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Enhancing consistency between climate and energy law and policy in fossil fuel-rich LDCs

A case study of Uganda

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Summary

Enhancing Consistency between Climate and Energy Law and Policy in Fossil Fuel-rich LDCs – A Case Study of Uganda

The problem

Human-induced climate change has resulted in widespread adverse impacts and related losses and damages to nature and people beyond natural climate variability. A 1.5°C in the near future would occasion the risk of unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans. Thus, an ambitious reduction of greenhouse gas (GHG) emissions for the stabilization of the mean temperature at 1.5°C to 2°C above pre-industrial (1850-1900) levels must be expedited during this decade. However, the current policies and Nationally Determined Contributions (NDCs) are insufficient to result in emissions enabling a limiting of global warming to the temperature goal of the Paris Agreement to the United Nations Framework Convention on Climate Change of 2015. This matters to Least Developed Countries (LDCs) especially as the global climate change legal regime recognises LDCs as especially vulnerable to the impacts of climate change in lacking the ability and flexibility to adapt or mitigate partly due to other competing priorities. While LDCs have through legislation domesticated the global climate change legal regime and to a certain extent undertaken adaptation and mitigation action, more still needs to be done. The competing priorities like poverty alleviation, development and energy security place a strain on the meagre resources and impact climate action in fossil fuel-rich LDCs seeking to balance their climate change obligations with their development agendas. This has resulted in energy laws and policies favourable to investment in fossil fuels. While fossil fuels offer a means of overcoming the resource challenge, they have implications for climate action and sustainable development. The LDC fossil fuel-rich approach points to the permanent sovereignty of States over natural resource for fulfilling the right to development and Third World Approaches to International Law; however, climate change should matter to require corresponding action.

Gap in knowledge

This focus on LDCs is motivated, first by the limited literature on fossil fuel-rich LDCs and its emphasis on the resource curse and the development context. It stresses that if the fossil fuel resources are not properly managed, the development sought after by LDCs will be elusive. Second, the literature

does not address the implications for climate change action of energy laws and policies that co-exist with climate change legislation and policies in fossil fuel-rich LDCs. This co-existence affects present and future climate action and sustainable development. The implication for plans on transitioning to cleaner or low carbon economies of these countries remains under-studied.

Research question

Hence, my research question is: *How can fossil fuel-rich Least Developed Countries, with a special emphasis on Uganda, enhance legal and policy implementation on climate and energy that is consistent with the Paris Agreement's long-term objective and the 2030 Agenda for Sustainable Development?*

I chose Uganda as a case study because (a) it is a Least Developed Country, (b) it is vulnerable to climate change and has experienced its impacts through droughts, landslides and floods, (c) has recently discovered oil (d) the high oil revenue expectations and implication for the country's development, energy security agenda and climate change actions (e) personal experience growing up in Uganda and exposure to her challenges of high poverty levels, growing national debt, energy insecurity, corruption, high unemployment, and foreign aid dependence.

Theoretical framework and method

Through a critical legal studies approach, this thesis analyzes the literature on LDCs in terms of adaptation, mitigation, sustainable development, fossil fuels, key challenges and climate finance. It critiques domestic oil laws and policies existing alongside climate change laws and policies in the context of the global climate change legal regime and the implications for climate action and sustainable development. Conservative Third World Approaches to International Law (TWAIL) considers the contribution of the first world to climate change and its influence on global legal regime as an extension of colonialism and should thus do more. Through conservative TWAIL I consider (a) Climate Change Convention, Kyoto Protocol, Doha Amendment and Paris Agreement (b) permanent sovereignty over natural resources (c) equity (d) right to development (e) ratification politics and (f) the 2030 Agenda for Sustainable Development (2030 ASD). Through critical TWAIL I consider what fossil fuel-rich LDCs can do or contribute to ensure the world does not cross 1.5°C. In exploring how States all cope, I analyse fossil fuels impacts on (a) future climate action (b) sustainable development (c) stranded assets (d) resource curse (e) renewable energy (f) phasing out fossil fuels. The research is desktop based and analyses literature on LDCs and climate action and then focuses on Uganda as

a single case study for fossil fuel-rich LDCs. It analyses Uganda's energy laws with emphasis on oil laws and policies and her climate change laws and policies in the global climate change legal regime context, and their consequences for present and future climate action, and sustainable development.

Chapter 2 examines the question: What are the strengths and weaknesses of the global climate change legal regime for climate action and its relevance for the global South? It analyses the global climate change legal regime (Climate Change Convention, Kyoto Protocol, Doha Amendment, and Paris Agreement) and considers ratification politics, sustainable development, fossil fuels, equity principles, cooperation, finances, technology transfer, capacity building, climate finance and market mechanism and their relevance for LDCs. It concludes that the global legal regime is underwhelming on fossil fuels in only recognising impacts arising from taking climate change measures on countries whose economies are highly dependent on income generated from fossil fuel and the associated difficulties in switching to alternatives. COP28 engagement on fossil fuels shows there is hesitancy in addressing them through a treaty. The Least Developed Countries Fund, Special Climate Change Fund, Adaptation Fund and the Green Climate Fund under the legal regime confirm the relevance of global financial support for climate action and especially for the global South. However, these Funds depend on voluntary contributions as it is not clear who should pay, and thus short-falls result in slowing climate action and effectiveness of the Funds. The legal regime offers a work in progress regime for addressing climate change in allowing for regular evolution of treaties based on knowledge. Though challenged by ratification politics, the legal regime is now more daring with the 1.5°C and obliges 'All Parties' to communicate ambitious climate efforts for strengthening global response to the climate change threat in the context of sustainable development. Further, the legal regime acknowledges the different circumstances of developed and developing countries and their varied abilities to respond to the climate change threat in urging for capacity building, cooperation and technology transfer all aimed at aiding implementation of climate action and the need for developed countries to take the lead in addressing climate change.

