presented. This chapter therefore presents the background of the study that

⁸ Yong et al (2010) Review of studies on the public -private partnerships (PPP) for infrastructure projects.

⁹ Muhangi, G. T. (2019). Secondary education in Uganda.

¹⁰ Tanaka, H. (2014). Toward project and program management paradigm in the space of complexity: a case study of mega and complex oil and gas development and infrastructure projects. *Procedia-Social and Behavioural Sciences*, 119, 65-74.

¹¹ Gabor, D. (2021). The wall street consensus. *Development and change*, 52(3), 429-459.

¹² Nwapi, C. (2016). A survey of the literature on local content policies in the oil and gas industry in East Africa. *SPP Research Paper*, (9/16).

includes; the historical theoretical, conceptual and contextual background, the statement of the problem, the purpose of the study, the specific objectives, the research questions, scope and significance of the study.

1.2 Background to the study

States in the world have encountered a plethora of rivaling needs and in the midst of such needs, states face a situation of limited fiscal space to provide all the required resources. These states often struggle to provide services to their citizens.¹³ One of the most pressing priorities for governments is having efficient energy,¹⁴ sometimes this efficient energy can be provided through clean and fossil energy options. From the time of the industrial revolution, energy has been known to improve production and increase growth of states.¹⁵ In short term, the exploitation of oil and gas, some states can provide finances that can be used for development. This implies the oil and gas provide the backbone for citizens' livelihoods and has provided a foundation for industrial development in major industrialized states.¹⁶ The World Bank estimates that 10-15% of this amount (US\$100 million) is wasted due to weak procurement structures, policies and procedures, as well as failure to impose sanctions for violations of the procurement units.¹⁷ However, PPP as a procurement option method possesses an extreme ability for the realization of successful delivery of projects both in LICs and MICs.

1.3 Statement of the problem

It was discovered that Uganda has almost 1.4billion barrels of recoverable oil¹⁸ however, the degree to which this oil will benefit the citizens of present and future Uganda depends on the procurement of oil and gas projects. This implies that the

¹³ Owusu-Manu, D. G., Adjei, T. K., Sackey, D. M., Edwards, D. J., & Hosseini, R. M. (2021). Mainstreaming sustainable development goals in Ghana's energy sector within the framework of public-private partnerships: challenges, opportunities and strategies. *Journal of Engineering, Design and Technology*, 19(3), 605-624.

¹⁴ Nduhura, A., Lukamba, M. T., Molokwane, T., & Nuwagaba, I. (2022). Non-compete provision: implications for stakeholders of public private partnerships in the energy sector of a developing country. *International Journal of Public Policy*, 16(5-6), 311-332.

¹⁵ Janicke, M., & Jacob, K. (2013). A third industrial revolution. Long-term governance for social ecological change, 47-71.

¹⁶ Mojarad, A. A. S., Atashbari, V., & Tantau, A. (2018). Challenges for sustainable development strategies in oil and gas industries. In *Proceedings of the International Conference on Business Excellence* (Vol. 12, No. 1, pp. 626-638).

¹⁷ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

¹⁸ Sen, Ritwika. (2018) *Enhancing local content in Uganda's oil and gas industry*.

process of procurement of oil and gas projects is handled properly for efficient and effective execution of such oil and gas projects. In spite of the presence of procurement laws and policies, some issues concerning the procurement of projects have already been raised in courts of law. Some concerns about contracts have already been depicted as opaque and others have not been effortlessly given to those who seek those contracts. The demand for information about the procurement process are not given as provided for in the access to information act 2005. Those who seek this information have found it very hard or have failed to get information concerning the procurement of oil and gas projects. According to the Independent News 2022; Ndagire¹⁹ the procurement process that was carried out by the East African Crude Oil Pipeline (EACOP) the Tilenga and Total Energies and Kingfisher by CNOOC were not executed according to the constitution of the Republic of Uganda. Another case was in the Nakawa court about disclosure of contracts.²⁰ With such court cases, it is thought that if an assessment of the PPP procurement of projects is not carried out, not much about the success of the PPP procurement approach may not be known and the oil and gas sector may face more problems. At the moment, several studies that have been carried out have not in detail ascertained the degree of success of the PPP procurement of projects in consideration of the practices in the oil and gas sector. This study therefore is trying to assess the status of PPP procurement of oil and gas projects in Uganda.

1.4 Purpose of the study

The research aim of this study was to assess the process of procurement of projects in the oil and gas sector in Uganda

1.5 Specific objectives of the study

- i. To assess the extent to which Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement
- ii. To examine the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda.

¹⁹ Ndagire, s. (2021). The East African Crude Oil Pipeline: A critical Analysis of the Procurement Process and its Implications for the Affected Communities.

²⁰ Charles Mwanguhya Mpagi and Izama versus the Attorney General, Miscellaneous Cause No.751 of 200.

- iii. To examine the factors that affect compliance to PPP procurement practices of oil and gas projects in Uganda

1.6 Scope of the study

1.6.1 Content scope

In terms of content scope, the study will be confined to the independent variable and the dependent variable which are PPP as an approach to the procurement of oil and gas projects in Uganda.

The study was therefore limited to; assess the extent to which Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement, examine the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda and examine the factors that affect compliance to procurement of oil and gas projects in Uganda.

1.6.2 Geographical scope

The study was conducted in selected institutions which are in the oil and gas project. Kampala and Masindi were preferred for this study as the areas or districts that have all the information which is connected to the execution of the oil and gas project.

1.6.3 Time scope

Regarding time frame scope, the study was restricted to a period of 10 years that is from 2013- 2023. This period has experienced a lot of activity since the 6th January 2006 milestone which was marked by Mputa 1 was announced as a commercial oil well.²¹ The focus of the study was to assess the PPP approach in the procurement of oil and gas projects in Uganda.

1.7 Research questions

- i. To what extent does Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement?
- ii. What are the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda?

²¹ Van Alstine, J., Manyindo, J., Smith, L., Dixon, J., & AmanigaRuhanga, I. (2014). Resource governance dynamics: The challenge of 'new oil' in Uganda. *Resources Policy*, 40, 48- 58.

- iv. What are the factors that affect compliance to PPP procurement practices of projects in the oil and gas projects in Uganda?

1.8 Research hypotheses

- i. Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement
- ii. There are clear the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda
- iii. There are no factors that affect compliance to PPP procurement practices of projects in the oil and gas projects in Uganda

1.9 Theoretical framework

The stakeholder theory as developed by Edward Freeman, is a theory which features a pluralistic description. The stakeholder theory is built on the theory that to perform effectively and efficiently managers have to give consideration to the wide spectrum of stakeholders²² for example, lobbyists, local communities and competitors, for example, the different financiers of PPP in the oil and gas sector. Another premise on which the stakeholder theory was built is that managers have a duty to stakeholders who are not only shareholders²³ but also secondary stakeholders. The stakeholders in this industry are diverse and include, among others, governments, local communities, investors, regulatory agencies, environmental organizations, and indigenous people. The operational and regulatory environments that oil and gas firms encounter are directly impacted by the unique interests, expectations, and concerns that each stakeholder group has.²⁴

²² Jones, T. M., Wicks, A. C., & Freeman, R. E. (2017). Stakeholder theory: The state of the art. *The Blackwell guide to business ethics*, 17-37.

²³ Bowie, N. E. (2012). Stakeholder Theory: The State of the Art, R. Edward Freeman, Jeffrey S. Harrison, Andrew C. Wicks, Bidhan L. Parmar, and Simone de Colle (New York: Cambridge University Press, 2010). *Business Ethics Quarterly*, 22(1), 179-185.

²⁴ Gonzalez, A., Mabon, L., & Agarwal, A. (2021). Who wants North Sea CCS, and why? Assessing differences in opinion between oil and gas industry respondents and wider energy and environmental stakeholders. *International Journal of Greenhouse Gas Control*, 106, 103288.

Stakeholders in the oil and gas industry are people, organizations, or other entities that have the potential to influence or be impacted by the decisions, actions, and operations of oil and gas firms.²⁵

Those with a financial interest in the success and profitability of oil and gas enterprises, including individuals, financial institutions, and organizations. Employees directly engaged by oil and gas firms, as well as labour unions fighting for their rights and promoting decent pay, secure employment, and other benefits.²⁶ Organizations that supply products, services, and knowledge to support oil and gas activities include logistics organizations, engineering firms, and equipment makers. Groups monitoring and possibly contesting the environmental effects and business activities of oil and gas companies are those that promote environmental preservation, sustainability, and social responsibility.²⁷

An organizational decision-making process should take stakeholders' interests, concerns, and expectations into account, according to stakeholder theory, which offers a framework for comprehending and managing relationships with stakeholders. Beyond just optimizing shareholder value, corporations have a moral duty to take into account the interests of all stakeholders. It places a strong emphasis on upholding moral obligations and pursuing sustainable long-term results. Focuses on examining the real interactions that exist between organizations and stakeholders, recognizing power structures, conflicts of interest, and methods for handling the various interests of stakeholders.²⁸

²⁵ AlNoaimi, F.A., & Mazzuchi, T.A. (2021). Risk management application in an oil and gas company for projects. *International Journal of Business Ethics and Governance*, 1-30.

²⁶ Normann, H.E., & Tellmann, S.M. (2021). Trade unions' interpretation of a just transition in a fossil fuel economy. *Environmental Innovation and Societal Transitions*, 40, 421-434.

²⁷ Okeke, A. (2021). Towards sustainability in the global oil and gas industry: Identifying where the emphasis lies. *Environmental and Sustainability Indicators*, 12, 100145.

²⁸ Bahadorestani, A., Naderpajouh, N., & Sadiq, R. (2020). Planning for sustainable stakeholder engagement based on the assessment of conflicting interests in projects. *Journal of Cleaner Production*, 242, 118402.

Establishing and maintaining strong relationships with stakeholders in the oil and gas business requires transparent and consistent communication in order to manage expectations and establish trust.²⁹

In order to lessen potential mistrust or false information, transparency helps to increase trustworthiness and decrease uncertainty. Messages from various stakeholder groups should be customized to meet their unique interests, worries, and preferences. Don't use too technical or complicated terminology; instead, speak in an understandable and straightforward manner. To prevent confusion or confusing signals, be consistent in your communication styles and messaging.

This theory encourages stakeholders' analysis and then establishes and governs the PPP evaluation as PPP project accomplishment as an aggregation of single stakeholders' achievements. The stakeholder theory presupposes that the evaluation of any project has to make considerations of all the stakeholders.

The theory assumes that there is the creation of value for every stakeholder but not giving all the focus on shareholders. PPP in the setting of the stakeholder theory explains the mechanism of procurement contracting in projects. This entails a sustained relation between the public and the government in the position of the procuring or purchaser and the different private business companies as the entities that design, construct and maintain the infrastructure and then give the services to the citizens or the consumers in a given sector. It is hypothesized that the contract can be modelled along different forms where there is the sharing of benefits between the stakeholders. This further emphasize the proportionate sharing of benefits in relation to the resources that were invested, responsibilities and the risks that were involved. Consequently, the public services and the provision of energy of infrastructure can result into a situation of win -win. The stakeholder theory assumes that the partners that are identified form active connections in a given PPP project like the oil and gas project for example; the government of Uganda, the private sector, the parliament of Uganda, the citizens,

²⁹ Shah, S.Q.A., Lai, F.W., Shad, M.K., & Jan, A.A. (2022). Developing a green governance framework for the performance enhancement of the oil and gas industry. *Sustainability*, 14(7), 3735.

environmentalists Uganda Revenue authority (URA), ministry of energy and Mineral, financial institutions and others.

Important also is the fact, the proponents of the theory suggest that the involvement and the commitment of the parties in the partnership change as the time goes by since the environment created under PPP is long standing. The stakeholder theory is appropriate in the explanation of the PPP as an instrument procuring project of the oil and gas project where different private businesses can be stakeholders in the design of the project and its execution. These private firms will be seen as partners with the government of Uganda in the oil and gas project and how the benefits can be shared as per the contracts signed with the government of Uganda.

10.1 Significance of the study

Acquisition of knowledge: There are four categories of stakeholders likely to benefit from this study; first there is the private sector who the study findings may equip with right knowledge. The study is expected to offer the private sector with ideas about PPP conceptualization. The study is also expected to guide the private sector on how to enter into partnership with the government.

Decision making: Secondly the government can gain a clear view of the necessity and advantage of having PPP and training so that they can make informed decisions.

Insight into success factors: Thirdly, the project managers might gain more insight into the factors that influence the successful execution of the projects and the perceptions towards the projects by the different stakeholders.

Policy development: Finally, policy makers and contract designers may improve on the policy planning to cater for future development for PPP. In addition, the study findings could help parliament of Uganda to identify the strategies that could be necessary to attract private investors and provide an aligned approach that encourages governments to have choices which do not compromise but promote the interests of the state.

10.2 Justification of the study

Among the objectives of the National Development Plan (MFEPD, 2010) is to grow the stock and quality of strategic infrastructure to quicken the country's position if it has to compete. Another important objective is on productivity and enhance the instruments for quality, effectiveness and service delivery that is effective. This is expected to be gained through preparing a mechanism; guaranteeing procurement of oil and gas projects and value for money in an environment that is suitable for the operation of PPP system. While it is thought that failure of projects arises out of states which do not guarantee clear and transparent procurement and effectiveness and efficiency, it was also thought that PPP is an approach which explains the success of project success mainly in least industrialized states.³⁰ This idea has not been widely researched on in the context this study is proposing and there is no empirical evidence to that effect yet.

³⁰ Osei-Kyei, R., & Chan, A. P. (2017). Developing a project success index for public–private partnership projects in developing countries. *Journal of Infrastructure Systems*, 23(4), 04017028.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This chapter presented the review of literature to the study on public-private partnership (PPP) as an approach in the procurement of projects in the oil and gas sector in Uganda. It presented the literature as authored by other researchers on the subject of PPP in relation to the procurement of oil and gas sector. This review of related literature is presented according to the study objectives which include; assess the extent to which Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement, examine the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda and examine the factors that affect compliance to procurement of oil and gas projects in Uganda.

2.1 Theoretical Review

Stakeholder theory as developed by Freeman Edward in 1984 is a theory which has been referred to in the explanation of stakeholders in projects literature. Despite the fact that the stakeholder theory has been used in the description and elucidation of PPP and the stakeholders in complex projects, it is important to mention that the theory has been critiqued for procedural, time and effectiveness. Those that have critiqued this theory have had their arguments grounded on the emphasis it puts on sharing of benefits from the projects and giving less focus on the partnership and how the project is managed for the social good of the citizens in a country.³¹

In some other instances, critique of the stakeholder theory is done on the fact that the theory holds that ethical business idea is built around the inclusion of the thinking that a stakeholder is an end and not a means. The general company value conception interest is built around the stakeholders' willingness to get involved in projects to strengthen the process of changing materials into products and services. The critiques argue that the stakeholder theory minimizes the long-term partnership is grounded on a well-run business which does not ignore the stakeholders. The rejection of a cardinal

³¹ Freeman, R. E., Harrison, J. S., & Zyglidopoulos, S. (2018). Stakeholder theory: Concepts and strategies. Cambridge University Press.

part in business makes the business a value of serving the stakeholders and subsequently cuts down on the advantages of PPP.³²

2.2 Empirical literature

2.2.1 Oil and gas legal and policy frameworks that reflect the best practices

One of the highly regulated industries or sectors is the oil and gas industry. It is legalized at several stages of management or authority as deemed best for the benefit of the citizens and the state³³ Different states pass distinct legislation that impact the oil and gas business. Oil and gas laws are principally meant to strike a balance between the different interests of the different stakeholders, their entitlements, duties and legal responsibilities.³⁴ Some of these stakeholders include the states that own the oil and gas, the citizens, the stakeholders that give the capital, human and finance and those who are involved in the operations.

States often aim at providing the fundamental setting for rules that control oil and gas operations in the host state, to regulate the activities and business as they are executed by stakeholders from the domestic and international arena.³⁵ These regulations specify the principle administrative and fiscal policies, or standards for the investment in the oil and gas sector. The oil and gas laws control and emerge from the wide background of national and international public law.³⁶

It is important to bring out the fact that, in a state, the national laws will form the basis to the oil and gas contracts and direct the legal and the business connection between the state and other stakeholders that provide capital or expertise.³⁷ On the

³² Freeman, R. E., Phillips, R., & Sisodia, R. (2020). Tensions in stakeholder theory. *Business & Society*, 59(2), 213-231

³³ Lowe, J. S. (2014). *Oil and gas law*. Thomson/West.

³⁴ Tumusiime, T. R. (2021). *Assessment of National and International Legal Frameworks for Ensuring Socio-Economic Resilience and Environmental Protection in Uganda's Petroleum Industry*. Nottingham Trent University (United Kingdom).

³⁵ Calder, M. J. (2014). *Administering fiscal regimes for extractive industries: a handbook*. International Monetary Fund.

³⁶ Tumusiime, T. R. (2021). *Assessment of National and International Legal Frameworks for Ensuring Socio-Economic Resilience and Environmental Protection in Uganda's Petroleum Industry*. Nottingham Trent University (United Kingdom).

³⁷ Luoga, F. D. (2016). Challenges in Setting up Legal Frameworks for Natural Resources Governance in the East African Countries. *The African Review: A Journal of African Politics, Development and International Affairs*, 1-16.

other hand, the oil and gas law, analyzed from the international perspective, does not have distinct sources and law creation approaches that emerge solely for oil and gas issues.³⁸ It is however crucial to mention that there exists numerous recognizable sources of international oil and gas legislation which can be found in customary law,³⁹ declarations, multilateral conventions and treaties. There also exists bilateral investment treaties which regulate distinct investment issues in the different states.⁴⁰

2.2.2 Structuring regulatory framework for oil and gas laws

The oil and gas legal framework comprise legal instruments that include; primary, subordinate and administrative assessments and decisions made by government officials using policy directions. The oil and gas legal framework formulated by states is a basic instrument that is meant for the administration of oil and gas undertakings in the state in question. Subsequently, the legal framework created by a given state can either be a rule-based legislation or an objective-based legislation.⁴¹

According to Hunter,⁴² the rule-based legal framework has their basis in the statutorily deep-rooted laws meant to guide the oil and gas undertakings. It is characteristic for these rules to demand for new regulations from time to time when there is a new situation that has arisen. However, rule-based legislation is known for having legal irregularities and can also lead to inflexibilities and can expose the state to creative compliance such that new situations can be adjusted to (Frantz, Pascal and Instefjord.⁴³

Objective-based legislation on the other hand, is not detailed, not prescriptive but is formulated on generally stipulated objectives or principles. It is on such principles and objectives that standards are set by which stakeholders execute their processes and it

³⁸ Bentham, R. W. (1987). *The International Legal Structure of Petroleum Exploration*. In *The International Oil Industry: An Interdisciplinary Perspective* (pp. 57-66). London: Palgrave Macmillan UK.

³⁹ Shihata, I. E., & Onorato, W. T. (1996). The joint development of international petroleum resources in undefined and disputed areas. *ICSID Review*, 11(2), 299-317. SSRN: <https://ssrn.com/abstract=2561370> or <http://dx.doi.org/10.2139/ssrn.2561370>.

⁴⁰ Schwebel, S. M. (2015). In defense of bilateral investment treaties. *Arbitration International*, 31(2), 181-192.

⁴¹ Hunter, T. S., & Campin, D. (2020). Regulating the disposal of produced waters from unconventional oil and gas activities in Australia. *Regulating Water Security in Unconventional Oil and Gas*, 243-266.

⁴² Hunter, T. S., & Campin, D. (2020). Regulating the disposal of produced waters from unconventional oil and gas activities in Australia. *Regulating Water Security in Unconventional Oil and Gas*, 243-266.

⁴³ Frantz, Pascal and Instefjord, Norvald, *Rules vs Principles Based Financial Regulation* (November 25, 2014).

is on such grounds that decisions are made by officials of government agencies and authorities or departments.⁴⁴ Dealing with this objective-based legislation implies that there is often recommendation to the general laws that stipulate the basic duty that the stakeholders must abide with in the execution of their operations. It is therefore important to state that the objective-based legislation is focused on the implementation of policy objectives utilizing the extensive principles instead of particular laws.⁴⁵

The choice that the state makes, whether rule-based or objective-based should not only allow the government to guide or control the oil and gas undertakings, it should also act in response to the exceptional concerns that often emerge in the control of the oil and gas project execution. The long-standing partnership between the state and other stakeholders in an unpredictable, transformative market and the need for predictability is determined by the state's choice of legislation.⁴⁶ The choice must also increase the certainty that private companies see in their partnership with governments when engaging in oil and gas projects.

Importantly, the response with which the choice of legislation selected by the government responds to issues must be predictable, transparent and must be reliable in relation to the oil and gas overall aims of the state. Subsequently, the choice of legislation framework that is created by the state must be a function of what a government wants to achieve in the administration of the oil and gas projects.⁴⁷ Additionally, it is imperative to state that what governments wants to achieve in the management of oil and gas projects is spelt out in its oil and gas policy. This implies that the oil and gas legal framework that is formulated by the state has to be aligned to the achievement of that outcome.⁴⁸

⁴⁴ Claire, A. B. (2017). Rules of Engagement: A Review of Regulatory Instruments Designed to Promote and Secure Local Content Requirements in the Oil and Gas Sector.

