

PSRB Working Paper

Whose Prosperity? The Politics of Uganda's Petroleum Sector Regulation, Taxation and Revenue Management Legislation

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List of Acronyms and Abbreviations

CNOOC	China National Offshore Oil Corporation
COSASE	Commissions, Statutory Authorities and State Enterprises
CSCO	Civil Society Coalition on Oil and Gas
CSCO	Civil Society Coalition on Oil and Gas
DRC	Democratic Republic of Congo
MOFPED	Ministry of Finance, Planning and Economic Development
MP	Member of Parliament
NRGI	Natural Resource Governance Institute
NRM	National Resistance Movement
PFOG	Parliamentary Forum on Oil and Gas
PSAs	Production Sharing Agreements
PSRB	Political Settlements and Revenue Bargains
SAPs	Structural Adjustment Programs
TAT	Tax Appeals Tribunal
UN	United Nations
UPC	Uganda People's Congress
URA	Uganda Revenue Authority

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"Then you hear people say, 'Museveni should go'. But go and leave oil Money? They want me to go so they can come and spoil the money. These people want me to go back to the bush"

Per Y.K Museveni, President of the Republic of Uganda at a Presidential Election Campaign in Namutumba District, Dec 21, 2015.

I. Introduction

The state in Uganda is comprised of three major organs, that is, the Executive, Legislature and the Judiciary.¹ Of these, the Legislature/Parliament is vested with the cardinal and sole responsibility of making laws on any matter in the interest of peace, order, development and good governance of the country.² Therefore under the Constitution, once a piece of legislation has been debated and passed by Parliament it becomes law and is binding from the time it is assented to by the President.³ From then onwards, such law or its provisions only cease to have effect in two circumstances: , a) where Parliament repeals it and b) where the law or any of its provisions is declared unconstitutional and therefore null and void by a competent Court of law.⁴ In the event, the final text of the law is often viewed as an end in itself and enforced as such without due regard to the political

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¹ See Articles 77, 98, 99 and 126 of the Constitution of the Republic of Uganda, 1995 (as amended)

² See Article 79 (1), Constitution of the Republic of Uganda, 1995 (as amended)

³ See Article 91 (8), Constitution of the Republic of Uganda, 1995 (as amended)

⁴ Under Article 137 (3) (b), a person who alleges that an Act of Parliament is inconsistent with or in contravention of the Constitution may petition the Constitutional Court for redress. Previously the Court has struck down provisions to do with the criminalization of the publication of false news in *Charles Onyango Obbo and Anor v. Attorney General*, Const. Petition No. 15 of 1997 & Const. Appeal No. 2 of 2002, criminal adultery in *Law and Advocacy for Women in Uganda v. Attorney General* Const. Petitions Nos. 13 of 2005 and 5 of 2006, unfair compensation in *Advocates for Natural Resource Governance and Development v. AG*, Const. Pet. No. 40 of 2013, criminalization of sedition in *Andrew Mwenda and Eastern Media Institute & Anor v. AG*, Cons. Pet. Nos. 12 Of 2005 and 3 of 2006 and criminalization of homosexuality in *Prof J. Oloka Onyango and 9 Ors v. Attorney General*, Const. Pet. No. 8 of 2014.

processes leading to its enactment save for where the legal procedure adopted in passing that law is found to have been flouted.⁵

In fact, behind the passing of these laws, there is a lot that goes on in the form of negotiations and bargains involving diverse sets of influential groups. The final text of the law therefore often reflects concessions reached at between influential actors and the government/ruling coalition. In the circumstances, law should be viewed as a product of an existing political settlement and not an end in itself. For this reason, the enforceability of such a law is highly dependent on the nature of the political settlement.⁶ In the case of Uganda, this is reflected in the context of laws governing the regulation, taxation, and revenue management of the petroleum sector. According to Richard Vokes the final text of Uganda's petroleum laws is a fair representation of the voices of influential groups with interests in the sector.⁷ These are listed to include political elites, oil companies and civil society among others.⁸ Uganda's petroleum sector legislative framework is, therefore, essentially a reflection of politics.

This notwithstanding, existing literature does not adequately analyze the role and effect of politics on the laws governing Uganda's petroleum sector. A comprehensive review of the literature reveals that most of the attention has instead been directed to the effect of petroleum exploration and production activities on politics and the risk of the resource curse.⁹ For example in 2011, Kiiza *et al* relying of experiences from other resource rich

⁵ In Prof. J Oloka-Onyango and Ors v. AG for example, the Anti Homosexuality Act was struck down after the court found that it had been passed by Parliament without quorum contrary to the provisions of the Constitution.

⁶ Political Settlement is defined to mean "the Distribution of Power among Groups and Institutions in a Society" see Mette Kjaer Anne and Ulriksen Marianne, The New Politics of Revenue Bargaining: Analytical Dimensions, Political Settlements and Revenue Bargains Project Conceptual Paper, 2018. On the impact of political settlement on enforcement and implementation of the law See Anne Mette Kjaer, Foreign Investment in Uganda's Oil Sector: Linkages and Issues for the Local Economy, DIIS Working Paper 2013: 24 pg. 12.

⁷ See Vokes, Richard. "The Politics of Oil in Uganda." *African Affairs* 111, no. 443 (2012): 303-14. See pages 312-313

⁸ *Id.*

⁹ The resource curse also known as the "paradox of plenty" is a tendency for oil rich countries to register less economic development compared to other countries without similar resources. See Ross, Michael L. "The Political Economy of the Resource Curse." *World Politics* 51, no. 2 (1999): 297-322. See also Humphreys, Macartan, Sachs, Jeffrey, and Stiglitz, Joseph E. *Escaping the Resource Curse* /. Initiative for Policy Dialogue at Columbia (Series). 2007. See also Peter G Veit, Carole Excell and Alisa Zomer, Avoiding the Resource Curse: Spotlight on Uganda, World Resources Institute Working Paper. 2011. See also The

countries in Africa, cautioned that failure to manage public expectations coupled with the lack of strong transparency and accountability requirements exposed the country to the risk of the resource curse.¹⁰ This point was reiterated by Ben Shepherd who offered some important lessons for Uganda as derived from four other countries (Indonesia, Norway, Chile and Botswana) with a proven record of sustainable management of their natural resources.¹¹ Kasimbazi on the other hand looks at potential environmental risks likely to arise from petroleum activities and makes a case for strong environmental regulation if the country is to avoid the resource curse.¹² Gabriella Wass explores the effect of petroleum activities on human rights and advances a number of proposals for Uganda to consider on the basis of the United Nations Guiding Principles on Business and Human Rights.¹³ Finally, Kyepa makes a strong case for Uganda to adopt a comprehensive corporate governance framework similar to that of Norway.¹⁴ This he posits, is necessary if the Uganda national oil company is to effectively play its envisaged role under the law, that is, managing all commercial aspects of petroleum on behalf of the government.¹⁵

The above confirms the point made by Hickey and Izama *et al*, to the effect that most of the studies on African petroleum resources tend to focus on the institutional and resource curse approaches ignoring the politics yet this may ultimately determine a nation's

Curse of Oil: The Paradox of Plenty, *The Economist*, December 20, 2005. Available on <http://www.economist.com/node/5323394> (accessed on July 12, 2017)

¹⁰ See Kiiza, Julius, Lawrence Bategeka, and Sarah Ssewanyana. "Righting Resource-Curse Wrongs in Uganda: The Case of Oil Discovery and Management of Popular Expectations" *Economic Policy Research Centre (EPRC)*, 2011, Economic Policy Research Centre (EPRC), Research Series. See also See Mark Tutton, Can Africa Break its 'Resource Curse'? *CNN*, August 23, 2010. Available on <http://www.cnn.com/2010/WORLD/africa/08/23/africa.resource.curse/index.html> (accessed on July 12, 2017) See also Moratuo Thoke, The Resource Curse in Africa, Southern African Resource Watch, 2012. Available on <http://www.sarwatch.org/pt-pt/node/269> (accessed on July 12, 2017)

¹¹ See Shepherd, Ben. *Oil in Uganda: International Lessons for Success*, 2013, Policy File, Royal Institute of International Affairs.

¹² See Kasimbazi, Emmanuel B. "Environmental Regulation of Oil and Gas Exploration and Production in Uganda." *Journal of Energy & Natural Resources Law* 30, no. 2 (2012): 185-221.

¹³ See Wass, Gabriella, Chris Musiime, and International Peace Information Service, Issuing Body. *Business, Human Rights, and Uganda's Oil* /. 2013.

¹⁴ See Kyepa, Timothy. "Integrating the Proposed National Oil Company of Uganda into the Corporate Governance Discourse: Lessons from Norway." *Journal of Energy & Natural Resources Law* 30, no. 1 (2012): 75-89.

¹⁵ *Id.*

commitment to development of its natural resources for the benefit of its citizens.¹⁶ On this basis Hickey *et al* suggest and take a different approach that involves the use of the political settlements framework to understand the contribution of politics in safeguarding national interests during Uganda's negotiations with international oil companies.¹⁷ The main challenge arising out of their analysis is that it is limited to the documentation of the role of the ruling coalition in protecting its interests during the initial negotiations with oil companies.¹⁸ They don't for example delve into the question as to whether beyond contract negotiations these interests had any influence on petroleum legislation. Yet ultimately if the law is skewed towards protecting the interests of members of the ruling coalition as they opine was the case in the process of contract negotiation, the anticipated public benefits from the resource will be lost.

The view that much premium has been placed on the potential impact of oil and gas discoveries on politics and not the other way round, that is, the impact of politics on oil and gas activities is also shared by Luke Patey.¹⁹ In his case, he looks at the role of regional and national politics in the advancement of Uganda's petroleum industry amidst the challenge of falling global oil prices and regulatory concerns.²⁰

Not much attention has thus been paid to the influence of politics on both petroleum legislation and sectoral activities in the literature. Importantly, the role of politics in the negotiations, formulation and eventual enactment of petroleum legislation is not sufficiently explored. From the literature available, there has been only one attempt to capture some of the forces and influences behind the enactment of legislation affecting the petroleum sector. Even then, this is limited to provisions to do with taxation of petroleum revenues and is done in the broader context of explaining the role played by

¹⁶ See Hickey, Sam, and Angelo Izama. "The Politics of Governing Oil in Uganda: Going against the Grain?" *African Affairs* 116, no. 463 (2017): 163-85 at pg. 163

¹⁷ *Id.*

¹⁸ *Id.* Ruling coalition has been defined to mean "groups who support the ruling elite and who help maintain the ruling elite in power." *Supra*, Kjaer.

¹⁹ See Patey, Luke. *Oil in Uganda: Hard Bargaining and Complex Politics in East Africa*, 2015, Policy File.

