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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.

**Keywords:** Upstream Petroleum, Public Participation, Regulatory Regime, Uganda, Environmental Impact

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## 1. 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 (Ondieki, 2018). As this burgeoning industry gains momentum, it becomes increasingly vital to address the fundamental issue of public participation. 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. 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 (Republic of Uganda, 1995). Furthermore, international agreements like the Aarhus Convention emphasize the significance of public participation in environmental concerns (UNECE, 1998).

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 (Nyanzi, 2015). It ensures that petroleum development occurs transparently and ethically, safeguarding national interests and citizens. 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.

In essence, public participation is not a discretionary choice but an indispensable element of good governance and accountable resource management (Nabwire, 2020). 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. Therefore, understanding the complexities and implications of public participation within Uganda's upstream petroleum sub-sector is a critical endeavor.

Public participation in the upstream petroleum sub-sector is essential for environmental sustainability, social responsibility, and economic inclusion (Nabwire, 2020). 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. Meaningful public involvement mitigates social and environmental risks associated with the industry and cultivates an engaged and accountable citizenry. 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 (National Democratic Institute, n.d.). In democratic societies, public participation ensures that governance is more responsive to the needs and aspirations of the people.

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 (Hickey & Mohan, 2005). 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 (Heller & Mandelbaum, 1991).

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 acceptable and credible. This transparency reduces the likelihood of conflicts and disputes arising from a lack of public trust (Schedler, 1999). 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 (Acland, 2011).

## 2. Literature Review:

Community participation in the oil and gas sector is a multifaceted concept that extends beyond mere consultation to involve active engagement of local communities in decision-making processes that impact their lives, environments, and livelihoods. (Arnstein, 1969) It emphasizes meaningful involvement, wherein community members play a central role in identifying issues, expressing their views, and influencing outcomes ((Cooke, 2001)). This involvement is not superficial but rather entails a deep level of engagement that fosters collaborative dialogue, capacity building, and shared decision-

making among stakeholders.(Franks Daniel, 2014) When communities are genuinely involved in decision-making processes related to oil and gas projects, they are empowered to contribute their insights and perspectives. This ensures that their concerns are heard and addressed, leading to more inform and equitable outcomes. Moreover, collaborative dialogue allows for the exchange of knowledge and expertise between community members, industry stakeholders, and governmental bodies, enriching the decision-making process.(Arnstein, 1969)

Capacity building is another crucial aspect of community participation in the oil and gas sector. It involves equipping communities with the necessary skills, knowledge, and resources to engage effectively in decision-making processes.(Franks Daniel, 2014) By enhancing the capacity of communities to understand complex issues and advocate for their interests, capacity building enables them to play a more meaningful role in shaping the outcomes of oil and gas projects. Shared decision-making further reinforces the principles of community participation by ensuring that decisions are made collaboratively, with input from all relevant stakeholders. This approach promotes transparency, accountability, and legitimacy, as decisions are reached through a consensus-building process that reflects the diverse perspectives and interests of the community.

Community participation in the oil and gas sector is essential for fostering sustainable development and ensuring that the voices of local communities are heard and respected throughout decision-making processes. Scholars such as Arnstein ,(Arnstein, 1969) Healey,(Healey, 2014) Bina,(Bina Omar, Hawamdeh Suha, Pinto Virgilio, Healey Robert, n.d.) Serrano-Berthet,(Serrano-Berthet, 2019) and Cornwall,(Cornwall, 2008) have emphasized the importance of various models and approaches to enhance community engagement in this sector. Public consultations serve as a foundational model of community participation, providing a platform for community members to express their views and concerns on proposed projects or policies. However, as Arnstein,(Arnstein, 1969) notes, consultations often lack meaningful engagement, with decision-making power remaining primarily with industry and government stakeholders. Despite this limitation, transparent and inclusive consultations can initiate dialogue and build trust between communities and decision-makers.

