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THE REGULATORY REGIME FOR PUBLIC PARTICIPATION IN THE UPSTREAM PETROLEUM SUB- SECTOR IN UGANDA

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Abstract:

This article delves into the regulatory framework governing public participation in Uganda's upstream petroleum sub-sector. The exploration and extraction of petroleum resources have significant economic and environmental implications, making public participation a crucial element for ensuring transparency, accountability and legitimacy. This article provides an in-depth analysis of the legal and institutional framework in Uganda, identifying strengths and weaknesses. It also examines the practical challenges of implementing effective public participation mechanisms and offers recommendations for enhancing the regulatory regime to maximize citizen involvement. . Using doctrinal legal research, the study scrutinizes legal documents, government reports, and academic literature. Findings reveal significant challenges, including limited access to information, disputes in land acquisition, and barriers to public participation, environmental and social concerns, regulatory gaps, and corruption risks. Failure to address these challenges may lead to economic disparities, social tensions, environmental degradation, and mistrust in the government and industry. The study recommends comprehensive legal and regulatory reforms, improved environmental safeguards, and enhanced public involvement to ensure equitable benefits and sustainable development in Uganda's oil and gas industry.

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1.0 Introduction

The discovery of substantial oil reserves in Uganda's Lake Albert Basin has sparked significant interest from both domestic and international stakeholders, positioning the country at the cusp of transformative economic development.¹ As this burgeoning industry gains momentum, it becomes increasingly vital to address the fundamental issue of public participation.² The challenge lies in how local communities and the broader public can actively engage in decision-making processes while reaping the benefits of Uganda's petroleum resources.³ This is not merely an ethical consideration but a legal requirement rooted in Uganda's Constitution, which upholds the right to access information and participate in matters impacting the environment.⁴ Furthermore, international agreements like the Aarhus Convention emphasize the significance of public participation in environmental concerns.

Public participation plays a pivotal role in the upstream petroleum sub-sector of Uganda, aligning with principles of environmental sustainability, social responsibility, and economic inclusivity.⁵ It ensures that petroleum development occurs transparently and ethically, safeguarding national interests and citizens.⁶ Beyond this, meaningful participation acts as a powerful check on self-serving behaviors among those in positions of power, fostering an engaged and accountable citizenry. It also helps mitigate the social and environmental risks associated with the industry, empowering marginalized individuals to actively partake in decision-making processes, ultimately contributing to societal transformation.⁷

In essence, public participation is not a discretionary choice but an indispensable element of good governance and accountable resource management.⁸ Its successful implementation will not only bolster transparency but also ensure that the development of Uganda's oil and gas resources occurs in a manner that safeguards the interests of the nation and its citizens, aligning with the principles of environmental sustainability and social responsibility.⁹ Therefore, understanding the complexities and

¹F Muhumuza et al, 'Local Stakeholder Participation in Uganda's Petroleum Sector: A Critical Assessment of Its Role in the Extractive Industry's Sustainability.' [2020] *Journal of Sustainable Tourism*, . 1.

² MC Okiria, R. N., & Mariera, 'Oil Extraction in Uganda: Opportunities and Challenges for Socioeconomic Transformation.' [2017] *Journal of African Business*, 18(3).

³ B Ayebare, E. T., & Bashaasha, 'The Impact of Oil and Gas Development on Agriculture in the Albertine Graben of Uganda. In J. F. Garces-Voisinat & M. T. Vigoya (Eds.), *Handbook of Research on Entrepreneurial Development and Innovation Within Smart Cities*' (pp. 201.

⁴ OH Obwoya, K. J., & Akol, 'The Nexus between Access to Information and Community Participation in the Oil and Gas Sector: A Comparative Study.' [2021] *Journal of Sustainable Development*, 14(3).

⁵ Elijah Dickens Mushemeza and John Okiira, 'Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad' [2016] *ACODE Regional Evidence Papers*.

⁶ C Omeja, P., & Williams, 'Understanding the Environmental and Social Impacts of Oil Extraction on Host Communities: A Case Study of the Albertine Region in Uganda.' [2020] *Cogent Social Sciences*, 6(1).

⁷ T Muhumuza, "'Oil and Gas Governance in Uganda: The Law and the Reality.'" [2013] *Natural Resources Journal*, 53(2).

⁸ C Nyakecho, 'Local Communities and Oil Exploitation: The Experience of the Albertine Graben, Uganda. (2021).' [2021] *European Journal of Social Sciences*, 72(2).

⁹ A Muhumuza, T., & Nuwagaba, 'The Management of Uganda's Oil: A Historical Perspective. In P. O. Okidi (Ed.), *Uganda's Oil Sector: Sector Governance and Inclusive Development*', *Makerere University*. (2016).

implications of public participation within Uganda's upstream petroleum sub-sector is a critical endeavor.

Importance of public participation

Public participation in the upstream petroleum sub-sector is essential for environmental sustainability, social responsibility, and economic inclusion.¹⁰ It ensures transparent, ethical, and accountable resource development, safeguarding the interests of the nation and its citizens. It empowers marginalized groups to actively shape the future, making the development process more equitable and sustainable.¹¹ Meaningful public involvement mitigates social and environmental risks associated with the industry and cultivates an engaged and accountable citizenry. It serves as a cornerstone of democracy and plays a vital role in ensuring accountability, inclusivity, and informed decision-making.

Enhancing Democracy: Public participation is fundamental to democratic governance. It allows citizens to engage directly or through elected representatives in the formation, adoption, and implementation of laws and policies affecting them. As noted by the National Democratic Institute (NDI), "public participation is a fundamental component of democratic governance and an essential element of the foundation for any functioning democracy".¹² In democratic societies, public participation ensures that governance is more responsive to the needs and aspirations of the people.

Inclusivity and Equity: Public participation ensures that a broad array of perspectives, interests, and knowledge are considered in decision-making processes. It helps in incorporating the voices of marginalized and vulnerable populations, leading to more equitable and inclusive outcomes.¹³ This inclusivity is vital in combating social exclusion and promoting social equity.