Chapter 3 examines the question: What can we learn from the literature regarding LDCs and climate change action and what are the gaps in knowledge? It looks at selected literature on LDCs in the context of climate change mitigation, adaptation, sustainable development, fossil fuels and their key challenges. It concludes that climate change and environmental issues are not prioritised by

LDCs. Adaptation and mitigation action is still dependent on availability of funding and the involvement of industrialised countries to compensate these countries for their mitigation costs. The achievement of sustainable development in LDCs requires the role of education, effective leadership, and equity alongside adaptation success. Climate action in LDCs is hampered by (a) limited financial resources (b) competing priorities, (c) corruption, and (d) fossil fuel dependence. For instance, LDCs' high public debts and poor performance on the global corruption index undermine climate change action and sustainable development in limiting the availability of financial resources. LDCs' fossil fuel dependence is backed by foreign capital investments and presents a challenge in moving to cleaner energies and only serves to entrench this dependence. The literature further places emphasis on the resource curse and the development context and stresses that if the fossil fuel resources are not properly managed, the development sought after by LDCs will be elusive.

The literature on LDCs and climate change does not address energy legislation and policies that co-exist with climate legislation and policies in fossil fuel-rich LDCs. This is important because the co-existence has a bearing on present and future climate action and sustainable development. Further, the implication for plans on transitioning to cleaner or low carbon economies of LDCs remains a grey area.

Chapter 4 examines the question: What are the strengths and weaknesses of Uganda's measures in her National Communications in dealing with the climate change impacts on selected sectors? It concludes that Uganda's National Communications identify agriculture, energy, tourism, manufacturing and transport as key sectors that are climate change impact prone. For instance, the agricultural sector contributes 42 percent to Uganda's GDP and 90 percent to export earnings and employs over 80 percent of the labour force. Further, the agricultural sector is sensitive to climate variability and change through varied rainfall seasons and prolonged droughts thus exacerbating poverty and undermining food security. Uganda's energy sector is dominated by hydropower but is affected by fluctuations in water availability through droughts and flooding. Uganda's energy laws provide for various energy sources with specific laws on nuclear, biofuels, petroleum and atomic energy. The country's energy policy emphasizes the relevance of a wider energy mix for the country's development and energy security objectives while noting climate friendly options like renewables. The relevance of fossil fuels in addressing energy security and development objectives does not consider phasing out of

fossil fuels or keeping them underground as options for overcoming a fossil fuel dependence culture in a climate change constrained world.

Uganda's climate measures still prioritise adaptation such as afforestation and agroforestry over mitigation and notes the high cost of inaction on the country's agriculture, water, infrastructure, and energy sectors. The transportation of oil through the oil pipeline instead of road freight is presented as a mitigation measure, although it does not address the key issue of producing and using oil.

Chapter 5 examines the question: What are the strengths and limitations of Uganda's legal and policy climate change landscape in the context of key development policy? A content analysis is carried out of the climate laws and policies, and the country's development policies. It concludes that Uganda's climate change policy seeks to balance climate change action and sustainable development, while its climate change legal regime including its National Climate Change Act 2021 (NCCA) provide a legal basis for the country's adaptation capability, building climate resilience and the development of a mechanism for lowering greenhouse gas emissions and providing for climate change financing. However, climate change litigation under the regime is limited to acts or omissions threatening or likely to threaten efforts towards adaptation to or mitigation of climate change, and thus ensures a distinction between climate change and human rights actions. Human rights actions have a separate procedure and so climate action under the NCCA risks being struck out on procedural grounds. Uganda's Vision 2040 and National Development Plans underscore the link between sustainable development and environmental protection but then identify fast-tracking oil and gas and mineral based industrialisation as one of Uganda's development strategies. So, the climate change legal and policy landscape is only effective to the extent that it does not disrupt the country's development agenda including the oil and gas sector whose expected revenues are deemed a means of achieving the development sought after. Uganda's climate action is mostly reliant on external funds in the form of loans, which adds to the country's public debt and serves to postpone decisions for the pursuit of low carbon alternatives to the future.

Chapter 6 examines the question: What is the implication of Uganda's oil and gas sector on its climate action and sustainable development? It analyses the laws and policies, in addition to scholarship on alternatives to fossil fuels. It concludes that Uganda's legal and policy landscape in the energy sector (especially oil) presents a legal basis for its operations aimed at addressing

energy shortcomings, poverty alleviation and driving its development agenda. Legislation on oil insulates oil activities from legal challenges through supremacy clauses in the event of a conflict of interest. Further, obscured oil contracts challenge access to information and public participation and are thus a stumbling block for potential litigation on evidentiary grounds. Infrastructure development like the East African Crude Oil Pipeline (EACOP) and a planned oil refinery seeks to expedite the commercialisation of oil, all under oil laws and policy which ensure the operational environment meets with less legal hurdles. Opposition to Uganda's oil development have centred on climate change and human rights violations. Litigation against the EACOP project instituted before the regional East African Court of Justice (EACJ) was dismissed on procedural grounds but the decision can be appealed.

The country's oil and gas policy is solely in place to ensure the commercialisation of oil and achievement of poverty eradication. Ongoing efforts to commercialise oil pose a challenge for climate action by entrenching fossil fuel dependence, the likelihood of a resource curse especially if corruption persists, and stranded assets and thus lead to increased public debt whose burden would be borne by Ugandans. Nuclear energy as a clean energy option is under consideration but the investment and waste management costs are prohibitive. In addition, spent fuel disposal and the risk of nuclear disaster with effects on human life and the environment remain key challenges associated with nuclear energy. Keeping oil underground is an option but its equitable implementation remains unclear especially on whose oil should be kept underground and who should pay.

Chapter 7 addresses the overarching research question: *How can fossil fuel-rich Least Developed Countries, with a special emphasis on Uganda, enhance legal and policy implementation on climate and energy that is consistent with the Paris Agreement's long-term objective and the 2030 Agenda for Sustainable Development?* and some implications for legal theory, recommendations and future research area. It concludes that the consistent implementation of the Paris Agreement's long-term objective and the 2030 Agenda for Sustainable Development in fossil fuel-rich LDCs should interest States and researchers. This is because of a co-existence of oil legislation and climate change legislation that impacts climate action and sustainable development. Fossil fuel-rich LDCs have enacted legislation to insulate their oil activities alongside climate action efforts. This is an approach that is entrenched in an absolute form of Permanent Sovereignty Over Natural Resources (PSNR) and coupled with TWAIL and the right to development. The oil laws and policies existing alongside climate laws and policies will continue

to conflict. Oil laws through their supremacy clauses conflict with climate change laws resulting in implementation inconsistencies in both climate action and sustainable development.

