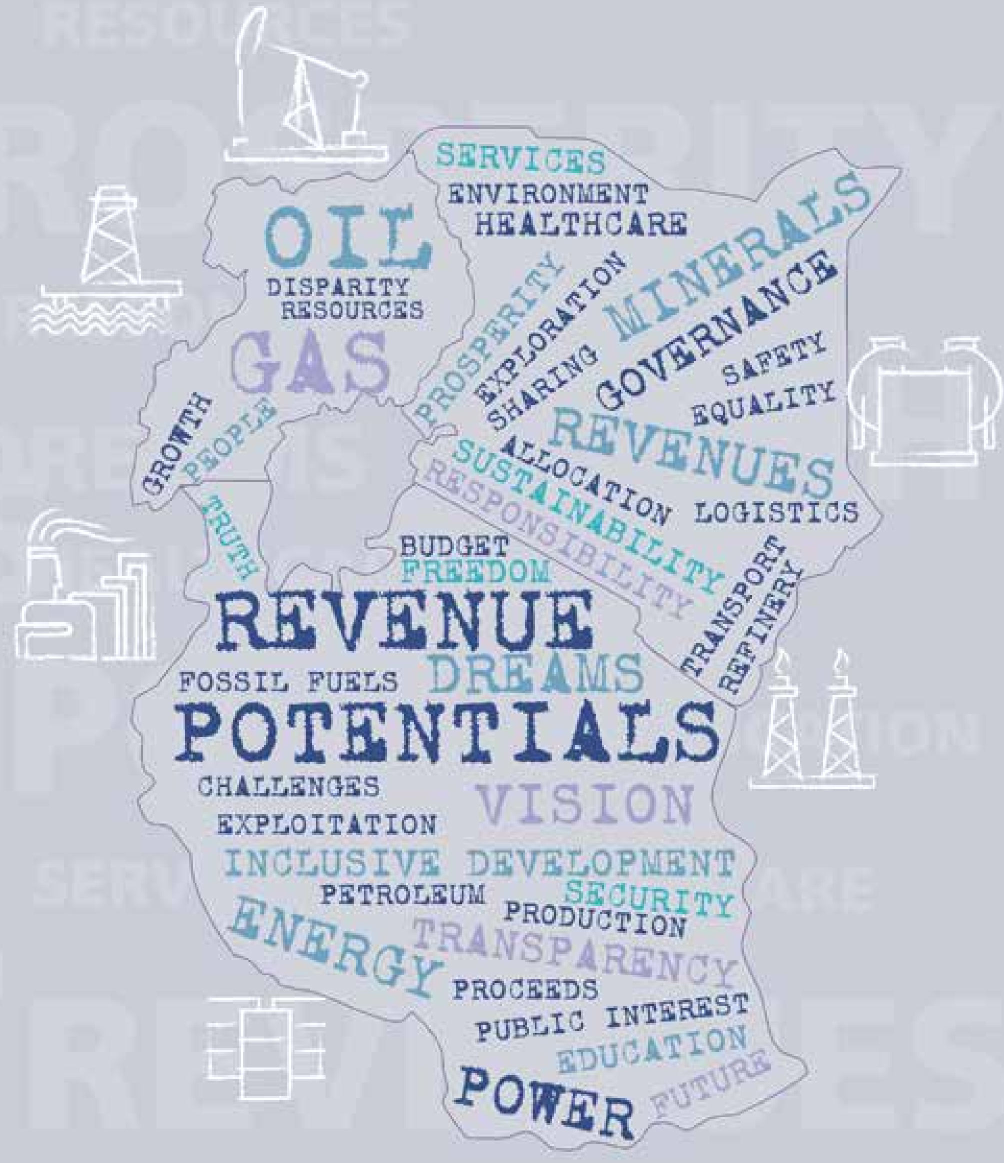
AFRICAN PERSPECTIVES ON SOCIAL JUSTICE



OIL AND GAS REVENUES FOR INCLUSIVE DEVELOPMENT

FRIEDRICH EBERT STIFTUNG

THE POTENTIALS OF OIL AND GAS REVENUES FOR INCLUSIVE DEVELOPMENT IN AFRICA

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Foreword

With the discovery of oil and gas in East Africa, comes the hope that expected revenues from the oil and gas sector will be utilised towards well-articulated sustainable development agendas, that are socially just and all-inclusive. For example, East African countries could reach their development potentials in record time by allocating oil and gas revenues towards developing and strengthening human resources within the education and health sectors, or by re-investing in labour-intensive but vulnerable sectors such as agriculture and cottage industries, by way of subsidies on high start-up costs and interest rates.

Having the potential to use this natural wealth for overall development and progress raises a number of fundamental questions: How best can oil and gas revenues be transformed into sustainable profit for the whole society? How effective and efficiently can a government plan and employ natural wealth revenues to ensure it reduces already existing inequalities? And, importantly, how can this be done while avoiding the *resource curse*[1] and *mineral-based poverty*[2] since in resource-rich countries in Africa and elsewhere resource wealth has "[often] led to poverty, inequality and violent conflicts"[3].

Inclusive Development – what does it mean?

"Making growth inclusive is about enabling stakeholders to share the benefits of increased affluence and promoting well-being"[4]

To address poverty and income inequality in Africa, development must be all inclusive. Development based on the exclusion of people based on their gender, ethnicity, age, disability or economic stance creates stagnation and deepens inequality. In addition, the perception that economic expansion increases the living standards and the well-being of the people has been highly questioned

1 Resource curse is a paradoxical situation in which countries with an abundance of non-renewable resources experience stagnant growth or even economic contraction.
2 The resource curse occurs as a country begins to focus all of its energies on a single industry, such as mining, and neglects other major sectors.
3 APP (2013): Equity in Extractives. Stewarding Africa's natural resources for all. Africa Progress Report 2013. Africa Progress Panel. Source: http://africaprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_LR.pdf [last access: 24/03/2014].
4 De Mello/Dutz (2012): Introduction. In: De Mello, Dutz (eds.): Promoting Inclusive Growth. Challenges and Policies. OECD; World Bank (pg.9-14). Source: http://www.keepeek.com/Digital-Asset-Management/oecd/economics/promoting-inclusive-growth_9789264168305-en#page9 [last access: 24/03/2014].

by eminent economists like Joseph Stiglitz and Amartya Sen, among others.[5] Besides, experiences and current developments in the global south, as well as the financial crises in the United States of America and Europe, prove that economic growth does not automatically challenge the uneven distribution of wealth in society. Yet, it is exactly this unequal profit of progress and growth for different social classes that is seen as a root cause for economic, social and political crises around the globe.[6] By focusing on progress in terms of an increasing GDP, the impact of economic expansion – namely a fragmentized society, which consists of a minority powerful elite with enormous economic capital vis-à-vis a poor and dependent majority – is not considered. As such, the focus for development has to shift from only increasing the per capita income of a nation, towards a more holistic understanding of development and progress by adapting the concept of *inclusive development within policies and plans*. The concept of *inclusive development* is closely linked to, if not based on, the ideas of *social justice*. The question of how to reduce poverty and inequality on a national as well as on an international level "[…] by means of a fairer distribution of incomes"[7] is a core question within the international discourse on social justice. *Inclusive development* is closely linked to Amartya Sen's understanding of development[8] and therefore includes, but is not limited to, poverty eradication and reduction of material deprivation.

"Inclusive development is a pro-poor approach that equally values and incorporates the contributions of all stakeholders - including marginalized groups - in addressing development issues. It promotes transparency and accountability, and enhances development cooperation outcomes through collaboration between civil society, governments and private sector actors."[9]

As a multi-dimensional concept, *inclusive development* looks at the interrelated causes of inequality from a broader perspective, and tries to analyze and alleviate them. *Inclusive development* understands inequality not only from an economic perspective, but also includes aspects of well-being, political participation and participation in social life, public discourse as well as decision-making

5 Further readings: www.stiglitz-sen-fitoussi.fr/documents/rapport_anglais.pdf (last access: 19.03.2014).

6 White, William (2012): Public debate: How do you make growth more inclusive? In: De Mello, Dutz (Eds.): Promoting Inclusive Growth. Challenges and Policies. OECD; World Bank (pg. 279-283). Source: http://www.keepeek.com/Digital-Asset-Management/oecd/economics/promoting-inclusive-growth_9789264168305-en#page9 [last access: 24/03/2014].

7 https://www.fes.de/gerechtigkeitswoche/pdf/online_Gerechtigkeitswoche_en_121010.pdf (Nov. 2011)

8 "Development can be seen […] as a process of expanding the real freedom people enjoy. […] Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or over activity of repressive states (Sen 1999, 3).

9 http://politicsofpoverty.oxfamamerica.org/2014/04/buzzword-or-outcome-what-is-inclusive-development/

processes. Furthermore, the concept does not only focus on intersectional aspects of exclusion in order to identify instruments to achieve a holistic, multi-dimensional and inclusive development for all members of society, but also includes environmental and generational aspects of development. In essence, it aims to achieve sustainable development for current and future generations, taking into consideration the limitation of natural resources and the vulnerability of environmental wealth.[10]

Therefore, the question arises of how to achieve inclusive development by using oil and gas revenues. How can we generate social justice in such diverse societies where the discourse seems to focus on growth-related issues such as market expansion, increased human resources and infrastructure, and where inequality can be identified along different lines such as ethnicity, gender, class, age, and religion, among others?[11]

To address these questions, the Friedrich-Ebert-Stiftung (FES) Uganda in 2014/15, embarked on a research project to explore whether member states of the East African countries are well positioned to avoid the dangers associated with the resource curse; and to assess whether they have the necessary political, legal/ regulatory/policy, and institutional frameworks in place, to ensure that oil and gas revenues are appropriated justly for inclusive development. To assess this, the research cross-referenced the existing frameworks with the principles or elements of inclusive development, such as transparency and accountability, stakeholder participation and empowerment, revenue distribution and sharing of benefits and environmental sustainability and intergenerational justice. Where gaps were identified, recommendations were suggested. This publication is a compilation of the studies conducted in Kenya, Tanzania and Uganda, which also draw lessons from Ghana, Botswana and Timor-Leste respectively.

Some of the key findings of this research establish that there is need for East African countries to comply with the Extractive Industries Transparency Initiatives (EITI), boost linkages, value addition and diversification, and to ensure societal relevance in political governance and equity in public spending, to name a few. Specifically for Kenya, it is recommended that there is a need to proactively initiate stronger public participation via dialogue before the oil flow commences. For Tanzania, it is recommended that the unclear land ownership laws currently raising disputes on onshore fields between local communities and oil and gas operators need urgent attention. And for Uganda, there is a

10 Rauniyar, G., & Kanbur, R. (2010). Inclusive growth and inclusive development: A review and synthesis of Asian Development Bank literature. Journal of the Asia Pacific Economy, 15 page 35

11 De Coninck, John (2013): Furthering an African Perspective on Social Justice: East African Social Justice Group. In: Tangen (ed.): African Perspectives on Social Justice. Friedrich- Ebert Stiftung, Kampala. (Pg. 3-11).

need to empower institutions to be independent from political influence. These recommendations are among many others noted for oil and gas revenues to contribute to equitable and just national growth and development.

This publication hopes to be a useful companion to students pursuing various disciplines in oil and gas management, active stakeholders, other researchers and policy-makers seeking to contribute in their various capacities to the subject matter.

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August 2016

Oil and Gas Revenues in Kenya: Potentials for Inclusive Development

List of Acronyms and Abbreviations

CoB	Controller of Budget
CoK 2010	Constitution of Kenya 2010
CRA	Commission for Revenue Allocation
CS	Cabinet Secretary
EITI	Extractive Industries Transparency Initiative
ERC	Energy Regulatory Commission
GCSPOG	Ghana Civil Society Platform on Oil and Gas
IIDI	Inter-American Institute on Disabilities and Inclusive Development
KPC	Kenya Pipeline Company
KPLC	Kenya Power and Lightning Company
KPRL	Kenya Petroleum Refineries Limited
LAPSSET	Lamu Port Southern Sudan-Ethiopia Transport
NAFFAC	National Fossil Fuels Advisory Committee
NEMA	National Environment Management Authority
NOCK	National Oil Corporation of Kenya
NUAC	National Upstream Advisory Committee
NUPA	National Upstream Petroleum Authority
PIAC	Public Interest and Accountability Committee
PRMA	Petroleum Revenue Management Act
PSC	Production Sharing Contracts

1. Introduction

The recent discoveries of oil and gas in Kenya have brought to the fore the issue of inclusivity in the distribution of the proceeds accruing from the exploitation of these extractive commodities. The issue of inclusivity is informed by the challenges and experiences of different resource-rich countries where the discovery of oil has, among other issues, increased inequality, sparked conflicts between the resident communities and the current government, as well as worsened the poverty situation in these countries. Government functionaries, civil society actors, and academicians are grappling with the issue of how to ensure that the revenues which the state derives from the oil and gas sector are utilised to benefit the whole country and its population, not only the political and economic elite.

The experiences of resource-rich countries where oil and gas discoveries turned into a curse rather than a blessing have highlighted the need to install a clear political, legal, and institutional framework that aims at ensuring inclusive development. This need is of particular importance in countries where policies have been pursued to give primacy to the choices and needs of the political and economic elite at the expense of the general citizenry. In Kenya for example, political elites have, over the years, maximized on state control for their exclusive interests. Even where the policy and legal framework was ideally crafted to address the development needs and common good of the country, the framework ended up serving the interests of a small clique at the centre of political and economic power.

This paper seeks to examine the current legal and policy environment undergirding oil and gas revenues and their implications on inclusive development. This is geared to inform the national and regional discourse on how the oil and gas sector could benefit the whole society.

In fact, the genesis of exclusive development in Kenya is rooted in Sessional Paper No. 10 of 1965 which, among other things, gave preference of budget allocation for developmental purposes towards "high potential areas" (agriculturally productive areas), which account for only 20 per cent of Kenya's total land coverage.

This unequal resource distribution has been identified as the key reason for the high levels of inequality in the country and has, inadvertently, exacerbated the deprivation of the country's most marginalized areas.[1] Marginalized communities and groups (women, youth, and people with disabilities) still remain at the periphery of the development discourse five decades after independence. In addition, the majority of rural areas lack most of the basic

1 Society for International Development. (2010). *Kenya's Vision 2030: An audit from an income and gender inequality perspective.* Nairobi: Society for International Development.

amenities that urban areas enjoy which is a testimony of further inequality between the urban and rural divide. To this end, uneven socio-economic development has become the norm in the country, necessitating a powerful struggle for the control of political power among the different ethnic groups in the country since the capture of the presidency is deemed as synonymous with control of political and economic resources.

The disparities and marginalization in Kenya are well demonstrated in Turkana, the main geographical area where oil has been discovered. Demographic and development statistics show that it is one of the poorest and most marginalized counties in the country. It is a drought-prone region which relies on humanitarian aid year in, year out. The Turkana population has high levels of illiteracy as well as poverty, and the discovery of oil has led to high expectations by the locals that the county now stands a high chance of being developed for its mainly pastoralist population.[2]

The discovery of oil and gas in Kenya, the unveiling of Vision 2030, and the promulgation of the 2010 Constitution of Kenya, which has devolution as one of its cornerstones, created valid expectations that this triangle of development will play a pivotal role in not only laying a foundation for achieving inclusive and sustainable development but also bridging the gap between the rich and the poor. This is informed by experiences elsewhere (Nigeria, DRC, South Sudan, Mozambique, Angola) which show that the existence of oil and mineral revenues alone is not a prerequisite to achieve sustainable and equitable development. It is therefore necessary that all stakeholders are not only involved in processes to engender inclusivity but also undertake concerted efforts to ensure that oil and gas revenues are used as one of the key vehicles for inclusive development so as to improve the lives of all citizens irrespective of geographical settlement, age, ethnicity, gender, and social background.

This paper explains how the political, legal, and institutional framework for the management and distribution of oil and gas revenues can contribute to achieving inclusive development in Kenya. In order to address the aforementioned concern, this paper is structured as follows. Section two lays the framework for inclusive development detailing the tenets that are essential for a state to achieve inclusive growth. Section three outlines the political, legal, and institutional framework that governs the exploration and exploitation of oil and gas in Kenya. Section four analyses whether the existing political, legal, and institutional framework as conceived is able to deliver inclusive development, and if not, what the shortcomings are. Section five identifies the practices from Ghana which can inform Kenya's attempt to attain inclusive growth through the utilization of the oil and gas sector and section six summarises the research findings.

2 Manrique-Gil, M. (2014). *In-depth analysis: Will development in East Africa be fossil-fueled.* European Union Policy Department, Directorate-General for External Policies: DG EXPO/B/PolDep/Note/2014_93.

2. Conceptualising Inclusive Development

Governments, scholars, and development practitioners have grappled with the precise meaning of the concept of inclusive development and as such there is no unanimous agreement as to what exactly constitutes inclusive development. However, the common thread in almost all definitions is the question of who profits from government policies and how the groups that profit are able to secure the distributive outcomes that favour them.[3]

This point was advanced in 1936 by Harold Lasswell in his book, *Politics: Who gets what, when, and how*, when he posited that distributive politics involves the allocation of government goods and services and is critical in the development of various regions in a country as it determines who gets what, when, and how. In essence, it determines the growth and development of the different facets of society.

Ravi Kanbur and Ganesh Rauniyar (2010) provide the simplest conceptualization of what inclusive development should be. They contend that "development" brings into play dimensions of well-being beyond simply income, while "inclusive" focuses attention on the distribution of wealth in society.[4] In other words, inclusive development is about the empowerment of people through the provision of an enabling and inclusive framework. From this perspective, it is associated with the equitable distribution of social and material benefits across all social groups.

There are other scholars who bring into play the participatory aspect of inclusive development. Jacqueline Wood (2014) contends that inclusive development is a means to facilitate participation in problem solving and decision making, to foster innovation and opportunity, and to share the benefits of development more broadly. She argues that in order to operationalise inclusive development, three conditions are necessary: the first is democratic ownership of the development processes; the second is space for leadership of development initiatives by a range of development actors such as GIZ, USAID, and DfiD; and the third is inclusive results that benefits all segments of society, which require a particular effort to ensure that the poorest and most marginalized populations also reap the benefits of the results.[5]

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3 Kramon, E., and Posner, D. (2012). *Who benefits from distributive politics? How the outcome one studies affects the answer one gets. Perspective on politics.* Source: http://web.mit.edu/posner/www/papers/Who%20Benefits.pdf. Accessed: 30/04/2015.

4 Rauniyar, G. and Kanbur, R. (2010). Inclusive development: *Two papers on conceptualization, application, and ADB perspective.* Source: http://kanbur.dyson.cornell.edu/papers/ADBCompendiumInclusiveDevelopment.pdf.

5 Wood, J. (2014). *Progress since Busan on inclusive development*. Source: http://effectivecooperation.org/wordpress/wp-content/uploads/2014/04/Inclusive-Development-HLM-Discussion-Paper-April-10-final1.pdf.

As a concept, Inclusive development has been used in reference to an emphasis on the creation of equal opportunities for the entire population of a country. The Inter-American Institute on Disabilities and Inclusive Development (IIDI) provides an illuminative description of the concept. IIDI defines inclusive development as the design and effective implementation of public policies and actions that bring about socio-economic and human development, in a way that promotes the capacities and equal opportunities and rights of all people, regardless of their social condition, gender, age, physical or mental condition, ethnicity, religion, sexual orientation, etc., in sustainable harmony with the environment.[6]

Overall, the inclusive development approach is anchored on the general framework of an increasingly equitable distribution of the wealth produced in countries, since the goal of including social groups and sectors that have been excluded from the benefits of development will be impossible to achieve without a more equitable distribution of revenues.[7] In this paper, we conceptualize inclusive development as a deliberate approach to involve all citizens in determining how to exploit, expropriate, and redistribute the resources for the benefit of all sections of society. As such, this kind of approach has to ensure that the development initiatives are for the benefit of all in the society, with an end of promoting inclusiveness in the society. It implies the involvement of the perennially marginalized and excluded; on the basis of region, county, gender, ethnicity, age, disability or religion; as key stakeholders in all phases of the development process, especially in the oil and gas extractive sector.

In order to advance the concept of inclusive development, Wood identifies key enabling factors which any society must embrace if it is to deliver inclusivity. These are transparency, conducive policy, legal and regulatory environment, and sheer political will.[8] This framework serves as a good starting point for Kenya to promote inclusive development.

3. Political, Legal and Institutional Framework

Oil exploration in Kenya started in the 1950s in the Lamu basin but did not yield commercially viable results for several decades. Due to the lack of results, the petroleum market (product prices, marketing, and distribution) was deregulated in 1994 to increase efficiency and encourage private involvement in exploration.[9] As of January 2014, the resource rich regions of Kenya (Lamu,

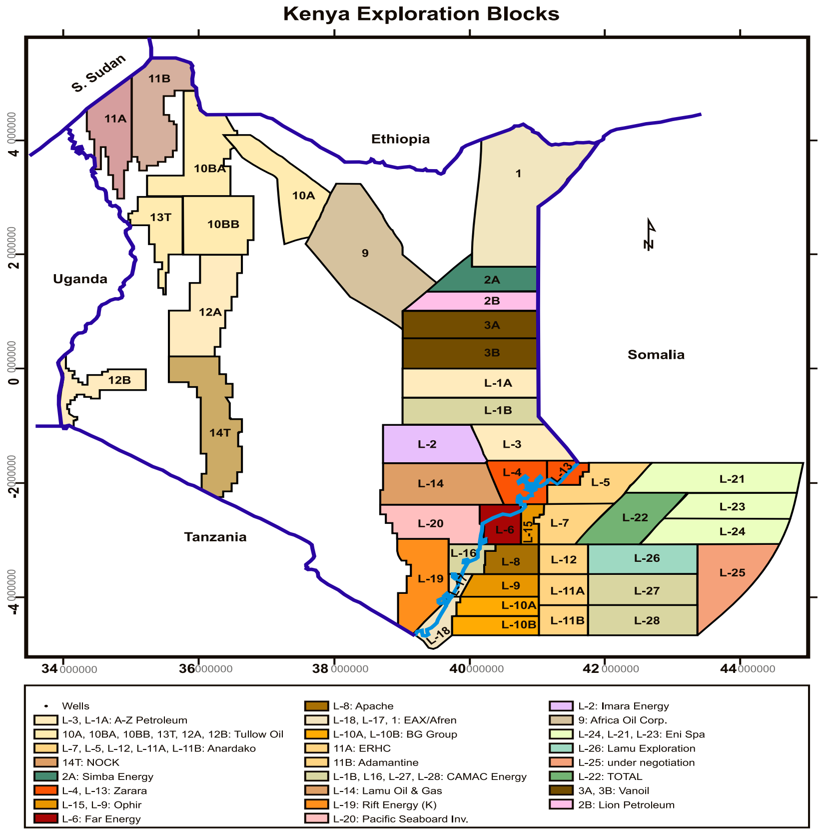
6 Handicap International (HI) and Inter-American Institute on Disabilities and Inclusive Development (IIDI). (2009). *A basic manual for inclusive development*. Nicaragua: HI and IIDI.

7 Ibid.

8 Wood, J. Progress since *Busan* (see footnote 5).

9 Munyua, J. and Ragui, M. (2013). “Drivers of instability in prices of petroleum products in Kenya.” *Prime Journal of Business Administration and Management.*

Anza, Mandera, and Tertiary Rift Basin) were divided into 44 blocks for the purpose of licensing, and seven other blocks were slated for addition in the future. To date, 39 wells have been drilled, with commercial successes confirmed so far only in the Turkana region (blocks 10BB and 13T), which are licensed to Tullow Oil (UK) and Africa Oil (Canada).[10]



Exploration Block Map of Kenya: Government of Kenya Revised Edition 2006

Prior to the promulgation of the CoK 2010 and the discovery of oil in 2011, Kenya's legal and institutional framework was basically outdated and underdeveloped since there had been no successful exploration in the oil and gas sector during the period. Therefore, there was no incentive to review laws in the oil and gas sector. Most explorations and agreements were based on the outdated Petroleum (Exploration and Production) Act, Cap 308 which was last revised in 1986. While this framework may have been appropriate for a nascent petroleum sector, it did not address, in sufficient detail, many important petroleum-sector topics such as revenue sharing, macro-economic dynamics of the oil sector, the question of livelihoods, or the constitutional demands for public participation, hence necessitating its review.

10 Manrique-Gil, M. In-depth analysis (See footnote 2).

Currently, the CoK 2010 provides an overall political, legal, and institutional framework for resource extraction, management and sharing of revenues, as well as public accountability of the said resources at both the national and county level. Parliament, as required by law, has further developed and/or is in the process of developing legislations that give life to the constitutional provision.

The Constitution of Kenya 2010 (CoK 2010) stipulates the equitable distribution of the country's revenues without discriminating against any group.[11] The CoK 2010 is committed to the principles of equality and non-discrimination. Thus, in the preamble, equality is listed as one of the six essential values upon which governance should be based.[12] To this end, the CoK 2010 has a whole chapter on devolution with provisions to preserve equitable allocation of resources that, ideally, should redress the long-standing issues of ethno-regional discrimination and inequality in Kenya (CoK 2010, Article 45).