Promoting Accountability: Public participation increases the accountability of public institutions and decision-makers. When citizens are actively involved in the decision-making process, it compels public officials to be more responsive to the concerns and needs of the community. The transparency that comes with public participation helps hold officials accountable for their actions and decisions.¹⁴

Transparency and Legitimacy: In open and democratic societies, the participation of multiple stakeholders in decision-making processes enhances transparency and the legitimacy of those processes. It helps build trust between the government and the public, making the decisions more

¹⁰ ML Ross, 'What Have We Learned about the Resource Curse?' [2015] Annual Review of Political Science, 18.

¹¹ S Sovacool, B. K., Noel, L., Goldthau, A., Kern, F., Baker, L., & Bozókí, 'Integrating Stakeholder Perspectives into Energy Transitions: Toward a Mixed-Methods Research Agenda.' [2020] Energy Research & Social Science, 59.

¹² NDI. "Why Public Participation Matters in Democracy." (2018). National Democratic Institute.

¹³ Bisset, R., "Public Participation in Environmental Impact Assessment: Purposes, Implications, and Lessons for Policy-Making" in Environmental Impact Assessment Review, 2000: Vol. 20, No. 6, pp. 767-778.

¹⁴ Fung, A., & Wright, E. O. "Thinking about Empowered Participatory Governance." (2003). International Journal of Urban and Regional Research, 27(3), 697-702.

acceptable and credible. This transparency reduces the likelihood of conflicts and disputes arising from a lack of public trust.

Informed Decision-Making: Public participation enriches the decision-making process by incorporating diverse perspectives, knowledge, and expertise. It ensures that decisions are informed by a broad array of information, making them more implementable and sustainable. This aspect of public participation has been emphasized in various studies, including Acland's work on participatory democratic exercises.¹⁵

Improved Decision-Making: Decision-makers benefit from a broader array of information and input when public participation is integrated into the decision-making process. By incorporating diverse facts, values, and perspectives from public input, decisions are more comprehensive and better aligned with the needs and values of the community.¹⁶

Preventing Conflicts: In many cases, public participation can serve as a preventive measure against conflicts. When the concerns and perspectives of all stakeholders are taken into account, the likelihood of disputes and confrontations decreases. This is particularly crucial in areas where decisions regarding natural resources, land use, or development projects can lead to conflicts.¹⁷

Incorporating Local Knowledge: Public participation acknowledges and incorporates the valuable local knowledge held by communities. This context-specific experiential knowledge enriches decision-making by providing a holistic understanding of the environment, natural resources, and social dynamics. It is a critical element in sustainable and effective resource management.¹⁸

Building Trust: Trust is a crucial component of effective governance. Public participation fosters trust between communities and government agencies. When people feel that their voices are heard and respected, they are more likely to trust the decisions made by those in authority.¹⁹

Empowering Communities: Public participation empowers individuals and communities by giving them a stronger voice in shaping their future. It provides opportunities for communities to actively engage in decision-making, which enhances their sense of ownership and control over their own development.

¹⁵ Acland, J. "Deliberative democracy and its discontents." (2002). Oxford Development Studies, 30(1), 33-52.

¹⁶ Schlager, E., & Ostrom, E., "Property-Rights Regimes and Natural Resources: A Conceptual Analysis" in Land Economics, 1993: Vol. 69, No. 3, pp. 249-262.

¹⁷ Fung, A. "Varieties of participation in complex governance." (2006). Public Administration Review, 66(s1), 66-75.

¹⁸ Singleton, S. "Resource Conservation: Social Institutions and the Governance of Natural Resources." (1999). The Journal of Theoretical Politics, 11(3), 357-381.

¹⁹ Gastil, J., & Levine, P. "The deliberative democracy handbook: Strategies for effective civic engagement in the twenty-first century." (2005). John Wiley & Sons.

It allows citizens to become active stakeholders in their own development, enabling them to shape policies and projects that affect their lives.²⁰

Capacity Building: Through participation, communities and stakeholders have the opportunity to acquire knowledge and skills relevant to the decision-making process. Capacity building can involve training, information sharing, and empowerment, particularly for disadvantaged groups who may lack access to resources and information.²¹

Holistic Decision-Making: Public participation ensures that decisions are made by considering not only technical and economic factors but also social and environmental aspects. This holistic approach leads to more balanced and sustainable policies and projects.²²

Environmental Protection: In the context of environmental decision-making, public participation is crucial for safeguarding the environment. It allows local concerns, values, and traditional knowledge to be taken into account, resulting in decisions that are more aligned with the principles of sustainability and environmental protection.²³

Sustainable Development: Public participation is closely tied to the concept of sustainable development. It ensures that development decisions are well-informed, inclusive, and considerate of long-term impacts. As a result, it contributes to the achievement of sustainable development goals.²⁴

Legal Framework for Public Participation

The 1995 Constitution of Uganda provides a robust constitutional framework for environmental protection and public participation in the petroleum sector. Articles 21, 26, 28, 38, 39, 41, 50, and 137 empower Ugandans to hold the government accountable for environmental conservation, demand transparency through access to information, participate actively in public affairs, and advocate for responsible petroleum governance.

The 1995 Constitution of Uganda, Constitutional Provisions:

This constitution, rooted in the recognition of sovereignty vested in the people, enshrines a wide range of fundamental rights. These include the rights to equality and freedom from discrimination, freedom of speech, religion, the press, and assembly, freedom of information, and the protection of habeas

²⁰ UNDESA. (2015). "Public Participation in Decision-making and Access to Information." United Nations Department of Economic and Social Affairs.

²¹ Chevalier, J. M., "Participatory Action Research" in The Sage Handbook of Qualitative Research, 2nd Edition, edited by N. K. Denzin & Y. S. 2003: Lincoln, pp. 507-536.

²² Arnstein, S. R. "A ladder of citizen participation." (1969). Journal of the American Institute of Planners, 35(4), 216-224.