⁴⁵ Carpenter, C. (2022). Regulator Analyzes Australia's Decommissioning Challenge. *Journal of Petroleum Technology*, 74(12), 51-54.

⁴⁶ Hunter, T. S., & Campin, D. (2020). Regulating the disposal of produced waters from unconventional oil and gas activities in Australia. *Regulating Water Security in Unconventional Oil and Gas*, 243-266.

⁴⁷ Cutler, J. (2011). Montara: broader implications. *The APPEA Journal*, 51(2), 721-721.

⁴⁸ Goldstein, B. A. (2018). Accelerating oil and gas investment and reserves by design. *The APPEA Journal*, 58(2), 557-561.

2.2.4 Essential components of the oil and gas legal framework

There have existed efforts to harmonize and sum up the components that should be believed very crucial in the oil and gas industry. However, there has been a tendency to often bring out the common components, which implies that there are many elements. It therefore becomes important for governments to identify the components that they need to regulate depending on what emerges from the state's strategic assessment.⁴⁹ The identification of the components is after the thorough consideration and comprehension of the aspects and drivers of competition in the state's oil and gas sector.

There is also a thinking that a characteristic downstream oil and gas sector mapping often assists in the identification of the representative oil and gas sector issues and value drivers. It is at this level that strategic assessment can be done to identify the components in the legal framework which can include;

2.2.5 State property in oil and gas

One of the most primary legal aspects guiding the links shared by human kind and natural environment is ownership and sovereignty. In relation to oil and gas these two aspects cannot be separated.⁵⁰ In this case sovereignty is linked to the correlation between the state and its regulation of its oil and gas resource. On the other hand, ownership links the association of states and private entities on the subjects of production or drawing out of oil and gas. This further captures the right to the gains, profits and benefits from the oil and gas extraction. Subsequently, the component of ownership in the oil and gas legal framework is very crucial.⁵¹ This is grounded in the theory of property literature by Locke. This theory supports the consent of the oil and gas owners who decide to form legal, executive and judicial powers over them even in

⁴⁹ Gumede, N. DESIGNING AN OIL REGULATORY FRAMEWORK.

⁵⁰ Lee, L.-F. (2009). Sovereignty over, Ownership of, and Access to Natural Resources. In A.D. Tarlock and J. C. Dernbach (Eds), Environmental Laws and their Enforcement (Vol. Encyclopedia of Life Support Systems). Oxford: EOLSS Publishers/UNESCO, pp. 1–31.

⁵¹ Claes, D. H. (2018). The politics of oil: controlling resources, governing markets and creating political conflicts. Edward Elgar Publishing.

the partnership with private entities.⁵² It is therefore clear that any stipulation conflicting in any way with other provisions in other laws or rights given or entrusted under that in removal of this are clearly overtaken by the provision showing ownership in the oil and gas law. This is in line with international practice and standards in the oil and gas legislation.⁵³

2.2.6 Competent authority

States can organize, arrange and legislate on their oil and gas depending on the unique conditions which exist in the state. The activities around oil and gas procurement of project, exploitation and development depends very much on the competence of the authority in the state.⁵⁴ It has often been argued that having a law which identifies a sole government agency to execute the government's oil and gas policy is appropriate.⁵⁵ It is this authority or government agency that negotiates and contracts investors or stakeholders on behalf of the government.⁵⁶ Further still, a good oil and gas legislation has an element of an authority which regulates, administers under the policy and compliance aspects in the event that the execution of the contracts has been scheduled.

Having a sole competent authority in the oil and gas legislation implies that the partners in the procurement of projects process will be convinced that there exists a sole point of contact in the state of operation. Different authors like Andreadis,⁵⁷ have argued that it would be suitable to have a ministry or an agency that possesses recognizable skills and knowledge with accumulated experience. It has been evidenced that several

⁵² Moore, M. (2015). A political theory of territory. Oxford University Press.

⁵³ Onorato, W. T., & Park, J. J. (2001). World petroleum legislation: Frameworks that foster oil and gas development. *Alta. L. Rev.*, 39, 70.

⁵⁴ Andreadis, I. (2015), Procurement and Contracting in the International Oil and Gas Upstream Sector.

⁵⁵ Onorato, W. T., & Park, J. J. (2001). World petroleum legislation: Frameworks that foster oil and gas development. *Alta. L. Rev.*, 39, 70.

⁵⁶ Caniëls, M. C., Gelderman, C. J., & Vermeulen, N. P. (2012). The interplay of governance mechanisms in complex procurement projects. *Journal of Purchasing and Supply Management*, 18(2), 113-121.

⁵⁷ Andreadis, I. (2015), Procurement and Contracting in the International Oil and Gas Upstream Sector.

states have used the ministry of energy as the authority to achieve the objectives through oil and gas exploration, development and production.⁵⁸

The agency or authority created should be well defined in the oil and gas legislation about the authority to distribute possessions to the prospective stakeholders seeking licenses in the procurement process. It is also good practice that the law does not allow the authority to compete for land since this can send wrong signal for stakeholders wishing to invest.⁵⁹ In the event that the agency or authority defined in the law, in or assistant to the ministry of energy, as a selected authority can be given authority to administer contracts. Additionally, it can be made to execute technical dealings, and carry on government technical functions in the oil and gas procurement of projects and not the sovereign, supervisory and business roles.⁶⁰

2.2.7 Oil and gas operations

Oil and gas operation is another indispensable provision or element often recognized as having an aim which is two-fold. On the one hand, it guarantees that the oil and gas undertakings are executed specifically below the permit or license that has been given under the procurement process by a competent authority. Further still this implies that the form and terms under which the license was granted are in compliance with the oil and gas law, regulations and in certain circumstances the oil and gas agreements.⁶¹ This also means that the terms under which the stakeholders are going to operate are coherent and regular considering the stipulated obligations in the oil and gas law and regulations.

In addition, the oil and gas provision is geared towards giving the government or the state the highest conceivable elasticity in the execution of oil and gas operations. Many times, this is often thought to be possible using an authority provided in the law as a national oil company (NOC), a private stakeholder or entity or through a private public

⁵⁸ Ruqaishi, M., & Bashir, H. A. (2015). Causes of delay in construction projects in the oil and gas industry in the gulf cooperation council countries: a case study. *Journal of management in engineering*, 31(3), 05014017.

⁵⁹ Andreadis, I. (2015), *Procurement and Contracting in the International Oil and Gas Upstream Sector*.

⁶⁰ Caniëls, M. C., Gelderman, C. J., & Vermeulen, N. P. (2012). The interplay of governance mechanisms in complex procurement projects. *Journal of Purchasing and Supply Management*, 18(2), 113-121.

⁶¹ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

partnership. This is further done in consideration of the limits of international customs and benchmarks, values in order to convince private business stakeholders to invest in a conducive oil and gas environment.

2.2.8 Oil and gas agreements

The component of agreements is another important provision of the oil and gas legislation. It is under this provision that the notion and draw around of a model contract can be initiated and established. It can be stated that it is under this section of the oil and gas law that the authority is given power to come up with model contracts to the prospective partner stakeholders.⁶² The model contracts therefore become the initial stage for negotiations of an agreement. The authority sometimes produces a sample copy as an exhibit. The format model contract produced by the authority therefore becomes part of the oil and gas law.⁶³

Under the component of agreement, there is often the consideration of the roles of the authority deemed competent and its conducting of negotiations and accomplishing oil and gas agreements either without intermediaries or with intermediaries. There is also the role of overseeing oil and gas operations under the procured projects, cancelling or halting oil and gas agreements after noticing non-compliance, offering non-exclusive prospecting certifications. Such roles are grounded on the oil and gas law and how it stipulates the interaction with the oil and gas law, how it states criteria of giving permits for the procured projects which are previously subject to the oil and gas law on operations.⁶⁴ The critical issue here is that there are no conflicts.

⁶² Husna, C. A., Hastuti, L., & Prihandono, I. (2017). Adaptation of Contract Models of Oil and Gas: A Comparative Study. *Hang Tuah Law Journal*, 56-75.

⁶³ Hendalianpour, A., Liu, P., Amirghodsi, S., & Hamzehlou, M. (2022). Designing a System Dynamics model to simulate criteria affecting oil and gas development contracts. *Resources Policy*, 78, 102822.

⁶⁴ APMG-International. (2016). *The APMG Public-Private Partnership (PPP) Certification Guide*, Chapter 8: Managing the Contract–Operations and Hand-Back.

2.3 Institutional responsibilities on the procurement of projects in the oil and gas sector

According to APMG-International,⁶⁵ once the PPP framework has been established with the guidance of the legal framework, there is then a clear indication of line agencies and the stakeholders in the private sector. This process also describes under what standard PPP process of procurement is going to be judged and assessed. It is under such an arrangement that the private sector stakeholders view how the likely partners are going to be engaged in the whole process. Without clear procurement guidelines, it becomes clear that there are chances that disputes will characterize the decisions on awards.⁶⁶

It can be argued that once the legal framework is clear and the competent authority has been well provided for in the oil and gas legislation, then the stakeholders can be sure that “model” and “standard” contracts will guarantee consistency.⁶⁷ Subsequently, the designing of PPP contracts is well planned for and this is a signal that the markets will get clear messages. However, this implies that institutions and their responsibilities have also been put in place.

The roles which the different agencies or institutions play at every stage or phase is often described in the oil and gas legislation. This is what is referred to in institutional responsibilities for PPP. It is important to state though, that institutional organization or arrangement is often distinct from state to state.⁶⁸ The unique necessities of the PPP setting or system determine the institutional responsibilities considering the previous institutional functions roles and capacities.

2.3.1 Common principles for effective design of institutional arrangement for PPPs

There have been general principles that some governments have used in guiding the formulation of institutional arrangements and these include principles like; putting up

⁶⁵ APMG-International. (2016).

⁶⁶ OECD, (2014) Overview of Public Governance of Public-Private Partnerships in the Russian Federation, Available from www.pppi.ru/sites/all/themes/pppi/img/zana3.pdf. Accessed 15th December 2023.

⁶⁷ Awodele, O. A. (2012). Framework for managing risk in privately financed market projects in Nigeria (Doctoral dissertation, Heriot-Watt University).

⁶⁸ OECD, (2014) Overview of Public Governance of Public-Private Partnerships in the Russian Federation.

institutions and responsibilities grounded on the present responsibilities and processes, designing institutional architecture correspondent with the first projects, allocating responsibilities to agencies, ministries or authorities that possess the motivation, evidence or facts, know-how to execute the responsibilities and unmistakably outline or explain any institutional links and lastly get around the creation of similarities and extra harmonization or coordination necessities.

The justification for using the current responsibilities and processes is key since there is often the realization that there are some sector agencies or ministries carrying out responsibilities of planning and project development. It therefore becomes inevitable for such agencies to continue executing such roles. The provision PPP as a fresh item and financing option become an addition to what such agencies have been undertaking. In the same way the prevailing public sector rulebooks and public finance guidelines lay the foundation of the framework which is adapted or customized to permit and encourage the advancement of PPP.⁶⁹

2.3.2 Common responsibilities

In the formulation of the PPP framework, governments have made considerations over the key roles and the identification of the prevailing institutions. Once they are known to be in place, they are given responsibilities that are appropriate for every agency or institution. Some of the common responsibilities comprise the following

2.3.3 Identification and procurement of projects

One of the most important responsibilities is the propelling forward the PPP projects. This comprises of identification of likely projects, assessing or evaluating, putting together (structuring) the preparation or drafting of the contract, bidding on the oil and gas project and lastly but not least the management of the contract in the post signing period.⁷⁰

⁶⁹ APMG-International. (2016). The APMG Public-Private Partnership (PPP) Certification Guide. Chapter 8: Managing the Contract–Operations and Hand-Back.

⁷⁰ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

2.3.4 Guarantee of coordination and the most suitable practice approaches

Important also is the guaranteeing of coordination and having the best practice methods. This implies that the guaranteeing the right course to be followed is a responsibility that is among the responsibilities of some of the agencies.⁷¹ This is followed by the analysis of a planned or projected PPP up to the time it is accomplished. It is imperative to state that this responsibility calls for agencies or ministries or institutions that are required to observe and give remarks about the progress of a project do have an opportunity. Subsequently, the agency that is mandated to approve a project or any other undertaking gets the facts and evidence required for the final thorough decision.⁷²

2.3.5 Public financial management

There has been discussion over responsibilities of public finance management by authors like Akintoye, A., & Beck, M.⁷³ This responsibility guarantees that adequate fiscal space is available for the funding of direct liabilities. This does not only take care of an environment in which risks apportioned to the public sector take shape and transform into fiscal expenditure.⁷⁴

2.3.6 Approving of projects

According to Van Thuyet, Ogunlana, & Dey,⁷⁵ giving approval of procured projects is a critical responsibility of institutions. This very much depends on the oil and gas legislation that stipulates the authority of an agency which is supposed to give a go ahead for the oil and gas project to advance. One of the major initiatives of agencies Al Subaih,⁷⁶ has shown that there are factors that delay approvals of oil and gas projects. This implies that information given by other institutions is vital in the oil and

⁷¹ APMG-International. (2016). The APMG Public-Private Partnership (PPP) Certification Guide.

⁷² APMG-International. (2016). The APMG Public-Private Partnership (PPP) Certification Guide.

⁷³ Akintoye, A., & Beck, M. (2015). An overview of public private partnerships. *Public Private Partnerships*, 21-38.

⁷⁴ Irwin, M. T. C., Mazraani, S., & Saxena, M. S. (2018). How to control the fiscal costs of publicprivate partnerships. International Monetary Fund.

⁷⁵ Van Thuyet, N., Ogunlana, S. O., & Dey, P. K. (2019). Risk management in oil and gas construction projects in Vietnam. In *Risk Management in Engineering and Construction* (pp. 225-247). Routledge.

⁷⁶ Al Subaih, A. (2015). Integrated project delivery: A paradigm shift for oil and gas projects in the UAE and the Middle East region. *Oil and Gas Facilities*, 4(04), 064-077.

gas sector if the responsibility of approval is to be fulfilled. This is further discussed by Bernauer⁷⁷ when he argued that projects should not be approved or let to go ahead if the claim negotiations are not well finalized with the responsible institutions.

2.3.7 Institutions mandated to carry out responsibilities

At the early stages of PPP, the sector agencies and ministries in some states are often without expertise that are required in the identification and procurement of projects to a successful accomplishment. In the same way those sector agencies sometimes lack the knowledge and skills in the engagement involving the private stakeholders.⁷⁸ Further still, these same agencies do not have know-how of handling demanding analysis of projects and project procurement. It can also be argued that these agencies do not have the culture of putting emphasis on attaining value for money for the state and its economic and social interests. All these inadequacies occur in an environment which require harmonization among the different state agencies.⁷⁹ However, the existing agencies may not have the ability to provide that coordination and therefore other entities are formed to fill the gap. Some of the institutions include;

2.3.8 Specific and Specialized PPP Units

Several states that have been successful in PPP programs have created specific specialized units to develop, oversee and coordinate PPP procurement of projects.⁸⁰ The roles of these units have been a mechanism that has promoted and advanced PPP solutions. These units have demonstrated that they are key in enhancing internal capacity and have helped build a pool of expertise that can be available. It is these units that have led to the accumulation of know-how through training. Such units in some states provide assistance to authorities when it comes to contracts in the execution of PPP. These units are usually formed as additional parts of the core

⁷⁷ Bernauer, W. (2020). Producing consent: How environmental assessment enabled oil and gas extraction in the Qikiqtani region of Nunavut. *The Canadian Geographer/Le Géographe canadien*, 64(3), 489-501.

⁷⁸ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

⁷⁹ HM Treasury (2012) *A new approach to public private partnerships*. Crown, London, p 15.

⁸⁰ Verougstraete, M. (2017). *PPP policy, legal and institutional frameworks in Asia and the Pacific*.

institutions for example ministry of energy. However, such units can be a financial burden in the event that the procured projects are not sustainable.⁸¹

2.3.9 External PPP contract and transaction advisors

The attainment of objectives of PPP in the procurement of projects in the oil and gas sector has made governments to look for external PPP contract and transaction advisors.⁸² This is not only the case with states that do not have experience, but also with those with long oil and gas PPP projects who may find need for expertise and skill in some areas. These advisors are hired to fill the gap in the in-house expertise in areas like technical tasks, for tasks like undertaking feasibility studies and the formulation of PPP draft contracts. It is also imperative to state that the degree or magnitude and nature of outside advisors depends on the course of the PPP program. Examples in Netherlands show that external advisors from the United Kingdom were part of the 75% external advisors who had more expertise than the internal expertise in Netherlands.⁸³ The Indian government of India also hired external advisers after the establishment of the PPP program for best practices.⁸⁴

2.3.10 Inter-departmental committees to supervise PPP transactions

Several states like Jamaica, British Columbia, Canada have realized the importance of inter-departmental committees which comprise of representatives from ministries of energy and finance and the legal departments.⁸⁵ The justification for such committees is very much in the need to avoid inefficiencies and a cumbersome process. It is believed that without such committees, there is a likely hood of bureaucratic inhibitions in the process. Therefore, such committees are intended to guarantee harmonization among

⁸¹ Verougstraete, M. (2017).

⁸² Khatleli, N. (2020). Assessing the Effectiveness of Transaction Advisors in Mitigating Information Asymmetry in South African PPP's.

⁸³ APMG-International. (2016). The APMG Public-Private Partnership (PPP) Certification Guide, Chapter 8: Managing the Contract–Operations and Hand-Back.

⁸⁴ Devkar, G. A., & Kalidindi, S. N. (2013). External agencies for supplementing competencies in Indian urban PPP projects. *Built Environment Project and Asset Management*, 3(1), 58-73.

⁸⁵ APMG-International. (2016).

agencies and the team created leads to a pool of skilled professionals who strengthen the PPP transactions. These can be given names depending on the interests of the state for example in Jamaica they are referred to as “Enterprise Teams” while in Canada they are “steering committees” which are created in the pre procurement period.⁸⁶

2.3.11 Specialist entities in different executing responsibilities

According to Zevallos Ugarte⁸⁷ the specialist institutions perform specialized responsibilities for the execution of the PPP transactions. He further states that in Peru, the procurement agency plays an important role in the carrying out of the PPP program while the sector regulatory entity is responsible for the monitoring of the private partners to see that they stick and comply with the agreed upon PPP contract according to the laws of Peru.

2.3.12 Central institutions

Among the several institutions that have responsibilities are the central agencies which sometimes are referred to as “whole government”. These agencies are not sectoral in nature when they are performing their functions. Such agencies comprise the ministry of finance, the second important agency is the attorney general which is an institution which has the duty under which legal compliance is found. It has been argued that these institutions have a characteristic of having to make observations or get information from sectoral agencies and make remarks on each and every policy that is formulated and procured projects. That issues that are often call for remarks from these agencies include expenditure, legal matters and economics. Furthermore, these agencies participate in the formulation of the PPP framework. It is often a requirement that such central agencies are consulted for advice at the different phases and levels of the PPP project process.⁸⁸

⁸⁶ APMG-International. (2016).

⁸⁷ Zevallos Ugarte’s book (2011) *Concesiones en el Peru: Lecciones Aprendidas (Concessions in Peru: Lessons Learned)*, s.l.: Fondo Editorial de la USMP provides further details on the institutional framework for implementing PPPs.

⁸⁸ APMG-International. (2016). *The APMG Public-Private Partnership (PPP) Certification Guide*, Chapter 8: *Managing the Contract–Operations and Hand-Back*.

2.4 Factors that affect compliance to PPP procurement practices in oil and gas projects

The definition of compliance can be very changeable as many other concepts in the humanities but according to the World Trade Organization (WTO),⁸⁹ it is the implementation of a state's objectives by the utilization of the applicable regulatory framework. In line with this study compliance with PPP arrangement framework refers to the pursuance of the procurement of projects implemented by states through the oil and gas legal framework designed by the states that are host to the oil and gas projects.

2.4.1 Transparency and release of PPP Information

According to the World Bank⁹⁰ it is important to practice transparency in execution of the PPP process since this is very instrumental in the achievement of improved value for money. This can be strengthened by upholding governance aspects and the increasing of management of the fiscal cost. Further still, the practice of the institutions producing supportable and justifiable contracts, the practice of reduction of the risks of renegotiation can be improved through the awareness and knowledge of the impact of transparency on service delivery.⁹¹

There has been the call for the establishment of processes that guarantee the giving out of information about tender notice, giving out of information about the outcome of the procurement procedures and the letting out information about contracts in news, journals or periodicals. It is such practices on important government decisions about PPP procurement activities that guarantee frankness that strengthen competition in the market for private partners.⁹²

Additionally, the factor of transparency about PPP contracts often embeds stipulations that carry recognizable impact on stakeholders apart from the procuring authority and

⁸⁹ WTO, (2020). "Agreement on Government Procurement (WTO GPA)" Geneva: World Trade Organization., http://www.wto.org/english/news_e/pres02_e/pr285_e.htm. Accessed 17th December, 2023.