Pg.30

²⁰ *Id*

private and public actors in influencing tax policy reform in Uganda.²¹ Yet it is important to understand the specific role of all actors and the politics behind the enactment of the current petroleum regulatory, taxation and revenue management legislative regime. In particular this approach would help explain best whether the law as is advances the interests of ordinary Ugandans or those of such influential groups in this case the ruling coalition/government and associated political elites. Understanding the politics is also critical in determining the extent to which the current petroleum laws will be enforced and in whose interest.²²

On basis of the above, this paper adopts a political settlements theory to examine the quality of Uganda's petroleum laws through the lens of the political processes that influenced their passing.²³ In this regard the paper seeks to determine to what extent Uganda's petroleum regulatory, taxation and revenue management legislative framework was influenced by politics and if this affected the quality of the law, its future enforceability and ultimately its ability to deliver a shared prosperity for all Ugandans irrespective of their political and economic clout.

Existing analyses of the law have largely placed a great deal of emphasis on the strength of current legislation *vis-à-vis* international industry best practices. The challenge with this approach is that it is possible for a law to meet and exceed expectations as regards to its conformity with such standards but in actual sense fail to deliver real benefit to ordinary Ugandans who are the bonafide owners of the resource. Indeed, as shown in this paper, Uganda's petroleum laws while fairly strong, they are likely to fail in ensuring equitable distribution of petroleum dividends. There is evidence that the laws promote executive control of the industry and that so far it is mainly the ruling coalition and affiliated political elites that have benefitted from Uganda's early oil boom. Oil revenues have also been deployed to facilitate the ruling National Resistance Movement's (NRM) stay in power. This result was guaranteed by the foresight (the idea that they could rely on oil resources

²¹ See Jalia Kangave & Mesharch W. Katusiimeh, "Tax Bargains: Understanding the Role Played by Public and Private Actors in Influencing Tax Policy Reform in Uganda" Working Paper 2015-2, pg. 13-14.

²² *Supra*, Kjaer 2013 pg. 16.

²³ *Supra*, Kjaer.

to extend their stay in power) and overbearing influence of the ruling coalition in the negotiations, revenue bargains and politics behind the enactment of petroleum laws.²⁴

II. Political Settlement Theory, Revenue Bargaining and Uganda's Petroleum Sector

The term political settlement has been used to describe diverse aspects of political processes including a) overall balance of power in society, b) negotiated agreements between state and society, c) outcome of peace processes, and d) common understanding between elites on power organization.²⁵ This understanding and definition of the term is equally reflected in academic scholarship. Di John and Putzel for example describe a political settlement to mean outcomes of either bargaining and negotiation between elites or those of peace processes in war to peace transitions.²⁶ Khan on the other hand argues that a political settlement arises when “the distribution of benefits supported by its institutions is consistent with the distribution of power in society and the economic and political outcomes of these are sustainable over time.”²⁷

From the definition of political settlements in existing literature there are two broad understandings of the term, that is, political settlements as outcomes of arrangements of power on one hand and political settlements as outcomes of peace processes.²⁸ This paper adopts Khan's framework of the political settlement as power relations between

²⁴ *Supra* Kjaer, Revenue Bargain has been defined to mean 'the exchange of revenue (to the state) for influence over public policies' A revenue bargain may involve direct haggling but may also be indirect. It also need not result into a fiscal contract. Importantly bargaining may also result into revenue foregone.

²⁵ See Mick Moore, What on Earth is a Political Settlement? Available on <http://www.governanceanddevelopment.com/2012/09/what-on-earth-is-political-settlement.html> (accessed on July 12, 2017)

²⁶ See Di John, J., Putzel, J., 2009. Political Settlements: Issues Paper, International Development Department. University of Birmingham, Birmingham UK.

²⁷ See Khan, M. (2010). 'Political settlements and the governance of growth-enhancing institutions. Working Paper (unpublished). London: School of Oriental and African Studies, University of London. Available online at: <http://eprints.soas.ac.uk/9968/> (accessed August 10, 2017)

²⁸ See Richard Mallet, Why Political Settlements Matter, A Response to Mick Moore, Overseas Development Institute, 2012. Available on <https://www.odi.org/comment/6816-why-political-settlements-matter-response-mick-moore> (accessed on July 11, 2017)

different groups and organizations contesting the distribution of resources.²⁹ It explores the different layers of negotiations and power dynamics between the ruling coalition/elite, multinational/international oil companies, parliamentarians, civil society, donors and Ugandan citizens in the formulation and enactment of recent petroleum regulation, taxation and revenue management legislation.

The paper also relies on the political settlements theory to explain the bargaining power of different influential groups and their impact on petroleum revenue management and taxation legislation. This concept also known as revenue bargaining, is defined to mean the “the exchange of revenue (to the state) for influence over public policies.”³⁰ Revenue bargaining may be direct as to for instance involve political exchanges or it may be indirect where the state takes certain measures in anticipation of better revenue yields in the future.³¹

In the case of Uganda, it is shown that initially multinational oil companies were able to use their capital leverage to obtain favorable terms in the Production Sharing Agreements (PSA) signed with the government of Uganda. As will be shown later in the paper, these companies secured favorable revenue terms in form of considerably low royalties and a stable taxation regime (stabilization clause). In short, they were initially successful in obtaining a favorable revenue bargain from the Ugandan government. In the long run however, the government/ruling coalition was able to leverage the surge in global oil prices as well as new commercial discoveries to reclaim the sector, reassert their influence over petroleum legislative processes and to obtain favorable revenue positions. It is argued that in pursuit of this objective (dominance over the sector and maximum revenue extraction), the ruling coalition was motivated by the opportunity to use petroleum revenues to extend their stay in power through patronage and military procurements. As seen from experiences elsewhere in Africa, this is a very rare and unique result. Most African countries are often not in position to meet the huge and demanding capital and

²⁹ *Supra*, Khan and note 6. See also Weldegiorgis, Mesfin, and Sturman. "Looking for Oil, Gas and Mineral Development in Ethiopia: Prospects and Risks for the Political Settlement." *The Extractive Industries and Society* 4, no. 1 (2017): 151-62.

³⁰ *Supra*, Kjaer and Ulriksen.

³¹ *Supra*, Kjaer and Ulriksen.

technical capacity requirements required in petroleum exploration, production, and development processes. As a result, a number of these countries have been forced to rely on multinational oil companies to develop their resources. Multinational oil companies have capitalized on this to influence several aspects of petroleum legislation and obtain maximum profit. As shown above, in Uganda's case multinationals were only successful in this endeavor in the initial stages of oil exploration. Following the confirmation of the presence of commercial oil deposits and the surge in global oil prices, the ruling coalition was quick to reassert itself over the sector with the objective of extracting maximum revenues from oil companies as a strategy of keeping power. This, it is argued, constitutes a reverse revenue bargain where the government/ruling coalition benefits more than the taxpayers, that is, multinational oil companies.

In the event, the ruling coalition has utilized early petroleum revenues to purchase patronage and to broaden its political support by among others providing public goods and services. In the same spirit, the ruling coalition has also been able to initiate expensive infrastructure projects using funds borrowed on the basis of the anticipated petroleum revenues.³² This is critical in the context of dwindling and often conditional donor support which the NRM has traditionally utilized to deliver goods and services as a strategy for securing political support.³³ The ruling coalition has also used the oil revenue impact to maintain a favorable taxation regime for their supporters. This is reflected in the form of politicized bail outs and tax exemptions for loyal supporters as well as the deliberate strategy to keep the tax burden minimal for its core political supporters, that is, peasants and the informal sector which despite constituting over 90% of the private sector

³² See "Uganda will not Spend Oil Revenue on Consumables" President Museveni, Presidential Press Unit, November 22, 2016. Available on <http://www.statehouse.go.ug/media/news/2016/11/22/%E2%80%9Cuganda-will-not-spend-oil-revenue-consumables%E2%80%9D-%E2%80%93-president-museveni> (accessed on March 23, 2019) See also Robert Looney, In Uganda, its Bust Before Boom, *Foreign Policy*, February 2, 2015. Available on <https://foreignpolicy.com/2015/02/02/in-uganda-its-bust-before-boom-oil-prices-east-africa/> (accessed on March 23, 2019)

³³ See generally, Epstein, Helen. *Another Fine Mess: America, Uganda, and the War on Terror*. New York: Columbia Global Reports, 2017.

is for the most part untaxed.³⁴ This it is argued is part of the indirect revenue bargain enjoyed by the ruling NRM coalition.

III. Overview of the History and Political Context of Uganda's Petroleum Sector

In 2006, Uganda's prospects of joining the list of oil producing countries were bolstered by the discovery of commercially viable deposits of petroleum in the Lake Albert region which is found in the Western part of the country³⁵ At the time of the discovery, the country's petroleum deposits were estimated to constitute a total of 2.5 billion barrels.³⁶ Following additional discoveries in 2012 and 2014, this number has been revised upwards to 6.5 billion barrels.³⁷ Of this, between 1.8 to 2.2 billion barrels are recoverable.³⁸

The confirmation of commercially viable amounts of petroleum marked an end to over a century of active searches for recoverable oil. Although oil seeps in the Albertine region were first seen by the indigenous communities, it took the work and skill of the colonial government to determine if this oil was available in recoverable amounts.³⁹ The presence of petroleum deposits in Uganda was later confirmed by EJ Wayland, a British geologist working in the department of geology after conducting seismic survey in the Albertine

³⁴ See Private Sector Foundation Uganda, Widening Uganda's Tax Base, and Improving Tax Administration, Administrative and Policy Instruments to Penetrate the Hard to Tax and Reduce Tax Burden on the Usually Easy Targets, Raising the Tax Ratio to 16% in 4 years, Final Report, 2009 at Pg.68. See also Bakibinga David, George Constantine, Rationale for Taxing the Informal Sector in Tanzania, and Uganda, 2019 (forthcoming publication on file with author). See also Alex Gitta, Uganda Company Bail Outs Politically Motivated, Critics Allege, *DW*, July 28, 2016. Available on <https://www.dw.com/en/uganda-company-bailouts-politically-motivated-critics-allege/a-19432023> (accessed on March 23, 2019)

³⁵ See History of Petroleum Exploration in Uganda, Directorate of Petroleum, Ministry of Energy and Mineral Development, Available on <http://petroleum.go.ug/21/Petroleum-Exploration-History> (accessed on November 11, 2017)

³⁶ See How Much Oil (and Gas) does Uganda have and where is it? *Oil in Uganda*, March 5, 2012. Available on <http://www.oilinuganda.org/facts-faqs/uganda-oil-facts-faqs/how-much-oil-and-gas-does-uganda-have-and-where-is-it.html> (accessed on August 2, 2017).