Uganda's pursuit of oil production presents further risks: (a) resource curse and (b) stranded assets. The prospect of a resource curse in Uganda should be a concern to the government and citizens based on other similarly placed LDCs like Angola. For instance, Uganda's patronage-based governance and struggle with corruption backs the likelihood of the resource occurring. Although countries like Uganda have invested heavily in a bid to commercialise their fossil fuels, it is still cheap to consider clean energy options and diversify now rather than later when the country and investors will be faced with the prospect of dealing with stranded assets that are no longer needful due to the necessity of moving to cleaner energy sources. The stranded assets present a worsening of the public debt and higher tax implication for Ugandans as it might be unlikely that the investors would bear the burden of the financial loss resulting from the stranding. Further, Uganda could be faced with the possibility of investor-state dispute settlement (ISDS) from investors in her oil sector seeking to ensure that their investments are secured even in the event of stranded assets, thus compounding Uganda's public debt situation.

The "Third World" should not use the right to development as an argument against climate action seeing that they are especially vulnerable. Uganda's 61 years of independence have been a missed opportunity for capacity building and formulation of alliances for a stronger voice at climate negotiations but it can still do something.

I thus recommend:

1. Legislative reforms and access to information.

Uganda's current oil laws insulating the activities of the oil and gas sector through supremacy clauses need amending in so far as they present an avenue for undermining climate action efforts and thus call for legislative reform. The oil and gas sector, especially activities that have a negative impact on addressing climate change should be open to legal scrutiny which the current climate change laws cannot achieve given the supremacy clauses of the oil laws. Further, Uganda would benefit from the establishment of a national climate change fund for climate action and other interventions to be approved by a body established under such law. This should be combined with addressing corruption to ensure that climate action is not financially affected due to the illicit practice. Internationally, clarity on fossil fuels under the global climate change legal

regime would be vital for future climate legislation and policy formulation in fossil fuel-rich countries.

Access to Information: Procedural justice needs to be strengthened to allow for access to information on private contracts in the oil and gas sector. These contracts are likely to frustrate public commitments on climate action through their non-disclosure and confidentiality clauses. Transparency for projects or activities with climate change implications needs to be promoted by limiting the power of public authorities under the Access to Information Act to grant access to information on such projects, a right which is mostly denied under the current law.

2. Renewable energy and keeping fossil fuels underground should be a pre-occupation for fossil fuel-rich LDCs.

Uganda's Vision 2040 envisages a key role for nuclear energy in the reduction of the country's energy deficit. The enactment of the Atomic Energy Act 2008 provides a framework for the promotion and development of nuclear energy for use in power generation and other peaceful means. Although this law has been in place, there has been no corresponding drive in investments in this field or in other renewable energy options. Since investments in fossil fuels are increasingly being discouraged and the EACOP project facing a number of constraints, this should motivate Uganda's exploration of cleaner energy options. Uganda is unlikely to abandon efforts to commercialise its oil on account of the massive investments made so far and the financial consequences for turning backing out (such as ISDS legal action). Nonetheless, it should consider an improvement of the energy laws with special emphasis on incentives for investments in renewable energy alongside policy discussions on the keeping some oil underground or phasing it out.

Climate easement which argues for compensation for the lost value of fossil fuels kept underground should interest future research especially on how it can apply to new oil and gas discoveries in Uganda. For instance, Ecuador in a 2023 referendum voted to stop some drilling in an area of the Yasuní National Park but it is not clear whether compensation was ever an issue here. The climate easement could start as a voluntary mechanism to ascertain its effectiveness and ways of encouraging participation. Its future functionality would consider a global legal framework or even a protocol to the Paris Agreement allowing for one or a combination of developed countries mobilising resources to pay fossil fuel-rich LDCs to keep their oil underground and the exceptional circumstances under which those fossil fuels can be accessed. An example of such an arrangement is the just energy transition drive by United Kingdom, USA and

the European Union to mobilise financial resources to assist coal dependent South Africa accelerate the decarbonization of its electricity system. For this to be developed into a financial model for keeping fossil fuels underground it would require more research on its sustainability, selection criteria and source of funding.

Samenvatting

Verbetering van de samenhang tussen klimaat- en energiewetgeving en -beleid in de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen - een casestudy van Oeganda

Het probleem

Door de mens veroorzaakte klimaatverandering heeft geleid tot wijdverbreide nadelige effecten en daarmee samenhangende verliezen en schade aan de natuur en mensen die verder gaan dan de natuurlijke klimaatvariabiliteit. Een temperatuur van 1,5°C in de nabije toekomst zou het risico met zich meebrengen van een onvermijdelijke toename van meerdere klimaatrisico's en meerdere risico's voor ecosystemen en mensen met zich meebrengen. Een ambitieuze vermindering van de uitstoot van broeikasgassen (BKG) voor de stabilisatie van de gemiddelde temperatuur op 1,5 °C tot 2 °C boven het pre-industriële (1850-1900) niveau moet dus in dit decennium worden versneld. Het huidige beleid en de nationaal bepaalde bijdragen (NDC's) zijn echter ontoereikend om ertoe te leiden dat emissies het mogelijk maken de opwarming van de aarde te beperken tot de temperatuurdoelstelling van de Overeenkomst van Parijs bij het Raamverdrag van de Verenigde Naties inzake klimaatverandering van 2015. Dit is van belang voor de minst ontwikkelde landen (MOL's), vooral omdat het wereldwijde wettelijke regime inzake klimaatverandering erkent dat de MOL's bijzonder kwetsbaar zijn voor de gevolgen van klimaatverandering omdat ze niet in staat en flexibel zijn om zich aan te passen of te verzachten, deels als gevolg van andere concurrerende prioriteiten. Hoewel de minst ontwikkelde landen door middel van wetgeving het wereldwijde wettelijke regime inzake klimaatverandering hebben gedomesticeerd en tot op zekere hoogte aanpassingen en mitigatiemaatregelen hebben genomen, moet er nog meer worden gedaan. De concurrerende prioriteiten zoals armoedebestrijding, ontwikkeling en energiezekerheid leggen een druk op de schaarse hulpbronnen en hebben invloed op de klimaatactie in de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen en die hun verplichtingen op het gebied van klimaatverandering in evenwicht willen brengen met hun ontwikkelingsagenda's. Dit heeft geresulteerd in energiewetten en -beleid die gunstig zijn voor investeringen in fossiele brandstoffen. Hoewel fossiele brandstoffen een middel zijn om de uitdaging van de hulpbronnen te overwinnen, hebben ze implicaties voor klimaatactie en duurzame ontwikkeling. De LDC-benadering die rijk is aan fossiele brandstoffen wijst op de permanente soevereiniteit van staten over

