

**THE ANALYSIS OF UGANDA'S OIL AND GAS LAWS TOWARDS THE
PROTECTION OF LAND RIGHTS IN THE OIL AND GAS INDUSTRY**

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DECLARATION

I, **KABUGHO BYAKUTAGA CAROLINE** do hereby declare that this dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfilment of any academic award.

Signed.....

Date.....

APPROVAL

This is to certify that, this dissertation entitled “**AN ANALYSIS OF UGANDA’S OIL AND GAS LAWS TOWARDS THE PROTECTION OF LAND RIGHTS IN THE OIL AND GAS INDUSTRY**” has been done under my supervision and now it is ready for submission.

Signature.....

DR. ANTHONY C. K. KAKOOZA

(Academic supervisor).

Date.....

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ACRONYMS

ACPHR	African Commission on Human and Peoples Rights
ALC	Area Land Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CNOOC	China National Offshore Oil Corporation
DLB	District Land Board
ECHR	European Convention on Human Rights and Fundamental Freedoms
GPD	Gross Domestic Product
HRC	Human Rights Committee
IACHR	Inter- American court of Human Rights
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Convention on Economic, Social and Cultural Rights
IHRB	Institute of Human Rights and Business
MEMD	Ministry of Energy and Mineral Development
PAP	Project Affected Persons
RDC	Resident district Commissioner
UDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous People

LIST OF CASES

Aerela & Nakkalajaivi vs. Finland (779/1997), communication of 24th Oct 2001

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Social and Economic Rights Action Centre (SERAC) & Centre for economic and social rights (CESR) vs. Nigeria Application No. 155/96

Uganda National Roads Authority (UNRA) vs. Irumba Asumani and Magelah Peter Supreme Court Appeal No 2 of 2014.

CHAPTER ONE: INTRODUCTION

1.1 Introduction

The oil and gas sector in Uganda has been at the fore front of development in the last past decade since the commercial oil discovery in 2006 in the Albertine Graben. The need for development of the oil and gas industry has since come up with a vast number of projects and exploratory infrastructural developments that are ongoing around the areas of operations. These include among others, road constructions, oil fields development, construction of the oil refinery, acquisition of land for waste management, construction of an international airport in Hoima, the setting up of technical camps around the oil and gas operational areas, the suggested pipeline project between the government of Uganda and with the government of Tanzania. Such development requires large capital, technical expertise, and big chunks of land.¹

Thus they have an adverse impact on the environment and the people. Land is increasingly being seen as a commodity and as a result its demand is on the increase. Speculators have rushed to acquire big chunks of land in the areas of Hoima, Buliisa, Kibaale which form part of the Albertine Graben and as a result the indigenous people are displaced. It is therefore important to study whether land rights of those indigenous land owners in those areas are protected.

The need to pave way for oil exploration and exploitation as well as speculative investment has created a challenge as regards protection of property/ land rights of the indigenous people living in the districts within the Albertine. In addition to the Land laws in Uganda that seek to protect land rights, more Acts, policies and Regulations have been put in place to regulate the operations of the industry to mitigate the direct and indirect impact of Oil and gas activities of the surrounding community and the environment. These include but not limited to the national Oil and gas policy 2008, the petroleum (Exploration, Development and Production) Act of 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

Despite that, there is still an outcry of violation of land rights as a result of massive evictions, land grabbing, under or delayed compensation.

In addition, the broad environmental issues faced by the oil and gas explorations and production

¹ 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.

industry are manifested at both local and international level. The include habitat protection and biodiversity air emissions, marine and fresh water discharges incidents and oil spills, soil and ground water contamination, damaged land, accidents and fire.

It is important for the oil and gas regulations to consider environmental issues in development. In order to achieve sustainable development, environmental protection should be an integral part of the development process. The oil and gas laws in trying to harmonise economic development with land rights protection, they must minimise the potential environmental risks because they directly and indirectly affect host communities. This research therefore critically analyses the existing Oil and Gas and related laws, and study the extent to which they protect land rights. The study shall look at both the National and International law, identify challenges and give recommendations.

1.1.2 Background of the Study

In Uganda, the aspects of land rights recognition dates way back in the advent of the colonialism which left a historical legacy structured around land relations and management.² Initially, colonialists introduced individual ownership of property rights in land previously held either communally or on the basis of sovereign trustees. The newly introduced system of property ownership was super- imposed to either supersede existing indigenous land rights systems or formally confirm pre-existing customary arrangements as was the case for kingdom areas.³

Since the commercial discovery of oil reserves in the Albertine, Uganda's Oil and Gas sector has been at the front of development. Very many developments and investments have come up, exploration is taking place across the entire Albertine rift with about 5/9 oil prospecting blocks established by government and allocated to IOCs for drilling. The graben is anticipated to have about 6.5bn burrows of Oil placing Uganda among the top African Oil producers. Without hitches, the country's Budget is likely to receive a windfall and the sector will boost national income hence alleviation of poverty.

Literature shows that all Oil rich countries in the world are faced with serious challenges among which is the protection of land rights of the indigenous people. This is because sector activities

² The Uganda National Land policy 2013 pg. 1

³ Ibid

require big chunks of land which is usually owned by the people. Many host governments concentrate more on economic development against its people's human rights. Already the country is suffering land insecurity. If the land question is not properly handled, the sector may turn into a curse instead of a blessing. There is need for a regulatory environment that fosters transparency and accountability in land acquisition processes to avoid land grabbing and increased number of court cases. The Law needs to ensure that the sector does not intensify land insecurity in the country. There is need for public participation in decisions that affect their land rights so that such decisions enjoy a broader, acceptance.

It is important to understand that Commercial oil deposits were first discovered in the Albertine Graben region in western Uganda in 2006, and since then the Government of Uganda has had plans for their exploitation, although the target date for first oil has been postponed several times.⁴ The extraction of oil means that there will be several large projects in the region, potentially including an oil refinery, the generation of electricity from gas, the export of crude oil to international markets by pipeline via Tanzania, and a new international airport.⁵

The Government expects that the development of the oil and gas industry will accelerate economic growth and job creation. However, each project requires large amounts of capital, technical expertise, and land.⁶ Since 2006, the Government embarked on the Construction of the Oil refinery which is expected to sit on approximately 29 square Kilometres. Due to all these developments, land related matters have taken a heated turn and many people have been affected.⁷

It is on that background that this research seeks to analyse the aspects to deal with individual land rights vis-à-vis governments ownership of natural resources in the oil and gas industry, in the areas of Albertine Graben where the oil and gas activities are taking place, where acquisition of big chunks of land already started and many villages have been or are being displaced from their origins. The question is; Do Uganda's oil and gas laws protect the individual land rights that accrue from the various activities that come along with the

⁴ Ogwang, T.; Vanclay, F.; '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 2019 pg.1

⁵ Ibid

⁶ Ogwang (n 4)

⁷ Muriisa. R: Land Grabbing and Oil Industry, Implications for Women's Land Rights and Oil Industry in Uganda; CRPD Working paper no. 57/2018

development of the oil and gas industry? If yes, to what extent and if not, why. What should be done to improve the situation?

There is need to balance petroleum production with conservation of biodiversity and environment. Lastly the law must ensure high standards of cooperate responsibility and compliance. It is on that Background that this thesis studied what the Oil and gas law is in relation to protection of land rights, what are the challenges are hindering the realisation of those rights and lastly suggested recommendations to enhance protection of land rights.

