

**THE RIGHT TO PROPERTY AND COMPULSORY LAND ACQUISITION IN THE
ALBERTINE GRABEN: AN ANALYSIS OF THE EFFICACY OF THE LEGAL REGIME IN
THE PROTECTION OF THE AFFECTED PERSONS.**

BY

SSEMMULI ANTHONY

STUDENT NUMBER: J21M23 / 018

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
FULFULMENT OF THE REQUIREMENT FOR THE AWARD OF MASTER OF
LAWS IN OIL AND GAS LAW AT THE INSTITUTE OF PETROLEUM STUDIES
KAMPALA IN AFFLIATION TO UCU.**

PREPARED UNDER THE SUPERVISION OF

PROF. GEORGE W.K.L KASOZI

DECEMBER 2022

DECLARATION

I, **Ssemuli Anthony**, do hereby declare:

That this dissertation entitled “**The right to property and compulsory land acquisition in the Albertine Graben: An analysis of the efficacy of the legal regime in the protection of the affected persons.**” is entirely my original work, except where acknowledged, and it has never been submitted to any other University or any other institution of higher learning for the award of a Degree.

I also certify that this research is particularly prepared by me for the partial fulfilment for the award of Master of laws in Oil and Gas from Uganda Christian University.

SIGNATURE.....

DATE.....

APPROVAL

This is to certify that the research entitled “**The right to property and compulsory land acquisition in the Albertine Graben: An analysis of the efficacy of the legal regime in the protection of the affected persons**” has been done under my supervision and now it’s ready for submission.

SIGNATURE.....

NAMES.

DATE.....

DEDICATION

I dedicate my research work to my parents, Mr. and Mrs. Tibamalirwa Tarcis. I also feel indebted to the love of my beloved children, Maria Joy Asimwe, Michael Pascal Bingi, Tracy Noeline Tumusiime, Elizabeth Atugonza, my dear wife Milly Ssemuli and my newly born son Tarcis Vianney Musinguzi.

ACKNOWLEDGEMENT.

I thank the Almighty God, the source of knowledge and wisdom for having seen me throughout my studies, having been able to fund my education and enabling me to undertake my research successfully.

I also wish to acknowledge all the people who made this research possible, and my dear supervisor. Finally, and all the lecturers who taught me the modules that were offered for the abundant knowledge I have acquired in Oil and Gas law.

My sincere gratitude goes to **Prof George W.K.L KASOZI**, for the supervision of my research most especially, the late submissions he endured but, with prompt advice despite your busy schedule.

Lastly, I pray to the almighty God to keep me healthy and moving and keep me relevant to my community.

ABSTRACT

Compulsory land acquisition has for most period of time been one of the fundamental issues that have daunted the Government of Uganda in respect to the preservation and protection of its people rights to property. This has been evidenced in the Albertine Graben region, whereby, the affected persons have been arbitrarily infringed of their properties, some having been relocated with or without compensation, the environmental preservation mechanisms not being adhered to, all done without the full participation of the project affected persons in determining the compensation values.

Access to energy is regarded as a fundamental requirement to socioeconomic development and poverty alleviation. According to the United Nations, unequal access to energy and low human development are highly correlated.

This study adopts the energy justice theoretical frame work, assessing the distributive, recognition and procedural elements of energy justice based **on Rawls’theory** of fairness that demands that in acquiring land for petroleum projects, the state must consider the landholders as equals, which calls for a participatory approach, consultation with the project affected people, obtain their consent, decisions to be reached by consensus and consider their livelihoods in calculating compensation.

The purpose of this thesis, is to establish whether the ownership rights and their transfer to extractive industries has been legally implemented or manifested with illegalities and human violations, to assess the legal and institutional frame governing compulsory land acquisition, whether the international best standards were adhered to, identify the gaps in the current legal regime, discuss the social implications to the livelihoods of the affected parties, the compensation mechanisms adopted and implemented, and the irregular practices executed that do not observe the law and then provide recommendations.

The research shall dwell on the three major oil projects in the area: “Tilenga, Kingfisher, and the Kabaale Industrial Park, which have acquired considerable land, for the progress of these projects. This will be done with the engagement of the case law, both local and foreign laws.

LIST OF ACRONYMS

CGV	Chief Government Valuer
CNOOC	China National Offshore Oil Corporation
DLB	District Land Board
DLT	District Land Tribunal
FAO	Food and Agriculture Organization of the United Nations.
NOGP	National Oil and Gas Policy
PAPs	Project Affected Persons
PSA	Production Sharing Agreement
RAP	Resettlement Action Plan

TABLE OF CONTENTS

DECLARATION.....	i
APPROVAL.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
ABSTRACT.....	v
LIST OF ACRONYMS.....	vi
TABLE OF CONTENTS.....	vii
CHAPTER ONE:GENERAL INTRODUCTION.....	1
1.1Introduction.....	1
1.2 Background of the study.....	1
1.3 The Statement of the Problem.....	13
1.4 Research Objectives.....	14
1.4.1 General Objectives.....	14
1.4.2 Specific Objectives.....	14
1.5 Research Questions.....	14
1.6 Scope of Study.....	14
1.6.1 Geographical Scope.....	14
1.6.2 Time Scope.....	15
1.6.3 Content Scope.....	15
1.7 Significance of Study.....	15
1.8 Research Framework.....	15
1.8.1 Theoretical Framework.....	15
CHAPTER TWO: LITERATURE REVIEW.....	20
2.0 Introduction.....	20
2.1 Compulsory Land Acquisition.....	20
2.2 Legal & Institutional Framework Governing Compulsory Land Acquisition.....	22
2.3 Land Tenure Systems and Their Impact on Compensation.....	32
2.4 Ambiguities in the Compulsory Land Acquisition Process.....	36

2.5 Social Effects of Land Acquisition in Albertine Graben	40
CHAPTER THREE: RESEARCH METHODOLOGY	43
3.0 Introduction.....	43
3.1 Research Design.....	43
3.2 Data Collection Methods.....	44
3.2.1 Household Survey.....	44
3.2.2 Key Information Interviews.....	44
3.2.4 Narratives.....	44
3.3 Data Analysis.....	45
3.4 Ethics Considerations.....	45
3.5 Methodological Constraints.....	45
CHAPTER FOUR: RESULTS AND ANALYSIS.....	46
4.0Introduction.....	46
4.1 Recap of Research Objectives.....	46
4.2 Synchronization of Primary & Secondary Findings.....	46
4.2.1 Cash Compensation.....	46
4.2.2 Compensation by Partial Acquisition and Monthly Rent Payments.....	47
4.2.3 Compensation in Kind or Resettlement.....	47
4.2.4 Other Findings.....	48
CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS	38
5.0 Introduction.....	51
5.1 Conclusions.....	51
5.2 Recommendations.....	52
BIBLIOGRAPHY	54
.....	

CHAPTER ONE

GENERAL INTRODUCTION.

1.1 Introduction

This chapter presents the background of the study, statement of the problem, the objectives of the study, scope, methodology, the research questions, the hypothesis, the scope of the study, the significance, justification and operational definition of terms and concepts.

1.2 Background of the study

The right to property is a fundamental and cardinal pillar of all democratic societies.¹ Access to land is essential for the attainment of a dignified livelihood,² serving as a catalyst for economic growth, social development and poverty alleviation. It reflects social justice and equality, and constitutes the basis to access food, housing and a source of security in the fight against hunger in the world.³

Commercial oil deposits were first discovered in the Albertine Graben region in western Uganda in 2006, from that time, the Government of Uganda started the exploitation phase.⁴ The extraction of oil means that, there will be many large projects in the region, including among others, an oil refinery, the generation of electricity from gas, the export of crude oil to the international markets through the East African Crude Oil Pipeline to Tanzania.

The Government expects the oil projects to boost the economic growth, job creation, contribute to poverty eradication, and improve on the general standard of living of Ugandans.⁵ However, each project

¹ A. Alias and N. Daud, ' Payment of adequate compensation for land acquisition in Malaysia, 12 Pacific Rim Property Research Journal (2006), p. 326.

² P. Gelbspan and F.G. V.Thea, Land in the struggle for Social Justice: Social Movement Strategies to Secure Human Rights (2013) available at <http://www.terradedireitos.org.br>.

³ Commission on Human Rights, Report of the Special Rapporteur on the Right to Food, Jean Ziegler, UN Doc. A/57/356 (27 August 2002) (Ziegler Report), para. 22.

⁴ Vokes, R . The politics of oil in Uganda. Afr. 2012, 111, 303-314.

⁵ Kinyera, P.B. Land, oil and expressions of citizenship in uganda's Albertine Graben. Extr. Ind. Soc. 2019,6, 110-119.

requires high amounts of capital, technical expertise, and land. The demand for land has resulted to the displacement of huge numbers of people.⁶

The research is conducted in three project areas of Tilenga, Kingfisher and Kabaale Industrial Park. Tilenga Project is an oil exploration project implemented by Total, a French multinational oil and gas company.⁷ It lies within the Murchison Falls National Park, this project is fundamental for Uganda's economy due to the anticipated revenues expected. Tilenga project is about 1170 hectares of land, having physically displaced 265 people with their livelihoods, to the effect that, they lost their means of crop production, livestock grazing, and natural resource gatherings.⁸ Land compensation rates were fixed by the Chief Government Valuer at 3.5 Uganda million shillings per acre.

The Kingfisher oil development project is located in Hoima district on the southern edge of Lake Albert, under the operation of CNOOC Uganda, a Chinese company.⁹ The total land take for the kingfisher project is approximately 340 hectares, with a total of 680 affected households, and 2949 persons¹⁰ of the total affected population. Already the project affected persons are not happy because there's increased pressure on their land by the foreigners, corrupt practices, increased opportunistic land acquisition by outsiders, including the government, and lack of a fair compensation for lost land.

The Kabaale Industrial Park takeover is approximately 2957 hectares from communities in 13 surrounding villages of Buseruka Sub County in Hoima district. The park holds an international airport being constructed, intended to service the oil and gas development, an oil refinery and crude oil export hub among others.

According to the information gathered from the Uganda Petroleum Authority, land acquisition for this park commenced in 2012, whereby 7118 persons were affected, 93 families chose to be relocated under the Resettlement Action Plan, while 2670 households opted for cash compensation. Though its noticed

⁶ Ogwang, T.; Vanclay, F. Van den Assem, A. Impacts of the oil boom on the lives of people living in the Albertine Graben region of Uganda. *Extr. Ind. Soc.* 2018, 5, 98-103.

⁷ Available online: <https://www.total.com> (accessed on 18 June 2022)

⁸ Atacama Consulting. Tilenga Project: Resettlement Action Plan 1 (RAP 1) for the proposed Industrial Area and N 1 Access Road; Atacama Consulting: Consulting: Kampala, Uganda, 2018.

⁹ Golder Associates. Environmental and Social Impact Assessment for the CNOOC *Uganda Ltd Kingfisher Oil Development, Uganda, Social and Cultural Heritage, Vol. 4C*; Golder Associates Africa: Durban, South Africa, 2018.

¹⁰ Ibid

that, there are still many people not yet compensated, and while I asked the Uganda Petroleum Authority about this matter, they argued that, those who had not yet been compensated either never presented themselves for verification or were their issues are still being handled and they also resorted to send the compensation money to the court' account for those who are not traceable.

It's been noticed that, large projects require very large tracts of land, ¹¹if not well managed, they cause displacement and resettlement which can have negative implications to the local communities. This call for the adherence to the international best standards, which prohibits for involuntary resettlement, and where resettlement is unavoidable, for all the affected parties to be fully and fairly compensated and to be practically engaged in the resettlement process.¹²

Studies indicate that land grabbing and lack of transparency and accountability are the major causes of social tensions leading to aggravated human rights violations against the local communities where extractive activities take place.¹³ Reports show that, petroleum conflicts have created 4 million deaths and the displacement of millions in countries like Libya, South Sudan, Nigeria, Algeria and Sudan.¹⁴

Scholars have argued that, the extractive sector tend to be associated with the resource curse and issues in regard to corruption, political and social instability, and economic underperformance rather than positive and inclusive growth and development.¹⁵ In the mid-1990s and early 2000s, the literature from political and economic scholars indicate that, the benefits from oil and gas was not realized which led to increased

¹¹ Vanclay, F. Project-Induced displacement and resettlement: From Impoverishment risks to an opportunity for development? Impact Assess. Prof. Apprais. 2017, 35-21.

¹² IFC, Guidance Note 5: Land Acquisition and Involuntary Resettlement; International Finance Corporation: Washington, DC, USA, 2012.

¹³ See, Prosper . B . Matondi, Kjell Havnevik & Atakilte " Introduction: biofuels, food security and land grabbing in Africa" in Beyene Prosper Matondi, K Jell Havnevik & Anakile Beyene (eds) Land Grabbing and Food Security in Africa (2011) at 7-9; Also see, Sonja Vermeulen and Lorenzo Cotula ' Over the Heads of Local People: Consultation, Consent and Recompense in Large –scale Land deals for Biofuels Projects in Africa" (2010) 37 (4) Journal of Peasant Studies 899-916; Lorenzo Cotula Land Deals in Africa: What is the Contract? (2011) at 16.

¹⁴ See, Judith Burdin Asuni ' Special Report on Blood Oil in the Niger Delta' (United States Institute of Peace Washington, DC: Report no. 229 of 2009) at 4; See also, Department for International Development (DFID) ' The Causes of Conflict in Africa: Consultation Document' (London: SW1E 5JL United Kingdom 2001) at 8; World Bank ' Country Study Angola, Oil, broad – based growth and equity' (Washington D.C., 2007) at 8; World Bank ' Report on the World Bank on Southern Sudan' (Washington D.C 2018) available at <https://www.worldbank.org/en/country/southsudan/overview> accessed on the 20th of November 2022.

¹⁵ Collier, P. The Bottom Billion; Why the Poorest Countries are failing and What Can be Done About It; Oxford University Press: Oxford, UK, 2007.

poverty, armed conflict and corruption in the most oil producing countries by that time to the effect that, the problem went beyond the Dutch Disease whereby the natural resources made other export sectors so uncompetitive.¹⁶

The proponents of transparency and accountability claim those, nations with insufficient government accountability or transparency mechanisms, are more likely to get involved in bribery and diversion of public funds to private accounts and ignore the environmental degradation, resource related violence and human rights violations.¹⁷

In response to the above concerns, the Extractive Industry Transparency Initiative (EITI) Principles were adopted in 2003 whereby Uganda was admitted as an EITI implementing country in August 2020. The aim is to strengthen efforts in ensuring transparency in the sector, strengthen tax collection, promote public debate, improve investment climate, build trust and create lasting value from the petroleum and mineral resources.

To achieve the above objectives, the Uganda government came up with a development policy, contract plan and license publication, the documentation of planned reforms on beneficial ownership transparency, communication and dissemination of data mechanisms and state participation initiatives in the extractive sector, to enhance revenue management and accountability through the publication of data on social and environmental expenditures, quasi-fiscal payments and the full documentation of environmental impact.