³⁷ See Ronald Musoke, Uganda's Oil Reserves now Estimated at 6.5 billion Barrels, August 28, 2014. Available on <https://www.independent.co.ug/ugandas-oil-reserves-now-estimated-6-5-billion-barrels/> (accessed on July 11, 2017)

³⁸ *Id.*

³⁹ See Kiiza, Julius, Lawrence Bategeka, and Sarah Ssewanyana. "RIGHTING RESOURCE-CURSE WRONGS IN UGANDA: THE CASE OF OIL DISCOVERY AND THE MANAGEMENT OF POPULAR EXPECTATIONS." *Economic Policy Research Centre (EPRC)*, 2011, Economic Policy Research Centre (EPRC), Research Series.pg.5.

region in the 1920's.⁴⁰ On the basis of his work, a total of five (5) concessions were granted to British businessmen.⁴¹ These became the second set of concessions after the very first one granted to British businessman William Brittlebank in 1913.⁴² The third set of concessions were extended to the Investment Company of Johannesburg in 1936 and 1937.⁴³ However, similar to its predecessors the company also failed to obtain any recoverable amounts and its activities were eventually affected by the outbreak of World War II which had the total effect of slowing down the activities of oil companies worldwide.⁴⁴ That notwithstanding, the colonial state remained interested in the development of the resource and used the data collected by the companies pointing towards commercial amounts to prospect further until 1951 when all operations were eventually suspended.⁴⁵ This marked the end of a protracted era of active colonial government driven petroleum exploration in the Ugandan protectorate. The next phase of petroleum exploration and development was to be handled under the various post-independence governments with varied results.

The main challenge is that soon after the grant of independence, the country descended into violence and anarchy. This made the environment less conducive for any form of investment including that in the petroleum sector. It was only after the return of the Uganda People's Congress (UPC) government to power in 1980 that the petroleum sector began to receive some renewed level of attention but even then, this was minimal. The major development during this time was the enactment of the Petroleum (Exploration and Production) Act of 1985.⁴⁶ The law was expected to pave way for the stalled development of the sector, but the UPC government was short-lived and did not live to realize this objective.

⁴⁰ See History of Petroleum Exploration in Uganda, Directorate of Petroleum, Ministry of Energy and Mineral Development, Available on <http://petroleum.go.ug/21/Petroleum-Exploration-History> (accessed on November 11, 2017)

⁴¹ See Angello Izama, Tracing Uganda's Oil Journey from 1913 to 2013, *Monitor*, December 31, 2013. Available on <http://www.monitor.co.ug/News/National/Tracing-Uganda-s-oil-journey-from-1913-2013/688334-2129680-kl6bja/index.html> (accessed on July 11, 2017)

⁴² *Id.*

⁴³ Kijiza *et al*, Pg.5

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Petroleum (Exploration and Production) Act cap. 150. Available on <https://ulii.org/ug/legislation/consolidated-act/150> (accessed on November 11, 2017)

Upon overthrowing the UPC government and its coming into power in 1986, the NRM promised to turnaround the broken state that Uganda was by restoring democracy and freedom on the one hand and rebuilding the economy on the other.⁴⁷ In as far as the petroleum sector is concerned, the NRM government and particularly President Museveni is on record for having insisted on building a team of competent and skilled individuals to run the sector before engaging in talks with prospective investors.⁴⁸ As such a number of Ugandans were sent abroad to train in various disciplines relevant to the sector in the late 1980's and early 1990's. In 1991, they were deployed in a newly created Petroleum Exploration and Production Department (PEPD) which was established in the Ministry of Energy to oversee the activities of the sector.⁴⁹

Following this development, the government entered into its first Production Sharing Agreement (PSA) with Petrofina petroleum in the same year (1991) for a period of two years.⁵⁰ Under this arrangement Petrofina was granted exploration rights over the entire Albertine graben but like its predecessors the company abandoned its pursuit after failing to hit commercial amounts. In 1997, the second PSA was concluded with Heritage Oil and Gas Ltd in respect to exploration area 3 consisting of the Semiliki basin.⁵¹ Another PSA was entered into with Hardman Petroleum in 2001 in respect to exploration area 2 which covered the Northern L. Albert Basin.⁵² The interests of both Heritage oil and Hardman were eventually purchased by Tullow Oil which in turn sold part of its interests to the China National Offshore Oil Company (CNOOC) and Total following confirmation of the presence of commercially viable amounts of oil in 2006. Jointly the three companies (Tullow, CNOOC and Total) are expected to lead the country to commercial production

⁴⁷ See generally Museveni, Yoweri, Elizabeth. Kanyogonya, and Kevin. Shillington. *Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda* /. 1997.

⁴⁸ See Reuben Kashambuzi, *The Story of Petroleum Exploration in Uganda: 1908-2008*, ImproPublications, Kampala, 2010. See also Donor Engagement in Uganda's Oil and Gas Sector, Global Witness, Briefing, 2010,9.

⁴⁹ *Id.*

⁵⁰ *Id.* See also History of Petroleum Exploration in Uganda, Directorate of Petroleum, Ministry of Energy and Mineral Development, Available on <http://petroleum.go.ug/21/Petroleum-Exploration-History> (accessed on November 11, 2017)

⁵¹ *Id.*

⁵² *Id.*

slated to commence in the year 2020.⁵³ Moreover, plans for construction of an oil refinery and laying of an oil pipeline as well as the development of the key infrastructure that is necessary for commercial oil production are in advanced stages.⁵⁴

In as far as the regulatory, taxation and oil revenue management legal framework is concerned, in 2013 the Petroleum (Exploration, Development and Production) Act was passed into law.⁵⁵ The law seeks to replace the old petroleum legal regime and to regulate upstream activities which include among others; exploration, development, production, licensing and participation of various actors in these activities.⁵⁶ There is also in place a separate petroleum revenue management and taxation regime. This is contained in the Public Finance Management Act 2015 and the Income Tax Act cap 340 (as amended) respectively.⁵⁷ As will be explained below, the laws were passed in a highly politically charged environment and the legislative process was dominated by the NRM to establish maximum control and revenue extraction from the sector. The motivation of the NRM to achieve this and to gain an upper hand in the legislation bargaining process was facilitated by the attraction to use petroleum revenues to purchase political patronage and consolidate their power as well as the favorable global oil prices obtaining at the time the legislation was passed.

⁵³ See Oil Production to Start in 2020, Parliament of Uganda. Available on <http://www.parliament.go.ug/index.php/about-parliament/parliamentary-news/1072-oil-production-to-start-in-2020> (accessed on September 9, 2017) See also Mark Keith Muhumuza, How Uganda is making Major Steps to Oil Production by 2020, *Daily Monitor*, January 11, 2017. Available on <http://www.monitor.co.ug/Business/Prosper/How-Uganda-is-making-major-steps-to-oil-production-by-2020/688616-3512156-crbamjz/index.html> (accessed on July 11, 2017). See Elias Biryabarema, Uganda gives Tullow Oil, Total Production Licences, *Reuters*, August 30, 2016. Available on <http://www.reuters.com/article/us-uganda-oil-idUSKCN115104>. (accessed on July 11, 2017)

⁵⁴ See Xinhua Museveni, Magufuli Launch Oil Pipeline, *New Vision*, August 5, 2017. Available on http://www.newvision.co.ug/new_vision/news/1459269/museveni-magufuli-launch-oil-pipeline (accessed on July 11, 2017). See also Fred Ojambo, Uganda Picks GEfor Group to Develop Oil Refinery Project, *Bloomberg*, August 7, 2017. Available on <https://www.bloomberg.com/news/articles/2017-08-07/uganda-government-chooses-group-with-ge-to-develop-oil-refinery> (accessed on July 11, 2017)

⁵⁵ See Petroleum (Exploration, Production and Development) Act, No. 3 of 2013. Available on <https://www.ulii.org/ug/legislation/act/2013/3/Petroleum%20%28EDP%29%20Act%202013.pdf>.

⁵⁶ *Id.* See Long Title.

⁵⁷ See Part VII of the Public Finance Management Act, 2015 on Petroleum Revenue Management. See also Part IXA, Income Tax Act cap. 340 (as amended) on Special Provisions for the Taxation of Mining and Petroleum Activities.

IV. Analysis of the Law and Politics of Petroleum Regulation, Taxation and Revenue Management Legislation

A. Petroleum Regulation Legislation

(1) The 1985 Upstream Petroleum Law and the Production Sharing Agreements (PSA's)

At the time the presence of commercial oil was confirmed, Uganda had in place two major Petroleum laws, that is, the Petroleum (Exploration and Development) Act of 1985 for the regulation of upstream petroleum activities⁵⁸ and the Petroleum Supply Act of 2003 for the regulation of importation, transport and storage of petroleum products.⁵⁹ The focus and scope of these laws especially the upstream law was rather shallow and out of sync with modern developments and demands in the sector. The 1985 law provided mainly for capacity building, acquisition of geoscientific data, attraction of foreign investors and contract negotiations among others.⁶⁰ This way, it put a lot more emphasis on initial activities in the sector and gave less priority to concerns likely to arise in later developments such as those to do with governance of the resource, environmental controls, transparency and accountability, health, and safety.

Moreover, the law vested a lot of discretion in the Minister in as far as negotiations with and contracting of oil companies was concerned.⁶¹ It is under this broad mandate that Uganda concluded Production Sharing Agreements (PSAs) with various multinational petroleum companies for the development of its resource. In effect these agreements also referred to as Production Sharing Agreements (PSA's) defined the relationship, benefits, duties, and obligations of both the government and the oil companies. PSAs in this way filled the gap left by existing laws thereby constituting an integral part of the petroleum sector regulatory framework in Uganda.

⁵⁸ See Long Title, Petroleum (Exploration and Development) Act, cap.150, Laws of Uganda, 2000.

⁵⁹ See Long Title, Petroleum Supply Act, 2003.

⁶⁰ See Energy Policy 2002, Ministry of Energy and Mineral Development, Republic of Uganda. Available on <http://energyandminerals.go.ug/downloads/EnergyPolicy.pdf>,(accessed on August 18, 2017)

⁶¹ See Section 3 of the repealed Petroleum Act, 1985 on Agreements with Government.

The challenge is that the negotiation and execution of these important agreements was confined to the executive arm of government.