The theoretical framework of this study draws upon various philosophical traditions, including

egocentrism, critical legal studies,(Kennedy, 1982) and natural law philosophy,(Kidd, 2003) to elucidate the principles of fairness, equity,(Rolston, 2012) and sustainability inherent in environmental justice.(Schlosberg, 2007) Egocentrism emphasizes the interconnectedness of humanity and nature, advocating for ethical principles that prioritize environmental sustainability and the well-being of ecosystems. Within the context of oil and gas extraction, egocentrism underscores the importance of balancing economic interests with environmental conservation.(Humphrey, 2003) Environmental justice seeks to rectify the imbalance in the distribution of environmental benefits and burdens,(Bullard, 1990) particularly within the context of oil and gas extraction, by ensuring meaningful participation of all stakeholders, including local communities, in decision-making processes.(Robert Bullard, 2012) The philosophy emphasizes inclusive and participatory approaches to resource management that prioritize the rights and interests of communities while safeguarding the environment for future generations.(Young, 2011)

This study situates its philosophical foundations within various traditions,(Guillaume Tusseau, 2007) linking environmental justice to critical legal studies,(Hendry, 2003) sociological thought, and natural law philosophy.(Rawls, 2009) By integrating these philosophical underpinnings, the study aims to offer a comprehensive understanding of environmental justice, examining it through legal, societal, and ethical lenses.(Sunstein, 2012) Theoretical perspectives on environmental justice,(Day, 2012) and community participation provide frameworks for analyzing the dynamics and mechanisms that shape the relationship between communities and the oil and gas sector in Uganda.(Julian Agyeman, Robert Bullard, 2016) Through the application of these theoretical perspectives, this study seeks to uncover insights into the challenges and opportunities for promoting environmental justice and community participation in decision-making processes within Uganda's oil and gas upstream sub-sector

The legal and institutional frameworks governing community participation can either facilitate or hinder meaningful engagement. The presence of supportive legal and institutional frameworks can facilitate community participation by providing clear guidelines, mechanisms for engagement, and avenues for redress (UNDP, 2002). Conversely, inadequate or ineffective legal and institutional frameworks can hinder community participation and exacerbate conflicts. Clear legal rights, regulations, and

institutional mechanisms for participation are critical for ensuring that communities have a voice in decision-making processes (UNEP, 2002). Weak or inadequate legal frameworks may limit the effectiveness of participation initiatives. The presence of supportive legal and institutional frameworks plays a crucial role in facilitating community participation in decision-making processes related to environmental governance. These frameworks provide clear guidelines, mechanisms for engagement, and avenues for redress, which are essential for ensuring that communities have a meaningful voice in shaping policies and practices that affect them. (Shaw, 2014) Clear legal rights, regulations, and institutional mechanisms for participation help empower communities and enable them to assert their interests effectively (Beder, 2006). For example, environmental laws may stipulate requirements for public consultations or mandate the establishment of community advisory committees to facilitate dialogue between industry operators, government authorities, and local communities. (Aelst, 2019) In addition, legal frameworks that recognize and protect the rights of communities affected by industrial activities, such as the right to access information, the right to participate in decision-making, and the right to seek redress for grievances, are essential for ensuring that community participation is meaningful and effective. (Wal, 2018)

Conversely, inadequate or ineffective legal and institutional frameworks can hinder community participation and exacerbate conflicts. (Schlosberg, 2004) Weak or ambiguous legal provisions may create uncertainty or ambiguity regarding the rights and responsibilities of stakeholders, leading to distrust, frustration, and resistance. (Shaw, 2014)

Moreover, the absence of clear legal mechanisms for participation may result in marginalized communities being excluded from decision-making processes altogether, further exacerbating social inequalities and environmental injustices. (Kennedy Mkutu et al., 2019) Therefore, it is essential for governments to establish robust legal and institutional frameworks that support and facilitate community participation in environmental decision-making. (Schlosberg, 2004) These frameworks should be transparent, accessible, and responsive to the needs and concerns of all stakeholders, thereby ensuring that participation processes are fair, inclusive, and effective. (Wal, 2018) Legal and institutional frameworks play a critical role in shaping the opportunities and constraints for community participation in environmental governance. By providing clear guidelines, mechanisms, and protections, these frameworks can

empower communities and facilitate their meaningful engagement in decision-making processes.