So, this research dwells on the assumption that, the establishment of a transparent regulatory framework for land acquisition, guarantees fair compensation while land is acquired for purposes of extractive activities in the promotion of constitutional rights to property, and adherence to the principles of fairness in the compensation process to limit land conflicts arising as a result of the acquisition of land in the oil and gas sector.

¹⁶ *ibid*

¹⁷ *ibid*

Scholars like Cotula ¹⁸have argued how fairness can be maximized to limit conflicts and incidences of marginalization and low productivity arising from land grabbing for petroleum exploitation. He goes ahead to assert that, there's always need for free, prior and informed consent before the acquisition of land from the local communities which calls for their full participation in the whole acquisition process.

So, Uganda needs to make sure that, the land required for oil and gas infrastructural development should be acquired in a fair and transparent manner, with the participation and consent of the affected original land owners, and the local communities need to be fairly and promptly compensated.

Currently, with the signing of the Financial Investment Decision (FID) on the 1st February, 2022 with the engagement of Total Energies EP Uganda, CNOOC Uganda Ltd, UNOC AND Tanzania Petroleum Development Corporation (TPDC) for the Tilenga, Kingfisher, EACOP projects assuring commitment to the development of the oil and gas sector in Uganda with an investment worth \$ 10 billion, which will boost both the upstream and midstream investment projects. This will require the full compensation of the affected parties in that regard.

So, if land acquisition and future revenues are well managed, it could lead to economic prosperity and improved standards of living of Ugandans, however, if mismanaged, it will result into many severe implications among others: project delays, escalating costs, reputational damage, food insecurity and conflict.

The concept of Compulsory Land Acquisition and Compensation in Uganda

In Uganda land ownership belongs to the citizens. The 1995 Constitution provides that land in Uganda belongs to the citizens and shall vest in them in accordance with the land tenure systems provided for in the Constitution which includes customary, freehold, leasehold and mailo¹⁹.

The history of this country was characterized by compulsory acquisition of property without prior payment of compensation. This was manifested with the government acquisition of properties belonging to the Kabaka of Buganda in 1965 to 1966, the nationalization of foreign companies in 1969 what came

¹⁸ L. Cotula., ,N. Dyer & S. Vemeulen ' Bioenergy and Land Tenure: The Implications of Biofuel for Land Tenure and Land Policy' , Land Tenure Working Paper, FAO and IIED Fueling Exclusion? The Biofuels Boom and Poor People's Access to Land (London : 2008).

¹⁹ Article 237

to be called the Nakivubo Pronouncements and the expropriation of Asian properties in 1972 to 1973 by the military government of the time.

The Land Acquisition Act came into force on the 2nd July 1965, enacted under the 1962 Independence Constitution. **Thereon Article 22 provided that:**

22 (1) “ No property on any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied that is to say;

- a) The taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or development or utilization of any property in such a manner as to promote the public benefit; and
- b) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- c) Provision is made by a law applicable to that taking of possession or acquisition, for the prompt payment of adequate compensation.”

The same Article was reproduced word by word in the 1966 interim Constitution.²⁰ However, Article 26 of the 1995 Constitution fundamentally changed the substance by incorporating the aspect of prior payment of compensation strengthening the principle of fairness.

The 1995 Constitution established a new constitutional era in regard to land ownership and property protection rights for Ugandans to enjoy. Pursuant to Chapter fifteen, ownership of land is vested in the Citizens of Uganda.²¹ Then Chapter Four, of the same constitution provides effective protective strings in the protection from deprivation of property under Art. 26 as provided:

1. “Every person has a right to own property either individually or in association with others.
2. No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-
 - a) The taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and

²⁰ Article 13 of the 1967 Constitution.

²¹ Art. 237 of the 1995 Constitution of Uganda.

- b) The compulsory taking of possession or acquisition of property is made under a law which makes the provision for-
 - i. Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of property; and
 - ii. The right of access to a court of law by any person who has an interest or right over the property.”²²

So, Article 26 (2) (b) clearly portrays for the payment of fair and adequate compensation which must be preceded before the taking of possession of the person’s property.

This principle was further emphasized in the case of **Uganda National Roads Authority vs. Asuman Irumba and Anor**, whereby the supreme court held that, *Sec. 7 of the land Acquisition Act which allowed for the government to compulsorily acquire land and pay lease was unconstitutional as it violated Art 26 (2)(b) of the Constitution. The compensation must come prior to the acquisition and must be adequate, and it must place the affected person on the same form as before or even in a better but not a worse off position.*

However much Art 26 (2) (b) provides for prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property by the Government, the Land Acquisition Act does not provide for payment of fair and adequate compensation as provided in the Constitution. It only refers to compensation without providing the mechanisms of how to assess compensation.

Although, the Land Act 1998 tried to harmonize this situation by providing under section 41(6) that compensation should be paid to the land owner in accordance with the market valuation assessed on a willing seller willing buyer basis, this notion was challenged in the case of **Sheema Cooperative Ranching Society & 31 Ors vs Attorney General**²³ where it was held that ‘ the Compensation award offered by Government pursuant to the Valuation Report of August 2005 was outdated and insufficient and inadequate since it was not based on the open market value and disturbances were never considered.’”

Land ownership system in Uganda is to the effect that, land is owned by the people and if the state wishes to utilize the land, there must be prior and adequate compensation provided to the owner before the government can compulsorily acquire the land.

²² Article 26 of the Uganda Constitution 1995

²³ High Court Civil Suit No. 103 of 2010 [2013]

The arising question is whether the right to own property is absolute? Under Article 43 of the 1995 Constitution, the right to own property is not non - derogable and it's limited as it provides that:

- 1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- 2) Public interest under this article shall not permit –
 - a) Political persecution;
 - b) Detention without trial;
 - c) Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.

Sec. 42 of the Land Act goes ahead to provide that, the Government or Local government may acquire land in accordance with Articles 26 and 237 (2) of the Constitution. This is to the effect that; Article 237(2)(a) provides that notwithstanding clause 1, the government or a local government may subject to Article 26, acquire land in the public interest, this implies that this right is not sacrosanct as emphasized in the case of **Amooti Godfrey Nyakaana vs NEEMA & Ors** Constitutional Appeal No. 05/2011 where it was held that, ” *an analysis of the provision of the Constitution (Articles 26, 237, 242, and 245) points to the principle that although one has a right to own land through one of the systems of land tenure listed in the Constitution, there may be situations which necessitate the government either to take over that land or to regulate its use for the common good of all the people of Uganda.* ”

Land rights in the oil and gas sector, are subdivided to include the surface rights and the subsurface rights. The surface rights belong to the citizens who are required to be compensated in order to utilize their rights, whereas the sub-surface rights belong to the government and are held in trust for the people. **Article 26 (1) of the 1995 Constitution** of Uganda provides for every person's right to own property either individually or in association with others, whereas **Article 237** provides that, the land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with land tenure systems: customary, freehold, mailo and lease hold.

The issue of land ownership, rights and interests in land has remained a socio-economic sensitive matter.²⁴ Majority of Ugandans regard land as their only source of livelihood for sustainability, food, shelter, health care among others.

Land ownership has proved to be a cardinal element of identity within the institutions of human society. It details the various rights that ought to be enjoyed, among others; the right to possess, right to use, the right to manage, the right to the property income, the right to the capital, the right to security, the rights or incidents of transmissibility.²⁵

According to Okere,²⁶ expropriated owners more often than not, thwart government efforts to put land to the intended use, whereas, Larbi.²⁷ Asserts that, Compulsory acquisition is the legal tool the government executes to acquire private rights in land without the consent of its owner or occupant in order to benefit society for investments in roads, railways, harbors and airports; for hospitals and schools; for electricity, water and sewage facilities; and for the protection against flooding and the protection of water courses and environmentally fragile areas among others.²⁸

Uganda's oil and gas sector has tremendously evolved to the effect that, the extraction, processing and distribution of the oil now require infrastructural development, which demands for considerable acquisition of land from the surrounding community project sites. These projects are specifically: Tilenga; Kingfisher; the East African Crude Oil Pipeline. Findings reveal that, already some people have started enjoying job opportunities, however, a large number of the project affected persons have been displaced, causing food insecurity, disintegration of social and cultural cohesion, and reduced access to social services.

²⁴ John . T. Mugambwa, 2002, Source Book of Uganda's Land Law – Kampala, Fountain Publishers, p.3

²⁵ A.M Honore, " Ownership" in A.G. Guest (ed.) Oxford Essays in Jurisprudence, Oxford University Press, (1961).

²⁶Okere, G.T. The Role of the Estate Surveyors and Valuers in Compulsory Land Acquisition and Compensation in Nigeria. A paper presented at NIESV Anambra State Branch C.P.D Seminar, Awka.2003.

²⁷Larbi, W. O. Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies. FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9th – 10th 2008.

²⁸Noel, P.G. (1998). *Property Theory, Property Rights, and Land Beliefs: Views of New York State Wetlands Owners and Permit Applicants about Land Ownership and Wetlands Regulations*. MSc. Thesis, Faculty of the Graduate School of Cornell University.1998.

The enjoyment of land is a fundamental and basic human and societal prerequisite that nature demands from everyone, that guarantees access to shelter and livelihoods that promotes the universal human rights in areas of poverty reduction, food security, sustainable rural and urban growth and development and economic prosperity.

Before, an owner enjoyed immunity from expropriation as a fundamental element in the society to the effect that, alienation of individuals was a normal practice without legal recourse. However, from the eighteenth century, this doctrine changed with the coming into force of the emphasis that the owner should be subjected to prohibitions and restrictions in the enjoyment of these rights, which eventually, resulted into the call for prompt, adequate and effective compensation.

The international law regulating the private foreign wealth deprivations are best explained by two major interests:” the national interest on all property within its territorial competence²⁹; and the common interests of the international community in enhancing maximum production and the flow of wealth across the state boundaries.

The extent of “prompt” compensation is case specific and depends on the situation of each State. Though, there may be some exceptional circumstances in which a State may not be able to compensate including foreign exchange restrictions which must be considered.

Adequate compensation must correlate with the market value of the investment, putting into effect the investment market value, fair price, genuine value and the real economic value. The principles that determine valuation include full compensation or” *restitution in integrum*,” which is calculated with the Hull formula of prompt, adequate and effective compensation.

Article 244 of the Constitution of the Republic of Uganda 1995, puts oil and other minerals under the protection of the Government and provides for benefit sharing between the community, the local government and the individual owner of such land.

²⁹ It should be noted that contemporary opinion asserts that states incur international responsibility, in the absence of treaty obligation, not by the taking itself, but by failure to provide compensation there for. This is logical owing to the conceded competence of states to control forms of wealth within their territorial boundaries. See Baade, Indonesian Nationalization Measures Before Foreign Courts-A Reply, 54 Am. J. Intl L. 801, 808 (1960); Sohn & Baxter, Responsibility of States for Injuries fo the Economic Interests of Aliens, 55 Am. J. Int’l L. 545, 555 (1961).

Article 244 of the Constitution provides that;

1. *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.*
2. *Subject to this Article, Parliament shall make laws regulating:*
 - a) *The exploration of minerals and petroleum;*
 - b) *The sharing of royalties arising from minerals and petroleum exploitation;*
 - c) *The conditions for payment of indemnities arising out of exploitation of minerals and petroleum; and*
 - d) *The conditions regarding the restoration of derelict lands.*
 - e) *Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local governments and the Government.*

Article 244 of the Constitution, enables the full operationalization of the minerals and the petroleum resources by mandating the Uganda National Land Policy to provide strategies to ensure the appropriate management and governance of strategic natural resources. These strategic strategies are provided out in Clause 30 of the policy whereby the government is required to:

- i. *Protect the land rights and land resources of customary owners, individuals and communities owning land in areas where mineral and petroleum deposits exist or are discovered;*
- ii. *Allow to the extent possible, co-existent possible, co-existence of customary owners, individuals and communities owning land in areas where petroleum and minerals are discovered;*
- iii. *Provide for restitution of land rights in event of minerals or oil being exhausted or expired depending on the mode of acquisition;*
- iv. *Guarantee the right to the sharing of benefits by land owning communities and recognize the stake of cultural institutions over ancestral lands with minerals and petroleum deposits; and*
- v. *Adopt an open policy on information to the public and seek consent of communities and local governments concerning prospecting and mining of these resources.*

The above provisions vest ownership of land discovered with natural resources in the government. However, ownership has to be completed by the government fulfilling all the requirements provided for under Article 26. Failure to fulfill these conditions requires the project affected persons to approach the

courts of law for redress. The above discussed laws should provide a smooth change of ownership for purposes of exploiting the mineral resources.

However, it has proved to be the opposite as evidenced in the Albertine Graben Region, whereby the government decided to retain 93% shares from royalties, and only to relinquish 6% to be shared among the local governments in the oil producing areas, which amount is unsustainable to guarantee the required optimization of the financial benefits,³⁰ the cultural institution in the region are awarded only 1%, while the communal land owners, the violent eviction victims and displacements are ignored, there's no legal recognition of the traditional mechanisms for dispute resolution or customary laws for managing disputes under the customary tenure.

The Production Sharing Agreements (PSAs) signed between the government of Uganda and the prospecting companies (Tullow oil, Dominion Oil, Heritage Oil) have remained a closely guarded secret by both the Ugandan Government and the oil companies.

The compulsory acquisition of private property for public purposes has proved to be a significant threat to the land tenure security across the areas of Uganda. This is already executed by the multi-national companies and government agencies in deprivation of private land rights to suit their economic interests, which has led the shift in the prioritization in producing only documents reflecting property rights in regard to cadastral surveys, mapping customary land claims, registration and titling of land, and notwithstanding, the inherent rights one ought to enjoy on land.

According to my research, the legal regime does not provide the mechanisms for the calculation of the compensation to be made to the victims. However much, the 1995 Constitution of Uganda provides for the prompt payment of just compensation to the land owner, but the word 'prompt' is not well defined to address the timeline for compensation which normally results into delayed payments, hence, contradicting with the principles of just and fair compensation.

These practices have led to the disrespect of the property rights enshrined in our Constitution and the international legal frameworks, whereby, Uganda is a member state, through the arbitrary deprivation of property.

³⁰ The Public Finance Management Act No. 3 of 2015. Section 75.

1.3 The Statement of the Problem

Compulsory land acquisition is one of the fundamental challenges that have proved to be both an historical and current challenge in the planning and execution of the Government of Uganda's infrastructural growth and development.