The contents of PSAs concluded between the government of Uganda and various oil companies to date remain unknown to a majority of Ugandans despite a push to have them disclosed.⁶² At the moment only Parliamentarians can access PSAs and even then under highly restricted terms that among other things forbid them from disclosing the terms contained therein.⁶³ This is notwithstanding the fact that under Ugandan law, citizens have a right to access information in possession of government and its agencies.⁶⁴ Secondly, under the Constitution the ownership of petroleum resources is vested in the government on behalf of the Republic of Uganda.⁶⁵ This means that people power is supreme and in this case is best served by public disclosure of information contained in the PSAs. This way there is accountability to the people who are able to determine whether the country obtained the best deal by looking at the contents of the PSAs.⁶⁶ The government is also motivated to strive for the best deal and corruption is significantly reduced where disclosure of information is made.⁶⁷

According to a report issued by Platform, the PSA entered into with Heritage Oil in 2004 in respect to Block 3A the oil company obtained more favorable and profitable terms in Uganda when compared to other places where it operated at the time.⁶⁸ The report gives

⁶² Interview with Civil Society Coalition on Oil and Gas in Uganda Members in Kampala, June 2017. See also Edward Ssekika, CSOs call for end of Secrecy in Oil Deals in a Petition to Parliament, *Oil in Uganda*, March 9, 2017. See also Patrick Kagenda, Secrecy, Woes, War over Uganda's Oil, *Independent*, July 9, 2009. Available on <https://www.independent.co.ug/secrecy-woes-war-ugandas-oil/> (accessed on September 27, 2017)

⁶³ Yassin Mugerwa, Sheila Naturinda & Isaac Imaka, Kadaga sets Tough Conditions for MPs to access Oil Deals, *Daily Monitor*, October 9, 2011. Available on <http://www.monitor.co.ug/News/National/688334-1252300-a47khhbz/index.html> (accessed on November 11, 2017)

⁶⁴ See Article 41, Constitution of the Republic of Uganda, 1995 (as amended). In 2005, Parliament enacted a law to operationalize the right to information. See Access to Information Act, 2005. See also Peter Veit, Carole Excell, and Alisa Zomer, Avoiding the Resource Curse: Spotlight on Oil in Uganda, World Resources Institute, pgs. 3-4 Available on https://www.wri.org/sites/default/files/avoiding_the_resource_curse.pdf (accessed on September 27, 2017)

⁶⁵ See Article 244 (1), Constitution of the Republic of Uganda, 1995 (as amended)

⁶⁶ See Peter Rosenblum and Susan Maples, Contracts Confidential: Ending Secret Deals in the Extractive Industries, Revenue Watch Institute, 2009 pgs. 15 and 16. Available on <https://resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf> (accessed on November 11, 2017)

⁶⁷ *Id.*, at 41

⁶⁸ See Taimour Law and Mika Minio-Paluello, Contracts Curse: Uganda's Oil Agreements Place Profit Before the People, Platform and Civil Society Coalition on Oil, 2010.pg. 14. Available on

an example of Kurdistan which was able to obtain more favorable terms from Heritage Oil despite the fact that at the time its government's legitimacy was contested.⁶⁹ The report also concluded that the terms of the PSA, exposed Uganda to unreasonable and fraudulent claims from the oil companies.⁷⁰ In this regard, Heritage was reported to have inflated their costs by USD 586, 511 in the period between September 2004 and October 2006.⁷¹ Of equally great concern, under the PSA, Uganda was only able to secure a signature bonus of USD 300,000 which was significantly low when compared to USD 3.5million paid to the DRC government in 2008 in respect to a similar block.⁷² According to Platform, the government of Uganda was distracted by the hard cash to be paid upfront instead of bargaining for a better signature bonus.⁷³ It seems the preoccupation of the government was, therefore, to secure as quickly as possible what Heritage was able to pay in cash. Platform observes further that no accountability was provided for the revenues obtained from the oil companies.⁷⁴ The question that arises, however, was to whose benefit a hurriedly negotiated bonus payment would be. This is partly answered by subsequent developments explored in the section on revenue management below, that is, the desire of the NRM to capture oil revenues as quickly as possible in order to further its own political ambitions.

The other explanation for a rather timid approach of the NRM in the negotiation of PSAs is the reality of powerful multinational oil companies. It should be recalled that at the time the initial negotiations took place, Uganda like other resource rich African countries did not have neither the capital nor the technical capacity necessary to bring the oil out of the ground. Considering this, Uganda had no option but to seek for the assistance of multinational companies in the development of its petroleum resources. This naturally granted these companies a higher bargaining power in the course of negotiation of the PSAs. It is not until 2006 when the presence of commercially viable deposits was

<http://platformlondon.org/wp-content/uploads/2012/01/Contracts-Curse-Uganda-Platform-CSCO.pdf>,
(accessed on November 11, 2017)

⁶⁹ *Id*, Pg. 13

⁷⁰ *Id*, Pg. 9

⁷¹ *Id*, Pg.9 and 30.

⁷² *Id*, Pg. 7

⁷³ *Id*, Pg. 6

⁷⁴ *Id*, Pg.7

confirmed that the situation began to tilt in favor of the ruling NRM coalition. The development together with the high global oil prices prevailing at the time enabled the NRM to ultimately assert its authority and influence during the petroleum legislative processes.

The exclusivity in the negotiation of PSAs and secrecy around the terms contained in these agreements may, therefore, be explained in the context of the factors outlined above, that is, the initial vulnerability of the NRM in the face of multinationals and the desire of the party to extract as much revenue as possible at the earliest opportunity. In light of this, it is argued that it was politically convenient for the NRM to keep the details contained in PSAs secret and to avoid scrutiny since to do so would have exposed them as having been vulnerable and acted in their own interest rather than those of the country as a whole. As seen later in the paper, the NRM gained more confidence when dealing with multinational oil companies post 2006.

(2) The National Oil and Gas Policy 2008 and Momentum for Petroleum Legislation

In 2008 the cabinet of Uganda approved the National Oil and Gas Policy to support further exploration and cater for evolving aspects of petroleum development and production.⁷⁵ The main objective behind the policy was to put in place a comprehensive plan and policy framework for sustainable production, processing and utilization of petroleum resources in the country with a goal of alleviating poverty.⁷⁶ The other objectives of the policy included: putting in place institutions and legislation for the effective management of the sector; promoting transparency and accountability, protection of the environment and biodiversity and fostering a spirit of cooperation with neighboring oil rich countries.⁷⁷ In order to achieve these objectives, the policy envisaged urgent and immediate enactment of new petroleum legislation with provisions for the development and production of the newly found resource and that incorporates international best practices in areas of health

⁷⁵ See National Oil and Gas policy, 2008 at pg. 5

⁷⁶ See National Oil and Gas Policy, 2008 at pg. 7

⁷⁷ *Id*, see pg. viii.

and safety, environmental protection, effective management of petroleum resources, national participation, local content and competitive licensing.⁷⁸

This notwithstanding, it took more than five years for the first piece of legislation regulating the sector to be enacted. Even then the decision to pass the law arose out of political pressure exerted by Parliament.⁷⁹ As noted above, the old petroleum law regime vested a lot of discretion in the Minister in as far as the negotiation of petroleum contracts and issuance of licences was concerned.⁸⁰ This increased on the risk of both manipulation and compromise in the negotiation of contracts with powerful international oil companies some of which have a checkered record in the countries that they have operated in.

It is, therefore, not surprising that at the peak of negotiations for new petroleum blocks the Minister of Energy together with other prominent personalities in government were accused of receiving bribes from petroleum companies in exchange for favorable terms. For example in a 2010 leaked US Cable, Ugandan ministers were accused of taking bribes from Eni an Italian based oil company.⁸¹ More allegations were raised on the floor of Parliament by Gerald Karuhanga the then Western Region Youth Member of Parliament (MP) who accused the three cabinet Ministers of soliciting for and receiving bribes from Tullow oil.⁸² The accusations raised by the MP sparked off a stormy debate in the house and subsequently Parliament resolved to constitute an adhoc committee to investigate the conduct of the implicated Ministers. The three accused were also urged to step down pending the conclusion of the investigations by the committee. Most significantly, Parliament imposed a moratorium on petroleum activities until a comprehensive law is debated and passed as required by the national oil and gas policy.⁸³

⁷⁸ *Id*, Pgs. Xi and 6

⁷⁹ Interview with Member of the Parliamentary Advocacy Forum on Oil, Kampala. June 2017.

⁸⁰ *Id*, See Section 3, Petroleum (Exploration and Development) Act, Cap.150.

⁸¹ See Elias Biryabarema, US Diplomat Believed Eni Bribed Uganda Ministers: US Cable, *Reuters*, December 10, 2010. Available on <http://www.reuters.com/article/us-wikileaks-uganda-oil/u-s-diplomat-believed-eni-bribed-uganda-ministers-u-s-cable-idUSTRE6B93EA20101210> (accessed on November 11, 2017)

⁸² See Isaac Imaka, "MPs Insist Tullow Oil gave Bribes for Contracts" *Daily Monitor*, April 12, 2012.

⁸³ See Resolution of Parliament in Respect of Regularization of the Oil Sector and Other Matters Incidental Thereto, October 11, 2012. Available on https://thisisafrica.files.wordpress.com/2012/02/resolution-of-parliament-on-the-oil-sector-oct_112011.pdf (accessed on November 11, 2017)

Although in the end the committee absolved all the three accused members of cabinet of committing any wrongdoing, this one courageous move by Parliament was very critical in ensuring that the law is passed, and that Uganda's oil sector is managed in accordance with the law. The moratorium built more pressure on government from the already licensed oil companies whose resources had been rendered idle following the decision of Parliament to impose a moratorium on all petroleum activities. This pressure resulted into fast tracking of the then stalled Petroleum (Exploration, Development and Production) Bill of 2010 which was eventually passed in 2013.

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

The Petroleum (Exploration, Development and Production) Act of 2013 provides for the regulation and management of Uganda's petroleum resources.⁸⁴ As part of regulation, the law provides for mandatory compliance with environmental principles as espoused in the National Environment Act and other laws applicable in the conduct of petroleum activity.⁸⁵ In furtherance of this, the law among others imposes penalties for pollution damage and compels oil companies to undertake Environmental Impact Assessments (EIAs) and to develop decommissioning plans all of which are necessary steps for safeguarding the environment.⁸⁶ This is very important given that the Albertine region is located in a diversity hotspot of both flora and fauna. In addition, the law contains comprehensive provisions on health and safety, state participation and national content.⁸⁷

In as far as the grant of petroleum rights is concerned, the law introduced a number of reforms aimed at achieving transparency in the contracting and licensing processes. First, the law enjoins the responsible Minister to develop a model PSA which should be approved by cabinet and laid before Parliament.⁸⁸ This is a great departure from the old arrangement where the sole responsibility of negotiation and conclusion of the PSA was

⁸⁴ See Petroleum (Exploration, Development and Production) Act, 2013.

⁸⁵ *Id.* See Section 3

⁸⁶ *Id.* See Sections 47 (3), 71 (2) (i), 76 (1)(f), 112 and 129.