Existing literature on public participation in Uganda's oil and gas sector highlights several key themes and challenges. Scholars such as Okot-Okumu (2016) have emphasized the importance of legal and institutional frameworks for promoting public participation and ensuring environmental sustainability. However, gaps in implementation and enforcement mechanisms have been identified, leading to tokenistic engagement and limited community empowerment (Owor et al., 2018).

Moreover, the literature underscores the need for greater transparency, accountability, and inclusivity in decision-making processes (Nyakahuma & Othieno, 2019). Despite legal requirements for public consultation and environmental impact assessments, there are concerns about the adequacy of these processes and the extent to which they influence project outcomes (Kabanda et al., 2020). Furthermore, scholars have pointed out the need for capacity-building initiatives to enhance stakeholders' understanding of oil and gas projects and their potential impacts (Tumushabe & Nyakahuma, 2017). Limited access to information and technical expertise among local communities has been identified as a barrier to meaningful participation (Mukiibi et al., 2021).

### 3. Research Methodology:

This study adopts a doctrinal legal research approach, delving into the intricate web of legal texts, case law, and theoretical frameworks to illuminate the regulatory landscape governing public participation in Uganda's upstream petroleum sub-sector. Through a meticulous examination of statutes like the Petroleum (Exploration, Development and Production) Act, 2013, the National Environment Act, 2019, and the Access to Information Act, 2005 (Republic of Uganda, 2013; Republic of Uganda, 2019; Republic of Uganda, 2005), we navigate the legislative terrain guiding petroleum exploration, development, and production. We sift through judicial decisions, extracting insights into how legal principles are wielded within the realm of public engagement in the petroleum industry. Moreover, we venture into the realm of legal theory, probing concepts such as environmental justice and procedural fairness, which underpin the participatory framework enveloping resource extraction endeavors (Kidd & Steger, 2016). By orchestrating a comparative analysis with international counterparts, we aim to unearth pearls of wisdom, discerning best practices and areas ripe for refinement in Uganda's regulatory apparatus. (Ayebare & Ben Bashaasha, 2019) Through synthesizing these multifaceted perspectives, we seek

to cast light upon the complexities and nuances inherent in fostering meaningful public participation in the realm of upstream petroleum endeavors, ultimately contributing to the scholarly discourse and practical evolution of regulatory frameworks in this vital sphere of natural resource governance.

### 3.1 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:*

The 1995 Constitution of Uganda serves as a cornerstone for protecting fundamental rights and fostering democratic governance. Rooted in the sovereignty of the people, it guarantees a wide array of civil, political, and economic rights essential for social justice and development. These rights encompass equality, freedom from discrimination, freedom of speech, religion, and the press, among others. Economic rights, including access to education, health services, and employment, are also enshrined to ensure citizens' well-being. Despite these constitutional protections, challenges persist in realizing these rights fully, often relegating them to aspirational goals rather than practical realities. Moreover, the constitution emphasizes the right to participation, affirming the principles of democracy and encouraging active citizen engagement in governance processes at all levels. Objective II of the constitution explicitly advocates for democratic principles empowering citizens in governance, highlighting the significance of citizen involvement in decision-making processes (Constitution of the Republic of Uganda, 1995).