1.1.3 Statement of the problem

IN Uganda, Oil and gas activities are in the Albertine Graben where oil reserves were commercially discovered. They were found to be onshore therefore are on land. The sector has transitioned from the exploration phase to the development phase preparing for oil production. A lot of infrastructural development such as road construction (Kaiso - Tonya road), assembling of heavy machinery, preparation of dumping sites for waste management, arrangement for pipeline construction, oil refinery fields are ongoing.

All these require big chunks of land and automatically people living within and around the oil fields are evicted and displaced. So far the available literature shows that many people in the Albertine Graben (Hoima, Masindi, Kibaale, and Buliisa) have been affected by these ongoing developments. The media is awash with all sorts of violations to the indigenous people as a result of the sector activities. Various complaints have been lodged in courts of law against government and land grabbers over land acquisition. Many scholars state that about 1200 households in Hoima district alone, have been displaced by the intended African Institute for Energy Governance. Many evictions have been carried out illegally and without adequate compensation, yet to the indigenous people previously occupying that land, land has important social cultural and spiritual value. They place a lot of value on it because they have lived there their entire life.

Pressure on land and natural resources increases the risk of disadvantaged groups not to assert their rights in land. The intensity of pressures on land, the existence of transnational land relations and increase in the resource to international investment treaties which are concluded between states to promote cross border investment flows are redesigning spaces for land claims at local and national levels. Available research so far indicates that land governance and reform

processes protect the interests of foreign investors in land against the legitimate claims of indigenous land owners who are predominantly agriculturalists, small scale producers, the landless and the poor and marginalised groups. The extractive industry is always associated with the resource curse, and issues like land grabbing, corruption, political and social instability, economic underperformance are part and partial. Uganda is at a critical point, to avoid joining the list of resource curse countries like Nigeria, Equatorial Guinea, & Angola which are also dependent on Agriculture. It is important to ensure that the regulatory framework addresses a transparent and accountable process of land acquisition and land use to protect the indigenous people from violation of their right to property. Ideally, the existing Oil and Gas Laws and other related land laws are meant to protect land rights. The reality is that despite their existence, a lot of violations are still ongoing. WHY

1.1.4 Objectives of the study

1.1.4.1 Main objective

The main objective of the study is to analyse how Uganda's oil and gas laws protect land rights.

1.1.4.2 Specific objectives

- i) To establish the extent of to which land rights are realized and protected in the oil and gas industry in Uganda.
- ii) To identify the challenges faced in protecting the land rights in the oil and gas industry in Uganda.
- iii) To propose recommendations that will help on solving the issue of protection of land rights in Uganda's oil and gas industry.

1.1.4.4 Research questions

- i) Do Uganda's Oil and Gas Laws protected land rights in the Albertine graben?
- ii) Are there any challenges faced in the protection of land rights in the Albertine graben?
- iii) What are the necessary recommendations that will enhance the protection of Land rights in the Albertine graben?

1.1.5 Justification of the study

With the discovery of oil and gas mineral deposits in Uganda's Albertine Graben, a lot of anxiety and excitement was created in the public and government where everyone expected to benefit from the economic development hence improvement of human livelihood. As part of planning, policies were formulated, laws enhanced, a Ministry and departments were created to manage the industry and keep an eye on the activities of the executive international firms and other stakeholders and to hold them accountable on behalf of the citizens of Uganda.

The optimism which the discovery of oil minerals came with seems to be falling short of reality when households and villages are evicted from their ancestral homes forcefully, with low or no compensation. Some people in Hoima started living like Internally Displaced Persons.⁸ The massive evictions to pave way for infrastructural development in Hoima and Kibaale for example seem to have taken away people's hope in benefiting from the industry. Many speculators acquired big chunks of land. All these affect people's livelihood hence leading to conflicts.

It is therefore important to carry out this research to establish the extent to which people's land rights are protected so as to restore their hope and know how to use the same law to assert for their rights. The study shall examine both the national and international instruments and establish how they provide for land rights. The potential impact of exploration and production activities must be considered in the context of national and global protection policies and legislation. Given the negative impacts associated with the oil and gas both socially and environmentally, this research aims at analysing the special treatment and protection offered to host communities with respect to land rights.

1.1.6 Significance of the study

This refers to the efficacy of the study to government policy makers, researchers, managers, IOC's, the public, legislators, courts, educational institutes etc.

To the policy makers; the study shall identify Lacunas in the Law regarding protection of land rights so that they can find a way of bridging the gap in the sector.

To the researchers; the study shall form part of the integral part of their research i.e.

⁸ <http://www.observer.Ug/business/38987-oil-rich-hoima-struggles-to-solve-the-land-question>

literature review and use it to build up on their intended research. It can create a background of their research and learn the existing literature about the similar type of study.

To students; the study shall educate learners about the extent to which the Oil and Gas laws protect land rights. It shall also act a reference point to the students.

Public; the study will help the public to learn about their rights, how to enforce their rights, understand the enforcement mechanisms present and also help the public to understand their duties towards government's compulsory land acquisition.

To Government; it shall help government or the Executive in formulating strategies of ensuring that people's land rights are protected e.g.by ensuring that the process of land acquisition as envisaged in the law is complied with.

Legislators; these have a mandate of making laws and an oversight role of supervising government programs. The discovery of oil in Uganda presents a unique responsibility for the legislators to provide an important input in ensuring that they pass laws that will promote accountability and transparency using their constitutional powers they must assume a responsibility of a guardian to the public because this resource is held by government in trust for the people. To the legislators, this study will identify gaps in the law which they will be addressed through amendments.

Courts; implementation because courts can make law. They can bridge the gap.

1.1.7 Scope of the study

1.1.7.1 Time scope

This study analyses how Uganda's oil and gas laws in place protect land rights in the oil and gas industry from 2006 to date. In 2006 Uganda's oil reserves were declared commercially viable thus these triggered preparations for the development of the oil and gas sector. In investors coming on board, necessitated the acquisition of land. It attracted investors like Tullow, CNOOC, and Total which are in the process of land acquisition.

1.1.7.2 Geographical scope

Geographically the study focused on the Oil and Gas areas in the Albertine Region of Western Uganda which includes Kibaale, Masindi, Buliisa, and Kiboga where the oil and gas activities

are taking place which affect the land owners in the surrounding communities.

1.1.8 Theoretical Framework

Being a doctrinal legal research, the research shall be guided by the following theories, that explain the importance of protection of land rights. It is important to note that land rights protection in the oil and gas industry of Uganda is the backbone of this study for which the researcher seeks analyse, whether the oil and gas laws protect people's land rights in Uganda.

Below are the theories that the researcher has reviewed which relate to the study.

The political economy theory

This theory seeks to understand how history, culture and customs impact an economic system.

Using the political economy approach, one is able to understand the complex mix of formal and informal institutions that shape individual and group behaviours and state response to these behaviours. The approach helps us to understand the policy processes and how they have shaped the land question in Albertine Graben

The nature of legislation on oil and gas, land laws, how they evolved and how they have impacted on land ownership, acquisition and compensation are all understood within this framework. African union observe that the colonial legacy of land acquisition processes combined with the rush for land for energy, food production opened Africa for a new form of scramble for Africa and recommends that countries must put in place policies and legislation for the avoidance of risks of losses of land by the poor or get proper compensation for land in case it is taken away.

This theory further helps us to understand how different groups and individuals exploit policy weaknesses for their own benefit. The land question in the oil rich region has largely been shaped by the weaknesses in the enforcement of the land law and these weaknesses have been exploited by land grabbers. The masses who hold customary land holding for example are not enlightened on the formal processes of owning land.