⁸⁷ *Id.* See Parts X and XII

⁸⁸ *Id.* See Section 6.

vested in the Minister without the involvement of other actors. Also, by having a model agreement presented to Parliament, it is scrutinized, and citizens have a better idea of its contents and are in position to determine by themselves whether it benefits them or not. Secondly, the law also introduces a competitive licensing regime in respect to exploration and production activities. Under Section 52 for example, the Minister is required to issue public notices in respect of areas open for oil exploration. Direct applications are only allowed in exceptional circumstances as for instance where no application has been received in respect to an area to which calls for bids have been previously made for at least three times without receiving any response.⁸⁹ The issuance of production licences is also required to follow a similar competitive process.⁹⁰

While these provisions all look progressive, the politics involved in negotiation of the law ensured that a number of them are rendered dysfunctional in the shortest run. In other cases, the final provisions of the law greatly departed from the agreed policy recommendations. For instance, in terms of the institutional framework, the national oil and gas policy had envisioned the establishment of a tripartite model of management akin to that of Norway.⁹¹ Under this arrangement, the management of petroleum resources was to be entrusted in three separate institutions namely; the Directorate of Petroleum in the Ministry of Energy, Petroleum Authority and the National Oil Company.⁹² Each of these institutions was envisioned to play a role separate from the other. The Directorate was charged with the roles of; licensing, policy formulation and implementation, development of draft legislation, negotiation of petroleum agreements and approval of field development plans among others.⁹³ The Petroleum Authority on the other hand was charged with the responsibility of providing assistance with the; implementation of regulations; monitoring licence expenditure; management of petroleum data; assessment of field development plans; ensuring health and safety standards and the assessment of revenues and profit due to the state.⁹⁴ The National oil company was given the

⁸⁹ *Id*, See Section 53

⁹⁰ *Id*, See Section 70

⁹¹ See *Uganda Oil and Gas Policy*, 2008. Available on also Principle 7.2

⁹² See Principle 7.2 of the Policy

⁹³ Principle 7.2.3

⁹⁴ Principal 7.2.4

responsibility of managing the state's commercial interests in the sub sector.⁹⁵ This would involve the optimization of shareholder value and the administration of contracts with co-ventures.⁹⁶

Norway is globally acknowledged as having one of the most effective systems of petroleum resources management.⁹⁷ By adopting the same model of management, Uganda was seen to be following the right path at least in the short run.⁹⁸ The challenge in the case of Uganda, however, was that the policy recommendation to have three independent institutions was never translated into law as envisioned in the policy. Instead, the politics of the day crept in compromising the future functioning and effectiveness of these institutions. First and foremost, the powers and responsibilities that had been allocated to the Directorate in the Ministry responsible for oil and gas were usurped by the Minister without justification. As discussed above, under the policy the directorate was to be entrusted with two main responsibilities, that is, the development and implementation of policy and negotiation of petroleum contracts with government. In total disregard of its own recommendation as represented in the Oil and Gas Policy, the government tabled a bill seeking to vest the role of negotiating petroleum agreements in the Minister of Energy instead of the directorate of petroleum. Several criticisms were leveled against this move but these did not yield much. It was for instance argued that given that in most cases the Minister of Energy was a mere political appointee, they lacked the technical capacity to effectively execute this responsibility. There was also concern that the Minister would only be accountable to the appointing authority and not to the citizens of Uganda. For these reasons, the provisions of the bill vesting these powers in the Minister were resisted by members of the opposition in Parliament. They walked out of the session that had been convened with the objective of having the Bill

⁹⁵ Principle 7.2.5

⁹⁶ *Id.*

⁹⁷ See Generally Kyepa, Timothy. "Integrating the Proposed National Oil Company of Uganda into the Corporate Governance Discourse: Lessons from Norway." *Journal of Energy & Natural Resources Law* 30, no. 1 (2012): 75-89.

⁹⁸ *Id.* See also Interview with Attorney working with the Directorate of Legislative Drafting, Ministry of Justice and Constitutional Affairs Uganda, June 2017.

passed in protest denying the ruling government the necessary quorum.⁹⁹ Earlier on, the Bill had received equal criticism from members of the Parliamentary Forum on Oil and Gas.¹⁰⁰ The actions of members of parliament were also supported by civil society groups under their umbrella body- the Uganda Civil Society Coalition on Oil (CSCO).¹⁰¹

In the end, the ruling National Resistance Movement (NRM) government, however, used its numerical strength in Parliament to pass the law which had the effect of vesting the Minister with overwhelming powers over licensing and contracting¹⁰² The politics of the day, therefore, trounced sound technical reasoning that was contained in the Policy document developed by an organ of the same government and previously approved by the cabinet. Over and above, the move strengthened the quest and resolve of the ruling NRM party to dominate the management and control of the country's petroleum sector. It should be recalled that soon after the government announcement of the presence of commercial oil, President Yoweri Museveni who also doubles as the chairperson of the NRM was captured on record referring to the landmark discovery as an NRM achievement. The President and Chairman of the party has also been severally quoted referring to the resource as 'my oil.'¹⁰³

Against this background, it is not surprising that the ruling NRM government changed goal posts in the middle of the game to clothe its own Minister and in effect the executive with

⁹⁹ See Isaac Imaka, Opposition MPs Walk Out, Oil Bill not Passed, *Daily Monitor*, November 22, 2012. Available on <http://www.monitor.co.ug/News/National/Opposition-MPs-walk-out--oil-Bill-not-passed--/688334-1627094-5w8syk/index.html> (accessed on November 11, 2017)

¹⁰⁰ See David Tash Lumu, My Amendments will Keep Away Oil Sharks, *Observer*, October 16, 2012. Available on http://www.observer.ug/index.php?option=com_content&view=article&id=21583:my-amendments-will-keep-away-oil-sharks (accessed on November 11, 2017). See also Isaac Imaka, "Move to Cut Ministers' Powers Stands in way of Passing Oil Bill," *Daily Monitor*, October 11, 2012. Available on <http://mobile.monitor.co.ug/News/TodaysPaper/691252-1530452-format-xhtml-tcs9jq/i/index.html> (accessed on November 11, 2017).

¹⁰¹ See also Isaac Imaka, Oil Bills: What, How and Who is Shaping The Oil Sector, *Daily Monitor*, November 18, 2017. Available on <http://www.monitor.co.ug/News/National/Oil-Bills--What--how-and-who-is-shaping-future-of-sector-/688334-1622778-uam4gi/index.html> (accessed on November 11, 2017) See also "4GC Joins in Call for Oil Bill Demos," *Daily Monitor*, November 27, 2012. Available on <http://www.monitor.co.ug/News/National/4GC-joins-in-calls-for-oil-Bill-demos/688334-1629732-ly0t0l/index.html> (accessed on November 11, 2017)

¹⁰² See Isaac Imaka, "Oil Bill Passed Amidst Protests," *Daily Monitor*, December 8, 2012. Available on <http://www.monitor.co.ug/News/National/Oil-Bill-passed-amid-protests/688334-1639236-9mg4scz/index.html> (accessed on November 11, 2017)

¹⁰³ See "Fact Checker, Museveni on Oil Production", *Daily Monitor*, December 28, 2016. Available on <http://www.monitor.co.ug/News/National/Fact-checker-Museveni-oil-production/688334-3011730-5jw7qr/index.html> (accessed on November 11, 2017)

a sweeping mandate including the power to negotiate petroleum agreements and issue licences. Needless to state that Ministers are appointees of the President. Although their appointment is subject to Parliamentary approval, the Parliament itself is dominated by the NRM. By vesting in the Minister, a broad mandate, the executive, and the President in particular is in effect granted an opportunity to monopolize the sector. In this case there is evidence that President Museveni was actively involved in mobilization of his Ministers and NRM leaning MPs to vote in favor of the provisions that sought to vest in the Minister powers over regulation and licensing of the sector.¹⁰⁴ This shows that right from the beginning he had a vested interest in controlling the sector and this could be effectively achieved with the Minister in charge.

As seen elsewhere in Africa, this exposes the country to a huge risk of having its resources mismanaged and for patronage at the expense of the interests of ordinary Ugandans. According to Luke Patey this is already happening as for instance President Museveni continues to play a central role in the management of the resource undermining the work of the responsible institutions.¹⁰⁵ The President has also been accused of personalizing and micromanaging the sector.¹⁰⁶ In light of this, Patey concludes that continued political meddling in the sector is a strategy of the ruling regime to tap into petroleum funds for campaign financing.¹⁰⁷ This conclusion lends support to the main argument raised in this paper, that is, the NRM and President Museveni's deliberate strategy to use their influence to negotiate for favorable petroleum legislation to enable them control and extract maximum revenue from petroleum activities in order to purchase political patronage and extend their tenure in power.

¹⁰⁴ See David Tash Lumu and Sulaiman Kakaire, "Oil Bill: NRM's Winning Formular," *The Observer*, December 9, 2012. Available on <https://www.observer.ug/component/content/article?id=22553:oil-bill-nrms-winning-formular> (accessed on March 30, 2019)

¹⁰⁵ See Patey, Luke. *Oil in Uganda: Hard Bargaining and Complex Politics in East Africa*, 2015, Policy File. Pg.24-25.

¹⁰⁶ *Id.* See also *Donor Engagement in Uganda's Oil and Gas Sector: An Agenda for Action*, Global Witness, 2010. Available on [file:///C:/Users/Dan/Downloads/uganda_final_low%20\(4\).pdf](file:///C:/Users/Dan/Downloads/uganda_final_low%20(4).pdf) (accessed on November 18, 2017)

¹⁰⁷ *Id.*

B. Petroleum Taxation, Revenue Management and Sharing Legislation

(1) Taxation

At the time petroleum discoveries were made in Uganda, all revenues generated from the petroleum activities were generally considered to constitute business income and therefore subject to tax under the Income Tax Act like any other income.¹⁰⁸ The law defines business income to mean any income derived by the tax payer from carrying on a business and/or trade.¹⁰⁹ Business income also includes among other things; gains from disposal of capital assets, proceeds from disposal of trading stock, interest, consideration received in return of trade restriction and the value of any gift derived in the course of a business relationship.¹¹⁰ Given this broad definition, almost all revenues generated from petroleum activity were subject to taxation under the general provisions of the Income Tax Act. The taxpayer was only allowed a deduction allowance in respect of losses and expenditures incurred in the exploration, development, or production of petroleum.¹¹¹ Otherwise the rest of the revenue was deemed to constitute taxable income.

The position of the law as enumerated above was fundamentally altered by the passing of the Income Tax (Amendment) Act no. 2 of 2008.¹¹² The amendment introduced a special and separate regime for taxation of revenues in the hands of petroleum contractors and sub-contractors.¹¹³ Under the amendment contractors were defined as persons with whom the government of Uganda has entered into a petroleum agreement.¹¹⁴ At the time these constituted of mainly multinational companies involved in petroleum exploration. Subcontractors on the other hand were defined as persons that

¹⁰⁸ See Income Tax (amendment) Act, 2006.

¹⁰⁹ See Section 18 (1), Income Tax Act (as amended). See also Section 2 (g) which defines business to include trade, profession, vocation, or adventure in the nature of trade.