The following section looks at the policy and legal frameworks governing the oil and gas sector and how they attempt to infuse inclusivity in the management of resource revenues from the oil and gas sector.

3.1 Political Framework

Wei (2011) pointed out that the distribution of oil and gas revenues is a policy process dependent on the political environment of the country, that is, whether it is a democratic state or not. He notes that economic rationality is not guaranteed, especially in the first-past-the-post electoral system that is dominant in the African continent.[13] In this system, political consideration of political leaders outweighs economic policies and decisions.

Kenya, as provided for in the CoK 2010 (Art. 138), subscribes to the first-past-the-post electoral system. Therefore, in order to guard against exclusivity in the policy making process, the CoK 2010 provides for a socio-economic and political framework that is geared towards bringing on board as many stakeholders as possible in the decision-making process through participatory democracy. This is done through the provision of a governance system that allows for the engagement of diverse stakeholders in the policy-making process. The most important aspect of this is the enshrinement of devolution in the constitution.

11 See the Constitution of Kenya online at http://www.kenyalaw.org:8181/exist/kenyalex/act view.xql?actid=Const2010.

12 The others are human rights, freedom, democracy, social justice, and the rule of law.

13 Wei, K. (2011). "The 'Resource Curse': Current schools of thought and policy responses." Getting it right: *Lessons from the South in managing hydrocarbon economies.* New York: United Nations Development Programme Special Unit for South-South Cooperation.

The cornerstone of the CoK 2010 is equitable sharing of national and local resources between the national government and the county governments. It empowers county governments to legislate and execute on the usage of the financial resources allocated to them as well as those they raise. To safeguard the autonomy of county governments, the CoK 2010 distributes nationally-raised revenue equitably among national and county governments. Article 203(2) provides a minimum guarantee that 15 per cent of annual national revenue should be allocated to county governments. Furthermore, public finance expenditure promotes equitable development of the country, especially by making special provisions for marginalized groups and areas (CoK 2010 Article 201-4). Article 204 (1) stipulates that provision shall constitute 0.5 per cent of the annual national revenue and shall be established for twenty years from the time of the Constitution coming into effect.

Some of the key objects of devolution are to: (a) give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them; (b) ensure equitable sharing of national and local resources throughout Kenya; (c) recognize the right of communities to manage their own affairs and to further their development; (d) promote social and economic development and the provision of proximate, accessible services throughout Kenya; (e) facilitate the decentralization of state organs, their functions, and services; and (f) enhance checks and balances and the separation of powers (CoK 2010 Article 174).

The CoK 2010 obligates the state to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and also ensure the equitable sharing of the accruing benefits (CoK 2010 Article 69).

Furthermore, Vision 2030[14] calls for the creation of a cohesive, equitable and just society based on democratic principles grounded in the existing rich and diverse cultures. As part of its international obligations to inclusive development, it also commits to ensure economic development across all regions of Kenya so as to build a just and cohesive society with social equity in a clean and secure environment.

Going further on the policy platform, the Jubilee Manifesto, which details the expectations of Kenyans on the Uhuru Administration, points out that the government should ensure that oil and gas resources be exploited for the best interests and benefits of all Kenyans. The Jubilee Administration promised to "review legislation governing access to energy resources in order to give the source county 20% rights of the net income of the resource." It further notes that they purpose to "create an Oil & Gas Revenue Fund and give 5% of public

14 Kenya Vision 2030 is the country's development programme covering the period 2008-2030. It shall be implemented in successive five-year medium plans.

revenues back to the local communities where resources are located and 5% to pay for the roll out of local renewable energy schemes. It will also fund the restoration and rehabilitation of excavated areas."[15]

This was to be realized through:

- Enactment of a legislation to ensure proper use of the expected future oil and gas revenues for the benefit of all Kenyans, and
- Establishing an in-country sovereign wealth fund based upon international best practices to secure an income from the resources of today for future generations of Kenyans.[16]

Despite these promises, few steps have been undertaken by the Uhuru Administration in an effort to meet them. The progress they have made is in the legislative process, which is still ongoing, with both the policy and bills (Mining Bill and Energy Bill), both still in draft form.

In summary, this is the political framework in which the management of the oil and gas revenues and its monitoring and evaluation in Kenya are supposed to be embedded. As noted above, the constitution lays down the specific criteria that the distribution of these revenues should meet, setting out the mechanisms and institutions (which are discussed later on) that the executive should put in place to ensure that the laid down criteria are adhered to. Upon setting the operational framework, the CoK 2010 empowers Parliament and other constitutional institutions such as the Commission of Revenue Allocation (CRA) to monitor the execution of the allocations.

Needless to say, the country is still facing several democratic deficits including the persistent role of ethnicity in politics, non-institutionalised political parties, and high levels of corruption which inhibit the quest for inclusive development. Likewise, institutional weakness and the lack of civil society engagement in budget transparency and the accountability processes pose a restriction on the progress of good governance in Kenya.[17] This has been evident in the perennial tender wars over natural resources and the battle between national and county governments that has pitted the national government and prospective international firms against county governments and local authorities. The continuation of these battles will surely be a waterloo to the quest for inclusive development.

15 Jubilee (2013). *Transforming Kenya. Securing Kenya's prosperity* 2013 – 2017. Source: http://issuu.com/jubileemanifesto/docs/jubilee_manifesto?e=7233495/1331805, pg. 48. Accessed: 30/04/2015.

16 Ibid.

17 Manrique-Gil, M. *In-depth analysis* (See footnote 2).

3.2 Legal Framework

There have been a number of laws which have over the years regulated the oil and industry sector. In light of recent discoveries in the sector, these laws are currently under review in order to tackle the challenges encountered in the exploration and exploitation of the resources. These include:

1. The Constitution of Kenya 2010;
2. The Energy Act, No. 12, 2006;
3. The Petroleum Development Fund Act 1991;
4. The Petroleum (Exploration and Production) Act Cap 308 1986, revised edition;
5. The Environmental Management and Co-ordination Act, 1999;
6. The Environment and Land Court Act No. 19 of 2011;
7. The Geothermal Resources Act No. 12, 1982;
8. The Commission of Revenue Allocation Act, 2011;
9. The Land Act 2012;
10. The Income Tax (Amendment) Act, made to specify the fiscal regime applicable to petroleum operations.[18]

Chapter Twelve of the CoK 2010 on Public Finance outlines how resource revenues should be utilized in a manner that promotes inclusive development. Article 203 establishes a detailed list of criteria for determining how nationally-raised revenues are to be equitably shared. These include: ensuring that county governments have adequate resources to perform their functions; addressing economic disparities within and among counties; and the stable and predictable allocation of revenues (CoK 2010 Article 203).

Article 203(2) of the CoK 2010 provides a minimum guarantee that 15 per cent of annual national revenue should be allocated to county governments. In this regard, during the fiscal year 2013/2014, the CRA[19] raised national revenue shares allotted to counties from 15 per cent to 34 per cent of the total shareable revenue as of the last audited accounts approved by Parliament as stipulated in the constitution.[20] The CRA has the mandate of making recommendations on how revenue is to be shared between the national government and the county governments. The formula for revenue allocation is as follows: population (45 per cent), basic equal share (25 per cent), poverty index (20 per cent), land area (8 per cent), and fiscal responsibility (2 per cent), as ratified by Parliament on 22 November 2012.[21]

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18 Kenya Civil Society Platform on Oil and Gas (KCSPOG). (2014). *Setting the agenda for the development of Kenya's oil and gas resources: The Perspectives of civil society.* Nairobi: KCSPOG

19 Note as a creation of the Constitution of Kenya 2010, the CRA never existed before this time.

20 The last audited accounts for the year 2013/2014 budget period were 2010/2011.

21 Commission on Revenue Allocation. (2012). *Recommendations on sharing of revenue raised by the national government between the national government and county governments and among county governments for the financial year 2013/2014.* Nairobi: Commission on Revenue Allocation.

In recognition of the disparities between different regions, in the provision of basic services, the CoK 2010 further establishes an Equalization Fund to accelerate progress towards equality in marginalized areas. This Fund is specifically tasked to redress imbalances in basic services including water, roads, health facilities, and electricity in marginalised areas. Article 204 (1) allocates 0.5 per cent of the annual national revenue to be established for twenty years from the CoK 2010 coming into effect. This Fund is tied to key manifestations of inclusive development, thus: "to provide basic services including water, roads, health facilities, and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation so far as possible" (CoK 2010 Article 204 (2)). There are a total of 14 counties which have been identified by CRA as marginalised and that are therefore targeted to benefit from this grant. These are Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo, and Lamu.[22]

A critical law that governs the oil and gas sector is the Petroleum (Exploration and Production) Act Cap 308 of the Law of Kenya, which commenced on 16 November 1984 and was revised in 2012. The Act gives the Minister of Energy and Petroleum exclusive powers in determining the scope and extent of exploration of oil and gas in the country.[23] Article 6 delegates the power to the CS to regulate the negotiation and conclusion of Production Sharing Contracts (PSC)[24] with potential investors. Article 4(1) further stipulates that no individual can undertake any petroleum operation in Kenya without the permission of the minister. In other words, the CS enjoys overwhelming powers in the operationalisation of oil and gas exploration in the country. This has the intended or unintended effect of circumscribing the operational latitude of other stakeholders, hence inclining exploration activities to non-inclusive tendencies. This opposes the constitutional provisions which give stakeholders, such as the media and the civil society, raison d'être for their operations. This may create an enabling environment for inequitable distribution of resources, exclusion of key actors and local communities, and allowing opportunities for rent-seeking which yields to the marginalization and regional disparities characteristic of the Kenyatta, Moi, and Kibaki regimes.

It should be noted that the legislative framework for the oil industry is still at its incipient stage, which provides stakeholders with an opportunity to influence its evolution.[25] This

22 Commission on Revenue Allocation. (2013). *Criteria for identifying marginalised areas forpurposes of the Equalisation Fund.* Nairobi: Commission on Revenue Allocation.

23 Manrique-Gil, M. *In-depth analysis* (See footnote 2).

24 An agreement between a host government and an international oil company outlining obligations of each party and defining a mechanism for reward in the event oil and gas is discovered and economically recoverable. The PSC also gives an oil exploration company the rights to explore for hydrocarbons in a country.

25 There are various provisions in the Constitution of Kenya 2010 and other related legislations which demand that all the legislative processes must go through public participation. This is, therefore, the opportunity that all the stakeholders use to ensure that any law that is in the process of being enacted has adhered to the voice of the people.

perhaps gives the stakeholders opportunity to lobby for a legal regime that enables the realization of inclusive development before enacting legislation. The Energy Bill, 2014 and The Petroleum Exploration, Development, and Production Bill, 2014, which are currently in the final stages are expected to subsume the existing ones (The Energy Act, No. 12, 2006, The Petroleum Development Fund Act 1991 and The Petroleum (Exploration and Production) Act Cap 308, 1986, revised edition) and address in detail issues related to the exploration of oil and gas.

Despite the participatory nature of the legislation process,[26] which aims to involve all stakeholders in the drafting process of these new bills, the provisions of the bills still bequeath the Cabinet Secretary (CS) overwhelming powers in directing the policy process and regulating the industry. The CS enters into petroleum agreements with contractors, grants permits, develops regulations, and supervises petroleum operations.

While the bills theoretically devolve decision making powers from the CS to the Energy Regulatory Commission (ERC), the CS still remains an influencing figure as s/he appoints five of the members of the Commission including the Director-General of the ERC. The ERC comprises the chairperson who is appointed by the President upon the recommendation of the Public Service Commission, the Principal Secretary in the Ministry of Energy and Petroleum, and the Director-General who, along with five other commissioners, is appointed by the CS.

The Energy Bill further establishes a Sovereign Fund managed by the national government into which 5 per cent of the government share of the revenue accruing from the proceeds of petroleum is remitted (Article 131). These revenue proceeds are to be shared[27] amongst the national government, county government, and the local community with the county government getting 20 per cent of the government share of oil profit and the local community receiving one-quarter of the amount paid to county government (Article 135). However, the determination of both, the amounts payable to the fund and withdrawals to be made from the fund are left at the discretion of the CS, pending the approval of Parliament (Article 136[3]).

The bill further stipulates that proceeds and profits of the fund shall be utilised

26 The Constitution of Kenya 2010, under Art 118, provides for procedures to ensure public access and participation in the legislative process. For instance, it gives Parliament the responsibility to ensure that the public has access to the bills and gives inputs and opinion to the bills during the legislative process. In addition, every citizen has a right to petition the parliament to consider any matter within its authority, including enacting, amendment, and repeal of any legislation (Art.118 (1 & 2).

27 The revenue sharing formula between the national government, the county government (s), and the local community for the proceeds from natural resources remains a proposal, under the County Royalties' Bill. It is still under discussions, as at the time of the development of this paper.

for purposes of investment for the benefit of future generations. Some of the goals the fund is anticipated to achieve include (a) providing an endowment to support development for future generations when petroleum reserves might be depleted, (b) cushioning the impact on or sustaining public expenditure capacity during periods of unanticipated petroleum revenue shortfalls, and (c) enhancing the development of Kenyan infrastructure (Article 136).[28]

Other important pieces of legislation currently being drafted are the Natural Resources (County Royalties) Bill 2013 and the 2013 Community Land Rights Bill (CLRB). The County Royalties' Bill, drafted by the Senate, envisions a 75-20-5 split of the percentage of royalties to be paid to the national government, the county government, and local community respectively. This is essential to check against the tendency of the national government to determine the form and content of funds dispersed to county and the community. The CLRB is a crucial component in the establishment of appropriate revenue and profit sharing mechanisms, which would allow local communities to benefit from natural resources by allocating their fair share from the revenues accrued from the explorations.[29, 30, 31]

Moreover, Article 58 of the Environmental Management and Coordination Act compels the National Environment Management Authority (NEMA)[32] to control the explorations in the oil and gas sector through Environmental Impact Assessment which must meet set criteria before commencement of explorations. These assessments are conducted by experts accredited by NEMA in order to check any bias towards the exploring companies.[33]

Unfortunately, the laws will not provide for mandatory disclosures regarding the financial transactions of the explorations. They do not provide for a comprehensive mechanism compelling the government and the contractors to publish their financial reports, especially the share of revenues accrued from the exploration. The new reporting requirements of the Extractive Industries Transparency Initiative (EITI) such as mandatory contract disclosure, reporting

28 It is important to note that due to the fact that it remains a bill, it is not cast in stone as changes, positive or negative, can be input before it is enacted.

29 Brookings Africa Initiative Growth (2013). *Oil and gas management for inclusive and sustainable development: An East African regional forum.* Proceedings Report. Kampala, Uganda. January 23-24, 2013. Source: http://www.brookings.edu/~/media/research/files/papers/2013/3/07%20oil%20gas%20management%20africa/0307%20%20nrm%20conference.pdf. Accessed: 30/04/2015.

30 Manrique-Gil, M. In-depth analysis (See footnote 2)

31 Odote, C. (2013). *The Legal and Policy Framework Regulating Community Land in Kenya: An Appraisal.* Friedrich Ebert Stiftung.

32 For the composition of National Environment Management Authority. Source: http://www.nema.go.ke/index.php?option=com_content&view=category&layout=blog&id=79&Itemid=475. Accessed: 30/04/2015

33 Petroleum Institute of East Africa. (2013). *Report of the First East African Upstream Summit.* Nairobi: Petroleum Institute of East Africa.

on winning bids, and justifications during a public tender licensing for oil blocks, disclosure of beneficial ownership information, reporting on expenditure from oil revenues have not been covered in the Countys Royalities Bill.[34]

Article 35 of the CoK 2010, on the Bill of Rights, establishes the right of access to information for all Kenyans. Currently, the Ministry of Information, Communication, and Technology is in the process of drafting legislation introducing a framework through which citizens can access information held by public bodies. If enacted in its current form, the Freedom of Information Bill, which has stalled, would revolutionize access to information in the country and play a critical role in enhancing transparency in the oil and gas industry.[35] This would enhance the mechanism which is anticipated to be put into place if the EITI principles are implemented by the country.

3.3 Institutional Framework

The CoK 2010 provides the overall institutional framework that outlines how the relevant stakeholders are to be integrated into the management and allocation of resource revenues. This includes a number of organizations that encompass the national and county government, constitutional bodies, the general citizenry, and civil society actors.

A legislature that effectively carries out the three core functions of oversight, representation, and lawmaking is critical to the success of natural resource management. This is because parliament is the only public oversight institution with the constitutional mandate to oversee the implementation of policy by the government, scrutinize public expenditures, influence and shape policy through the lawmaking process, and represent citizen concerns and needs in decision-making.

The CoK 2010 entitles Parliament to act as a representative of the public in ensuring equitable allocation of resource revenues and monitoring utilization of the same. Article 95 (4) stipulates that the National Assembly shall determine the allocation of national revenue between the levels of government according to a stipulated criteria and appropriate funds for expenditure by the national government and other national state organs (CoK 2010 Article 95). Therefore, Article 95 puts in place an enabling legal framework and guidelines for the allocation of revenue. The criteria is set out in the National budget, which has to be passed by the parliament, as well as the expenditures as provided for in the

34 KCSPOG. Setting the agenda (see footnote 18).

35 This is a deliberate move, because the government is not keen to open up access to informa tion by the public. It will open up the information on the deals, agreements and contracts entered into, many of which are mere conduits for misuse of public resources. The implica tions of this are dire, especially as regards accountability, integrity, and transparency.

Appropriation Bill for every fiscal year. On the other hand, Article 217 provides that the Senate determines the allocation of national revenue among counties.[36]

Through its legislative function, parliament is responsible for drafting and reviewing bills, as well as passing legislation needed for effective natural resource management. Through their lawmaking functions, legislators are enacting comprehensive legislation in order to develop a more coherent legal and regulatory framework for the industry and address the complexity of issues that a comprehensive natural resource management framework requires.

Parliament is uniquely positioned to understand and monitor the effects of extractive industries on citizens and act as a bridge between the government, private sector, and civil society. Through its representative function, parliament has the position to ensure that the voices, preferences, and interests of the public are heard, respected, articulated, and factored into the decision-making process. In reality, however, parliaments are known to compromise the supreme responsibility of oversight, representation, and articulation of the people's interests with political party interests, selfish rent-seeking interests.

More importantly, Parliament ratifies grants and gives concessions for exploiting natural resources. In fact, the Petroleum Bill subjects all petroleum agreements to parliamentary ratification (Article 140 [1]).

Two other critical institutions in public finance are the CRA and the Controller of Budget (CoB). The principal function of the CRA is to make recommendations[37] on sharing revenue between national and county governments as well as among county governments (CoK 2010 Article 216). The CoB is meant to oversee implementation of national and county government budgets by authorizing withdrawals requested by governments towards their respective recurrent and development expenditures from public funds under Articles 204, 206, and 207.

The Petroleum (Exploration and Production) Act provides an elaborate layout of the other key institutions that play a critical role in the management of the oil and gas sector. The Ministry of Energy and Petroleum is the most influential actor in the sector because it is charged with key responsibilities in the exploration of natural resources. The CS is the one who, on behalf of the government: negotiates, enters into, and signs petroleum agreements with a contractor; grants non-exclusive exploration permits; and supervises petroleum operations carried out under a petroleum agreement (Article 5 of

36 This is the case with the development of the County Royalties' Bill by the Senate. However, the royalty bill is only in reference to the revenues accruing as a result of the sale of natural resources; whereas the allocations mentioned here are all the revenues entitled to the county governments by the national government, including the percentage of the royalties.

37 The CRA presents its recommendations to the parliament (the Senate and the National Assembly) for discussion and adoption.

the Petroleum Act). However, nowhere does the Act give prominence to the involvement of the citizenry and civil society actors in the sector. The new Petroleum Bill retains these functions intact and therefore, the CS remains a very influential actor in the industry.

The National Oil Corporation of Kenya [NOCK], Kenya Pipeline Company [KPC], Kenya Power and Lightning Company [KPLC], ERC, and Kenya Petroleum Refineries Limited (KPRL], among others, are also key actors in the oil and gas sector, but they are under the control of the CS[38] who is in-charge of appointing the heads of these institutions. NOCK participates in upstream and downstream petroleum operations. It was established to facilitate and participate in the exploration for petroleum products. NOCK also acts as a government agent tasked to compile national energy data and run petroleum laboratories and the development of alternative fuels.[39] The ability of NOCK to effectively execute its mandate is constrained by its limited capacity in terms of financial resources, technical resources and scope which has left the CS controlling most operations in the sector.

The Energy Bill entitles the ERC to: (a) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the energy sector; (b) monitor compliance of the provisions of petroleum and coal exploration and production contracts; (c) make and enforce directions to ensure compliance with the Act and with the conditions of licenses issued under the Act (Article 13); and (d) protect consumer, investor and other stakeholder interests (Article 12). However, the same bill also gives the aforementioned powers to the CS. In any case, apart from the chairperson who is appointed by the President, the rest of the commissioners are appointed by the CS giving him/her powerful influence through his/her appointees. This runs the risk of providing space for exclusionary tendencies in the appointment process, skewing the process in favour of the interests of the CS, especially if the interests of the CS are not in line with those of the stakeholders.

Moreover, the Energy Bill establishes an inter-ministerial committee, the National Fossil Fuels Advisory Committee (NAFFAC) to advise the minister on the PSC negotiations.[40] This important body lacks representatives of other key stakeholders in the sector as it is purely made of government representatives.

38 The Cabinet Secretary is the executive head of the ministry under the Constitution of Kenya 2010. This replaced the position of the Cabinet Minister.

39 Community Action for Nature Conservation. (2012). National Civil Society Oil and Gas Conference Report on the Theme: "Towards enhancing greater transparency, accountability and good governance in oil and gas development (exploration and production) in Kenya". 4 December 2012, Boma Hotel, Nairobi.

40 NAFFAC is composed of the Principal Secretary in the Ministry of Energy and Petroleum, Managing Director of NOCK, the Attorney General, CS of the National Treasury, Commissioner of Petroleum Energy in the Ministry of Energy and Petroleum, Chief Geologist in the Ministry of Energy and Petroleum, Director General of NEMA, Commissioner General of the Kenya Revenue Authority, and Commissioner of Mines and Geology.

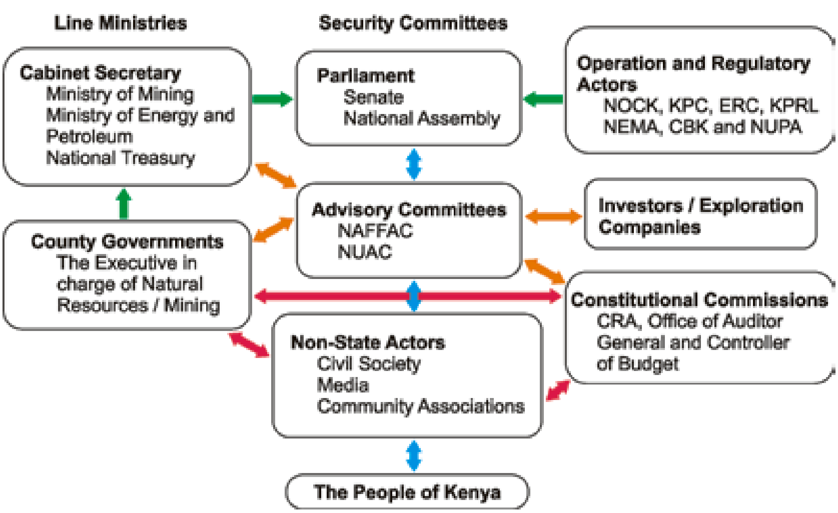
It excludes other stakeholders such as the private sector, the civil society, and community representatives.

Despite attempts to shrink the operation space of the CS, s/he still enjoys enormous powers through the authority to supervise petroleum operations, sign or revoke a petroleum agreement, register contractors, reject any advice from the NAFFAC, and control the operationalisation of blocks, etc (Article 140-4 CoK). The CS of Mining, Energy and Petroleum therefore remains influential in the sector.

The laws, which are under deliberation, seem to lack the inclusion of an institutional framework through which the civil society and indigenous communities could oversee the operationalisation of the exploitation of the oil and gas sector. More importantly, there is need for a channel to voice the needs and concerns of the local community and non-state actors (civil society, the media, private sector associations, and others). Non-state actors play a leading role in ensuring that the voices of the people are incorporated in the policy and legal decisions that affect them both directly and indirectly, therefore the institutional structure below places them right next to the people of Kenya.

Evidently, apart from the concern raised above as regards the institutionalized inclusion of CSOs and indigenous communities, the CoK 2010 and relevant legislations theoretically provide an elaborate framework to work as a foundation for ensuring inclusive development and monitoring the use of oil and gas revenues. The challenge remains in effective implementation of these provisions, which demands an inclusive approach, with a deliberate decision to involve all the key stakeholders in the process.