⁹⁰ World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

⁹¹ Ismail, S., Musawa, M. S., & Ahmad, H. (2019). Transparency of public private partnership (PPP): the extent of mandatory information disclosure. *Built Environment Project and Asset Management*, 9(5), 655-668.

⁹² Viana, L. C., Moreira, J. A. C., & Alves, P. (2023). Disclosure of Information and Transparency in Public-private Partnerships: a Comparative Study Between Portugal and the UK. *Accounting in Europe*, 20(1), 66-92.

the bidder that has been the choice of the mandated authority. It is also important for the stakeholders that have genuine and suitable interest. The information that is given about the required components in the contract are useful to the stakeholders in the procurement process.⁹³

2.4.2 Lack of competition

For PPP procurement process to lead to value for money, there is the need to manage the issue of competition has to be well arranged as provided for in the oil and gas legal framework. It is therefore important to argue that the evaluations made in the PPP groundwork the likelihood towards realization of the project is dependent on the last “market test” in the course of the procurement procedure. Subsequently, it can be a worry in relation to suitability of the PPP if only one private partner or bidder is registered. This further stimulates the thinking that the bid will not lead to value for money. Though one can argue that the process is legal even when a single bidder is realized, it can also be a result of some factors which can be identified as leading to such a result after advertising.⁹⁴

In a scenario where only, a sole bidder is registered the agencies concerned can often think about a process of retendering if the dismal bidding was generated by procurement imperfections. Additionally, the agencies can also prepare an activity on due diligence to guarantee the prospective partner as a stakeholder is fully compliant with all the legal and other obligations. In consideration of all the above it can be concluded that registering a single bidder is a sign of a problem and calls for review of the PPP legal framework.⁹⁵

2.4.3 Corruption and failure to comply with PPP procurement arrangement

There has been realization that when contract terms are renegotiated, there are chances that the opening of contractual agreements are going to benefit the interest of partner stakeholders in the procurement process. This practice of renegotiation

⁹³ Rosell, J., & Saz-Carranza, A. (2020). Determinants of public–private partnership policies. *Public Management Review*, 22(8), 1171-1190.

⁹⁴ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

⁹⁵ World Bank Group. (2016). *Benchmarking public-private partnerships procurement 2017*. World Bank.

features a lot of aspects that can deny the public information since such renegotiation is undertaken in time period after the tender process. The post-contractual renegotiations that have occurred in Latin America have provided clear evidence that corruption is indeed widespread and has affected the procurement compliance.⁹⁶ It has also been noticed that unscrupulous policy makers use several other channels including corruption to stage renegotiation in the post-tender stage. In Chile, the negotiators on the government side, decided to have PPP contract renegotiation in order to circumvent limits on expenditure such that they could get advantages in the next elections.⁹⁷

⁹⁶ Iossa, E., & Martimort, D. (2014). Corruption in Public-Private Partnerships, Incentives and Contract Incompleteness. CESifo DICE Report, 12(3), 14-16.

⁹⁷ Iossa, E., & Martimort, D. (2014). Corruption in Public-Private Partnerships, Incentives and Contract Incompleteness.

CHAPTER THREE: METHODOLOGY

3.1 Introduction

This chapter discussed the methods, approaches, and instruments that were used to obtain data and information about how the independent variable (Public Private Partnerships) and the dependent variable (procurement of projects in the oil and gas sector) were related. In this chapter, the research designs, as well as its justification, were presented. The chapter also described and discussed study population, the sampling methods, the data collection methods and techniques, validity and reliability, data processing, the method of data analysis, the expected limitations and the description of ethical considerations.

3.2 Research Design

The research design is the theoretical blueprint for a study. A researcher for his/her research arranges an action plan, which comprises the outline of gathering, measurement, and examination of data. The research design is unconnected to a specific method of gathering data. Therefore, it is important to know that when planning research, it is essential to identify the type of verification needed in responding to the research interrogations rationally.⁹⁸

The study used a case study design since it provokes an in-depth investigation⁹⁹ of a specific research problem on the legal framework and how it influences the use of PPP in the oil and gas sector. Case study design is unlikely to call for statistical surveys or comparative investigations. This design helped to contrast an area of PPP in the oil and gas sector in Uganda. This design was also instrumental in testing whether the theories that were used apply to the phenomena¹⁰⁰ in the practical world. The case study assisted the investigator to understand, interpret and explain the complex issues during the contextual analysis of several events, situations and the links between them. It is also important to argue that the case study design was helpful in the application of the

⁹⁸ Inaam, A. (2016). Research Design. *Social Science and Interdisciplinary Perspectives*, 1, 68-84. Inaam, A. (2016). *Research Design. Social Science and Interdisciplinary Perspectives*, 1, 68- 84.

⁹⁹ Goodyear-Smith, F., Jackson, C., & Greenhalgh, T. (2015). Co-design and implementation research: challenges and solutions for ethics committees. *BMC medical ethics*, 16(1), 1-5.

¹⁰⁰ Albert, M. J. Gabrielle Durepos and Elden Wiebe, eds., 2010. *Encyclopedia of Case Study Research*.

different methodologies¹⁰¹ like description of events through interviews and analysis of secondary data in probing the research problem. Since the study was grounded in the humanities, the design made use of the case study design to scrutinize contemporary practical international system situations. This gave the investigator a basis for applying concepts and theories in the study.

The case study research design was used in describing the characteristics of the relationships between PPP and the oil and gas sector in Uganda.¹⁰² The study used mixed methods implying quantitative both with qualitative approaches. Mixed methods represent a methodology of research which is associated with the systematic combination of quantitative and qualitative data in investigating a phenomenon undergoing study.¹⁰³ This helped in the integration of data during the collection of data, analysis, and discussion.

The qualitative method which looks at phenomena in their natural setting in an interpretive way and makes meaning out of them sought an in-depth understanding of PPP issues and how it influenced the oil and gas sector in Uganda. The mixed research design employed both descriptive and interpretive traditions. These traditions rule out the connecting of past data and demands for exhaustive accounts of existing experiences minus assigning denotation.¹⁰⁴

3.3 Sampling techniques

The sampling methods that were used in the study included convenient sampling, purposive sampling, snowball and random sampling. The convenient sampling was used to select officials who were available and willing to participate as respondents. Also known as availability sampling and this was used where the initial accessible primary

¹⁰¹ Lee, R. M. (2010). The secret life of focus groups: Robert Merton and the diffusion of a research method. *The American Sociologist*, 41(2), 115-141.

¹⁰² Carl, M., Dragsted, B., & Jakobsen, A. L. (2011). A taxonomy of human translation styles. *Translation journal*, 16(2), 155-168.

¹⁰³ Creswell, J. W. (2013). Steps in conducting a scholarly mixed methods study.

¹⁰⁴ Charlick, S. J., Pincombe, J., McKellar, L., & Fielder, A. (2016). Making sense of participant experiences: Interpretative phenomenological analysis in midwifery research. *International Journal of Doctoral Studies*, 11, 205.

data source was utilized for the research without extra necessities.¹⁰⁵ Some officials in the population who took part in the PPP process were not willing to be respondents in the study.

Purposive sampling was used to select the officials who had knowledge about the PPP in the oil and gas sector. This study was used a mixed method which was grounded mainly on collection of qualitative data that was rich and expressed in opinions and description of events, and qualitative approach was used when it was necessary during data collection. The officials that were selected therefore were those ones that had accumulated knowledge about PPP in the procurement of projects. In this judgmental sampling there was need to select persons purposely for the provision of important information that could not be acquired from other selections.¹⁰⁶

Expert sampling was used to select those experts on PPP and the procurement of projects in the oil and gas sector. These gave their objective opinions on the themes and depending on the rich knowledge that they had accumulated over time. This type of sampling was used because there was need to identify key informants who could give information on the foundation of their knowledge, experience and expertise.¹⁰⁷

In each institution, there was one official who helped to organize interviews. Given the fact that the researcher did not have the power of selecting the choice of participating persons and fully relied on the goodwill of a contact person and therefore it was organized in a straightforward way by choosing an official who was in the institution for some good time or for the period equivalent to the time scope or those that were in the institution before. Therefore, the institutions were presented with the criterion which was thought essential for the exploration of the institution and their formation. The number of years spent in the institution, the functioning of the institution and the problems it is trying to deal with.

Random sampling was used to choose the lower rank officials from the institutions that were selected. The officers were many and therefore the technique suited this big number of officers to choose a sample which was representative enough. The number

¹⁰⁵ Saunders, M., Lewis, P. and Thornhill, A. (2012) *Research Methods for Business Students*. Pearson Education Ltd., Harlow.

¹⁰⁶ Maxwell, J. A. (1996). *Qualitative research design: An interactive approach*. Sage Publications, Inc.

¹⁰⁷ Bruce B. Frey, (2018) *The Sage Encyclopedia of Educational Research, Measurement, and Evaluation*.

of male officers (55%) was slightly bigger than that of female officers (45%). This technique was used to give an equal chance to the officers in the institutions that were chosen for the study.

3.4 Study Population

The study population included institutions of government which consisted; of the parliament of Uganda, who are concerned with making laws, and ministry of energy. The experts in the oil and gas sector, foreign affairs ministry which is responsible for engaging foreigners and the officials from Uganda revenue authority and Ministry of planning and economic development which docket is central in negotiation and responsible for development. The population was characterized by officials who were called upon for qualitative data. The designated population was based on decisive factors which consist of the importance of the institution on the PPP and oil and gas sector.

3.5 Sample Size and Sample Design

To decide the target population, the investigator recognized and got respondents from the whole population who have been in the institutions for not less than 10 years. This is the time which was decided as the time scope. These were thought to have an understanding and opinions or views with sufficient simplicity and penetration. It was consequently at this level of describing the target population that the investigator thought through aspects such as the capacity to remember and connect authentic life occurrences and the ability to rationally think and communicate ideas in a suitable language. Therefore, education and understanding of the suitable subject was thought through in choosing the individuals of the target population.¹⁰⁸

The target study population included officials in the parliament of Uganda, who are the concerned people to make laws, and ministry of energy. The trade and commerce ministry, the experts in the oil and gas sector, labor ministry, foreign affairs ministry which is responsible for engaging foreigners and the officials from Uganda revenue

¹⁰⁸ Asiamah, N., Mensah, H., & Oteng-Abayie, E. F. (2017). General, target, and accessible population: Demystifying the concepts for effective sampling. *The qualitative report*, 22(6), 1607-1621.

authority and Ministry of planning and economic development which docket is central in negotiation and responsible for development. These were conveniently selected and the conveniently selected were also purposively chosen since many of these targeted populations were thought to be with knowledge about the study. 4 officials from the legislature.

The sample size representative of the categories of respondents in this study was 80. It was determined using Krejcie and Morgan’s sample size calculation which is the same as using Krejcie and Morgan’s sample size determination Table. The sample size determination Table 3.1 is a derivative from the size calculation which is expressed below. The Krejcie and Morgan sample size calculation was based on .50 in the Table in the appendix.

The formula used for the calculation is.

$$n = \frac{X^2 * NP * (1-P)}{ME^2 * (N-1)} + (x^2 * P * (1-P))$$

n= Sample size

X² = Chi-square for the specified confidence level at 1 degree of freedom

N=Population size

P= Population proportion (.50 in this table)

ME=Desired margin of error (expressed as a proportion)

Table 1 Sample Size Determination

Category	Population (N)	Sample size. (n)	Sampling technique
Private firms involved in PPP		4	Purposive sampling
Verified Citizens in Uganda	100	80	Random sampling
Officials from the Ministries		4	Purposive sampling
Experts		10	Purposive/snowball sampling
Total	100	98	

Source: Author 2023

3.6 Data sources

The gathering of data performs an important part in any given part of the study. For a study to be carried out, the researcher needed to use different sources of data and these sources can be categorized as primary or secondary data.¹⁰⁹ The term “primary data” implies that data is gathered for the very first time. Secondary data refers to data that has already been gathered by other researchers or authors for other objectives but related to the study of the current researcher.¹¹⁰

3.6.1 Primary Data

This study employed both primary and secondary sources of data; primary data which was gathered through the words between the researcher and the respondents. In this regard the written responses and observable items and experiences were in the form of pictures. Primary data was gathered through focus group discussions, interviews, and observations.

3.6.2 Secondary data

Secondary data was produced by re-examining the past useful literature which included published and unpublished resources including media reports. This type of secondary material was of importance since it was considered a wealth of information. Other documented experiences like films, and documentaries about the oil and gas sector in different parts of the world and particularly Africa were also useful for the study in providing extra information to deepen the authenticity of data.

3.7 Data Collection Instruments

Data collection methods refer to the ways by which an investigator collects data from the selected respondents in any given study. These methods included quantitative data collection methods and qualitative data collection methods which included focus group discussions, interviews, archival methods, and documentary review methods. The quantitative methods included surveys. This section presents the different methods

¹⁰⁹ Douglas, J. A., Douglas, A., McClelland, R. J., & Davies, J. (2015). Understanding student satisfaction and dissatisfaction: an interpretive study in the UK higher education context. *Studies in Higher Education*, 40(2), 329-349.

¹¹⁰ Ajayi, V. O. (2017). Primary sources of data and secondary sources of data. *Benue State University*, 1(1), 1-6.

that were used in the collection of data. The study employed the following quantitative and qualitative methods to gather data. The study used qualitative methods in the collection of data. This involved the use of interviews that were conducted with key informants from the selected institutions.

Interviews were used because the key informants are thought to have in-depth information about the variables of the study. Interviews were used to collect the needed data from people that have accumulated knowledge because of their experience and their work. The interviews were carried out with the use of an interview guide. This was used to gather information using face-to-face dialogue between the researcher and key informants on issues to do with PPP in the oil and gas sector.

The key informants were officials from the selected institutions as mentioned in the previous section. The researcher conducted semi-structured interviews and, in some circumstances, also conducted several fewer formal conversations with key informants at meetings and held e-mail interviews which will be held most importantly for unearthing the distinct features between the PPP and oil and gas sector in Uganda.

Instruments are tools that are used in the collection of data in any given study.¹¹¹ In this section the different instruments that were used under the different methods which were presented. The instruments that were used include questionnaires and interview guides. Questionnaires were used to collect vast amounts of data from big numbers of respondents. Part of the interview guide was used to collect opinions from officials.

3.7.1 Questionnaires

Questionnaires are an example of data collection instruments, and the researcher used one set of semi-structured questionnaires with open and close-ended questions. One questionnaire was used to collect information from the citizens. This is because questionnaires work well with big numbers of which data is to be obtained and it helped in collecting big volumes of data. The questionnaire was useful in helping to get big volumes of data from many respondents in a short period.

¹¹¹ Abawi K. (2014) Data collection instruments. Paper presented at: Geneva Workshop 2014. Training Course in Sexual and Reproductive Health Research; 2014 Sep 17; Geneva. Available from: <https://www.gfmer.ch/SRH-Course-2013/Geneva-Workshop/Datacollection-instruments-Abawi-2014.ht>.

3.7.2 Interview guide

An interview guide is an instrument that is used in the collection of opinions and descriptions from selected respondents who know the topics of study. The research used the interview guide as an instrument for the collection of in-depth information in interviews. Interviews were used to collect the needed data from people that have accumulated knowledge because of their experience and their work. The creation of an interview guide permitted an investigator in several ways. It is also important to argue that an interview guide was merely a catalogue of topics that an investigator plans to cover in an interview which elevated the level of inquiries that an interviewer wanted the respondent to answer beneath every topic.¹¹²

3.8 Ethical considerations

After the researcher was cleared on the research proposal and the research tools, he set out to get permission to go to the field and collect the data. The researcher secured a letter of introduction from the Department of Post-graduate Studies which was addressed to the various authorities in the field. In other words, the letter was used to introduce the researcher to the relevant administrators in the Offices.

The researcher took responsibility to ensure that the respondents were informed about the value of the study being investigated. This enabled the respondents to positively appreciate their contribution as participants in the study. The researcher ensured that the informed consent of the respondents was sought first to carry out any other study activities such as the use of photographic equipment where there was a need and the use of audio recorders where there was a need.

The researcher observed the research norms including honesty, confidentiality, and accurate handling of information and employed objectivity in the application of the data collection methods to arrive at the desired results.

¹¹² Chris Bird's (2016) interview guide. Published in Perspectives on Data Science for Software Engineering.

3.9 Measurements of Variables

3.9.1 Archival method

This method refers to a way of looking at past files, paperwork, or data sets for remarkable associations. These records comprise newspapers, articles, speeches by public officials, censuses, and government statistical records.¹¹³ Furthermore, the researcher used the archival method; this method focused on already written materials mainly reports filed on the laws and the problems documented on PPP in Uganda. These were in electronic sources and newsprint. These were interpreted qualitatively and were included in the study. Major themes in historical records and reports were considered in the study.

The distinctiveness of PPP in many African States has often been described as not clear, but in this study, there was a need to describe it. Interviews were also be important to move further than the order of historical actions to unearth the motives of the laws, actors, and their perceptions.

3.9.2 Documentary review method

This research method denotes the examination of documents that include information or data about the phenomenon which an investigator wishes to investigate.¹¹⁴ The researcher reviewed documents which comprise; government reports, policy documents, ministry reports under which the different institutions fall, and online opinions of Ugandans and other people from around the world concerning the appropriateness of PPP and the oil and gas sector. This focused on documents. Broad themes on major laws and policies and oil were considered in the study.

¹¹³ Ketelaar, E., Gilliland, A. J., McKemmish, S., & Lau, A. J. (2017). Research in the Archival Multiverse.

¹¹⁴ Bailey, W. T. (1994). A longitudinal study of fathers' involvement with young children: Infancy to age 5 years. *The Journal of genetic psychology*, 155(3), 331-339.

3.9.3 Focus group discussion

A focus group refers to a structured debate or conversation to stimulate a discussion about a particular topic of interest¹¹⁵ To permit the respondents to have a fruitful discussion, where opinions and experiences on how the laws support verification of citizenship 5 FGDs of not more than 6-10 people were held with the parish verification committees in the border districts are intended and targeted. Focus group discussions were conducted to collect information from citizens. With the arrangement of 6-10 in each group the respondents took part in the debates¹¹⁶ the debates continued for around one hour and a half or two hours. These FGDs were from the citizen respondents.

Focus Group Discussion guides were used to collect relevant information about the study problem. This method was used to enable citizen participants to hear each other's responses and make additional comments. It enabled the researcher to get first-hand and in-depth data in a social context.

It is important to make the respondents interested in the debates and the most significant and appealing questions were designed and asked immediately after the debate begun. This approach, which is referred to as funneling permitted the all-purpose questions to be put across at the same time restricting them to the themes and thereafter exploring to attain clarification.

3.10 Validity and Reliability of the Research Instrument

This was divided up into two parts which included the validity and reliability of the research instrument and are in the following ways.

3.10.1 Validity

The researcher ensured the content validity of the instrument by making the questions conform to the conceptual framework. Hence the items in the instruments were concerned with only the study variables. Content validity was used to ensure that what is in the interview guide is all related to and relevant to the study variables. This

¹¹⁵ Abawi K. (2014) Data collection instruments. Paper presented at: Geneva Workshop 2014. Training Course in Sexual and Reproductive Health Research; 2014 Sep 17; Geneva. Available from: <https://www.gfmer.ch/SRH-Course-2013/Geneva-Workshop/Datacollection-instruments-Abawi-2014.htm>.

¹¹⁶ Flick, U. (2009) An Introduction to Qualitative Research (4th Ed) Oliver's Yard Sage Publications London.

required the researcher to examine the content together with the supervisor. The questionnaire was subjected to expert raters in the school of postgraduate studies. The rated findings were used to compute a content validity index using the formula.

$$CVI = k/N$$

Where k is the number of items rated Disagree or Agree, then, the use of True and False and Use of Yes and No and use of Rarely or Regularly

N= the number of items in the questionnaire. This will help in establishing the measures and items that will be valid and help to know the significant number.

The triangulation of methods was used to increase the validity of both qualitative and quantitative instruments.¹¹⁷ The qualitative data about the process of verifying PPP in Uganda and the quantitative data on the number of experiences that have occurred in the state of Uganda and questions were set in interviews and questionnaires in such a way that data collected is valid.

3.10.2 Reliability

To ensure reliability, the researcher measured the consistency of the research instruments using Cronbach's alpha. It was used to measure whether all items within the instrument measure the same thing. For qualitative data, the researcher used independent experts to avoid the subjectivity and credibility of items.

The researcher also measured the reliability of the questionnaire items. Cronbach's alpha was also used to determine the coefficient between a sincere response and all other sincere responses of the same item that are drawn randomly from the same population of interest. The formula that was used is $\alpha = kr / (1 + (k-1) r)$. It made use of the number of variables or question items in the instrument (k) and the average correlation between pairs of items (r):

¹¹⁷ Amin, M. E. (2005). Social Science Research: Conception, Methodology and Analysis. Makerere University, Kampala Uganda.