¹¹⁰ See Section 18 (1), Income Tax Act (as amended)

¹¹¹ See Section 22 (6), Income Tax Act (as amended)

¹¹² See Income Tax (Amendment) Act, no. 2 of 2008. Available on <https://www.ulii.org/node/24752> (accessed on August 3, 2017)

¹¹³ *Id.*

¹¹⁴ *Id.* Also see Part IXA of the Income Tax Act (as amended) on Special provisions for the taxation of petroleum activities.

supply goods and services to contractors in respect to petroleum agreements.¹¹⁵ Among the key highlights for the amendment were restrictions on the amount of expenses contractors were allowed to recover from the income obtained before taxation. In this respect, only those expenses incurred in the contract area could be offset in the computation of taxable income.¹¹⁶ Those outside the contract area were not recoverable from the income derived from that area. In the same vein, only those royalties included in the contractor's gross income from the sale of petroleum were allowed to be deducted.¹¹⁷ In addition, the law also allowed contractors to claim decommissioning costs and exploration and development expenditure as part of the allowable deductions.¹¹⁸

The law relating to taxation of petroleum income was amended yet again in 2015.¹¹⁹ However aside from offering detail and clarity on the extent of deductible expenses (these include exploration and development expenditure as well as decommissioning costs), the new amendment did not offer any substantial changes.¹²⁰ In 2017, the law was again amended this time to impose a cap on the total amount of deductible expenses recoverable by petroleum companies.¹²¹ As a result of this amendment, petroleum companies are not allowed to make any deductions in excess of the cost oil realized from a contract area in a given year of income.¹²² Where the total deductions exceed the cost oil, they are permitted to be carried forward to the next year.¹²³ This presents a differential approach when it comes to taxation of the oil sector given that other sectors are not subject to the same restriction to the extent that they can deduct all allowable expenditures without any limit.¹²⁴ Secondly, the amendments to the income tax code considered altogether show that the approach of the government of Uganda has been to tax the petroleum sector in a rather rigorous manner when compared to other sectors.

¹¹⁵ *Id.*

¹¹⁶ *Id.*, See Section 89C

¹¹⁷ *Id.*, Section 89 D

¹¹⁸ *Id.*, Sections 89E and 89F

¹¹⁹ See Income Tax (Amendment) Act, No.

¹²⁰ *Id.*, See Section 89GB and 89GC

¹²¹

¹²² See Income Tax (Amendment) Bill, 2017.

¹²³ *Id.*

¹²⁴ See Denis Kakembo, Why Uganda Should Reconsider Oil Tax Amendment, *The New Vision*, November 10, 2017. Available on https://www.newvision.co.ug/new_vision/news/1465456/uganda-reconsider-oil-tax-amendment (accessed on April 5, 2018)

This it is argued is done with the objective of maximizing tax revenue from the sector. In turn this strategy supports the ruling coalition's objective to stay in power.

In addition to the amendments effected on the substantive parts of the income tax law, a separate tax procedural law was enacted in 2014.¹²⁵ The main purpose of the law was to among others regulate tax administration and enforcement processes.¹²⁶ The timing of the passing of the law and the likely effect of some of its provisions also points towards another deliberate strategy to aggressively tax petroleum revenues in the hands of especially wildcatter oil companies that have a habit of relocating to other countries once they make commercial strikes.

It is also quite clear that the spirit and function of the new law was informed by the difficult experience of the government of Uganda in collecting capital gains tax realized from a transaction involving two major multinational oil companies. To provide a brief background to this, in 2010 Heritage Oil and Gas Ltd (Heritage) sold its stake in petroleum exploration areas Blocks 1 and 3A to Tullow Uganda Limited (Tullow). Under the sale agreement, Heritage was responsible for all non-transfer taxes while transfer taxes were to be borne by Tullow.¹²⁷ With full knowledge of the transaction, the Uganda Revenue Authority (URA) issued two separate assessments and a notice to Tullow oil to pay a capital gains tax in the amount of USD 313, 477500 due from Heritage which at this time was in the process of exiting the country. In issuing the notice, the URA relied on Section 108 of the Uganda Income Tax Act that gave the commissioner powers to require any person in possession of assets including money belonging to a nonresident taxpayer to pay tax on behalf of such taxpayer. The assessment was contested by the two oil companies. Heritage Oil proceeded to challenge the assessment before the Tax Appeals Tribunal (TAT) on grounds among others that the assessment contravened the stabilization clause contained in the PSA signed with the government of Uganda which had the effect that the agreement could not be varied to the detriment of the company. In this vein, Heritage argued further that any disputes arising from the provisions of the PSA were required to be subjected to compulsory arbitration which had not been the case.

¹²⁵ See Tax Procedure Code Act, 2014

¹²⁶ *Id.*, Long Title to the Act.

¹²⁷ *Id.*

After a careful consideration of the facts however, the Tax Appeals Tribunal (TAT) decided in favor of the URA. Following this outcome, Heritage filed a further appeal to the High Court of Uganda, but this was dismissed in 2011.¹²⁸

The other oil company, that is, Tullow on the other hand took a different approach that involved the lobbying of URA officials and high-level politicians including President Museveni so as to halt the collection of tax until all disputes involving the transaction with Heritage had been settled. These efforts however remained futile. Instead, the government of Uganda put further pressure on the Tullow to remit the tax assessed. The government also declined to renew Tullow's licence until the tax liability is settled in full. In the end, Tullow opted to honor the agency notice and bring an action for recovery of the monies paid on behalf of Heritage in the High Court of England and Wales.¹²⁹ After full consideration of the evidence presented by both parties, the learned judge Mr. Justice Burton entered judgment in favor of Tullow oil on grounds that the URA assessment was valid under Ugandan law and that being the case Tullow oil was justified to act on it.¹³⁰

The ruling of the High Court of England and Wales as well the tedious experience of the URA in recovering the taxes due on the transaction inspired the enactment of the Tax Procedures Code Act, 2014.¹³¹ The law which was passed a year after the court decision emboldened and clarified on the power of the Commissioner URA to recover full taxes due through persons that owe the tax payer money.¹³² Under the law, it is immaterial whether the tax is already due at the time of the recovery or whether it will fall due at a future date.¹³³ In this respect, the law is much more aggressive than the one relied on (Section 108 Income Tax Act) to issue an assessment to Tullow to the extent that the commissioner may initiate collection of the full tax solely on the basis of his/her belief that the tax payer will incur tax liability in the future.

¹²⁸ See *Heritage Oil and Gas v. Uganda Revenue Authority*, High Court Civil Appeal No. 14 of 2011.

¹²⁹ See *Tullow Oil Uganda Ltd v Heritage Oil and Gas Ltd & Heritage Oil Plc* [2013] EWHC 1656 (Comm). Available on (accessed on August 11, 2017)

¹³⁰ *Id*

¹³¹ See Tax Procedures Code Act, 2014.

¹³² *Id*, See Section 31

¹³³ *Id*, See Section 31.

It should be recalled that this was one of the most contentious issues raised in the case filed by Tullow before the UK High Court. In that case it was argued on behalf of Heritage that the assessment notice was invalid since it had been issued prematurely (before the transaction could be completed) and secondly that the tax assessed was not final since it was disputed by Heritage. On its part, Tullow argued that it was under the compulsion of provisions of the law to effect full settlement of the tax assessed on behalf of Heritage and that it had taken all steps to avoid effecting payments to the URA until the dispute involving Heritage had been settled. In order to determine the issue whether full settlement of the tax was required immediately the notice was received, the court examined the difference in the use of the words *due* and *due and payable* as used in the tax code at the time. After careful consideration of the evidence and the word *due* as used in Section 108 of the law, the court found that Tullow was justified to remit the full tax assessed by the URA the moment the assessment was raised notwithstanding whether the URAs actions were premature or not. In effect section 108 made full payment of the assessed tax mandatory notwithstanding any outstanding disputes and objections to imposition of the tax. For this reason, Tullow was entitled to full recovery of the amount paid to the URA on behalf of Heritage.¹³⁴

URA's experience in recovering the capital gains tax due on the transaction between Heritage and Oil was therefore a difficult and protracted one. They exerted pressure on Tullow by declining to renew its licence until the tax due was fully settled. In an action for recovery of taxes paid to URA from Heritage, the latter questioned the powers of the commissioner URA under Section 108 of the income tax code to collect the full tax liable before all disputes and objections to the tax are settled. Following this experience and with the aim of avoiding future similar challenges, the government enacted the Tax Procedures Code. The objective of the law was to widen the power of the commissioner to compel third parties to make tax payments on behalf of taxpayers to whom they owe money on the sole belief that such taxpayers will not pay the tax on the date it falls due.

It should be noted that in the course of determination of the dispute, evidence was adduced to show that the ruling NRM and President Museveni were fully behind and

¹³⁴ Supra, Decision of the High Court of England in Tullow oil v. Heritage

supported the actions of the URA.¹³⁵ In particular, it was reported that during the time of the dispute Tullow Oil delegations were sent to meet with President Museveni on three separate occasions but on all of them he turned down their request to halt the tax assessment until final determination of the dispute.¹³⁶ The President's approach to the Tullow- Heritage tax dispute is rather interesting given that he has on previous occasions granted favorable tax concessions to select multinational companies as a basis of attracting foreign investment.¹³⁷

In the event, the current petroleum taxation legislative regime reflects the determination of the ruling coalition to use the law to extract as much revenues as possible from the sector. There are several factors that explain this approach. First and foremost, the petroleum sector unlike others attracted unprecedented interest from members of the Ugandan public including politicians, academics, and civil society. Several development partners that provide substantial aid to Uganda such as the Norwegian government were also involved in assisting the government of Uganda to manage its petroleum wealth effectively.¹³⁸ As a way of appealing to all these interests and in a show of commitment to generate maximum oil revenues, the NRM government enacted rigorous and stringent tax laws. This aside and perhaps what explains the NRM government's main motivation for a rigorous taxation approach is its desire to extract the maximum rents and revenues possible in order to fund its strategy to maintain power. It has been noted elsewhere that patronage provides the glue that holds the NRM ruling coalition together.¹³⁹ Petroleum tax revenues have in turn been utilized to provide an additional source of fuel for the patronage machinery.

¹³⁵ *Id*

¹³⁶ *Id*

¹³⁷ See for example Stephen Kafeero, Taxes: Who is Exempted, Why? *Daily Monitor*, May 6, 2018. Available on <https://www.monitor.co.ug/News/National/Taxes-Rugunda-Parliament-Cabinet-finance-Income-Tax/688334-4546968-format-xhtml-oo1wyc/index.html> (accessed on March 25, 2019). See also Ismail Musa Ladu, Uganda Loses Shs 1 trillion in Tax Exemptions Annually- Report, *Daily Monitor*, June 23, 2016, Available on <https://www.monitor.co.ug/Business/Uganda-loses-Shs1-trillion-tax-exemptions-annually-report/688322-3262116-5rvdshz/monitor.co.ug> (accessed on March 25, 2019)

¹³⁸

¹³⁹ See generally Tripp, A. (2010). *Museveni's Uganda: Paradoxes of power in a hybrid regime* / (Challenge and change in African politics).