Conservative theory recognizes customary tenure as sufficient tenure security.⁹ Since land

⁹Chanock, M. *The Making of South African Legal Culture, 1902–1936: Fear, Favour and Prejudice*; Cambridge University Press: Cambridge, UK, 2001; ISBN 0521791561.

acts as a social, political and economic tie between kinship groups.¹⁰ Viewpoint stems from a multi-functional, multi-generational understanding of land from a broadly African perspective in which land forms the foundation of socio-economic, religious, and political Systems.¹¹ This theory recognizes the role of traditional leaders who are largely responsible for land allocation and administration in their communities. In his article, Bruce cautions that the premise of conservative theory may only apply in situations of subsistence agriculture and land abundance.¹² This theory relates and expounds on the use of land which acts as a social, political and economic tie in a society. The proponents of this theory recognize the role of traditional leaders in the protection of land rights, who ensure that land is used according to the norms and customs of that community.

Democratic adaptation theory highlights the need for democratization, justice (particularly around gender equality), and accountability. Nakwe states that one of the key goals of this theory is to clarify existing land tenure relationships,¹³ respecting existing land rights that are legitimate in African customary law; providing clarity on what these existing rights are i.e.

The ‘arrangement’ vs. the ‘form’ of tenure in so far as these are recognized in African customary law.¹⁴ This may be achieved by recognizing social and off register tenures that already exist ‘in the shadow of’ the dominant legal system of property rights but are legitimate and legal in terms of African customary law. Therefore the laws should respect the uncodified social rights. It is important to focus on anti-eviction measures, democratic land administration and governance, to avoid human rights abuses at the hands of the investors.

Hybrid adaptation theory allows communities to decide “which rights are important and should be recorded.¹⁵ This theory recognises community participation and such a participatory approach creates a sense of ownership of the process of formalization. It also allows for flexibility, innovation, and the adoption of fit-for-purpose technology and low-cost tools to record land tenure information.¹⁶ It leads to hybrid tenure arrangements that reflect “what

¹⁰Nkwae, B. Conceptual Framework For Modelling and Analysing Periurban Land Problems in Southern Africa. Ph.D. Thesis, University of New Brunswick, Fredericton, NB, Canada, 2006.

¹¹Nkwae (n 10)

¹² Bruce, J. Do Indigenous Tenure Systems Constrain Agricultural Development? In *Land in African Agrarian Systems*; Basset, T., Crummey, D., Eds.; the University of Wisconsin Press: Madison, WI, USA, 1993; pp. 356.

¹³ Nkwae (n 10)

¹⁴ Bruce (n 12)

¹⁵Arko-Adjei, A. Adapting land administration to the institutional framework of customary tenure: The case of peri-urban Ghana. Ph.D. Thesis, Delft University of Technology, Delft, the Netherlands, 2011.

¹⁶ DLA White paper on South African land policy; Department of Land Affairs (DLA): Pretoria, South Africa,

happens frequently in practice; that tenure is often established through a combination of statutory law, custom or informal arrangements, rather than a single one”.¹⁷

Lastly, is the **Central Tenet Of Evolutionary Replacement Theory**, also known as the **Evolutionary Theory of Land Rights (ETLR)**. This theory provides that “under the joint impact of increasing population pressure and market integration, land rights spontaneously evolve towards rising individualization and that this evolution eventually leads Rights-holders to press for the creation of duly formalized property rights”.¹⁸ This theory emphasizes the formalization of interests in Land by registration. In order to reduce land conflicts, increase land security, promote efficiency and economic growth, private land should be registered. Registration increases the value of land and therefore gives the land owner a greater advantage to bargain for an adequate compensation. Much as registration of interests creates security of tenure, it puts customary land owners at a disadvantage because registration is quite expensive. The theory therefore favours the wealthy. The explanations forwarded by the theories discussed in this section show the need protecting land rights Visa-Vis development.

They further explain the basis upon which the demand for respect and protection of the land rights as derived. These are applicable to the indigenous people who lived and owned land. In the areas that are being used for the development of the oil and gas industry who are or have been affected by the ongoing oil and gas activities.

1.1.9 Organisation of chapters

Chapter one; shows the introduction of the study, the background, research objectives and research questions, the scope of the study, significance of the study, literature review and methodology. Literature review shall contain literature relating to the objectives of the study.in relation to the objectives of the study. The methodology shall include the research design, the tools to be used to gather the information concerning the study.

Chapter Two; discusses an analysis of the international legal framework on the protection of land rights in the oil and gas industry.

1997.

¹⁷ Royston, L.; Abrahams, G.; Hornby, D.; Mtshiyi, L. *Informal Settlement Upgrading: Incrementally upgrading Tenure under Customary Administration*; Housing Development Agency: Johannesburg, South Africa, 2015.

¹⁸ Platteau, J. *The evolutionary theory of land rights as applied to sub-Saharan Africa: A critical assessment*. *Dev. Change* 1996, 27, 29–86

Chapter Three; discusses and analyses the National legal framework on the protection of land rights in the oil and gas industry of Uganda.

Chapter Four; contains summary of the findings, conclusions and recommendations.

1.2 LITERATURE REVIEW

1.2.1 Introduction

Uganda's commercially viable oil reserves were discovered beneath the Albertine Rift Valley part of Uganda in the districts of Kibaale, Hoima Buliisa which is estimated to be about 3.5 barrels.¹⁹ Much as Uganda's oil discovery attempts were in 1925, exploration began in 2003 due to the confluence of oil scarcity and rising prices in the country. Uganda then joined the list of the New Oil rich countries on the African continent. Uganda's oil was found to be onshore.²⁰ This means that most of the oil mining activities would be carried out on land. Uganda being an agriculturally based economy, most of the land is occupied by indigenous people for their livelihood. Therefore, oil mining activities automatically disrupt the human population because bio diversity and eco systems are destroyed. There is human displacements hence leaving the people landless. An example is in Buseruka Hoima District where in 2014 about 7198 people from 13 villages were to be evacuated in order to create space for construction of an oil refinery. Not only that but also cases of land grabbing by speculators, inter-ethnic tension growth were reported in the Uganda Human Rights Commission Report of 2014.²¹

The II Seismic surveys caused inconveniences to the farming activities in the Graben limiting cultivation and destroying crop fields.²² Not only that but also, oil causes soil infertility because it settles on the soil hence decreasing soil productivity.

Government as a guarantor of the protection of human rights undertook various measures under its Resettlement Policy Framework Programme of 2013. However, it was reported by International Alert Report that there were some discrepancies like inadequate compensation. For example, in Hoima, residents complained that they received little compensation after

¹⁹ OJJO: The legal framework for the protection of indigenous people in Uganda Oil and Gas Industry; page 4

²⁰ Thunstorm Anthony; 2012 Oil and Gas in Africa's Reserves potential and prospects KPMG

²¹ Daily Monitor, March 20th 2014- OJJO's paper page 4

²² Bategeka L. Kiiza J. &Ssewanyana.S. 2011; Oil Discovery in Uganda: Managing Expectations. Economic policy Research Centre Makerere University, Kampala-Uganda

destroying their crops during the construction of access roads and oil surveys. Similarly residents of Kabaale parish in Hoima district Buseruka subcounty where government planned to construct a state of the art oil refinery, complained that the progress towards compensating them for their land was slow and left them with no source of subsistence²³ Land speculators, rich and influential elites have up surged in some oil districts.²⁴

Rugadya further adds that despite progress made to address land related legislative issues, the land sector in Uganda faces several challenges that include insecurity of tenure, over lapping and conflicting land rights, & glaring inequity in access to and ownership of land. The NAPE Report (2012) also shows how 700 Ha of land in Buliisa district was grabbed by the bourgeoisies, therefore the poor and disadvantaged people are not only displaced but left in a dire and squalid livelihood situation.