The Institutional Structure of Oil and Gas Sector



4. The Kenyan State: Towards Inclusivity

The Africa Progress Panel Report contends that transparency and accountability are the twin pillars of good governance. Transparency equips citizens with information on the level of resource wealth, how it is managed, and who benefits. It enables the public to monitor the activities of governments and concession holders. It also helps to facilitate open debate and build consensus. Accountability is about creating structures through which governments become answerable for their actions.[41] Together, transparency and accountability are the key prerequisites for effective management of natural resources and inclusive development – a foundation that is currently underdeveloped in most African countries.

In the Kenyan context, lack of transparency and accountability has been detrimental to the integration of inclusive development into the emerging oil and gas sector. In fact, weak mechanisms of transparency and accountability have engendered weak checks and balances and a restricted regulatory capacity, which makes the sector prone to corruption. This could result in the mismanagement of oil and gas resource revenues and the inability to achieve inclusive development as revenues are diverted.

According to discoveries of oil from 2012 through September 2014 in Turkana County, Ngamia area is reported to have 660 million barrels of oil, Amosing with 231 million barrels, Amosing with 142 million, Twiga with 142 million barrels, and Agete with 231 million barrels. However, Kenya's chequered history in resource allocation has raised fears that the revenues accruing from the oil and gas exploration might end up benefiting mostly those who are in control of political and economic power and their clients (i.e., kin from their geographical settlements) at the expense of generating widely distributive gains for all. It is this widely publicized "resource curse" [42] in the Global South, and more specifically, in Africa that Kenya must guard against if it is to actualize inclusive development through the evolving oil and gas sector.

Following the discovery of oil in the country, the Government embarked on institutional reforms with the aim of building a strong institutional environment for regulating the upstream petroleum sector. The proposed reforms have been compiled in the new Petroleum Exploration, Development and Production Bill 2014. The proposals seek to create new institutions and to realign the role of some existing institutions. Two new institutions that have been proposed are a National Upstream Petroleum Authority (NUPA) and a National Upstream Advisory Committee (NUAC). NUPA shall be the regulator of upstream

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41 Africa Progress Panel. (2011). *Equity in Extractives: Stewarding Africa's natural resources for all.* Geneva: Africa Progress Panel.

42 A situation where mineral wealth has negative political and economic effects leading to slower or declining economic growth and authoritarian regimes.

operations and NUAC will take the entire role of NAFFAC. Unlike the ERC, which has regulatory oversight on the entire energy sector, NUPA's role will only focus on the upstream sector. The ERC will, therefore, stop its coverage of upstream operations. With regard to NUAC, it is not clear yet if NAFFAC will be abolished or assigned other responsibilities. NAFFAC was established to and still is carrying out the following responsibilities:[43]

- Advise the Cabinet Secretary of Energy on petroleum and coal exploration
- Negotiate the terms of licenses of petroleum and coal blocks for exploration, production and development with investors
- Create and sub-divide new exploration blocks and establish a national petroleum data centre[44]
- Build local technical capacity in petroleum exploration

Despite the strides which have been made with the enactment of the CoK 2010 and the introduction of devolved government, the achievement of inclusive development still remains a goal that Kenya aspires to actualize. The national government remains unable to let go of centralization of power and remains in control of the key processes in the oil and gas sector. More importantly, avenues for citizen participation remain stifled as the government continues to be the predominant actor in the industry. As such, those in control of political and economic power, and their kindred and clients, continue to be the main beneficiaries of resource revenues.

Communities residing in areas where oil and gas has been discovered are already becoming disillusioned due to a lack of immediate benefits from these discoveries, for example, through unskilled labour absorption. In October 2013, members of the local community in Turkana stormed the Tullow Oil compound demanding jobs from the company. This demand compelled the company to increase its financial commitments to social development and the national government to provide greater security at the drilling sites.[45] An evaluation by the International Working Group on Indigenous Affairs demonstrated the gravity of the situation. For instance, the evaluation of the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) infrastructure project in Kenya found that in vulnerable pastoralist communities, such as Orma, Wardei, Samburi, and Borana, the companies were clearly less concerned with the people's land rights and livelihoods.[46]

43 Republic of Kenya, 2014. *Draft National Energy Policy 2014.* Unpublished. Source: http://www.energy.go.ke/downloads/National%20Energy%20Policy%20-%20Final%20Draft.pdf. Accessed: 22/12/2014.

44 See Ministry of Energy and Petroleum (2012). *National Energy Policy. Third Draft.* Source: http://www.kplc.co.ke/fileadmin/user_upload/Documents/05-2012/Media/National_Energy_Policy_-_Third_Draft_-_May_11_2012.pdf, pg. 32. Accessed: 30/04/2015.

45 Manrique-Gil, M. *In-depth analysis* (See footnote 2)

46 ibid

There is a possibility that these protests could have been fuelled by the lack of legislation and policy that could give a clear vision of profit-sharing arrangements, local content, land rights and mechanisms for local communities to voice their complaints (such as an oil ombudsman).[47] On a positive note, the evolving legislative process is likely to create mechanisms to address these concerns since lack of transparency is one of the key sources of tension between communities and governments/exploration firms. However, there is need to ensure that communities receive all the information and in formats that are useful and accessible.[48]

The government has also been compelled to manage the expectations which come with the discovery of oil and gas. In order to manage the expectations of communities, NOCK has been sensitizing people by sharing factual information so that they understand that it takes time before the benefits associated with oil and gas exploration can be realized. They have endeavoured to explain to communities what exploration entails and the parameters for the envisaged benefits in terms of revenue sharing.[49]

In light of the recent resource windfall, the above assessment questions whether the Kenyan government can ensure that the framework for inclusive development, provided by the CoK 2010, can be actualized once these resources begin to generate revenues.

In order to inform this debate, the following section draws lessons from the experience of Ghana that can inform Kenya in effecting a positive relationship between oil and gas exploration and inclusive development.

5. Lessons from the Ghanaian Experience

Having laid out the political, legal, and institutional framework that governs the management of oil and gas revenues and highlighted the challenges involved in executing the regulatory framework, this section of the paper teases out the lessons that can be derived from the Ghanaian experience. It explores how Ghana has handled the exploitation of oil and the management and distribution of oil revenues. To do so, the section draws on over one-and-a-half decades of Ghana's experience in the sector, outlining positive lessons to learn from and negative ones to avoid as alternatives to overcoming them are crafted.

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47 Vasquez, P. (2013). Kenya at a crossroads: *Hopes and fears concerning the development of oil and gas reserves. International Development Policy.* 5/2.

48 Institute for Human Rights and Business, Kenya National Commission of Human Rights and United Nations Human Rights. (2012). *Avoiding the resource curse: Advancing human rights within the oil and gas sector in Kenya. Conference Report.* Intercontinental Hotel, Nairobi, Kenya, 6 November 2012.

49 Community Action for Nature Conservation (see footnote 39)

The Africa Progress Panel Report 2013 has adopted three key themes which were identified as the most relevant aspects of the extractive industry governance agenda. These are: first, managing state companies and concessions to prevent resource diversion and the undervaluation of assets; second, collecting taxes and royalties to secure a fair share of resource revenue for the public purse; and, third, achieving a wide distribution of benefits through equitable public spending.[50]

The Ghanaian experience demonstrates how these themes have been addressed in order to achieve inclusive development. Ghana has built on the foundation created through the Extractive Industries Transparency Initiative (EITI)[51] to build a new culture of openness in the oil and gas sector. It became a compliant member in October 2010 after satisfying all the relevant indicators. The aim of EITI is to strengthen governance in the extractive industry sector and to establish itself as the global standard for the promotion of revenue transparency.[52] This has enabled the timely release of comprehensible and reliable socio-economic and political information, which is accessible to all relevant stakeholders in the oil and gas sector.[53]

At a time when legislative oversight was weak, Ghana's EITI reports represented the most comprehensive source of information on oil and gas revenues. The information included production volumes, the value of mineral exports, the names of companies operating in the country, production data by company, production stream values, royalties, special taxes, dividends, and licence and acreage fees.[54] More importantly, the Ministry of Energy has put Ghana's most important petroleum agreements online.[55]

It has also been noted that an enabling policy, legal and regulatory environment[56] is a further prerequisite for enabling stakeholders of various types to organize

50 Africa Progress Panel. *Equity in extractives.* (see footnote 41)
51 The EITI is a global standard that promotes revenue transparency. It has a robust yet flexible methodology for monitoring and reconciling company payments and government revenues at the country level. Each implementing country creates its own EITI process which is overseen by participants from the government, compa¬nies and national civil society.
52 Fotinatos, E. (2011). *Getting it right: Lessons from the South in managing hydrocarbon economies.* New York: UNDP Special Unit for South-South Cooperation.
53 Bellver, A. and Kaufmann, D. (2005). *Transparenting transparency: Initial empirics and policy applications.* Washington, D. C.: Policy Research Working Paper.
54 Bell, J. C., Heller, P. and Heuty, A. (2010). *Comments on Ghana's Petroleum Revenue Management Bill.* Revenue Watch, New York.
55 Africa Progress Panel. *Equity in extractives.* (see footnote 41)
56 This refers to the laws and policies which are legislated by the parliament to provide the guidelines, institutional platforms, and structures for appropriate and structured involvement of the stakeholders in the process. For instance, while the constitution provides for the parliament enacting legislation to guide how the public participates in the governance process, none has been developed. Such a law will give the stakeholders the platform, resources, and strategy to engage in oil and gas governance.

and articulate their voices, and for implementing initiatives aligned with the priorities of the people they serve or represent. Therefore, in 2011, having become EITI compliant in the petroleum and mineral sector, Ghana enacted the Petroleum Revenue Management Act (PRMA). The legislation exceeds EITI standards and provides a strong framework for public accountability through disclosure of public expenditures and regular scrutiny by the Public Interest and Accountability Committee (PIAC). Apart from establishing rigorous rules for reporting on oil fund assets and investments, the PRMA created an independent regulatory body, the PIAC, to monitor compliance with the law, provide a platform for public debate, and assess the management and use of petroleum revenues.[57,58] The PIAC must publish semi-annual and annual reports in two state-owned newspapers, post the reports on its website, and hold meetings twice a year to discuss the reports with the public. The Committee also has to submit a copy of its semi-annual and annual reports to the president and to parliament. The auditor general provides external audits of the petroleum funds each year, while the Bank of Ghana conducts internal audits, with the governor submitting quarterly reports.[59]

Though the PIAC is an advisory body with no formal powers, it has significant leverage. The committee comprises 13 representatives of religious, traditional, and professional bodies; civil society and community-based groups; trade unions; and the Ghana Extractives Industries Transparency Initiative. The committee publishes bi-annual reports that have compelled the government to explain its performance. Its first report highlighted a 50 per cent shortfall between forecast and actual government revenues– which was due to uncollected corporate taxes.[60,61,62] However, it should be pointed out that Ghana has been able to achieve these improvements as a result of the requisite political will. The political will of all development actors to improve development policy and practice is an important aspect for achieving inclusive development. Practice has shown that legislations and institutions cannot deliver much without political will.

Resource revenue flows are often unpredictable, making robust public finance management vital if maximum benefits are to be accrued. This enables a country to focus on public spending that reaches the most marginalized communities, especially with regard to basic services. In order to guide the efficient collection,

57 Bell, Heller, and Heuty. *Comments on Ghana's Petroleum Revenue* (see footnote 54)
58 Africa Progress Panel. *Equity in extractives.* (see footnote 41)
59 International Monetary Fund (IMF). (2011). *Fifth review under the three-year arrangement under the extended credit facility and request for modification of performance criteria.* IMF Country Report No. 12/36.
60 Public Interest and Accountability Committee (PIAC). (2012). *Report on petroleum revenue management for 2011 – Annual Report.* Ghana: PIAC
61 Bell, Heller, and Heuty. *Comments on Ghana's Petroleum Revenue* (see footnote 54)
62 Africa Progress Panel. *Equity in extractives.* (see footnote 41)

allocation, and management of revenue from oil resources, two petroleum funds have been established within the framework of the PRMA. These are the Ghana Petroleum Funds which consists of the Ghana Heritage Fund, designed to provide endowment for future generations, and the Ghana Stabilisation Fund, that is designed to cushion the impact of unanticipated petroleum revenue shortfalls.[63] Legislation allows the government to use 70 per cent of oil revenues to support its budget and as collateral for loans. A minimum of 30 per cent of revenues are to be saved in the petroleum funds – 9 per cent in the Heritage Fund and 21 per cent in the Stabilisation Fund.[64,65,66] The Ghanaian experience provides a number of lessons which are critical in ensuring that Kenya actualizes the goal of inclusive development:

The first lesson is to adopt the global common standard for transparency such as the EITI in which natural resource transparency is critical to inform dialogue, enhance coordination and seek synergies, and jointly monitor whether development results are reaching those that are most in need. Clause 8 of the PRMA requires the publication of records of petroleum receipts in the newspapers and online. Clause 16 requires the Minister of Finance to reconcile quarterly petroleum receipts and expenditures and submit reports to Parliament as well as publish the reports in the newspapers.

Clauses 46 to 48 provide for four different types of audits of the petroleum accounts: internal audits, external audits, annual audits, and special audits. Clause 50 requires the Minister of Finance to submit an annual report on the Petroleum Account and the Ghana Petroleum Funds as part of the annual presentation of the budget statement and economic policies to Parliament. Clause 51 provides that information or data, the disclosure of which could significantly prejudice the performance of the Ghana Petroleum Fund, may be declared by the Minister as confidential, subject to the approval of Parliament. However, it further requires detailed explanations on why the information should be held confidential and that confidentiality shall not limit access to information by Parliament and the Public Interest Accountability Committee. Clause 52 criminalizes the failure to comply with the obligation to publish information under the bill.[67]

Therefore, it is imperative that Kenya emulates what has been achieved under the EITI and adopt best-practice standards for the disclosure of contracts by placing all extractive industry contracts online, translating them into relevant

63 Ghana Civil Society Platform on Oil and Gas (GCSPOG). (2011). *Ghana's oil boom: A readiness report card.* Accra: GCSPOG.

64 Brazilia, M. et al. (2013). "Oil, Energy Poverty and Resource Dependence in West Africa." J*ournal of Energy & Natural Resources Law.* Vol. 31, No. 1.

65 KCSPOG. *Setting the agenda.* (see footnote 18)

66 PIAC. *Annual Report* (see footnote 60)

67 GCSPOG. *Ghana's oil boom* (see footnote 63)

languages, and facilitating national dialogue over the same. The government should work towards early compliance with the EITI; support the strengthening of EITI disclosure standards; and subject the operation of state companies, as well as foreign investors, to EITI standards.

Second, Kenya should seek avenues that boost linkages, value addition, and diversification in the oil and gas sector, such as: add value by processing natural resources before export; forge links between extractive industries and domestic suppliers and markets to contribute towards value addition; and structure incentives to favour foreign investors who build links with domestic suppliers, undertake local processing, and support skills development. Strengthening linkages and adding value are critical if the benefits of resource extraction are to be spread more widely.[68] Tied to this is the human resource development of the locals so they can be employed in highly specialized and high-paying jobs. Kenya can thus follow the Ghanaian path and embark on education and skills development, including training in technical skills and upgrading the mining university to cover programs in oil.[69]

In fact, Ghana based its local-content policy on the Trinidadian model. Trinidad and Tobago proactively addressed the issue of local content in its energy sector by engaging the business community in a broad-based effort to train its workers, build capacity for small enterprises, and continue to develop technology for the petroleum industry. Ghana also sought out Trinidadian support to replicate its successes.[70]

Third, Kenya needs to proactively initiate stronger public participation, by conducting workshops/meetings that can form the foundation for drafting a work plan and framework before flows of oil and gas revenues commence.[71] The framework should advocate for a strong and proactive involvement of the civil society. Afrimap (2007) assigns some of the relative democratic success of Ghana to the country's vibrant civil society.[72] Contributions by civil society range from input in policy dialogues, outreach to grassroots, agenda setting, and increased political participation. To increase their influence, civil society actors often join together in issue specific coalitions, something that has given civil society actors a legitimate role in Ghana's political landscape. In relation to oil management, over 100 civil society actors gathered in 2010 to establish the

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68 Africa Progress Panel. *Equity in extractives.* (see footnote 41)

69 Africa Development Bank (ADB). (2012). *Republic of Ghana country strategy paper 2012-2016.* ADB Country Operations Department – West 1 Region.

70 Fotinatos, E. (2011). "The Extractive Industry Transparency Initiative: Moving Beyond Petroleum Industry Transparency." (see footnote 52)

71 ibid

72 Afrimap et. al (2007). Ghana. *Justice Sector and the rule of law. A discussion paper.* Dakar: Open Initiative for West Africa. Source: http://www.afrimap.org/english/images/report/AfriMAP_Ghana%20JusticeDD.pdf, pg. 5. Accessed: 30/04/2015.

Civil Society Platform on Oil and Gas, a civil society coalition aiming to ensure good governance of oil resources.

The Government of Ghana, through the Ministry of Finance and Economic Planning, provided the opportunity for citizen participation through nationwide forums on the proposals for managing petroleum revenues. The Ministry of Energy also published a draft of the local content policy as well as held public forums in parts of the country to solicit public views on how Ghanaians could benefit from the industry.[73] If Kenya adopts such public engagement then successes and failures shall be owned by both the government and the people.

Fourth, Kenya should ensure equity in public spending. This can be done by strengthening the national commitment to equity that would be the foundation for inclusive growth. Finance generated by the development of oil and gas should be directed towards the investments in health, education, and social protection that are needed to expand opportunity, and towards the development of the infrastructure needed to sustain dynamic economic growth.

Fifth, Kenya needs to put in place legislation that establishes clear fiscal policies, contractual arrangements, and regulatory regimes by creating a stable climate that is conducive to long-term investment by extractives companies. This will avoid the development of "patchwork" regimes based on case-by-case negotiations and it will result in support for wider strategies for inclusive growth and poverty reduction. As noted above, Ghana's PRMA created an independent regulatory body, the PIAC, to ensure compliance in the management and use of petroleum revenues.

Sixth, Kenya should create a Petroleum Tax Unit. The Ghana Revenue Authority has created a Petroleum Tax Unit that focuses exclusively on the oil and gas sector. More importantly, they have significantly enhanced the capacity of staff members to monitor contracts and collect taxes. The onus is on the Kenyan government to develop a fully-fledged petroleum tax unit in order to curb to tax evasion loopholes.[74]

Seventh, the government needs to create a mechanism for auditing payments by oil companies. The capacity of the Office of the Auditor General should be enhanced in order to competently undertake audits of oil company payments, including audits of company costs to the project.

Lastly, the Kenyan institutional architecture needs to provide a framework through which civil society actors, and by extension the general citizenry, can monitor the operations in the oil and gas sector and ensure that they are compliant with international best practices.

73 GCSPOG. *Ghana's oil boom* (see footnote 63)

74 ibid

What Kenya should emulate is not mirrored in the institutions and mechanisms that Kenya already has or is in the process of putting in place. Kenya has a good, enabling legal and policy framework, but the challenge is in implementation. And it is at this level that actors such as the media, the civil society, and the international development partners are central in guaranteeing that the sector plays a catalytic role in realising inclusive development in the country.

However, Ghana has its own shortfalls which Kenya should ensure do not hinder its prospects of actualizing inclusive development. First and foremost, Ghana commenced oil production without the requisite legal and regulatory framework, especially a national policy on oil and gas development and a revenue management law.

Second, Ghana is exporting crude oil, not value-added petroleum products. Kenya should attempt to enter into an agreement that emphasises refinery capability building which would enable the production of value-added exports. More importantly, this would maximize revenue generation and growth of the economy.[75]

6.0 Conclusion

Ensuring that oil and gas revenues contribute to inclusive socio-economic development is not a technical exercise, but first and foremost, a political process. While it is a fact that the requisite legal, regulatory, and policy framework is being put in place, these initiatives will only work if they are backed with the requisite political will.

The experience with Sessional paper no. 10 of 1965 should be a foundation for lessons learnt that should not be replicated in the post 2010 constitution and vision 2030 framework. More importantly, the national and county governments should work in tandem, in addition to inculcating participatory democracy so as to stay true to the spirit of inclusive development. Sessional Paper No. 10 was about developing the potential areas and then using the gains to redistribute to the non-potential areas. However, while a lot was invested in the potential areas and gains accrued from the same, the redistribution never occurred. In light of this failure, devolution is meant to ensure that equitable development is achieved in Kenya irrespective of whether a county is classified as potential or non-potential.

Towards this end, the study proposes that Kenya should, first, adopt the global common standard for natural resource extraction transparency as a way of ensuring that development accruing from these resources reaches those who

75 Makerere University Convocation. (2013).*Oil management and its utilization for economic Development: The case of Ghana.* Kampala: Makerere University.

need it most. Second, the Kenya government should create a framework for a strong and proactive involvement of the civil society in the oil and gas sector to ensure good governance of oil resources. Such public engagement will ensure that successes and failures are owned by both the government and the people. Third, Kenya should ensure equity in public spending of finance generated from the oil and gas sector so as to reach all communities, including those in marginalized areas. Finally, Kenya needs to put in place legislation that establishes clear physical policies, contractual arrangements, and regulatory regimes geared towards creating a stable climate that is conducive to long term investment by extractive companies in order to make inclusive development predictable and not subject to the whims of predatory ruling elites.

Oil and Gas Revenues in Tanzania
Potentials for Inclusive Development

Executive Summary

The recent discoveries of gas in commercially viable quantities in Tanzania have attracted both national expectation and international attention and are expected to contribute greatly to the growth of the country's economy.

However, in many developing countries throughout the world, problems arise from the inequitable distribution of national wealth resulting from revenues of the natural resource sector.

This paper focuses on the developments in the oil and gas sector in Tanzania by highlighting the potential for fairly distributing revenues from this sector within the country.

In this regard, the term Inclusive Development (ID) is elaborated as a key word for a holistic approach that is all-inclusive in fostering development within the country's various population tiers. This development includes not only measurable indicators such as the quantitative figure of Gross Domestic Product (GDP), but also qualitative indicators like the enhancement of well-being within society.

With special emphasis on the oil and gas sector in Tanzania, the political, legal and institutional endowments are highlighted in analyzing power structures and possible devia-tions from ID.

The paper finds that the Government of Tanzania has, of late, taken important steps that can pave the way for inclusive development in the petroleum sector. Recently passed legislation such as the Petroleum Act of 2015, the Tanzania Extractive Industry (Transpa-rency and Accountability) Act of 2015 and the Oil and Gas Revenue Management Act of 2015 provide a good basis for the fair distribution of petroleum revenues. However, lessons from other countries suggest that the existing legal framework remains incomplete and that the transition from theory to practice remains a major challenge. Moreover, entrenched power structures in Tanzania's political system and the history of the country's mining sector cast doubt on whether an inclusive development process can be achieved.

List of Abbreviations

ACORD	Agency for Co-operation in Research and Development
AGI	Africa Growth Initiative
ASP	Afro-Shiraz Party
BoT	Bank of Tanzania
C-SAR	Centre for Strategic Analyses and Research
CCM	Chama cha Mapinduzi
CSR	Corporate Social Responsibility
CSO	Civil Society Organization
EPRC	Economic Policy Research Centre
EWURA	Energy and Water Utilities Regulatory Authority
GBS	General Budget Support
GDP	Gross Domestic Product
GoT	Government of Tanzania
HIPC	Highly Indebted Poor Countries
ID	Inclusive Development
JET	Journalists' Environmental Association of Tanzania
KIPPRA	Kenya Institute for Public Policy and Analysis
MDG	Millennium Development Goals
MEM	Ministry of Energy and Minerals
MKUKUTA	Tanzania's Poverty Reduction Strategy Programme
MPSA	Model Production Sharing Agreement
NGO	Non-Governmental Organization
NGRF	Natural Gas Revenue Fund
NGPA	National Gas Policy Act
NOC	National Oil and Gas Company
NRGI	Natural Resource Governance Institute
NSGRP	National Strategy for Growth and Reduction of Poverty
PPP	Purchasing Power Parity
PSA	Production Sharing Agreement
PUR	Petroleum Upstream Regulator
PURA	Petroleum Upstream Regulatory Authority
RWA	Revenue Watch Institute
TANESCO	Tanzania Electric Supply Company Limited
TANU	Tanganyika National Union
TEITI	Tanzania Extractive Industry Transparency Initiative
TPDC	Tanzania Petroleum Development Corporation
TRA	Tanzania Revenue Authority
UNDP	United Nations Development Programme
URT	United Republic of Tanzania

1. Introduction

Tanzania, like other countries in the East Africa region, recently discovered vast quantities of petroleum resources. These resources – major off-shore natural gas reserves in this case – bear the promise of lifting Tanzania from its current status as a country of low human development to a middle-income country in the coming years, as stated in its national development strategy.