(2) Revenue Management

The NRM's approach in the taxation and extraction of other revenues from multinational oil companies, while successful, raised one major concern, that is, its ability and commitment to manage the oil windfall in an open and transparent manner. This is because, from the experiences garnered from a number of resource rich African countries, prudent management of natural resource revenues is necessary if any country is to succeed in converting its petroleum wealth into shared prosperity for all its citizens.

Legislation plays a very important role in promoting transparency and accountability and setting in place controls necessary to reduce corruption and waste of resources. In the case of Uganda, all aspects of Uganda's public revenue management are covered under the Public Finance Management Act 2015.¹⁴⁰ Part VIII of the law is specifically dedicated to the management of petroleum revenues.

In particular, the law creates a number of safeguards for efficient and effective mobilization and utilization of the realized petroleum revenues. In this regard the law establishes a special fund into which all petroleum revenues must be paid.¹⁴¹ While the Uganda Revenue Authority (URA) bears the responsibility to collect all petroleum revenues, it is obliged to remit these into a special fund, that is, the petroleum fund.¹⁴² All the withdrawals from the fund are subject to the approval of Parliament and require a warrant from the auditor general.¹⁴³ The law further requires that all such withdrawals are strictly utilized for the sole purpose of supporting the annual budget and for long term investment.¹⁴⁴

Besides the petroleum fund, the law also establishes the petroleum revenue investment reserve.¹⁴⁵ The major function of the reserve is to invest the allocated petroleum revenues

¹⁴⁰ See Public Finance and Revenue Management Act, 2015.

¹⁴¹ Section 56, Public Finance Management Act, 2015. This section establishes the Petroleum Fund.

¹⁴² Section, 57

¹⁴³ Section 58

¹⁴⁴ Section 58

¹⁴⁵ Section 62

for the long-term benefit of Ugandans in accordance with the petroleum revenue investment policy.¹⁴⁶

In terms of accountability of the two institutions, it should be noted that both the petroleum fund and the petroleum revenue investment reserve are required to prepare and submit annual performance and financial reports to the office of the auditor general for audit.¹⁴⁷ The auditor general is in turn required to submit annual audit reports in respect of both the petroleum fund and the investment reserve to Parliament for further scrutiny.¹⁴⁸

There is no doubt that these provisions of the law, if followed to the letter, will enhance transparency and accountability in Uganda's petroleum sector to the extent that they emphasize the active role of institutions rather than the executive and members of the ruling coalition. This approach is rather surprising especially when contrasted with that taken in regard to regulation of the sector where the executive exercises a wide mandate. There are a number of possible explanations as to why the ruling NRM coalition was willing to embrace these strong controls over petroleum revenues even when this restricted their ability to tap into the funds for their own purposes. In the first place, the discovery of petroleum and consequent confirmation of the existence of commercially viable amounts generated a lot of interest and heightened public expectations in the sector. Legislation over petroleum revenue management, therefore, took place amidst great public scrutiny making it politically risky for the ruling coalition not to pay attention to controls suggested for the prudent management of the revenues.

Secondly, in the process leading to the passing of the law, there is evidence that the ruling NRM coalition was subject to pressure from different stakeholders that worked closely together to ensure that the law, when passed, promotes transparency and accountability in the sector. Some of the most active groups in this regard include, members of the Parliamentary Forum on Oil and Gas (PFOG), opposition leaning parliamentarians, civil society and donor groups.¹⁴⁹ Together these groups persistently promoted and insisted

¹⁴⁶ Section 63

¹⁴⁷ See Section 61

¹⁴⁸ Section 73

¹⁴⁹ See Parliamentary Forum on Oil and Gas, Available on <https://www.parliament.go.ug/page/parliamentary-forum-oil-and-gas> (accessed on May 5, 2019)

on quality legislation and inclusion of strong controls in the law as a way of avoiding the resource curse.¹⁵⁰ According to Global Witness, donors were concerned with petroleum revenue management because at the time they were responsible for funding of 35% of the country's budget.¹⁵¹ They were therefore interested in prudent management of resource funds in order to protect the gains made previously and to put the country on course to funding its budget fully.¹⁵² Civil society and parliamentarians on the other hand emphasized the importance of citizens participation for transparency and accountability in the sector. In the end, the ruling coalition bowed to pressure and opted to cooperate in this endeavor as a way of assuaging both the minds, the masses, and critical groups. However, it became clear what the true interests of the ruling coalition in as far as the management of petroleum revenues is concerned were. For instance, prior to 2015 all oil revenues were required by law to be deposited on the oil revenue account held in the Bank of Uganda. Following the passing of the Public Finance Management Act, all monies available on the revenue account were expected to be transferred to the petroleum fund but this was not done.¹⁵³ According to the Bank of Uganda report, as of June 2017 the country was estimated to have generated a total of USD 728,758,293 in oil related revenues.¹⁵⁴ Of this, it was indicated that USD 620,582,750 had already been spent as part of the national budget. There were, however, no indications as to which aspects of the budget had been funded using the funds casting doubt on whether the expenditure was done for the right purpose and in accordance with the law.¹⁵⁵

It should also be recalled that in 2011 the government of Uganda almost depleted its foreign exchange reserves in a hurried decision to purchase fighter jets and other military equipment from Russia at an estimated cost of USD 744Million.¹⁵⁶ Moreover at the time

¹⁵⁰ *Id.*

¹⁵¹ See Donor Engagement in Uganda's Oil and Gas Sector: An Agenda for Action, Global Witness, October 2010.

Pgs. 15- 16. Available on [file:///C:/Users/Dan/Downloads/uganda_final_low%20\(5\).pdf](file:///C:/Users/Dan/Downloads/uganda_final_low%20(5).pdf) (accessed on May 4, 2019)

¹⁵² *Id.*

¹⁵³ Section 57

¹⁵⁴ Bank of Uganda Annual Report 2016/17, Available on https://www.bou.or.ug/bou/bou-downloads/publications/Annual_Reports/Rprts/All/Annual-Report-2016-2017.pdf

¹⁵⁵ See Mark Keith Muhumuza, "Where is Uganda's Oil Money?" *Daily Monitor*, January 16, 2017. Available on <https://www.monitor.co.ug/Business/Uganda-s-oil-money-URA-Tullow/688322-3518302-wrcldwz/index.html> (accessed on March 30, 2019)

¹⁵⁶ See Nicholas Bariyo, Uganda Buys Fighter Jets, *Wall Street Journal*, April 7, 2011, Available on <https://www.wsj.com/articles/SB10001424052748704013604576248094099823846on>

of this unprecedented purchase, Uganda was not at war with any country and neither did it have any serious internal security threats deserving of such sophisticated equipment.¹⁵⁷ The procurement was, therefore, a clear demonstration of the NRM's decision to prioritize military needs and demands over all other sectors in the expenditure of oil cash. This is not surprising given the NRM's militarist background having ascended to power through the barrel of the gun. Up until this moment, the military remains a key institution and is at the center of the NRM's strategy to maintain its grip on power.¹⁵⁸

In an interview, following the incident, the Central Bank Governor stated that the bank had released the money on the basis of a presidential pledge to replenish the reserves using anticipated oil revenues.¹⁵⁹ Following this revelation, it is feared that over 85% of oil funds generated between 2010 and 2017 were spent in replenishing forex reserves that were nearly depleted by the Russia procurement contrary to the spirit of the public finance management law.¹⁶⁰ It should be further noted that the process of procuring the fighter jets was itself controversial as Parliament was not involved from the beginning. Instead, the expenditure was made on the express instructions of President Museveni without securing the necessary approval from Parliament as is required by law.¹⁶¹

Besides the procurement of military equipment, on the eve of the 2011 Presidential election, the NRM ruling coalition forced through a supplementary budget of USD 256million much of which (30%) was allocated to the office of the Presidency.¹⁶² This constituted the largest ever single supplementary budget in the country's history. The

<https://www.wsj.com/articles/SB10001424052748704013604576248094099823846> (accessed on November 11, 2017).

¹⁵⁷ Interview with Member of Civil Society Coalition on Oil in Kampala, June 2017.

¹⁵⁸ See generally Busingye Kabumba, Dan Ngabirano and Timothy Kyepa, *Militarism and the Dilemma of Post-Colonial Statehood, The Case of Museveni's Uganda*, Development Law Publishing, Kampala, June 2017.

¹⁵⁹ See Isaac Imaka, Mutebile Reveals Oil Deal with Museveni, *Daily Monitor*, November Monitor, November 16, 2011. Available on (accessed on November 11, 2017)

¹⁶⁰ See Alon Mwesigwa, Shs. 2.3 Trillion from Oil Disputes Already Spent, *Observer*, October 30, 2017. Available on <http://observer.ug/news/headlines/55683-shs-2-3-trillion-from-oil-disputes-already-spent.html>

¹⁶¹ See Julius Barigaba, \$740m Fighter Jets Scam Sneaks under the Radar, *The East African*, April 2, 2011. Available on <http://www.theeastafrican.co.ke/news/-740m-fighter-jets-scam-sneaks-under-the-radar/2558-1137840-11r0eru/index.html>

¹⁶² See Khisa, Moses. "Political Uncertainty and Its Impact on Social Service Delivery in Uganda." *Africa Development* 40, no. 4 (2015): 159-88. Pgs. 182-183. See also Freedom in the World, Uganda, Freedom House, 2013. Available on <https://freedomhouse.org/report/freedom-world/2013/uganda> (accessed on March 30, 2019)

main concern, however, is that while Parliament had the mandate to authorize such spending, it is doubtful whether the funds allocated were spent on critical areas. Instead, it was reported that the NRM could have diverted the extra budgetary allocation to fund its own political campaign.¹⁶³ This report is strengthened by the revelation that the 2011 general election was highly commercialized with vast amounts of money distributed to voters.¹⁶⁴ Given this context, the government representation to the effect that oil revenues were spent on budgetary activities is telling in a number of respects. The narrative seeks to justify the NRM's interest and strategy, that is, its expenditure on public services shortly before the election to win political support and the direct deployment of public (oil) revenues to finance the NRM's political campaigns including through voter bribery.¹⁶⁵

More recently in 2016, a team of 42 government officials received a total of UGX 6billion (USD 1.7M) as a token of appreciation for their role in the successful resolution of a tax dispute involving the government of Uganda and multinational oil companies.¹⁶⁶ A parliamentary committee setup to investigate the manner in which these officers were rewarded faulted the process under which the reward was made. The criteria used to identify the beneficiaries many of them powerful NRM loyalists was also questioned. On this basis the committee recommended a full refund of the funds received by all beneficiaries.¹⁶⁷ No sooner had the committee pronounced its position than President Museveni came out to proclaim that his office would instead refund the UGX 6billion on

¹⁶³ See European Union Election Observer Mission, Final Report on the Uganda General Elections, 2011. Available on http://eeas.europa.eu/archives/eucom/pdf/missions/eucom_uganda2011_final_report_en.pdf (accessed on March 30, 2019)