This is due to the irregularities in the legal regime, capitalistic tendencies that have emerged as the result of the mineral resources discovered in Uganda, and the level of high corruption evidenced of recent which has led to the displacement and a higher rate of rural urban migration. It has led to high costs of infrastructural developments and long delays resulting from prolonged compensation procedures leading to the notion that, Uganda's cost of infrastructural development is one of the highest in Africa. This results in project delays in cases where an affected person rejects compensation and resorts to court.³¹ In government's argument, those who resort to court are always in pursuit of their inherent and inalienable right granted under article 26 of the 1995 Constitution of the Republic of Uganda. The right is to the effect that, fair and adequate compensation ought to be paid to any person whose private property or land has been acquired, demolished or affected by a public project.³²

Land compensation under compulsory land acquisitions is very critical for the success of any project under oil and gas industry. This is so because the law demands an adequate and timely compensation to the project affected persons before any project can commence. This implies that no project can commence before the project affected persons can be adequately compensated in Uganda's oil and gas industry.³³

However, in reality, it's noticed that, many people were not fairly and adequately compensated in the affected project areas of the Albertine Graben regions, which led to illegal displacements, rural urban migration, increased psychological torture, social economic inequality among others, despite the presence of the legal framework and guidelines regarding land acquisition and compensation in place.

³¹Bategeka L. and John M. Matovu (2011). Oil Wealth and Potential Dutch Disease Effects in Uganda. *Economic Policy Research Centre (EPRC)*, June, p.40

³²Niraiyamani Julius and ors , Oil Politics and Land Tenure Changes in Uganda , Understanding the Curse of Dispossession in the Albertine Region , *African Social Science Review* VOL. 10, NO.1, 2019.

1.4 Research objectives

1.4.1 General Objective

The main objective of the study is to assess the efficacy of the legal regime in the protection of the affected persons in relation to the property rights in relation to compulsory land acquisition in the Albertine region.

1. To assess the legal and institutional framework governing property rights and compulsory land acquisition in Uganda.
2. To analyse the different land tenure systems and likely impact on compensation in the Albertine Region
3. To identify the ambiguities in the legal regime governing compulsory land acquisition in Uganda.
4. To identify the social effects of land Acquisition in the Albertine Graben Region.

1.5 Research Questions

1. What is the current legal and institutional framework governing property rights and compulsory land acquisition in Uganda?
2. What are the different land tenure systems and their impact on compensation in the Albertine Region?
3. What are the gaps in the legal regime that regulate compulsory land acquisition in Uganda?
4. What are the social effects of land Acquisition in the Albertine Region?

1.6 Scope of the study

1.6.1 Geographical Scope

This study covered the districts of Hoima, Buliisa, Kikuube and Nwoya, specifically concentrating on three major projects “Tilenga, Kingfisher, and the Kabaale Industrial Park where compulsory land acquisition was effected, and this study focused mainly on the affected parties and how they were compensated.

1.6.2 Time Scope

The study focused on a period of time since they started the exploration phase up to the time they signed the Final Investment Deal (FID).

1.6.3 Content Scope

The study focused on interviews, cluster of knowledge and literature on compulsory land acquisition and property rights.

1.7 Significance of the Study

This study is expected to analyze the gaps in the laws governing compulsory acquisition and highlight irregular practices carried out by the government agencies in the land acquisition process. It will provide remedies on how to effectively compensate and avoid delayed compensation and unfair practices that have been witnessed in the Albertine region.

This study provides possible recommendations to the legislators to take into account to improve on the law and enhance a better system of compulsory land acquisition.

The study is also expected to be utilized by other future researchers as a basis for further research. It will be relevant to government agencies, donors and other stakeholders who intend to improve the level of compensation within the oil and gas sector.

1.8 Research Frameworks

There are two fundamental research frameworks, among others the theoretical framework and the conceptual framework. The theoretical framework is based on the existing theories and provides the general relationship between variables, whereas, the conceptual framework is specific and establishes the variables that will be considered in a provided study. For this study, I propose to adopt the theoretical framework, because it's most suited for this research.

1.8.1 Theoretical Framework

The study adopted the '**theory of justice**'. (1971)³⁴ John Rawls introduced in his book '**A Theory of Justice**' in which he aimed to counter the utilitarian theory that had been dominant at the period of the

³⁴ John Rawls A Theory of Justice (1971) at 21.

Anglo-American political theory for quite a long time whose theory ignored individual liberty and maximised the good for all.

Rawls argued that, what the ruling class considered good might not be good to the ruled, he valued justice as a virtue to the society and being fair. That the Constitution should be founded on the principles of justice, which implies that, the law or decision making process should be participatory.

In the context of the petroleum activities, land acquisition and compensation process should be participatory, engaging every person that is affected by the petroleum project, he calls for fair rules that may lead to just ends, based on the principles of human rights, allowing the affected people to participate fully in the land acquisition and compensation process.

Rawls connotes two principles of justice that defines his theory which are: 1). Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all, and 2). Social and economic inequalities are to be arranged so that they are both: a) to the greatest benefit of the least advantaged, consistent with the just savings principle as enunciated in the difference principle, and b). Attached to offices and positions open to all under conditions of fair equality of opportunity.

He asserts that, liberty limitation is allowable as long as it's to improve the livelihood standards of the worst off. In the context of petroleum projects, the right to own property must be protected, but where there's compulsory land acquisition in the public interest, the government must pay compensation to the affected people taking into consideration their source of livelihood, and must ensure that, the compensation is based on consent, consensus and consultation aimed at benefiting all.

The Uganda constitution 1995 sets a benchmark for the compulsory land acquisition to be effected with '**fairness**'.³⁵ Rawls' justice as fairness theory relates fairness to participatory approaches in the protection of rights, including the right to property.

Rawls is critical to establishing an appropriate scheme for calculating compensation in respect to land acquired for petroleum projects, putting into effect the elements of 'free, prior, informed consent, consultation and consensus building (procedural fairness).

³⁵ Article 26 (2) (b)

He further demands that, distributive justice ought to respect the livelihood rights of the least advantaged, which will help to address the compensation challenges the oil rich Albertine Graben region is facing. He suggests that, those benefiting from the production of petroleum exploitation should bear the burden of production by allowing part of the income gained from the petroleum projects be spent towards raising the living standards of those who sacrifice their land for the good of all.³⁶

So, the theory of distributive justice stresses for the state to responsibly distribute the burdens and benefits of wealth production fairly in the society. That the economic system has to be organised to address the least advantaged members of society to be put in a better position, by ensuring equal participation in the process of giving away their land, should be rewarded for their contribution to prevent them from being marginalised and the calculation of the compensation must consider the livelihood of the affected people and put them in a better position.

Though, philosophers have argued against this notion that, insisting that, individuals must be provided the freedom to act independently on how they spend their earnings or wealth, without minimal interference by the state,³⁷ which Rawls rejects to the effect that, as long as the merit doesn't give absolute entitlement to those that have merit or talent over the less talented.

He goes ahead to provide that, fairness is a function of procedures (procedural justice) which require the participants to be fully aware of the content of the rules to which they subject themselves.³⁸ This call for the consent to be bound by the rules that are expected to regulate their relationship with other participants in what Rawls refers to as the principle of 'Mutual acknowledgement'.³⁹

Rawls argues that, land for petroleum activities should embrace participatory procedures that are non-discriminatory and equitable,⁴⁰ full information disclosure, transparency, a reasonable notice and provide sufficient time for preparation and hearing of the affected groups.⁴¹ Procedural justice entails processes which address the lack of recognition which results into a lack of fair representation in decision making and unequal distributional outcome.

³⁶ See, John Rawls a Theory of Justice (Revised Edition 1999) at 74.

³⁷ See, Nozick and Dworkin in for example: Dworkin, Op Cit, note 64 at 283 – 345; and, Nozick, Op Cit, note 56.

³⁸ Ibid.

³⁹ Rawls' The Justification of Civil Disobedience', Op Cit, note 62 at 179.

⁴⁰ Rasch and Kohne (n 97) 608; Heffron, Stephan and Jenkins (n 99) 2.

⁴¹ Margot Hurlbert and Jeremy Rayner, 'Reconciling Power, Relations and Processes: The Role of Recognition in the Achievement of Energy Justice for Aboriginal People' (2018) 228 Applied Energy 1320, 1322; <https://doi.org/10.1016/j.apenergy.2018.06.054>; Jenkins and others (n 94) 178.

He argues that, justice is fair, if the parties have all relevant information and have fully engaged voluntarily in the formulation of rules regulating their association and have freely consented to be bound by them. The consent seeking process entails details on the nature of a proposed action, risks involved, benefits and alternatives to the proposed action. The consultative approach is likely to address issues in regard to compensation rates, or adequacy of compensation, type of compensation, resettlement plans among others.

land acquisition process for large scale infrastructure is bound by technical processes such as land valuation, compensation and other activities such as: reconnaissance surveys, stakeholder and community sensitisation, survey and valuation data capture, compilation of detailed strip maps and valuation tables, preparation of valuation report, identification, verification and disclosure, preparation of payment batches and the subdivision and titling among others.

This means that, the state must adopt rules that facilitate a mutually beneficial transaction with the affected people, which calls for their active participation in the formulation of the rules of procedures to reasonably regulate their conduct, consent or consensus in the land acquisition process for petroleum activities, and determination of compensation, and the rules must provide mechanisms for resolution of disputes between the parties.⁴²

Unfortunately the resettlement planning and its execution has worsened the socioeconomic conditions of the most project affected persons in Hoima District, Buseruka Sub County, where the oil exploration led to land conflicts which threatened the existence of the indigenous communities, due to a lack of procedural land justice system. The affected people displaced by these projects, were not engaged in the decision making process concerning relocation preference, housing design among others. A baseline survey carried out by HOCADEO (2012, P.29) reports that the majority of the individuals believed in the idea that there were incidences of land grabbing whereby 46.7% strongly agreed, and believe that more people were likely to be displaced on their land due to oil discovery.

John Rawls' notion in his difference principle calls for the recognition of livelihood rights as one of the fundamental interests in land. That compensation process should account for the livelihood rights in correlation of other rights linked to the land rights. Land is considered as a source of life, and land being

⁴² See, Rawls, Op Cit, note 86 at 112.

connected to the right to work, shelter and housing, land as a source of food, water and good health, land as a cultural right, which calls for a fair compensatory legal regime in relation to land rights.

However, according to the International Labour Organisation Report 2020⁴³, 2.3 million women and men around the world succumb to accidents and diseases especially in commercial activities related to extractive which calls for strong regulation to ensure health and safety standards of workers and the surrounding communities are respected.

So, Rawls's Theory of Justice is a fundamentally applied to help to investigate the processes and outcomes to be considered 'just and fair', and to evaluate the impacts of oil and gas development on the local livelihoods in the Albertine Region, and to identify and analyse the serious gaps in the regulation and laws governing compulsory land acquisition in Uganda.

⁴³ International Labour Organisation Report (2020)

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Chapter two was guided by the specific objectives aimed at conducting a chronological review of the existing literature and analysis of the legal frame work by the researcher. The chapter brought forth the previous literature on the various concepts set out in the objectives of the study.

2.1 Compulsory Land Acquisition

Compulsory land acquisition has been defined as the action and right of the government to take land for public use, public benefit in the countries having private land ownership.⁴⁴ Other participants define it as the power of government to acquire private rights in land without the willing consent of its owners or occupants in order to benefit the society.⁴⁵

So, it's a process whereby the government or its institutions acquire private land for the purpose of industrialisation, development of infrastructural facilities urbanisation of the private land, which provides compensation to the affected land owners and their rehabilitation and resettlement.⁴⁶

The State must enjoy this sovereign right by adhering to the legally established frameworks that are fair, accountable and transparent, and there must be a strong rationale for the dispossession of land from the rightful owners indicating the proposed projects to the public and the overriding rights of the affected private land owners.⁴⁷

⁴⁴ Subash Ghimire, Arbind Tuladhar, Sagar Raj Sharma, 'Governance in Land Acquisition and Compensation for Infrastructure Development, 'American Journal of Civil Engineering, Vol. 5, No. 3,2017, pp. 169-178.

⁴⁵ Food and Agriculture Organisation of the United Nations, 'FAO Land Tenure Studies 10; Compulsory acquisition of land and compensation, '2008 at 4.

⁴⁶ Norah Njagali and William Matovu, ' Presentation on Challenges Affecting Land Acquisition for Infrastructural Projects in Uganda', 2016. Accessible at <http://www.surveyorsof Uganda.org/downloads/CHALLENGES%20xx.pdf> (Accessed on 26th /05/ 2022).

⁴⁷ Subash Ghimire, et al, 2017, at 4.

Article 26 of the Constitution provides for the right to protection from deprivation of property and guarantees the right to everyone to own property individually or in association with others. It establishes conditions for compulsory deprivation of property in public use or in the interest of defence, public safety, public order, public morality or public health.

Article 26(2) (b) further provides that, there must be prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of private property. However, there are no specific provisions addressing the surface access rights between the international oil companies and the local communities, nor provisions for compensation and resettlement of displaced communities, which has enhanced conflicts between the government, transnational oil companies, and the surrounding local communities in the Albertine Graben region increasing court disputes.

The upstream law provides for surface rights to the effect that, Section 135⁴⁸ provides that “*a Licensee holder cannot exercise any rights under their license without the written consent of the landowner.*” This provision emphasises the co-existence of petroleum development with landowner’s rights, whereas, Section 136 of the same law, enables the landowners in the exploration area to retain the right to graze stock or to cultivate the surface of the land without the interference of petroleum activities in the area.

However, Section 138⁴⁹ enables the petroleum production holder to acquire exclusive rights over a block in a development area, which disarms the landowner the chance to negotiate for an enhanced value of their property by subjecting it to the government valuer’s determination. As a result, most of the landowners in areas Albertine region were not compensated for the disturbance of their rights and for any damage done to the surface of their land as a result of oil and gas related activities.

The Supreme Court of India in **Susethat Vs State of Tamil Nadu**⁵⁰ emphasised that, “*there must be a balance between human rights and economic development*”. In this regard, oil and gas laws should be revised to include this precautionary principle in a bid to protect the rights of the affected people alongside the oil and gas development activities.

⁴⁸ Petroleum (Exploration, Development and Production) Act 2013.

⁴⁹ *ibid*

⁵⁰ Civil Appeal 3418 of 2006.

Tom Ogwang & Frank Vanclay, 2019⁵¹ argue that, oil and gas development should not lead to a resource curse, “Dutch disease”, instead, Uganda and other resource rich countries in Africa should ensure that the negative consequences from the resource exploitation especially from land acquisition, are fully addressed by adhering to the international best practices.

It’s argued that, human rights are the basis for securing dignity and equality for all people.⁵² The international instruments set out a range of rights and freedoms like the protection from deprivation of property, right to education, the right to favourable conditions of work, to a clean and healthy environment among others.

It’s noticed that, Uganda’s oil and gas laws fall short of protecting and promoting fundamental and other human rights and freedoms enshrined in the Constitution, at the same time, Uganda’s policy and legal regime fails the compliance test in regard to the UN Guiding Principles on Business and Human Rights.