natuurlijke hulpbronnen voor het vervullen van het recht op ontwikkeling en derdewereldbenaderingen van het internationaal recht; Klimaatverandering zou echter van belang moeten zijn om overeenkomstige actie te vereisen.

Lacune in kennis

Deze focus op de minst ontwikkelde landen wordt in de eerste plaats gemotiveerd door de beperkte literatuur over de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen en de nadruk die wordt gelegd op de vloek van de hulpbronnen en de ontwikkelingscontext. Het benadrukt dat als de fossiele brandstoffen niet goed worden beheerd, de ontwikkeling die de minst ontwikkelde landen nastreven ongrijpbaar zal zijn. Ten tweede gaat de literatuur niet in op de implicaties voor klimaatveranderingsmaatregelen van energiewetten en -beleid die naast de wetgeving en het beleid inzake klimaatverandering in de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen. Deze coëxistentie heeft gevolgen voor de huidige en toekomstige klimaatactie en duurzame ontwikkeling. De implicaties van deze landen voor de plannen voor de overgang naar schone of koolstofarme economieën blijven onderbelicht.

Onderzoeksvorag

Daarom is mijn onderzoeksvorag: *hoe kunnen de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen, met speciale nadruk op Oeganda, de juridische en beleidsuitvoering op het gebied van klimaat en energie verbeteren die in overeenstemming is met de langetermijndoelstelling van het Akkoord van Parijs en de Agenda 2030 voor duurzame ontwikkeling?*

Ik heb Oeganda als casestudy gekozen omdat (a) het een minst ontwikkeld land is, (b) het kwetsbaar is voor klimaatverandering en de gevolgen ervan heeft ondervonden door droogtes, aardverschuivingen en overstromingen, (c) onlangs olie heeft ontdekt (d) de hoge verwachtingen voor olie-inkomsten en implicaties hebben voor de ontwikkeling, de energiezekerheidsagenda en de maatregelen tegen klimaatverandering van het land (e) persoonlijke ervaring met opgroeiens in Oeganda en blootstelling aan haar uitdagingen van hoge armoedeniveaus, groeiende staatsschuld, energiezekerheid, corruptie, hoge werkloosheid en afhankelijkheid van buitenlandse hulp.

Theoretisch kader en methode

Door middel van een kritische juridische studiebenadering analyseert dit proefschrift de literatuur over MOL's in termen van adaptatie, mitigatie, duurzame ontwikkeling, fossiele brandstoffen, belangrijke uitdagingen en

klimaatfinanciering. Het bekritiseert binnenlandse oliewetten en -beleid die naast wetten en beleid inzake klimaatverandering bestaan in de context van het wereldwijde wettelijke regime voor klimaatverandering en de implicaties voor klimaatactie en duurzame ontwikkeling. Conservative Third World Approaches to International Law (TWAIL) beschouwt de bijdrage van de eerste wereld aan klimaatverandering en de invloed ervan op het wereldwijde juridische regime als een verlengstuk van het kolonialisme en zou dus meer moeten doen. Via conservatieve TWAIL beschouw ik (a) het Verdrag inzake klimaatverandering, het Kyoto-protocol, het Doha-amendement en de Overeenkomst van Parijs, (b) permanente soevereiniteit over natuurlijke hulpbronnen, (c) billijkheid, (d) het recht op ontwikkeling, (e) ratificatiepolitiek, en (f) de 2030-agenda voor duurzame ontwikkeling (2030 ASD). Door middel van kritische TWAIL denk ik na over wat de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen kunnen doen of bijdragen om ervoor te zorgen dat de wereld de 1,5 °C niet overschrijdt^o. Bij het onderzoeken hoe staten allemaal omgaan, analyseer ik de effecten van fossiele brandstoffen op (a) toekomstige klimaatactie (b) duurzame ontwikkeling (c) gestrande activa (d) vloeik van hulpbronnen (e) hernieuwbare energie (f) uitfasering van fossiele brandstoffen. Het onderzoek is desktopgebaseerd en analyseert literatuur over MOL's en klimaatactie en richt zich vervolgens op Oeganda als een enkele casestudy voor MOL's die rijk zijn aan fossiele brandstoffen. Het analyseert de energiewetten van Oeganda met de nadruk op oliewetten en -beleid en haar wetten en beleid op het gebied van klimaatverandering in de context van het wereldwijde juridische regime inzake klimaatverandering, en de gevolgen daarvan voor huidige en toekomstige klimaatactie en duurzame ontwikkeling.