For the Bagungu in Buliisa, Oil exploration activities e.g. gas flaring in 2009 made the area almost inhabitable because the whole environment was affected. Temperatures soared so high that people walked barely naked. All these affected their full enjoyment of their land. The explosives used during Seismic surveys left the walls of their houses cracked' crops destroyed and delay of compensation worsened the situation. Not only that but also, heavy trucks compressed the soils on which they passed hence making it difficult for cultivation. Some sacred cultural sites where rituals were conducted were also destroyed e.g. the Ngasa II oil well is seated on a cultural site. Paths traditionally known for hunters and animals, were closed and fenced off by the people who bought land yet originally, they were for communal use.

Much as there is a well laid regulatory framework, it is important to identify the extent to which the legal policy and institutional framework in Uganda promotes or protects the indigenous people's land rights in these oil producing areas.

This chapter therefore shall study the international legal framework, i.e. some international Conventions and how other countries have applied them. The researcher shall also study the National oil and gas legislation to the extent of protection of Land rights. Not only that but also the researcher shall identify the challenges faced in the realization of the enjoyment of land

²³ Oil in Uganda: "Compensation remains thorny issue in Oil regions" available from: www.oiluganda.org retrieved on March 10th 2020

²⁴ Rugadya, A, Margaret.2009: Escalating Land conflicts in Uganda: A Review of Evidence from Recent Studies & Surveys: The Internal Republican Institute. the Uganda Round Fable Foundation 2009

rights come up with findings and make appropriate recommendations.

1.2.2 Identifying the extent to which land rights are protected by the oil and gas laws in Uganda

This section speaks to the first objective which seeks to establish the extent to which land rights are protected in the oil and gas industry. It is important to investigate how land rights are accorded protection locally and internationally.

The issue of the protection of land rights cuts across most sectors of the economies of the world. Acquisition of land is an important aspect for various major sectors especially those that deal with industrial development, and require a vast chunk of land near the areas where development takes place.

Uganda's oil and gas industry is not different from any other developmental venture or industry that has its developments and activities to be majorly based on land. The oil and gas deposits in Uganda were discovered in the Albertine Graben, and they are onshore. This has necessitated the relevant developmental partners in the industry to acquire a vast chunk of land for developmental purposes of various activities in the industry. It has also motivated land speculators and the rich to acquire big chunks of land around the oil operation areas. Automatically violations of land rights trickle in, because given the country's illiteracy levels, the indigenous land owners are taken advantage of.

Uganda being among the new countries on the list of the world's oil rich countries, literature has shown that oil discovery has its adverse effects on society especially violation of land rights. The researcher therefore is seeking to establish whether Uganda's oil and gas laws protect land rights and if so, to what extent. The researcher shall study how other oil rich countries like Nigeria, Kenya, Bolivia, Saudi Arabia, Ghana, South Africa, have handled the issue of protection of land rights vis-à-vis the need for development in their oil and gas industries. This will be a benchmark from which Uganda shall borrow a leaf.

1.2.2.1 Realization of the existence of Land Rights

A study carried out by the Food and Agricultural Organization of the United Nations (FAO) describes the extent to which land rights are explained and understood. The study reveals that land rights are not perceived as a human rights issue. Land rights broadly refer to rights to own use, control, and transfer a parcel of land. They include rights to: occupy, enjoy and use land and resources; restrict or exclude others from land; transfer, sell, purchase, mortgage, inherit and bequeath; develop or improve; rent or sublet; and benefit from improved land values or rental income.²⁵

Jeremie Gilbert in his related Article on land as human rights, argues that legally land rights fall within the categories of land laws, land tenure agreements, or planning regulations; but they are rarely associated with human rights law.²⁶ He stresses that internationally, there is no treaty or declaration that specifically refers to a right to land as a human right and that rarely has the issue of land rights been cited in international humanitarian law. However, land rights are a key human rights issue that cannot be ignored. This is because all other rights are dependent on land rights, for example a right to access food, housing and development. Land can also be a source of insecurity especially where many become landless.²⁷

Jeremie states that in many countries, the practice has been that access and rights over lands is based on segregated systems where the poorest and less educated do not hold security of land tenure.²⁸ Control of rights to land has historically been an instrument of oppression and colonization. For example, in South Africa during Apartheid regime, many locals were denied a right to own property as a tool to oppress them hence a violation of their rights. This created a lot of tension between the white minority and the black majority which led to many deaths and property destruction. However there has been various judicial decisions that have shown hope for the realization of land rights in South Africa. They have significantly upheld provisions relating to the protection of land rights.

The idea of approving and respecting land rights has continued to be promoted and respected

²⁵ Food and Agricultural organisation of the United Nations (FAO) 2002. Land tenure and rural development. Rome. (FAO Land Tenure Studies, 3).

²⁶Jeremie Gilbert, Land rights as Human Rights: the case for a specific right to Land. International Journal on Human Rights (2013) IJHR <<https://sur.conectas.org/en/>> accessed 10 February 2020

²⁷ Ibid

²⁸ Ibid

in many areas of the world. The recognition of People's entitlement to land where they derive their livelihood has been adopted by many countries rich in oil and gas. Governments have enacted laws and policies intended to achieve the goal of recognizing the indigenous land owners. Resettlement plans have been made, compensation is supposed to be adequate, etc.

The International Land Coalition, in its 2003 report explains that the issue of land rights remains a serious concern in the world today for the fact that it plays a catalytic role in economic growth, social development, and poverty alleviation.²⁹

According to Jeremie, many activities mostly commercially related activities that operate on large scales usually require the acquisition of large tracts of lands for operation.³⁰ Land is required by the investors who seek land for economic development. In most cases, the process of acquisition of land for economic gains is usually done to the detriment of the local populations who are losing their lands to international investors.³¹ Therefore the protection and realization of land rights vis-à-vis development in the oil and gas industry is of paramount importance to the host governments if the industry is to boom.

The continued use of land as a commercial entity has made it plausible for governments to prioritize the protection of land rights in many parts of the world. This has been seen in countries like India, South Africa, Brazil, Mexico, Malaysia, Indonesia, and the Philippines. In so doing, various institutions and organizations have resorted to the promotion of the protection of land rights as part of human rights.³²

Roger in his Article provides that Land rights are not only directly impacting individual property rights, but are also at the heart of social justice. Despite calls for recognition of a right to own land, under international human rights law no human rights treaty specifically recognizes land rights as an independent fundamental human right. Out of the nine core international human rights treaties, land rights are only marginally mentioned once, in the context of women's rights in rural areas.³³ Despite this set back, international jurisprudence has

²⁹International Land Coalition (ILC). 2003. towards a common platform on access to land: the catalyst to redurcral poverty and the incentive for sustainable natural resource management. Rome

³⁰ Gilbert, (n 26)

³¹ Ibid

³² Gilbert, (n 26)

³³ Plant, Roger. 1993. Land rights in human rights and development: introducing a new ICJ initiative. International Commission of Jurists Revue, Geneva, Switzerland, no. 51, p. 10-30.

tried to raise awareness of this right through court decisions, scholarly works, and journals.³⁴ There has also been various judicial decisions that have shown hope for the realisation of land rights in South Africa.