As a result, the recent resolutions passed by the European Union stopping the construction of the East African Crude Oil Pipeline (EACOP), have faulted the Uganda government, transnational oil companies, and the international service providers in the oil and gas industry on a number of human rights issues ranging from lack of transparency and accountability in the sector, non-disclosure of information, land conflict and compensation rights violations, labour discrimination between international expatriates and the local human resources employed in the international oil companies in the Albertine Graben region, and the existing institutional and legal systems failing to recognise the legal interests and rights of communal land owners in the face of multinational business interests.

2.2 Legal and Institutional Framework Governing Compulsory Acquisition

Compulsory land acquisition must adhere to the principles governing rule of law, human rights and constitutionalism in Uganda. The international community has come up with parameters to enhance the minimum core principles that ought to be respected and implemented towards the achievement of equitable compulsory land acquisition processes.

⁵¹ Tom Ogwang & Frank Vanclay, 2019. Social Impacts of Land Acquisition for Oil and Gas Development in Uganda, Urban and Regional Studies Institute, Faculty of Spatial Sciences, University of Groningen, 9700av Groningen, The Netherlands, [online] available at <https://www.mdpi.com/2073-445X/8/7/109/pdf> (accessed on 20th November 2022)

⁵² European Commission, ‘Oil and Gas Sector Guide on Implementing the UN Guidelines on Business and Human Rights.’

These principles advocate for the balance between country infrastructural development programs and the individual or collective proprietary rights. They call for participation, consensus, strategic vision, responsiveness, effectiveness and efficiency, accountability, transparency, equity, and rule of law.⁵³

At the same time, the World Bank under the Governance Assessment Framework (LGAF), provides various governance principles for adoption and implementation in land governance, which include: integrity and accountability, efficiency and effectiveness, civic engagement and public participation, equity and fairness and impartiality, legal security and rule of law, subsidiary, autonomy, transparency, consistency and predictability.⁵⁴

So, all the above mentioned principles are vital to the full effectiveness of the compulsory land acquisition frame work to the effect that, there should be a guarantee of procedural rights, respect of the freedoms accruing from the affected persons or the communities like the right of notice, fair hearing, right to appeal when dissatisfied with the present means of adjudication.

The Right to Property and Compulsory Acquisition under the International and Regional Human Rights Standards

Under the conventional human rights, the right to property is regarded as a cornerstone of the Universal Declaration of Human Rights.⁵⁵ Article 17 of the UDHR provides that; “Everyone has the right to own property alone as well as in association with others’ and that ‘no one shall be arbitrarily deprived of his property’.⁵⁶ This provision recognizes the fundamental rights to property and goes ahead to limit the government’s ability to arbitrarily interfere with the enjoyment of property ownership rights.

Under the European Convention on Human Rights and Fundamental Freedoms 1950,⁵⁷ everyone has the right to respect for his private and family life, his home and his correspondence; there shouldn’t be any interference by a public authority in the exercise of this right, except in accordance with the law in the

⁵³ Graham, J. (2003), ‘Principles for good governance in the 21st century,’ Policy brief, quoted in Subash et al, 2017 at 2.

⁵⁴ Subash et al, 2017 at 2.

⁵⁵ 24 W. A.Shabas, *The Universal Declaration of Human Rights: The Travaux Prepaatoires*, Volume 1, October 1946 to November 1947 (Cambridge University Press, 2013), p. xxxvii; L.Cotula, ‘Property Rights, Negotiating Power and Foreign Investment: An International and Comparative Law Study of Africa’ (2009) , p. 87, unpublished PhD thesis, University of Edinburgh.

⁵⁶ Article 17(1) and (2), Universal Declaration of Human Rights (1948).

⁵⁷ Article 8, First Protocol

interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of the morals, or for protection of the rights and freedoms of others.

It's now a recognized practice that, the right to property is categorized as a rule of customary international law as evidenced in most United Nation member states where Uganda is a member state, having a strong inclusion in their constitutions and legislations.

According to the Regional human rights, institutions recognize the right to property, including the right to be fairly compensated in cases of involuntary deprivation of their property.⁵⁸ The right to property is protected under Article 14 of the African Charter on Human and Peoples' Rights (ACHPR) which provides that:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

In that regard, the Maputo Protocol goes ahead to protect the right of women to own property. The Maputo Protocol emphasizes the right to land as one of the fundamental elements of the right to food security.⁵⁹ This implies that, the government is mandated to guarantee all women the right to property as an essential element to the furtherance of the sustainable development initiatives.⁶⁰

Exceptions to the Right to Property

However, it should be noticed that, from both the International and Regional legal frameworks, the right to property is not absolute in nature. Its subject to the “eminent domain” which is the innate right of the State to take over part or whole of one's property in the execution of the State sovereignty for a legally justifiable reason for or in public interest within the law after due compensation.

The National Legal Frame Work

Since the discovery of oil and gas in Uganda, the government has tried to come up with laws and policies to transform the economy from a predominantly low income to a competitive upper middle income

⁵⁸ Article 1, Protocol No. 1 to the European Convention on Human Rights (ECHR); Article xxiii, American Declaration of the Rights and Duties of Man; Article 21, American Convention on Human Rights (ACHR); Article 14, African Charter on Human and Peoples' Rights (ACHPR); Article 31, Arab Charter on Human Rights.

⁵⁹ Article 15 (a)

⁶⁰ Article 19 (c).

country by 2040⁶¹, by establishing effective regulatory frame work management to promote growth, development and respect of human rights as the right to health in Uganda.

The main legal frame work governing compulsory acquisition is the Constitution of Uganda 1995 and operationalized by the Land Act of 1998 (as amended) and the Land Acquisition Act Chapter 226 of 1965 and the Land Regulations of 2004.

1. The 1995 Constitution (as amended) of Uganda.

The Constitution is the supreme law of the land, to the effect that, no other law in Uganda precedes it. All other laws derive their validity from the Constitution and any law which proves not to agree with the provisions of the Constitution, that law is rendered null and void to the extent of its inconsistency with the Constitution.⁶² Pursuant to Chapter fifteen, ownership of land is vested in the Citizens of Uganda.⁶³ Then Chapter Four, of the same constitution provides effective protective strings in the protection from deprivation of property under Art. 26 as provided:

- (1) "Every person has a right to own property either individually or in association with others.*
- (2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-*
 - (a) The taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and*
 - (b) The compulsory taking of possession or acquisition of property is made under a law which makes the provision for-*
 - (i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of property; and*
 - (ii) The right of access to a court of law by any person who has an interest or right over the property. "*⁶⁴

⁶¹ Christopher Mbaziira, Teddy Namatovu (2018) Africa Human Rights Law Journal

⁶² Article 2 of the Constitution of the Republic of Uganda, 1995, as amended.

⁶³ Art. 237 of the 1995 Constitution of Uganda.

⁶⁴ Article 26 of the Uganda Constitution 1995

The above provisions indicate that, every citizen has the right to own land and this right can only be taken away after the fulfillment of the above requirements. However, all natural resources are owned by the state as provided by Article 237 of the Constitution that provides that land in Uganda belongs to the citizens and shall vest in them in accordance with the land tenure systems provided in the Constitution.

Clause 1 of the same Article goes ahead to provide that, the Government or local government may, subject to Article 26 of the Constitution, acquire land in the public interest and the conditions governing such acquisition shall be as prescribed by Parliament. So, the government shall hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens.

Article 244 of the Constitution provides that;

1. *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.*
2. *Subject to this article, Parliament shall make laws regulating*
 - a. *The exploitation of minerals and petroleum;*
 - b. *The sharing of royalties arising from mineral and petroleum exploitation;*
 - c. *The conditions for payment of indemnities arising out of exploitation of minerals and petroleum; and the conditions regarding the restoration of derelict lands.*
3. *Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual land owners, local governments and the Government.*

The above provisions vest ownership of land discovered with natural resources in the government. However, this ownership to be complete, the government must fulfill the requirements provided for under Article 26 of the Constitution, and failure to fulfill these requirements grants the citizen the right to approach the courts of law for redress.

2. Land Acquisition Act Chapter 226 of 1965

The purpose of the Act is to provide for the procedures that must be undertaken in the process of compulsory appropriation of land for public purposes.⁶⁵ The procedures of acquisition must adhere to the

⁶⁵ Long title of the Land Acquisition Act, Cap 226.

provisions of Article 26 and Article 237 of the Constitution. Section 6 of the Act, goes further to emphasise that:

Where a notice is published under section 5 in respect of any land, the assessment officer shall, on the day specified in the notice, proceed to hold an inquiry into claims and objections made in respect of the land and shall make an award under his or her hand specifying;

- a) The true area of the land;*
- b) The compensation which in his or her opinion should be allowed for the land; and*
- c) The apportionment of that compensation among all the persons known or believed by him or her to have an interest in the land, whether or not they have appeared before him or her.*

The Act emphasizes the element of compensation prior to the take-over of the land. However, it empowers the minister to make regulations for the assessment and payment of compensation, which creates controversy on whether, is the right person for the compensation assessments. The minister is required to make a declaration through a statutory instrument to the effect that, the identified land has to be for public purposes and be served onto the occupier of the land.⁶⁶ The assessment officer (Government Valuer) issues a notice through the gazette and places the same at a convenient place on the land declaring the intention of the government to appropriate the land.⁶⁷ On the publication of a declaration in regard to land, the assessment officer is meant to superintend over the marking out and measuring of the land to produce a plan of the land.⁶⁸

This limits the owner of the land the chance to suggest how much compensation he or she wants according to the attachment he or she might have with the land. Though, section 13 of the Act tries to provide the remedy by stating that;

Where an award is made under section 6, any person awarded or claiming that he or she should have been awarded compensation may within sixty days of the date of the award appeal to the High Court by way of objection to any or all of the following;

- a) The total amount of the compensation awarded;*
- b) The apportionment of the compensation;*

⁶⁶ Section 3 of the Land Acquisition Act, 1965.

⁶⁷ Section 5 (1) –(4) of the Land Acquisition Act, 1965.

⁶⁸ Section 4 of the Land Acquisition Act, 1965.

c) Any failure or refusal of the assessment officer to include him or her in the apportionment.

3. The Land Act 1998 (as amended)

The Act was enacted to provide for the tenure, ownership and management of land, to amend and consolidate the law relating to tenure, ownership and management of land.⁶⁹ Section 2 of the Land Act provides that, subject to Article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems: (a) customary, (b) freehold, (c) mailo, and (d) leasehold.

Section 42 of the Act goes ahead to provide that, the Government or a local government may acquire land in accordance with Articles 26 and 237 (2) of the Constitution, in recognising the power of government to take over ownership of land from the private individuals for the common good of the country and strengthening the protection of customary tenure land owners by providing a Certificate of Customary Ownership (CCO), and emphasizes the locus of the customary land owners as legal claimants in situations of land disputes.

4. The Petroleum (Exploration, Development and Production) Act 2013

The Petroleum (Exploration, Development and Production) Act 2013 was enacted to govern activities of oil production in the upstream section. It promotes for the principle of fairness and reasonableness in the compensation process for any disturbance or deprivation of land,⁷⁰ and the same Act provides that, compensation has to be executed within four years from the date is accrued.⁷¹

Section 135 of the Act provides that, a licensee shall not exercise any right under a license;

- a) Without the written consent of the relevant authority, upon any land dedicated or set apart for a public purpose or for a place of burial or upon land over which a mining lease, an exploration licence or a right to cultural site has been granted;*
- b) Without the written consent of the land owner;*
 - (i) Upon any land which is the site of or which is within two hundred meters of any inhabited, occupied or temporarily unoccupied house or building;*

⁶⁹ Long title of the Land Act (as amended) Cap 227

⁷⁰ Section 139 (1a)

⁷¹ Section 139 (3)

- (ii) *Within fifty meters of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or on which agricultural crops are growing*
- (iii) *Upon any land from which, during the year immediately preceding, agricultural crops have been reaped or;*
- (iv) *Upon any land which is the site of or which is within one hundred meters of a cattle dip-tank, dam or water used by human beings or cattle.*

Section 136 further provides that;

A land owner in an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of the land in so far as the grazing or cultivation does not interfere with petroleum activities or safety zones in the area.

This implies that, land rights include the surface rights as provided under section 136 and the subsurface rights as envisaged under section 137. The licensee acquires the right to access the sub surface on condition that, he or she has to pay rent for utilising the surface in the process of accessing the subsurface.

The Policy Frame works

a. The National Land Policy, 2013

The cardinal objective of the policy is to stimulate the contribution of the land sector to overall socio-economic development, wealth creation and poverty eradication in Uganda, harmonise and streamline the complex tenure regimes in Uganda for equitable access to land and security of tenure, clarify the complex and ambiguous constitutional and legal framework for sustainable management and stewardship of land resource and redress historical injustices to protect land rights of groups and communities marginalised by history on the basis of gender, religion, ethnicity, among others.

In relation to compulsory land acquisition, the policy emphasizes that, the state as a trustee for the citizens of Uganda, shall exercise the power of compulsory acquisition responsibly and in public interest.⁷² Though, it recognises that, the government has not exercised this mandate of compulsory land acquisition responsibly and in the public interest. The policy provides strategies of ensuring responsible

⁷² Uganda National Land Policy, 2013 at 14.

acquisition of land by the government, by calling for amendments of the Land Act and the Land Acquisition to;

- i. Prescribe a set of regulations and guidelines outlining the roles and responsibilities of the central government, local government and the various state agencies and organs in the execution of this mandate.
- ii. Provide guidelines and procedures for the payment of prompt, adequate and fair compensation irrespective of the tenure system for the local governments to exercise this power.⁷³

b. Guidelines for Compensation Assessment under Land Acquisition (GCALA) 2017

These guidelines have been in existence since 2017, purposely to harmonise and improve on the general valuation assessment practice to maintain and sustain fair and adequate compensation to the project affected parties. They provide ten principles based on the global standards and best practices for the whole process to adhere to.

The guidelines further provide for the five conventional valuation methods that are meant to be implemented in Uganda in property compensation, which include: “ The comparison method / Market or Direct Sales Comparison method; the Contractor’s method / Cost or Replacement method; Investment method (income method derived from the physical property); Profit method (or capitalization approach) and the Residual method.

Institutional Framework Governing Compulsory Land Acquisition in Uganda

These laws must be backed up and upheld by strong, independent National Institutions to provide oversight and accountability of high value. They provide checks and balances for each other.

i. Chief Government Valuer Office

The CGV heads the valuation division within the department of land administration in the Land Management Directorate. This office provides timely and reliable property valuations to help the government in decision making, assesses the Stamp Duty, advises the government on property rates, values property for rent by the government, and supervises government projects.⁷⁴

⁷³ Clause 2.3.11, Uganda National Land Policy, 2013 at 14.

⁷⁴ Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 AT 6.