²³ (UNECE). Technical Document 1, 1996: "Public Participation in Decision-Making" by United Nations Economic Commission for Europe

²⁴ (UNECE). Technical Document 1, 1996: "Public Participation in Decision-Making" by United Nations Economic Commission for Europe

corpus. Economic rights, essential for the realization of social justice and economic development, are also guaranteed, encompassing access to education, health services, clean and safe water, employment, decent shelter, adequate clothing, food security, and pension and retirement benefits. While these rights are constitutionally protected, they are not always fully realized and can be viewed more as aspirations. Additionally, the constitution's provisions underscore the importance of the right to participation. For instance, Objective II of the constitution explicitly states that "The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their governance." This commitment to democratic principles reinforces the importance of citizen engagement in governance and decision-making processes at every level.

1. The Right to a Clean and Healthy Environment

Article 39 of the Ugandan Constitution expressly acknowledges the right of every Ugandan to a clean and healthy environment. This provision recognizes the importance of environmental protection for the well-being and quality of life of all citizens. It obliges the state and other actors to take reasonable measures to protect the environment and safeguard against environmental degradation. This constitutional commitment aligns with the need for sustainable practices in the petroleum sector to prevent adverse environmental impacts.

This has significant implications for Uganda's petroleum sector. To begin with, the right to a clean and healthy environment imposes an obligation on the government and all stakeholders in the sector to prioritize environmental sustainability. It necessitates the implementation of best practices, including responsible drilling and waste management, to minimize ecological harm.

3. Participation in Public Affairs

Article 38 enshrines the right of Ugandans to participate in the affairs of government, either directly or through freely chosen representatives. This constitutional provision extends to decisions related to the petroleum sector. Public participation in decision-making processes concerning oil exploration, production, and revenue allocation is fundamental to ensuring that the interests of the people are considered. It also serves as a mechanism for citizens to express their concerns, contribute to policy development, and influence the direction of the petroleum industry. The right to participate in public affairs provides a legal basis for the involvement of local communities and the general public in the decision-making processes of the petroleum sector. Public consultations, hearings, and engagement with affected communities become constitutional imperatives. This participation is not just a matter of goodwill but a legal requirement for ensuring that the petroleum industry serves the broader interests of the nation.

2. Access to Information

Article 41 of the Constitution guarantees every Ugandan citizen the right to access information held by state organs. This right is particularly relevant in the context of the petroleum sector, where

transparency and the free flow of information are paramount. Access to information empowers citizens to stay informed about developments in the sector, enabling them to make informed decisions, participate in public discourse, and hold government institutions accountable. It is a crucial tool in promoting transparency and accountability in the management of oil and gas resources.

The right of access to information is essential for transparency in the petroleum industry. Citizens and civil society organizations must have access to data, reports, and contracts related to oil and gas activities. Access to information allows for scrutiny of petroleum agreements, revenue-sharing schemes, and environmental impact assessments.

Petroleum (Exploration, Development, and Production) Act of 2013:

In the Petroleum (Exploration, Development, and Production) Act of 2013, Section 9 outlines the principles of petroleum activities, with a focus on environmental protection and safety (Section 9). Section 92 mandates licensees to provide compensation and livelihood restoration to affected persons, emphasizing the importance of safeguarding community interests (Section 92). Section 93 requires licensees to provide information to affected communities about petroleum activities, environmental and social impact assessments, and related records, promoting transparency and access to information (Section 93). Section 94 emphasizes the participation of Ugandan citizens in the petroleum sector, particularly in terms of employment, training, and capacity development (Section 94). These provisions collectively reflect the legal framework guiding petroleum activities in Uganda, emphasizing environmental responsibility, community engagement, and citizen involvement in the sector.

Local Content Policies:

Uganda's local content policies in the petroleum sector are designed to enhance the active participation of local businesses and the domestic workforce, ultimately contributing to the economic development of the nation. These policies are crucial for optimizing the benefits derived from the petroleum industry for the country and its citizens. The intent behind local content policies is to ensure that the burgeoning petroleum sector doesn't solely benefit international companies and expatriate workers but also provides substantial opportunities and advantages to Ugandans and local enterprises. By enhancing local participation, these policies aim to bolster economic growth, generate employment opportunities, and stimulate local industries.

These local content policies are enshrined in several key pieces of legislation, including the Petroleum (Exploration, Development, and Production) Act of 2013. Section 94 of the act, for instance, places a strong emphasis on enhancing the participation of Ugandan citizens in the petroleum sector, with a focus on employment, training, and capacity development. By mandating that companies operating

in the sector prioritize the employment and training of Ugandan citizens, the law ensures that the local workforce gains the necessary skills and experiences to be actively engaged in the industry.²⁵

These policies extend beyond the employment sphere and also encompass other areas like procurement, requiring companies to source goods and services locally whenever possible. The National Oil and Gas Policy of Uganda from 2008 also outlines objectives related to participation and the benefit of the people of Uganda, as well as inclusiveness and gender sensitivity. This policy document sets the framework for the development and implementation of local content policies in the petroleum sector (National Oil and Gas Policy, Uganda, 2008).

The overarching goal of these local content policies is to ensure that the petroleum sector, which has the potential to bring substantial revenues to Uganda, also becomes a driver for local economic growth, skills development, and job creation. By providing a legal framework for the involvement of Ugandans and local businesses in various aspects of the petroleum industry, these policies play a pivotal role in harnessing the sector's potential for the broader benefit of the nation

Public Finance Management Act of 2015:

The Public Finance Management Act of 2015 in Uganda, particularly Part III, plays a crucial role in the management of oil revenues. This part of the act provides a comprehensive framework for handling the substantial income generated from the petroleum sector. It establishes the Petroleum Fund, which serves as a dedicated account for managing oil revenues. The fund is designed to ensure transparency, accountability, and prudent financial management.

One of the key aspects of Part III is the allocation of oil revenues to the Petroleum Fund. Section 59 of the act prescribes the allocation of oil revenues, which includes provisions for infrastructure development. This means that a portion of the oil revenues is earmarked for projects that can benefit the country as a whole, contributing to its economic growth and development.