However, when regarding the petroleum sector and its prospects from an inclusive development (ID) point of view, caution should be exercised and exaggerated expectations should be avoided. The petroleum sector, by its nature, does not employ a high number of workers. Direct participation in the petroleum workforce is, therefore, impossible for the majority of Tanzanians.

Bearing this in mind, the gas findings in the country will only support a process of inclusive development if (a) linkages between the petroleum sector and sectors that employ a greater number of Tanzanians are established, especially the agricultural sector and (b) if the revenues obtained from the sector are invested in a way that benefits all Tanzanian citizens. By all Tanzanian citizens, the authors do not only mean all members of today's society but also future generations. Gas deposits are finite resources that if depleted today, will not be there for exploitation by coming generations. The sustainable management of these resources, investment in different sectors (diversification), revenue savings and the protection of the environment from potentially hazardous activities of the gas industry are, therefore necessary to safeguard the interests of future generations and enable a process of truly inclusive development.

Transparency and accountability of the institutions that govern the sector are necessary prerequisites for a process of inclusive development. Consequently this study focuses on the political, legislative and institutional framework governing the sector in order to explore and outline potentials for inclusive development.

The paper is structured as follows: Chapter two provides an introduction to the concept of inclusive development and outlines the analytical framework of the study. Chapter three examines the political, legal and institutional framework for managing natural resources in Tanzania, alongside a brief introduction to the current status of and recent developments in Tanzania's petroleum sector. The chapter also discusses national policies and legislation, with a special emphasis on the three recently passed Acts governing the sector, namely the Petroleum Act of 2015, the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015 and the Revenue Management Act of 2015. Additionally, it outlines the main governmental institutions regulating the sector and other actors and stakeholders that are active in the Tanzanian gas sector. Chapter four discusses the redistributive potential of the outlined framework with a focus on the contribution to inclusive development. Chapter five provides a brief analysis of the petroleum sector in Timor-Leste and draws conclusions from the country's experience for the Tanzanian context. And finally, Chapter six sums up the findings and concludes the study.

2. Definition of Inclusive Development

Equitable distribution of revenues from natural resources is often a key challenge in resource-rich countries; yet these resources constitute a great opportunity to reduce poverty and inequality among and between different population groups. Poor governance and imbalanced power structures often leave room for individuals to enrich themselves while large parts of the population cannot benefit from the wealth created from natural resources. Economic wealth, however, is only one way of defining the development of a country (UNDP, n.d.). Nowadays, the term ID is used to describe a multi-dimensional approach to development that looks beyond the quantitative dimensions of growth by focusing on qualitative aspects like the well-being of individuals and decreasing levels of inequality with regard to access to health, education, and other physical and social facilities, among others. ID is a very broad term and refers to the improvement of the distribution of well-being along these dimensions (Kanbur & Rauniyar, 2010).

Inclusive Development is, therefore, a normative process that aims at ensuring that all marginalized citizens are included in the development process. ID consists of two basic concepts - Inclusion and Development.

Inclusion can be understood as a process or a goal to consider diversity as a fact and to appreciate these differences in daily life. Differences exist due to a range of factors – some universal (e.g. gender), some cultural (e.g. religion) and context-specific (e.g. education). Societies - with their values and legal regimes - are often seen as opponents of inclusion of all facets of live. Inclusion means involving everyone in a society at all levels, collaboration and networking – in short, meaningful participation. The concept of inclusion stresses the necessity to empower citizens to participate during decision-making and implementation stages and to take different perspectives into account at all levels.

The second word which has to be defined in the term ID is 'development'. The richest ten percent of people in the world own 85 percent of all assets, while the poorest 50 percent own only one percent. Inequality in terms of money is a core challenge that ID aims to target. The United Nations Development Programme (UNDP) focuses on a definition of development that includes poverty alleviation, civil society participation and the standards and principles of human rights: participation, non-discrimination and accountability. ID is often set in line with the Millennium Development Goals (MDGs) because development for different gender groups is not defined solely by economic target values.

Within the sociological literature, two major concepts are provided to achieve inclusion. The first recommends a focus on society removing the barriers that exclude groups from equitably participating within the society. The second dimension of inclusion focuses on the group of persons who are excluded, to build up their capacities and support them by lobbying for their inclusion. In Europe, for example, inclusion plays a vital role in the educational sector where Non-Governmental Organizations (NGOs) struggle for common education possibilities for children with and without disabilities (Burtscher et al., 2013).

In Sub-Saharan Africa, the meaning of the term ID has to be enhanced, given the high levels of inequality and the high number of people who are excluded (Sembene, 2015) from their countries' development. The reduction of inequality should be central in these countries, and capacity measures have to be taken not only on a financial level but also in areas such as education and the provision of other social services. With regard to equitable access to a nation's wealth for all groups, enhanced mechanisms for civic participation should be explored, in order to empower marginalized groups within the society to voice their interests and to participate in decision-making processes. It is important to make decisions based on consensus in order to enable the people to own processes and developments in their country (UNDP, n.d.).

This study focuses on power structures, decision making processes, sustainability and the distribution of resource revenues, to provide a comprehensive view of ID in Tanzania that considers future generations and the environment in the context of the natural resource sector.

3. Political, legal and institutional frameworks for managing resource revenues in Tanzania

Revenues from natural resources can only be managed fairly if the frameworks for managing these revenues allow for all stakeholders within society to equitably benefit from them.

A look across its national borders reveals that beyond Tanzania, the whole East African Region has made large discoveries in exploitable gas and oil fields across South Sudan, Uganda, Kenya and Mozambique. As such, the topic of effectively managing oil and gas revenues is a relevant one for the region.

Discussions surrounding the sector and the identification of possible synergies have led the different stakeholders in the sector to cooperate and share knowledge and experience beyond national boundaries. In January 2013 for instance, leading policy think tanks in East Africa - the Economic Policy Research Centre (EPRC), Uganda; Kenya Institute for Public Policy and Analysis (KIPPRA); and Centre for Strategic Analyses and Research (C-SAR), South Sudan – in collaboration with the Africa Growth Initiative (AGI) – organized a two-day Forum on the Management of Oil and Gas Resources for Inclusive and Sustainable Development in Africa, discussing how to use the revenues generated in compliance with ID.

While the oil and gas discoveries present great potential for regional cooperation and integration, they also pose an important challenge to the region's governments, as they must balance the claims of the multi-billion-dollar oil investors and domestic demands mainly expressed by the national civil society. On the one hand, the Tanzanian government has to assure investors that their investments are safe from both financial mismanagement and political instability across borders, while on the other hand, they have to guarantee the population an adequate participation in generated revenues.

Therefore, good governance measures have to be taken to secure budget discipline and sophisticated financial and banking systems. Competitive auctioning processes and an enabling framework for inclusive development should be installed. East African countries must also establish predictable legal regimes that adhere to global transparency standards. This can contribute to creating critical trust in the ability of the region's governments to fairly handle oil and gas resources on behalf of their people. To do so, civil society actors such as think tanks, Civil Society Organizations and Non-Governmental Organizations are important players for checking policies and acts that are proclaimed by the government (Brookings, 2013).

3.1 Situation Analysis: Oil and Gas Sector in Tanzania

Recent research studies on gas resources have highlighted the importance of natural resources to Tanzania's economy and to local livelihoods. In Tanzania, more than 70% of the population live in rural areas and depend directly on agriculture and natural resources for their daily needs. At the same time, nearly 44% of the country's land area is governed by a conservation regulation, which has a bearing on the way people utilize and manage the resources on the land (Tanzania Natural Resource Forum, 2009). Because of these factors, good governance of natural resources is critical to the economy.

Oil and gas exploration in Tanzania dates back to 1952. British Petroleum and Shell International were the first companies to undertake oil exploration in the country and con-centrated their efforts in the Coastal Basin known as Zanzibar and Mafia. There was a pause on hydrocarbons exploration until 1969, when the government of the United Republic of Tanzania established the Tanzania Petroleum Development Corporation (TPDC). TPDC's establishment placed the government at the forefront of hydrocarbons exploration in the country because all exploration was to be conducted with or under TPDC's supervision.

According to TPDC, over the past 60 years, about 96 wells have been drilled in Tanzania, both offshore and onshore. Minister for Energy and Minerals, George Simbachawene, has said that the discovered amounts of natural gas stand at approximately 55 trillion standard cubic feet – enough to enable the country to become a major global player in the industry (Ng'wanakilala, 2015). The Tanzanian government hopes that the oil and gas sector will accelerate foreign direct investment and strengthen economic growth. The World Bank estimates total investments in the sector could be as high as USD 4-5 billion a year, generating annual government revenues of USD 3-6 billion. Foreign operators have had considerable success in gas exploration since 2010.

Although regulatory authorities, especially the Ministry of Energy and Minerals (MEM), TPDC and the Energy and Water Utilities Regulatory Authority (EWURA) emphasize the importance of exploiting oil and gas fields in order to benefit Tanzanian society as a whole, it is still unclear if Tanzania will learn from the experiences of other resource rich countries.

The impact of regulatory changes in the oil and gas sector will be augmented by increased state participation. Populist political calls for higher taxation and state management of Tanzania's natural resources are in line with the agenda pursued by the major political parties in the 2015 presidential elections calling for higher taxation and ownership of Tanzania's natural resource wealth. This has led to a controversial debate on how to manage natural resources within Tanzanian society. Increased investment in oil and gas, as well as popular accusations that the government has mismanaged the mining sector, have led to calls for tighter royalty schemes and other redistributive policies.

Tanzania will only receive meaningful benefits – in terms of ID – from its natural gas resources if it puts in place strong political, legal, regulatory and institutional mechanisms and frameworks that enable it to receive maximum benefits along the entire natural gas and oil value chain.

3.2 Political Framework

3.2.1 Regime type of the United Republic of Tanzania

The United Republic of Tanzania – the largest East African country in terms of geographical size – was founded in 1964, made up of the mainland (former Tanganyika) and Zanzibar (constituted by the islands Pemba and Unguja). Economically, the country is defined as a low-income country with a GDP of US$ 49.2 billion in 2014. In 2012 the World Bank estimated that more than 43 percent of Tanzanians live below the extreme poverty line of USD 1.25 Purchasing Power Parity (PPP) per day (Index Mundi, n.d.).

From 1964 until 1985 Tanzania was led by the socialist leader Julius Kambarage

Nyerere, leader of the Tanganyika National Union (TANU) party that ruled the single party state. Nyerere stepped down in 1985 after failing to deal with the rapidly deteriorating economy. The development strategy under the socialist state can be regarded as inclusive to the extent that the government's policies were aimed at treating all citizens equally to foster the feeling of belonging to one nation and overcoming ethnic and tribal boundaries. This was especially visible with respect to natural resources in the country (Arusha Declaration, 1967). However, decision-making processes were far from inclusive. Nyerere's willingness to admit to his mistakes and approval of a new political order permitted multi-party democracy and economic reforms.

Since independence, TANU – the political party that merged with the Zanzibar Afro Shiraz Party in 1977 to become CCM (Chama cha Mapinduzi) – has governed in Zanzibar and Mainland Tanzania. Political inclusion through the participation of heterogeneous groups of political leaders was already pursued during the single party system; and the CCM tried to enhance diversity by introducing a quota to pave the way for women to enter parliament. Women members must not make up less than 30% in the National Assembly (The Constitution of the United Republic of Tanzania).

In order to open up towards a pluralistic political system, the Eighth Constitutional Amendment (Act 4 of 1992) removed the one-party system of government and provided for multi-party elections for the Union Government in May 1992. Further amendments provided for multi-party elections and redefined political decision-making in Tanzania. Decentralization, rural participation and ownership of political programmes programs by the people were identified as key requirements for participatory development or ID (Meena 2003; The World Bank Group 2015).

Under the current governance structure, the United Republic of Tanzania (the Union) is divided into the Tanzanian mainland and the two semiautonomous islands of Zanzibar (Pemba and Unguja), which have their own constitution, parliament, government and budget. Democratic developments in the two parts of the country have unfolded differently. On the mainland, the one-party system gave way quite peacefully to a multiparty system, although the former single party, Chama Cha Mapinduzi (CCM), clearly controlled and dominated the process and only faced serious challenges from the new opposition parties in recent years, especially in the 2015 election. In Zanzibar, transformation was marked by violent clashes and the sustained repression of one opposition party, which was allegedly twice denied victories won at the polls. (Al Jazeera, 2015)

3.2.2 Governance structure

By world standards, Tanzania is a country that receives a high proportion of General Budget support (GBS). A study done by the NGO KEPA Tanzania showed that within the Financial Years 2006-2012, GBS declined from 16% in 2006-2007 to 8,7 % in the Financial Year 2011-2012 as a percentage of the national budget. At the same time, the study indicates that donors are moving away from GBS as an aid instrument.

Instead of GBS, more and more donors focus on earmarking their funds and channeling them to specific areas, rather than letting the Government of Tanzania choose where to invest the aid money in line with its development strategy. Possible explanations could include the lack of tangible poverty reduction, lack of progress on policymaking and implementation, the damage to Tanzania's reputation brought by corruption scandals, followed by the financial crisis and the rise of conservative politics in donor countries.

Combining GBS and earmarked project funds, approximately one fifth of the Tanzanian Budget is based on external sources, indicating a lack of sovereignty of the state. The shift from GBS towards earmarked project funding could be interpreted as a lack of confidence of donors in the government's ability to enhance ID (KEPA Tanzania, 2012).

The current focus of the Tanzanian government on partnerships between the state and the World Bank and/or other bilateral donors is officially bound up with the relative empowerment of poor states and their civil societies. There is widespread skepticism among academics regarding the balance of power relations within these partnerships.

3.2.3 Political Initiatives for ID in the oil and gas sector

Tanzania is characterized by high income disparities and unequal distribution of development chances, especially in the education sector. Several political programmes and strategies focus on ID throughout all sectors. Two cross-cutting programmes specifically highlight the aspect of ID.

MKUKUTA, the government's National Strategy for Growth and Reduction of Poverty (NSGRP) specifically highlights the aspect of ID. The Strategy aims to improve the standard of living and well-being of the Tanzanian people. It is a national framework for putting the focus on poverty reduction high on the country's development agenda, and is committed to the Millennium Development Goals.

As the nation's overarching economic policy and poverty reduction strategy for the past five years, MKUKUTA recognizes the centrality of natural resource management and good governance for attaining more effective development policies. It also highlights the significance of natural resource management for poverty reduction and economic growth efforts in Tanzania.

3.3 Legal framework

3.3.1 Existing and proposed national policies, laws and regulations

Tanzania has a comprehensive legal and regulatory framework regulating the petroleum industry in the country. The government has various substantive and subsidiary laws that govern upstream, midstream and downstream activities, starting with the Constitution of the United Republic of Tanzania. Other laws governing the sector are the Petroleum (Exploration and Production) Act of 1980, the Petroleum Act of 2008, the National Natural Gas Policy of 2013, the National Energy Policy of 2003 and the National Land Policy of 1995. In addition, the Government of Tanzania published the first draft of the Local Content Policy of Tanzania for Oil and Gas Industry in 2014 and the draft of a new National Energy Policy in 2015.

However, despite the existence of the above-mentioned regime, the Tanzanian government enacted new legislation in mid-2015 to address controversies and shortcomings of the existing laws. The new laws, namely the Petroleum Act, the Tanzania Extractive Industry (Transparency and Accountability) Act and the Oil and Gas Revenue Management Act were tabled before parliament under a certificate of urgency and passed into law in August 2015 (Breakthrough Attorneys, 2015).

The Proposed New Constitution

During his 2011 New Year address, President Jakaya Kikwete announced that he would form a Constitution Review Commission to coordinate and supervise a process of making a new constitution. The draft constitution– presented by the Constituent Assembly to President Jakaya Kikwete in October 2014 – proposes the following changes:(a) the creation of an Independent Electoral Commission, (b) allowing presidential election results to be legally challenged, (c) limiting the number of ministers a president can appoint, (d) a requirement that there is a 50/50 split of men and women in the National Assembly and (e) ensuring equal land ownership rights for women. Especially with regards to the provisions on the inclusion of women, the draft constitution makes remarkable progress in creating additional space for Inclusive Development (IDEA, 2014). However, the process of writing the draft constitution was far from inclusive. In April 2014, the three major opposition parties walked out of the Constituent Assembly, claiming their suggestions for reform were being ignored. The opposition parties had proposed a new structure of the Union: currently the Union is made up of two governments: (1) the Union government that has authority for Union matters and non-Union matters concerning Tanzania Mainland and (2) the revolutionary government of Zanzibar that has authority for all non-Union matters concerning Zanzibar. The opposition's proposal is a three-tier government, with three Presidents: the President of the United Republic, the President of Tanganyika and the President of Zanzibar.

Petroleum (Exploration and Production) Act 1980

The Petroleum (Exploration and Production) Act No. 27 of 1980 used to be the main act regulating exploration and exploitation of oil and gas resources in Tanzania. It declared all petroleum resources to be the property of the United Republic of Tanzania and prohibited any person or company from carrying out exploration and production of petroleum without a license granted under the provision of the law.

The Act had various shortcomings with regards to ID. For instance, it stipulated that the Minister responsible for petroleum affairs was given power to extend the license for foreign extraction companies (The Petroleum (Exploration and Production) Act, No. 27 of 1980). The Act was repealed by the Petroleum Act of 2015.

National Gas Policy Act - 2013 (NGPA)

Among other provisions, the NGPA provides for the establishment of TPDC as the new National Oil and Gas Company (NOC) and regulator, which increases the level of insecurity for private extraction companies. The Act offers little detail on how this new player will interact with the sector. The new oil and gas company is expected to play a key role in the Tanzanian oil and gas sector, within infrastructure projects and with the long-term issuance of exploration and production licenses. Its planned political independence will have significant impact on key aspects such as the speed of licensing procedures in the oil and gas sector.

The National Oil and Gas Company is expected both to increase exploration and production activities, and to reduce tensions between conflicting interests of production activities and regulatory laws.

However, the TPDC is also expected to gain a growing share of licenses through joint ventures with foreign companies. Furthermore, minimum stakes could be mandatory in all future operations and remain subject to political decisions. The endowment of rights within the newly created national oil and gas company will be decisive for enhanced ID. Local participation and the training of local employees to enhance knowledge transfer from international oil and gas extracting companies remain closely linked to the enforcement of the Model Production Sharing Agreement (MPSA).

The MPSA reduced the profitability of deep-water projects for private investors, through higher royalties, taxes and reduced profit sharing. In October 2013, President Jakaya Kikwete said the government could take between 65 to 75 percent of any future license awarded (Protection Group International, 2014). The absence of an economic stabilization clause in the MPSA also leaves companies exposed to future changes in taxation, potentially overriding individual contractual agreements.

Petroleum Act 2015

The Petroleum Act, the Tanzania Extractive Industry (Transparency and Accountability) Act and the Tanzania Oil and the Gas Revenue Management Act were all tabled before the National Assembly under a certificate of urgency in June 2015. Despite controversies surrounding the Bills, especially the way they were tabled, the National Assembly passed all three Bills for presidential assent into law. President Kikwete assented to the laws on 4 August 2015.

The Petroleum Act covers the extraction of both oil and natural gas. It provides regulations for upstream, midstream and downstream petroleum activities. The Act moreover establishes new institutions whose mandate overlaps those of already existing institutions governing the sector.

It specifically establishes an Oil and Gas Bureau within the Office of the President that will advise the Cabinet on strategic matters related to the oil and gas sector. The Act moreover establishes the Petroleum Upstream Regulatory Authority (PURA) that will advise the Minister of Energy and Minerals on Production Sharing Agreement (PSA) negotiations and other contracts with international oil and gas companies. PURA will also be responsible for processing, granting, renewing, suspending and canceling exploration, development and production licenses.

Furthermore, the Act designates the TPDC as the official National Oil Company (NOC). The major role of the NOC will be to regulate the commercial aspects of the petroleum sector in upstream, midstream and downstream operations. The Government of Tanzania will hold a 51 percent stake in the company.

The Petroleum Act of 2015 also establishes EWURA as regulator of midstream and downstream activities (Petroleum Act, 2015).

The new Petroleum Act provides a strong legal framework for inclusive development. The institutions established under the Act have the potential to regulate the petroleum sector in a transparent and accountable manner. By buying shares of the NOC, the public will have the possibility to influence the sector governance. However the nature of the Act is still very conservative. The power to grant, renew and suspend licenses is vested in the Minister of Energy and Minerals and he is only advised by PURA. The Act also has CSR provisions that commit license holders to give preference to goods produced in Tanzania and services rendered by Tanzanian companies. The Act also stipulates that license holders and contractors shall prepare a 5-year procurement plan indicating the use of local labor and resources in insurance, financial, legal, accounts and health services, as well as goods procured in Tanzania. Moreover, they must submit a recruitment and training program for Tanzanian citizens to PURA and prepare an annual CSR plan to be agreed with the relevant local government authority. However, these provisions remain vague in nature and do not commit the license holders to fulfill measurable performance indicators or key outcomes. Generally, the Act establishes a first basis, but this basis needs to be fleshed out in subsidiary regulations. In the case that this substantiation does not take place, the Petroleum Act carries the risk of providing good initiatives that are not binding due to the lack of measurable performance indicators (The Petroleum Act, 2015).

Tanzania Extractive Industries (Transparency and Accountability) Act of 2015
The Tanzania Extractive Industries (Transparency and Accountability) Act was passed by the GoT in August 2015 to enhance transparency and accountability in the extractive industry. The Act only applies to Tanzania Mainland, not to Zanzibar. It stipulates various transparency and accountability measures, including the establishment of the transparency and accountability committee, the nomination committees, obligations of extractive companies and statutory recipients, obligations to publish information, the appointment and the role of the reconciler, and the role of the controller and auditor-general.

According to the Act, all concessions, contracts and licenses relating to the extractive industry are to be published. Non-compliance is a criminal offense and companies are fined up to Tsh 150 million (approx. USD 75,000). This is in sharp contrast to the existing PSAs as well as to the Mining Development Agreements, which have confidentiality clauses. If this provision is implemented, it will be a milestone in the history of Tanzanian natural resource governance and inclusive development. Needless to say, like the earlier discussed Petroleum Act 2015, the Tanzania Extractive Industries (Transparency and Accountability) Act is conservative by its nature and has provisions that violate principles of inclusive development.

The Tanzania Extractive Industries (Transparency and Accountability) Committee which is established under the Act as an independent government entity with an oversight role for the promotion and enhancement of transparency and accountability in the extractive industry is a multi-stakeholder entity composed of government, companies and civil society. The nomination of its members, however, takes place in a non-transparent and undemocratic manner: the Chairperson is elected by the President and the other members by the Minister of Energy and Minerals (The Tanzania Extractive Industries (Transparency and Accountability) Act, 2015).

Tanzania Oil and Gas Revenue Management Act of 2015

The Tanzania Oil and Gas Revenue Management Act, which was signed into law on 4th August 2015 applies to both Tanzania Mainland and Zanzibar, and regulates the management of oil and gas revenues as well as the exploration, development and production phases. The Act establishes the Oil and Gas Fund, which consists of two types of accounts, namely the Revenue Holding Account and the Revenue Sharing Account. The Fund's objectives are to ensure that fiscal and macroeconomic stability are maintained and that the financing of investment in oil and gas is guaranteed. The Fund shall moreover ensure that socio-economic development is enhanced and that the inter-generational resource is safeguarded by saving oil and gas revenues for the coming generations.

The Act stipulates that the Bank of Tanzania (BoT) shall manage the Fund as an agent of the GoT. It notes that in any financial year, at most, an amount equal to 3% of the Gross Domestic Product (GDP) is transferred to the Consolidated Fund for budgetary use, and at least 60% of the Fund's spending shall target strategic development projects. However, it does not specify what strategic development projects are being referred to, or which sectors shall be prioritized. These fiscal rules seem to be rather rigid and might cause problems in the future. If the Fund can spend the equivalent of 3% of the country's GDP per year, this means that the revenues from the petroleum sector must be higher than 3% so that revenues are safeguarded for future generations, as the Act stipulates. The 60% rule appears arbitrary and it might be a further point of future debate when so-called strategic development projects require more finances.

The Act also establishes a Portfolio Investment Advisory Board. Similar to the Tanzania Extractive Industries (Transparency and Accountability) Committee, however, the nomination process for the board is far from inclusive and democratic. The board only consists of four members and the chairperson, which does not guarantee a minimum quorum for credible decisions. Moreover the process of appointing the members does not necessarily ensure the integrity of the appointments. According to the Act, the President shall appoint the chairman and other members of the board.

The Act moreover empowers the Tanzania Revenue Authority (TRA) and the National Oil Company (NOC), to collect oil and gas revenues due to the Tanzanian Government. The TRA shall be responsible for the collection of taxes and levies and the NOC shall collect non-tax oil and gas revenues.

The Act stipulates that collection and disbursement of the revenues from the Fund shall be made in a transparent and accountable manner. The records of oil and gas revenues and expenditure shall be published in the Gazette by the Minister of Finance (URT, n.d. a).