Unfortunately, the CGV office is challenged with understaffing and less financial resources which has hampered their performance in the delivery of this service, to the extent of advising the government ministries and agencies to seek private consultants to provide the valuation services, and left with the role of approving them which has undermined the quality of valuation to the expense of the Project Affected Persons.

ii. District Land Boards

The Land Act creates the District Land Boards with corporate rights to sue or be sued.⁷⁵ Their mandate is to compile and maintain a list of rates of compensation payable in regard to crops, buildings of non permanent nature, and to review the list of rates of compensation every year,⁷⁶ and to liaise with the district technocrats in determining these rates. The members are chosen among the local communities with the knowledge of the local land values. They are independent from the Uganda Land Commission and not subjected to any direction or control from any authority. They must take cognizance of the district council policy on the land and the different systems of customary and other tenure systems within the district.⁷⁷

iii. District Land Tribunals

The District Land Tribunals are established by the Land Act to determine any dispute relating to compensation for land compulsorily appropriated.⁷⁸ In determining compensation, the DLT must consider the following; (a) in regard to customary ownership, the value of the land shall be the open market value of unimproved land; (b) the value of the buildings shall be considered at open market value for urban areas and depreciation cost for the rural areas; (c) the value of standing crops on the land, excluding annual crops harvested during the time the notice given to the tenant,⁷⁹ and must provide a disturbance allowance of 12 percent, or if less than six months, a notice to give vacant possession of 30 percent of any assessed sum.⁸⁰

It was noticed that, however much the law provides for these mandates to the DLBs, compensation rates were not assessed which put the deprived persons to arbitrary estimated compensation rates provided by

⁷⁵ Section 56 of the Land Act.

⁷⁶ Section 59 (1) (e) and (f) of the Land Act.

⁷⁷ Section 60 (1) of the Land Act.

⁷⁸ Section 76 (1) (b) of the Land Act.

⁷⁹ Section 77 (1) of the Land Act.

⁸⁰ Section 77 (2) of the Land Act.

the government consultants and contractors, who have no knowledge on the communities' social – economic and religious dynamics and attachments to particular types of properties.⁸¹

iv. The Judiciary

The Judiciary has the Constitutional obligation to mitigate land injustice in situations of compulsory land acquisition. From the reality, access to land justice is fluid and has enormous limitations to the effect the affected persons face serious challenges and don't enjoy free and access to justice.⁸² The failure to operationalize the Local Council Courts which play a fundamental role in facilitating land transactions at the local levels, are paramount in reducing the root cause of the disputes and promoting access to justice at the grass root and decongest the formal court system,⁸³ which has been riddled with huge backlog of cases.

There's widespread corruption among the judicial officers and the Police Force who ought to have been central in the promotion of land justice which has affected their public confidence in the administration of land justice. This is further revealed by Transparency International ranking these two institutions as the most corrupt being followed by the Land Registration Services Office.⁸⁴

2.3 The Land Tenure Systems and Their Impact on Compensation in the Albertine

Land tenure refers to the relationship among people with respect to land and its resources. According to **Rugadya**, land tenure security is the individual's perception of his or her rights to a piece of land on a continual basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labor or capital invested in land, either in use or upon alienation. The tenure defines how land rights are assigned and who has access to the land or the rights of use.

The Uganda's 1995 Constitution recognizes four types of land tenure systems in Uganda: i.e. Mailo, Leasehold, Freehold and Customary land tenure systems, and the Land Act 2010 as amended, provides

⁸¹ Francis Tumusiime, 'The Right to Own Property: Towards a Just and Fair Compensation in Uganda's Oil Sector', Policy Briefing No. 60, SAIIA, November, 2012, at 2.

⁸² Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 5. Accessible at <https://www.judiciary.go.ug/files/downloads/Judiciary%20to%20Land%20Commission%20inquiry.pdf> (Accessed on 25/05/2022)

⁸³ Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 12.

⁸⁴ Transparency International, 'The East African Bribery Index, ' 2017.

how tenure, particularly the customary system can be secured. The Act grants all legitimate and bona fide occupants property rights; establishes land tribunals and decentralizes land administration.⁸⁵

It is under such tenure systems under which land can be acquired, owned, utilized and disposed off. If you do not belong to any of the systems of tenure, you do not own land in Uganda. However, you can only be defined as a tenant on a property, a squatter or bona-fide occupant as may the law determines based on circumstances of occupancy.⁸⁶The majority of the land in the Albertine region of Buliisa and Hoima districts is customarily owned. The control and distribution are vested in the hands of the local chiefs and elders in the area.

The Land Act, 1998 and 2010 as amended provide that, proof of ownership of land under the customary land tenure system shall be the possession of a certificate of registration. The Constitution of Uganda⁸⁷ provides that, people may apply for a certificate of ownership of land, but does not oblige them to do so which affects them during compensation.

It was noticed that, customary tenure and the authorities are inadequate in protecting the tenure. In the Albertine Graben, the distribution of power and wealth is affected by the land holding position of the community members. Land rights under customary tenure are mostly unregistered and lack any formal documentation. In absence of a cadaster of such land rights, visualizing and considering ownership boundaries has been a challenge in determining compensation rates in those areas. Possession of a land title is the only legal claim that one can show as evidence of owning land since titling and privatizing guarantee land security and the protection of rights to land. However, it can be challenged depending on how the title was acquired. In the Albertine Graben region, land titling has been largely fraudulent. Recently, 14 titles to land in the oil rich region were cancelled.

The Constitution allows the conversion of customary land into freehold, but besides the lack of knowledge, the process itself its expensive and unaffordable by most people, which implies that, most of the land in Bunyoro region remains predominantly customary.

It was also noticed that, most of the government officials have illegally taken over the land which formerly belonged to the people in some parts of Bunyoro and Buliisa districts where most oilfields are

⁸⁵ <https://www.ecolandproperty.com/types-of-land-tenure-systems-in-uganda/>

⁸⁶ *ibid*

⁸⁷ Article 237 (4a)

found, leaving people who formerly occupied these lands without land.⁸⁸ The land taken over is not well compensated for because of the lack of titles.

Uganda is at a critical point if it wants to avoid joining the growing list of resource curse countries.⁸⁹ The government needs to ensure that, the land needed for oil and gas infrastructure is acquired in a fair and transparent way, and with the consent of the original land owner. People in the local communities need to be fairly and promptly compensated for their land.⁹⁰

The four land tenure systems provide a variety of diversities in the law applicable, where the written law applies especially to the Mail, freehold, and leasehold land holding systems, whereas for customary law applies to customary tenure. The various institutional frameworks among some tenure systems, coupled with the different norms and applicable rules, imply different treatment in situations of compensation.

Recognition and allocation of rights to land under customary is not uniform across the country, because these rights are allocated and sanctioned or recognized following the customs of a given community. These customs vary from community to community, and sometimes from clan to clan, and even from sub-clan to sub-clan, and eventually family to family.⁹¹ It's the major form of land holding in Uganda, accounting for between 75-80% of the land, with only 15-20% being registered.⁹²

Its argued that, customary tenure cannot completely disappear even when its converted into freehold, customary tenure is associated with many customs and taboos to the effect that, it continues to be applied even after the land has been converted to freehold, implying that, the customary practices and beliefs cannot change even with the changes in registration of the status of the land. It's noticed that, the dual claims to the same land have contributed a lot to the land grabbing and land disputes as reported by the investigations before the Commission of Inquiry into land.⁹³

⁸⁸ According to this reporter, one of the 14 land titles which had been acquired illegally belonged to a former First Deputy Prime Minister.

⁸⁹ Sturesson, A.;Zobel, T. The Extractive Industries Transparency Initiative (EITI) in Uganda: Who will take the lead when the government falte.rs? *Extr. Ind. Soc.* 2015,2, 33-45

⁹⁰ Shepherd, B, *Oil in Uganda: International Lessons for Success*; The Royal Institute of International Affairs: London, UK, 2013; Available online: https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0113pr_ugandaoil.pdf (accessed on 20th November 2022)

⁹¹ Nakayi, 2015 at 20.

⁹² Ibid

⁹³ See The Uganda Gazette, Vol CX. No.7 (2 February 2017), Supplement No. 2, Legal Notice No.2 of 2017, setting up the Commission.

Considering the above elements, it's argued whether, the market value method as a measure for compensation can enhance fairness on customary land. Neata⁹⁴ emphasizes that, a monetary sum based on the land value cannot compensate for the lost community, lost land for the future generations, provided that, this land is held and used jointly as a family or a community which creates a bundle of rights on the same piece of land under appropriation.

This creates ownership challenges in a highly capitalized and legalized environment which demands and relies on evidence based settings of courts of law. The current Compulsory Land Acquisition legal framework does not accommodate such complexities, peculiarities and sensitivities bearing in mind that, the customary setups are patriarchal in nature, and it recognizes the owners of customary land in their individual capacities.

The lack of well-designed mechanism to deal with customary land tenure holding during the acquisition processes, creates many loopholes that disenfranchise the women, children, and persons living with disabilities, from the findings, there's been exclusion of the marginalized groups from sharing on the paid compensation in situations of land dispossession, which is contrary to the best international standards recommended by FAO principles which advocate for the protection of the lands of the indigenous peoples and communities that use customary tenure land holding.⁹⁵

Mailo Land Tenure System

Mailo land dates back from the 1900 signed agreement between Buganda and the British government during the colonial times.⁹⁶ Under Mailo tenure, ownership is in perpetuity, but subject to the lawful and bona fide occupant's rights. The ownership rights are possessed by a registered owner who holds a Mailo land title. The user rights can be transferred by the occupant to the descendant but would require the consent of the registered owner to transfer user rights to a non-family member.⁹⁷

Under Mailo tenure system, the absentee land lord issue became a fundamental problem mostly in the districts of Hoima and Kikuube, which has hampered compensation to the effect that, they couldn't be

⁹⁴ Liz Neate, 'Compulsory Acquisition Of Land: The Need For Robust Governance To Deliver Public Interest Projects Through Land Assembly.

⁹⁵ Principle 9.2

⁹⁶ Joireman, S (2007) Enforcing new property rights in Sub-Saharan Africa: the Ugandan Constitution and the 1998 Land Act. *Comparative Politics* 39(4): 463-480.

⁹⁷ Musinguzi, M., Huber, T.; Kirumira, D.; Drate, P. Assessment of the land inventory approach for security tenure of lawful and bona fide occupants on private Mailo land in Uganda. *Land Use Policy* 2020, 104562.

trace and many other people came out claiming ownership of the land without the knowledge of the tenants in their respective land for dual ownership recognition. The district land board was unable to sort this problem in time, the land titles were claimed by the grand grand children of the land owners, some were forged documents, notwithstanding the legal position of the rights of the Bona fide occupants on the land, which proved to be a challenge in the compensation process and most of these matters are before the courts of law for determination.

Freehold Tenure System

The Freehold land tenure originates from the English freehold system, it recognizes perpetual holding of land or for a period less than perpetuity on set terms and conditions.⁹⁸ However, the process of acquiring the freehold land title in the Albertine region is expensive because it requires substantial amount of money for adjudication, consolidation and registration, which is unfair to a poor and uneducated population in the Albertine region.

Compensation is easier to prove entitlement in Mailo land tenure, freehold and leasehold where there's registration other than under the customary tenure system which is highly informal and less documented by certificate of title and hence hard to prove.

At the same time, multiple tenure system creates chances for land grabbing, mostly through fraud where certificates of titles are made on already titled land as Mailo, or where freehold certificates of title are issued to persons other than the customary owners and occupiers of land without any sort of title.⁹⁹

2.4 The Ambiguities in the Legal Regime and the Required Legislative Reforms

The ambiguity as to what constitutes to a just and fair compensation

Uganda lacks a clear policy as to what constitutes a just and fair compensation. The law provides that, the State shall pay just compensation before the compulsory acquisition of any private property.¹⁰⁰ However, the meaning of a just compensation hasn't yet been well defined, but the Black's law Dictionary prescribes that, 'just' implies 'legally right; lawful; and equitable'.¹⁰¹

⁹⁸ Section 3(2) of the Land Act.

⁹⁹ Mwebaza, R (1999) How to integrate Statutory and customary tenure? The Uganda case. Paper presented at the DFID Workshop on Land Rights and Sustainable Development in Sub-Saharan Africa, 16-19 February 1999, Berkshire, UK.

¹⁰⁰ Article 26 (2) of the Uganda 1995 Constitution.

¹⁰¹ Black's Law Dictionary 9th Edition.

In the case of **Goodman International ltd vs. Attorney General and Luweero**¹⁰² District Land Board, it was held that, private rights can only be alienated by the State upon prompt payment of fair and adequate compensation prior to the taking of possession. However, from the above case, it's noticed that, a just and fair compensation is determined by the courts of law, which creates a lot of delays in the process.

Parliament should enact provisions for payment of prior, prompt, just and adequate compensation in line with the Constitution and Supreme Court rulings. The law should specify what constitutes to fair and adequate compensation taking into account the international standards and best practices and existing jurisprudence.

The ambiguity as to what constitutes public purpose

In practice, the interpretation of public use and public interest to justify land acquisition is too broad and weakens the land governance environment. The Constitution or the Land Acquisition Act, should clearly define as to what constitutes public use and public purpose as well as the legal requirements and criteria to assess whether the project meets the criteria relating to public interest, public use and public purpose to ensure that compulsory land acquisition powers are used sparingly and not for a broad range of activities, and should not impose social costs on land tenure rights holders and occupiers that exceed public benefit, improve on accountability, clarity and should provide detailed provisions that identify the acceptance scope of public interest, public use and public purpose based on an exhaustive list of purposes for which compulsory acquisition is allowed.

Enormous powers granted to the Minister.

The Act leaves broad authority in the hands of the Minister of Lands who may when satisfied, require any land by the Government for a public purpose make a declaration to that effect. It's recommended that, the executing government agency is required to justify that, the acquisition is in the public interest by applying a proportionality test before expropriating the land. The test should be able to determine whether, the land acquisition is necessary to serve a public purpose, whether the project is suitable, and whether the public benefits deriving from the land acquisition are proportionate to costs borne by the affected populations and the environment.

¹⁰² Goodman International ltd vs. Attorney General and Luweero District Land Board (2014)

The unclear valuation process

Not until 2017 when the Ministry of Lands and Urban Development, launched the Guidelines for Compensation Assessment under Land Acquisition (GCALA)-2017, the Chief Government Valuer used different laws to determine the valuation and compensation advisory services to the government. By the time it commenced, the properties of the affected persons were already valued in the Albertine Graben region, which really questions the just and fairness of the compensation in that region up to date. Though, it's yet to be seen whether these new guidelines will enhance transparency, fairness and enhance consistency in the valuation and compensation processes during the compulsory land acquisition.