¹⁶⁴ See Josh Kron, President of Uganda Coasts into a Fourth Term, *New York Times*, February 20, 2011. Available on <https://www.nytimes.com/2011/02/21/world/africa/21uganda.html> (accessed on March 30, 2019). See also Xan Rice, Uganda Leader Wins Presidential Election Rejected as Fraudulent by the Opposition, *The Guardian*, February 20, 2011. Available on <https://www.theguardian.com/world/2011/feb/20/ugandan-leader-wins-presidential-election> (accessed on March 30, 2019)

¹⁶⁵ *Id.*

¹⁶⁶ See Julius Barigaba, Queries Raised on \$1.7M Uganda 'Presidential Handshake', *The East Africa*, January 9, 2017. Available on <http://www.theeastafrican.co.ke/news/Queries-raised-on--1-7m--Uganda-presidential-handshake/2558-3511228-jhqomj/index.html>

¹⁶⁷ COSASE to probe Shs.6bn Presidential Handshake, Parliament of Uganda. Available at www.parliament.go.ug. See also Report of the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) on the Investigations into the Circumstances under which the Reward of UGX 6billion was given to 42 Public Officers Who Participated in the Heritage Oil and Gas Arbitration Case, Parliament of Uganda, 2017. (On file with Author)

their behalf.¹⁶⁸ Earlier on the President had defended the payment of the reward when interviewed by the committee. In his words he did not see anything wrong with rewarding a team that helped the country recover very significant taxes from a hesitant oil company. Therefore, when he was approached for his approval, he readily endorsed the payout. The President's action was, however, found to have been done outside the law and to have unnecessarily cost the Ugandan taxpayer an unjustified UGX 6billion.

The incidents above illustrate a pattern of unjustified expenditures made at the quest of the top leadership in the ruling NRM coalition. The events also demonstrate the fact that legal and institutional frameworks are not sufficient especially where there is a strong political arm that is dedicated to satisfaction of its own interests at the expense of those of citizens. In the case of military procurements, the President working with loyal officials in government was able to sidestep the provisions of the law to push his own agenda. Parliament was also excluded from the processes leading to the expenditures. The President also used his clout to reward government official's majority of them fiercely loyal to the NRM outside the law. In similar fashion, using the supplementary budget approach the NRM was able to bring oil revenues within their political campaign spending net in 2011. This belabors the point that in pseudo democratic countries such as Uganda, the existence of the law notwithstanding, the decision as to how petroleum revenues are vested lies with the political elites and in this case an overreaching President.

(3) Revenue Sharing

Aside from establishing legal safeguards in the management of petroleum revenues, the Public Finance Management Act of 2015 also for the first time introduced a formula for petroleum revenue sharing between the government, local and traditional authorities in the area where oil is found. Under the law, the central government is entitled to retain 94% of all revenues realized from petroleum royalties.¹⁶⁹ Out of this, 1% is reserved for

¹⁶⁸ See Dickens H Okello, Museveni Agrees to Refund 6 Bn Handshake Money, *Chimp Reports*, April 26, 2017. Available on <http://chimpreports.com/museveni-agrees-to-refund-6bn-handshake-money/>

¹⁶⁹ Section 75

cultural institutions within the areas where the oil is located.¹⁷⁰ The remaining 6% is required to be shared amongst local governments located within the petroleum exploration and production areas.¹⁷¹

The provisions as to revenue sharing were a result of intense and heated lobbying by two major groups, that is, local councils and traditional institutions. The cultural and traditional institutions in the areas where oil was found led by Bunyoro made an initial demand of at least 12.5% share in the oil revenues.¹⁷² This was made on the basis that the kingdom was the custodian of all land in the Albertine region where the oil is found.¹⁷³ Similar demands for a share in petroleum revenues were also made by local governments in the oil rich areas on the basis that their people would be most affected by the social and environmental impacts of petroleum activities. In the end cultural institutions were only allowed a 1% share while districts were granted 6% share.¹⁷⁴ The central government, therefore, retains the giant share of oil revenues. The share of local governments and traditional authorities, on the other hand, remains negligible especially when compared to other natural resources such as minerals and national parks where the share of local governments is between 17% and 20% of the total revenue.¹⁷⁵ Again this points to the deliberate policy of the ruling government to ring fence oil revenues and use them to satisfy their own political interests.

On the face of it, petroleum revenue taxation and management legislation unlike regulation appears to have the least visible political footprints. Indeed, this study confirms that there was a deliberate effort on the part of the ruling government to entrust the process of crafting an appropriate legal framework for management and taxation of petroleum revenues with its technocrats.¹⁷⁶ This is not surprising for as Angello and

¹⁷⁰ *Id*

¹⁷¹ *Id*.

¹⁷² Bunyoro Leaders demand for more, *Oil in Uganda*, June 15, 2015. Available on <http://www.oilinuganda.org/features/companies/bunyoro-leaders-demand-for-more.html>

¹⁷³ *Id*.

¹⁷⁴ See Peter G. Magelah, Government Should Explain the Rationale for Determining Oil Royalties, *Oil in Uganda*, July 29, 2014. Available on <http://www.oilinuganda.org/features/opinion/government-should-explain-the-rationale-for-determining-oil-royalties.html>

¹⁷⁵ See Muhwezi, et.al, (2009). Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE Policy Research Series, No. 30, 2009. Kampala pgs. 15-16

¹⁷⁶ Interviews with Attorneys in the Attorney Generals Chambers, 2018

Hickey have observed, right from the beginning the ruling coalition was determined to obtain the best deal in the process of negotiation with the oil companies.¹⁷⁷ This section argues that the motivation of the ruling coalition to benefit most from petroleum revenues went beyond the contract negotiation stage. Therefore, while the interests of the ruling coalition are not outrightly apparent in the petroleum revenue management and taxation legislative processes, both the outcome of the legislative process and utilization of the revenues realized so far, suggest that there was a deliberate move by the ruling NRM coalition to rely on the skills of technocrats to maximize petroleum revenues for its own benefit. The NRM has also used its success in the negotiation with multinational companies, ability to come up with quality legislation and to extract maximum revenues from petroleum activities to boast of its overall competence and thereby make a claim that its best suited to govern.¹⁷⁸ The dilemma is that the fruits of these efforts have to a greater extent been used to champion the party's stay in power rather than uplift the lives of citizens.

¹⁷⁷ See Hickey, Sam, and Angelo Izama. "The Politics of Governing Oil in Uganda: Going against the Grain?" *African Affairs* 116, no. 463 (2017): 163-85 at pg. 163

¹⁷⁸

Legal Instruments, Ruling Coalition and Nature of Political Settlement – Summary

Legal Instrument	Strength of Ruling Coalition	Key Objectives of the of Legal Instrument	Political Settlement
Petroleum (Exploration and Production) Act 1985	Vulnerable	Regulation, capacity development & attraction of foreign investment	Multinational oil companies more powerful
PSAs concluded with Multinational Oil Companies pre 2006	Vulnerable	Regulation and definition of relationship between gov't & multinationals	Multinationals more powerful
National Oil and Gas Policy 2008	Less vulnerable	Legal & institutional framework for management of petroleum sector	Ruling Coalition regaining control
Petroleum (Exploration, Development & Production) 2013	Stronger	Regulation of petroleum exploration, dev't & production	Ruling coalition more powerful
Public Finance Management Act 2011	Less vulnerable	Fiscal & macroeconomic management of public resources including petroleum revenues	Strong ruling coalition but with several controls on its ability to expend petroleum revenues as set by donors, parliamentarians & civil society.
Income Tax Act (as amended) and Tax Procedure Code Act, 2014	Stronger	Collection & taxation of petroleum revenues	Stronger ruling coalition and more vulnerable multinational oil companies

V. Conclusion

On paper, it appears that Uganda may have obtained a great deal from its oil even before the first commercial drop flows out of the ground. Right from the beginning, the ruling NRM coalition was foresighted to invest in training and capacity building of its technocrats. The NRM was also careful to negotiate for relatively better terms in the PSAs concluded with multinational oil companies. Although Uganda could have obtained a better deal from the companies, on average the country was still able to get a good deal compared to the experience of other resource rich countries in Africa.

Importantly, in 2006, the NRM ruling coalition was emboldened by the confirmation of the presence of commercially viable amounts of oil and the surge in global oil prices. The NRM used this opportunity to exert its power and influence petroleum legislative processes. In the event the laws when passed bestowed a lot of control over the sector in the executive and in particular the President who is also the chairman of the ruling NRM party. With the help of technocrats, the NRM was also able to ensure that petroleum laws enable them extract maximum revenues from multinational oil companies while at the same time ensuring stringent regulation of their activities. In terms of transparency and accountability, the laws also attempt to introduce a number of legal safeguards in the management of petroleum revenues. The challenge is that some of the provisions have been ignored in the interest of political expediency of the NRM and its rulers.

There are a number of factors that explain the NRM's insistence on a stringent and rigorous petroleum regulation, taxation and revenue management legislation. These include: the vigilance of parliament and other oversight institutions, civil society groups, donors as well as the prevailing high oil prices at the time of negotiation and passing of the laws. The NRM has also used its ability to regulate and tax the petroleum sector to stake a claim to the effect that its best suited to govern and lead Uganda through the next phase of oil production. That said, it is hereby argued that the chief motivation behind the laws was the NRM's deep strategy to monopolize the sector, extract and apply petroleum revenues to extend their stay in power. This they have achieved by among others renting political support and delivering on a number of campaign promises. Petroleum revenues are also utilized to deliver public goods and services in a bid to appeal to the masses for

political support. This in itself it is argued constitutes of an indirect revenue bargain where the ruling coalition is able to deliver on its mandate without necessarily creating an extra tax burden on politically significant groups. In the result, members of the ruling elite as well as those that constitute the core of the NRM support, that is, peasants, are able to enjoy some level of service with limited or no taxation at all. On the other hand, politically insignificant groups such as multinational oil companies are regulated and taxed more aggressively to fund this approach.

This strategy confirms that in pseudo democratic resource rich countries, the regulatory, taxation and resource revenue management laws and institutions however efficiently designed, they do not necessarily reflect the genuine desire by governments to guarantee a shared prosperity for their citizens using the revenues generated but are rather a decoy meant to facilitate predatory habits of the ruling regime. In applying the political settlements theory, this paper makes the point that beyond the legal and institutional frameworks, it is important to pay attention to the politics involved in the formulation of law in order to understand the true interests of the different players. The politics also determines the level of fidelity to, and enforcement of the laws passed. In the case of Uganda, the politics behind the legislative processes favored the ruling NRM to dominate and extract maximum revenues from the petroleum sector. This is part of the regime's survival strategy as it ensures that there are sufficient resources to deliver on political promises and to fuel the patronage machinery responsible for keeping it in power.

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