National Land Policy Act - 1995

Despite the 1995 National Land Policy Act, much ambiguity still exists – thus making the process for securing land titles complicated and often contentious. Local populations especially suffer from this ambiguity. The issuance of permits for resource extraction is unclear, with central authorities often issuing licenses without an awareness of how land is being used locally. The government's failure to provide reliable information or improve land ownership rights has affected multiple foreign operators, most acutely in the mining sector.

3.4 Institutional framework

3.4.1 Main institutions governing the oil and gas sector

Ministry of Energy and Minerals

The Ministry of Energy and Minerals is responsible for coordinating and putting in place appropriate policies, laws and regulations and acting as an oversight body, ensuring that sustainable development in the energy and mineral sector is realized. Moreover the ministry has an oversight role in different state-owned and statutory bodies (MEM, MEM Overview, accessed 01.11.2015).

George Simbachawene, Minister of Energy and Minerals is deputized by Charles Kitwanga (Energy) and Charles Mwijage (Minerals). Simbachawene came into office after his predecessor Sospeter Muhongo resigned over a multimillion-dollar energy scandal in January 2015 (Kabendera, 2015).

Tanzania Petroleum Development Corporation

TPDC is the National Oil Company, fully owned by the Tanzanian government. The MEM executes its petroleum exploration and development through the TPDC. The Petroleum Act of 2015 has a more extensive role in the country's oil and gas sector. With the new legislation, TPDC will exclusively manage the GoT's commercial interests and involvement in petroleum projects. TPDC has a wide range of functions and responsibilities. It is responsible for the exploration and production of petroleum in the country, shall engage in distribution and storage, and shall acquire exploration and production rights. Moreover, TPDC holds equity or participates in all oil and gas concessions, franchises and licenses and is responsible for the development of an adequate industrial base for the oil and gas industry (Tanzania Petroleum Development Corporation, accessed 30.10.2015). TPDC is also tasked with advising the government on policy matters pertaining to the petroleum industry and safeguarding the national interest in the natural gas industry.

Tanzania Electric Supply Company Limited (TANESCO)

TANESCO is a parastatal under the Ministry of Energy and Minerals. The power utility company generates, transmits, and distributes electricity to Tanzania Mainland and sells power in bulk to Zanzibar (Tanzania Electric Supply Company, n.d.).

TANESCO's generation system currently consists mainly of hydro and thermal-based power generation. Recently, however, power generation through the use of natural gas commenced on a larger scale than before. In September 2015, TANESCO started generating electricity using natural gas transported with a pipeline from Mtwara to Dar es Salaam. For the government, natural gas constitutes the biggest hope for a permanent solution to the country's power problems, as it guarantees sufficient supply of electricity throughout the year. The switch to power plants fired by domestic gas is also expected to reduce oil imports, hence leading to an increase in the country's annual savings (Kamagi, 2015).

Bank of Tanzania

The Bank of Tanzania is the Central Bank of the country. The bank focuses on containing inflation to retain price stability and is mandated to inspect and supervise other financial institutions (Bank of Tanzania, n.d.).

The role of the BoT in the oil and gas sector is mainly stipulated in the National Natural Gas Policy of Tanzania (2013), the Local Content Policy of Tanzania for Oil and Gas Industry (2014) and the Oil and Gas Revenue Management Act (2015).

According to the existing legislation, BoT's main responsibility in the oil and gas sector is to establish monetary conditions able to contain potentially rises in inflation, fueled by the natural gas industry. Essentially, the BoT shall ensure that natural gas related activities do not cause negative impacts on monetary policy and macro-economic stability. Moreover, it shall advise the government on the impact of the natural gas sub-sector as it evolves, as well as on the national economy, and shall manage and administer the Natural Gas Revenue Fund (URT, n.d. c.).

In addition, BoT is responsible for releasing and monitoring requested expenditure and funds approved for the local content purpose (URT, n.d.).

The new Oil and Gas Revenue Management Act stipulates the role of the BoT as manager and administrator of the Natural Gas Revenue Fund in greater detail. The Act instructs the bank to open accounts for the fund, act as an agent of the Government in carrying out, on a daily basis, the investment strategies and operational guidelines, set and implement benchmarks and risk limits for the investment strategies, and report performance of the fund to the Minister (URT, n.d. a.).

3.4.2 Mechanisms and Instruments set in place to manage and monitor the allocation and utilization of revenues.

The Natural Gas Revenue Fund (NGRF)

The NGRF is the proposed Sovereign Wealth Fund of Tanzania. A Sovereign Wealth Fund is a state-owned investment fund that is established using balance of payment surpluses, official foreign currency operations, the proceeds of privatizations, governmental transfer payments, fiscal surpluses, and/or receipts resulting from resource exports. The fund will be set up for the management of revenues accruing from the country's emerging gas industry.

The NGRF is proposed in the National Natural Gas Policy of Tanzania (2013), prepared by the MEM and endorsed by the Tanzanian cabinet in October 2013 but has not yet been established by an Act. The Policy stipulates that the fund will be set up to "ensure transparency and accountability over collection, allocation, expenditure and management of all natural gas revenues". It is envisaged that the fund will have clear guidelines, be developed transparently, and be used for investments in other sectors of the economy, as well as to finance socio-economic development and create savings for future generations.

The NGRF will be managed and administered by the Bank of Tanzania. The Oil and Gas Revenue Management Act details the NGRF framework, dividing the fund into two separate accounts both maintained at the BoT, namely the Revenue Holding Account and the Revenue Savings Account. The sources of funding will include royalties, government's profit share and dividends on government participation in oil and gas operations, corporate income tax on exploration, production and development of oil and gas resources and returns on the fund's investments (URT n.d. c.).

3.4.3 Civil Society Organizations engaged in the oil and gas sector

With the increasing quantity of gas findings and the growing importance of these findings for the future development of the country, many civil society actors have recently started focusing their activities on the oil and gas sector. However, as oil and gas is still a relatively new sector in Tanzania, the capacity of most civil society organizations to hold the government to account remains fairly limited. Nevertheless, recent public debates and revealed scandals – for example the leaked Statoil PSA-Addendum – mark a shift in public perceptions. The public and many civil society actors demand access to information and more transparency in the sector. This is a crucial development, as citizens cannot hold the government responsible for its actions if they are not aware of their rights and do not know about the developments in the oil and gas sector.

Tanzania Extractive Industry Transparency Initiative (TEITI)

The Extractive Industry Transparency Initiative (EITI) is a global coalition of governments, extractive companies and civil society organizations working jointly to enhance openness and accountability in the management of revenues stemming from natural resources. It was officially established in June 2003 in London, UK.

Tanzania became a member of the EITI on 16th February 2009. TEITI has 16 representatives drawn from the government, companies and civil society. TEITI comprises the oil and gas as well as the minerals sector in the country. The sector companies have to disclose their payments to the government and the government has to disclose the receipts of revenues on an annual basis. Thereafter, a consultant reconciles the payments and revenues using the standard EITI reporting guidelines, which leads to the publication of TEITI Reconciliatory Reports.

EITI has been criticized for its voluntary nature and its limited focus on a small part of the value chain.

Natural Resource Governance Institute (NRGI)

The NRGI, formerly known as the Revenue Watch Institute (RWI), is an independent, non-profit organization that provides research-based policy advice to natural resource rich countries. The NRGI works with government actors, civil society, media and the private sector to build the capacity of the actors and increase transparency and accountability in the natural resource sector (Natural Resource Governance Institute, n.d. a.).

In Tanzania, NRGI is working closely with local organizations such as the Policy Forum, the Agency for Co-operation in Research and Development (ACORD) and the Journalists' Environmental Association of Tanzania (JET). Together with these partners, NRGI's activities aim to strengthen civil society's role in natural resource governance, building awareness of EITI and strengthening media oversight of the extractive sectors (Natural Resource Governance Institute, n.d. b, n.d. c).

Haki Madini

Haki Madini (Swahili for Mineral Rights) is a non-profit organization that advocates for a more equitable distribution of natural resource wealth and an accountable and transparent extractive sector. Its activities include policy lobbying, hosting community forums, organizing media campaigns and exchanging knowledge and experience with other organizations active in the extractive sector (Haki Madini, n.d).

In the oil and gas sector Haki Madini hosts and participates in different forums aimed at improving the dialogue between the various stakeholders in the sector. Some of the of the regular platforms Haki Madini is organizing and/or participating in include the Tanzania Mining, Oil & Gas Forum in Dar es Salaam, and the Natural Resource Forum in Arusha (Zinduka, 2014).

3.4.4 Actors who are part of the decision-making processes

Closely connected to the Public Finance Act is the Annual Finance Act (2013). This act grants powers to the Minister of Finance to raise funds to finance the budget by imposing taxes.

This provides relative autonomy to the Minister of Finance to decide which branches within the Tanzanian economy have to bear higher taxes. This arbitrariness leaves room for an individual person to significantly influence tax structures. The Minister of Finance is also empowered by the Public Finance Act to reallocate government budgets for other means. (Ministry of Finance Tanzania, n.d.)

This example shows the vulnerability of the Tanzanian government system towards decisions that include only a very small number of decision makers but have a large impact on a great percentage of its citizens. ID is not in line with these types of governance structures that exclude the voices and concerns of the masses.

The term ID has not been used within the recent debate over the development of the oil and gas sector in Tanzania. However, George Simbachawene states that the current resource discoveries could strongly boost the economy and that spillover effects will be also felt in other sectors in Tanzania, provided that oil and gas revenues are efficiently and effectively used to enhance socio-economic development. Nevertheless, he is aware that such discoveries do not grant prosperity by their sheer existence, and he emphasizes the need to recognize, face and overcome challenges such as: insufficient institutions to manage the sector and legal frameworks, as well as insufficient human, financial, physical and related resources for the sub-sector (IDS, 2014).

This holistic approach, is in line with the idea and definition of ID.

4. Redistributive Potential of the outlined political, legal and institutional frame-work in contributing to Inclusive Development

For decades, scholars have spoken about the "resource curse" and have used this extensively to explain why Highly Indebted Poor Countries (HIPCs) are not able to escape issues such as social injustice, non-transparency and poverty, despite vast resource deposits. Scholars argue that the oil and gas sector is at the very center of contemporary development and provides unique possibilities for ID (Bebbington, 2014). Ross (2012) has recently shown that performance across oil dependent polities and economies has been uneven. There are multiple examples where resource extraction has resulted in lost economic and social opportunities.

In the past, especially in the mining sector, Tanzanian leaders, to a large extent, have not exploited the full potential of natural resources, in particular oil and gas, for ID. Learning from the mistakes in the mining sector and improving resource governance in the oil and gas sector will be some of the major factors that affect the redistributive potential of oil and gas revenues and the future of the country. Currently the sector remains largely non-transparent, stoking fears that it will take a similar direction to that of the mining sector, where political and economic elites benefit greatly by using their political powers to contract external companies to extract natural resources.

Bebbington (2013) defines eight aspects of inclusion, which can be seen as points of action for ID. The redistributive potential of Tanzanian politics for ID will be compared with these normative definitions. These considerations are based on the assumption that external contractors are willing to adhere to the points outlined below. The enforcement of these channels to enhance ID are legally assigned by the Tanzanian government to the NOC and Local Government Authorities via the Petroleum Act of 2015 and the Oil and Gas Management Act of 2015, both of which are binding laws for external companies in the oil and gas sector.

- ID can be reached via employment of local population. Within the oil and gas sector this would mean more direct and indirect employment. This includes the presence of knowledge transfer from external employees who have more experience compared to local populations.
- A second channel is inclusive supply chain management. Companies can manage their supply chains in ways that offer more opportunities for local and regional populations to be included in their activities.
- Creating CSR and transparency. These are approaches to employee and community well-being, to redistribute profits through company-sponsored social programs. This can only be implemented effectively if incentives are set by the Tanzanian government to adhere to CSR and transparency guidelines.
- Ownership is a buzzword within the development debate of HIPC. Through ownership, companies can also include the local population and the workforce in the structure of the extractive enterprise, as either shareholders or joint owners. These channels not only promote ID, but they also reduce the pressure on governments and external companies if the actions taken are not successful.
- Public ownership focuses on the possibility that extractive enterprises could be publicly owned and as such allow for some sort of social inclusion in their operations, even if in practice such operations generally run as enterprises owned and organized by government.
- Planning and consultation: The efficiency of this tool is strongly connected to the actual outcome of consultation and whether the voices of those who were consulted are heard.
- Taxation and social expenditure: How far the population is included in getting access to the financial resources generated by extractive industries depends largely on the ways in which the sector is taxed. At this stage the government can interfere and steer the process. Progress towards ID depends on the means through which this fiscal revenue finds its way into social investment and other development programs. Considering the redistributive power of the Tanzanian Minister of Finance to tax different branches of the economy, there is a large space for individual discretion. The aim should be an equal distribution of revenues to target increasing inequality (gender, age, ethnic and class based, urban/rural etc.)
- Environment: the potential for adverse environmental effects is high in the extractive economy. If contemporary and future generations are excluded from (net) benefits due to environmental damage, then the governance of environmental impact is important for social inclusion.

4.1 To what extent do the existing policies contribute to ID today?

Although there are multiple policies such as the Petroleum Act of 2015, the Tanzania Extractive Industries (Transparency and Accountability) Act and the Revenue Management Act, which stress the need for ID within the oil and gas sector, the reality does deviate to a large extent from these normative approaches.

The Tanzanian government often emphasizes that the country's population does benefit from natural resource management policies and laws. Increasing economic development in towns, especially in Dar es Salaam, leads to a higher purchasing power of a broader middle and upper class. Demands for enhanced education, as well as improved social and physical infrastructures coupled with a higher awareness of Tanzania's resources, will likely lead to stricter requirements for foreign companies. This may include higher investments in training of local nationals and knowledge transfer schemes. A look at the current state of know-how within the population with regard to oil and gas exploitation is discouraging. Skill deficiencies among the population could impact productivity or inflate wages for the small number of trained Tanzanian nationals. Existing government-corporate employment training schemes will take several years to have an effect on the size of the skilled workforce available locally. All these challenges present important opportunities with respect to ID.

4.2 Who benefits most from the natural resource revenues given the current political, legal and institutional framework?

In order to set up a system with a fair distribution of natural resource revenues, political systems have to fulfill basic requirements. As one precondition for ID, the system of distribution of revenues resulting from natural resources must be perceived as equitable. In Tanzania natural resource revenues only contribute a small share towards GDP. Almost half the taxes that constitute national budget transactions are collected from three sectors (telecommunications, beverages, and cigarettes). The collection and distribution of revenues must be transparent. Therefore the government needs to publish comprehensive, accessible reports on its tax collection efforts and revenue distribution. Revenues gathered from the oil and gas sector are low (The World Bank Group, 2015). This implies that ID assumptions are violated and only a small amount of people benefit from the current revenues generated within the sector.

Given the current political, legal and institutional endowment, it has to be said that Tanzanian ministries dealing with onshore and offshore licenses benefit to a large extent from oil and gas discoveries. Chapter 3.4.4 pointed out the autonomy of the Minister of Finance to tax any branch of the economy. It stands to reason that only a small group of decision makers benefit from the taxation of gas and oil extractors. Due to a non-transparent system of taxation and redistribution of revenues, it can be inferred that the benefits from natural resource revenues for the population remain low.

Growing local demand for gas on the one hand, and the ongoing electricity shortfalls caused by insufficient infrastructure endowment and a weak energy supplier (TANESCO) on the other, point to the need for stringent government actions and the need to take the voting power of the population into account more seriously.

The country is expecting massive foreign investments in its near-shore gas sector in the medium-term future. While a number of international oil companies are currently negotiating with the Government, no final investment decisions are expected to be made in the near future. If oil prices remain depressed over the longer term, the investment plans of multinational companies in the near-shore natural gas sector may be affected. While oil and gas prices are not fully linked, there is nonetheless a strong correlation between these two prices, as liquefied natural gas contracts are generally heavily indexed to oil prices. In the medium to longer term, low oil and mineral prices may have a negative impact on the Tanzanian economy, also having a negative influence on the speed of ID (The World Bank Group, 2015).

By looking at the aspects of ID cited by Bebbington, a redistributive potential of revenues stipulated in the new oil and gas management acts can be seen. Under Article 219 of the 2015 Petroleum, the government as a whole via the NOC benefits from a specified participating interest in petroleum operations. Under Article 220, local entrepreneurship and goods made in Tanzania shall be promoted. A foreign license holder shall give preference to goods that are produced or available in Tanzania and services that are rendered by Tanzanian citizens and or local companies.

Article 222 stipulates that all external contractors shall provide training and recruitment of Tanzanians in all phases of petroleum operations and gas activities, and take into account gender equity, persons with disabilities, host communities and succession plans in accordance with the Employment and Labor Relations Act.

Article 223 focuses on ID by emphasizing the need for knowledge transfer to the local population. It also points to the need for external contractors to adhere to training programs for locals.

The legal foundation has been set to distribute benefits from natural resource revenues towards a broader range of stakeholders. Nevertheless, it is too early to evaluate the effectiveness of the recent laws guiding the petroleum sector in Tanzania. It will take time to judge its effectiveness. Furthermore, because the oil and gas sector has the ability to employ only a limited number of Tanzanians, further redistributive laws have to be set in place.

4.3 Who has acting and decision making power in the existing political arena?

The institutions charged with overseeing oil and gas exploration in Tanzania are the Minister responsible for Energy and Minerals, the Commissioner for Petroleum Affairs and the TPDC. The Minister has the power to issue and grant licenses, sign PSAs, demand the payment of royalties and issue various directives after the discovery of gas or oil. Having these powers centered in one person contradicts the idea of ID completely.

TPDC, the new NOC will be directly involved in strategic oil exploration and exploitation, as well as specialized operations in the oil value chain using its different subsidiaries. The National Petroleum Policy does not demand total government participation in the oil and gas sector, but rather, strategic participation. The strategic operations of NOC are not, however, defined.

Another institution that will be established is the Petroleum Upstream Regulator (PUR), which will be the main regulator of all upstream operations including receiving and reviewing applications for petroleum and gas exploration and exploitation. The PUR will be responsible for overseeing upstream operations and advising the Minister on granting, reviewing, suspending and cancelling petroleum development licenses. Although the creation of PUR suggests a system of checks and balances between the responsible minister and the PUR, it is not clear to what extent ID will benefit from this system.

5. Country Comparison: Timor-Leste

The Democratic Republic of Timor-Leste is the newest and one of the smallest sovereign states in Asia. It is also one of the most impoverished countries in Asia. The Human Development Index ranks Timor-Leste at 128 out of 187 countries, and thus, as a country of medium human development. It has been suffering from violent conflicts, food shortages, poor infrastructure, diseases, malnutrition and problems in the education sector. The country is extremely dependent on revenues from the oil and gas sector. Oil and gas revenues provide more than 95% of Timor-Leste's government revenues, and comprised 81% of the GDP in 2012.

Contested maritime boarders with Australia in the area of Timor-Leste's oil and gas fields have caused further problems and tensions in the past (Drysdale, 2007).

The non-petroleum economy of the country has been neglected and is very small. 19% of Timor-Leste's economy is "non-petroleum" but about half of this is financed through oil and gas money disbursed by the state. The Country imports 33 times as much as it exports. In 2013 Timor-Leste spent $ 535 million on imported goods, while non-oil exports totaled only $ 16 million. The country suffers from high inflation and growing foreign debt. As such, Timor-Leste can be seen as a prime example of the so-called Resource Curse (Scheiner, 2013).

In the past Timor-Leste introduced various measures to address these challenges and to elude the resource curse. The country's constitution of 2002 outlines the basic conditions for the management of its natural resources:

"The resources… shall be owned by the State and shall be used in a fair and equitable manner in accordance with the national interests… The conditions for the exploitation of the natural resources… should lend themselves to the establishment of mandatory financial reserves (Constitution of the Democratic Republic of Timor-Leste, 2002, 59).

The most noticeable institutional reform was the introduction of a Petroleum Fund in 2005, based on Norway's petroleum revenue management model. The Fund shall finance the state's budget and save revenue for future generations (Wang, Wang, & Wang, 2012).

The income from exporting the country's petroleum wealth is channeled through the Petroleum Fund. All Petroleum revenues go directly into the fund and money is withdrawn to fill the budget deficit. The Petroleum Fund was created to serve as a buffer between fluctuating oil income and the state's budget. Although guidelines exist that are supposed to regulate annual withdrawals from the fund (three percent of the fund's total capital per year), these guidelines have been violated and the withdrawn amount has exceeded the three percent rule almost every year. Current estimations predict that the fund will only last until 2025. Another measure taken by the government of Timor-Leste was the introduction of the United States Dollar as currency to moderate inflation and currency exchange fluctuations (Scheiner, 2014).

When comparing the situation of the extractives sector in Tanzania to Timor-Leste, it becomes obvious that differences between the two countries outweigh the similarities.

Tanzania is a country that just recently discovered petroleum resources of a quantity that is commercially viable for both domestic consumption and to export. In contrast to Timor-Leste, Tanzania does not have a history of civil war and political insecurity. The extractives sector constitutes an important part of Tanzania's economy but its contribution to the national economy stands in no comparison to the role the extractive sector is playing in Timor-Leste. The Mining Sector contributes to roughly 5% of Tanzania's GDP and a third of the country's exports (National Resource Governance Institute, n.d. d.). According to an IMF report released in April 2014, once infrastructure is in place and production is under way, annual revenue collections from Tanzania's gas resources could range between $3 billion and $6 billion. This will undoubtedly constitute a major part of the country's GDP that stood at $ 33.2 billion in 2013 but is far from the level of dependency on the petroleum sector witnessed in Timor-Leste.

That said, Tanzania could learn some valuable lessons from the experience of Timor-Leste. Even though Timor-Leste has tried to learn from international best practices and chose to create a Petroleum Fund Law that governs the collection and management of receipts associated with the petroleum wealth, regulates transfers to the state budget and provides for government accountability and oversight of its activities, the Fund did not trigger inclusive development in the country. One reason for this is that the existing regulatory framework only provides guidelines and not legally binding rules. This has led to a violation of the guidelines, with more money from the fund being spent than outlined in the law. Moreover the Petroleum Fund Law lacks strong transparency regulations. The law does not require companies to publish what they pay to the government, or to individuals. As such, no audit of accounts is received.

Another reason for the Fund's failure to ensure inclusive development is the fact that the law does not provide detailed plans for how the petroleum revenue should be invested. According to the law, the investment strategy of petroleum revenues is conservative. It specifies that not less than 90% of the revenue shall be invested in qualifying instruments that will potentially provide a lower return but also carry a lower risk of loss. The remaining 10% or less may be invested in other instruments as long as they are issued abroad, liquid, transparent, and traded in a financial market of the highest regulatory standard. An investment board advises the Minister of Planning and Finance with respect to investment strategy and benchmarks for desired investment returns. External investment managers appointed by the Central Bank are tasked to maximize the Fund's returns.

Timor-Leste's unique Petroleum Fund Law does not include guidelines or rules for how the petroleum revenue should be spent. It does not mention the use of the revenues for poverty reduction, certain priority sectors and/or institutional development. Rather the Parliament decides how the revenues are spent (Drysdale, 2007).

In the past, this has led to government spending that stood in sharp contrast to the concept of inclusive development, and rather favored certain groups in society, while neglecting others. For instance, the state spends 35% more on overseas scholarships than on its domestic university, which has four times as many students. Public hospitals have been neglected while well-connected citizens fly for treatment abroad on public expense. Airports, highways and ports consume billions of dollars while very few Timorese people can afford to fly or own their own cars. Moreover, special interest groups like veterans, contractors, former office holders and former soldiers have privileged entitlement to public funds (Scheiner, 2014).

For Tanzania this means that the establishment of institutional mechanisms like a Petroleum Fund and different policies to regulate the petroleum sector and its revenues, are a necessary but insufficient condition to enable inclusive development in the country. Different details of the institutional set-up and laws are of major importance on the way towards inclusive development. These details include but are not limited to whether the laws prescribe guidelines or are legally binding, and the extent to which the process of collecting, administrating, investing and spending petroleum revenues is transparent (and if the information is available and comprehensible in a timely manner). Moreover a focus on how the revenues should be spent is of major importance in order to trigger inclusive development.

6. Conclusion

The extractive sector bears enormous potential for Tanzania, but it also bears multiple risks. Past experience in Tanzania's local mining sector exemplifies what can happen if the sector is not managed in a transparent and accountable manner. A close examination of the sector, which has a longer history than the oil and gas sector in the country, provides lessons. Throughout the country, mining facilities faced protests, attacks on facilities and crime. Revenues from the sector benefited small and powerful interest groups in and outside the country rather than contributing to inclusive development and benefitting the general public. Looking into the experience of other African countries with oil and gas, the first case that comes to mind is that of Nigeria. The Nigerian oil wealth has been more of a curse than a blessing for the West African nation as the country did not manage to transform the wealth into inclusive development, with only a corrupt elite benefitting disproportionately. In this way, Nigeria has been often cited as a prime example of the "Resource Curse". By looking at the experience of Timor-Leste, we see that even if a country tries to learn from international best practices when drafting bills and setting up the institutions governing the sector, the threat of the resource curse remains real as long as these best practices do not find their way from theory into practice.