Lack of time limits in the approval of valuation reports

Section 7 of the Land Acquisition Act contradicts the progressive constitutional requirement of prior compensation by allowing the assessment officer to take possession of the land as soon as he or she has made an award,¹⁰³ the current law puts the public interest in higher regard than compensation to the land owner prior to taking which results in impoverishment of the affected persons, through uncertainty, displacement and lack of financial means to re-establish themselves.

This call for the establishment of compensation funds to be available at the outset of the project, and the law should provide for fair and transparent procedures and define timeframes for the prompt payment of compensation.

Non provision of Restoration of livelihoods and Rehabilitation:

The current law does not provide for restoration of livelihoods and rehabilitation. There's great need to provide for special, targeted measures designed to fully restore and improve the living standards, livelihoods, productive capacities and the living standards of the PAPs, especially the most vulnerable groups in the PAPs.

The resettlement of vulnerable people on alternative land is required where the loss of their land means a loss of their livelihoods, and are unable to use cash compensation to purchase similar land elsewhere and resettlement is the only means to sustain their livelihoods.

The non-effectiveness of the District Land Boards

¹⁰³ Section 6 of the Land Acquisition Act

They are meant to provide the compensation rates to the Chief Government Valuer to facilitate compensation to the affected persons and the communities. It was noticed that, they lack computation knowledge to determine the rates, not well appreciative of the current market values, no data inventories in these offices, and no periodical sensitization programs to enhance their capacities. As a result, the region was undervalued, which has been a persistent complaint from the project affected persons in the Albertine region.

The Land Acquisition Act is Archaic in nature

The Land Acquisition Act 1965, is no longer in tandem with the current land governance standards to the effect that, the Act doesn't provide room to contest against the Minister in situations of acquisition processes and the justification of the proposed project, the exact amount of land acquired and whether its within the public interest. This is reflected where the amount of land for acquisition is exaggerated for purposes of inflating the figures to the benefit of some individuals in the ministry and other government agencies which increases the cost of the project.

The Land Acquisition Act 1965 only provides for the procedures meant to be followed by the government in the land acquisition, but the law is silent on the modalities of valuation and compensation, and it also lacks the time limits in the approval of the valuation reports.

Provided that, the Albertine region enjoys customary land tenure system with varied rights on the same piece of land, and undocumented, and only known to its owners and the local traditional institutions, it makes the estimation and valuation process challenging.

The long title of this law provides the compulsory acquisition being for "public purposes", and the same terms carry the same meaning as used in Article 26 of the Constitution that provides for "public use" and Article 237 that also provides for "public interest." The effect is that, the law is silent on the exact meaning of the terms which are used as a basis for the acquisition of land which makes it ambiguous and prone to abuse due to multiple interpretations.

The general administration, management and adjudication framework which accommodates compulsory land acquisition is undermined by the Land Acquisition Act 1965 which isn't in tandem with the contemporary developments on land acquisition. The processes provided by section 2, 6, and 14 of the Land Acquisition Act, have been criticized as being redundant to the effect that, they are outdated and

lengthy in procedures which ought to be reduced without putting the rights of the project affected persons in danger.

The inconsistent cutoff date and its impact on the livelihood of the PAPs

The cut-off date program was adopted on the presumption that the PAPs shall be compensated by either cash compensation or resettled within 12 months from the date of valuation. Though, from the findings on the ground indicate a lot of suffering and desperation from the project affected persons to the effect that, they were stopped from further developments on the land including agricultural production which has been a source of livelihood.

The inadequacy in market value for ancestral land compensation

The primary objective of compensation is to put the victim of compulsory acquisition into the position they were before the compensation took place.¹⁰⁴ The challenge arose when the process was unclear on how communities are to be restored to their original position before the compulsory acquisition of their ancestral land. This was evidenced during the controversy regarding the drilling of wells on the grounds of important shrines of spirits of the adjacent Lake Albert. Surprisingly, the oil companies and the State prioritized at the market value of the land, notwithstanding its cultural heritage value.

2.5 The Social Effects of Land Acquisition in the Albertine Graben Region.

Land acquisition for these projects has had tremendous social implications to the livelihoods of the affected communities. Some have already been displaced from their land, families have ended up in towns, which has affected their standard of living and led to impoverishment.¹⁰⁵ Most of the affected persons are peasants engaged in farming, fishing and animal grazing. For example, the Kabaale Industrial Park led to the displacement of 7000 people, whereas Tilenga Project affected 600 people who have found it challenging to cope up with the different environmental economic activities.

This has led to the influx of immigrants to urban centres of Hoima, Masindi, Biiso and Pakwach, which has created tensions over job opportunities in the areas of migration, and some are already regretting to the decisions they took in relation to the compensation agreements which have already rendered them

¹⁰⁴ Paragraph 2 (c) , World Bank Operational Policy 4.12 on Involuntary Resettlement.

¹⁰⁵ Golder Associates. Environmental and Social Impact Assessment for the CNOOC Uganda Ltd Kingfisher Oil Development, Uganda: Social and Cultural Heritage, Vol 4C; Golder Associates Africa: Durban, South Africa, 2018.

homeless and impoverished.¹⁰⁶ Hence, leading to the increase in the cost of living, and the poor unable to access the basic services. For example, the Tilenga Project ESIA¹⁰⁷ acknowledged that, the cumulative population growth would exacerbate project impacts especially access to land and shelter, which will result into inflation, and this would affected the cash compensated parties to find replacement for land elsewhere.

AECOM¹⁰⁸ provided that, the oil and other infrastructural developments would enhance the local economy, create jobs, and business opportunities, and increase disposable incomes. The taxes and other revenues would contribute to both the local and national revenues, which will end up being spent on the infrastructural development that would promote economic growth. Though, the challenge is to ensure appropriate mechanisms of government expenditures, and to minimize corruption and wasteful spending.¹⁰⁹

The rural peasants are already manipulated by the middlemen or local agents engaged into selling off their land at a very low replacement prices. One of the locals intimated that, land grabbing in involved with highly connected people in the government and well protected. Land speculation and the displacement has had effects on the people pushed out of high valued land creating inflation at lower levels, the poor people becoming priced out of the land market.¹¹⁰

The massive land take has led to large scale conversion of former agricultural land into industrial and commercial ventures which has rendered the local people into food insecurity, prostitution, landlessness and increased poverty. The Kabaale Industrial Park which displace over 7000 people, are no longer in agro production which was their main source of income, some had ventured into the boda-boda business which has now since collapsed and those unable to seek employment, are already experiencing increased insecurity and impoverishment.

¹⁰⁶ Kinyera, P.B. Land, oil and expressions of citizenship in Uganda's Albertine Graben. *Extr. Ind. Soc.* 2019, 6, 110-119.

¹⁰⁷ AECOM. Tilenga Project: Environmental and Social Impact Assessment; National Environment Management Authority: Nairobi, Kenya, 2018; pdf. (Accessed on 26 May 2022).

¹⁰⁸ Ibid

¹⁰⁹ Transparency International. Corruption Perceptions Index 2019. Available online: https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2018 (accessed on 30 May 2022).

¹¹⁰ Cotula, L.; Vermeulen, S.; Leonard, R.; Keeley, J. Land Grab or Development Opportunity? Agricultural Investment and International land Deals in Africa; IIED/FAO/IFAD: London, UK; Rome, Italy, 2009; Available online: <http://www.fao.org/3/a-ak241e.pdf> (accessed on

Oil exploration has resulted into restrictions of access to resources where livelihoods were derived especially around Lake Albert where cultivation and grazing of animals used to happen, which has led to other allegations of expansion of gazette land around the prospecting areas to restrict access to such land, livelihoods have been strained by the reduction in incomes and production in agro-production and fishing.

There's unprecedented interest in land in areas where oil prospecting is done, which has increased land disputes and tenure insecurity exacerbated by corruption, and suspicion due to lack of information on land ownership and land transactions.

Its noticed that, there was failure from the locals to extract information from the central land registry on the land registry, to the extent relying on information from the district land offices, which resulted into insufficient information, and most of the parties engaged in the land acquisitions, where from outside, with less information on the ownership rights and interests in land, and the terms and conditions of the land leased to most of these companies were not that clear.

There's no specific framework to regulate the transactions between the oil companies and the government on one hand and the communities on the other, no well streamlined mechanism for the companies to engage with land owners, and the local leadership.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This Chapter discussed the various legal instruments that provide analysis of an assessment of the right to property and compulsory land acquisition in Albertine Graben region. Specifically considering the legal and institutional framework governing compulsory acquisition in Uganda, to identify the social effects of land Acquisition in the Albertine Graben Region, the ambiguities and the procedural safeguards that should be complied with prior to the process of compulsory land acquisition and to provide remedies to the legal regime and policy. It provides the study design, legal context of the study, data collection strategies, documentary review checklist, document review, data analysis plan, ethics consideration and anticipated methodological constraints / limitations.

3.1 Research Design

Research design is a plan for determining the methods and procedures for collecting and analyzing the required information. A good research ought to handle the research question question as unambiguously,¹¹¹ the research question for this study was whether the land in Albertine Graben region was fairly acquired for oil and gas development, the ambiguities and safeguards adopted and the social effects to the livelihoods of the affected communities.

The research adopted a qualitative research design, interviewing participants in the sector, collecting primary data as well as the analysis of the laws and scholarly articles. Qualitative research provided a comprehensive understanding of people's opinions, experiences and histories, and it enabled me to delve deeper into the subject matter which the quantitative method does not offer.

3.2 Data Collection Methods

The study adopted three main methods of data collection, among others: house hold surveys, key information interviews, records review and narratives which are comprehensively discussed in detail below.

3.2.1 Household Survey

Household interviews were carried out using a predesigned questionnaire and mainly targeted the head of the family or their spouses. The households covered in the research were selected using mixed criteria at different intervals. Two sub counties per district and two villages per sub-counties were selected with the guidance of the local leaders.

Fifteen households were selected by way of systematic random sampling from a sampling frame for each village provided by the research under the guidance of the local council chair persons.

3.2.2 Key Informant Interviews

¹¹¹ NYU (n.d), "What is research design" <http://www.nyu.edu/classes/bkg/methods/005847chl.pdf> accessed on 06 June 2022 pg 9.

Key informant Interviews following a semi structured questionnaire were conducted for lc1 officials, Sub County chiefs, Chairperson Area Land Committee, and the Chair Person District Land Boards.

3.2.3 Records Review

Records of the land office and district land boards for the last ten years (200-10) were reviewed using a standard data extraction form. The extraction of the information was carried out by the district land officers.

3.2.4 Narratives

Narratives of the six individuals, who owned the land where oil exploration and production has been done in the districts of Hoima, Buliisa, Kikuube and Nwoya, were carried out. The discussion during the interviews focused on:

- Ownership history of the land,
- General uses of the land,
- Initial contact with the exploration firms and sequent interfaces,
- Details on land transactions with exploration company (nature of arrangement on sale, lease, rent, duration of the lease and the amount received
- Arrangement to share revenue from oil between the respondent and the exploration companies,
- Level of knowledge of the respondent of provisions for oil benefit sharing in the constitution or any other policy.

3.3 Data Analysis

Data analysis was done from the responses from the affected parties in the research project. A qualitative analysis was also done from the legal instruments and scholarly articles. I applied the thematic analysis to identify patterns and themes in the interview data. I engaged in thorough understanding of the existing legal framework for Uganda “The 1995 Constitution of Uganda, Compulsory Land Acquisition, the Land Act 1998, and Petroleum (Exploration, Development, and Production) Act, the Petroleum (Refining Conversion, Transmission and Midstream Storage).

3.4 Ethics Consideration

Ethics standards prevent against the fabrication or falsifying of data, to promote knowledge and truth as the primary research goal. Ethical behavior is critical for collaborative work to encourage an environment of trust, accountability, and mutual respect among the researchers. Ethical matters impact the integrity of the research results, promote honesty, objectivity, respect for intellectual property, social responsibility, confidentiality, non discrimination among others.

3.5 Methodological Constraints

The limitations of the research were majorly in regard to data collection at two primary stages. The inability to extract information from the National Land Registry which would have assisted in determining the pattern and trend of land titling and land transactions in these districts. This was because the data needed wasn't provided on time.

The affected people who used to live and use this land most of them declined to be interviewed in fear of threats from some of the government agents. The research also had cost implications to do with internet costs, the engagement with expert which called for consultation fees, stationary costs among others.

CHAPTER FOUR

RESULTS AND ANALYSIS

4.0 Introduction

This chapter contains the findings and the analysis thereof in relation to the provisions of the regulatory regime, specifically contains the findings got from the user interviews.

4.1 Recap of the Research Objectives

The study considered the following research objectives: assess the legal and institutional framework governing property rights and compulsory acquisition in Uganda, identify the ambiguities in the legal regime, identify the social effects of land acquisition in the Albertine Graben Region, and to provide remedies.

4.2 Synchronizing the Primary and Secondary findings

The results of the interviews reveal that oil discovery induced land compensation resulted into both physical relocation and loss of shelter, and economic loss of assets that affected the livelihoods of the project affected persons in those communities.

The three forms of compensation were executed during the displacement and land dispossession operations in the research areas, which include: cash compensation, compensation by partial acquisition and monthly rent payments and compensation in kind or resettlement.

4.2.1 Cash Compensation

Cash compensation was the most adopted means by the affected people of Buliisa and Hoima districts. It involved the monetary payment for the land, houses, crops, and trees among others. Measurements varied in relation to items and the land was paid in square meters or acreage. It was however noticed that, the use of different measurements and payment modalities for the land wasn't fair in nature. For instance, for those who had opted for land per square meter were fairly compensated against those who had opted for acres who eventually got a low deal.

The valuation of houses was varying in cost according to the quality and type. The interviewers revealed that, assets and property that received compensation were only those that had existed in 2009, the time when the valuation was conducted, and the cash compensation arrived at were not sufficient for affected persons to obtain alternative land elsewhere, which affected people's productivity and inability to acquire alternative land due to land price appreciations in the surrounding areas, which contradicts with the Uganda Compensation Guidelines and Assessment under Land Acquisition (GCALA, 2017) principle 1.¹¹²

4.2.2 Compensation by Partial Acquisition and Monthly Rent Payments

This modality involves the identification of land for oil activities such as exploration and grounds for testing, and the owners of the land are paid cash compensation on a monthly basis. This mode of compensation was executed mostly in areas of Buliisa district. The agreement between the land owners

¹¹² The Principle of Equivalence states that " Compensation followed by involuntary displacement or Compulsory Land Acquisition is based on the principle of fairness, adequacy and prior and prompt compensation where the project affected persons should not be worse off in financial or any terms after the acquisition than he or she was before.

and the oil companies provided that, when land is no longer needed for oil activities, it would be returned to the owners, but if the government or company decides to own the rented land indefinitely, the monthly payments would be nullified and the land owner would get full payment in cash, and specified land would be rehabilitated to normality.