The idea of approving and respecting land rights has continued to be promoted and respected in many areas of the world. The recognition of People's entitlement to land where they derive their livelihood has been adopted by many countries rich in oil and gas. Governments have enacted laws and policies intended to achieve the goal of recognizing the indigenous land owners. Resettlement plans have been made, compensation is supposed to be adequate, etc.

With diverse views on how land rights are recognized and protected, the discussions from the South African case,³⁵ different scholarly Articles and institutional publications reviewed show how far the world has tried to recognize and promote land rights. Failure to protect land rights of the indigenous people, fetters the development of the industry.

1.2.2.2 Land Rights as Property Rights.

Property rights refer to rules that specify who may do what with a particular place or thing and under what conditions e.g. who may sell, rent, mortgage or deal with the property. Property rights give precise understanding of both the local and international perspective. Land rights and management is considered an important aspect in any economy and in regional development since it is a potential source of conflict if not well handled.

Landownership like any property rights determines the participation of the players in resource exploitation. . In addition in a well-functioning market economy, property rights give for efficiency in the usage and allocation of natural resources. Property ownership rights secure involuntary appropriation of one's land. They also allow easy transferability from one person to another in a willing manner hence reducing chances of conflict.

Allen Tom in his Article on property as a fundamental right in India, describes Property to refer to the ownership over a thing or things, but that the word has also often been associated with the idea of property in land.³⁶

³⁴ Ibid

³⁵ Maledu & Others Vs. Iteleng Bakgatla Mineral Resources (property Limited) & Anor [2018] ZACC 41

³⁶ Allen, Tom. 2007. Property as a fundamental right in India, Europe and South Africa. *Asia-Pacific Law Review*, v. 15, no. 2, p. 193-218.

The right to property is a common denominator throughout most of the legal systems of the world, which usually frame it as one of the fundamental liberties of an individual. Allen further stipulates that most constitutions have a strong entrenched guarantee of this right which has played a tremendous role in the development of human norms and values.³⁷

Jeremy Gilbert in his Article provides that historically, the guarantee of property rights in land was one of the central issues that triggered the development of an emergent human rights system.³⁸ More so that the issue of property rights have commonly been a central feature of the affirmation of individual liberties against State authority in many Western liberal democracies.³⁹

Jeremie Gilbert further refers to the 18th century US Bill of Rights and the French Declaration of the Rights of Man and of the Citizen that put the protection of property rights at the same level as the right to life. In this context, private property meant the protection, guarantee, and security of tenures of land, as only the people who have official title to such land would be protected. History has it that usually only the wealthy and powerful landlords had such official title.

The ideas and approaches of owning land and protection of the same kept changing with time as various individuals started owning land despite the rule and oppression of the monarch. As explained by Jeremie the realization of land rights as property rights, gave rise to various forms of protection of land rights to evolve. He refers to an example of the of pre-eminence of property rights in some of the first human rights declarations of the eighteenth century, or even earlier documents, where the explanation is based on the idea that indigenous people had to acquire protection of their property rights against the power of the monarchs.⁴⁰

The Western origins of the right to property have largely influenced the way property rights have been framed under international human rights law.⁴¹ Various international human rights instruments have supported the notion of the protection of land rights as a human right. Among them is the Universal Declaration of Human Rights (UDHR)⁴². It provides that; “*everyone has*

³⁷Ibid

³⁸Waldron, Jeremy. 1988. The right to private property. Oxford: Clarendon Press; New York: Oxford University Press

³⁹Ibid

⁴⁰ Gilbert, (n 26)

⁴¹ Ibid

⁴²United Nations 1948. Universal Declaration of Human Rights. General Assembly, resolution 217 A

the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property.”⁴³ The inclusion of this Article in the UDHR, has sparked a lot of internal debates as to whether land rights are human rights? As a result, many international instruments now recognize it as a right.

Uganda as a new country that has joined the list of oil producing countries, a lot of land acquisition is taking place in the Albertine Graben. It is therefore important that as a signatory to many international human rights conventions, the laws governing the sector should recognize and promote the rights of the indigenous people as land owners. Much as the industry requires a lot of land and Government and other participants in the industry are acquiring land in the Graben, it is important to secure land holders’ property rights as a guarantee that their land will be used sustainably. This reduces the anxiety that land will be taken away from the local owners arbitrarily. As a result it makes the land owners to make sane decisions and surrender their land for investment with a hope of their reversionary right especially if it has been acquired by international companies which are non-citizens who under Article 237(2) of the Constitution can only acquire leases for not more than 99 years.⁴⁴

1.2.2.3 Land rights as cultural rights

Land and culture are twins, they move together. Land rights usually fall within the categories of land laws, land tenure agreements but they are rarely associated with human rights though they form the basis of most human rights e.g. right to food, shelter, water, development, association, and are a source of spiritual, cultural and social identity. This therefore means that culture cannot be preserved if the right to land is not protected. In many countries, land rights are for the rich because they are the ones that own land while the poor are landless. Land rights are therefore used as a weapon of oppression.

Jeremie Gilbert in his Article states that many indigenous communities stress that their land is also a source of their spiritual, cultural and social identity.⁴⁵

The Human Rights Committee (HRC) in its interpretation of Article 27 of the International Convention on Civil and Political Rights (ICCPR) which concerns cultural rights for

(III)< <http://www.un.org/en/documents/udhr>> accessed on 15 February 2020

⁴³ Ibid, Article 17(1) & (2)

⁴⁴ The 1995 Constitution of Uganda

⁴⁵ Ibid

minorities, to the relationship between cultural and land rights because in every indigenous community, their culture and norms determines their use of land. Additionally, the committee observed that culture manifests itself in many forms like a particular way of using land resources for fishing, hunting, and occupation.⁴⁶

Courts have also appreciated that culture and land rights are connected and they shape people's way of life. For example, the Inter- American court of Human Rights commented that "indigenous groups by the fact of their very existence have the right to live freely in their own territory. Therefore, the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of position and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations."⁴⁷

Since then, the IACHR has developed a larger jurisprudence on land rights by integrating them as part of the right to property, right to life and right to health and thus it is called the right to cultural integrity which refers to a bundle of different human rights to wit right to culture, subsistence, livelihood, religion and heritage which all support the protection of land rights.⁴⁸

Scheinin Martin also in the same view recognizes a fact that land is of central significance in the sustenance of a culture, which requires the protection of land.⁴⁹

The African Commission on Human and Peoples' Rights (ACHPR) in the case concerning the Endorois community in Kenya re-echoed the right to cultural integrity. It came at a time when the Endorois community was displaced from their ancestral land in the heart of the Great Rift Valley to create a wildlife reserve, thereby plunging a community of traditional cattle-herders into poverty and pushing them to the brink of cultural extinction.

To the Endorois community, access to their ancestral territory in addition to securing subsistence and livelihood, is sacred, being inextricably linked to their cultural integrity and its

⁴⁶(Human Rights Committee (HRC). General Comment No. 23: the rights of minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5<<http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111>> accessed on 13 February 2020

⁴⁷ Ibid

⁴⁸Gilbert, (n 26)

⁴⁹Scheinin, Martin. 2000. The right to enjoy a distinct culture: indigenous and competing uses of land. In: ORLIN, Theodore. S.; ROSAS, Allan; Scheinin, Martin. 2000. The jurisprudence of human rights law: a comparative interpretive approach. Turku/Abo: Abo Akademia University.

traditional way of life”.⁵⁰ The ACHPR acknowledged that the removal of the indigenous community from its ancestral land was a violation of their right to cultural integrity based on freedom of religion (Article 8), right to culture (Article 17), and access to natural resources (Article 21) of the African Charter.