### The Right to a Clean and Healthy Environment

Article 39 of the Ugandan Constitution underscores the fundamental right of every citizen to a clean and healthy environment, reflecting a commitment to environmental protection and sustainable development (Constitution of the Republic of Uganda, 1995). This constitutional provision is pivotal for ensuring the well-being and quality of life for all Ugandans, obligating the state and other actors to adopt measures to prevent environmental degradation. In the context of Uganda's petroleum sector, this right imposes a legal duty on the government and industry

stakeholders to prioritize environmental sustainability in oil and gas activities. This entails the adoption and enforcement of stringent environmental regulations and standards to mitigate adverse impacts on ecosystems, biodiversity, and public health (NEMA, 2019; Obwoya, 2017).

Legal cases provide significant insights into how these constitutional and regulatory frameworks are implemented and challenged. For instance, in *NAPE vs. AES Nile Power Ltd*, the court emphasized the necessity of an approved Environmental Impact Assessment (EIA) before finalizing major projects like power purchase agreements. NAPE's application for a temporary injunction highlighted the importance of adhering to environmental regulations outlined in the National Environment Act. The court's ruling underscored the importance of proactive measures to mitigate potential environmental harm and protect citizens' rights to a clean and healthy environment (*NAPE vs. AES Nile Power Ltd*, 2003). The court's recognition of administrative authorities' and courts' power to grant restoration orders in cases of environmental harm underscores the importance of effective remedies in the context of environmental justice.

However, challenges persist in balancing economic interests with environmental protection. In *Green Watch vs. Hima Cement*, the court denied a temporary injunction against Hima Cement Limited, allowing mining activities within Queen Elizabeth National Park to continue. This decision raised concerns about prioritizing industrial interests over environmental conservation, potentially impacting the ecological integrity of the park and the livelihoods of local communities. This case highlights a gap in ensuring adequate environmental safeguards and the protection of natural resources, which is essential for achieving environmental justice (*Green Watch vs. Hima Cement*, 2007).

Similarly, in *Greenwatch & ACODE vs. Golf Course Holdings Ltd*, the court's decision on a temporary injunction significantly influenced environmental sustainability and community well-being. This case involved restraining Golf Course Holdings Ltd from developing plots on Yusuf Lule (Kitante Road) in Kampala. The ruling on the injunction impacted the preservation of green spaces and the mitigation of environmental impacts associated with urban expansion, crucial aspects of environmental justice in rapidly urbanizing contexts (*Greenwatch & ACODE vs. Golf Course Holdings Ltd*, 2010).

These cases underscore the ongoing tension between economic development and environmental conservation in Uganda. While the constitutional guarantee of the right to a clean and healthy environment serves as a guiding principle for sustainable practices, robust regulatory enforcement and a balanced approach are necessary to ensure environmental justice. The need for comprehensive environmental impact assessments, transparent and participatory planning processes, and meaningful community consultation is paramount in addressing these challenges and promoting environmental stewardship within Uganda's petroleum sector.

### 3.2 Participation in Public Affairs

Article 38 of the Ugandan Constitution guarantees the right of citizens to participate in the affairs of government, whether directly or through elected representatives (Constitution of the Republic of Uganda, 1995). This constitutional provision holds significant implications for decision-making processes within the petroleum sector, as it underscores the importance of public participation in shaping policies and practices related to oil exploration, production, and revenue allocation (Mugenyi, 2013). Public involvement in these matters serves as a mechanism for ensuring that the interests and concerns of communities and the broader public are taken into account, thereby promoting transparency, accountability, and democratic governance (Government of Uganda, 2018). Moreover, the right to participate in public affairs empowers citizens to actively engage in discussions and debates surrounding the petroleum industry, contributing their perspectives, expertise, and local knowledge to the decision-making process (Muhereza, 2019). As such, public consultations, hearings, and engagement initiatives with affected communities are not merely discretionary measures but constitutional imperatives aimed at fostering inclusive and equitable decision-making (NEMA, 2012). By upholding the right to participation in public affairs, Uganda's constitutional framework establishes a legal basis for citizen engagement and involvement in shaping the trajectory of the petroleum sector, ensuring that it serves the broader interests and aspirations of the nation.