However, from the findings the agreements were written in English, a language not appreciated by the majority of the PAPs. This was noticed during the various interviews where most of the affected people echoed different views in relation to whole compensation mechanism. This demonstrates that, whereas the compensation guidelines and modalities were in place, most of them were faulted, which created delays in compensation, property valuation rates were not clear, not equating to the actual market value, and the agreements not well understood by the affected persons.

4.2.3 Compensation in Kind or Resettlement

This kind of compensation required the settlement with equivalent land and houses they owned in their former land rather than cash compensation. This was characterized with the resettlement of one head of the family, with a three bed roomed house to be provided to and the land equivalent to what he or she owned before it was returned. The head of the family who was polygamous would be entitled to register only one wife for resettlement, and the land titles were mostly written in the names of the person resettled as the head of the family.

However, it was noticed that, the resettlement process took longer than anticipated which affected the PAPs and their plans to plan accordingly to their next resettlement, and to adjust the new environmental conditions, which also had an adverse effect on the women finding themselves detached from their husbands.

Most of the PAPs complained of empty promises especially in areas of Kyakaboga resettlement to the effect that, land titles which had been promised as part of the resettlement package were not fulfilled on time, and didn't come easily. These titles were meant to assure legal ownership of the resettlement house and to assist them advance in recovering their livelihoods as collateral security in acquiring loans among others. Unfortunately, the persons interviewed expressed psychological stress they are experiencing as a result of the delayed titles to the effect that, they cannot access capital to start off their new livelihoods.

4.2.4 Other Findings

In areas like Rwamutonga responsible for waste management, residents were evicted without compensation, and they now live in camps.¹¹³ There are claims that, the residents were made to sign agreements which they didn't understand since they were written in English.

In some areas, the residents received less valued compensation for their land and property, due to the fact that the valuation process was executed by a government appointed valuer who in most cases overlooked the property.

The families that resisted the low compensation rates in the refinery project have not yet received compensation, and for those who did receive it was neither a negotiated nor a bargaining process. The compensation had been predetermined by the contracted organization (Strategic Friends International) and the government valuer.

In regard to the adequacy of the compensation, the residents in Butyaba and Wanseko indicated that, it wasn't equivalent to the value of their gardens, and that, they were subjected to compensation inequality to the effect that, a garden of maize and beans would be compensated at just 150,000 shillings irrespective of the size of the garden.

Most residents felt that the compensation for the attachments on the land was insufficient in accordance with the standards that regulate compensation. The value was assessed basing on land as a physical asset, notwithstanding the social implications of relocation, for example the burial grounds were left behind which caused both psychological distress and emotional stress.

In Kabaale Parish, in Hoima District, for example, in-depth interviews and group discussions revealed that conditions attached to cutoff dates were not fair. While cutoff dates are necessary to restrict speculative behavior and therefore deter bulging compensation bills, the dates have been used unfairly in compulsory land "acquisition" processes for the oil activities.

¹¹³¹¹³¹¹³¹¹³ Evictions were conducted by a McAlester company, having paid a rich man who owned a land title and was the one who received compensation. About 1,000 hectares previously occupied by about 700 residents were cordoned off and denied access to their gardens (<https://reliefweb.int/report/Uganda/land-eviction-breeds-violence-oil-rich-hoima-Uganda>, accessed on 20/January 2021). The Land Act provides that, before evictions or transactions on land, the Bona fide occupants must be adequately compensated.

When government set the cutoff date for the refinery project on the 2nd June 2012, local residents were restricted from using the land for long term projects, yet they did not receive compensation until six to seven years later. The cutoff date was not time-bound in terms of when compensation would be made, so, more than 100 families affected spent all this time without the right to occupy their land, to grow perennial cash crops such as coffee and bananas¹¹⁴.

It was also noted that ever since people were stopped from using the land, market food prices in the area went up. Farmers were no longer using the land to produce crops. Consequently, those who used to earn from their gardens, through selling surplus food crops have seen their incomes reduced since they have nothing to sell in the market.

The local markets have also been closed because of lack of produce and customers. This compulsory land acquisition has had a serious implication especially to vulnerable citizens such as women as one of the affected PAP women had this to say;¹¹⁵

As women, we were always given land from our husbands and relatives to grow crops as a source of income. Land was available for every woman who was energetic and willing to make money. However, since the coming of the oil project, there has been a renewed interest on land whereby, those who used to give us land can no longer give us because they want compensation and many households have migrated because of oil discovery.

In Kasenyi village in Buliisa District, the conditions were not different; Farmers, pastoralists and fishermen were dispossessed of their land in preparation for the establishment of the central processing facilities and industrial park that took 784.504 acres of land from the population. The people were stopped from accessing the already enclosed land since May 2017, yet, they have not received their compensation.

The study findings indicate that, there were barriers that limited the women participation in the land compensation process, most men didn't engage their wives in the compensation monies which resulted

¹¹⁴Joseph Oloka Onyango, Centre for Research on Peace and Development, *Courting the Oil or Playing by the Rules, An Analysis of the Legal and Regulatory framework Governing oil in Uganda*, CRPD, Working Paper, No.50, 2018.

¹¹⁵Uganda Consortium on Corporate Accountability, *Handbook on Land Ownership, Rights, Interests and Acquisition in Uganda*, 2018.

into it being wasted in goods and services. Men went ahead to marry new wives, bought lavish vehicles instead of looking for land to secure their lost property.

Again evidence reveals that, compensation doesn't sufficiently replace the lost property, lost livelihoods, improve the incomes, rather it worsens the standard of living of the project affected persons and mostly the women, children and the aged.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter is made up of various conclusions based on analysis of various text and legislation concerning with the assessment of Compulsory Land Acquisition in Uganda.

5.1 Conclusion

There are challenges in the legal frame work governing compulsory land acquisition, other challenges arising as a result of government entities like the chief government valuer, the district land boards, the district land tribunals, and the land registry.

Uganda lacks a clear policy as to what constitutes a just and fair compensation. The law provides that, the State shall pay just compensation before the compulsory acquisition of any private property.¹¹⁶ However, the meaning of a just compensation hasn't yet been well defined.

In practice, there's no provided time limit for the approval of Valuation Reports and the compensation rates compiled by the District Land Board (DLB) used by the Chief Government Valuer which explains the delays in the compensation process.

From the study, it was noticed that, the DLDs lack computation knowledge to determine the rates commensurating with current market values, no data inventories in these offices, and no periodical sensitization programs to enhance their capacities.

The Land Acquisition Act 1965, is no longer in tandem with the current land governance standards to the effect that, the Act doesn't provide room to contest against the Minister in situations of acquisition processes and the justification of the proposed project, the exact amount of land acquired and whether its within the public interest. This is reflected where the amount of land for acquisition is exaggerated for purposes of inflating the figures to the benefit of some individuals in the ministry and other government agencies which increases the cost of the project.

¹¹⁶ Article 26 (2) of the Uganda 1995 Constitution.

The cash compensation process and resettlement programs had shortcomings that failed to handle the social, cultural and economic aspects of the affected persons and the communities. The land compensation and resettlement process was gender blind to the effect that, many women, children and the elderly were left helpless.

The process experienced fraudulent land acquisitions, connivance, under valuations and delayed or inadequate compensations. The speed of acquiring land titles legally was accompanied by short notices, which led to massive community evictions. The customary land tenure was undermined to the effect that, those who didn't prove ownership, couldn't be compensated.

5.2 RECOMMENDATIONS

There's great need for legislative reform in regard to the terms provided by Article 26 (2) of the Constitution of Uganda which include "Public Order, Public Safety, and Timely, Adequate, Fair and Prompt". To be in line with the efforts of the courts of law which have tried to define these terminologies.

The Land Acquisition Act 1965 is no longer in tandem with the current governance trends which needs to be amended to bring into conformity with the Constitution of Uganda and to fully operationalize the Supreme Court decision in **Uganda National Authority vs. Irumba Asumani & Peter Magelah** where the Supreme Court confirmed the sanctity of property rights under the Constitution to the effect that, the court ruled that the Land Acquisition Act (Cap 226) was unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner.

The law should provide for compensation of property beyond its monetary value by even considering the value of the ancestral lands as experienced in Bunyoro Kingdom, and the Constitution should be expounded to explain what just and fair compensation entails.

A clear timeframe for compensation should be well stipulated in the legal framework, to avoid future cases of delays which have been evidenced in most parts of the oil project in the Albertine Graben, and it will assist the affected parties to plan better in acquiring other areas to resettlement.

The Government should enact regulations to govern the assessment and payment of compensation under the Land Acquisition Act to operationalize Section 20¹¹⁷ of the same Act, to provide an equitable formula to determine fairness, adequate and prompt compensation and the time frame for the Project Affect Persons to receive their compensation.

To increase on the empowerment programs for the DLBs through enhanced funding and trainings to ensure timely appraisal of the District compensation rates which is fundamental to the compensation assessment for the Project Affected People at the district levels.

Need to effectively operationalize the District Land Tribunals and the Area Land Committees, through increased funding and capacity building to enhance their roles at the local government level in settling land disputes which will reduce the case backlog in the Courts of law.

The land registry needs to be reformed to enable expeditious titling of land to let the government agencies proceed with the adequate and timely compensation of the PAPs, to reduce the multiplicity of titles especially noticed on public land through freehold land titles, limit corruption and fraud in the process of acquiring those titles, and to manage customary land tenure in aggressively providing mechanisms for the acquiring both individual and community titles.

Need for the establishment of an Escrow Account managed by the Courts of law in situations involving land disputes only involving inter-family or individual disputes regarding ownership of land under the State appropriation. This implies that, the government can use the land whereas the parties settle their conflicts in Court.

The government should develop a dissemination of sensitization program to enhance the importance of infrastructural development to boost public support of these projects, the affected persons should also be sensitized about their property rights, the processes involved and the remedies available.

The state authorities should strictly observe the law that regulates the compensation process, to maintain and sustain the land tenure security, reduce on the tensions between the government and its citizens. This should be guided by the spirit of good governance to balance the public interests and individual interests with amicable solutions.

¹¹⁷ The Minister may, by statutory instrument, make regulations for the assessment and payment of compensation under this Act and generally for giving full effect to the provisions and purpose of this Act.

The Government officials and the contractors should be sensitized on the property rights, the expropriation procedures and the inalienable value of the properties and the remedial processes should be made simpler and affordable and accessible to everyone, whether poor, rich, literate or illiterate.

BIBLIOGRAPHY

Books:

- Alou, Abiodun Natural Resources and Conflict in Africa: The Tragedy of Endowment. (*University of Rochester Press*, 2007).
- Barry, Brian Theories of Justice: A Treatise on Social Justice Vol. 1 (California: University of California Press, 1989).
- Chinen, M.A., The Standard of Compensation for Takings, *Minn. J. Int'l L.* 25, 2016, p. 335.
- Dawson, F.G. and Weston B. H., Prompt, Adequate and Effective: A Universal Standard of Compensation?, *Fordham Law Review*, Vol. 30, Issue 4, 1961, p. 727
- Deininger, K. *Land policies for growth and poverty reduction*. Washington DC, 2003.
- FAO, Land Tenure Studies 10, Compulsory Acquisition of Land and Compensation, Food and Agricultural Organization of the United Nations, Rome 2008.
- Ferguson J. (2005). *Seeing Like An Oil Company: Space, Security, and Global Capital in Neoliberal Africa*.
- Ferguson J. (2006). "*Global Shadows: Africa in the Neoliberal World Order*". Durham, United Kingdom.
- Fischer, J.M. *Understanding remedies*, LexisNexis, 2010.
- Global Rights Alerts, Acquisition of Land for Oil Refinery, Tracking Progress in Resettling Project Affected Persons. WHO Opted for Land for Land Compensation. 2015.
- Global Witness (2014). "*A Good Deal Better? Uganda's Secret Oil Contracts Explained*". London: Global Witness Ltd, September, 2014.
- Grotius, Hugo *The Rights of War and Peace* (1625) (New York: Walter Dunne, 1901 ed).
- Honore, 'Ownership' in Coleman J, *Readings in the philosophy of Law*, Garland Publishing, New York, 1999.

- Larbi, W. O. Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies.
- Larbi, W. O. Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies. *FIG/FAO/CNG International Seminar on State and Public Sector Land Management*, Verona, Italy, September 9th – 10th 2008.
- Lay, T and Mika Minio-Paluello (2010). “Contracts Cursed: Uganda’s Oil Agreement Place Profits before People”, Vol.4, p.662. Smith, E Ernest et al., (2010). *International Petroleum Transactions*, Third Edition (Rocky Mountain Mineral Law.
- Noel, P.G. *Property Theory, Property Rights, and Land Beliefs: Views of New York State Wetlands Owners and Permit Applicants about Land Ownership and Wetlands Regulations*.1998.
- Rawls, John A Theory of Justice (Cambridge: Harvard University Press, 1971).
- The East African, 23 December, 2011. Uganda Land Alliance. (2011). “Land Grabbing and its Effects on The World Bank. China Land Surveying and Planning Institute. Asset Valuation in Land Acquisition and Compensation. *PRC Thematic Report No. 2. 2005*.
- The World Bank/Oxford. Denver-Green, B. *Compulsory Purchase and Compensation*. The Eighth Edition, Estate Gazette, London 2005.
- Twesigye Bashir and Kathleen Brophy (2015). Up Against Giants. Oil-influenced land injustices in the Albertine Graben in Uganda. *Civic Response on Environment and Development*, Kampala, Uganda.
- Uganda Consortium on Corporate Accountability, Handbook on Land Ownership, Rights, Interests and Acquisition in Uganda, 2018.
- William. Storbeck, A General Theory of Eminent Domain, Washington Law Review, Vol.47, No.4.