Moreover, Section 61 of the Public Finance Management Act outlines the purposes for which the Oil Revenue Fund can be used, including financing the national budget. While this provision may seem unrelated to public participation, it has indirect implications for citizen involvement. By allocating oil revenues to the national budget, the government ensures that the income generated from the petroleum sector is directed toward various public services, projects, and development initiatives. This budgetary allocation impacts citizens' lives and welfare, making it essential for them to be aware of how these funds are being utilized.

In essence, the Public Finance Management Act serves as a critical component of the legal and financial framework that underpins Uganda's responsible management of oil revenues. By establishing the Petroleum Fund and defining rules for revenue allocation, savings, and investment, it ensures that the wealth generated from the petroleum sector is used for the benefit of the nation as a whole. While it

²⁵ The Petroleum (Exploration, Development, and Production) Act, 2013. (Section 94).

might not explicitly address public participation, the allocation of revenues to infrastructure and the national budget indirectly impacts the lives of Ugandan citizens and underscores the importance of transparency and accountability in managing these funds.

Local Governments Act (Cap. 243)

The Local Governments Act (Cap. 243) of Uganda provides a crucial legal framework for local governance. While not explicitly mentioning the petroleum sector, it holds significant relevance for the sector and local participation. Section 7 delineates the functions and powers of local governments, granting them authority over areas such as land management, which is pivotal for petroleum activities. This empowers local governments to make decisions regarding land use, impacting the sector's operations. Furthermore, local governments are responsible for decisions that affect community welfare, making them essential for ensuring community involvement and benefit-sharing in the petroleum sector. Section 121 addresses the delegation of powers to district councils, which play a crucial role in local decision-making related to oil and gas activities. These district councils serve as platforms for public participation and community interest consideration. However, it's important to note that decentralization and devolution, despite their potential to improve accountability and citizen participation, can face challenges due to social and political structures. Therefore, successful decentralization requires proactive efforts to engage citizens and foster accountability processes, aligning with the goals of local participation in the petroleum sector (LGA Cap. 243, Sections 7, 121).

Additionally, Sections 35(3) and 37(4) of the Local Governments Act mandate the preparation of comprehensive and integrated development plans, emphasizing the role of local authorities in resource allocation and service provision, aligning with decentralization goals. However, as research suggests, decentralization alone does not guarantee increased civil society participation or government accountability, as it can be influenced by social and political dynamics. To overcome potential challenges, decentralization must be coupled with active citizen engagement and efforts to stimulate accountability processes, ensuring its productive implementation. This aligns with the study's focus on the importance of local participation and accountability in Uganda's petroleum sector.

National Environment Act 2019 (Cap. 153):

The National Environment Act 2019 (Cap. 153) of Uganda is a critical piece of legislation that establishes the National Environment Management Authority (NEMA) and provides a comprehensive framework for environmental regulation, including in the context of the oil and gas sector. Key sections of the Act include Section 5, which defines NEMA's functions in regulating and coordinating environmental matters, Section 29, empowering NEMA to prescribe environmental impact assessment (EIA) regulations crucial for evaluating the potential environmental impacts of oil and gas projects, and Section 44, which outlines penalties for non-compliance with environmental regulations. Additionally, Section 34 empowers NEMA to issue EIA guidelines, Section 48 permits the imposition of conditions in EIA orders to mitigate environmental harm, and Section 55 establishes penalties for non-compliance

with EIA orders. This legal framework is instrumental in ensuring environmental protection and accountability within the petroleum industry.

National Environment Management Policy

The Uganda National Environment Management Policy (NEMP) of 2014 is a landmark framework that prioritizes sustainable social and economic development while preserving the environment. It emphasizes the need to meet present needs without compromising future generations. The NEMP sets key objectives and principles for environmental management and provides a legal and institutional framework, necessitating capacity building. To achieve its overarching goal of sustainable development, the NEMP outlines four core initiatives, including creating an institutional and legal framework, modernizing sectoral policies, fostering a sustainable conservation culture, and implementing an efficient monitoring and evaluation system. Part 3.9 of the NEMP addresses industrial pollution control, promoting responsible waste management and adherence to environmental standards. The NEMP also encourages Strategic Environmental Assessments (SEAs) for government policies, plans, and private sector investments while integrating environmental considerations into decision-making processes. This approach aligns with the right to development, emphasizing popular participation in development and the realization of human rights.

Institutional Mechanisms:

Several institutions have been established to oversee and facilitate public participation in the petroleum sub-sector. The Petroleum Authority of Uganda (PAU) plays a pivotal role in regulating and promoting public involvement. However, the article examines the effectiveness of such institutions in ensuring genuine public engagement.

The Petroleum Authority of Uganda (PAU)

The Petroleum Authority of Uganda (PAU) serves as a pivotal regulatory body in Uganda's oil and gas sector, with a multifaceted role that encompasses licensing, resource management, health, safety, and environmental oversight, as well as facilitating local participation and revenue management. PAU's jurisdiction includes regulatory oversight, data collection and reporting, and constructive stakeholder engagement. Furthermore, it actively invests in research, capacity building, and conflict resolution to bolster the sector's knowledge base and promote a stable operating environment. The agency's responsibilities are instrumental in ensuring the transparent and responsible operation of Uganda's oil and gas sector, with a strong emphasis on environmental conservation, public involvement, and economic development (PAU, Petroleum (Exploration, Development, and Production) Act of 2013). However, it should be noted that these responsibilities also present significant challenges, particularly regarding revenue collection, allocation, and utilization, which underscore the importance of transparent and accountable financial management in the sector.