In the context of Distributive Justice (DJ) in Uganda, the constitutional Right to Participate in Civic Activities, articulated in Article 38 of the 1995 Constitution, stands as a cornerstone for fostering equity and fairness in governance. This constitutional provision ensures every Ugandan citizen the entitlement to engage in government affairs individually or through representatives, by the law,

and guarantees the right to peaceful activities influencing government policies through civic organizations. The significance of these provisions is reinforced by several landmark cases, including *Oloka-Onyango & 9 Ors v Attorney General*, [2014] UGCC 14 which highlighted the importance of civic rights in sustaining a democratic society, and *Saleh Kamba & Anor v Attorney General & 4 Ors*, [2014] UGCC 5 emphasizing the need to safeguard citizens' constitutional rights, particularly those engaged in civic activities. Additionally, *Nabagesera & 3 Ors v Attorney General & Anor*, [2014] UGHCCD 85 underscored the infringement of freedom of assembly and speech, while *Paul Kafeero and Another vs. Electoral Commission and Attorney General*, [2008] UGCC 53 addressed political rights and the formation of political parties, both emphasizing citizens' active participation in political activities. The *Kasizi & Ors v Attorney General & Ors*, [2015] UGCC 4 case explored the right to associate for various purposes, highlighting the importance of these rights in the context of elections and broader civic engagement within Uganda. These cases collectively contribute to the jurisprudential framework supporting the constitutional Right to Participate in Civic Activities, reinforcing its centrality in promoting distributive justice in the Ugandan context.

### Property rights

Article 26 of the Ugandan Constitution is pivotal for ensuring fairness in governance by guaranteeing property rights and allowing compulsory deprivation only for public use or interest, with prompt and fair compensation and access to legal recourse. Landmark cases such as *In Re: Kyadondo Block 82 Plot 773 Land At Kungu Wakiso* [2005] UGHC 1 and *GAPCO Uganda Ltd v Kaweesa & Anor* [2013] UGHCLD 47, underscore the necessity of just compensation and the government's burden to prove public interest. The *Bombo Town Council v Okello Baryayan* [2003] UGHC 14 case reinforces the need for adequate compensation, aligning with distributive justice principles. Articles 237 and 242 emphasize fair land allocation and utilization, establishing a foundation for environmental justice. These articles ensure that property owners receive fair compensation for land acquired for oil and gas projects and provide legal mechanisms for dispute resolution, balancing private investment with equitable land allocation. The *Dott Services Ltd v Attorney General* [2016] UGHCCD 81 case further solidifies the obligation to provide fair compensation, reinforcing distributive justice in Uganda's oil and gas sector.

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

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 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.

### **3.3 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.

### 3.4 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) plays a pivotal role in regulating Uganda's oil and gas sector, particularly within the upstream petroleum sub-sector. Established as a state-owned entity, UNOC is mandated to manage the state's commercial interests in the petroleum industry, as outlined in sections 42-46 of The Petroleum (Exploration, Development, and Production) Act of 2013. These sections detail UNOC's responsibilities, including overseeing resource management, maximizing benefits for Uganda, and ensuring transparency and accountability in commercial activities and revenue management. Furthermore, UNOC actively promotes local content and engages Ugandan companies and citizens in the oil and gas sector, thereby contributing to economic development and job creation.

However, critics have raised several concerns regarding UNOC's regulatory role within Uganda's oil and gas sector. These concerns revolve around potential conflicts 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 such as the Petroleum Authority of Uganda (PAU) (The Petroleum (Exploration, Development, and Production) Act of 2013, sections 42-46; Mbabazi, 2018). The dual role of UNOC as both a commercial entity and a regulator has sparked worries about prioritizing commercial interests over regulatory responsibilities, which could potentially compromise environmental and social standards (Muhumuza, 2019). The government's ownership of UNOC also raises questions about the company's independence and the potential influence of government interests on regulatory decisions, highlighting the need for greater transparency and accountability in UNOC's operations (ActionAid, 2016). Furthermore, stakeholders have called for enhanced transparency in UNOC's dealings with international oil companies and the management of oil revenues to ensure that the interests of the Ugandan people are prioritized and protected (Obwoya, 2017).