Although land rights are not expressly stated in some of the major human rights instruments worldwide such as the American convention or the African Charter, land rights have been acknowledged by regional Human rights bodies as an important Human right for indigenous people.

This effort culminated into the adoption of the UN declaration on the rights of indigenous people in 2007. In this declaration, many of its Articles refer to land rights as an essential Human right for example Article 25 of the Declaration affirms that “indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and uphold their responsibilities to future generations in this regard.”⁵¹ Much as the Declaration is not a treaty but it reflects the fact that states have started to recognize the right to land as a human right.

1.2.2.4 Land rights as an issue of gender Equality

Women’s land rights and being able to use them is linked to other issues like distribution of rights and resources in society, and distribution of opportunities between women and men. For women to access and control productive resources, institutional arrangements and practices such as the Law relating to marriage, society’s view about women’s rights, succession law need to be addressed through legislation and policies. Gender differences should be recognized if Land objectives such as promoting sustainable resource management, increasing land productivity etc. are to be achieved.

Land is a very important asset to a rural woman because she uses it to support her family. She cultivates to provide food and income. Land tenure is strongly associated with higher levels of investment and Agricultural productivity. Secure land rights for women are often correlated

⁵⁰African Commission on Human and Peoples Rights (ACHPR). 2010. Communication 276/2003, Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRG) (on behalf of the Endorois) v Kenya (decision of Feb., 2010).

⁵¹ Gilbert, doyle

with better outcomes for them and their families and this increases their bargaining power at household and community levels.⁵²

It is true Men and women have inadequate access to secure rights over land however, women are more disadvantaged. Majority of them are landless because of the effect of customary law and practices which do not recognize women's right to inherit or own property. Equitable access to land is a human rights issue and as the UN Economic and social council commission on the status of women states "land rights discrimination is a violation of human rights"

Even though women play a very important role in Agriculture land ownership or land tenure systems whether cultural or statutory have historically discriminated against women. Globally, women land holders are less than 15% of all the land holders. Even that, the few women land holders do not possess a legal document that proves ownership of their land.⁵³

It is important for governments to put in place legislation and policies that guarantee women's land rights. Land rights are central to the fulfilment of women's human rights.⁵⁴ They are essential to women's living conditions and economic empowerment. In Uganda family land cannot be dealt with without the consent of a spouse. This is mainly to protect women's rights because society has disregarded women as having equal rights with men in terms of ownership of property. For Nicaragua, titles for plots allocated by the state are issued in the names of both husband and wife⁵⁵. This however does not guarantee gender equality in land tenure if enforcement of the laws is lacking. Women living under customary law often do not enjoy these rights because customary law is patriarchal.

Most of the literature concerning land rights has been developed and evaluated on the basis of realization of gender equality.⁵⁶ Land rights are emphasized in relation to women's rights to land for purposes of gender equality. Women's land rights are often dependent on marital status, which makes their security of tenure dependent on their relationships with their husband. Under national legislations regulating property rights within the family, land rights are often restricted to men as the household heads who hold exclusive administrative rights over family

⁵² Food and Agriculture organization of the united nations; the Gender gap in land rights page 1

⁵³ Ibid pg 4

⁵⁴ Gilbert Jeremi (n 26) page 13

⁵⁵ Ibid

⁵⁶ Gilbert, (n 26)

property.⁵⁷

As reported in the report of the former UN Special Rapporteur on Adequate Housing that; “*In almost all countries, whether ‘developed’ or ‘developing’, legal security of tenure for women is almost entirely dependent on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable.*”⁵⁸

The connection between access to livelihoods and land rights is further emphasized in Articles 15 and 19 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa that was adopted in 2003.

Article 15 declares that; “*States Parties shall ensure that women have the right to nutritious and adequate food.*” In this regard, they shall take appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.⁵⁹ Article 19, encourages States to “promote women’s access to and control over productive resources such as land and guarantee their right to property”⁶⁰

Kothari referring to a report produced by the National Human Rights Commission of India; stipulates that *Land, apart from being a productive resource also provides a great degree of socio-economic security and stability. The control and ownership of land by women also serves as an empowering resource and helps to balance gender dynamics, especially in historically patriarchal societies.*⁶¹

The women’s rights approach to land rights links access to land not only to non-discrimination but also to poverty alleviation and economic empowerment. Uganda therefore should emphasize ownership of land by women to promote economic development.

⁵⁷ Ibid

⁵⁸Special Rapporteur on adequate housing. Study on women and adequate housing. E/CN.4/2003/55, 26 March. <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2003.55.En?](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2003.55.En?)> accessed on 11 February 2020

⁵⁹African Commission on Human and Peoples’ Rights. 2003. Protocol to the African Charter on Human and Peoples <<http://www.achpr.org/instruments/women-protocol/>> accessed on 11 February 2020

⁶⁰Ibid

⁶¹Kothari, Miloon; Karmali, Sabrina; Chaudhry, Shivani. 2006. The human right to adequate housing and land. New Delhi: National Human Rights Commission.

1.2.3 Challenges faced with the protection of land rights in Uganda's oil and gas industry

1.2.3.1 Land Grabbing

The Uganda Land Policy stipulates that the discovery of oil and gas deposits in the Albertine Graben generated excitement in Uganda regarding the promise the resource may yield to the national economy; the energy subsector and to the national social wellbeing.⁶²

It thus equally raised concerns with issues of tenure, compensation, displacement and resettlement especially with the host communities surrounding the oil and gas mineral deposits. With such anticipations, the rush to secure land in oil-rich areas was on the rise which was a threat to individual land ownership in the region. As cases of grabbing from indigenous communities went on the rise customary land owners became insecure because they do not possess registered interests in their land therefore proof of ownership becomes a problem. As a result they do not benefit fairly on the share of royalties as provided in the constitution.⁶³ This research shall therefore investigate how different laws in Uganda's oil and gas industry provide for the protection of land rights of the unregistered interests i.e. customary ownership which is predominant in the Albertine Graben.

1.2.3.2 Lack of clear information of the Industry proceeds

Aloysius Kasoma in his Article recognizes displacement of the local communities as one of the effects of oil and gas activities as a potential source of conflict in the region.⁶⁴ He gives an example of the Development of the oil refinery which was expected to displace over 30,000 people in the nine villages of Nyahaira, Kyapoloni, Bukona, Kabaketo, Nyamasoga, Rugashare, Katooke, Kijumba and Kitegwa as well as part of Kaayera in the Hoima district. According to his Article, the MEMD set aside five billion Ugandan shillings UGX 5 billion (about US\$1.8 million) for the local communities 'compensation'.⁶⁵

The study shows that amidst all these preparations, most of the communities were left in suspense on how the procedure of eviction and compensation was to take place. This kind of

⁶² The Uganda National Land policy 2013 pg.3

⁶³ Ibid

⁶⁴ A. Kasoma (2012). 'Uganda oil refinery to displace 30,000', The Independent, 4th June 2012. Available at <http://www.independent.co.ug/business/business-news/5859-oil-refinery-to-displace-30000>

⁶⁵ Ibid

suspense has impacted negatively on the livelihoods of most of the people in these communities.⁶⁶ He states that Participants in the focus group discussions during his research indicated that some people have abandoned growing both food and cash crops for fear of being evicted before the crops mature.⁶⁷ In addition to this the communities mentioned their concerns that despite losing their source of livelihood like their gardens and the crops thereto, the compensations did not come in timely as the displacement activity was ongoing. This therefore means that some vital information about compensation was not given to the project affected persons and this affected their ability to bargain for a better rate for their land, let alone to know when they were expected to vacate.