Hoofdstuk 2 gaat in op de vraag: Wat zijn de sterke en zwakke punten van het wereldwijde wettelijke regime inzake klimaatverandering voor klimaatactie en de relevantie ervan voor het Zuiden? Het analyseert het wereldwijde wettelijke regime inzake klimaatverandering (Verdrag inzake klimaatverandering, het Protocol van Kyoto, de wijziging van Doha en de Overeenkomst van Parijs) en beschouwt ratificatiepolitiek, duurzame ontwikkeling, fossiele brandstoffen, billijkheidsbeginselen, samenwerking, financiën, technologieoverdracht, capaciteitsopbouw, klimaatfinanciering en marktmechanisme en hun relevantie voor de minst ontwikkelde landen. Het concludeert dat het wereldwijde wettelijke regime teleurstellend is op het gebied van fossiele brandstoffen door alleen de effecten te erkennen die voortvloeien uit het nemen van klimaatveranderingsmaatregelen voor landen waarvan de economieën sterk afhankelijk zijn van inkomsten uit fossiele brandstoffen en de daarmee gepaard

gaande moeilijkheden bij het overschakelen op alternatieven. De betrokkenheid van COP28 bij fossiele brandstoffen laat zien dat er aarzeling is om ze aan te pakken door middel van een verdrag. Het Fonds voor de minst ontwikkelde landen, het Speciaal Fonds voor klimaatverandering, het Adaptatiefonds en het Groen Klimaatfonds in het kader van de wettelijke regeling bevestigen het belang van wereldwijde financiële steun voor klimaatactie en met name voor het Zuiden. Deze fondsen zijn echter afhankelijk van vrijwillige bijdragen, aangezien het niet duidelijk is wie moet betalen, en tekorten leiden dus tot een vertraging van de klimaatactie en de doeltreffendheid van de fondsen. Het juridische regime biedt een work in progress-regime voor het aanpakken van klimaatverandering door een regelmatige evolutie van verdragen op basis van kennis mogelijk te maken. Hoewel uitgedaagd door de ratificatiepolitiek, is het juridische regime nu gedurfder met de 1.5°C en verplicht het ‚alle partijen‘ om ambitieuze klimaatinspanningen te communiceren om de wereldwijde reactie op de dreiging van klimaatverandering te versterken in de context van duurzame ontwikkeling. Verder erkent het wettelijke regime de verschillende omstandigheden van ontwikkelde en ontwikkelingslanden en hun uiteenlopende mogelijkheden om te reageren op de dreiging van klimaatverandering door aan te dringen op capaciteitsopbouw, samenwerking en technologieoverdracht, allemaal gericht op het ondersteunen van de uitvoering van klimaatactie en de noodzaak voor ontwikkelde landen om het voortouw te nemen bij het aanpakken van klimaatverandering.

Hoofdstuk 3 gaat in op de vraag: Wat kunnen we leren van de literatuur over MOL's en maatregelen tegen klimaatverandering en wat zijn de lacunes in de kennis? Er wordt gekeken naar geselecteerde literatuur over de minst ontwikkelde landen in de context van mitigatie van en aanpassing aan klimaatverandering, duurzame ontwikkeling, fossiele brandstoffen en hun belangrijkste uitdagingen. Geconcludeerd wordt dat klimaatverandering en milieukwesties geen prioriteit hebben voor de minst ontwikkelde landen. Aanpassings- en mitigatiemaatregelen zijn nog steeds afhankelijk van de beschikbaarheid van financiering en de betrokkenheid van geïndustrialiseerde landen om deze landen te compenseren voor hun mitigatiekosten. Het bereiken van duurzame ontwikkeling in de minst ontwikkelde landen vereist de rol van onderwijs, effectief leiderschap en rechtvaardigheid, naast succes bij aanpassing. Klimaatactie in de minst ontwikkelde landen wordt belemmerd door (a) beperkte financiële middelen, (b) concurrerende prioriteiten, (c) corruptie en (d) afhankelijkheid van fossiele brandstoffen. De hoge overheidschulden van de minst ontwikkelde landen en de slechte prestaties op de wereldwijde corruptie-

index ondermijnen bijvoorbeeld de maatregelen tegen klimaatverandering en duurzame ontwikkeling door de beschikbaarheid van financiële middelen te beperken. De afhankelijkheid van de minst ontwikkelde landen van fossiele brandstoffen wordt ondersteund door buitenlandse kapitaalinvesteringen en vormt een uitdaging bij de overgang naar schonere energie en dient alleen maar om deze afhankelijkheid te verankeren. De literatuur legt verder de nadruk op de vloek van de hulpbronnen en de ontwikkelingscontext en benadrukt dat als de fossiele brandstoffen niet goed worden beheerd, de ontwikkeling die de minst ontwikkelde landen nastreven, ongrijpbaar zal zijn.

De literatuur over de minst ontwikkelde landen en klimaatverandering gaat niet in op energiewetgeving en -beleid die naast klimaatwetgeving en -beleid in de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen. Dit is belangrijk omdat het naast elkaar bestaan van invloed is op huidige en toekomstige klimaatactie en duurzame ontwikkeling. Verder blijven de implicaties voor plannen voor de overgang naar schonere of koolstofarme economieën van de minst ontwikkelde landen een grijfs gebied.

Hoofdstuk 4 onderzoekt de vraag: Wat zijn de sterke en zwakke punten van de maatregelen van Oeganda in haar nationale mededelingen bij het omgaan met de gevolgen van klimaatverandering voor geselecteerde sectoren? Het concludeert dat Oegandese nationale communicatie landbouw, energie, toerisme, productie en transport identificeert als sleutelsectoren die gevoelig zijn voor klimaatverandering. De landbouwsector draagt bijvoorbeeld 42 procent bij aan het BBP van Oeganda en 90 procent aan de exportinkomsten en biedt werk aan meer dan 80 procent van de beroepsbevolking. Verder is de landbouwsector gevoelig voor klimaatvariabiliteit en -verandering door gevarieerde regenseizoenen en langdurige droogtes, waardoor de armoede wordt verergerd en de voedselzekerheid wordt ondermijnd. De Oegandese energiesector wordt gedomineerd door waterkracht, maar wordt beïnvloed door fluctuaties in de beschikbaarheid van water door droogte en overstromingen. De energiewetten van Oeganda voorzien in verschillende energiebronnen met specifieke wetten op het gebied van kernenergie, biobrandstoffen, aardolie en atoomenergie. Het energiebeleid van het land benadrukt het belang van een bredere energiemix voor de ontwikkelings- en energiezekerheidsdoelstellingen van het land, terwijl klimaatvriendelijke opties zoals hernieuwbare energiebronnen worden opgemerkt. De relevantie van fossiele brandstoffen bij het aanpakken van energiezekerheid en ontwikkelingsdoelstellingen overweegt niet om fossiele brandstoffen uit te faseren of ondergronds te houden als opties om een cultuur

van afhankelijkheid van fossiele brandstoffen te overwinnen in een wereld met beperkte klimaatverandering.