3.11 Data Process and Analysis

The use of thematic analysis was recognized as one of the methods for recognizing, examining, and describing patterns or themes in the data that has been collected.¹¹⁸ Depending on the critical levels stipulated by Patton & Cochran,¹¹⁹ is the kind of data analysis which considers themes analysis where the investigator reads and interpreted the texts or opinions or through building observations to attain the sense of the data; recognition of the themes and making short what the respondents were bringing up such that the investigator can get a hidden standpoint of the undertaking which is being carried out. The data was sorted, coded, and organized in frequency tables to reveal the percentage scores of the different study attributes. The findings were also subjected to further analysis using quantitative and qualitative techniques.

3.11.1 Quantitative data analysis

The researcher processed quantitative data using statistical procedures. The researcher turned figures from questionnaires into frequency counts and these were presented in frequency tables. To statistically analyze the data, the independent variable was conceptualized into questions that require each respondent to do a self-rating on PPP. The responses were based on the Likert scale was scored ranging from one Disagree to two Agree and there were chances provided for respondents to use False which was taken to be 1 and True which was taken to be 2. The dependent variable was also fragmented into items based on the Likert scale. The researcher will calculate the total scores on each of the items for each respondent in the questionnaire. The questions about PPP and oil and gas sector was set in which case the respondents were required to choose from the range of options that were given on any given question in the questionnaire.

¹¹⁸ Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative research in psychology*, 3(2), 77-101.

¹¹⁹ Patton, M. and Cochran, M. (2002).

3.11.2 Qualitative data analysis

For the qualitative data, the collected data was transcribed carefully so as to ensure the accuracy and consistency; responses from interviews and discussions. The data was recorded in the interview transcripts and thereafter the researcher will examine the views of the respondents. The qualitative data was exposed to techniques content analysis, interpreted, and thereafter it was described. During analysis, qualitative responses was grouped; ideas were collected from that grouped source; the responses were also put into broad themes that was constructed a category of themes. The topics, themes and categories were coded according to themes.

3.12 Anticipated limitations and Problems

Just like any other studies, the formulation of research aims and objectives were broad to include more institutions for the sake of giving a wider and deep understanding of the issues surrounding PPP. Such PPR related issues revolved around the identification and verification of private firms. Therefore, the results were revealed and were interpreted with this limitation in mind.

Secondly, the empirical results that were reported here were considered in the light of another limitation on the sample size which depended on the nature of the research problem. The sample size was bigger considering the people who had verified the statistical tests. The researcher was able to identify a significant relationship with the data set. A larger sample size generated a more accurate result than what was used in this study. However, this was appropriately handled because of the use of a mixed method compared to a situation where the study would have been solely quantitative in its methodological design.

One of the problems that was encountered include the bureaucracy that was common with officials who had to respond to their official duties. This resulted in the postponement of interviews with them. This was solved by having these officials come up with schedules under which the researcher fitted and rescheduled others.

The problem of bureaucracy and postponement of interviews affected the already limited time that was supposed to be used in the study. This necessitated the researcher to forego some of the activities outside the research such that more time could be allotted to the study to collect the necessary data in time for the study.

3.13 Summary

This chapter presents the logic and justification in supporting the choice of methods, approaches, and tools that were used in obtaining the necessary data and information about how the independent variable and the dependent variable are related. In this chapter, the research design, as well as its justification, were presented. The chapter also described and discussed the study population, the sampling methods, the data collection methods and techniques, validity and reliability, data processing, the method of data analysis, limitations, and the description of ethical considerations.

The goal is to collect data which lead to results that brought out the relationship PPP and oil and gas sector in Uganda. To achieve this goal the researcher used mixed methods which were quantitative and qualitative approaches. These are suitable for the study since the magnitude of the problem was effectively measured with the use of the quantitative approach and the questions surrounding the “why” and the “how” were well answered during the interviews where respondents gave explanations on such questions.

CHAPTER FOUR

RESULTS

4.0 Introduction

This chapter of the results presents the perceptions of the respondents on the independent variable (Public Private Partnerships) and the dependent variable (procurement of projects in the oil and gas sector) in Uganda. Both the position results of the questionnaire (PAQ) and interviews are discussed.

The hypotheses tested included;

- i. Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement,
- ii. There are clear the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda
- iii. There are no factors that affect compliance to PPP procurement practices of projects in the oil and gas projects in Uganda

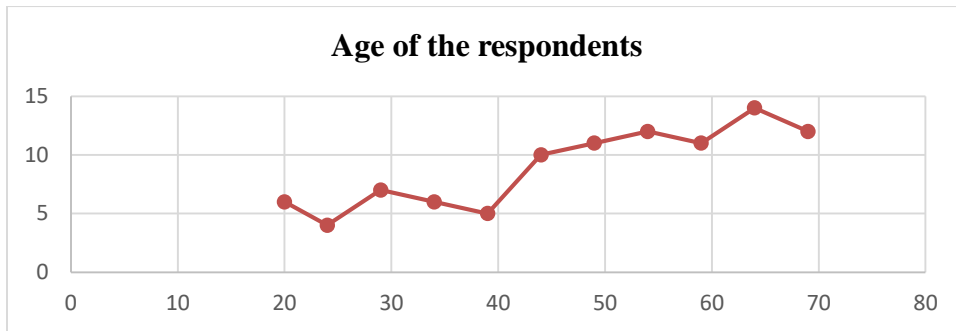
The parts of this chapter are arranged according to the objectives of the study. The perceptions that the participating officials in the institutions have over the legal framework, the institutional responsibilities, and the factors that affect the compliance to the PPP procurement practices of projects in the oil and gas projects in Uganda. The distribution of the respondents is presented and the categories of the respondents are presented.

4.2.0 The Descriptive Data

4.2.1 Bio-Data of Respondents

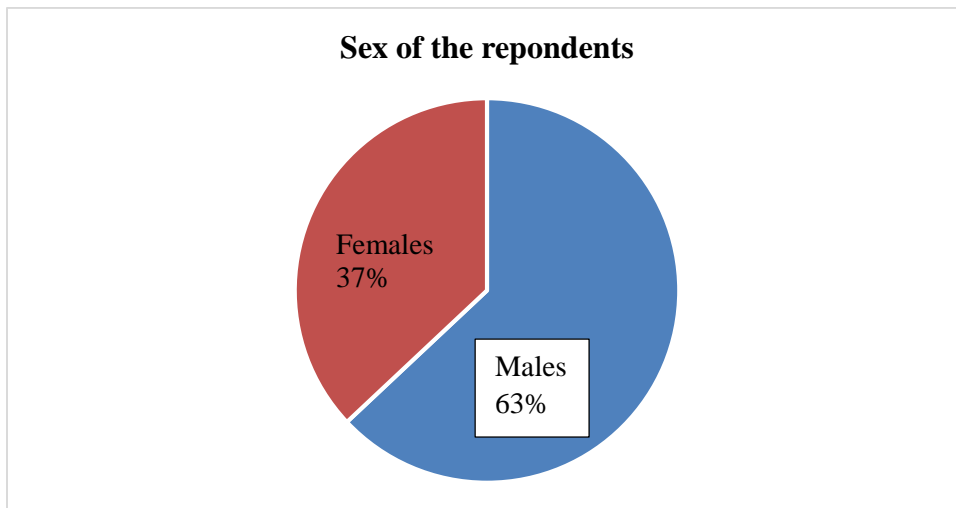
With respect to the age of the participating respondents in the study, the records on this found that most respondents were 40 years and above and the findings gave the following results as Table (1) indicates. See Table 1:

Table 1: showing the age of the respondents



Source: *Primary data, 2024*

The results on the sex of the respondents show that the majority ...63% were males, only a few.at 37%% were either more willing to give information or that women were not comfortable expressing themselves on such matters. (See figure 1)



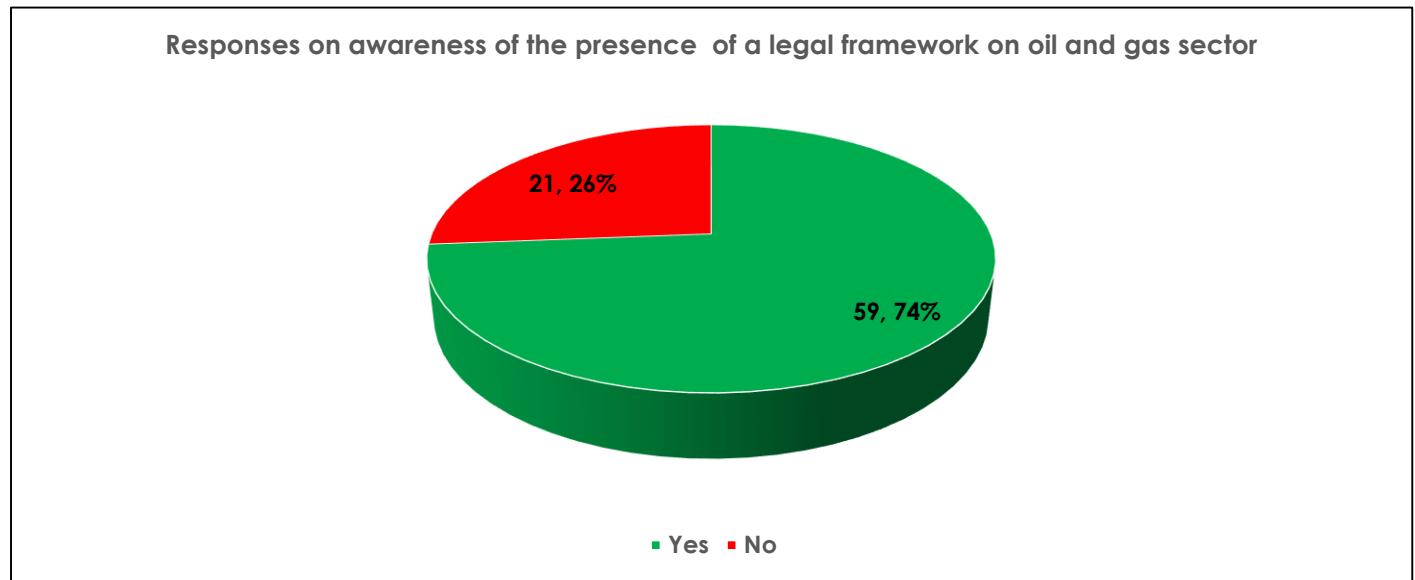
Source: *Primary data, 2024*

4.2.2 Research objective 1: Legal framework

To understand whether Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement, respondents were introduced to different items to have their say. Their responses were computed by making an aggregate of responses given by the respondents to the items and 5-point Likert scale (= Yes and No). The responses for the presence of a legal framework are presented in table while the information

from key informants (officials from the different institutions is also provided to back up these findings as presented below.

Pie Chart Showing awareness of the existence of a legal framework on PPP and Project Procurement.



Source: Primary Data, 2024

The results on the awareness of the existence of a legal framework on PPP on the procurement of projects in the oil and gas sector showed that the majority of respondents 74 % accepted that there is a legal framework, while the minority 26% did not think there was a legal framework. The results reveal that the minority of respondents were not aware or they could have meant that there was no satisfactory legal framework on PPP to direct the procurement of projects in the oil and gas sector in Uganda. (See figure.....)

The results on awareness of a legal framework from the interviews showed that there were several officials who were aware of the different laws that are on PPP which guide on the procurement of projects in the oil and gas sector. While talking to the investigator, one of the officials (R2) said that;

“It is clear that Uganda for a long period of time did not develop a broad legal framework to legalize the oil and gas sector. This could have been in part for the reason that survey for the oil and

gas was not seriously done up to 1980s. before that even the colonialists did not consider oil and gas were existing in commercial quantities to warrant its exploration” (Source: Primary Data, interview’6th January 2024, in Kampala)¹²⁰

The official continued elaborated and showed that the earliest laws regarding the legalization of the oil and gas sector could be traced to petroleum exploration and production Act No 20 of 1985. While explaining this he said that;

“The Act that was formulated in 1985 was repealed by the Petroleum (exploration, development and production) Act of 2013 and this was the only law that was applicable to the regulation and control of all activities in the oil and gas sector in Uganda” (Source: Primary Data, interview’6th January 2024, in Kampala)¹²¹

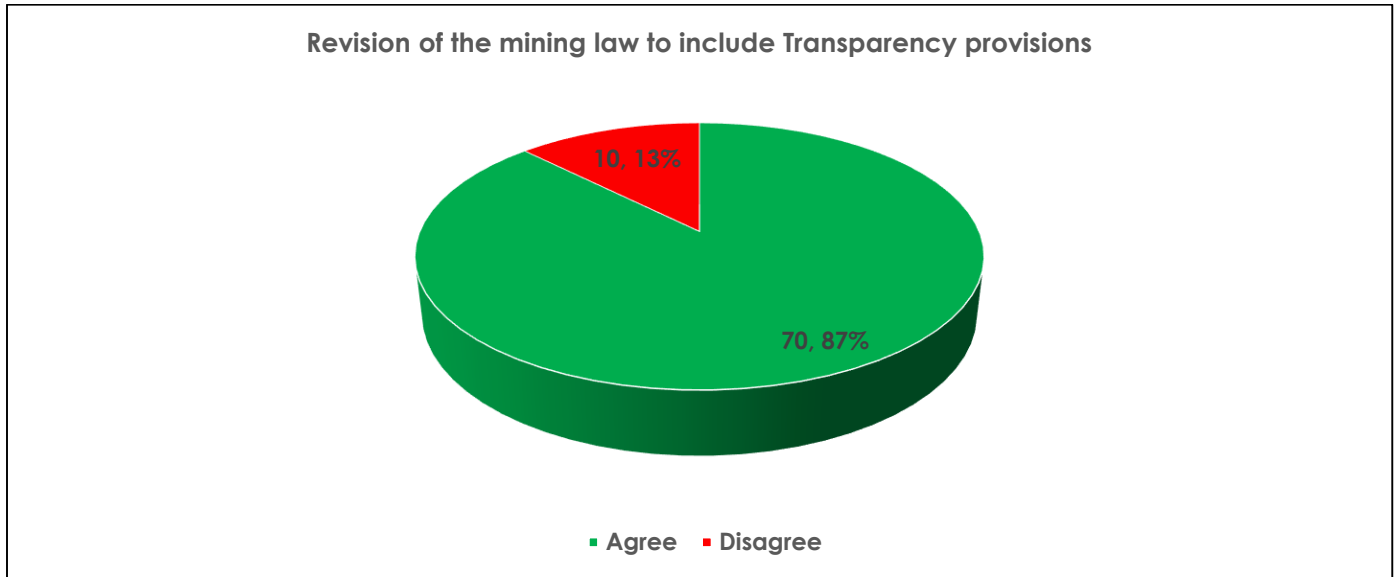
4.2.3 Revision of the mining law has not been done since 2003 with transparency provision

The findings on whether the Mining law has not been revised since 2003 and does not have transparency provisions showed that the majority of the respondents 87% mentioned that they agree that the law was revised and has transparency provisions, while the minority 13% disagreed, The results reveal the fear of not revising the law on mining and having no transparency provisions was not so high so this attitude can help communities have some faith in the procurement and transactions in the oil and gas sector. It can also be interpreted that those who mentioned that they disagreed did not mean that they had knowledge but they could not be aware that the law was revised.

¹²⁰ Primary Data, interview’6th January 2024, in Kampala.

¹²¹ Primary Data, interview’6th January 2024, in Kampala.

Pie Chart Showing whether revision of the mining law has been done since 2003 with Transparency provision.



Source: *Primary Data, 2024*

From another interview that was carried out with another respondent (R4) it was revealed that different laws were enacted and others revised through parliament from the time oil and gas deposits were discovered in Uganda. In the interview the official asserted that;

The different laws that were enacted by parliament since the discovery justifiable oil and gas deposits comprise of the constitution of the Republic of Uganda, 1995, the national oil and gas policy 2008, the petroleum (exploration, development and production) Act 2013 (the Upstream Act, The oil and gas Revenue management policy (OGRMP) 2012, the petroleum (refining, conversion, transmission and Midstream storage) Act 2013 (the Midstream Act) and the public finance

Management Act 2015. (Source: Primary Data, interview'6th January 2024, in Kampala)¹²²

In the interview that was held with one of the officials (R7) from parliament it was revealed that the constitution forms the foundation of the legal framework for the PPP and the procurement of projects in the oil and gas sector in Uganda. In that interview the official said that;

“The constitution of the Republic of Uganda is the core of the laws that regulate the oil and gas sector in Uganda. This is the supreme law in the country, this law requires the government to guarantee that all resources are exploited to benefit the citizens of this country. The same constitutions in Article 244(2) obliges the legislature to make laws that control the exploration, exploitation, production, management of revenues accruing from the exploitation of oil and gas resource”
(Source: Primary Data, interview'7th January 2024, in Kampala)¹²³

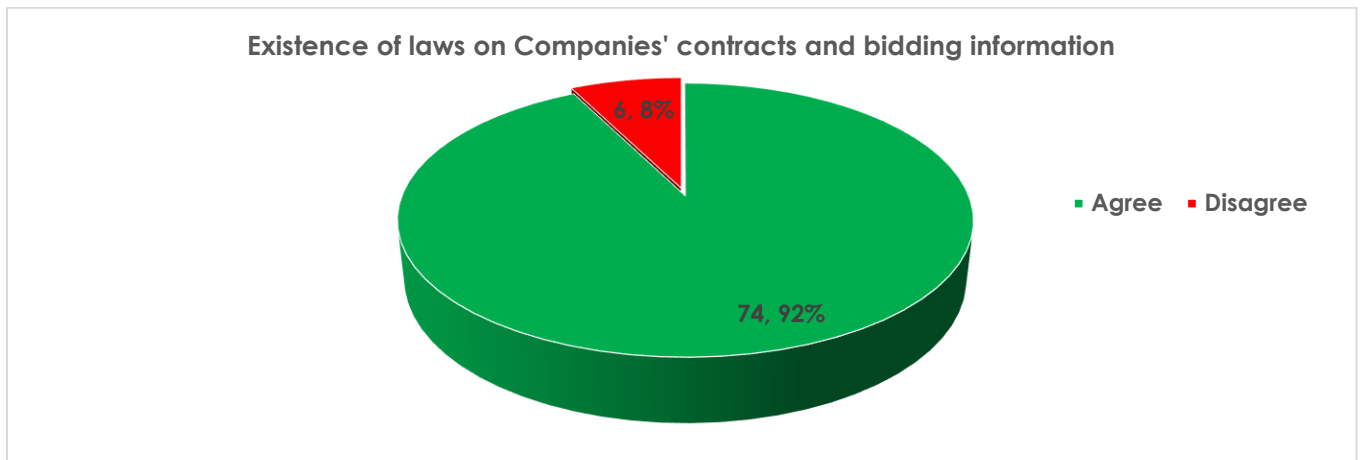
4.2.4 Existence of laws on companies' contracts and the bidding information

The findings on the issue that there are laws on companies' contracts and bidding information showed that the majority of the respondents 92% agreed while 8% disagreed. The results reveal that the majority of respondents agree that the laws on companies and bidding exists. Their response however did not show that the laws were applied. The belief that the laws exist can strengthen their trust in the laws and their belief that they can benefit from the oil and gas sector.

¹²² Primary Data, interview'6th January 2024, in Kampala.

¹²³ Primary Data, interview'7th January 2024, in Kampala.

Pie Chart showing existence of laws on companies' contracts and bidding information



Source: Primary Data, 2024

The results from the interviews that were carried out, further revealed that the constitution also gives the right to citizen to know about what takes place in the exploitation and ownership of the resources. In the interview that was carried out with the respondent (R5), the official cited an article and said that;

“In article 41(1) of the 1995 Uganda constitution, it is stipulated that citizens have a right to access information in the custody of the state or any organ or agency of the state minus the situations where the giving out of such information can influence the security, contract transparency in the oil and gas and mining sectors contract transparency in the petroleum and mining or sovereignty of the state or interfere with the right to privacy of any other individual” (Source: Primary Data, interview’7th January 2024, in Kampala)¹²⁴

Further still, there was more revelation on the legal framework when one of the respondents (R9) went ahead and talked about the Petroleum (exploration, development and Production) Act 2013 (the Upstream Act). The official who was interviewed said that;

¹²⁴ Primary Data, interview’7th January 2024, in Kampala.

“Uganda enacted this act to streamline the NOGP of Uganda (2008) by formulating a valuable operational legal framework and institutional arrangement to guarantee that the course of exploring, developing and producing of petroleum in Uganda are executed in a sustainable way that also ensures the highest outcomes for citizens in the generation today and future” (Source: Primary Data, interview’7th January 2024, in Kampala)¹²⁵

In his discussion of the Petroleum act of 2013, it was revealed that the act has particular sections or provisions that are meant to guarantee transparency in the oil and gas sector. For example, section 11 sub-section 2 (d) was discussed, this necessitated that the authority guarantees transparency in all activities of the petroleum sector.