1.2.3.3 Secrecy in handling pertinent matters.

According to the International Alert study on the livelihood in the Albertine Graben region, there seems to be a lot of secrecy surrounding oil. It reveals that the affected persons were only told to report to the Resident District Commissioners Office for guidance.⁶⁸ Where they were advised to engage with the district land boards on how to deal with their land. However, the issue of the rates provided by the district land boards proved contentious because the PAPs were not involved and consulted and they didn't know how the rates were arrived at. They felt that their right to negotiate for a fair compensation had been trampled on by the oil companies/local governments. More so, many of the sub-county leaders did not know whether the PAPs had been compensated and if they had how their compensation was determined.⁶⁹

It is important to state that the people should be involved at all stages so that they can own the project and give full support. When these transactions remain a secret, it becomes hard to establish whether the affected people's land rights are protected within the dictates of the law. This study will therefore investigate how such a challenge is addressed under the Uganda's oil and gas laws to establish the extent to which the law protects land rights.

1.2.3.4 Unequal bargaining power of the stakeholders involved in negotiations

The Institute of Human Rights and Business (IHRB) in their paper about preventing conflicts over land, explains that "Conflict over land use arises because land has alternative uses,

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ International Alert, Governance and Livelihoods in Uganda's Oil-Rich Albertine Graben (2013) pg 41

⁶⁹ Ibid

alternative values, and alternative significance.⁷⁰It further stipulates that Land negotiations often occur in a context where the power equations relations are uneven hence leading to human rights abuses.

IHRB continues to stipulate that while there is no specific, codified “right to land” under human rights law (i.e. human rights law does not explicitly recognize the right to land *per se*), it is clear that ‘land’ includes a very broad range of rights.⁷¹ The issues put across by IHRB do not differ from the situation in Uganda that the researcher in this study is trying to analyse.

These negotiations usually lead to displacements, resettlements and compensations most especially between the government and the host communities. It is well known that two sides cannot be equal because of different interest. Government being the custodian of public property and whatever it does is believed to be in public interest. As a result, its interest overrides individual rights. Many times, land is compulsorily acquired by government for public interest at low or inadequate compensation which is contrary to the constitutional provision, due to unequal bargaining power. This hinders the realisation of the enjoyment of the rights to land.

1.2.3.5 Traditional and cultural barriers

When natural resources are discovered in areas that are not settled in, there are no complex issues that the industry has to deal with. The situation is different for areas which have been settled on. This is because it involves resettlement, compensation and mass sensitization about the need to relinquish their properties for which they have cultural attachments. There is a lot of resistance met when trying to relocate such people. Resettlement is problematic in many ways for rural people especially land is particularly important in some cultures and can have deep spiritual and emotional meanings. According to Dreibelbis, a culturally sensitive, dignified process, where communities feel that they have been thoroughly consulted, compensated and are happy with their new settlements is rare to come across.⁷²

Dreibelbis, continues to stipulate further that Issues of resettlement and compensation are key

⁷⁰Institute of Human Rights and Business, *Preventing Conflicts Over Land: Exploring the role of business and the value of human rights approaches*, Draft Position Paper, November 2009, available at: http://www.ihrb.org/pdf/Preventing_Conflicts_over_Land-Draft_Position_Paper_Nov09.pdf

⁷¹ Ibid

⁷² Dreibelbis C, ‘Land Grabs Damage Indigenous Communities in Uganda’, in: First Peoples worldwide, last updated 23 October 2012 (<http://firstpeoples.org/wp/land-grabs-damage-indigenous-communities-in-uganda/>).

in Uganda, a country where land titles and rights are complex. Dreibelbis gives an example of land for the refinery which was demarcated, but concerns have been raised over the resettlement process and compensation. That in these processes, rights of indigenous populations are also frequently cited as unrecognized and undervalued when extractive industries enter tribal territory, as ownership may have been passed down through generations but never officially registered.⁷³

The situation as explained in the Albertine Graben region where Uganda's oil and gas deposits are situated is surrounded by the traditional elements of Bunyoro Kitara kingdom.

In the Albertine Graben because most of the land was for the kingdom which was communally occupied and owned, the societies in these areas saw no need to register their land since land in most traditional kingdoms was owned communally. Such instances make it hard for the protection of peoples land rights that are affected by the oil and gas industries through aspects of displacements in a bid to clear land for the industry development in question.

The views given by Dreibelbis are important to understand and put in mind when it comes to the handling of land rights in Uganda in the oil and gas industry. However Dreibelbis did not bring out the aspects of handling these issues through the use of legal dictates. Thus it is on such basis and edifications that the researcher in question seeks to analyse how through Uganda's oil and gas laws, the issues concerning land rights like the one discussed by Dreibelbis can be protected and upheld in the oil and gas industry in Uganda.

1.2.4 The Importance of Protecting Land Rights.

The protection and realization of land rights was found vital to this research. The researcher found it plausible to highlight the importance of protecting land rights of the indigenous people in the Albertine Graben vis-a-vis oil resource development.

1.2.4.1 Land as a source of livelihood

The rights of owners and tenants by occupancy whose land is blessed with natural resources like oil and gas, are limited to the surface of the land. Their rights are limited to buildings, crops and trees among others that are on the surface. A person that holds such land can claim for compensation for their rights to ownership of the land in cases of compulsory acquisition

⁷³ Ibid

by the Government.⁷⁴ Further the land owner is entitled to a certain percentage of the Royalties. It is important to note that Property rights play an important role in ensuring sustainable natural resource management, good governance and empowerment of poor communities towards an enhanced development of their communities. It is important to ensure that these land rights are concisely protected within the areas of the communities that are likely to be affected by the activities of Uganda's oil and gas operations in the Albertine Graben region.

Uganda being an Agri- based economy, it is important to protect the soil, sources of water plants and animals for sustainability. Sustainability requires securing and protecting people's rights over land because it is where they live, farm and rear their animals. Insecurity about land and property rights makes the local people to fear to lease or release their land to the international oil company's (investors) for fear that their land will not revert back to them. Security for land rights and property rights guarantees continued ownership of land and that it cannot be taken away arbitrarily. This therefore enables land owners to make decisions on how their land will be used sustainably hence allowing long term sustainable investment.⁷⁵

1.2.4.2 Transparency to whom the land rights Belong

The issue of property rights raises fundamental questions of who claims rights to what resources, who has access to the land and associated natural resources, and who has the responsibility for managing these lands. Of particular interest, is how land and property rights create incentives or disincentives for sustainable management and governance of natural resources such as agricultural lands, forest resources, freshwater and coastal resources, wild species of plants or animals or watersheds.⁷⁶ The discussion given above is important in that straitening the aspects of to whom the land rights accrue makes it easy in case there is need for compensation and resettlement, it becomes easy to locate and establish the necessary compensation plans for the communities affected in question. For this case the concentration of this study will look at the oil and gas activities in the Albertine Graben region taking into consideration how the laws governing oil and gas industry in Uganda protects land rights that accrue to the communities that originally were settled in areas where the development of oil and gas projects are situate.