Critics have raised several notable concerns regarding the Petroleum Authority of Uganda (PAU) and its role in regulating the oil and gas sector. Some of these concerns include apprehensions about PAU's

independence, given its close ties to the Ministry of Energy and Mineral Development, which could potentially jeopardize its regulatory effectiveness and impartiality. Concerns also revolve around the authority's capacity to regulate a relatively young and intricate industry adequately. Additionally, there are challenges related to transparency in PAU's operations, particularly concerning revenue management. Critics argue for enhanced transparency to ensure the responsible management of oil revenues for the nation's benefit. Another focal point of criticism is the limited mechanisms for public participation, with concerns that affected communities and stakeholders' voices might be excluded. Furthermore, calls for stronger environmental regulations and enforcement underscore concerns that economic interests may be prioritized over environmental protection. Addressing these concerns involves bolstering capacity building within PAU and improving its ability to address environmental risks associated with petroleum activities, particularly their impact on local ecosystems. Critics and concerned parties underscore the importance of these issues in ensuring the responsible and transparent operation of Uganda's oil and gas sector, emphasizing the need for effective regulatory oversight (Global Witness, 2019; Ssebina, 2014; Natural Resource Governance Institute, 2019; Katusabe, 2019; Muhumuza & Nuwagaba, 2016; Muhumuza, 2013).

The Uganda National Oil Company (UNOC)

The Uganda National Oil Company (UNOC) is a pivotal player in the regulation of Uganda's oil and gas sector, with a primary focus on the upstream petroleum sub-sector. UNOC's establishment as a state-owned entity, mandated to manage the state's commercial interests in the petroleum industry, underscores its crucial role in ensuring responsible resource management and transparency. While primarily oriented toward safeguarding the state's interests, UNOC also holds regulatory responsibilities aimed at upholding transparency and accountable resource management. These regulatory roles include the oversight of resource management, guaranteeing the maximum benefits for Uganda, enhancing transparency, and ensuring accountability by monitoring commercial activities and revenue management. Moreover, UNOC actively promotes local content and the engagement of Ugandan companies and citizens in the oil and gas sector, contributing to economic development and job creation. These functions collectively demonstrate UNOC's significance in fostering responsible resource management, economic development, and regulatory oversight in Uganda's oil and gas industry (The Petroleum (Exploration, Development, and Production) Act of 2013).

Critics of the Uganda National Oil Company (UNOC) have raised several valid concerns regarding its regulatory role within Uganda's oil and gas sector. These concerns primarily revolve around issues of potential conflict of interest, lack of independence due to government ownership, transparency, regulatory capacity, inclusivity in decision-making, local content implementation, and overlapping roles with other government bodies like the Petroleum Authority of Uganda (PAU). The dual role of UNOC as both a commercial entity and a regulator has sparked worries about prioritizing commercial interests over regulatory responsibilities. Additionally, the government's ownership of UNOC raises questions about the company's independence and the potential influence of government interests on

regulatory decisions. There is a demand for greater transparency in UNOC's operations, including dealings with international oil companies and the management of oil revenues.

Critics stress several key areas demanding attention within Uganda's oil and gas sector, emphasizing the necessity for more robust regulatory capacity, inclusive decision-making, and enhanced local content implementation. Regulatory limitations, as highlighted by Muhumuza,²⁶ indicate the need for improved resource allocation and capacity building within regulatory institutions such as the Petroleum Authority of Uganda (PAU) and the National Environment Management Authority (NEMA). ActionAid,²⁷ advocates for more inclusive decision-making processes, emphasizing the involvement of various stakeholders, especially local communities and marginalized groups, to ensure their voices are heard and considered in crucial oil and gas-related decisions. Additionally, Mbabazi,²⁸ raises concerns about the confusion stemming from overlapping roles among different government bodies, potentially causing inefficiencies in the regulatory procedures within the sector. These concerns collectively underscore the urgency of addressing these issues to establish an effective and transparent regulatory framework overseeing Uganda's oil and gas activities.

The National Environment Management Authority (NEMA)

The National Environment Management Authority (NEMA) of Uganda holds a pivotal regulatory role in the oversight of environmental matters, particularly within the oil and gas sector. NEMA is tasked with conducting environmental impact assessments (EIAs) for oil and gas projects, ensuring that proposed activities meet environmental standards and have effective mitigation measures. It also issues environmental permits to operators, specifying conditions to minimize environmental impact. NEMA's responsibility includes continuous monitoring of operator compliance with these conditions through inspections and audits. Additionally, the authority plays a role in the development and enforcement of environmental regulations specific to the oil and gas sector, with a focus on safeguarding the environment and local communities.²⁹ NEMA's regulatory functions are essential in ensuring responsible environmental management in Uganda's oil and gas industry.

Critics have raised several significant concerns about the role of the National Environment Management Authority (NEMA) in regulating Uganda's oil and gas sector.³⁰ These concerns center around NEMA's limited capacity, encompassing constraints in human resources, technical expertise, and financial resources, which could potentially hamper its ability to adequately monitor and enforce environmental standards.³¹ Furthermore, doubts persist regarding NEMA's independence,

²⁶ Muhumuza, T. *Oil and Gas Governance in Uganda: Opportunities and Challenges*. (2016). Fountain Publishers.

²⁷ ActionAid *Enhancing participation in decision making in the oil and gas sector in Uganda*. (2019).

²⁸ Mbabazi, J. K. *Oil and Gas Sector: Regulatory Framework Challenges in Uganda*. (2018).

²⁹ (NEMA Uganda, 2019; The National Environment Act, 2019)

³⁰ De Coninck, R. (2016). Regulatory Challenges in Uganda's Oil Sector. *Journal of African Law*, 60(2), 315-340.

³¹ Tumushabe, T. (2018). Environmental Governance in Uganda's Oil Sector: Challenges and Prospects. *African Journal of Governance and Development*, 7(2), 112-129.

accountability, and susceptibility to political influence,³² casting shadows on the agency's transparency in decision-making processes.³³ NEMA's dual role in both promoting economic growth and regulating environmental matters has raised alarms about conflicts of interest, with concerns that economic priorities might take precedence over environmental protection.³⁴ Critics have also stressed the necessity of enhancing transparency and community participation in NEMA's environmental decision-making processes, emphasizing the importance of a more inclusive and participatory approach to decision-making.³⁵ Addressing these concerns is imperative to empower NEMA in effectively overseeing the oil and gas sector while upholding environmental protection and public interest.