The respondent went ahead and said that;

“The Act directs the minister assisted by the authority is obliged to promote transparency in the oil and gas sector for example section 6 talks about the agreements with government and sub-section 2 obliges the minister to cause and develop PSA or any new model agreement in which the government is going to participate. This Act calls for a minimum degree of transparency which comprises of presenting the draft PSA to the executive arm of government for endorsement and later to the legislature or parliament” (Source: Primary Data, interview’7th January 2024, in Kampala)¹²⁶

This result implies that the agreements signed under the PPP in which the government participates have to be transparent and the government, executive and the legislature or parliament have to be aware of such agreements over the procured projects under this legal framework.

The results reveal that the legal framework further provides for the access to information in relation to planning and procurement of public contracts like the public procurement and Disposal Act of 2003. Procurement Regulations. This is for both local and central government.

¹²⁵ Primary Data, interview’7th January 2024, in Kampala.

¹²⁶ Primary Data, interview’7th January 2024, in Kampala.

From the interview the respondent (R5) said that;

“The legal framework has guided on the information on the Petroleum (Refining, conversion, transmission and Mid-streaming storage) Act 2013, the whistleblowers Act of 2010. This was meant to protect individuals that come out with information in public interest concerning public contracts though such information may be confidential. Also the government of Uganda is a signatory to the United Nations Convention Against corruption and the Africa Union convention on the prevention and combating of corruption from 2004” (Source: Primary Data, interview’7th January 2024, in Kampala)¹²⁷

The results from the interviews also indicated that the legal framework also has the public procurement and disposal of public assets Act of 2003. It is under this Act, section 5 which talks about the formation of the PPDA to guarantee the application of fair, competitive, non-discriminatory, transparent and value for money procurement and disposal standards and practices

From the findings it was also indicated that the petroleum Act, 2013 has provisions on an environment which supports the efficient management of petroleum resources of Uganda since it provides institutions with power to manage oil and gas resources and the regulation of activities therein. In one of the interviews that were conducted one of the respondents (R3) explained and said that;

“The Petroleum Act of 2013 provides for efficient management of resources through institutions which were given power. They must regulate the activities like license, explore, develop, production and cessation of oil and gas activities or retiring and guaranteeing public safety, protection of health and environment in oil and gas activities. The upstream Act then controls the licensing and participation of commercial firms in oil and gas activities. All this can be found in section 5” (Source: Primary Data, interview’8th January 2024, in Kampala)¹²⁸

¹²⁷ Primary Data, interview’7th January 2024, in Kampala.

¹²⁸ Primary Data, interview’8th January 2024, in Kampala.

The results imply that the oil and gas activities in Uganda cannot be carried out without the approval or sanction, licensing, permission or authorization in agreement with the petroleum act of 2013.

It was further indicated that under section 6 of this Act the government can have enter into agreements in relation to oil and gas activities in harmony with the Act with any entity in relation to the giving or renewing the license, the demeanor of the entity of the oil and gas activities on behalf of any entity or individual who has been given a license.

Interviews conducted with officials from the ministry of finance Planning and Economic Development (MoFPED) showed that indeed another important Act is the PPP Act of 2015 (PPP Act). It was revealed that under section 2 this Act is, in legal terms, the foundation of all PPP projects that are prepared and executed under Uganda's National development plan (NDP) and its important priorities. One of the officials (R6) who was interviewed observed that;

“The PPP policy of 2010 laid the foundation action plan concerning PPPs and the responsibilities of the parties participating. The role of the private sector is disaggregated in relation to the guidelines, guidelines, regulations and standardization of PPP documents and procedures. It stipulates the framework for public agencies and units of government to evaluate projects, spot and single out the suitable private partners, negotiate the contracts and evaluate, monitor and appraise their execution” (Source: Primary Data, interview’8th January 2024, in Kampala)¹²⁹

The respondent (R6) further explained and said that,

“This policy guides on PPP accountability and procurement practices and is provided to be used to all public entities in Uganda, as well as government ministries, departments, local authorities and statutory bodies. It breaks down all the steps to be kept in the process of PPP to its last stage, this guarantees that it will lead to the achievement of value for money results in comparison to the conventional

¹²⁹ Primary Data, interview’8th January 2024, in Kampala.

procurement' (Source: Primary Data, interview'8th January 2024, in Kampala)¹³⁰

It is further revealed that the PPP policy of 2010 in Uganda created the groundwork policy in relation to PPP. This foundation policy stipulated the responsibilities of the parties involved in any project. It can also be pointed out that the role of the private sector is described in detail in the guidelines, regulations and standardization of the policy (PPP) official papers and processes along with the capacity building plans and agendas. The PPP policy of 2010 further availed the framework for the public agencies and departments to assess projects, ascertain the suitable private partners, discuss and bargain the contracts and evaluate, monitor and appraise the execution of such projects. While this is the case it is hard to see that what was stipulated in the PPP policy of 2010 has actually been upheld in the oil and gas sector in Uganda.

The failure for the PPP to take root in Uganda has been said to be from the fact that it has not been funded, not well provided with human resources and Uganda as a country has been characterized to lack enough ownership. This is further made worse by the fact that there is low capacity in the line ministries and the agencies mandated to do the contracting. The same agencies which are meant to develop contracts and implement PPP are also weak. While the PPP policies have been put in place it is also important to argue that they are not clear on standardization and homogeneity in the examination, procurement, arranging and the execution of PPP projects. This has been experienced in the standardization of institutional processes and approaches.

There has also been the lack of a sufficient framework for enabling communication and release or exposition of information during the PPP process. This implies that the results that private investors and users need during the process is not well passed on and this may have an effect on the process when the would-be investors who are better are not aware of the line of projects which are under operation.

¹³⁰ Primary Data, interview'8th January 2024, in Kampala.

4.3.0 Development of PPP in Uganda and how it has occurred within different institutional arrangements in the oil and gas sector

From the interviews that were conducted on the development of PPP in Uganda and how it has occurred within different institutional arrangements in the oil and gas sector, the results showed that there were several steps and institutions that were considered as those that were important in the development of PPP. This was reflected in the interview which was conducted with one military official who said that;

“The government’s need to transform the country from a peasant to a modern and prosperous country by 2040 under the vision 2040, by the National Planning Authority (NPA) led to efforts for expanded and sustainable national infrastructure like energy and road infrastructure, this necessitated the part of the private investors for the creation of an alliance initiate and influence the vision and mission”¹³¹

It can be observed that NPA was part of the institutions that could have laid the foundation of the development of the PPP as it showed the need to have such arrangements for the private sector in areas where big amounts of money were needed. This meant that there was supposed to be cooperation between government of Uganda and the private sector.

Another official who was also interviewed stated that;

“The need to have PPP necessitated a legal framework to guide and control the execution. This effort can be traced in the constitution articles 178 (9b) as amended in 2005. This text encourages PPP as a critical element between the private investors and government. The private were considered as enablers and the government would protect the citizens’ rights in a balanced development of the country”¹³²

One can therefore see that the institution of parliament here provided another step in the development of the PPP this can be well observed in the public private partnership policy of 2010. It is the policy which laid the foundation in relation to PPP and the functions or responsibilities of the parties in the partnership. It was this policy that provided the framework to be used by the agencies. This is in line with what Mugurura

¹³¹ Primary Data, interview’9th January 2024, in Kampala.

¹³² Primary Data, interview’10th January 2024, in Kampala.

and Ndevu,¹³³ observed when they argued that the private investors were well described in relation to the guidelines, code of practice standardization of PPP processes and documents plus capacity advancement.

In another interview which was held with another official, from one of the institutions, it was discovered that another institution and a step in the PPP could be traced with the Public Procurement and Disposal of Public Assets (PPDA). In the interview the official stated that;

*“The importance of the PPDA in the development of PPP can be examined in the governance of the procurement and disposal sequence for government projects. It is under the PPDA that the contracting is done which is under section 52(a) of the PPP Act. The contracting institution has to often be guided by the PPP in relation to the categories of contract arrangements”.*¹³⁴

What is important here is that the case of procurement of projects in the oil and gas sector can be affected by the transparency in the information sharing. Once there is no transparency, the applicable procurement procedures, documents and prospective private investors are denied the opportunity to get the needed information. The population may also be left in the dark when it comes to local content aspects. This has been the case where the issues of transparency have even led to court cases concerning issues of contracts as demonstrated in Bagobo, Mugyenyi, Magara, & Twebaze¹³⁵ when they highlight the problems in the disclosure and reporting of information by government institutions.

While they state that Uganda is a signatory to initiatives on transparency and has shown interest in being part of the Extractive Industries Transparency Initiative (EITI) the level of transparency is still negligible in the oil and gas sector. However, it is known that transparency can lead to accountability in the sector as argued by

¹³³ Jude Mugurura and Zwelinzima Ndevu (2020), The legal public–private partnership framework and policy implementation in Uganda.

¹³⁴ Primary Data, interview’ 11th January 2024, in Kampala.

¹³⁵ Paul Bagabo and Onesmus Mugyenyi etal CONTRACT TRANSPARENCY IN UGANDA’S PETROLEUM AND MINING SECTORS ACODE Policy Research Paper Series No.94, 2019.

In addition to the above, the results from the interviews that were carried out it was shown that there were other institutions that were involved in the development of the PPP. This included the ministry of finance under which the Public Finance management Act of 2015 was enacted. This meant that the old Public Finance and Accountability Act of 2003 (PFAA) had to be abandoned (Republic of Uganda, 2015, Section, 84). One official from the ministry of Finance Planning and Economic Development stated that;

The question of managing finance where the government of Uganda had to borrow money or to get money from private investors or private sector was critical. This is in line with what the European Union (2016)¹³⁶ argued when they acknowledged that PPP occur because countries do not have money for big infrastructures. This therefore requires that duties and functions, the agreements on grants and money sourced through external borrowing necessitate the legal mechanism to explain the obligations of parties, for example the private investors and governments. Such laws deal with regulations, control of processes and the arrangement therein.

It can further be argued that the stage of having finances under the PPP regulated formed another step in the PPP since it formed the ground for a unobstructed, well examined and broadly consented handling of the foundation of PPP principles in relation to agreements among the parties in the oil and gas sector. Mugurura and Ndevu¹³⁷ believe that this was to streamline the management of grants, guarantees, inspecting and stock taking and the book-keeping of public finances and the debt from such arrangements (PPP)

From another interview that was conducted on the institutions and the development of PPP, the results showed that there was the institution of the Auditor General that was considered crucial considered as tin auditing and reporting on public accounts. This was reflected in the interview which was conducted with one official who said that;

¹³⁶ EU Law and Publications in 2016 < <https://op.europa.eu/webpub/com/general-report-2016/en>> Accessed on 25 February 2024.

¹³⁷ Jude Mugurura and Zwelinzima Ndevu (2020), The legal public–private partnership framework and policy implementation in Uganda.

*“The national audit Act of 2008 empowers the Auditor general to inquire, investigate, examine and report where the office thinks that there is need for that inquiry or examination. Such would be on the expenditure of public finances in a PPP project or money expended advanced or guaranteed to a private entity where government has no controlling interest”.*¹³⁸

The revelation that there was an institution like that of the Auditor general who was given discretionary powers to look into and report on the expenditure of public finances in PPP project confirms that there was need to be accountable in the PPP projects. This can be traced in the section 30 (1) of the PPP act of 2015. What is important to bring out is the fact that there is no transparency of such aspects of the PPP. Such audits would increase contract transparency and such transparency would shed more light to increased accountability in the oil and gas sector.¹³⁹

Despite that the office of the Auditor general was important in the PPP development as the Act meant to provide a comprehensive account in relation to the management of public finances, debts, grants and guarantees, too much opaque dealings have led to doubts in the public arena. This finding was in line with what was stated by Mugurura and Ndevu¹⁴⁰ that the auditing that was meant to give supervision under audit committees at policy levels, has been associated with no transparency. Even when the parliament, secretary to treasury auditor general and committees were to be instrumental in the activities of auditing, even members of parliament have complained about the opaqueness in the finances under PPP.

While interviewing another officer on the same issue of the institutions and the development of the PPP, it was also confirmed there were institutions that included the environmental institutions and land. In his response over the same question, he asserted that;

“The issue of land institutions and environment were another important part of the PPP development. Imagine that infrastructure development affects land acquisition and destruction of the

¹³⁸ Primary Data, interview’ 10th January 2024, in Kampala.

¹³⁹ Paul Bagabo and Onesmus Mugenyi etal CONTRACT TRANSPARENCY IN UGANDA’S PETROLEUM AND MINING SECTORS ACODE Policy Research Paper Series No.94, 2019.

¹⁴⁰ Jude Mugurura and Zwelinzima Ndevu (2020), The legal public–private partnership framework and policy implementation in Uganda.

*environment so this had to be an important part of the PPP". This is where the national environment Act Cap 153 and the land Act Cap 277 are crucial"*¹⁴¹

The revelation about the institution of land and environment in the development of the PPP in Uganda, have been an important issue and have elicited international response to the extent of trying to make private investors stop investing in the oil and gas sector in Uganda. It has been reported that there has been exposure to environmental effects and land grabbing for those people affected by the East African Crude Oil Pipeline (EACOP). Though the institutions that were identified in the development of PPP are in place land issues like land grabbing have been constantly emerging. This is evident in what has been discovered by Les Amis de la Terre France (2022)¹⁴² which confirmed that there was land grabbing leading to human rights violations. There was repeated failure to get informed consent to land prior to the project. There was registered abuse of property rights where people were subjected to indecent health and restrictions on freedom of expression.

Further still, the issues of the environment have not only been confirmed by the demonstrations in Africa and Europe, there has been concerns over destruction of the environment. This finding has been similar to that of Les Amis de la Terre France¹⁴³ where it has been argued that big risks have been ignored thereby endangering the unique biodiversity not only in Uganda but also in Tanzania. Total energies as a private entity have been mentioned in undermining the protected marine reserves and that a climate disaster is feared to be building.

It is therefore important to assert that the institutions that were put in place in the development of PPP have not been fully utilized to help in the implementation of the PPP projects like that of EACOP thereby making PPP undertaking a risky one.

¹⁴¹ Primary Data, interview' 10th January 2024, in Kampala.

¹⁴² Rapport d'activités 2022 des Amis de la Terre France Découvrez le rapport d'activités 2022 des Amis de la Terre France.

¹⁴³ Rapport d'activités 2022 des Amis de la Terre France Découvrez le rapport d'activités 2022 des Amis de la Terre France.

4.3.1 Structure of the regulatory framework for the oil and gas laws

To understand the structure of the regulatory framework for the oil and gas laws under the PPP mechanism respondents were asked to give their opinions and explanation and their responses are presented here below.

Interviews conducted showed that indeed there was an interesting structure of the regulatory framework for the oil and gas sector in Uganda. It was revealed that there were laws concerning procurement process, tender documents, contracts, risks under which there is the PPP contract structuring, PPP tendering and award, PPP tendering and award -stakeholder engagement, PPP tendering and award-procedures and institutional responsibilities. One of the officials who were interviewed observed that;

“The PPP framework which was adopted in 2010 was meant to achieve better use and allocation of public finances, efficient delivery of public infrastructure, providing of good quality public services and increased economic growth and foreign direct investment. This led to the PPP Act of 2015, the PPP regulations, and the PPP guidelines”¹⁴⁴

From the results in one interview with an official, it was indicated that the framework exists though some people have indicated that the legal framework is weak. This has been because there has been abuse of legal framework and no sanctions have been given to those that abuse it. This would suggest that there is no legal framework for PPP as it has no provision for sanctions on those that violate it. One cannot fail to realize the situation when numerous insurance private entities decided to abandon the insurance business over EACOP citing the numerous troubles. This suggests that the framework is weak and may not have guidelines when in the real sense it exists. The PPP Act provides for the practices and has information on the procurement rules and approaches that can be applied to PPP.

While discussing this, another official argued that;

“There is a problem when it comes to the legal framework which does not clearly provide for situations when people connive with

¹⁴⁴ Primary Data, interview’ 12th January 2024, in Kampala.

international private entities that can influence processes. This is a major weakness plus the fact that ministers are given powers to develop contracts.....”¹⁴⁵

The finding also exposes the fact that the legal framework does not have a provision which strikes a balance between the issues of confidentiality and the right of access to information on the part of the citizens for which the government is acting on behalf. The ownership of this oil and gas is in the citizens of Uganda and therefore deserve to know what is happening with their property. This argument was also upheld by Tumusiime¹⁴⁶ when he observes that the property of oil and gas was just vested in the government of Uganda as stipulated in section 4 of the upstream Act. This Act just reaffirms what is in article 244 of the constitution of the Republic of Uganda.

4.3.2 Critical essential sections of the oil and gas legal framework

The discussion about contracts in the oil and gas sector became an important aspect in almost every interview that was held with respondents. This therefore showed that the component of contracts is an important essential section. This also refers to the choice of procurement procedure in the oil and gas sector. In an interview that was carried out in Kampala with one of the respondents, the official stated that;

“The institutions and people concerned with the contracts have not shown competence, willingness and the commitment to the PSAs. In addition to that giving some powers to the minister who may not have enough competence weakens this provision.the issues of how the country responds to the insufficiency in justifying the use of non-competitive process, aspects of the violations of the non-competitive arrangements, contract dividing and the violation of risky situations of urgency and other issues surrounding alterations which are not supported”¹⁴⁷

This revelation on contracts and their confidentiality aspects has been at the centre of discussion which shows that there has been a lot of opaque procurement procedures and this has led to doubts about the justification of some dealings. This further

¹⁴⁵ Primary Data, interview’ 12th January 2024, in Kampala.

¹⁴⁶ Tukundane Ronnah Tumusiime (2021) A Thesis submitted in partial fulfilment of the requirements of Nottingham Trent University for the degree of Doctor of Philosophy.

¹⁴⁷ Primary Data, interview’ 13th January 2024, in Kampala.

highlights the weakness in the legal framework where transparency has been much complained about. With no consequences and punishment to whoever violates that Act, this becomes a very sensitive aspect which is not handled well. The graveness of the component of contracts and the transparency thereof can be seen in the case of Charles Mwanguhya Mpagi and Izama Angelo v Attorney general Misc cause Case No. 751 of 2009”¹⁴⁸

It can further be argued that the contracts between the oil and gas partners in form of private entities, once kept in the dark implies that there has been connivance, corruption and failure to give the true nature of contracts that have been signed on the procured projects. It is therefore important to state that even the parliament which has the advisory role in the development and approval of the agreements (PSA) does not have full access to such agreements. The failure to give full information to the legislators brings more doubt.

To show that some of the legislators were at one time very concerned about these agreements and how they were handled one legislator emphatically said that;

*“The issue of agreements has been an important part of our dissatisfaction with how it has been handled. Actually, it is because of the demand for these agreements that we were kicked out of the National Resistance Movement (NRM) party”.*¹⁴⁹

What is interesting was that the court gave a ruling indicating that the applicants in one Mwanguhya and Izama Vs Attorney General case¹⁵⁰ did not give enough evidence that their quest for information was meant for the public only and that the information would not lead to hurt the third parties like the private oil entities which were prospecting for the oil. Having such situations dealt a blow to upholding those concerned with oil and gas contracts accountable. This fear was also shown by Lewton¹⁵¹

¹⁴⁸ Charles Mwanguhya Mpagi and Izama Angelo v Attorney general Misc cause Case No. 751 of 2009.

¹⁴⁹ Primary Data, interview’ 13th January 2024, in Kampala.

¹⁵⁰ Charles Mwanguhya Mpagi and Izama Angelo v Attorney general.

¹⁵¹ Thomas Lewson, (2022) Total’s oil pipeline gets go-ahead from Ugandan MPs despite secret terms.

when she stressed that the contracts that were finally seen by some people confirmed that the contracts that were signed were not in the interest of Uganda and the citizens. In addition to the above, there were doubts on the contracts and revenues from the contracts that were signed over the procured projects. The doubts were aired by several members of the civil society organizations (CSOs) and some members of parliament who were concerned about the time given to stakeholders. Some of the concerns were about the pipeline (EACOP) and the revenue from the extracted oil. In one of the interviews that was held with a legislator, the legislator was concerned and said that;

“.....the way some issues about contracts on the projects procured are handled is not good, the bill that was passed about the pipeline was rushed as if it was something very negligible, we were debating a project which may turn into a curse for this country like it has been in some of countries where people have been killed either because of environmental impacts from oil and gas”¹⁵²

The revelations on the above issue exposed the critical sections of the legal framework but were not handled well. This can even be seen happening at the parliamentary level where laws are made and approvals are sought. The way the bill was hurriedly done was also noticed by AFIEGO¹⁵³ when it was mentioned that the EACOP bill was not given enough time. One of the members from the civil society Nabiruma felt disturbed when she argued that they were observing blindly on the issues of agreements. This issue of contracts has become a very controversial issue in the procurement of oil and gas projects in Uganda.

4.3.3 Ownership aspect in the legal framework

The results from the interviews that were conducted, it was shown that there was little feeling of ownership when it came to oil and gas in relation to procurement of projects. The PPP arrangement acknowledges that the people of Uganda are the owners of the property. Putting that in mind there were so many instances which show that people

¹⁵² Primary Data, interview' 13th January 2024, in Kampala.