JOURNALS:

- A. Alias and N. Daudi, ‘Payment of adequate compensation for land acquisition in Malaysia’, 12 Pacific Rim Property Research Journal (2006), p. 326
- AFIEGO, ‘Memorandum of Proposals by Civil Society for the 2016 Draft Land Acquisition & Resettlement Framework for the Oil Sector,’ 22/11/2016.
- African Social Science Review Volume 10, Number 1, Spring 2019

- Alden – Wily, L. ‘Land Rights Reform and Governance in Africa: How to make it Work in the 21st Century?’ UNDP Discussion Paper (2006).
- Bischini A, Peterson, J and Roine J. (2007). Resource Curse or Not: A Question of Appropriability. *Scandinavian Journal of Economics* 109 (3).
- Bogor, Indonesia. Ghatak, M. and Mookherjee, D: “Land Acquisition for Industrialization and Compensation of Displaced Farmers”, 2011, *WIDER Working Paper*, 35.
- Byakagaba, Patrick (2014). Land Rights Abuses in the Oil Rich Albertine Graben in Uganda. *Civic Response on Environment and Development*, Kampala, Uganda.
- Edwards, Jocelyn (2011). “Tullow Oil Deal Empty Victory for Uganda”, *the Independent (Uganda)*, Saturday, 26, March, 2011
- FAO, ‘Compulsory Acquisition of land and compensation,’ 2008, FAO Land Tenure Studies.
- FAO, ‘Voluntary Guidelines on the Responsible Governance of Tenure ‘. 2012.
- Frances Birungi Odong, Sylla Oumar, Antonio Danilo and Simon Peter Mwesigye, ‘ Strengthening Women’s Land Rights And Security Of Tenure For All On Customary Land Settings; Implementing Innovative And Gendered Land Tools And Approaches’, A paper prepared for presentation at the ‘ 2018 WORLD BANK CONFERENCE ON LAND AND POVERTY’, The World Bank, Washington DC, March 19-24, 2018.
- Francis Tumusiime, ‘ The Right to Own Property: Towards a Just and Fair Compensation in Uganda’s Oil Sector’, Policy Briefing No. 60, SAIIA, November, 2012.
- German, L., Schoneveld, G. and Mwangi, E. (2011). Contemporary processes of large-scale land acquisition by investors: case studies from sub- Saharan Africa. *Occasional Paper68*. CIFOR, 2011.
- German, L., Schoneveld, G. and Mwangi, E. Contemporary processes of large-scale land acquisition by investors: case studies from sub- Saharan Africa. 2011. *Occasional Paper68*. CIFOR, Bogor, Indonesia.
- Ghatak, M. and Mookherjee, D. “Land Acquisition for Industrialization and Compensation of Displaced Farmers”, 2011. *WIDER Working Paper*, 35.
- Grover, R., Mikhail, S. and Zlatina, Y. The Development of Compulsory Purchase and Compensation in the Transitional Economies of Central Europe. *Paper presented at the RICS Research Conference*. The Cutting Edge, Cambridge, September 6-7.1999.

- Grover, R., Mikhail, S. and Zlatina, Y. The Development of Compulsory Purchase and Compensation in the Transitional Economies of Central Europe. *Paper presented at the RICS*
- Ingrid Gildseth, ‘ Land tenure practices and land acquisitions in oil region: The case of Hoima, Western Uganda,’ Master Thesis of Geography, Department of Geography, Norwegian University of Science and Technology Trondheim, May 2013.
- International Alert, Oil and Gas Laws in Uganda, A legislative Guide, Oil Discussion Paper, No. 1. 2011. Understanding Conflicts, Building peace.
- Izama Angelo (2013). “*Tracing Uganda’s’ Oil Journey from 1913- 2013*”. *Daily Monitor*, Tuesday 31, December, 2013.
- J. Gilbert, ‘Land rights as human rights: the case for a specific right to land’, 18 SUR International Journal on Human Rights (2013), p. 115.
- J. Oloka – Onyango, ‘ Land Injustice, Impunity and State Collapse in Uganda: Causes, Consequenses and Correctives.’ Human Rights and Peace Centre, Makerere University, October, 2017.
- Jacob Odeh Envorob, Technical Legal issues in Land Acquisition for Development of Crude Oil and National Gas Facilities within the Niger Delta Region of Nigeria.
- James Muhindo, ACODE, Compulsory Land Acquisition in Uganda, ACODE Working Paper Series, No.17, 2017.
- Joseph Oloka Onyango, Centre for Research on Peace and Development, Courting the Oil or Playing by the Rules, An Analysis of the Legal and Regulatory framework Governing oil in Uganda.
- Julius et al.: Oil Politics and Land Tenure Changes in Uganda: Understanding the Curse of Dispossession in the Albertine Region Published by Digital Scholarship @ Texas Southern University, 2019
- Julius et al.: Oil Politics and Land Tenure Changes in Uganda: Understanding the Curse of Dispossession in the Albertine Region Published by Digital Scholarship @ Texas Southern University, 2019 Kampala.
- Juma (2015). “Politics, the State and Limits of Oil-Led Development in Uganda”. *A Paper Presented at Makerere Institute of Social Research (MISR) Seminar*, 08 July 2015.
- Karl Terry (1997). “*The Paradox of Plenty: Oil Booms and Petro-States*”. Berkeley: University of California Press.

- Karl Terry (2004). “Oil-Led Development: Social, Political and Economic Consequences”, *Encyclopedia of Energy*.
- Kashambuzi, R.J. (2010). “*The story of petroleum exploration in Uganda 1984-2008: A matter of Faith*”. Fountain publishers, Kampala.
- Kashambuzi, Reuben (2011). “*A matter of Faith: The History of Petroleum Exploration in Uganda*”.1984-2008. Kampala Ugandans Impro Publications.
- Kasita Ibrahim (2012). “Government discloses oil deals”, *New Vision*, 28 June, 2012.
- Kyomugasho Miriam (2016). “Oil Industry in Uganda: Social Economic Effects of People in
- Liz Neate, ‘ Compulsory Acquisition Of Land: The Need For Robust Governance To Deliver Public Interest Projects Through Land Assembly, ‘ Paper prepared for presentation at the “ 2018 World Bank Conference On Land And Poverty”, The World Bank - Washington DC, March 19-23, 2018 at 6-7
- Loung P.J and Erika Weinthal (2010). “*Oil is not a Curse: Ownership Structure and Institutions in Soviet Union Successor States*”: Cambridge University Press, Cambridge, New York.
- Mamdani, M. (2012). The Contemporary Ugandan Discourse on Customary Tenure: Some Historical and Theoretical Considerations. Papers Presented to the Workshop on the Land Question: Capitalism, Socialism and the Market, *Makerere Institution of Social Research*, 9-10 August.
- Margaret A. Rugadya, ‘Escalating Land Conflicts in Uganda; A Review of evidence from recent studies and surveys,’ Intenational Republican Institute (IRI), 2009.
- Nakayi Rose,’ The Legal and Policy Framework and Emerging Trends of Large Scale Land Acquisition in Uganda: Implications for Women’s Land Rights,’ Center for Basic Research Working Paper No. 109/2015.
- Niraiyamani Julius and ors , Oil Politics and Land Tenure Changes in Uganda , Understanding the Curse of Dispossession in the Albertine Region , African Social Science Review VOL. 10, NO.1, 2019.
- Noel, P.G. (1998). *Property Theory, Property Rights, and Land Beliefs: Views of New York State Wetlands Owners and Permit Applicants about Land Ownership and Wetlands Regulations*. MSc. Thesis, Faculty of the Graduate School of Cornell University.1998.
- Obi Cyril (2010). “Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil- Rich Niger Delta”. *Canadian Journal of Development Studies* 30, nos. 1–2 (2010): 219– 236.

- Observer Research Foundation. Mega Project Development: Issues in Land Acquisition. Edited proceedings of a seminar organized by the Centre for Politics and Governance. *New Delhi Observer Research Foundation*, (1)2010.
- Odudu, W.O. Standard for compensation valuation and claims in both private and public sectors in Otegbulu A.C. (ed). *Guidelines and standards for valuation practice*, Lagos, Chuzy tech resources Ltd.2003.
- Ojambo, Fred (2015). “CNOOC of China Wins Uganda’s First Oil Production License”. Okuku
- Ojikutu, O., Bennett, R. and Groenendijk, L. An assessment of land acquisition in Nigeria. *Being paper presented at FIG Working Week*, Rome, Italy, 6-10 May, 1-10. 2012.
- Radon J. (2005). “The ABC of Petroleum Contracts: License- Concession Agreements, Joint Venture and Production Sharing Agreements”, in Svetlana T and Sciffrin A (ed), *Covering Oil: A Reporter’s Guide to Energy and Development*, New York: Open Society Institute, pp 61-99.
- Regulatory Impact Statement *Land Acquisition and Compensation Regulations*. Civil Law Policy Department of Justice, 2012.
- Republic of Uganda (1998). *The Land Act, 1998*, Entebbe: Uganda Government Printing and Publishing Corporation.
- Republic of Uganda (2013). *The Petroleum (Exploration, Development and Production) Act, 2013 (PEDP: 4th April)*.
- Ross Michael (2012). “*The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*”, Princeton and Oxford: Princeton University Press.
- Rugadya, M. (2009). “Escalating Land Conflicts in Uganda: A Review of Evidence from Recent Studies.
- Sachs, J.D and Warner A.M. (1995). “Natural Resource Abundance and Economic Growth”, *NBER Working Paper*.
- Sam Hickey, Bukenya, B., Izama, A. and Kizito, W. (2015). “The political settlement and oil in Uganda”. *ESID Working Paper*. 48. Manchester, UK: University of Manchester.
- Sanyal K (2007). “*Rethinking Capitalistic Development. Primitive Accumulation, Govern mentality and Post-colonial capitalism*”. Routledge, London.
- Shaxson N. (2007). “*Poisoned Wells the Dirty Politics of African Oil*”. New York: Palgrave Macmillan.

- Soares de Oliveira (2007). “*Oil and Politics in the Gulf of Guinea*”, New York: Columbia University Press.
- Stieglitz, Joseph (2013). “*The Price of Inequality: The Avoidable Causes and Invisible Costs of Inequality*”. New York: Norton.
- “Surveys June, 2009”. *International Republican Institute (IRI) and The Uganda Round Table Foundation. The Communities in the Oil rich Albertine Region*”. The case of Hoima, Buliisa and Amuru districts. Submitted to is
- Transparency International, ‘The East African Bribery Index,’ 2017
- Uganda Land Alliance (2016). “Land Oil and Gas”. *Quarterly Newsletter*. January March, 2016.
- Vokes, R. (2012). ‘The politics of oil in Uganda’, *African Affairs* 111, 303-314. Water and Environmental Risk Management, Munchen. University.
- Uganda, CRPD, Working Paper, No.50, 2018. World Resource Centre, Focus on Land in Africa, Brief, 2010. Village, Hoima and Bunyoro Region in Uganda”. Masters Dissertation, Syracuse *Land Management*, Verona, Italy, September 9th –10th.

STATUTES:

- The 1995 Constitution of the Republic of Uganda.
- Land Act 1998, Cap 227 (as amended)
- Land Acquisition Act. Cap. 226 of 1965
- Petroleum (Exploration, Development and Production) Act 2013 (Upstream Act)

REGULATIONS

- Guidelines for Compensation Assessment under Land Acquisition (GCALA) 2017

POLICIES

- National Oil and Gas Policy (NOGP); 2008
- National Land Policy, 2013
- Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017.

Web Links:

- ACODE and IIED, ‘ Catching up with the fast pace of land access change in Uganda,’ Policy Brief, January 2017 Accessible at <https://www.acode-ug.org/Files/Publications/17415IIED.pdf>
- Charles Peter Mayiga, ‘ Reasons land conflicts are on the rise,’ The New Vision, Accessible at https://www.newvision.co.ug/new_vision/news/1456461/reasons-land-conflicts-rise
- FAO (2008). *Compulsory Acquisition of Land and Compensation*. FAO Land Tenure Studies No.10. Rome. Retrieved on 7th March, 2022, from: <http://www.fao.org>
- FIAN-Germany, ‘Human Rights violations in the context of Kaweeri Coffee Plantation in Mubende / Uganda,’ Shadow Report to the UN Committee on Economic, Social and Cultural Rights, 2015. Accessible at https://www.fian.org/fileadmin/media/publications_2015/ParallelReport_UGA_CESCR54_E.pdf
- Judiciary Memorandum to the Land Commission of Inquiry, 2018. Accessible at <https://www.judiciary.go.ug/files/downloads/judiciary%20Presentation%20to%20Land%20Commission%20of%20Inquiry.pdf>
- Mugambwa, J (2014), ‘Should the Government Expropriate Private Land for Investors in Uganda?.In: Proceedings of the 36th Annual Conference Proceedings of the African Studies Association of Australasia and the Pacific,’ 26-28 November 2016. Available from: <http://afsaap.org.au/assets/john-mugambwa.pdf>
- Mugerwa, Francis (2013). “Oil discovery changes land use in Bunyoro.” The Daily Monitor, September 12, 2013, retrieved from: [http://www.monitor.co.ug/SpecialReports/Oil discovery-changes-land-use-in- Bunyoro/688342/1988974/-/ar4iuf/-/index.html](http://www.monitor.co.ug/SpecialReports/Oil%20discovery-changes-land-use-in-Bunyoro/688342/1988974/-/ar4iuf/-/index.html).
- Nakayi Rose, ‘ Interrogating Large Scale Land Acquisition and Land Governance in Uganda: Implications for Women’s Land Rights,’ Centre for Basic Research, 2016. Accessible at <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/56333/IDL-56333.pdf?sequence=2&isAllowed=y>

- norah Njagali and William Matovu, ‘ Presentation on Challenges Affecting Land Acquisition for Infrastructure Projects in Uganda’, 2016. Accessible at <http://www.surveyorsofuganda.org/downloads/CHALLENGES%20of%20LAND%20ACQUISITION%20FOR%20INFRASTRUCTURE%20PROJECTS%20IN%20UGANDA%20XX.pdf>
- Omirin, M. and Famuyiwa, F. Infrastructure Provision and Private Lands Acquisition Grievances: Social Benefits and Private Costs. *Journal of Sustainable Development*, (4)6.2011. Retrieved from: <http://dx.doi.org>
- Sadab Kittatta Kaaya, ‘Mubende gold row: Inside story of forceful evictions,’ The Observer, 16/August/2017. Accessible at <https://www.observer.ug/businessnews/54412-mubende-gold-row-inside-story-of-forceful-evictions>
- UWONET, ‘ The National Land Policy addressing the unfinished tasks Gender Transformation & Empowerment; A foundation to women to women’s rights’, 2015 at 10. Accessible at <https://www.uwonet.or.ug/download/documentations/THE-NATIONAL-LAND-POLICY-ADDRESSING-THE-UNFINISHED-TASKS-A-foundation-to-women-to-women%25E2%2580%2599s-rights-2015..pdf>
- Watts, Michael (2006). “Empire of oil: Capitalist dispossession and the scramble for Africa”. *Monthly Review* 58(4).38 *African Social Science Review*, Vol. 10, No. 1[2019] Art.7[https://digitalscholarship.tsu.edu/assr/vol10/iss1/7African Social Science Review Volume 10, Number 1, Spring 2019 2021http://monthlyreview.org/0906watts.htm](https://digitalscholarship.tsu.edu/assr/vol10/iss1/7African%20Social%20Science%20Review%20Volume%2010,%20Number%201,%20Spring%202019%202021http://monthlyreview.org/0906watts.htm) (accessed October,10, 2021).
- World Bank. *Involuntary Resettlement Sourcebook*. 2004, World Bank. www.worldbank.org
- World Bank. *Operational policies on involuntary resettlement*.2007.www.worldbank.org
- Zahra Abigaba, ‘UETCL blames project delays on long acquisition process,’ The Weekly Observer, 7th/06/2017. Accessible at <https://observer.ug/news/headlines/53242-uetcl-blames-project-delays-on-long-land-acquisition-process.html>