Focusing on the oil and gas sector in Tanzania, multiple issues have to be considered. By its nature, the petroleum sector is much more capital intensive than labor intensive and does not employ a large number of people. Inclusive development thereby cannot result from Tanzanians finding jobs in the sector. Linkages to other sectors need to be established and the revenues from gas resources need be used to finance sustainable development projects. However, recent experience in the sector casts doubt on whether this is the path that Tanzania will follow. Onshore fields raised land disputes and problems of local community relations towards oil and gas operators. Unclear land ownership laws and a poor interaction between the public and private sector desperately need to be addressed and reviewed in order for oil and gas extraction to take place in a more inclusive way.

The violent protests against the development of a gas pipeline in Mtwara in 2013 are indicative of the threat facing Tanzania, and highlight the importance of involving affected communities in the decision-making processes. Further considerations for oil and gas extraction could lead to rising violence, which would worsen the circumstances for extractors. This is especially true in Mtwara, where it was discovered that offshore gas fields were targets of piracy (Protection Group International, 2014). Mtwara port has been earmarked as a key logistical hub for oil and gas operations to aid the sector's growth in Tanzania. The high number of demonstrations targeting mining interests is illustrative of some of the threats likely to impact future oil and gas operations.

A further point of concern are the PSAs that, until today, are not open to the public. This has already caused heated debate, such as that surrounding the leaked Statoil Addendum in 2014 (Natural Resource Governance Institute 2014).

On a positive note, however, Tanzania already has a robust political, legal and institutional framework in place that bears the promise that the vast gas resources can be managed in a transparent and accountable manner and can contribute significantly to a process of inclusive development in the country. With the three new Acts – the Petroleum Act 2015, the Tanzania Extractive Industries (Transparency and Accountability) Act 2015 and the Revenue Management Act 2015 – Tanzania paved the way for inclusive development in the oil and gas sector. The process by which the Acts were tabled and signed, however, was far from inclusive. There was no public consultation and discussion for these Acts, which will have a huge influence on the country's future. On the contrary, they were pushed through in a few days.

Finally it can be stated that ID is a desirable political path in Tanzania; nevertheless problems of individual revenue appropriation are a reality. Decisions over oil and gas licenses and extraction titles are still ruled by key individuals within the Tanzanian government.

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Oil and Gas Revenues in Uganda: Potentials for Inclusive Development

1. Introduction

The discovery of commercially viable oil deposits in Uganda was first announced in 2006, on the eve of the country's 44th independence celebrations (African Development Bank, 2009). However, oil exploration in Uganda dates back to the 1920's when the first oil drilling was done near Kibira around Lake Albert, in Hoima district. After independence, the process was disrupted by political turmoil and only resumed in 1990 following the signing of cooperation agreements between Uganda and the Democratic Republic of Congo for joint exploration and development of common fields (Ministry of Energy and Mineral Development, 2012). These agreements formally paved the way for full-scale exploration until the pronouncement of commercially viable oil deposits in Uganda. Despite the pronouncement of the oil discovery, the larger part of revenue is not expected until 2017 when full-scale production commences. Nevertheless, the Government of Uganda expects to start earning revenue in the form of bonuses and Capital Gains Tax before commencement of production.

Expectations from political actors, the general public as well as foreign investors towards the oil subsector can be distinguished into two forms: euphoric optimism and skepticism (Bategeka et al, 2011). Euphoric optimism includes expectations that oil shall lead to increased national prosperity, finance a larger proportion of the national budget, liberate Uganda from donor-dependence and boost investments in developmental infrastructure such as roads, power plants, education and health infrastructure, and socio-economic areas (African Development Bank 2009). This optimism is shared by the Ministry of Energy and Mineral Development. Despite the anticipated benefits from the discovery, a number of Ugandans seem to be critically challenging the euphoric expectations towards the emerging oil industry. Their fear is that the political elite and their patronage network will become better equipped to siphon off resources supposedly destined for public investment (Mbabazi, 2013), thereby deteriorating public service provision as well as widening the already high income inequality gap. Furthermore, there is a fear that the oil industry might constitute a risk to Uganda's domestic security as it might fuel subversive activities by people who feel excluded from the substantial development dividends from the oil wealth (Bategeka et al, 2011).

Oil exploration activities, such as the digging of seismic wells and drilling, have already led to involuntary changes in land ownership, and exacerbated land disputes, evictions and displacement of communities in the Albertine Grabe (Uganda Land Alliance, 2011). The most common land related problems in the Albertine Region are land grabbing and encroachment. Therefore it is perceived that, if not managed well and monitored closely, oil exploitation is also likely to alter food security and agriculture as energetic young people, most of them semi-literate, might abandon agriculture for illicit trade in oil and gas products.

This will be fuelled by the fact that such deals are more profitable than farming (Rwakakamba and Lukwago, 2013).

Depending on how the political, legal and institutional framework is constituted and how well it is implemented, the discovery of oil and gas in Uganda can be either a blessing or a curse. It can be a blessing if the management of oil revenues is based on transparency, accountability and fairness and if the petrodollars are used as the basis for inclusive and sustainable development of oil-exporting countries (Gary and Carl, 2003). On the other hand, if not managed well, it could result in increased corruption, inequality and social tensions as well as environmental degradation, among others, leading country into a resource curse. In Africa, countries like Nigeria and Angola were well documented examples of the oil curse, whereas Botswana is widely acknowledged for the proper management of its natural wealth, which has allowed the country to elevate itself to upper middle-income status and to become one of the fastest growing economies in the world. This contrast presents huge lessons for Uganda as it embarks on its journey as an oil and gas-producing nation.

It is against this background that this study was conducted in order to examine the extent to which the current political, legal and institutional framework of oil and gas revenue management in Uganda potentially contributes to inclusive development.

This report comprises six chapters, including the introduction, which provides an overview to the discovery of oil and gas in Uganda and provides the aim and objective of the study. Chapter two conceptualises and provides a theoretical framework for understanding inclusive development. This section identifies four focus areas of study that form the centre of analysis of this paper. The third chapter provides background information on poverty, inequality and inclusive development in Uganda. In chapter four, the framework for the management of oil and gas revenues is presented and analysed to establish the extent to which it has the potential of fostering inclusive development. Existing political, legal and institutional frameworks are taken into account. These frameworks are juxtaposed in chapter five with experiences from Botswana. The study assesses Botswana's management of natural resources and provides lessons for Uganda. The last section provides the conclusions and policy recommendations.

2. Conceptualising Inclusive Development

Although the concept of Inclusive development had already been developed by Lasswell in 1963, it appeared high on the international development agenda only during the ongoing Post-2015 negotiations (Wood, 2014). The concept is underpinned by democratic and human rights principles. Therefore inclusive development means to enable and facilitate participation of all actors in problem solving and decision making, to foster innovation and opportunity and to share the benefits of development holistically (ibid, 2014). The World Bank contextualizes inclusive development as the "design and implementation of actions and policies for socio-economic and human development aimed at equal opportunities and rights of all people regardless of social status, gender, physical abilities or race" (Garrido-Lecca et al., 2009).

Inclusive development has been widely linked to the concepts of pro-poor growth and inclusive growth. But what exactly does the term inclusive development mean?

Recent developments in the global south as well as the financial crisis in the US and Europe demonstrated that growth does not automatically challenge the uneven distribution of wealth. Therefore, economic policies geared towards rapid economic growth do not automatically lead to a reduction in inequality, even when they are informed by certain ideas about 'pro poor' growth (Ianchovichina & Lundstrom, 2009). On the contrary, the problem of social division often becomes exacerbated in fast-growing economies that rely heavily on extractive industries that do not employ much labour, and where the non-resource sectors often suffer heavy contractions during boom periods (ibid, 2009).

To prevent such a scenario in Uganda, the formulation of policies for the emergent oil and gas industry have to be based on a much broader concept of economic development that goes beyond the notion of simple 'growth'. Policies should not only aim at fighting poverty and inequality, but also guarantee the broad involvement of stakeholders in decision making processes, promote innovation and entrepreneurship and put in place transparent mechanisms that monitor the implementation of legislation and the sustainable and equitable distribution of benefits.

Wood (2014) emphasizes exactly those aspects in her model of inclusive development, which builds on a three-part framework that not only addresses the inclusiveness of economic development, but also seeks to combine it with one of voice, action and results. With regard to 'voice', Wood argues that inclusive development implies democratic ownership of development processes. This means that transparent, predictable and inclusive spaces have to be created where the voices of multiple stakeholders, e.g. civil society organisations (CSOs), local governments and private sector actors can be heard at national and local levels when plans and policies are being elaborated, implemented and monitored. These spaces and mechanisms can be complemented by accountability mechanisms that allow the public, including the poor and marginalised, to voice their priorities and concerns (ibid, 2014).

To operationalise the democratic ownership principle, inclusive development also depends on inclusion in 'action': Diverse development actors play different roles according to their priorities and plans, which – if coordinated effectively – can build the right synergies and avoid duplication.

Finally, inclusive practices in terms of voice and action lead to inclusive 'results', i.e. inclusive forms of growth, well-paid jobs and the poor benefiting from the direct effects and distribution of this growth (ibid, 2014).

All of these three manifestations of inclusive development can only be advanced if certain enabling factors are in place. The most relevant factors in the case of the Ugandan oil and gas industry are transparency and accountability on financial flows, policies and programmes and a legal and regulatory environment that enable all stakeholders to organise and articulate their grievances and to implement initiatives (ibid, 2014). Revenue distribution, sharing of benefits, transparency and accountability as well as participation and environmental sustainability are key aspects of inclusive development and will be in the center of this study's analysis.

3. Poverty, Inequality and Inclusive Development in Uganda

At first sight, it seems as if the Ugandan government is justified to celebrate outstanding achievements in terms of economic performance and poverty reduction over the past years. In 2012/2013 Uganda's economic growth averaged 6.2% (Tumusiime-Mutebile, 2014) before slowing down to an estimated 4.1% in 2013/2014. An impressive performance has also been achieved in poverty reduction; the proportion of people living below the poverty line fell from 56.4% in 1992/3 to 19.7% in 20012/13 (Ministry of Finance, Planning and Economic Development, 2014).

However, these numbers fail to take into account factors such as the very limited growth of household incomes and barely improving living standards, which point to strongly increasing income inequality accompanying the recent economic growth. With a per capita income of US$ 480 by 2012, Uganda remains a low-income country. Indeed, measurements of household inequality undertaken with the Gini Coefficient reveal that income inequality rose from 0.365 in 1992/3 to 0.395 in 2012/13 (Ministry of Finance, Planning and Economic Development, 2014). Similarly, the 2nd Chronic Poverty Report for Uganda indicated that around one in every ten households is still trapped in poverty (11.6%), and the majority of these include rural women as well as small-hold farmers (Development Research and Training, 2013). There exists a perception that despite the increase in the number of initiatives aimed at improving the standard of living for specific social groups – e.g. the National Agricultural Advisory Services (NAADS), Rural Financial Services, and Northern Uganda Social Action Fund, among others – attaining equality within Ugandan's society will probably not happen in the near future.

It is well recognized that the poor delivery of quality basic services has led to poor outcomes. For instance, the infant mortality rate stands at 54 per 1,000 live births, the maternal mortality ratio stands at 438 per 100,000 live births, and gross primary school completion rate stands at only 54% (Ministry of Finance, Planning & Economic Development, 2013).

Agriculture is the most important source of employment, income and overall wellbeing in Uganda. According to the Uganda National Household Survey 2009/10, about 66% of Uganda's working population is engaged in the agricultural sector and derives their livelihood from it; however, the agricultural sector has had downward real growth over the last decade. The real growth rate in agricultural output declined from 7.9% in 2000/01 to 1.5% in 2013/14 (Ministry of Agriculture Animal Industry and Fisheries, 2015). The minimal growth of the agricultural sector is contributing to the increasing unemployment, especially amongst the youth, and increasing inequality between the rural and urban population in Uganda.

It is against this background that before the actual start of the activities, the necessity emerges to analyse the existing political, legal and institutional framework in order to prepare accordingly and to put in place mechanisms that will increase the potential of the oil and gas revenues to contribute to a more inclusive development of the country.

4. The Framework for the management and distribution of oil and gas revenues in Uganda

In this section, the study examines the existing political, legal and institutional framework for the management of oil and gas revenues and analyses its potential for achieving inclusive development. The areas of inclusive development considered in this study are drawn from the theoretical framework introduced in Chapter 2. In line with this framework, the political, legal and institutional framework will be examined to explore how it fosters the participation of different stakeholders, equitable sharing of benefits of oil and gas revenues, promotion of transparency, accountability and environmental sustainability.

4.1 The Political framework

After several years of post-independence conflicts, the National Resistance Movement (NRM) captured power in 1986 and set Uganda back on the track to development. Since then, Uganda has made significant progress in achieving stability in politics, institutional and social development as well as macroeconomic stability. In 1995, a new constitution was promulgated, which among other things established a Presidential system, initially adhering to the Movement System. In 2005, following a landmark referendum, the country cancelled the Movement System in favour of a multi-party system characterised by competitive electoral politics. That same year, however, under controversial circumstances, the Constitution was amended and Presidential term limits scrapped.

While the Constitution of the Republic of Uganda provides a clear separation of powers between the Executive (Under Article 99), Legislature (Article 79 1, 2) and Judiciary (Article 128), the most dominant pillar in Uganda's political system is the Executive and the powerful President. The President is the Head of State, Head of Government and Commander-in-Chief of the Uganda People's Defense Forces (UPDF) and the Fountain of Honour, among other duties (Article 98). These powers have been over-utilised by the current President (President Museveni), who occasionally traverses the boundaries of other organs of the state. Examples of such incidences include when the President signed a new exploration deal between Tullow, Total and China National Offshore Oil Corporation (CNOOC), disregarding the moratorium on the signing of oil deals, which had been instituted by the Parliament of the Republic of Uganda.

With the exercise of excessive powers by the President, the hitherto-appearing broad-based coalition that provided for the participation of all stakeholders has become much narrower in character and far less inclusive (Golooba and Hickey, 2013).

This is a crucial characteristic of what Tripp calls a "Presidentialised" form of semi-authoritarian democracy (Tripp, 2010). The arguments being made are that the political system in Uganda is built around a highly top-down and nepotistic approach, with an inner circle comprising a few people (mainly the President's family members and people from his region), a wider circle that comprises both some key players and 'window-dressing elites', and then a broader, more localized network (Golooba and Hickey, 2013).

Currently, the legislative arm (Parliament) has been turned into an appendage of the ruling party (NRM). With majority members (67%) in Parliament, even decisions of a national nature are decided in the NRM caucus, and only brought to the August house (Parliament) for rubber-stamping; consequently, Parliament has been weakened and reduced to a "rubber-stamp" of the Executive.

Furthermore, the quality of Parliament has further been affected by gerrymandering – manipulating district boundaries to create partisan advantaged districts. Since 1990, the Government of Uganda has been creating more districts, from 34 in 1990 to 112 in 2010.

As a result, there is a general perception that this has led to the election of Members of Parliament with low capacity and moral aptitude. Most of them view politics as a business rather than serving the interests of their electorates.

Since Uganda turned into a multi-party political system, a number of regulations that stifle the participation and ability of political parties, Non-Governmental Organisations (NGOs) and individuals to organize around various causes have been passed. Included among them are the Public Order Management Act (2103) and the Non-Governmental Organisations Bill (2015). Some of these regulations are meant to ingrain the current regime and stifle any political opposition.

The state of affairs described above has increased elite politics, corruption, ethnic-based politics, patronage-based governance and has weakened institutional checks and balances. It is because of these issues that some analysts argue that Uganda appears to be a perfect candidate for a resource curse" (Mosbacher, 2013).

The over-centralisation of power with the President has a danger of working against the aims of inclusive development. There are fears that unless effective checks and balances are put in place, the oil and gas sector could be easily manipulated for the benefit of the elite's political interests and not the majority's needs and demands.

4.2 The Regulatory framework

Uganda's oil and gas sector is governed by a number of regulations and policies including: the Constitution of the Republic of Uganda, 1995; the Petroleum (Exploration, Development and Production) Act, 2013; Petroleum (Refinery, Conversion, Transmission) Act, 2013; the National Oil and Gas Policy, 2008; the Oil and Gas Revenue Management Policy, 2012 and the Public Finance Management Act, 2015. Other regulations that have an indirect bearing on the management of the oil and gas subsector include: the Access to Information Act, the Local Government Act, the Land Act, the Land Acquisition Act and the National Environment Act, among others. The section below critically assesses these regulations and their potential for promoting inclusive development in the sector.

4.2.1 The Constitution of the Republic of Uganda, 1995

As the supreme law of the land, the Constitution (as amended in 2005 and 2015), sets a promising framework for an inclusive approach to manage the affairs of the country. From the onset, the Constitution makes it a moral responsibility of the state to ensure that development is managed in a participatory way with special focus on marginalised areas and minority groups. The National Objectives and Directives of State Policy Section II (1) of the Constitution specifically states that "the state shall be based on democratic principles which empower and encourage active participation of all citizens at all levels of their governance." Similarly, specific provisions are embodied in the Bill of Rights

(Chapter 4 of the Constitution) that promotes equity and inclusivity. These include among others; Article 21 (Equality and freedom from discrimination), right to education (Article 30), affirmative action in favour of marginalised groups (Article 32) both in terms of direct provision as well through the establishment of semi-autonomous institutions such as the Uganda Human Rights Commission and the Equal Opportunities Commission among others.

In regard to the oil sector, the Constitution under National Objectives and Directives of State Policy, objective XIII, states that "The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda."

Similarly, Section XXVII (ii) emphasizes that "the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and, in particular, the State shall take all possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes".

It should be noted that in an attempt to ensure the National Objectives and Directives of State Policy get a force of law, Parliament in 2005 amended the Constitution to add article 8A which empowers the state to implement the national objectives and directives. The same article requires Parliament to make a law that guides the enforcement of these directives; however, no law has been made to-date and the objectives remain largely unenforced.

Prior to 2005, the Constitution only provided for management of minerals. In 2005 the amendment to the Constitution brought in an aspect to provide for the ownership of mineral and petroleum resources. Article 244(1) provides that "Subject to article 26 of this Constitution, the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda."

The provisions of Article 244(1) of the constitution are ambiguous with respect to the equity and sharing of oil revenues. Many have argued that the provision attempts to remove ownership of oil and gas resources from citizens and places it on the state (Magelah, 2013; Tumusiime, 2012). Unlike other provisions which state that oil or natural resources are owned by the state in trust for citizens, this suggests oil is owned by the government on behalf of the state. It remains to be seen how this provision will be enforced and whether the enforcement will focus on ensuring the government shares benefits with and in consultation with citizens, or will adopt a top down approach that does not necessarily consider the interests of citizens.

The Constitution places emphasis on ensuring that benefits arising out of mineral exploration are shared equitably for the benefit of all Ugandans. Under Article 244(3), the Constitution provides that "minerals and mineral ores shall be exploited taking into account the interest of the individual landowners, local governments and the government". To realize this objective, Article 244 (2) of Constitution empowers Parliament to make laws regulating the exploitation of minerals, the sharing of royalties arising from mineral exploitation, the conditions for payment of indemnities arising out of exploitation of minerals, and the conditions regarding the restoration of derelict lands.

From the above, one can argue that much as the constitution lays the foundation for promoting inclusive development and sharing of petroleum benefits in Uganda, the ambiguity created as to the ownership of petroleum and mineral resources creates the potential for abuse that could easily see a lack of inclusivity in approaches for the management of oil, gas and mineral resources in Uganda.

4.2.2 Petroleum (Exploration, Development and Production) (PEDP) Act, 2013

The Petroleum (Exploration, Development and Production) Act of 2013 (PEDP Act) is one of the laws that operationalises the National Oil and Gas policy of 2008. The Act vests ownership of petroleum rights in the government on behalf of the Republic of Uganda (Part II) and also establishes a number of institutional structures to ensure sustainable petroleum exploration, and development.

The Act describes the different roles to be performed by different stakeholders including the roles of the Minister of Energy and Mineral Development. Under Section 9 of the Act, the authority for granting and revoking oil licenses is placed in the hands of the Minister of Energy and Mineral Development. These powers include, among others, negotiating and endorsing petroleum agreements and approving field development plans. The Act also provides that the Minister may, in exceptional circumstances, in consultation with the Authority, receive direct applications for a petroleum exploration license (Section 53). However, the Act does not define the exceptional circumstances under which this provision can be invoked; and without strict accountability measures, this provision only serves to reinforce the Minister's exceptional powers to grant petroleum exploration license.

This Act has been criticised for limiting inclusiveness and the participation of different stakeholders – particularly the Parliament and the Petroleum Authority – in offering checks and balances in the management of petroleum activities. For example, the Act does not provide for a process where citizens or residents in affected areas are consulted on the granting of licences to the allocation and demarcation of blocks. The Act does not provide for feedback or grievance handling mechanisms between citizens, oil companies and government, thus leaving a number of citizens out of the process. There is a fear among Ugandans that placing critical functions in the hands of the Minister risks politicising the sector, which could adversely affect inclusiveness in the sector as decisions will be determined by political dividends rather than technical expediency. According to Angelo Izama, a Ugandan energy analyst, this way of power distribution is like "handing over an ATM (cash) machine" to long-serving President Yoweri Museveni and his government.

When it comes to access to information and transparency, the act places a duty on staff of the regulatory agency the Petroleum Authority of Uganda not to disclose information (S. 32), restricts granting information, and provides that petroleum data shall remain confidential (S. 152). These provisions restrict access to information and may negatively affect citizen participation.

Another important criticism of the Act is the lack of proper checks on the National Oil Company. The PEDP Act creates a National Oil Company (NOC), which is charged with managing the country's share of oil revenues. According to section 42, the NOC will be a company incorporated under the Companies Act and will be run as a private company. The PEDP Act does not provide for the accountability and transparency processes of the NOC, and does not detail how the NOC will relate to other national entities.

The PEDP Act is strong on ensuring that environmental impact assessments are conducted before oil companies are licensed; however, implementation will depend largely on the National Environment Act and a strong environment regulatory agency. At the time of writing this report, government was in the process of amending the National Environmental Laws of the country to bring them in tandem with oil and gas needs. It is yet to be seen if the new environmental laws will provide for clear regulation of the sector that avoids abuse of the environment.

4.2.3 Petroleum (Refinery, Conversion, Transmission and Midstream Storage) Act, 2013

Like the Petroleum (Exploration, Development and Production) Act, the Petroleum (Refinery, Conversion, Transmission and Midstream Storage) Act of 2013 was purposely developed to operationalise the National Oil and Gas Policy, 2008. It contains provisions on licensing of mid-stream operations, as well as general provisions relating to license and environmental standards. It was established to ensure that midstream operations in Uganda are carried out in a sustainable manner that guarantees optimum benefits for all Ugandans (both at present and for future generations), to promote equitable access to facilities for midstream operations and to define state participation and national content in midstream operations.

The act carries some positive clauses for inclusive development. This is particularly clear in the provisions for state participation and national content, including skills transfer through training and employing Ugandans for capacity building. In Part VII Section 52-55, the Act requires that licensees and contractors must give priority to Ugandans and registered Ugandan companies for the provision of goods and services while supporting their commercial endeavours. In practice however, Obore (2011) notes many local firms capable of providing services for the infant industry are losing contracts to foreign companies. He further quotes the Minister for Energy and Mineral Resources as saying that Ugandans have been "sleepy to date" while foreign firms have mobilized themselves. According to analysts, the government has not done enough to build the capacity of Ugandans to take advantage of the opportunities in the oil and gas industry.

The above provisions notwithstanding, there are some provisions that work against the achievement of inclusive development. The Act grants the Minister for Energy and Mineral Resources sole powers to award, suspend and initiate the development and implementation of policies concerning midstream operations, among others. As already discussed, these provisions increase opportunities for the abuse of power by the Minister and therefore heighten the risk of manipulation by the political elite.

Similarly, Sections 76(1) (a through d) and 77(1) on ministerial oversight and responsibility impose restrictions to the provision of information to the general public. In clause 76(1) "The Minister can make information available to the public subject to confidentiality of the data and commercial interests." Without defining what type of information falls under this category, this clause provides room for unnecessary secrecy and concealment of information from the general public. Section 77 (1) goes even further, stating that all data and information submitted to the government from licensees will remain confidential and will not be reproduced or disclosed to third parties.

These provisions are contrary to the principles of transparency and accountability articulated in various other laws such as Access to Information Act (2005).