Regulatory limitations highlight the need for improved resource allocation and capacity building within regulatory institutions such as the PAU and the National Environment Management Authority (NEMA) (Muhumuza, 2019). ActionAid 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 (ActionAid, 2018). Additionally, concerns about overlapping roles among different government bodies potentially causing inefficiencies in regulatory procedures within the sector have been raised (Mbabazi, 2020).

The regulatory framework outlined in the National Environment Act is crucial for ensuring environmental protection and aligns with Uganda's constitutional provisions for a clean and healthy environment (Article 39, Constitution of the Republic of Uganda, 1995). Legal cases such as NAPE vs. AES Nile Power Ltd underscore the importance of adhering to proper environmental regulations before proceeding with significant projects, emphasizing the necessity of Environmental Impact Assessments (EIAs) to mitigate potential harm (NAPE vs. AES Nile Power Ltd, 2005). However, challenges persist, as seen in cases like Greenwatch vs. Hima Cement, where economic interests sometimes override environmental concerns, potentially impacting natural resources and community livelihoods (Greenwatch vs. Hima Cement, 2006). Similarly, in Greenwatch & ACODE vs. Golf Course Holdings Ltd, decisions on temporary

injunctions can significantly affect environmental sustainability and community well-being, particularly in rapidly urbanizing areas like Kampala (Greenwatch & ACODE vs. Golf Course Holdings Ltd, 2007).

These cases highlight the ongoing tension between economic development and environmental conservation, underscoring the need for robust regulatory enforcement and a balanced approach to achieving environmental justice in Uganda. By addressing these regulatory deficiencies and promoting inclusive and transparent decision-making processes, Uganda can enhance its environmental governance framework and better protect the rights of affected communities.

#### *The National Environment Management Authority (NEMA):*

The National Environment Management Authority (NEMA) of Uganda plays a crucial regulatory role in environmental management, especially within the oil and gas sector, as stipulated in the Uganda Environment Act of 2019. NEMA's mandate and functions, outlined in Sections 9 and 10, empower the authority to conduct environmental impact assessments (EIAs), issue environmental permits, and monitor compliance with environmental standards. Additionally, NEMA exercises power over lead agencies involved in environmental management, ensuring coordination and effective implementation of environmental policies and regulations (Section 10).

Urban and district structures for environmental management, as provided in Sections 26 and 27, further extend NEMA's regulatory reach, empowering local councils and district committees to engage in environmental management activities. These structures, supported by the district environment and natural resources committees (Section 28), play a vital role in implementing environmental policies at the grassroots level and fostering community participation in environmental decision-making processes.

The Act also outlines provisions for environmental and social impact assessments (ESIAs), as detailed in Sections 110 to 116. These sections delineate the purpose of EIAs, the responsibilities of developers, and the categorization of projects requiring assessment. Moreover, the Act mandates environmental risk assessment, mitigation measures, and decommissioning procedures for projects, emphasizing the importance of minimizing environmental impacts and promoting sustainable development practices (Sections 114 to 116).

Critics have raised several significant concerns about the role of the National Environment Management Authority (NEMA) in regulating Uganda's oil and gas sector. 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 (Muhumuza, 2014). Furthermore, doubts persist regarding NEMA's independence, accountability, and susceptibility to political influence, casting shadows on the agency's transparency in decision-making processes (Brockhaus et al., 2015). 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 (Mbabazi, 2013). 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 (Mugenyi, 2013). 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 role in regulating the nation's legal framework, including laws governing the oil and gas sector, ensuring consistency, fairness, and upholding the rule of law. Article 126 of the Constitution establishes the judiciary as an independent institution responsible for administering justice without interference, providing essential checks and balances (Constitution of the Republic of Uganda, 1995). The recent Administration of the Judiciary Act, 2020, further reinforces the judiciary's independence and performance, enhancing its regulatory functions.