De klimaatmaatregelen van Oeganda geven nog steeds prioriteit aan aanpassing zoals bebossing en agroforestry boven mitigatie en wijzen op de hoge kosten van niets doen voor de landbouw-, water-, infrastructuur- en energiesectoren van het land. Het vervoer van olie via de oliepijpleiding in plaats van het goederenvervoer over de weg wordt gepresenteerd als een mitigerende maatregel, hoewel het de belangrijkste kwestie van de productie en het gebruik van olie niet aanpakt.

Hoofdstuk 5 onderzoekt de vraag: Wat zijn de sterke en zwakke punten van het juridische en beleidsmatige klimaatveranderingslandschap van Oeganda in de context van het belangrijkste ontwikkelingsbeleid? Er wordt een inhoudsanalyse uitgevoerd van de klimaatwetten en het klimaatbeleid, en het ontwikkelingsbeleid van het land. Het concludeert dat het klimaatveranderingsbeleid van Oeganda een evenwicht probeert te vinden tussen klimaatverandering en duurzame ontwikkeling, terwijl het wettelijke regime inzake klimaatverandering, inclusief de National Climate Change Act 2021 (NCCA), een wettelijke basis biedt voor het aanpassingsvermogen van het land, het opbouwen van klimaatbestendigheid en de ontwikkeling van een mechanisme om de uitstoot van broeikasgassen te verminderen en te voorzien in financiering van klimaatverandering. Rechtszaken over klimaatverandering in het kader van het regime zijn echter beperkt tot handelingen of nalatigheden die een bedreiging vormen of kunnen vormen voor de inspanningen tot aanpassing aan of beperking van de klimaatverandering, en zorgt dus voor een onderscheid tussen acties op het gebied van klimaatverandering en mensenrechtenacties. Mensenrechtenacties hebben een aparte procedure en dus loopt klimaatactie in het kader van de NCCA het risico op procedurele gronden te worden geschrapt. Oeganda's Visie 2040 en Nationale Ontwikkelingsplannen onderstrepen het verband tussen duurzame ontwikkeling en milieubescherming, maar identificeren vervolgens een versnelde industrialisatie op basis van olie en gas en mineralen als een van de ontwikkelingsstrategieën van Oeganda. Het juridische en beleidslandschap van klimaatverandering is dus alleen effectief voor zover het de ontwikkelingsagenda van het land niet verstoot, inclusief de olie- en gassector, waarvan de verwachte inkomsten worden beschouwd als een middel om de gewenste ontwikkeling te bereiken. De klimaatactie van Oeganda is grotendeels afhankelijk van externe fondsen in de vorm van leningen, wat bijdraagt aan de staatsschuld van het land en dient om beslissingen over het nastreven van koolstofarme alternatieven uit te stellen tot de toekomst.

Hoofdstuk 6 onderzoekt de vraag: wat is de implicatie van de Oegandese olie- en gassector op zijn klimaatactie en duurzame ontwikkeling? Het analyseert de wetten en het beleid, naast de wetenschap over alternatieven voor fossiele brandstoffen. Het concludeert dat het juridische en beleidslandschap van Oeganda in de energiesector (met name olie) een wettelijke basis biedt voor zijn activiteiten die gericht zijn op het aanpakken van energietekortkomingen, armoedebestrijding en het aansturen van zijn ontwikkelingsagenda. Wetgeving op het gebied van olie isoleert olieactiviteiten tegen juridische uitdagingen door middel van suprematieclausules in het geval van een belangenconflict. Verder betwisten verduisterde oliecontracten de toegang tot informatie en inspraak van het publiek en vormen ze dus een struikelblok voor mogelijke rechtszaken op grond van bewijsmateriaal. Infrastructuurontwikkeling zoals de East African Crude Oil Pipeline (EACOP) en een geplande olieraaffinaderij is bedoeld om de commercialisering van olie te versnellen, allemaal onder oliewetten en -beleid die ervoor zorgen dat de operationele omgeving minder juridische hindernissen ondervindt. De oppositie tegen de olieontwikkeling van Oeganda concentreerde zich op klimaatverandering en mensenrechtenschendingen. Een rechtszaak tegen het EACOP-project die was aangespannen bij het regionale Oost-Afrikaanse Hof van Justitie (EACJ) werd op procedurele gronden afgewezen, maar tegen de beslissing kan beroep worden aangetekend.

Het olie- en gasbeleid van het land is uitsluitend bedoeld om de commercialisering van olie en de uitroeiing van armoede te waarborgen. Voortdurende inspanningen om olie te commercialiseren vormen een uitdaging voor klimaatactie door de afhankelijkheid van fossiele brandstoffen te verankeren, de kans op een vloek van hulpbronnen, vooral als de corruptie aanhoudt, en gestrande activa en zo te leiden tot een grotere staatsschuld waarvan de last door de Oegandezou worden gedragen. Kernenergie als optie voor schone energie wordt overwogen, maar de kosten voor investeringen en afvalbeheer zijn onbetaalbaar. Daarnaast blijven de verwijdering van verbruikte splijtstof en het risico van een kernramp met gevolgen voor mensenlevens en het milieu belangrijke uitdagingen in verband met kernenergie. Olie ondergronds houden is een optie, maar de rechtvaardige uitvoering ervan blijft onduidelijk, vooral over wiens olie ondergronds moet worden gehouden en wie moet betalen.

Hoofdstuk 7 gaat in op de overkoepelende onderzoeksvraag: *hoe kunnen de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen, met speciale nadruk op Oeganda, de juridische en beleidsuitvoering op het gebied van klimaat en energie verbeteren die in overeenstemming is met de langetermijndoelstelling van de Overeenkomst van Parijs en de Agenda 2030 voor duurzame ontwikkeling?* en enkele implicaties voor juridische

theorie, aanbevelingen en toekomstig onderzoeksgebied. Het concludeert dat de consistente uitvoering van de langetermijndoelstelling van de Overeenkomst van Parijs en de Agenda 2030 voor duurzame ontwikkeling in de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen, staten en onderzoekers zou moeten interesseren. Dit komt door het naast elkaar bestaan van oliewetgeving en klimaatveranderingswetgeving die van invloed is op klimaatactie en duurzame ontwikkeling. De minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen hebben wetgeving uitgevaardigd om hun olieactiviteiten te isoleren naast de inspanningen op het gebied van klimaatactie. Dit is een benadering die is verankerd in een absolute vorm van permanente soevereiniteit over natuurlijke hulpbronnen (PSNR) en gekoppeld aan TWAIL en het recht op ontwikkeling. De oliewetten en -beleidsmaatregelen die naast klimaatwetten en -beleid bestaan, zullen met elkaar in conflict blijven. Oliewetten zijn door hun suprematieclauses in strijd met klimaatveranderingswetten, wat resulteert in inconsistenties in de implementatie van zowel klimaatactie als duurzame ontwikkeling.