4.2.4 The Public Finance Management Act, 2015

The Public Finance Management Act of 2015 (PFMA) repealed the Public Finance and Accountability Act, 2003, and amended the provisions of the Budget Act, 2001, in regards to the budget cycle. The Act provides for general finance and budget management in Uganda, and aims at enforcing the National Oil and Gas Revenue Management Policy, 2012. It also provides for public finance management by establishing among others: the Petroleum Fund and the collection and deposit of revenues into and the withdrawal of revenue from the Petroleum Fund, and for the management of the Petroleum Revenue Investment Reserve; the role of the Bank of Uganda in the operational management of the Petroleum Revenue Investment Reserve; and the establishment of the Investment Advisory Committee.

Part VIII (sections 56 – 75) of the Act provide for Management of Petroleum revenues. This Part applies to the collection, deposit, management, investment, and expenditure of petroleum revenue that accrues to Government from the exploitation of the petroleum reserves in Uganda. According to this Act, all collections and government shares of petroleum revenues shall be deposited in the Petroleum Fund (section 56 (2)) and any withdrawal from the fund shall not exceed the amount authorized by Parliament or granted by an Appropriations Act and a warrant of the Auditor General (section 58).

While the objective is to provide safeguards for withdrawal of funds, this is not strong enough to deter abuse. Without specifically stating an absolute cap of withdrawal permitted, this leaves room for manipulation of Parliament – especially by the Executive using its majority vote – which could result into withdrawal over and above what would have been ideal. This follows similar precedents where parliament has been used to approve supplementary budgets over and above the recommended limits.

The Act establishes an Investment Advisory Committee to advise the Minister on the investments made under the Petroleum Revenue Investment Reserve (section 66). However, all the members of the Investment Advisory Committee shall be appointed by the Minister, further entrenching the powers of the Minister.

Linking it to the concept of inclusive development, the Act provides safeguards for the management of resources and also reinforces statements made by the President to only invest the funds in financing infrastructure and development projects of government and not the recurrent expenditure of government. However, inclusive development will not be achieved by a one-dimensional focus on infrastructure, but rather by achieving the right balance between investments in infrastructure and in social development projects such as health, education, job creation and social security mechanisms, among others.

One aspect of inclusiveness considered in the National Oil and Gas Revenue Management Policy, 2012, and the Public Finance and Management Policy (PFMA), 2015, is that of sharing of royalties. The PFMA, 2015 provides that Local Governments located in oil producing areas shall share 6% of the royalties, while cultural institutions shall share 1% and central government takes 93% of royalties. It should be noted that this arrangement only focuses on share of royalties. The Central Government will retain the rest of the oil and gas revenues, which will be included in the national budget or invested in accordance with the PFMA.

The National Oil and Gas Revenue Management Policy, 2012, provides that sharing of royalties should take into consideration the social costs that the districts hosting oil facilities will suffer and the need for balance in regional development. For this reason the royalties are meant to stabilize affected local economies by compensating local governments for the extra costs incurred in dealing with oil revenues while at the same time preventing regional imbalance in development, which could result from some districts earning extra income from oil revenues.

However, the law is not clear on which local governments qualify to benefit from royalties. According to the Local Government Act (Cap 243, Laws of Uganda), local governments in Uganda include District, City, Municipality, City Division, Municipal Division, Town Council and Sub County. However, lower local governments such as sub counties and city divisions are not votes and do not receive money directly from central government. The provisions of the PFMA appear to provide direct funds – through royalties – for lower local governments, and this could result in a conflict between upper local governments such as cities and districts and lower local governments.

Another important aspect of royalty sharing is the provision to share royalties with cultural institutions. This is in conflict with S.59 (3) of the PFMA and the National Oil and Gas Revenue Management Policy, 2012, which restricts the expenditure of petroleum funds to infrastructure and development projects. Generally cultural institutions are not under obligation to construct development infrastructure or development projects for the general public, as this is a mandate of government. The share of 1% royalties with cultural institutions therefore may not necessarily result in the development of projects for the common good. This revenue sharing regime has been criticized for providing incentives for the development of cultural institutions in places where they did not exist and this may be a basis for future conflict (Kajubu 2012).

The PFMA, was amended six months after coming into force. The PFMA (Amendment) Bill, 2015, has provisions that would allow government to borrow from the treasury without parliament approval. It is feared that the provisions in the PFMA (Amendment) Bill may negatively affect revenue management and undermine transparency and better planning.

The PFMA does not provide for transparency and accountability of key sectors in Uganda. For example, it does not provide for budget, management and accountability of funds handled by the National Oil Company. This is a major gap in the management of such an important company for the sector.

Although the National Oil and Gas Policy, 2008, provided for state participation in Extractive Industries Transparency Initiative (EITI) as a step towards ensuring transparency in the sector, all other petroleum laws in Uganda do not provide for state participation in EITI. This provision in the policy remains largely unimplemented.

4.2.5 Access to Information Act, 2005

The Access to Information Act of 2005 operationalises Article 40 of the Constitution of the Republic of Uganda on the right of access to information in possession of government. It states that "every citizen has a right to information and records in the possession of the state or any public body" (S. 5 (i) Part II) and can therefore request for the disclosure of such Information if not done automatically by the government bodies (S. 2; 10).

The existence of this law notwithstanding, the current trend of activities in the oil sector does not conform to the above requirements. There is general government secrecy even with repeated demands for information from parliament about activities in the sector – particularly the contents of the oil Production Sharing Agreements (PSAs) which government has signed with the various oil companies. The lack of information on the PSAs makes it difficult to know how much the country will collect from the oil and gas revenues and, therefore, to hold government to account for the utilisation of public resources. Most of the current figures are based on estimates. For example, the Uganda's Vision 2040 Section 4.1.3 (87) estimates that oil and gas contribution to Uganda's Gross Domestic Product (GDP) will be 4% by 2020, 37% by 2030 and 74% by 2040. While the 4% for year 2020 seems conservative, the other estimates are obviously too optimistic (Gelb and Majerowicz, 2011).

To address the contradiction between the practice and the legal framework on access to information, in 2008, two journalists from the Daily Monitor Newspaper filed a legal suit against government seeking the court to compel the government to disclose details of the oil and gas contracts based on the 2005 Access to information Act (Daily Monitor, 12th July 2008). In 2011, the court ruled in favour of government, stating that it had a right to withhold information that is construed to jeopardise national security, and thereby suggesting that the disclosure of PSAs would amount to a breach of national security. This case has been on appeal and the court is yet to make a decision. Similarly, in 2010, civil society organizations, led by the Human Rights Network of Uganda (HURINET) and Green-watch, filed a case at the Constitutional Court for an interpretation of the 2005 Access to Information law in relation to the PSAs. This case is still pending at the Constitutional Court.

The lack of disclosure of information in the oil sector poses a significant risk for inclusive development. Unless addressed, this can increase the risk of corruption and misuse of oil revenues.

The implementation of the Access to Information Act has been bogged down by other conflicting laws such as the Official Secrets Act and the Oaths Act, which requires government officials to take an oath of secrecy not to reveal government information in their possession (Ngabirano 2010). In the same spirit, the PEPD Act limits officials of the Petroleum Authority from revealing information in the petroleum sector (S. 32 and 152 of PEPD Act). These laws greatly limit the enforcement of the right to access information, thereby limiting citizen participation in the oil and gas sector.

Local content and citizen participation in the oil and gas sector

According to the Oil and Gas Policy, 2008, Ugandans will participate in the oil and gas sector through employment, provision of services and technology transfer (mainly education and adaptation of technology). The state participates in the sector through institutions that regulate the sector and those that will play a role as players. In this regard, the key institutions are the Petroleum Authority of Uganda (PAU), which is the main regulatory agency, together with the Petroleum Department at the Ministry of Energy. Although the PAU is meant to be an independent body (S.14 PEPD Act), it is greatly under the control of the minister and the presidency, as seen in S.13 of the PEPD and other provisions that subject its decisions to the minister's orders. This could result in political influence in the sector. Further, the role of the minister and the role of the authority are the same and this could result in the duplication of roles or conflicts (Magelah 2014). However the authority is yet to be fully constituted and it remains to be seen how it will play its role.

The National Oil Company (NOC) is the other entity through which government will participate in the sector. According to the Oil and Gas Policy for Uganda, 2008, NOC will be the business arm of government that competes with other companies in the oil and gas sector. National oil companies have been recognized as an effective way of ensuring state participation, value chain addition and citizen participation in the oil and gas sector (Tordo, 2011).

The PEPD Act establishes the NOC as a private company. The law does not, however, put in place accountability, transparency and reporting measures. This gap may limit the extent to which citizens can hold the NOC accountable. Such provisions and the lack of proper checks on national oil companies have been responsible for the mismanagement of the oil and gas sector in many countries (Tordo 2011, Marsh 2007).

Outside government participation, citizens are also expected to participate in the oil and gas sector. Direct citizen participation will take the form of service provision to the sector and direct employment. It should be noted, however, that the oil and gas sector is not a major employer and will not solve Uganda's employment problems. The nature of skills needed in the oil and gas sector may not be readily available in Uganda. For this reason government has embarked on creating a National Content Policy, which will provide for citizen participation. Government has also started training Ugandans in sector-related activities by establishing the Kigumba Petroleum Institute, and a process is underway to turn Kicwamba Technical College into a Petroleum Institute to provide skilled labour for the sector (UPIK 2014).

Despite the above efforts, industrial players who think more efforts should have been put into training have criticized government for being slow. The PEPD Act requires every person applying for a license in Uganda to have in place a plan for training and employing Ugandans, as part of the points to be evaluated (see S. 71(3) of PEPD Act). The different licence holders have, over time, sponsored Ugandans to study various courses within and outside Uganda. However, no evaluation has been conducted on the relevance of the courses studied to the sector (Magelah 2014).

Both the PEPD Act and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act provide that oil companies should purchase goods and services from Ugandan Companies; and that where there are no Ugandan companies, they should purchase such products from joint venture companies where Ugandans own at least 48%. The laws and the policy do not define what a Ugandan company is and this may result in challenges in enforcement. A Ugandan company does not necessarily mean a company owned by the country's citizens and therefore there is a need for clarification on what qualifies as a Ugandan company (Magelah, 2014).

Much as the provisions on local content and service provision are good, they have been criticized for being too stringent and may not easily be met by ordinary Ugandan businesses. For example, the petroleum laws provide that the oil companies are under obligation to buy from Ugandan companies if these companies provide a service that is competitive at international level. The fact that the majority of companies in Uganda are small capital companies that conduct mainly local trade means they may not be competitive enough to meet the international standards needed for the sector.

Magelah (2014) recommends an approach such as those adopted by Ghana and Nigeria in local content, where different standards are applied to different services and goods for the oil sector, with the expectation that over time the local companies will adapt to the international standards, or that national standards will be developed that meet the requirements of a specific country and that can be sustainable in the long run.

Another criticism for local content in Uganda has been the lack of proper regulatory and monitoring institutions. Whereas countries like Ghana, Nigeria and Angola have created institutions that carry out day to day monitoring of company compliance with the local content requirements of the country, Uganda does not have such a specialized institution whose role is to ensure companies comply with local content needs. This presents a potential of laws and policies that may largely go unimplemented.

Overall, if well implemented, local content could lead to inclusiveness. However, local content may not necessarily lead to citizen participation and inclusiveness, and could result in "elite capture" of the oil and gas sector, as witnessed in Angola and other countries dependent on the extractive sector (Ovadia 2012, Heum, Quale, et al 2003). The focus for local content should have broad goals that capture both the skilled elite and the semi or unskilled population.

4.3 The Policy framework

4.3.1 National Oil and Gas Policy, 2008

The National Oil and Gas Policy, 2008, was formulated for the efficient management of oil and gas resources during exploration, development and utilization. Under the policy goal of "using the country´s oil and gas resources to contribute to early achievement of poverty eradication and creating lasting value to society", the policy sets the broad framework for participation by different stakeholders in all aspects of planning and management of the oil and gas sector, with the aim of ensuring that oil and gas resources are used to create lasting benefits for the country. Objective VII of the Policy aims at ensuring optimal national participation in oil and gas activities in terms of government's involvement through shareholding in licenses and private sector provision of goods and services, as a means of adding value to the resource. The National Oil and Gas Policy is also based on the principles of "transparency and accountability" and stipulates that "openness and access to information are fundamental rights in activities that may positively or negatively impact individuals, communities and states". Specifically, the policy commits to promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management and disclosure of revenues and expenditures accruing therefrom.

Objective VI of the policy identifies a number of strategies and actions, which include: publishing the revenues received from oil and gas activities regularly, enlisting participation of local governments and stakeholders during the development of oil and gas resources and sharing of royalties in accordance with the constitution, and participating in the processes of the Extractive Industries and Transparency Initiative (EITI). This mention in the policy notwithstanding, it is worth noting that the policy does not stipulate mechanisms for legal enforcement of its provisions. Similarly, aspects of EITI were not included in the three major laws that form the cornerstone of Uganda's legal framework for managing oil and gas revenues (The Petroleum (Exploration, Development & Production) Act, 2013, Petroleum (Refinery, Conversion, Transmission and Midstream Storage) Act, 2013, and the Public Finance Management Act, 2015). Theoretically therefore, the concept of inclusive development is anchored on access to information, transparency and effecting disclosure laws and practices.

4.3.2 National Oil and Gas Revenue Management Policy, 2012

The Oil and Gas Revenue Management Policy, 2012, covers the areas of collection and administration of government revenues from oil and gas activities, as well as the institutional and governance structures for the management of oil and gas activities. For inclusive development, the policy provides for a mechanism for the sharing of royalty revenues with the local governments within the oil-producing region. This is drawn from the Constitutional provisions, which provide for the sharing of royalties between central Government and areas where the natural resources are discovered.

According to the policy, a maximum of 7% of all royalty revenues (including 1% for cultural institutions) shall be set aside for sharing between local governments located in the oil and gas producing areas. While the exact amount of royalties is yet to be established, the policy provides the principles to be used in allocating the royalty to local governments. These include intra-regional fairness at the level of production, as well as sustainability of local revenue.

At the local level, it will be the responsibility of each government to agree and allocate a share of their royalty revenues to institutions within their jurisdictions such as sub-counties, cultural institutions and other institutions as recognized by the constitution. After offsetting royalties to local governments, the policy provides that the remaining 93% of revenues shall be retained by the central government for the benefit of the entire country. The 93% share of royalties together with other revenues from oil and gas related activities shall be kept in the Petroleum Fund for long-term savings, but also to finance current spending. It is worth noting that the policy does not provide clear guidelines on how much shall be saved or drawn to finance current spending.

The establishment of the Petroleum Fund is drawn from the experiences of countries that have been successful in their oil and gas resource management, such as Norway. Redistribution is one of the key aspects of inclusive development and by committing to sharing royalties with local governments from the oil producing regions, the government is demonstrating its zeal for ensuring that oil and gas revenues are redistributed among the population. These provisions alone, however, are insufficient for ensuring inclusive development in relation to sharing benefits. The policy is silent on the options/strategies of how incomes from oil and gas are going to be redistributed. Indications in the existing framework are that revenues shall be invested in infrastructure projects, which will benefit Ugandans indirectly and in the long-run, while providing short-term employment opportunities. Considering, however, that many locals may not have the necessary skills for such huge infrastructure projects, the question is how this provision will be implemented, or whether it would be more efficient for companies to employ foreign partners, which makes the benefits from oil and gas elude citizens even further.

In order to pave the way for inclusive development, there is need for clearly prescribed policies that ensure a fair redistribution of benefits to the citizens. The idea of a Petroleum Fund has proven its potential to ensure stabilization of government spending during periods of oil-price volatility and savings for use by future generations. As already mentioned, however, the existence of a fund alone does not guarantee effective management of oil and gas revenues. The experience of Norway indicates that the extent to which the fund will achieve its objectives depends on fiscal discipline and the extent to which it shall be independent from political pressure. There have been several incidences of the government of Uganda using funds from the consolidated account without parliamentary approval and the same is likely to occur with the Petroleum Fund if fiscal discipline is not exercised. Parliament as an institution for offering checks and balances is weak and this only increases fears that without strong political commitment, the Petroleum Fund could potentially be used to finance self-interest projects/activities of the ruling NRM party and other political elites. To safeguard these revenues, the policy should provide strict limits on the amount of money that can be withdrawn from the fund each year and also clearly indicate areas where this money shall be spent.

4.3.3 National Development Plan, 2015

The second National Development Plan (NDP) (2015/16 - 2019/20) under the theme "Strengthening Uganda's Competitiveness for Sustainable Wealth Creation, Employment and Inclusive Growth" is underpinned by the principles of inclusive development. The Plan contains a specific section on Oil and Gas (NDP 8.2) where a number of strategies and intervention areas are listed to ensure, among others: increased efficiency and effectiveness in the management of Uganda's oil and gas resource potential; improved protection of the environment against oil and gas activities and the mitigation of the likely effects of greenhouse gases (GHG) emissions; and improved stakeholder relationships in the development of a desirable oil and gas sector. Beyond the oil and gas sector, the NDP also identifies a number of strategies such as expanding social protection measures aimed at reducing poverty and inequality on a national scale.

4.4 Institutional Framework

Many scholars such as Mehlum et al. (2006) and Robinson et al. (2006) have argued that the quality and independence of institutions strongly determines whether or not a country avoids a resource curse. They note that low quality institutions may be conducive to bad policy choices since they provide an environment that allows inefficient, politically motivated (re)distribution policies to take place. Independent and high quality institutions, on the other hand, constrain decision makers and render rent seeking or clientelist policies infeasible or costly (Robinson et al, 2006).

The principal institution responsible for the management of oil and gas activities in Uganda is the Ministry of Energy and Mineral Resources. The Ministry is responsible for policymaking and implementation, and regulation of oil and gas activities. The ministry has five departments, three of which are directly related to the management of oil and gas activities.

4.4.1 The Department of Geological Surveys and Mines

The Department of Geological Surveys and Mines is the oldest department, founded in 1919 to promote and ensure rational development and utilisation of mineral resources in a safe and sustainable environment, for the socioeconomic enhancement of the people of Uganda. The department has four operational divisions which include the Geology Division, the Mines Division, Geo-Data Division and the Laboratories Division. The roles and responsibilities of this department includes, among others, collecting and interpreting the geological data, identifying economic mineral prospects, and producing maps and reports relevant in the promotion of exploration and exploitation of Uganda's mineral resources. The department is also responsible for issuing licenses for the exploration and exploitation of the identified mineral occurrence, as well as preserving and disseminating geoscience data of the Department.

4.4.2 The Petroleum Exploration and Production Department

The Petroleum Exploration and Production Department is the department responsible for oil and gas exploration and development in Uganda. The department's mandate is "to establish the petroleum potential of the country and promote it."

4.4.3 The Department for Petroleum Supply

The Department for Petroleum Supply is mandated to promote, regulate and monitor petroleum supply in Uganda in an environmentally safe and sustainable, free and competitive market. The main policy goal of the department is to meet the petroleum product needs of the Ugandan population for social and economic development.

4.4.4 The Directorate of Petroleum

The Directorate of Petroleum carries out the roles of policymaking, monitoring and evaluation for the petroleum sector. This directorate comprises three separate departments responsible for the upstream, midstream and downstream petroleum subsectors respectively (National Oil and Gas Policy 2008). To establish this directorate, the Midstream Petroleum Unit established in 2007 was transformed into the Midstream Petroleum Department to constitute one of three departments under the Petroleum Directorate.

4.4.5 The Petroleum Authority of Uganda

The Petroleum Authority of Uganda regulates the different players in the oil and gas subsector. The Petroleum Authority is governed by a Board of Directors consisting of seven members appointed by the President, with the approval of Parliament. The appointment of the board members was concluded in July 2014 with parliament approving five of the seven names nominated by the President. In order to minimize presidential influence on the board, there is a need to impose competency requirements for board members. The board is supervised by the Minister for Energy and Mineral Development and their roles include, among others, monitoring and regulating petroleum operations, proposing and implementing regulations, monitoring expenditure on licenses and assisting in negotiating and administering PSAs.

4.4.6 The Uganda National Oil Company (NATOIL)

The Uganda National Oil Company (NATOIL) will handle government's commercial interests in the subsector, such as state participation in the licenses and marketing the country's share of oil and gas production received in kind. So far, only the Board Members of the company have been appointed following the due process of nominations by the President and approval of Parliament, while the company will become operational when production commences in 2017. Some of the functions to be performed by the NATOIL include administering contracts with joint ventures, participating in contractor/operator meetings and Investigating and proposing new upstream, midstream and downstream ventures to be undertaken by the government. NATOIL also works as a collection agency for petroleum paid in kind by all licensed companies in Uganda.

Other institutions critical to the Oil and Gas subsector

In addition to the above new institutions to be created, specific responsibilities have also been assigned to a number of other ministries and government agencies.

a) The Bank of Uganda (BoU): Key roles include advising government on the impact of the oil and gas sector on the national economy, ensuring that oil and gas activities do not impact negatively on monetary policy and macroeconomic stability and managing and administering the Petroleum Fund.
b) The Uganda Revenue Authority (URA): As the government revenue collection agency, the URA is responsible for administering the collection of revenue from oil and gas activities in line with the relevant laws, assisting in monitoring and assessing the impact of oil and gas revenues on the economy, and participating in the formulation of tax measures to regulate collection of the right revenues from oil and gas activities.
c) The Ministry of Finance, Planning and Economic Development (MoFPED) is responsible for ensuring appropriate management of petroleum revenues, promoting and sustaining transparency in the oil and gas sector, ensuring that fiscal and other economic issues are appropriately addressed in the PSAs and providing policy guidance in the management of the Petroleum Fund, among others. Specifically, the Minister of Finance Planning and Economic Development under the Public Finance Act, 2015, has powers to constitute the Investment Advisory Committee, exercise ownership and control over the Petroleum Fund through the Investment Advisory Committee, issue strategic investment guidelines to the Central Bank as well as monitor the overall performance of the Fund, and report to Parliament on the performance of the Fund on a periodic basis.

In conclusion, at least on paper, there is a clear institutional framework for the management of oil and gas activities. Like other institutions in Uganda, however, there is a fear that these may not fully exercise their mandates due to political interference. Per this analysis, the laws under the legal framework vest a great deal of powers in the Minister of Energy and Mineral Development rather than in the institution and this power could be used to influence decision making within the respective institutions to suit political interests. Similarly, considering the multiplicity of institutions established, it is possible that there will be a duplication of roles and responsibilities within and across the petroleum institutions—namely the Petroleum Authority (PA), the Directorate of Petroleum and the National Oil Company (NOCs).

To ensure a strong and independent institutional framework, there is a need for strong political commitment and empowerment of the respective institutions to remain autonomous and steer away from political interference. In the case of Uganda, proper coordination mechanisms between the institutions assigned specific roles under the National Oil and Gas Policy have to be put in place in order to reduce duplication and conflict of roles and responsibilities.

5. Lessons from Botswana

Botswana has had a long history of uninterrupted civilian leadership and an impressively stable political situation, and has maintained an annual economic growth rate of 9 percent. From being ranked one of the twenty-five poorest countries in the world in 1966, with a per capita Gross Domestic Product (GDP) of about US$70, Botswana moved to becoming an upper-middle income economy in 1998, reaching a per capita GDP of 9,200 USD in 2004 (Paula et al, 2012). These improvements notwithstanding, the country continues to grapple with the challenges of high levels of poverty and inequality, unemployment, and a high infant mortality rate, among others. With these challenges, it is important to note that Botswana is by no means a country of best practice in terms of implementing inclusive development. Rather, the key lesson is the way this country has managed to turn its resource into a blessing rather than a curse.

As a nation, Botswana's economy is heavily dependent on the extractive sectors, most notably diamond production, which accounts for more than one-third of GDP, 70-80 percent of export earnings, and half of government revenues (World Bank, 2009). In this section, the paper reviews Botswana's success with respect to its successful utilization of natural resources, with the view to drawing lessons for Uganda. To do this, the paper critically analyses the key factors that enabled Botswana to escape the pitfalls of the resource curse and the lessons that Uganda could learn to do the same.

Many commentators associate Botswana's success to its political history (Mbabazi, 2013). Unlike many nations on the African continent, Botswana has posted an impressively stable political situation and has never experienced any insurgencies or civil conflicts in its post-colonial history. This stability, backed by political commitment, has enabled the country to build a strong national integrity system which - according to Transparency International - is defined as the sum total of laws, institutions and practices in a country that maintain accountability, and integrity of public, private and civil society organizations. Today, Botswana's bureaucracy is one of the most effective and corruption-free in Africa, and for 13 years in a row, it has achieved the highest score for African Countries in Transparency International's Corruption survey index. Beyond history however, Botswana's success in avoiding the resource curse has been because of a number of strategic decisions in reforms on mineral rights, economic diversification, de-linking expenditure from revenues and investing surplus revenues for use by future generations (Meijia et al 2012).