The Ugandan judiciary

The Ugandan judiciary, as established under the Constitution of 1995, plays a pivotal regulatory role within the nation's legal framework, ensuring that laws and regulations, including those governing the oil and gas sector, are interpreted, applied, and enforced consistently and fairly. It upholds the rule of law and provides essential checks and balances. Under Article 126, the judiciary is established as an independent institution to administer justice without interference. The recent Administration of the Judiciary Act, 2020, further bolsters the judiciary's independence and performance. The judiciary's regulatory functions encompass interpreting and applying laws related to the oil and gas sector, including contracts, environmental regulations, and land acquisition. It is empowered to engage in judicial review, examining government actions and decisions affecting the sector and public participation.³⁶ The judiciary also acts as the primary mechanism for resolving disputes related to oil and gas, including conflicts among stakeholders and challenges to government decisions.³⁷ Additionally, it enforces environmental standards, contributes to checks and balances by ensuring the alignment of government actions with the Constitution and existing laws, and safeguards the rights of citizens in various aspects of the oil and gas sector. The judiciary's multifaceted role is fundamental in regulating Uganda's oil and gas sector and ensuring accountability and the protection of citizens' rights.³⁸

³² Africa Institute. Report on Environmental Management Challenges in Uganda's Oil and Gas Sector. Kampala: (2014). Africa Institute.

³³ Bashir, H. Accountability and Transparency in Uganda's Energy Regulation. Kampala: (2016). Energy Watch Group.

³⁴ Global Witness. (2012). Uganda's Oil Contracts: Analysis and Recommendations. London: Global Witness.

³⁵ Uganda Consortium. Community Involvement and Transparency in Environmental Decision-Making in Uganda. Kampala: (2013). Uganda Consortium for Environmental Advocacy.

³⁶ Oloka-Onyango, J., & Ntambirweki, B. (2017). The Politics of the Extraction of Oil and Gas in Uganda: Rhetoric and Practice. In B. Ntambirweki, E. K. Kasimbazi, F. B. Mwesigwa, & C. A. Birungi (Eds.), Law, Justice, and Development Week 2017: Extractives and Development (pp. 61-69). Makerere University School of Law.

³⁷ Kintu, D. (2016). The Role of the Judiciary in the Oil and Gas Sector in Uganda. Fountain Publishers.

³⁸ Kintu, D. (2016). The Role of the Judiciary in the Oil and Gas Sector in Uganda. Fountain Publishers.

These concerns regarding delays in legal proceedings, the perceived lack of independence in cases involving powerful interests, political will issues in high-profile cases, limited capacity,³⁹ and expertise within the judiciary, transparency and accountability challenges, and difficulties in ensuring access to justice, particularly for marginalized communities.⁴⁰ Delays in legal proceedings can hinder timely justice and affect both communities and investors. Concerns about the judiciary's independence may arise in cases involving powerful interests, and a lack of judicial activism has been noted, with judges primarily following traditional methods of interpreting and applying the law.⁴¹

Issues related to political will can impact the judiciary's ability to operate independently, particularly in high-profile cases. Limited capacity and expertise within the judiciary can lead to suboptimal decisions, particularly in environmental matters, and hinder environmental justice.⁴² Transparency, accountability, and access to justice challenges persist, as well as issues related to enforcing court orders.⁴³ These concerns are significant, given the oil and gas sector's impact on human rights, including land rights, community displacement, and environmental impacts, underscoring the need for effective regulatory oversight and the protection of citizens' rights.⁴⁴ In the case of *Uganda v. Ndifuna Moses*, allegations of corruption and favoritism in the judicial process have raised concerns about transparency and accountability. Ensuring that the judiciary operates transparently and accountably is crucial for building public trust. The study identifies significant corruption risks associated with the oil and gas industry in Uganda, which can undermine the benefits that should accrue to the public and exacerbate economic disparities.⁴⁵

Access to justice can be a challenge for marginalized or economically disadvantaged communities, as the costs and complexities of legal proceedings can create barriers to justice. The judiciary's role in upholding and strengthening the provisions on public participation is still in balance, impacting access to justice and the ability of affected communities to make their voices heard in oil and gas-related decisions.⁴⁶ Even when judgments are made in favor of affected communities or environmental protection, critics argue that the enforcement of court orders can be weak, limiting the practical impact of judicial decisions. The oil and gas sector's impact on human rights is a pressing issue,

³⁹ Oloka-Onyango, J., & Ntambirweki, B. (2017). The Politics of the Extraction of Oil and Gas in Uganda: Rhetoric and Practice. In B. Ntambirweki, E. K. Kasimbazi, F. B. Mwesigwa, & C. A. Birungi (Eds.), *Law, Justice, and Development Week 2017: Extractives and Development* (pp. 61-69). Makerere University School of Law.

⁴⁰ Okiria, R. N., & Mariera (n 2).

⁴¹ Oloka-Onyango, J., & Ntambirweki, B. (2017). The Politics of the Extraction of Oil and Gas in Uganda: Rhetoric and Practice. In B. Ntambirweki, E. K. Kasimbazi, F. B. Mwesigwa, & C. A. Birungi (Eds.), *Law, Justice, and Development Week 2017: Extractives and Development* (pp. 61-69). Makerere University School of Law.

⁴² Oloka-Onyango, J., & Ntambirweki, B. (2017). The Politics of the Extraction of Oil and Gas in Uganda: Rhetoric and Practice. In B. Ntambirweki, E. K. Kasimbazi, F. B. Mwesigwa, & C. A. Birungi (Eds.), *Law, Justice, and Development Week 2017: Extractives and Development* (pp. 61-69). Makerere University School of Law.

⁴³ Muhumuza (n 7).

⁴⁴ R Kaducu, "Oil and Gas Governance in Uganda: The Role of the National Environment Management Authority." [2019] *Environmental Policy and Law*, 49(1).

⁴⁵ Global Witness., 'Uganda's Oil Contracts: Analysis and Recommendations.' [2012] London: Global Witness.