Oeganda's streven naar olieproductie brengt nog meer risico's met zich mee: (a) vloek van hulpbronnen en (b) gestrande activa. Het vooruitzicht van een vloek van hulpbronnen in Oeganda zou een zorg moeten zijn voor de regering en burgers, op basis van andere minst ontwikkelde landen in een vergelijkbare positie, zoals Angola. Het op patronage gebaseerde bestuur en de strijd met corruptie in Oeganda ondersteunen bijvoorbeeld de waarschijnlijkheid dat de hulpbron zich voordoet. Hoewel landen als Oeganda zwaar hebben geïnvesteerd in een poging om hun fossiele brandstoffen te commercialiseren, is het nog steeds goedkoop om schone energieopties te overwegen en nu te diversificeren in plaats van later, wanneer het land en investeerders worden geconfronteerd met het vooruitzicht om te gaan met gestrande activa die niet langer nodig zijn vanwege de noodzaak om over te stappen op schonere energiebronnen. De gestrande activa betekenen een verslechtering van de staatsschuld en hogere fiscale gevolgen voor Oegandesezen, aangezien het onwaarschijnlijk is dat de investeerders de last van het financiële verlies als gevolg van de stranding zouden dragen. Verder zou Oeganda kunnen worden geconfronteerd met de mogelijkheid van geschillenbeslechting tussen investeerders en staten (ISDS) van investeerders in haar oliesector die ervoor willen zorgen dat hun investeringen worden veiliggesteld, zelfs in het geval van gestrande activa, waardoor de staatsschuldsituatie van Oeganda wordt verergerd.

De „Derde Wereld“ mag het recht op ontwikkeling niet gebruiken als een argument tegen klimaatactie, aangezien ze bijzonder kwetsbaar zijn. De 61 jaar onafhankelijkheid van Oeganda zijn een gemiste kans geweest voor

capaciteitsopbouw en het formuleren van allianties voor een sterkere stem in de klimaatonderhandelingen, maar het kan nog steeds iets doen.

Ik beveel daarom aan:

1. Wetshervormingen en toegang tot informatie.

De huidige oliewetten van Oeganda die de activiteiten van de olie- en gassector isoleren door middel van suprematieclausules moeten worden gewijzigd voor zover ze een manier bieden om de inspanningen op het gebied van klimaatactie te ondermijnen en dus oproepen tot wetshervorming. De olie- en gassector, met name activiteiten die een negatieve invloed hebben op de aanpak van klimaatverandering, moeten openstaan voor juridisch toezicht dat de huidige klimaatveranderingswetten niet kunnen bereiken gezien de suprematieclausules van de oliewetten. Verder zou Oeganda baat hebben bij de oprichting van een nationaal klimaatveranderingsfonds voor klimaatactie en andere interventies die moeten worden goedgekeurd door een orgaan dat krachtens een dergelijke wet is opgericht. Dit moet worden gecombineerd met het aanpakken van corruptie om ervoor te zorgen dat klimaatactie niet financieel wordt beïnvloed door de illegale praktijk. Internationaal zou duidelijkheid over fossiele brandstoffen in het kader van het wereldwijde wettelijke regime inzake klimaatverandering van vitaal belang zijn voor toekomstige klimaatwetgeving en beleidsformulering in landen die rijk zijn aan fossiele brandstoffen.

Toegang tot informatie: De procedurele rechtvaardigheid moet worden versterkt om toegang te krijgen tot informatie over particuliere contracten in de olie- en gassector. Deze contracten zullen waarschijnlijk publieke toezeggingen over klimaatactie frustreren door hun geheimhoudings- en vertrouwelijkheidsclausules. Transparantie voor projecten of activiteiten met gevolgen voor de klimaatverandering moet worden bevorderd door de bevoegdheid van overheidsinstanties op grond van de wet op de toegang tot informatie te beperken om toegang te verlenen tot informatie over dergelijke projecten, een recht dat in de huidige wetgeving meestal wordt ontzegd.

2. Hernieuwbare energie en het ondergronds houden van fossiele brandstoffen zouden een zorg moeten zijn voor de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen.