Reforming ownership of mineral rights: At independence, mineral rights in Botswana were held by landowners, which included the state, private farmers and tribal authorities (Keith 2009). Through the Mines and Mineral Act 1967, the first step adopted by the government of Botswana to create a conducive environment for private investment in mining was to acquire all the mineral rights owned by the tribal authorities through progressive negotiation with the respective holders, and to declare them property of the state (Mines and Mineral Act 1967, Battistelli; Guichaoua, 2011). The transfer of mineral rights to the state played a significant contribution in averting the inequalities between mineral-producing and other areas of the country that would have arisen due to mining activities. Similarly, it made it easy for government to negotiate with and equitably compensate previous owners. In Uganda, the legal framework is not explicit on the question of ownership of mineral rights. According to the Constitution, minerals in Uganda are owned by Government while the surface of the land where they are found is privately owned by individuals and communities. With these provisions, exploration companies must first obtain surface rights from landowners before any mineral license is granted by government to enable them to commence mining operations. Because of the separation of these rights, negotiating royalties and agreeing on percentages becomes difficult and can vary from one region to another. In early October 2014, President Yoweri Museveni announced that cabinet would push to amend the Mineral Act of 2011, in order to make government the legitimate landowner of mineral-rich land. According to the Ministry of Energy and Mineral Development, if government acquires both surface and mineral rights, people will still be treated fairly and there won't be any reason for disputes to escalate.

Establishment of a public-private partnership in the Mining sector: The mining sector in Botswana was developed through a smart partnership of strategic cooperation between the government and private sector, with the government requirement that in addition to the companies paying a modest royalty rate, the government would take up a small portion of the equity in the mining operation (Keith, 2009). Equity stakes provided a mechanism for government representation on the company boards, and provided the government with first-hand information on mining operations and a direct say in the management of the nation's mineral resources. The arrangement helped to ensure that mining companies understood government policies, and that the government had a good appreciation - at an early stage - of any problems faced by mining companies (Ibid). Like Botswana, Uganda's general policy framework is market-oriented, and supportive of the private sector. Actually, the National Development Plan identifies the private sector as a critical player in the achievement of Uganda's development objective (NDP 2010). However the contrast with Botswana's approach is that in Uganda, the government has so far been content to let private investors run the oil and gas activities independently for as long as the revenue sharing/appropriation agreements are adhered to.

Economic Diversification and establishment of strong fiscal guidelines: As a deliberate action, Botswana strategically pursued economic diversification through the development of non-mineral sectors (Maijia et al 2012). This economic diversification focused on the creation of a business friendly environment, addressing policy and institutional matters such as ensuring the stability of the financial sector and creating projects to drive diversification such as through support to agriculture and tourism, among other sectors (Ibid). In addition to economic diversification, the government of Botswana also put in place strong fiscal guidelines to prevent excessive spending and ensure fiscal sustainability of mineral resources (Government of Botswana, 2009). Some of the fiscal rules adopted included setting the maximum government expenditure at 40% of GDP to be consistent with the Projected Medium Term government revenue (Maijia et al 2012).

Creation of investment fund for mineral resources: In addition to the strong fiscal rules adopted, Botswana established the Pula Fund in 1993 as a stabilization fund as well as savings fund for future generations (Ibid). This practice has already been adopted in Uganda through the proposed Petroleum Fund, to be managed at the Bank of Uganda on behalf of the Ministry of Finance Planning and Economic Development. Botswana's success, however, does not come solely from the creation of the fund, but more importantly from the ability to prevent government from altering the budget or rules surrounding the fund (Maijia et al 2012). This is due to the presence of strong institutions, independent from political interference and based on the principals of broad based participation and good governance, which Botswana is highly regarded for.

While Botswana is a unique country with its own history and characteristics, the analysis of factors for its success provide the following lessons for Uganda, which, if implemented, could avert a resource curse.

Strong institutions and good governance are a perquisite for successful management of natural resources; the existence of a legal framework and institutions will not lead to effectiveness if good governance and the independence of the institutions are not strengthened. Parliament needs to play a stronger role in checking the executive as well as passing effective laws to safeguard resources.

From the start, strong fiscal policy rules on utilization of oil and gas revenues need to be put in place. Uganda has just passed the Public Finance Bill but this remains vague, for example, on how much can be drawn to finance the current spending through the consolidated fund. The Bill states that "the moneys withdrawn from the Petroleum Revenue Holding Account to the Consolidated Fund to support the annual budget shall not exceed the amount authorized by Parliament in the Appropriation Act". Without a clear limit, – and considering the weak role of Parliament – this can be abused in favour of those with a majority vote in Parliament.

While the Petroleum Fund shall be established in line with the Pula Fund in Botswana, to be effective, policy guidelines need to be put in place indicating and/or capping how much can be drawn from the fund to meet present demand. As oil is a finite resource, government needs to promote economic diversification into other sectors such as agriculture and tourism, to avoid falling into the popularly known trap of the "Dutch Disease".

Address transparency. As discussed in the paper, one of the biggest threats to Uganda's emerging oil industry that the government needs to address is the lack of transparency. Without information, Ugandans cannot hold their government to account. This not only limits participation, but could also potentially allow for the allocation of oil revenues in a manner which is not in line with policies and development goals.

6. Conclusions and Recommendations

This study sought to examine the current political, policy, legal and institutional framework for the management of oil in Uganda and to analyse the extent to which it potentially contributes to inclusive development. The preceding analysis indicates a robust framework to guide the management of oil and gas revenues exists. A number of laws and policies govern the management of oil and gas revenues, including the Constitution of the Republic of Uganda, the Access to Information Act, the National Oil and Gas policy, the National Oil and Gas Revenue Management Policy, the Petroleum (Exploration, Development and Production) Act, the Petroleum (Refinery, Conversion, Transmission) Act, and the Public Finance and Management Act.

Similarly, the institutional framework has been defined under the National Oil and Gas Policy of 2008 and the Petroleum related laws, which provide for the establishment of the Directorate of Petroleum in the Ministry of Energy and Mineral Resources, to carry out the roles of policymaking, monitoring and evaluation for the petroleum sector. A Petroleum Authority of Uganda will also be established to regulate the different players in the oil sector, as well as a National Oil Company whose role includes, among others, handling all aspects of the state's participation in the licenses and marketing the country's share of oil and gas production received in kind.

The study recommends that these institutions be empowered to be independent from political influence to be able to effectively execute their mandate. For example, government could explore imposing minimum competency requirements for Board Members of the Petroleum Authority as well as the National Oil Company to ensure that only persons with the right competencies are appointed, as opposed to political nominations.

The study critically assessed these legal and institutional frameworks and the extent to which they potentially contribute to inclusive development. This assessment was guided by the key aspects of inclusive development, including: Transparency and Accountability; Stakeholder participation and Employment; Revenue Distribution and Sharing of Benefits; and Environment sustainability & intergenerational justice.

6.1 Revenue distribution and sharing of benefits

The National Oil and Gas Policy of 2008 provides that 7% of all royalty revenues shall be set aside for local governments located in the oil and gas producing areas while the balance (93%) shall be moved into the Petroleum Fund for long-term savings as well as financing current spending. While these provisions for revenue sharing provide a good starting point, there is a need to involve existing and respected local community institutions such as Kingdoms in the processes of negotiation, decision making, and grievance handling with regard to sharing of benefits.

The Public Finance and Management Act, 2015, provides a framework for the use of petroleum revenues and restricts it to the financing of infrastructure and development projects of government. This limits the potential for inclusive development as social aspects of development are not included and, therefore, the government is not obliged to use part of the funds to finance social protection and other expenditure aimed at enhancing access to social services such as health and education. To achieve inclusive development and to enable the oil revenue to have long lasting impact, planning for how to use oil revenues should be done in the context of a holistic national development plan that also prioritizes increased investments in physical and human capital as well as agriculture, where majority of Ugandans derive livelihood.

Similarly, to avoid abuse, government should put in place strong withdrawal rules for the Petroleum Fund by specifying in the Public Finance Regulations an absolute cap of how much can be transferred from the Fund, rather than leaving it to Parliament to determine the amount, as this could be abused by the Executive using its majority vote to alter approvals.

6.2 Transparency and accountability

Inclusive development is anchored in access to information, transparency and putting in place disclosure laws and practices. Transparency entails that accurate information is available and published on a regular basis. The Constitution provides for the right to access information and is reinforced by the Access to Information Act, 2005. However, despite the existence of this Act, only partial information about activities in the oil sector has been shared with Parliament and none with the general public. In fact, provisions in the Petroleum (Refinery, Conversion, and Transmission) Act, 2013 contradict the Access to Information Act. Section 77(1) of the Petroleum (Refinery, Conversion, and Transmission) Act 2013 and S.152 of the PEPD Act state that all data and information submitted to the government from licensees will remain confidential and will not be reproduced or disclosed to third parties. Up to now, little has been done to address the culture of secrecy that exists in most government institutions and public bodies because of the existence of the Official Secrets Act, which hinders disclosure of information by Public officials.

In order to increase the level of transparency and accountability in the oil sector, it is highly recommended that government sign up to the Extractive Industries Transparency Initiative (EITI), which obliges member states to routinely disclose information. Further, it is recommended that government review the confidentiality clauses in the Petroleum (Refinery, Conversion, and Transmission) Act and amend the Official Secrets Act and the Oaths Act to place them in line with the Access to information Act.

6.3 Stakeholder participation

The study notes that oil and gas in Uganda remains a politically turbulent issue defined by a lot of secrecy. On paper, stakeholder participation seems to have been catered for through the various mechanisms and roles to be played by Parliament. In practice however, real decision making powers have been placed in the hands of a few. The Petroleum (Exploration, Development & Production) Act of 2013 and the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act of 2013 place a great deal of power in the hands of the Minister of Energy and Mineral Development to manage petroleum activities, including the approval and cancellation of production sharing agreements, without prior involvement of parliament. This has been at the center of debate, as Ugandans fear that allocating excessive powers to the Minister leaves much room for the politicisation of the sector. This could adversely affect inclusiveness, as decisions will be determined by political dividends rather than technical expediency.

Furthermore, the participation of Parliament in decisions regarding oil and gas activities has been limited. In 2012, Parliament hurriedly passed the Petroleum (Exploration, Development & Production) Act, 2013 and the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act, 2013 with little or no debate. This is due to a number of factors including the unwillingness of the Executive to share information on oil and gas activities such as PSAs with Parliament, and the limited capacity of some Parliamentarians to provide well-informed input and debate on legislation, regulations, and policies. This has significantly diminished the ability of Parliament to oversee the oil and gas activities in Uganda.

The study recommends that to strengthen stakeholder participation, Petroleum laws should be amended to spread out roles between the Minister for Energy and Mineral Development with the existing institutions. This could, for example, include ensuring the Minister consults Parliament during the approval and cancellation of production sharing agreements. This would enable parliamentary oversight as well as limit the potential for political interests overriding national interests if powers were only vested in one individual. Similarly, the frameworks need to define and provide for strong involvement of civil society in all activities of the subsector. Furthermore, clear division of decision-making powers across multiple ministries/agencies should also be established, particularly in the areas of licensing, monitoring and revenue collection.

6.4 Environmental Sustainability

Whereas the Petroleum (Exploration, Development and Production) Act, 2013, is strong on environmental impact assessments being conducted before oil companies are licensed, the Act does not have sufficient provisions to ensure that the environmental effects of the oil industry will be vigilantly monitored when the oil is being produced, refined, transported and used. Therefore, there is a need to strengthen the measuring and monitoring of environmental regulations when industries are in actual operation. This will require building the capacity of NEMA and other environment monitoring agencies. In addition, monitoring environmental standards should involve more stakeholders besides NEMA, including CSOs and other external agencies.

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Analytical Matrixes From Selected Countries

Analytical matrix - Botswana

Current diamond framework with regards to harnessing diamonds production and revenues for inclusive development

Framework \ elements of inclusive development	*Transparency & accountability*	*Stakeholder participation & empowerment*	*Revenue distribution & sharing of benefits*	*Environmental sustainability & intergenerational justice*
Political	Anti-corruption agency (DCEC) established, Ministry of Energy and Water Resources has direct responsibility for natural resource regulation and management. Disclosure of the terms of contracts and profit-sharing arrangements with natural resource developers and publication of independent external audits have the same effects for increasing transparency in natural resource management.			
Regulatory / legal / policy	Anti-corruption policies well stipulated in the DCEC handbook	Diamond mining is governed by the Mines and minerals act Chapter 66:01 of 1999. The main legislation governs the ownership of minerals and mineral rights, application for mining licenses and environmental obligations. Anybody over the age of 18, resident for more than 4 years can apply for mining license. Communities benefit through employment	GoB retains 50% of the shares in Debswana. In Botswana, use of mineral revenues has followed an implicit self-disciplinary rule, the Sustainable Budget Index (SBI), under which any mineral revenue is supposed to finance 'investment expenditure' defined by as development expenditure and recurrent spending on education and health.	Environmental obligations well stipulated in the Minerals act. Also the Environmental Impact Assessment legislation is used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment.

		and infrastructure in remote areas. Revenue for social development.	No budget for diamond revenue alone. The national budget is made up of all sources of revenue and it benefits all people in the country.	
Institutional	Botswana member of EITI. Anticorruption authority- DCEC which is effective. The constitution also makes the attorney general independent of the government and politicians.	DTC Botswana is a 50/50 joint venture between Botswana government (GoB) and DeBeers. The main purpose of the company is to mine and recover diamonds optimally and responsibly. In addition to sorting and valuing, DTC Botswana has a sales and marketing function which is responsible for local sales of aggregated diamonds.		There has been an introduction of state of environmental reporting and the production of natural resources accounts for livestock, minerals and water, in order to mainstream environmental issues into the planning process. In addition, Environmental Impact Assessment (EIA) legislation came into force in MAY 2005, along with the subsequent promulgation of environmental regulations.

Analytical matrix – South Sudan
Current oil & gas framework with regards to harnessing oil & gas production and revenues for inclusive development

Framework \ elements of inclusive development	*Transparency & accountability*	*Stakeholder participation & empowerment*	*Revenue distribution & sharing of benefits*	*Environmental sustainability & intergenerational justice*
Political	▪ Constitution commits the government to transparency and accountability (Article 169(2)) ▪ While the government has established anti-corruption institution, it has not been able to prosecute any official accused of corruption ▪ President is elected by popular vote, however, the extension of president's term of office for another three years does undermine accountability to voters ▪ Parliament less than effective when it comes to passing new legislation	▪ Constitution supports consultation of local communities when developing oil related regulations ▪ Commitment to offer 25% of positions to women at all levels of government ▪ Local government is empowered to manage 3% of oil money allocated to them ▪ Decentralised multiparty democracy	▪ Constitution allocates 5% of oil revenue split between states government (2%) and communities in the counties of oil- producing states (3%) ▪ Constituency development fund allocates 3% of ordinary government revenue for development purposes in geographic constituencies of all 10 South Sudan's states ▪ National Development Plan 2011-2014 commits the government to child's cash transfer ▪ However, this has not been implemented	▪ Constitution (Article 37 and 169) commit the government to sustainable management of natural resources and diversification of the economy but much remains to be done to put it into practice
Regulatory / legal / policy	▪ No anti-corruption legislation ▪ Petroleum Act 2012, Article 78 (1-2) subscribes to Extractive Industry Transparency Initiative ▪ There is no approved policy on transparency or accountability	▪ Article 65 of Petroleum Act gives priority of employment in the oil sector to qualified South Sudanese nationals ▪ Article 65 of Petroleum Act encourages oil companies to train nationals through provision of scholarships	▪ Petroleum Revenue Management Act 2013 allocates 2% of oil revenue to governments of oil-producing states and 3% to communities living in the counties of oil-producing states ▪ Constituency Development Fund Act	Health, Safety, and Environment Systems Regulation 2015 obliges oil companies to conduct Environmental and Social Impact Assessment

		▪ Article 67 (2b) of Petroleum Act commits oil companies to develop plans for implementation of local content ▪ There is no policy on local content or stakeholder empowerment	2012 allocates 3% of ordinary revenue to be used for development purposes in all geographical constituencies of South Sudan	
Institutional	▪ Ministry of Petroleum and Mining charged with management of development of petroleum resources ▪ Ministry of Finance and Economic Planning charged with management of petroleum revenue ▪ Central Bank charged with upkeep of petroleum revenue accounts ▪ Ministry of Petroleum and Mining publishes in its marketing report production outputs and revenues ▪ Petroleum and Gas Commission Monitors the Petroleum and Gas Sector	▪	▪ Ministry of Finance and Economic Planning is charged with allocation of petroleum revenue in the budget and transfer of share to the state and local communities in oil producing states ▪ This mandate was observed in the budget of fiscal year 2014/2015 but in the budget of 2015/2016	▪ Health, Safety, and Environment (HSE) Department at the Ministry of Petroleum and Mining monitors and assesses contractors' compliance with HSE regulation according to Marketing Report by the Ministry of Petroleum and Mining

Analytical matrix - Tanzania

Current oil & gas framework with regards to harnessing oil & gas production and revenues for inclusive development

Framework \ elements of inclusive development	***Transparency & accountability***	***Stakeholder participation & empowerment***	***Revenue distribution & sharing of benefits***	***Environmental sustainability & intergenerational justice***
Political	High degree of presidential power, oversight role of the parliament weak Parliament less than effective when it comes to passing new legislation	conservative, strongly monopolized decision making	Risks of corruption and patronage inherent in Tanzania's political system	Environmental sustainability no priority in the political discourse
Regulatory / legal / policy	There is an anti-corruption legislation in place. 1.) In 2015 the Tanzanian Extractive Industries (Transparency and Accountability) Act (TEITI) was passed. All contracts and PSAs shall be disclosed. 2.) The Oil and Gas Management Act 2015 under article 12, establishes a Portfolio Investment Advisory Board supervising the disbursing of oil and gas revenues. Article 18 stipulates (2) Disbursement of funds from the Fund shall be made in a transparent and accountable way.	With regard to local participation the articles 219 -224 in the Tanzanian Petroleum Act 2015 define local participation of the oil and gas sector: Local Content, Local training, know-how transfer and local industry	Under Article 8 paragraph 2 of the Oil and Gas Revenue Management Act,, 2015 of Tanzania, Revenues shall be managed to ensure (a) fiscal and macroeconomic stability is maintained; (b) that the financing of investment in oil and gas is guaranteed; (c) social and economic development and (d) that inter-generational resource is safeguarded -in any financial year, at most an amount equal to 3% of the GDP is for budgetary use, and at least 60% of such transfer is dedicated to funding strategic development expenditure	Under Article 8 paragraph 2 of the Oil and Gas Revenue Management Act, 2015 of Tanzania, Revenues shall be managed to enhance under subsection (d) resource for future generations is safeguarded. Petroleum Act 2015 and Production Sharing Agreements contain environmental sustainability clauses and stipulate the polluter pays principle

Institutional	-Tanzania became member of EITI in 2009 but the membership was temporarily suspended in September 2015 -Portfolio Investment Advisory Board -Section 7 establishes an Oil and Gas Bureau within the Office of the President -TEITI Act establishes the Extractive Industries (Transparency and Accountability) Committee	Under the Petroleum Act 2015 Section 8 designates Tanzania Petroleum Development Company (TPDC) as the official National Oil Company (NOC). 51% of the NOC shares will be held by the GoT and 49% publically traded. Section 12 of PA 2015 establishes a Petroleum Upstream Regulatory Authority (PURA) responsible for implementing local content in the petroleum sector	To manage oil and gas revenues, The Oil and Gas Revenue Management Act, 2015 establishes and Oil and Gas Fund	The Ministry of Energy and Minerals in consultation with Tanzania Bureau of Standards approve application of technical specifications, standards and quality control norms for protection of public health, safety and environment and ensure the safety of operations in the petroleum supply chain PURA to oversee environmental matters

Analytical matrix - Uganda

Current oil & gas framework with regards to harnessing oil & gas production and revenues for inclusive development

Framework \ elements of inclusive development	***Transparency & accountability***	***Stakeholder participation & empowerment***	***Revenue distribution & sharing of benefits***	***Environmental sustainability & intergenerational justice***
Political	▪ Oil and gas in Uganda remains a politically turbulent issue defined by a lot of secrecy. ▪ A lot of patronage-based governance and weakened institutional checks and balances ▪ Parliament unable to check the Executive - due to low capacity of some MPs ▪ There is minimal political will in enforcing the anti-corruption Act 2009 ▪ NRM party constitution does not allow free thinking and decision making of its MPs who sometimes demand accountability on issues the party holds a different position - thus affecting accountability	▪ The Executive wields a lot of power -rescinds the decisions of Parliament i.e. in 2012, the President signed new exploration deals between Tullow, Total and CNOOC in disregard to the moratorium on signing of oil deals which had been instituted by Parliament. ▪ Real decision making powers lies in the hands of a few. ▪ With the exercise of excessive powers by the president, the hitherto appearing broad-based coalition that provided for the participation of all stakeholders has become much narrower in character and far less inclusive There is fear that without strong political commitment, the Petroleum Fund could potentially be used to finance self-interest projects/activities of the ruling NRM party and other political elites.	▪ A number of Ugandans seem to be critically challenging the euphoric expectations towards the emerging oil industry. The fear is that the political elite and their patronage network will become better equipped to siphon off resources supposedly destined for public investment, thereby leading to deterioration in public service provision as well as widening of the already high income inequality gap. ▪ There is fear that the oil industry might constitute a risk to Uganda's domestic security as it might fuel subversive activities by people who feel excluded from the substantial development dividends from the oil wealth.	▪ Most politicians are less concerned with the environmental sustainability - the President has been quoted saying uganda needs to first develop before talk about environment.
Regulatory / legal / policy	▪ The anti-corruption Act 2009 (was amended to include provisions on recovery of funds &	▪ Petroleum Refinery, Conversion, Transmission Act 2013 contains provisions for the	▪ The national Oil and Gas Policy (2008) provides that 7% of all royalty revenues shall	▪ the current petroleum laws have inadequate provisions for environmental, health

	confiscation of property of convicts), is in place - the challenge is selective enforcement. ▪ Only partial information about activities in the oil sector have been shared with parliament and not with the public ▪ The unwillingness of the Executive to share information on oil and gas activities such as PSAs with parliament and the limited capacity among parliamentarians to be able to provide well informed input into legislation, regulations and policies	participation and national content including skills transfer through training and employing Ugandans for capacity building. ▪ However many local firms, capable of providing services for the infant industry are losing contracts to foreign companies. ▪ The Petroleum (Exploration, Development and Production) Act 2013 and The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013 allocate a lot of powers in the hands of the Minister to manage petroleum activities including approval and cancellation of production sharing agreements. ▪ The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act does not have accompanying regulations. ▪ Access to information is limited on the oil and gas sector. ▪ No regulation on local content.	be set aside for local governments located in the oil and gas producing areas while the balance (93%) shall be moved into the Petroleum Fund for long-term savings as well as financing current spending. ▪ The Public Finance Management Act 2015 provides a framework for the use of petroleum revenues and restricts it to the financing of infrastructure and development projects of government. ▪ The government has so far been content to let private investors run the oil and gas activities independently for as long as the revenue sharing/appropriation agreements are adhered to.	and human rights concerns. ▪ Whereas the Petroleum (Exploration, Development and Production) Act, 2013 is strong on environmental impact assessment before the oil companies are licensed, the Act does not have sufficient provisions to ensure that the environmental effects of the oil industry will be vigilantly monitored when the oil is being produced, refined, transported and used. ▪ Although the Exploration, Development and Production Act provides for liability for damages caused by oil discharge pollutions, it is not clear on how the extent of pollution will be assessed and how frequently. Moreover, the Act is blind to the fact that environmental damage occurs on a wide scale which might not make it possible for oil companies to compensate farmers and the whole country or region for the damage

Analytical matrix - Uganda - continued
Current oil & gas framework with regards to harnessing oil & gas production and revenues for inclusive development

Framework \ elements of inclusive development	*Transparency & accountability*	*Stakeholder participation & empowerment*	*Revenue distribution & sharing of benefits*	*Environmental sustainability & intergenerational justice*
Institutional	▪ The National Oil and Gas Policy, 2008 talks about Uganda participating in the processes of the Extractive Industries and Transparency Initiative (EITI) but not yet signed to the EITI. ▪ A number of anti-corruption agencies exist such as: IGG and Anti-Corruption Court; however, their funding is still low. ▪ The culture of secrecy in most government institutions and public bodies a big challenge due to the official Secrecy Act, which hinders disclosure of information by public officials.	▪ Petroleum Authority is governed by a Board of Directors consisting of seven members appointed by the President with the approval of Parliament ▪ Five members of the Authority were approved by Parliament in July 2014; however, the Presidential has a lot of influence on the Authority. ▪ Six members of the Uganda National Oil Company were approved by Parliament ▪ However, the Presidential has a lot of influence on the Authority and Uganda National Oil Company	▪ Limited capacity to handle complex issues (contracts negotiations) in the oil and gas sector	▪ ▪· Institutional mechanisms for ensuring environmental sustainability are inadequate ▪NEMA lacks capacity to effectively ensure that the environmental effects of the oil industry will be vigilantly monitored when the oil is being produced, refined, transported and used

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