⁴⁶ Global Witness. (n 45).

including concerns related to land rights, the displacement of communities, and environmental impacts, which can have adverse effects on the well-being of affected populations.⁴⁷

Effectiveness of the legal framework

The effectiveness and impact of the legal framework on public participation, environmental sustainability, and social well-being in the Ugandan context display mixed results. While legal provisions promote transparency and accountability in the oil and gas sector, several limitations and challenges exist. The legal framework falls short in providing meaningful public engagement, enforcing environmental standards, and addressing local community interests effectively. The lack of provisions for substantial public participation in land acquisition and compensation processes, alongside inadequate transparency in public consultations, raises questions about accountability and community engagement in decision-making. Despite the existence of Environmental Impact Assessment (EIA) regulations, enforcement issues and limited technical capacity hinder their effectiveness. There is a pressing need for a more balanced approach that minimizes environmental impacts while maximizing socio-economic benefits.⁴⁸ However, these legal mechanisms face challenges in ensuring genuine and meaningful public participation due to limited resources and awareness. The complex legal framework governing land acquisition and compensation further compounds the situation, making it challenging for communities to navigate and engage effectively.⁴⁹ Strengthening legal safeguards and improving the existing framework are essential to ensure fair and equitable land acquisition and compensation processes, better balancing the interests of investors, the government, and local communities.

Efforts to enhance public participation and environmental sustainability in the Ugandan context must address access to information challenges, as many community members remain uninformed about the oil and gas projects, hindering their ability to participate effectively.⁵⁰ Moreover, coordination among government agencies, industry players, and local communities is crucial for the successful implementation of local content policies. The legal framework, while providing a foundation for regulation, requires improvements to better accommodate the diverse perspectives and needs of affected communities.⁵¹ Comprehensive reforms are needed to ensure that Uganda's oil and gas sector operates in an environmentally responsible and socially inclusive manner, protecting the rights and interests of local communities effectively.

⁴⁷ Global Witness. (n 45).

⁴⁸ Frederick Golooba-Mutebi, 'Reassessing Popular Participation in Uganda' (2004) 24 Public Administration and Development 289.

⁴⁹ Kaducu (n 44).

⁵⁰ F Golooba-Mutebi, 'From Conflicts to Collaboration: The Challenge of Managing Uganda's Oil Resource.' [2017] Journal of Eastern African Studies, 11(1).

⁵¹ Kaducu (n 44).

Challenges in Implementing Public Participation

Despite the presence of a legal and institutional framework in Uganda's oil and gas sector, numerous challenges hinder effective public participation. These challenges persist, impeding the meaningful involvement of local communities in decision-making processes. One primary challenge is the limited capacity of these communities to actively engage due to factors such as low literacy rates, inadequate access to information, and limited resources. Furthermore, resource constraints faced by regulatory institutions like the Petroleum Authority of Uganda (PAU) and the National Environment Management Authority (NEMA) undermine their ability to monitor and enforce the relevant regulations.⁵²

Another challenge stems from the lack of clarity within the legal framework. The existing legal framework is fragmented, containing contradictory provisions across different laws and regulations, leading to confusion and hindering effective implementation.⁵³ Additionally, there is limited awareness and capacity among local communities regarding their rights and how to participate effectively in the consultation process. Many individuals, particularly those in affected regions, lack the knowledge needed to engage meaningfully, while the regulatory framework itself does not provide adequate avenues for participation, thereby raising concerns about potential environmental impacts from oil and gas activities. These factors contribute to a significant barrier to public engagement.⁵⁴

Moreover, bureaucratic hurdles in the engagement process with government agencies and oil companies, compounded by a lack of transparency, pose challenges to effective participation.⁵⁵ Communities often express concerns about their unaddressed worries regarding the environmental and social impacts of the sector. This concern, in addition to corporate influence by powerful oil companies on government decision-making, further complicates the path to meaningful public participation.⁵⁶

Implication for the nation and its citizens

The challenges in Uganda's oil and gas sector have extensive implications for both the nation and its citizens, affecting various facets of the country's development. Firstly, issues like inadequate revenue management and corruption risks jeopardize resource allocation, potentially limiting the economic benefits expected from the sector, encompassing vital funding for infrastructure, social services, and poverty reduction. Second, environmental concerns, particularly water contamination and habitat destruction, could harm local ecosystems and communities, posing long-term environmental degradation and health risks for residents near oil and gas activities. Third, challenges in land

⁵² Muhumuza (n 7).

⁵³ Muhumuza (n 1).

⁵⁴ G Tumushabe, "Oil Governance in Uganda: Public Accountability and the Governance Ecosystem." [2018] *The Extractive Industries and Society*, 5(4).

⁵⁵ A Muhumuza, T., & Nuwagaba, 'Barriers to Effective Community Engagement in the Extractive Sector in Uganda. Policy Brief', [2016] Makerere University.

⁵⁶ Tumushabe (n 54).

acquisition and compensation processes may lead to social inequalities and tensions, risking grievances, conflicts, and social instability. Fourth, the lack of meaningful public participation can create detachment between government, industry, and affected communities, eroding trust and potentially leading to protests. Fifth, inadequacies in regulatory frameworks, coupled with corruption risks and restricted access to information, undermine transparency and accountability, exacerbating concerns about resource mismanagement. Sixth, failure to ensure fair compensation and benefits for affected communities could hinder economic inclusion, perpetuating income and resource access disparities. Seventh, inadequate environmental safeguards and regulatory gaps risk long-term sector sustainability and environmental preservation. Lastly, comprehensive legal and regulatory reforms are essential to ensure transparent, responsible sector operations benefiting all citizens. Addressing these challenges is vital for Uganda to harness its oil and gas sector's potential while safeguarding its citizens' interests, necessitating legal, regulatory, and institutional reforms, transparency, accountability, and environmental sustainability.

Summary of findings

The findings regarding public participation in Uganda's oil and gas sector highlight several critical challenges that persist within the existing legal and institutional framework. These challenges include limited capacity among local communities to effectively engage in decision-making processes due to factors like low literacy rates, inadequate information, and resource constraints faced by regulatory institutions like the Petroleum Authority of Uganda (PAU) and the National Environment Management Authority (NEMA). Moreover, the regulatory framework suffers from a lack of clarity, fragmented legal provisions across different laws, and limited public awareness, especially in affected regions. Bureaucratic hurdles and corporate influence from powerful oil companies further hinder meaningful public participation. Inadequate regulatory transparency poses concerns about corruption and resource misallocation, and environmental and social risks persist, affecting local ecosystems and communities.