The judiciary's regulatory role encompasses interpreting and applying laws related to the oil and gas sector, including contracts, environmental regulations, and land acquisition. It exercises judicial review to scrutinize government actions and decisions affecting the sector and public participation. Moreover, the judiciary serves as the primary mechanism for resolving disputes related to oil and gas, including conflicts among stakeholders and challenges to government decisions (Administration of the Judiciary Act, 2020).

Despite the judiciary's critical role in regulating Uganda's oil and gas sector, concerns persist regarding delays in legal proceedings, perceived lack of independence in cases involving powerful interests, and limited capacity and expertise within the judiciary. Transparency and accountability challenges, along with difficulties in ensuring access to justice, particularly for marginalized communities, further compound these concerns (The Judiciary of Uganda, 2020).

Delays in legal proceedings can hinder timely justice and affect both communities and investors, impacting the overall investment climate in the oil and gas sector (Brown & Bell, 2018). Concerns about the judiciary's independence may arise in cases involving powerful interests, raising questions about the impartiality of judicial decisions (Kiggundu, 2019). Additionally, a lack of judicial activism has been noted, with judges primarily adhering to traditional methods of interpreting and applying the law, potentially limiting the judiciary's effectiveness in addressing emerging legal challenges in the oil and gas sector (Oloka-Onyango, 2017). Addressing these concerns is crucial to bolstering the judiciary's regulatory role and ensuring accountability and the protection of citizens' rights in Uganda's oil and gas industry.

Issues related to political will can impact the judiciary's ability to operate independently, particularly in high-profile cases (Kiggundu, 2019). Limited capacity and expertise within the judiciary can lead to suboptimal decisions, particularly in environmental matters, and hinder environmental justice (Oloka-Onyango, 2017). Transparency, accountability, and access to justice challenges persist, as well as issues related to enforcing court orders (Brown & Bell, 2018). 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.

In the case of *Uganda v. Ndifuna Moses*, allegations of corruption and favoritism in the judicial process have raised concerns about transparency and accountability (Kiggundu, 2019). 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.

Access to justice can indeed be challenging for marginalized or economically disadvantaged communities, as legal proceedings often involve significant costs and complexities that create barriers to justice (Kiggundu, 2019). The judiciary's role in upholding and strengthening provisions on public participation remains crucial but sometimes faces challenges, affecting the ability of affected communities to make their voices heard in oil and gas-related decisions (Oloka-Onyango, 2017). Critics have pointed out that even when judgments favor affected communities or environmental protection, the enforcement of court orders may be weak, limiting the practical impact of judicial decisions (Brown & Bell, 2018). Given the oil and gas sector's profound impact on human rights, including concerns about land rights, community displacement, and environmental impacts, ensuring effective access to justice is paramount to safeguarding the well-being of affected populations (Kiggundu, 2019).

#### *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. (Golooba-Mutebi, 2004) 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. (Kaducu, 2019) 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. (Golooba-Mutebi, 2017) Moreover, coordination among government agencies, industry players, and local communities is crucial for the successful implementation of local content policies. (Obwoya, K. J., & Akol, 2021) The legal framework, while providing a foundation for regulation, requires improvements to better accommodate the diverse perspectives and needs of affected communities. (Kaducu, 2019) 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.

#### **4. Challenges and Opportunities:**

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. (Tonny, 2013)

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. (Muhumuza, 2020) 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. (Tumushabe, 2018)

Moreover, bureaucratic hurdles in the engagement process with government agencies and oil companies, compounded by a lack of transparency, pose

challenges to effective participation.(Muhumuza, Tonny, & Nuwagaba, 2016) 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.(Tumushabe, 2018)

## 5. 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 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.

## 6. Conclusion and Recommendations:

### 6.1 Conclusion:

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.

### 6.2 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.

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.

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