¹⁵³ Africa Institute for Energy Governance (2021) < Africa Institute for Energy Governance The way the bill was hurriedly done was also noticed when it was mentioned that the EACOP bill was not given enough time - Search (bing.com)> Accessed on 25 February 2024.

felt that they are alienated from the oil and gas projects. One official who was interviewed, stated that;

“It is very hard to imagine that there is a provision which talks about ownership yet very little shows ownership by the citizens. Ownership is provided for in the Upstream Act section 4 and even the constitution articles 244 talks about ownership but, some of the institutions and officials have not indicated to people what the provisions say”¹⁵⁴

The findings on the ownership of the oil and gas in Uganda as provided in article 244 in the constitution and section 4 in the Act have not been well handled by the responsible institutions and officials. This can be done by giving information to the owners and involving them in the implementation of oil and gas activities. This can be done through local content. Once the ownership of oil and gas is not shown through transparency then even the private entities that may be scared from investing in the oil and gas sector. This view is held by Gumede Nhlanhla,¹⁵⁵ when she argued that opaqueness exhibited in regulatory framework can impact the likely private entities and those other private investors participating in the project procurement to shy away. Ernst and Young¹⁵⁶ also indicated that once uncertainty in the legal framework and practices are noticed by private investors then it becomes one of the severe risks under the PPP arrangement.

In addition to the above, one can argue that the powers given to the minister is not well thought out in relation to licences and the substance of the licences. These powers pose a risk to the sector because there appears to be no safeguards. In the discussion about ownership and risks Hammond and Mahler,¹⁵⁷ have shown that the countries that have such provisions like Nigeria and Angola have not used oil and gas resources in favour of the owners, who are the citizens. Therefore, when violation of the laws governing PPP and the oil and gas sector are not followed for example article 244 in the constitution it becomes a concern for the citizens.

¹⁵⁴ Primary Data, interview’ 14th January 2024, in Kampala.

¹⁵⁵ Gumede Nhlanhla, (2009) Public Procurement in the South African Economy: Addressing the Systemic Issues.

¹⁵⁶ Ernst and Young (2012), uncertainty in the legal framework and practices is one of the severe risks that can affect the viability and attractiveness of PPPs for private investors.

¹⁵⁷ Teye Tsatsu (2016) Energy resource (Oil) Mismanagement in West-Africa.

4.3.4 Competence of the authority concerned with management of PPP and procurement of the oil projects

From the interviews that were conducted on the competence of the authority concerned with management of PPP and procurement of the oil projects, the results showed that there were several concerns that were depicted that induced the minister who may not have any competence in the PSAs, the lack of capacity on the part of the officials, there has also been the case of underfunding of PPP and this funding could be used for capacity development. This was reflected in the interview which was conducted with one official who said that;

“PPP has not been given the focus and attention it needs, the PPP as an institution under the ministry of finance planning and economic development has not been fully used in the oil and gas sector. They do not have people with the know how and it seems they were haphazardly put together”¹⁵⁸

This revelation that the PPP as an institution under the ministry of finance planning and economic development is not competent enough can imply that it does not have the professionals to do work and advise on the procurement of projects. The fact that some of the officials who have powers are political ministers and may not have knowledge about PPP, this could reduce on the functionality and competence of the PPP system. This is not different from what Mugurura and Ndevu¹⁵⁹ discovered in their works and they argued that there was no expertise on the part of PPP, there was low financial abilities, they suffered from absence of necessary equipment, no technical skills and did not have teams but groups of labour. This situation leads one to think that the work of the PPP has been left to international oil companies because it is them that have complete control of the technical aspects. This ranges from the hydrologists and bridge experts to the modelling of PSA.

In another interview with one of the respondents it was found out that some of the officers did not know about the law on PPP and when asked about the legal framework

¹⁵⁸ Primary Data, interview’ 14th January 2024, in Kampala.

¹⁵⁹ Jude Mugurura and Zwelinzima Ndevu (2020), The legal public–private partnership framework and policy implementation in Uganda.

it was found out that some of the officers could not talk about the PPP legal framework. In one interview, one respondent remarked and asked;

“I am not sure about the law that you are talking about”¹⁶⁰

This revealed that they were not fully involved in the procurement of projects in the oil and gas sector, others did not even give enough impression that they are aware of the law under which they were working. It can also be argued that the aspect of secrecy has also affected the work of PPP institution. This view is shared by Mugurura and Ndevu¹⁶¹ when they state that the strategy of keeping almost every aspect in opacity has left the private sector and other stakeholders in a situation that does not allow them to have information and the situation does not suggest that there will be any change.

4.3.5 Satisfactoriness of the oil operations as captured in the legal framework, the competence of the national oil company and the obligations of other stakeholders

From the interviews that were conducted on how satisfactory the oil operations are captured in the legal framework in relation to the competence of the national oil company and the obligations of other stakeholders, the results from these interviews showed that there were several issues that were opined by the officials and these included the low capacity in the local market of private entities, the influence of some countries and their private companies in the oil and gas sector, the small competitiveness in the PPP arena and the secrecy in the process of identifying private entities. This was revealed in the interview which was conducted with one official who said that;

“In the PPP process of procuring of oil and Gas projects, Uganda uses PSAs where the contractors execute the early stages in exploration of oil. In circumstances where oil is discovered the contractor is given part of the oil to cover the costs. A country like Uganda which is in oil as a new state in the oil business faced many challenges. Not so many people can bargain such issues in the PPP”.¹⁶²

¹⁶⁰ Primary Data, interview’ 14th January 2024, in Kampala.

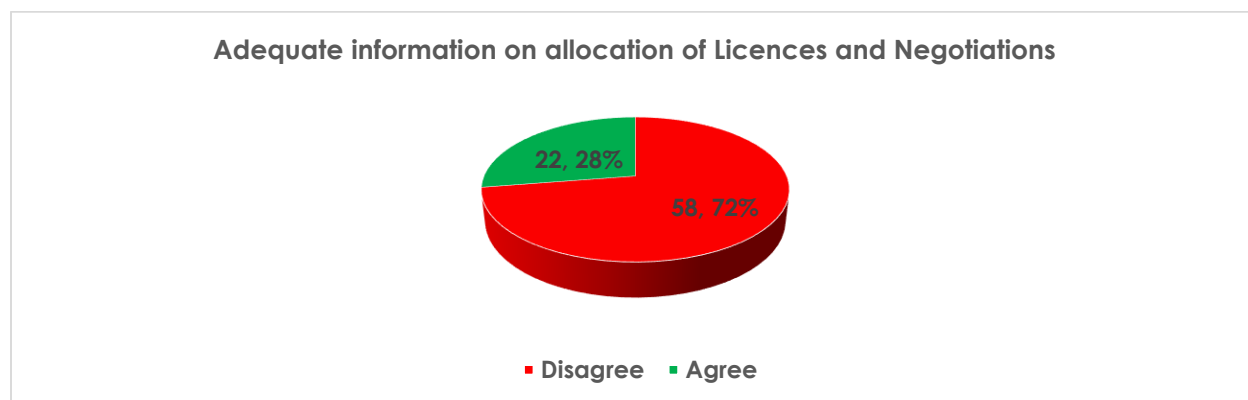
¹⁶¹ Jude Mugurura and Zwelinzima Ndevu (2020).

¹⁶² Primary Data, interview’ 15th January 2024, in Kampala.

4.3.6 Adequate information on the process of identification, appointment, operations and reporting by persons responsible for allocating licenses as well as negotiating, signing and managing contracts

The results on adequate information on the process of identification, appointment, operations and reporting by persons responsible for allocating licenses as well as negotiating, signing and managing contracts, showed that the majority of respondents 72% disagreed identified the people in oil and gas governance as secretive, 28% mentioned that they agree. The results reveal that the respondents did not agree that there was adequate information which suggests that the system is closed and people do not get information on the oil and gas as owners of the resource (See figure)

Fig. Showing the distribution of responses on the adequate information on the process of identification, appointment, operations and reporting by persons responsible for allocating licenses as well as negotiating, signing and managing contracts.



Source: *Primary data 2023*

The finding that Uganda is not well knowledgeable about the operations and that it has used model PSAs which have been used by countries which have had problems with the oil and gas sector implies that Uganda may also face the same problems. This view is similar to what Tumusiime¹⁶³ stated when he observed that countries which go into the oil and gas business in their earliest days, will have sometimes fall to the tricks of international oil companies. They often exaggerate their costs in their exploration operations such that they get big compensations in terms of tax.

¹⁶³ Tukundane Ronnah Tumusiime (2021) A Thesis submitted in partial fulfilment of the requirements of Nottingham Trent University for the degree of Doctor of Philosophy.

In such circumstances one would argue that the option would be to do very serious benchmarking from those countries which have had good experience. However, the problem is that, it is such countries which have powerful oil companies which have experience and therefore would be on the side of their countries.

In another interview with another respondent, it was discovered that during the operationalization of the PPP in the procurement of oil and gas projects there have been disputes which have for sometime been referred to countries where the identified private companies come from. In the interview the respondent stated that;

“Uganda like other countries which are just experiencing oil and gas activities for the first time get exposed to judicial problems and sovereignty.Uganda has not been exceptional as it has also had issues with tax disputes with internal oil companies”¹⁶⁴

From the revelation, it can be implied that the lack of experience in the field of oil and gas sector has meant that Uganda is suffering from judicial issues. This is similar to what Global witness¹⁶⁵ when it argued that the citizens of Uganda cannot easily comprehend why their government is coerced to be pay money in an external court over issues concerning their oil and gas in Uganda. It is such disputes which lead to judicial jurisdiction concerns. Coupled with shallow legal experiences in the oil and gas sector, oil and gas business legal problems that emerge from PSAs lead host countries like Uganda to international arbitration areas out of problems from contracts signed with IOCs. These IOCs often think that the host countries do not have the technical know how to handle such business conflicts. This in the end compromises the sovereignty of the host countries.

4.4.0 Negotiations and agreements from the benchmarking to transparency

The results from the interviews that were conducted about the negotiations and agreements from the benchmarking to transparency, on issues concerning who was involved in negotiations and agreement signing. The researcher also asked about why information is held and why court cases have shown concern over opaque agreements

¹⁶⁴ Primary Data, interview’ 15th January 2024, in Kampala.

¹⁶⁵ Global witness, (2012) A good deal better? <A Good Deal Better? | Global Witness> Accessed on 25 February 2024.

showed that there were several descriptions which indicate that the negotiations and agreements are often seen in the negative way. In the interview that was carried out with one of the officers, this was confirmed when the officer stated that;

“The government did benchmark and promised to do the best practices but the areas to benchmark can be wide and require people from different areas, like negotiation, contracts, environment, tax administration, transparency, revenues, social and economic impact and others. What the government does with reports is another. People are concerned with many issues in the oil and gas sector”¹⁶⁶

The revelation on the negotiation and agreements (PSAs) has been featuring a lot in debates where it has been shown that the government of Uganda has been opaque. It is also important to argue that this opaqueness has led to speculation on almost everything. The situation about benchmarking, negotiations and agreements has been well captured but not in the positive. This is similar to what has been stated by World Bank and ACFODE¹⁶⁷ when it was reported that there is scanty information concerning negotiation and the successful bidders. The same situation of opaqueness is featuring in the negotiation terms and the criteria for the negotiations. In its discussion about contracts the World bank¹⁶⁸ states that there was no standard model of contracts and transaction documents. This implies that there is no standard way of proceeding with contracts and this can be abused. With no transparency the attitude of citizens has to be biased towards what is going on in the oil and gas procurement of oil and gas projects.

There has been very little information on the disclosure of the contracts signed with the successful bidders, there is little on which bidder is in which project area, there is no text, the additional documents and the amendments that have been made after negotiations.¹⁶⁹

¹⁶⁶ Primary Data, interview’ 15th January 2024, in Kampala.

¹⁶⁷ World Bank Group. (2016). Benchmarking public-private partnerships procurement.

¹⁶⁸ World Bank Group. (2016).

¹⁶⁹ Paul Bagabo and Onesmus Mugenyi etal Contract Transparency in Uganda’s Petroleum and mining sectors Acode policy research paper series No.94, 2019.

In another interview that was held with another official, the official observed and said that;

“..... the government has been silent on issues like procured project level reserves, such information could be well structured to show some form of accountability for the citizens, it is also concerning that guidelines on negotiations are not known. This is crucial before contract signing”¹⁷⁰

This finding that opaqueness exists on almost every aspect of negotiating and agreements casts doubt on the benchmarking that was done. Further still, this sounds a grave concern on how the officials in the negotiations can be manipulated by the negotiators. The IOCs can also find a way of undermining the negotiations if there are no rules on such negotiations. The world bank¹⁷¹ has shown how guidelines on negotiations with bidders who have been successful can be very helpful before the procurement of project and signing of the contracts. This information is also important on the procured project level reserves in a broken-down way and this can also be integrated into government systems and not reported individually.

4.4.1 Common principles that were used for effective designing of institutional arrangement for PPPs in the oil and gas projects

From the results in another interview, with an official from one of the institutions that are deal with oil and gas resource management, it was indicated that good practices in the PPP can be at different levels. These levels can be the preparation for PPP, procurement of PPP, good practices in unsolicited proposals of PPP and good practices in PPP contract management. It is such levels at which good practices are applied and failure can lead to poor procurement of projects. While discussing this issue, the official said that;

“.....there has been efforts to guarantee that the choice on the procurement of PPP is admissible and correct and the institution is prepared to start the procurement and we make sure there is long term financial effect endorsement, there is also project assessment and

¹⁷⁰ Primary Data, interview' 15th January 2024, in Kampala.

¹⁷¹ World Bank Group. (2016).

*priority given in relation to public investment projects in an environment of Uganda public investment strategies”.*¹⁷²

The fact that there is an effort to exercise some good practice is good but the concern is about the secrecy which may not support ideas on the way those practices are integrated into the whole process. This concern is shared by the world Bank,¹⁷³ when it states that good practices at the preparation level can be sound when the project is appropriately acceptable when there is fiscal affordability evaluation, risk evaluation, market evaluation, financial feasibility, social economic examination. Further still, it is important to compare PPP and public procurement and then the procuring institution prepares an outline of the PPP contract featuring requests for proposals. This necessitates a standardized PPP model contracts which ensures consistency.

In Uganda where the minister has powers to draft PPP contracts and there exists no standardized PPP models, one can therefore argue that the good practices that were mentioned become almost useless. This is coupled with the fact that the PPP institution itself is weak and lacks competencies.¹⁷⁴ The fact that a minister may not have the knowledge and can be changed or dropped as a minister highlights the weaknesses at this level of operation when one is talking about good practices of PPP.

In another interview, another official reiterated the good practices that are experienced at the preparation level and said that;

*“.....at the level of procuring PPP there must be competition and transparency in the course of PPP procurement execution without which the process becomes doubted. The issues to consider include technical competencies of evaluation committee members, time for potential private entities, publication of the procurement notice, the existence of detailed tender documents at all the stages of the Procurement time, publication of the award, negotiation between the award winner and PPP institution, publication of the signed contract online and others”*¹⁷⁵

¹⁷² Primary Data, interview’ 15th January 2024, in Kampala.

¹⁷³ World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

¹⁷⁴ Jude Mugurura and Zwelinzima Ndevu (2020), The legal public-private partnership framework and policy implementation in Uganda.

¹⁷⁵ Primary Data, interview’ 15th January 2024, in Kampala.

The revelation on the good practices at the level of procuring PPP implies that once all these practices are implemented there can be a good process for the implementation of the PPP process. However, this has not been the case at this level of the PPP procurement. First and foremost there has already been doubts about the competence of the people in the PPP.¹⁷⁶ It can be argued that the minister being part of the government (executive) makes the process exposed to political influence which can compromise the objectivity of the procurement process. Without giving the petroleum authority, the powers to negotiate and finalize contracts leaves the procuring in a weak position. The use of the minister (Section 9 of the Upstream Act and Section 8 of the Midstream Act) as a negotiator can also lead to the failure of the practice of competitiveness.¹⁷⁷

Further still, having the minister to just inform the parliament of Uganda about the agreements makes the PPP process weak. There has also been the view that the natural resources exist but it has not been active on the oil and gas issues in relation to procurement of the projects and following the legal framework.¹⁷⁸

On the publication of the information, it has been argued that there has often been opaqueness of almost every aspect of PPP and this further frustrates competitiveness. The explanation given by the government has often been the confidentiality of some information about the contracts and the private companies involved.¹⁷⁹ It is also interesting that the resolution by parliament to make the PSAs available they were given a short period of time to have a look at the signed contracts and many complained about this incident.¹⁸⁰

Another official who was interviewed over the same issue said that;

¹⁷⁶ Pamela Mbabazi & Martin Muhangi, (2018) Uganda's Oil Governance Institutions: Fit for Purpose? CRPD Working Paper No. 60 December.

¹⁷⁷ World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

¹⁷⁸ Pamela Mbabazi & Martin Muhangi, (2018).

¹⁷⁹ Veit, Excell and Zomer, (2011) Avoiding the Resource Curse: Spotlight on Oil in Uganda.

¹⁸⁰ Pamela Mbabazi & Martin Muhangi (2018) Uganda's Oil Governance Institutions: Fit for Purpose? CRPD Working Paper No. 60 December.

“.....for proper procurement there is often a practice regarding the issue of unsolicited proposals (USP). There are practices like; appraising the advantages of unsolicited proposals to see if they are in line with government investment interests, granting of a good period of time for likely private bidder and starting competitive procurement. These practices over USP strengthens transparency and competition in the course of procurement of projects which are labelled as USP. This should not be the major component of procuring projects.”¹⁸¹

From the finding that there are also practices over USP makes procurement implementation better since it can trigger competition and all the advantages of having competition in the procurement of projects. Related to this, is the assertion by the World Bank¹⁸² comment when it observed that once subjected to proper assessment the USPs can be one of those aspects of procurement that can generate private sector partnering with advantages in the oil and gas sector.

Hodges and Dellacha¹⁸³ have further explained that it is incumbent on the PPP authorities to assess USPs to guarantee that they are in line with what is happening in the economic environment of the economy of the host state. This however does not mean that there should not be transparency in the assessment of the USPs. The officials responsible for the execution of PPP procurement very often have not used this practice in a transparent manner to generate competition for the selection of the final private entity. The failure to execute good practices leads to the risk of failure to attain value for money in the oil and gas sector.

From the results in another interview with an official, it was indicated that there are also practices that are exercised in the PPP contract management and they can guarantee an effective execution and delivery of oil and gas projects. It was also observed that some of these practices are essential in the PPP contract management with an effective system which is open and executed by experts. While discussing this, the official argued that;

¹⁸¹ Primary Data, interview' 15th January 2024, in Kampala.

¹⁸² World Bank Group. (2016). Benchmarking public-private partnerships procurement.

¹⁸³ Hodges and Dellacha ,(2007) Unsolicited Infrastructure Proposals How Some Countries Introduce Competition and Transparency.

“.....like in other organization and activities there can be some deviations from what is planned and desired, we also have a system for managing the execution of PPP contracts, there is a contract managing team, there is the monitoring system and where there have been gaps, we agitate for change, butthe regulations on renegotiation can be revisited for better results”¹⁸⁴

The revelation about the practices in the PPP contract management in the oil and gas sector may mean that the practices may be on paper but in the implementation may not reflect what is done. This could have implied that those that were interviewed or who answered questions in the questionnaire either did not know, ignored or hid the knowledge about other factors. Authors like the World Bank¹⁸⁵ have explored and have argued about the failure in the teams dealing with PPP and procurement of projects in the oil and gas sector. The Opaqueness or secrecy, the involvement of the minister of energy in the contract management¹⁸⁶ have indicated that contract management in oil and gas sector in Uganda has problems concerning good practices in the PPP.

Further still, one can argue that the monitoring and evaluation systems of PPP in Uganda also have problems if monitoring and evaluation has really been done over the contracts. Since monitoring and evaluation in PPP uncovers the gaps in implementation. If there is no transparent presentation of contract documentation it is likely that monitoring will not be done well.¹⁸⁷ This also implies that there is expected no change expected to structure the private entities and regulations will be hard to enforce. In such scenarios, the replacement of private entities that have not been up to the criteria in the contract becomes hard and this may also compromise value for money and can also lead to corruption and accountability problems

¹⁸⁴ Primary Data, interview’ 15th January 2024, in Kampala.

¹⁸⁵ World Bank Group. (2016). Benchmarking public-private partnerships procurement.

¹⁸⁶ Pamela Mbabazi & Martin Muhangi (2018) Uganda’s Oil Governance Institutions: Fit for Purpose? CRPD Working Paper No. 60 December.

¹⁸⁷ Ministry of National Development Planning, Development Planning Agency, (2015) Republic of Indonesia.