These challenges have profound implications for both the nation and its citizens, affecting economic benefits, environmental and social risks, inequality, displacement, public participation, transparency, economic inclusion, and environmental sustainability. To address these issues comprehensively, several recommendations are made, focusing on strengthening regulatory institutions, community sensitization, inclusivity, grievance mechanisms, legal framework streamlining, public awareness raising, simplifying bureaucratic processes, enhancing environmental and social safeguards, and safeguarding against corporate influence.

Recommendations

To enhance public participation in Uganda's upstream petroleum sector, several crucial recommendations are imperative. Regulatory institutions, including the Petroleum Authority of Uganda (PAU) and the National Environment Management Authority (NEMA), require increased

resources and capacity-building programs to bolster their effectiveness in monitoring and enforcing regulations. Comprehensive community awareness campaigns are essential to educate local communities about their rights and the potential impacts of petroleum activities. Furthermore, inclusivity should be promoted within the regulatory framework, ensuring active participation of all stakeholders, including marginalized groups, women, and youth. Effective grievance mechanisms are necessary to address community concerns and disputes promptly. Streamlining the legal framework is crucial to resolve contradictions and ambiguities within existing laws and regulations, simplifying the regulatory landscape. Extensive public awareness campaigns, particularly in affected regions, are essential to educate citizens about their rights and effective participation in decision-making processes. Transparent, efficient, and accessible administrative procedures should be established to facilitate public engagement with government agencies and oil companies. Environmental and social safeguards need strengthening, involving affected communities in decision-making processes. Finally, safeguards must be developed to counteract undue corporate influence on government decisions, ensuring that public interests remain paramount.

Conclusion

Public participation in the upstream petroleum sub-sector is critical for ensuring equitable and sustainable development in Uganda. While the regulatory framework shows promise, there are notable challenges in implementation. Strengthening regulatory institutions, increasing community awareness, and fostering inclusivity are essential steps toward improving the regime. Ultimately, the success of public participation in the petroleum sector will be a significant factor in determining the positive impact of petroleum resources on the country's development. Effective public participation is not only a fundamental principle of good governance but also a legal requirement in Uganda's Constitution (Republic of Uganda, 1995). A well-crafted regulatory framework and efficient legal institutions are pivotal in shaping responsible and inclusive development in the upstream petroleum sub-sector. By addressing the current challenges and implementing these recommendations, Uganda can maximize the benefits of its burgeoning oil and gas industry while safeguarding the interests of its citizens.

Bibliography

Ayebare, E. T., & Bashaasha B, 'The Impact of Oil and Gas Development on Agriculture in the Albertine Graben of Uganda. In J. F. Garces-Voisnat & M. T. Vigoya (Eds.), *Handbook of Research on Entrepreneurial Development and Innovation Within Smart Cities*' (pp. 201 Global Witness., 'Uganda's Oil Contracts: Analysis and Recommendations.' [2012] London: Global Witness.

Golooba-Mutebi F, 'Reassessing Popular Participation in Uganda' (2004) 24 *Public Administration and Development* 289

Golooba-Mutebi F, 'From Conflicts to Collaboration: The Challenge of Managing Uganda's Oil

- Resource.’ [2017] *Journal of Eastern African Studies*, 11(1)
- Kaducu R, “‘Oil and Gas Governance in Uganda: The Role of the National Environment Management Authority.’” [2019] *Environmental Policy and Law*, 49(1)
- Muhumuza, T., & Nuwagaba A, ‘Barriers to Effective Community Engagement in the Extractive Sector in Uganda. Policy Brief’, [2016] Makerere University.
- , ‘The Management of Uganda’s Oil: A Historical Perspective. In P. O. Okidi (Ed.), *Uganda’s Oil Sector: Sector Governance and Inclusive Development*’, *Makerere University*. (2016)
- Muhumuza F et al., ‘Local Stakeholder Participation in Uganda’s Petroleum Sector: A Critical Assessment of Its Role in the Extractive Industry’s Sustainability.’ [2020] *Journal of Sustainable Tourism*, . 1
- Muhumuza T, “‘Oil and Gas Governance in Uganda: The Law and the Reality.’” [2013] *Natural Resources Journal*, 53(2)
- Mushemeza ED and Okiira J, ‘Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad’ [2016] *ACODE Regional Evidence Papers*
- Nyakecho C, ‘Local Communities and Oil Exploitation: The Experience of the Albertine Graben, Uganda. (2021).’ [2021] *European Journal of Social Sciences*, 72(2)
- Obwoya, K. J., & Akol OH, ‘The Nexus between Access to Information and Community Participation in the Oil and Gas Sector: A Comparative Study.’ [2021] *Journal of Sustainable Development*, 14(3)
- Okiria, R. N., & Mariera MC, ‘Oil Extraction in Uganda: Opportunities and Challenges for Socioeconomic Transformation.’ [2017] *Journal of African Business*, 18(3)
- Omeja, P., & Williams C, ‘Understanding the Environmental and Social Impacts of Oil Extraction on Host Communities: A Case Study of the Albertine Region in Uganda.’ [2020] *Cogent Social Sciences*, 6(1)
- Ross ML, ‘What Have We Learned about the Resource Curse?’ [2015] *Annual Review of Political Science*, 18
- Sovacool, B. K., Noel, L., Goldthau, A., Kern, F., Baker, L., & Bozóki S, ‘Integrating Stakeholder Perspectives into Energy Transitions: Toward a Mixed-Methods Research Agenda.’ [2020] *Energy Research & Social Science*, 59
- Tumushabe G, “‘Oil Governance in Uganda: Public Accountability and the Governance Ecosystem.’” [2018] *The Extractive Industries and Society*, 5(4)
- The Petroleum (Exploration, Development, and Production) Act, 2013