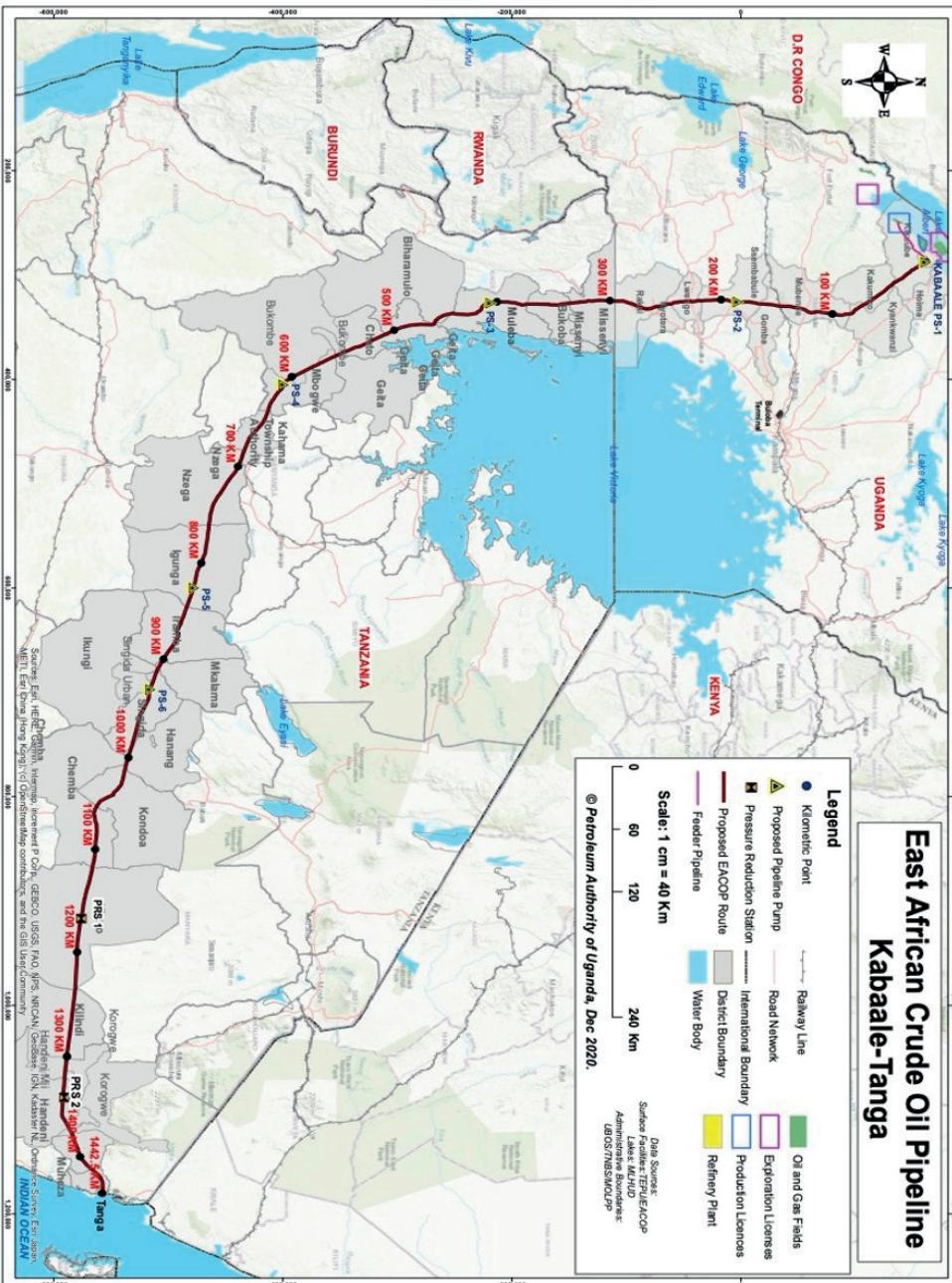
Oeganda's Visie 2040 voorziet in een sleutelrol voor kernenergie bij het terugdringen van het energietekort van het land. De inwerkingtreding van de Atomic Energy Act 2008 biedt een kader voor de bevordering en ontwikkeling van kernenergie voor gebruik bij energieopwekking en andere vreedzame

middelen. Hoewel deze wet van kracht is, is er geen overeenkomstige stimulans geweest voor investeringen op dit gebied of in andere opties voor hernieuwbare energie. Aangezien investeringen in fossiele brandstoffen steeds meer worden ontmoedigd en het EACOP-project met een aantal beperkingen wordt geconfronteerd, zou dit Oeganda moeten motiveren om naar schonere energieopties te zoeken. Het is onwaarschijnlijk dat Oeganda zijn inspanningen om zijn olie te commercialiseren zal staken vanwege de enorme investeringen die tot nu toe zijn gedaan en de financiële gevolgen van het terugtrekken (zoals ISDS-juridische stappen). Niettemin moet een verbetering van de energiewetgeving worden overwogen, met speciale nadruk op stimulansen voor investeringen in hernieuwbare energie, naast beleidsdiscussies over het ondergronds houden of uitfaseren van een deel van de olie.

Klimaaterveldienbaarheid, die pleit voor compensatie voor de verloren waarde van fossiele brandstoffen die ondergronds worden bewaard, zou toekomstig onderzoek moeten interesseren, vooral over hoe het van toepassing kan zijn op nieuwe olie- en gasontdekkingen in Oeganda. Ecuador heeft bijvoorbeeld in een referendum in 2023 gestemd om sommige boringen in een gebied van het Yasuní National Park te stoppen, maar het is niet duidelijk of compensatie hier ooit een probleem was. De klimaatversoepeling zou kunnen beginnen als een vrijwillig mechanisme om de effectiviteit ervan vast te stellen en manieren om participatie aan te moedigen. De toekomstige functionaliteit ervan zou een mondial wettelijk kader of zelfs een protocol bij de Overeenkomst van Parijs in overweging moeten nemen, waardoor een of een combinatie van ontwikkelde landen middelen kunnen mobiliseren om de minst ontwikkelde landen die rijk zijn aan fossiele brandstoffen te betalen om hun olie ondergronds te houden, en de uitzonderlijke omstandigheden waaronder die fossiele brandstoffen toegankelijk zijn. Een voorbeeld van een dergelijke regeling is het streven van het Verenigd Koninkrijk, de VS en de Europese Unie naar een rechtvaardige energietransitie om financiële middelen te mobiliseren om het van steenkool afhankelijke Zuid-Afrika te helpen de decarbonisatie van zijn elektriciteitssysteem te versnellen. Om dit te ontwikkelen tot een financieel model om fossiele brandstoffen ondergronds te houden, zou meer onderzoek nodig zijn naar de duurzaamheid, selectiecriteria en financieringsbron.

Annex

East African Crude Oil Pipeline Route



Source: Petroleum Authority of Uganda, 2020.

The central research question of this thesis focuses on how Uganda and similar fossil fuel-rich LDCs can improve consistency in implementing climate and energy laws and policies in the context of the global climate change legal regime. The study highlights a literature gap, particularly the lack of emphasis on the climate change implications of energy laws in fossil fuel-rich LDCs. Existing research mainly discusses the resource curse and development, without adequately discussing the intersection with climate policy. Further, implication for climate change action of energy laws and policies that co-exist with climate change legislation and policies in fossil fuel-rich LDCs is not addressed. The thesis contributes findings, recommendations and identifies areas for future research that could benefit both policy makers in fossil fuel-rich LDCs and North-South international law scholars.