4.4.2 Public finance management under PPP in oil and gas projects: Fiscal space, direct liabilities and risks

The results from the interviews that were conducted, showed that there has been doubts about the public finance management under PPP. There is a lot of secrecy surrounding fiscal space, direct liabilities and risks in the oil and gas sector. The results showed that where there has been a history of non-disclosure in contracts, negotiations, the public finance information performance has also been covered in skepticism. In such circumstance it has been very hard to know exactly public finance management and the scope and level of threat from such uncertainty will also determine the efficiency and effectiveness of public finance and PPP. One official who was interviewed, expressed mixed reactions when he expressed optimism and pessimism that;

“.....there is awareness on the public finance management Act and its requirement on the Minister of Energy and minerals development. There is a requirement to present reports to parliament on semi-annual and annual basis about the petroleum fund. The aim is to know about cash inflows and outflows. The problem is about the non-disclosure of information. Even the parliament is sometimes kept in darkness”¹⁸⁸

From the finding that there is a problem of disclosure, means that the issues from the contracts and implementation creeps into the public finance and management. This could be the reason too much debate on corruption have been aired out in the public.¹⁸⁹ It even worsens when the minister is given powers to appoint the committee in the consideration that if the minister is corrupted the committee is also exposed. This is expected since there is no good system of disclosure and there is no clear system to check the powers of the minister.

¹⁸⁸ Primary Data, interview' 15th January 2024, in Kampala.

¹⁸⁹ Pamela Mbabazi & Martin Muhangi (2018) Uganda's Oil Governance Institutions: Fit for Purpose? CRPD Working Paper No. 60 December.

Avocats Sans Frontières¹⁹⁰ has a similar concern when they argue that the minister is not required to guarantee that the payments made by the private entities in PPP arrangement are not broken down for clear understanding. Uganda has often been urged to apply EITI standards where payments are categorized according to type, the origins of the payment and the source project in the oil and gas sector. If such payments are not done and disaggregated like that it becomes very hard to track the payments and revenue on the part of government because the national budget looks at a single composite figure accruing from the oil and gas sector.

4.4.3 Institutions in approval of oil and gas projects: factors for delays, impact of negotiations and re-negotiations if any and the implications

From the results of the interview that was held with another official, who was asked about the institutions in approval of oil and gas projects, it was shown that the negotiations and the approvals of contracts are also shrouded in secrecy and opaqueness. Without planning and professionalizing the negotiation and approvals the impact of PPP on the procurement of projects will often be negative. In the interview, the official commented that;

*“..... negotiations of contracts by the members from the executive has not got good perception from different people. Sometimes negotiation leads to delays. Sometimes negotiations are about information on tax administration and contracts. There are situations of perpetual negotiations. The negotiations can be interpreted differently by different people some talk about delay of investment and decisions by private entities or IOCs. Negotiations put in mind revenues sharing, commercial and legal issues. To do this for sustainable oil and gas industry takes time”.*¹⁹¹

From the findings it was revealed that before 2013 the determination of exploration licenses was pegged on negotiations which were confidential between government of Uganda and the IOCs. The names of private companies, the particulars of the areas were not supposed to be disclosed. This was stopped with the Exploration, development and production Act of 2013. However, it is argued that there is no change from that as

¹⁹⁰ Avocats Sans Frontières, (2015) < Avocats Sans Frontières France (avocatsansfrontieres-france.org)> Accessed on 25 February 2024.

¹⁹¹ Primary Data, interview’ 15th January 2024, in Kampala.

much of the same practice is happening. According to ACODE,¹⁹² the information on blocks for exploration was supposed to be disclosed, particulars of IOCs bidding, the development in bidding rounds and those IOCs which were successful. It is further important to state that some of the PSAs were signed before 2013 and the contracts of the bidders who were successful have remained confidential and the particulars of negotiations have not been public. To get access to PSAs at parliamentary library is very tight and for one to get access one must apply to see them with complicated procedure. This renders the whole process difficult for those who would want to get access.

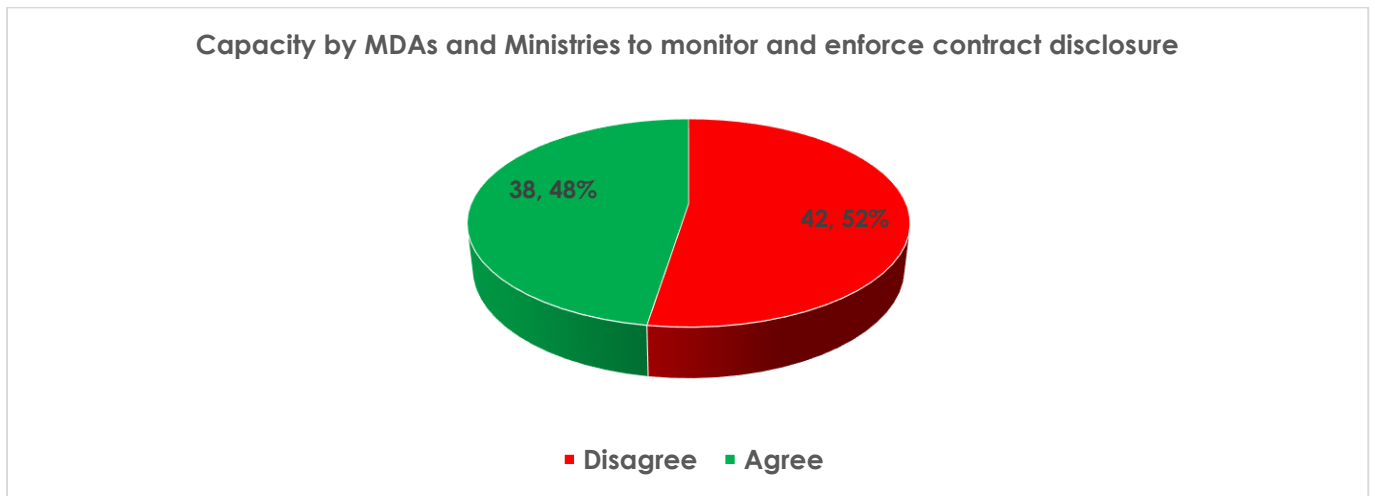
4.5.0 Institutions involved and their responsibilities in procurement of oil and gas projects under the PPP arrangement

4.5.1 Capacity by MDAs and Ministries to monitor and enforce contract disclosure

The results on the capacity by MDAs and Ministries to monitor and enforce contract disclosure, showed that the majority 52% were of the opinion that the institutions (MDAs and Ministries) did not have the capacity to monitor and enforce contract disclosure(disagreed) whereas the minority 48%. The results reveal that the institutions do not have the capacity to monitor and enforce disclosure of contracts (See below)

¹⁹² ACODE (2021) Citizens' Convention on Extractives < Welcome | Advocates Coalition for Development and Environment (acode-u.org)> Accessed on 25 February 2024.

Pie Chart Showing results on provision monitoring and disclosure of contracts



Source: *Primary Data, 2024*

From the results in one of the interviews with an official from the legislature as an institution which makes laws of the country, it was indicated that there were several institutions that are involved in the procurement of oil and gas projects, in the interview it was discussed that these institutions include; the PPP unit, the PPP committee, the parliament, which does the oversight committee, the executive, the supporting ministries, ministry of energy and mineral resources, petroleum authority, National oil company, investment advisory committee, the attorney general and others.

In the interview the officials, the official described the institutional framework, when he said that;

“The government has tried to put up the necessary institutions guided by the legal framework, the next step is to provide training and expertise and capacity to these institutions because Uganda is still in the early stages of dealing in the oil and gas industry. There are challenges because the capacity is still low”¹⁹³

The revelation that the government is still struggling to provide capacity to the several institutions and agencies implies the fact that the institutions have not operated to the highest standards. This implies that there is still lack of some competencies and skills. The problem arises when systems are not put in place

¹⁹³ Primary Data, interview’ 15th January 2024, in Kampala.

in the recruitment, training and capacity building. This argument is in line with what the World Bank¹⁹⁴ has argued when it stated that agencies do not have know-how of handling demanding analysis of projects and project procurement. It can also be argued that these agencies do not have the culture of putting emphasis on attaining value for money for the state and its economic and social interests.

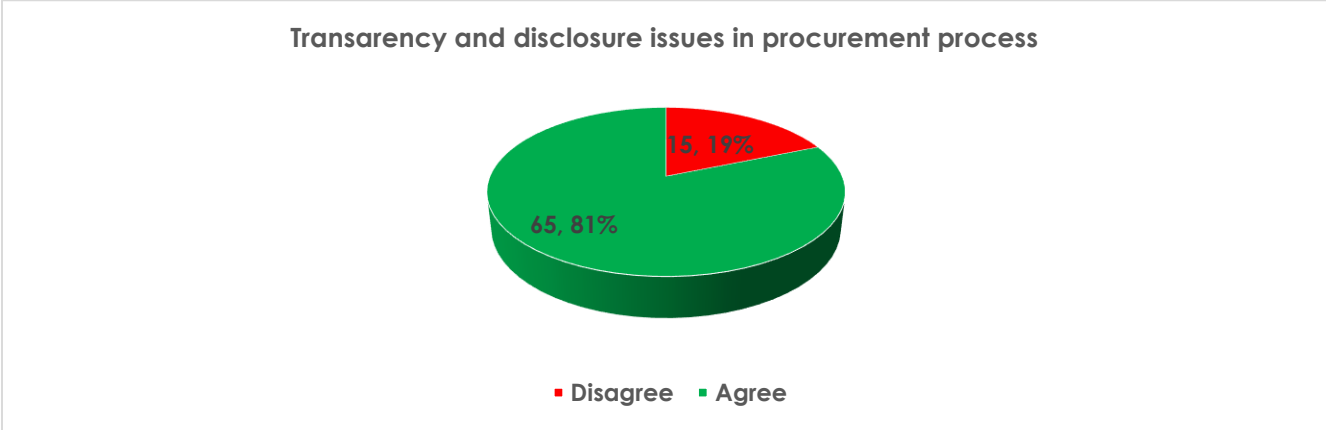
4.5.2 Factors that affect compliance to PPP procurement practices

To understand whether there are factors that have been identified as affecting the compliance to PPP procurement practices in the oil and gas sector, respondents were introduced to different items to have their say. The responses on the factors are presented as data from key informants from the different officials who work with institutions in the oil and gas sector.

4.5.2.1 Transparency issues

The results on transparency and disclosure of contracts, showed that the majority 81% sagreed that there was transparency and disclosure issues, whereas the minority 19 % disagreed. The results reveal that the relationship between procurement process and transparency is strained and this could be because of different reasons which are not known. (See below)

Pie Chart Showing Transparency and Disclosure issues



Source: *Primary Data, 2024*

¹⁹⁴ World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

From the results in one interview with an official, it was indicated that the abuse of the procurement practices has been reported so often but the enforcement or the monitoring and evaluation has not worked well. Either it is because of the capacity that is lacking or it is because of the lack of competencies by the officials in such institutions. There was also discussion on the poor funding of the PPP unit which may indicate that the government is struggling to build institutions. This makes it prone to compliance abuses. The institutional framework is not showing professionalism and now fractured and not well coordinated.

While discussing this, the official argued that;

..... compliance with PPP arrangement framework and the pursuance of the procurement of projects implemented by the different institutions has suffered from different factors and this is mainly because of the flow of information in the oil and gas legal framework designed through the legal framework. This is not good for implementation and the benefits to the citizens of this country.¹⁹⁵

The study findings revealed that there were several issues regarding transparency on the negotiation of contracts, tax administration revenue, implementation of the project. Even the government bodies like the parliament and the members of parliament struggle to get information from the institutions involved in the governance of the oil and gas resources. This is not different from what the World Bank called for when it argued that it is important to practice transparency in execution of the PPP process since this is very instrumental in the achievement of improved value for money. The fact that there is a structure of governance in the oil and gas sector means that there was a plan to have a culture of transparency but this is not what has been experienced. This may imply that there is no clear system of oversight. This can also be interpreted from what one of the respondents (R11) asserted when he said that;

“If the parliament which is supposed to do oversight duties and responsibilities is made to struggle to get information about the oil and gas, then be sure such problems of transparency are going to persist”¹⁹⁶

¹⁹⁵ Primary Data, interview’ 16th January 2024, in Kampala.

¹⁹⁶ Primary Data, interview’ 15th January 2024, in Kampala.

The revelation that even the legislative body is kept away from procurement information, means that the monitoring and evaluation of the procurement is hard. What is important because the legislative body is the one which appropriates and is also part of the approving system. This view is also held by SEATINI¹⁹⁷ where it has observed that parliament's oversight role has been deemed as not important. This way of running an important industry compromises the value for money in the oil and gas sector. Further still, the practice of the institutions producing supportable and justifiable contracts, the practice of reduction of the risks of renegotiation can be improved through the awareness and knowledge of the impact of transparency on service delivery.¹⁹⁸

In another interview which was held in Kampala with one of the officials, it was discovered that some practices can be very damaging to revenue from the oil and gas sector. When the government which is using PPP in procurement of projects is willing to pay on behalf of a private investor if they do not have enough capital then this does not indicate a good route to PPP in fiscal management. One of the officials who was interviewed showed a sense of confusion when she commented and said that;

“.....some practices by government seem like red flags on the procurement process mess and they are compromising compliance in the PPP. Such practices can be mistaken for illicit financial flows in relation to tax avoidance and tax evasion. Such practices also disorganize competition in the procurement process”¹⁹⁹

This practice of government of helping some investors compromises the competition which is a strong element in the procurement process. Additionally, the factor of transparency about PPP contracts often embeds stipulations that carry recognizable impact on stakeholders apart from the procuring authority and the bidder that has been the choice of the mandated authority. It is also important for the stakeholders that have genuine and suitable interest which rests on the information provided. The

¹⁹⁷ Southern and Eastern Africa Trade Information and Negotiations Institute, (2022) CSOS push for regulations to implement beneficial ownership in Uganda October.

¹⁹⁸ Ismail, Musawa, & Ahmad, (2019) Disclosure of public-private partnership (PPP) voluntary information: Case of Malaysian PPP projects.

¹⁹⁹ Primary Data, interview' 15th January 2024, in Kampala.

information that is given about the required components in the contract are useful to the stakeholders in the procurement process, this was supported by the arguments made by Rosell, & Saz-Carranza.²⁰⁰

4.5.2.2 Lack of competition

From the interviews conducted, it was indicated that indeed institutions in the oil and gas sector had not well facilitated the lack of competition as was expected of the procurement process. It was however revealed that lack of the flow of information encouraged fewer private investors to join the procurement bidding which they felt would lead them to awards that they aspire for. One of the officials who were interviewed observed that;

*“.....when information is not well disseminated then the would-be investors are denied information which would lead them to compete favorably. This is based on the argument that PPP procurement can be very successful if there is competition. The end result is value for money”.*²⁰¹

From the above revelation that competition has compromised compliance with procurement practices means that there will be loss of value for money, this is because there has been failure to manage the issue of competition in the oil and gas legal framework. The World Bank²⁰² has argued that the evaluations made in the PPP groundwork builds ground for the realization of the project which is dependent on the last “market test” in the course of the procurement procedure.

In the end one is made to argue that suitability of the PPP is compromised if only one private partner or bidder is registered. This further stimulates the thinking that the bid will not lead to value for money. Though one can argue that the process is legal even when a single bidder is realized, it can also be a result of some factors which can be identified as leading to such a result after advertising.

²⁰⁰ Rosell, & Saz-Carranza, (2020) Determinants of public-private partnership policies.

²⁰¹ Primary Data, interview' 16th January 2024, in Kampala.

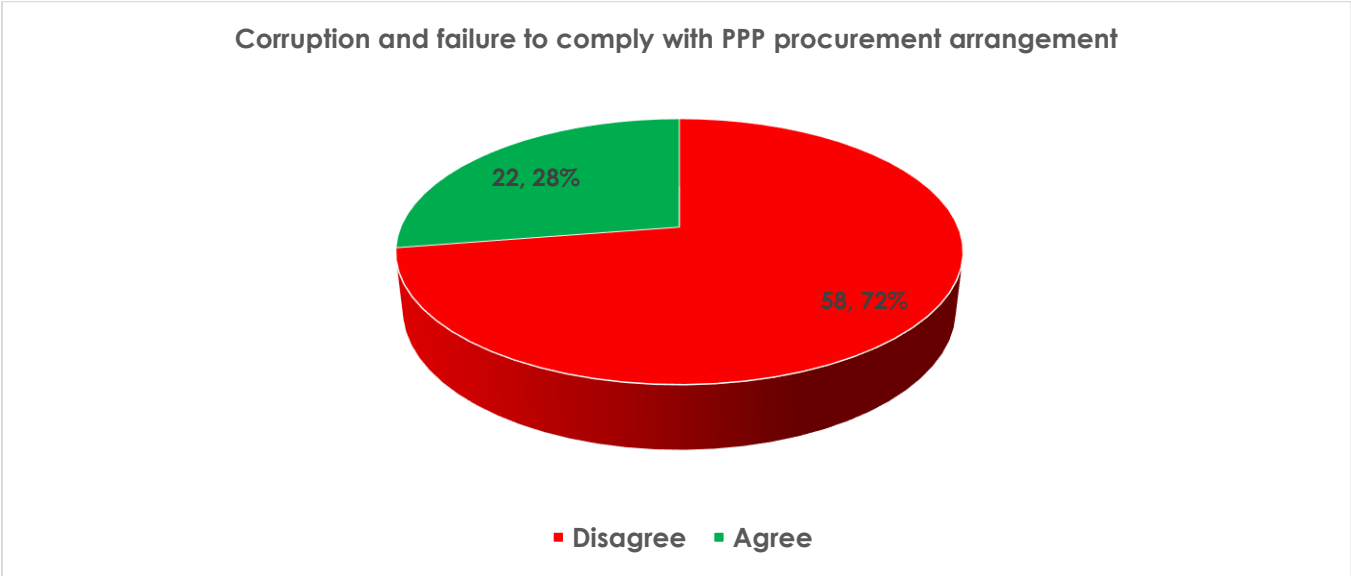
²⁰² World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

The World Bank²⁰³ further argues that, once a sole bidder is registered the agencies concerned can often think about a process of retendering if the dismal bidding was generated by procurement imperfections. Additionally, if the imperfections do not arise from corruption, incompetencies of poor flow of information, the agencies can decide on the preparation of activity on due diligence to ensure that the prospective partner as a stakeholder is fully compliant with all the legal and other obligations. One can therefore conclude that in such situation of all the above, the registration of a single bidder indicates a problem and this requires a necessity for revising the PPP legal framework.

4.5.2.3 Corruption and failure to comply with PPP procurement arrangement.

The results on corruption and failure to comply with PPP procurement arrangement, showed that the majority 72% disagreed that there is corruption, whereas the minority 28% agreed. The results reveal that the level of can be associated with what is happening in the oil and gas sector. (See Table 8 below)

Pie Chart Showing the Corruption and failure to comply with PPP procurement arrangement.



Source: Primary Data, 2024

²⁰³ World Bank Group. (2016). Benchmarking public-private partnerships procurement 2017. World Bank.

From the results of the interview that was held with another official, who was asked about factors that have led to compliance issues, it was shown that corruption can actually be one of those serious factors that compromise compliance with procurement arrangement. Without putting stop mechanisms in place in the planning and professionalizing the sector the impact will often be negative. In the interview, the official commented and said that;

“..... Uganda has a bad history of corruption, this situation is worsened by secrecy, lack of transparency and accountability in the sector. there have been debates about corruption and this is bringing worries if the oil starts to flow and revenues coming in. the debate in parliament about handling the oil money is a reminder of the concerns”²⁰⁴

The finding that signs of corruption have been experienced in the procurement arrangement carries a very big implication in a country which has been noted as having corruption with impunity. There have been reports that ministers had had been bribed by companies involved in oil exploration. This view is shared Brophy and Wandera²⁰⁵ when they stated that though no evidence was uncovered, there was a finding in the report that actually huge amounts of money in revenue could not be accounted for. Further still, there was an observation in a parliamentary report that there were inconsistencies which were put in the range of 500,000 dollars that could not be found in transfer accounts under the responsibility of institutions that are supposed to collect oil revenue in Uganda.

Further still, one can argue that the issue of corruption becomes even more concerning if one considers what happened in 2017 with the recovery of money in the range of Shs 1.5 trillion that was supposed to be paid by Heritage oil and gas to the Uganda Government. This payment led to speculation as Brophy and Wandera²⁰⁶ indicated when they stated that the “presidential handshake” caused a debate since some people saw this as a concerning indicator for the lack of compliance to the protocols which are laid

²⁰⁴ Primary Data, interview’ 16th January 2024, in Kampala.

²⁰⁵ Brophy and Wandera (2018) Keeping Corruption in Check in Uganda’s Oil Sector?

²⁰⁶ Brophy and Wandera (2018).

down in the public finance management Act of 2015. This Act stipulates the way withdrawals are supposed to be done from the oil fund.

The issues indicated in the oil and gas sector in relation to corruption have been covered by authors like Iossa, & Martimort,²⁰⁷ who indicated that circumvention of the rules and guidelines in the oil and gas sector is a serious problem which compromises the procurement arrangement. This does not only appear in the mismanagement of the revenues but also in the contract negotiation as shown in the doubts with the ministers that were allegedly mentioned in corruption in Uganda.

²⁰⁷ Iossa, & Martimort, (2014) *The Simple Microeconomics of Public-Private Partnerships*.

CHAPTER FIVE

LEGAL AND INSTITUTIONAL ANALYSIS

The fundamental tenets of any PPP legal framework are "transparency" and "accountability," which are necessary to provide "value for money" and operate in the "public interest" when carrying out these large-scale projects.

The foundational policy governing PPPs and the obligations of the parties involved is the Public-Private Partnership Policy of 2010.²⁰⁸ An analysis of the private sector's contribution may be found in regarding rules, regulations, and PPP standardization documentation, procedures, and capacity-building shows. It offers public agencies a structure. and departments to evaluate initiatives, determine which private partners, negotiate the terms, evaluate, and keep an eye on and assess how well they are implemented.

All public institutions, including all government departments and ministries, local authorities, and all statutory bodies, are covered by the policy, which simplifies PPP accountability and procurement procedures. It lays out every stage of the PPP process that must be completed in order to guarantee that it produces results that are more cost-effective than those of traditional procurement.²⁰⁹

One of the institutions made available by the Act is the Public-Private Partnership Unit. The PPP Committee's secretariat and technical arm, established by the Act. In terms of section 11 of the Act, the unit is tasked with providing the Committee and project team with technical, financial, and legal knowledge. The PPP Unit is tasked with carrying out civic awareness campaigns, educating the public about public-private partnerships, building capacity, and offering advice to contracting authorities and other parties involved in the planning, coordinating, and monitoring of PPPs. This unit is to be established within the Ministry of Finance, according to section 10 of the Act. When a PPP Unit is housed within the Ministry of Finance, it can take use of the advantages that come with being near such a crucial Ministry.

²⁰⁸ The Public Private Partnerships Framework Policy, 2010.

²⁰⁹ The Public Private Partnerships Framework.

The Act under section 2 provides that all PPP projects planned and carried out in accordance with the National Development Plan and its main priorities are legally supported by the Public-Private Partnership Act of 2015 (PPP Act). Section 38 - 45 of the Act provides that, these projects focus on how public infrastructure can be developed through various strategic and operational activities, including building and operating agreements, leasing, developing and operating agreements, operation and maintenance agreements, designing, financing, and building ownerships.

In particular, through the operationalization of stakeholder management and the description and emphasis of the significant responsibilities for the key PPP stakeholders, the PPP Act under section 37 is clear about how issues related to risk management and allocation, financing technicalities, and operating impacts can be dealt with through carefully structured procedures and regulations.²¹⁰ The Act under section 3 lays out the following principles: value for money; transparency; protection and respect for users' rights and interests; accountability of the contracting authority; encouragement of Ugandans to participate in PPPs as private parties; protection of bidders' intellectual property throughout the project; and promotion of growth and development through the efficient and innovative use of the private sector.²¹¹

Governments' inability to fund large-scale infrastructure projects is the primary driver of public-private partnerships. As a result, the obligations, duties, and agreements on grants, financing, and external borrowing of the parties including government guarantees, rules, and process and structure control need to be legally binding. This confirms the role played by the private sector in the procurement process.

Strict controls are mandated by the Act under sections 47(4) and 48(1), along with accounting and auditing practices and controls meant to guard against the core PPP concepts of corruption, mismanagement, fraud, and embezzlement.

²¹⁰ The Public Private Partnerships Act, 2015.

²¹¹ The Public Private Partnerships Act.

CHAPTER SIX

SUMMARY OF FINDINGS CONCLUSION AND RECOMMENDATIONS

This chapter presents the summary of findings, conclusion and recommendation depending on the objectives of the study and the findings. The research aim of this study was to assess the process of procurement of projects in the oil and gas sector in Uganda. Depending on the study purpose and specific objectives, this research which were to assess the extent to which Uganda's oil and gas legal and policy frameworks reflect the best practices in procurement, to examine the institutional responsibilities on the procurement of projects in the oil and gas sector in Uganda and to examine the factors that affect compliance to PPP procurement practices of oil and gas projects in Uganda.

From the study findings, the following emerged as important issues:

The fact that oil and gas sector is and as resource are an important and complex one, and that Uganda is looking at this sector to strengthen its development vision 2040 and spur its own national interests implies that there is need for a regulatory framework which can guide the exploitation of oil and gas to improve the welfare of the citizens of Uganda who own the resource and the government is doing all the implementation on behalf of these citizens. This is an aspect which the stakeholder theory emphasizes as inevitable, satisfying their assumption that every stakeholder with their own interests is supposed to benefit and be consulted and informed on the oil and gas activities.

This study also found there exists a legal framework on PPP and the oil and gas sector. This was a good step in the policy and implementation level, however, there have been some loopholes which have led to the non-compliance of the officials in the transmission, dissemination of information about companies, contracts, and procurement of the projects. Quite remarkable opaqueness was evident in investment projects, and transparency issues have led to low trust in those entrusted to negotiate contracts with IOCs.

The study found that the international legal instruments that have been put in place on transparency time for publishing application for bids have not been well followed by the institutions, and cannot easily be put to use over the oil and gas exploration and production. To make matters worse, the government has signed agreements which have in the very beginning led to court cases. Some in Uganda and others outside Uganda. Such court case are red flags which stand in the way of the implementation of the international legal mechanisms that would potentially have eased the oil and gas exploration, production and revenue issues considerably.

Many of the institutions that are involved in the procurement of projects in the oil and gas sector have not performed to their expectations in their roles and responsibilities. This has been said to be in part because of the way the executive has been put in a stronger position yet the minister is part of the executive. The creation of institutions like the National oil company and the petroleum authority of Uganda has been found to work loosely with the PPP committee. This committee is not well composed of experts who can do technical work, in contracts and monitoring and evaluation of the procured projects.

The institutions like the parliament of Uganda have not been given the chance to do its oversight role and this was found to be partly because of the lack of transparency in the oil and gas sector even when the legal framework is very clear on dissemination of the information.

Conclusions

Based on the findings from this study, the following conclusions have been arrived at the study concluded that the legal framework pol and gas framework including that of PPP in Uganda was positive and useful in trying to guide and streamline the procurement of projects, contracts implementation and revenue from the oil and gas sector.

This study concludes that the legal framework has commissions and omissions of important aspects that have continued to be unclear and this has led to limitations in the implementation of the exercise. There exists governance, institutional, economic and information sharing requirements issues, and the issues of having a minister in

drafting contracts when he/she could not have competencies and the sanctions on failure to share information aspects of the legal framework that have not been stipulated in the law to have the effective and efficient operation of the national oil and gas sector.

On the second objective of the study, the study concludes that many institutions have not carried out their roles and responsibilities very well, the study found that this is due to competence issues, poor funding by the government, the inclusion of the executive in the technical work of institutions, the failure by government to be open with information which makes monitoring and evaluation to correct the mistakes.

The study has concluded that there is a wide range of instances where non-compliance to the good practices has been registered. This mainly because of the non-closure of information right from applications, the bidding, contracts. The failure to practice transparency as a good practice has compromised the competition which is a feature of PPP which is crucial for value for money.

The study also concludes that political influence is a major problem in the practice of PPP since it has given a minister who can be changed any minute. The negotiation of contracts in a secretive manner is often prone to corruption and that can compromise the accountability in the oil and gas revenues.

Recommendation

The government of Uganda through the Parliament should come up with a legal and policy framework that guarantees the exploitation of oil and gas in a way that is commensurate with the constitution of the Republic of Uganda which shows that the government is working on behalf of citizens who are the owners of the oil and gas resource. In this way the rights and freedoms of Ugandans will be respected in relation to the information regarding oil and gas in Uganda.

The Legal framework should provide for public disclosure of information on contracts over exploration, production, environment and accountability purposes. This will give the investors the picture that the whole system of PPP is transparent, will enhance competition and value for money.

For PPP to be successful the government and parliament should pass laws which allow the correct identification of selected oil and gas projects where PPP would be feasible, where the arrangement of contract drafts or contracts can guarantee suitable pricing and transfer of risks to private entities that become partners in the PPP arrangement.

The government of Uganda should, through Parliament create laws that clearly show the coordination of the institutions that are in the oil governance structure, stipulate the roles and responsibilities that can lead to an effective, efficient and transparent system.

The government of the republic of Uganda should be mindful of the capacity of the workers in the PPP unit and oil and gas industry. There should be training of the officials in the oil and gas sector such that there is enough expertise in contract negotiation, drafting, procurement, tax administration and revenue management. The failure to have such expertise can be very costly in an important sector which is expected to spur development.

The government should establish a broad and transparent fiscal book keeping and a method that is standard for PPP. The PPP unit should be given appropriate funding so that it can function at its best without meagre funding which does not allow it to do its work.

The government of Uganda and the parliament of Uganda should formulate a law which streamlines the oversight, monitoring and evaluation that can guarantee the suitable pricing and quality of service in the oil and gas sector. The law must stipulate what parliament should do in the oversight throughout the PPP process. The PPP unit should also have a strong monitoring and evaluation department well equipped and funded.

The government and parliament should also come up with a legal framework which has provisions for sanctions over failing to abide with the issues of contracts and good practices in the PPP process. There is need to look for loopholes in the legal framework and plug them such that such loopholes are not used for corruption tendencies.

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**APPENDIX A
QUESTIONNAIRE**

Introduction

Hello. My name is Samuel Musoke, a student of Institute of Petroleum Studies Kampala (IPSK) I am conducting a study Titled **PUBLIC-PRIVATE PARTNERSHIP (PPP) AND THE PROCUREMENT OF PROJECTS IN THE OIL AND GAS SECTOR IN UGANDA** which will be used as a partial fulfilment for the award of the degree of Masters in LLM (Oil and Gas) under the same institute. You are kindly requested to participate in this study; your participation will contribute towards achieving of the above goal. I would very much appreciate your participation in this interview. The questionnaire usually takes between 10 and 20 minutes to complete. The information you provide will be kept confidential and will not be shown to other persons. I therefore kindly request you to participate in the study however it is voluntary, you are free not to participate if you decide to.

Signature of interviewer:

Date:

Respondent agrees to answer questions. 1 Respondent does not agree answer the questions.

Section one: Introduction of the respondent and general information

- 1) Name.....
- 2) Age.....
- 3) Education level
- 4) Marital status
- 5) Occupation.....

Section A

- i. Aware of the existence of legal, policy and institutional framework for contract transparency
Agree Disagree

- ii. The Mining law has not been revised since 2003 and does not have transparency provisions
Agree Disagree

- iii. There is availability of information about the total area that is to be opened up for exploitation with details of surface and sub-surface rights and needs for users
Agree Disagree
- iv. There is publication of prospective opportunities for exploration and the specific location of the prospective opportunities
Agree Disagree
- v. Information is available about names of companies bidding and the details of the ownership of the companies including the bidding outcome for each stage on the bidding rounds
Agree Disagree
- vi. Information is available about the negotiations with the successful bidder including the negotiation terms and criteria for the negotiations
Agree Disagree
- vii. There is disclosure of the contract for each project area in full including the text, annexure and amendments.
Agree Disagree
- viii. Information is available on project level reserves and revenues in a disaggregated manner ideally mainstreamed into government systems rather than standalone reporting.
Agree Disagree
- ix. There is publication of project-level data on commercial, social and environmental outcomes against project-level rules to track compliance
Agree Disagree

- x. There have been detailed public disclosure of the contents of contracts/licenses
Agree Disagree
- xi. The Information about existence of PSAs/ licenses has been disclosed to the public
Agree Disagree
- xii. Information on the companies which the government of Uganda was negotiating with and the details of the areas under negotiation were a secret until the 2013 when the Petroleum (Exploration, Development and Production) Act came into force.
Agree Disagree
- xiii. The transparency provisions in the petroleum laws are not adequate to guarantee full disclosure of contracts
Agree Disagree

Section B

- i. There is adequate information on the process of identification, appointment, operations and reporting by persons responsible for allocating licenses as well as negotiating, signing and managing contracts
Agree Disagree
- ii. The transparency is only related to announcement of the process and outcomes and not details of the contracts signed
Agree Disagree
- iii. The Ministry did not go far enough to announce the details of the contracts, the contract sums or the beneficial owners of the companies that benefitted from the contract awards
Agree Disagree

- iv. There is limited access is open to stakeholders in the Parliament of Uganda library
Agree Disagree
- v. The level of disclosure by institutions does not permit comprehensive analysis of the details of the contracts to assess what the government signed on behalf of citizens
Agree Disagree
- vi. There is no information about production licenses disclosed to the public
Agree Disagree
- vii. There is no information about PSAs disclosed to the public
Agree Disagree
- viii. The current state of the Fund including the amount of money has not been publicly disclosed by the institution stipulated by the legal framework
Agree Disagree
- ix. information about the refinery and the pipeline, including costs and modalities of financing, is not available to the public.
Agree Disagree
- x. Inadequate capacity by MDAs and Ministries to monitor and enforce contract disclosure
Agree Disagree
- xi. The relevant institutions have not reviewed the existing laws to suit the existing needs for the oil and gas sector
Agree Disagree

- xii. Institutions in Uganda lack financial, technical and human resources that are required for undertaking petroleum operations
Agree Disagree
- xiii. The roles of the Minister tend to often interfere with those of established institutions
Agree Disagree
- xiv. The roles and functions of the PAU and NOC could be harmonised to realise the rationale for which institutional structures were established under the Petroleum Act, 2013
Agree Disagree

Section C

- i. There are inadequate laws on contract disclosure in the extractives sector:
Agree Disagree
- ii. There are inadequate government willingness to disclose contracts
Agree Disagree
- iii. There are inadequate capacity by MDAs and Ministries to monitor and enforce contract disclosure
Agree Disagree
- iv. There exists complicated nature of extractives contracts for the public to understand
Agree Disagree
- v. There is a high level of corruption in Uganda
Agree Disagree
- vi. There exists contract information accessibility challenges
Agree Disagree

vii. The drafting a competitive PSA in the oil and gas sector been placed under institutions such as the PAU or the NOC that have specialised experts.

Agree Disagree

viii. Mention what could be done to improve on the PPP procurement of projects in Uganda

Thank you for participation

APPENDIX B

Interview Guide for officials in Institutions

Introduction

Hello. My name is Samuel Musoke, a student of Institute of Petroleum Studies Kampala (IPSK) Uganda. I am conducting a study which will be used as a partial requirement for the award of a Master's degree in LLM (Oil and Gas) program of the above institution. You are kindly requested to participate in this study; your participation will contribute towards achieving of the above goal. I would very much appreciate your participation in this Interview. This information will also help the government to plan for the oil and gas sector to plan for service delivery and development of the country. The interview usually takes between 10 and 20 minutes to complete. The information you provide will be kept confidential and will not be shown to other persons. You do not have to participate in this interview. If I ask a question you don't want to answer, just let me know and I will go on to the next question; or you can stop the interview at any time. However, I hope that you will participate in this interview, since your views are important.

I therefore kindly request you to participate in the study however it is voluntary, you are free not to participate if you decide to. In case you accept, I would also like to ask you to allow me record the proceedings in order to save time and ensure that we capture all the information. The recordings will not be used for anything else other than the study. They will be disposed of at an appropriate time. The relevancy of this study will depend so much on your honest response to the questions asked

Do you want to ask me anything about the study?

May I begin the interview now?

Signature of interviewer:

Date:

Respondent agrees to be interviewed. 1 Respondent does not agree to be interviewed.

2 Section one: Introduction of the respondent and general information

- i. Name.....
- ii. Age.....
- iii. Education level
- iv. Occupation.....
- v. Have you ever heard about Public-Private Partnership arrangement in Uganda?
 - a. Yes No.....
- vi. What can be your opening comments about PPP procurement in Uganda?

Can you tell me how PPP procurement in Uganda is linked to the oil and Gas sector?

What is your broad interpretation of the term regulatory framework?

Can you briefly talk about the PPP regulatory framework, in terms of typology

What is your opinion about the type of legal system (common law versus civil law) and whether it weighs heavily on the type of PPP regulatory framework that exists in the Ugandan economy?

Can you explain the development of PPP in Uganda and how it has occurred within different institutional arrangements in the oil and gas sector?

How would you describe the structure of the regulatory framework for the oil and gas laws?

Can you explain the critical essential sections of the oil and gas legal framework?

What is your opinion about the ownership aspect in the legal framework? Are you satisfied with how Ugandans are informed about this resource ownership?

Can you describe the competence of the authority concerned with management of PPP and procurement of the oil projects?

Please explain how satisfactory the oil operations are captured in the legal framework (probe for the competence of the national oil company and the obligations of other stakeholders)

Please exhaustively talk about the negotiations and agreements from the benchmarking to transparency (probe for issues concerning who was involved in negotiations and agreement signing, why information is held and why court cases have shown concern over opaque agreements)

Section B: institutional arrangement

From which institutions under PPP and oil and gas Project are you working?

What is your comment about the common principles that were used for effective designing of institutional arrangement for PPPs in the oil and gas projects?

In your opinion, what is in place that guarantees coordination and what is the most suitable practice/ approaches?

Kindly explain about the aspect of the public finance management under PPP and oil and gas projects. (Probe for fiscal space, direct liabilities and risks)

Which institution approves oil and gas projects (probe for factors for delays, impact of negotiations and re-negotiations if any and the implications)

Can you describe and explain the institutions involved and their responsibilities in procurement of oil and gas projects under the PPP arrangement?

Section C: Compliance to PPP procurement practices in oil and gas projects

In your opinion tell me about the factors that you have identified as those that can affect compliance to PPP procurement practices

Can you talk about transparency and release of PPP Information in the context of compliance to PPP procurement practices?

How has the aspect of competition or the lack of competition affected the PPP procurement practices?

As part of the institutions explain how corruption and failure to comply with PPP procurement arrangement has been your worry for the oil and gas projects in Uganda

What challenges have you faced in executing the PPP procurement practices in the oil and gas sector in Uganda?

What recommendations would you make for the efficient execution of the PPP procurement of oil and gas projects in Uganda?

Thank you for participating

APPENDIX C

Post VIVA Form



UGANDA CHRISTIAN UNIVERSITY

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UGANDA CHRISTIAN UNIVERSITY

SCHOOL OF RESEARCH & POSTGRADUATE STUDIES

DISSERTATION CORRECTION COMPLIANCE REPORT BY THE CANDIDATE (POST VIVA FORM)

Date: ...2 MAY 2024.....

Name of Candidate: ...MUSOKE SAMUEL..... Reg. No: S22M23/023

Title of Dissertation ...PUBLIC-PRIVATE PARTNERSHIP (PPP) AND THE PROCUREMENT OF PROJECTS IN THE OIL AND GAS SECTOR IN UGANDA

SN	COMMENTS BY EXTERNAL EXAMINER	ACTION TAKEN	INDICATOR
1	The abstract should be around 350 words. At the moment, it is unnecessarily long.	The abstract has been made shorter and concise.	Page vi
2	The research questions are missing. Add 3-4 research questions to guide you in this dissertation.	3 research questions have been added to guide the dissertation	Page 16
3	Discussions on the legal and institutional framework should be incorporated in a separate chapter titled, 'legal and institutional analysis'.	A separate chapter 'Legal and Institutional Analysis' has been incorporated.	Page 87

4	Chapter 2 and 3 have the relevant information, however, it is better to focus on the main aspects of those two chapters.	Chapter 2 and 3 were corrected as guided.	
5	Chapter four, you should be responding to the research questions. Your finding regarding laws and policies should be drawn from your reviews and analysis of the relevant laws- and not what the respondents had to say. It is not the duty of the interviewees to review the laws for you, please.	A legal analysis of the study was used to examine the research questions.	Page 65-67

S N	COMMENTS BY INTERNAL EXAMINER	ACTION TAKEN	INDICATOR
1	Topic too wide, not specific there is need to come up with a better one.	Topic has been made shorter and specific	Cover page
2	Objectives should be aligned with the topic	Objectives revised and aligned with the topic of study	Page 15
3	No literature review, this should be handled	More literature has been added in line with the objectives of the study	Page 21

S N	COMMENTS BY VIVA VOCE PANNEL	ACTION TAKEN	INDICATOR
1	Indicate the legal analysis in your work	A separate chapter 'Legal and Institutional Analysis' has been incorporated	Page 87
2	Likert scales shouldn't be presented in tabular form.	Tabular forms have been corrected as guided to pie graphs.	Chapter 4
3	Combine agree and strongly agree in your analysis	Agree and strongly agree as well as disagree and strongly disagree have been combined as guided.	Chapter 4
4	Revisit your framework and write about both theoretical and conceptual framework	The theoretical framework described in section 1.9 served as the foundation for	Page 16

	and choose one that is suitable for your research.	the study and more information has been added.	
5			

CANDIDATE'S NAME

MUSOKE SAMUEL...



Candidate's Signature

SUPERVISOR'S NAME

IVAN MUGABI



Supervisor's Signature