⁷⁴ The Uganda National Land policy 2013

⁷⁵ Land and Property Rights; Junior Farmer Field & Life School – facilitator's guide by FAO

⁷⁶ Dreibelbis (n 72)

1.2.4.3 Promotion of self-reliance

Property rights are a critical tool for promoting self-reliance among the poor. Specifically, improved access to arable land can provide incentives for greater investments in time and labour towards development of the natural resource base. This leads to greater productivity of arable lands and hence greater food security at the household level.⁷⁷ Land and natural resources are important assets for individuals and households in meeting subsistence needs including food and shelter.⁷⁸ To that end, secure access to land and natural resources is critical for poverty alleviation and food security.

1.2.4.4 Promotion of rural empowerment

Secure property rights are an important element of rural empowerment. Where property rights are weak or non-existent, rural populations may be displaced or customary access and control over resources may be challenged by outside interest groups. On the other hand, secure property rights that are protected by law can empower rural communities, ensuring participation in critical decision-making processes related to the management of land and natural resources, and other social political processes.

This is important to understand that land in the rural areas is a precious value where people gain value for their livelihood. when it comes to the protection and promotion of land rights in the oil and gas industry of Uganda with the major concentration on the areas in the Albertine Graben the case study where vast communities are located that are affected by the activities carried out in the oil and gas industry in question, it becomes of paramount importance to understand the attachment and value the rural people attach to their lands in question. It is on such parameters that the research in question seeks to analyse Uganda's oil and gas laws showing how they protect the ideal of land rights in the oil and gas industry in Uganda.

1.3 RESEARCH METHODOLOGY

This section presents the methodology that will be used in the study. It covers the research design, data collection methods, tools, ethical considerations, and limitations of the study.

⁷⁷ The Uganda National Land policy 2013

⁷⁸ The Uganda National Land policy 2013

1.3.1 Research Design

The design that will be used for this study is doctrinal legal research method. According to S.N Jain, doctrinal legal research involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions through legal reasoning or rational deduction.⁷⁹ This type of research is called a pure theoretical research.⁸⁰

More so it is defined to mean research into legal concept and principle of all types of case, statutes and rules.⁸¹ It is concerned with the analysis of the legal doctrine and how it has been developed and applied.⁸² The stability and certainty of law are desirable goals and social value to be followed and which make the doctrinal research a primary concern to a legal researcher.⁸³

Thus this kind of research methodology is carried out on a legal proposition or propositions by way of analysing the existing statutory provisions and cases by applying the reasoning power. The researcher adopted this design and analysed the existing laws, statutes, rules, regulations and policies making specific legal inquiries into what the law is regarding protection of land rights.

1.3.2 Characteristics of Doctrinal research methodology

- i. The researcher shall focus on the nature of law and legal authority; thereby evolving systematic analysis of statutory provisions and of legal principles involved therein or derived therefrom, and also logical and rational ordering of the legal propositions and principles.⁸⁴ This methodology shall help to find the one right answer to a particular legal question or set of questions.⁸⁵

1.3.3 Data Collection Methods

The researcher will use only secondary sources of data collection for the study. Emphasis was on substantive law, rules, doctrines, concepts and judicial pronouncements.⁸⁶ The researcher

⁷⁹S.R. Myneni, *Legal Research Methodology*, published by Allahabad Law Agency, Faridabad, 2014, at 40

⁸⁰Rattan Singh, *Legal Research Methodology*, published by LexisNexis, 1st Edition 2013, India, at 148

⁸¹<http://www.studymode.com/essays/Significance-And-Relevancy-Of-Doctrinal-Research-55442354.html>

accessed on 26th March 2019

⁸²Myneni (n 79)

⁸³S.N.Jain, *doctrinal research and Non-doctrinal Legal research*, Reprinted from 17 journal of the Indian Law Institute, (1975).

⁸⁴Myneni (n 79)

⁸⁵Ibid

⁸⁶Rattan Singh, *Legal Research Methodology*, published by LexisNexis, 1st Edition 2013, India, at 148

used statutes or enactment, report committees, legal history and judgements. Most sources shall be textbooks, periodicals and commentaries.⁸⁷ The legal scholar will use legal data gathered from case laws, legislation, law journals and Articles, law reform reports, parliamentary materials, policy documents, and relevant text law books and relevant online materials that are relevant to the area of study. The researcher will make her research based on secondary data which is relevant to her proposition.⁸⁸

1.3.4 Data Collection Tools

Since doctrinal legal research methodology analyses secondary sources, in this study the researcher relied on a variety of data found in the library and online relevant sources.

These consist of books, journal Articles, statutory materials, legal history, judgements, and case reports and digest, and reports of committees which will all be relevant to the topic in question.

1.3.5 Ethical considerations

In this research, the researcher shall ensure that all the literature to be reviewed is presented with proper reference to authors of the literature.

1.3.6 Limitations of the study

The limitations of the study will relate to the fact that some relevant research materials that have appropriate published information to the research in question have limited access because they have been copyrighted and can only be accessed through various tiresome steps.

Also some published Articles are hard to access as most of them necessitate payment to various websites through various forms of online payments which shall make, the information available limited to the researcher.

The researcher intends to inquire and if possible, subscribe to the available libraries in Uganda that are subscribers to most of the relevant sites with relevant Articles to this study. An example is the Uganda Christian University off campus library access portal.

⁸⁷S.R. Myneni, *Legal Research Methodology*, published by Allahabad Law Agency, Haryana, 5th Edition 2005, India, at 40

⁸⁸ Ibid

CHAPTER TWO: INTERNATIONAL LEGAL FRAMEWORK ON THE PROTECTION OF LAND RIGHTS IN THE OIL AND GAS INDUSTRY

2.0 Abstract

Globally as a result of political marginalization and discrimination of indigenous people, they suffer different kinds of injustices. The practice of the governments owning the rights in these resources on behalf of the citizens and masses is a trend that is envisaged in most jurisdictions in the world today. It is a state's responsibility to ensure that people's rights are protected. However, quite often this duty conflicts with the interest of the state. This chapter explains the role of international law in protecting land rights of landowners in the area of operations of oil and gas activities.

It examines some international human rights instruments and selected decisions of the different international bodies established to monitor compliance of the provisions of those international human rights instruments by the member states. For example, the ICCPR, the ICESCR, the ICERD, ILO, the UDHR among others. The chapter also demonstrates the relevance of regional laws in protecting land rights. The researcher has adopted an approach of a comparative nature between two African states that is Nigeria and Kenya to demonstrate the relevance and applicability of these international human rights instruments in the protection of land rights. To achieve this this chapter examines decisions of the international bodies, their general recommendations regarding protection of human rights but in particular land rights from which Uganda can benchmark.

2.1 Introduction

While there is currently no instrument under international human rights that explicitly provides for a human right to land, several of them relate land issues to the enjoyment of specific substantive human rights e.g. right to food, equality between men and women, rights to indigenous people and their relationship with their ancestral lands or territories,⁸⁹ health adequate housing, water etc.

Internationally and regionally, different instruments have also addressed land issues in relation to a number of civil cultural, economic, political, and social rights including the rights of

⁸⁹ Land and Human Rights: standards and Applications : United Nations Human Rights Office of the High Commissioner pg. 3

minorities and indigenous people. These include but not limited to; ILO, ICCPR, ICESCR, ICERD, the ACHPR, the UNDRIP, the IACHR, CEDAW and the ECHR. This study reveals how each instrument provides for the protection of land rights. The chapter has highlighted some of the best practices on how the right to enjoyment of land and ownership has been upheld and protected in the world today using a comparative study of Nigeria and Kenya.

2.2.3 The role of ICERD & the CERD

Article 1(1) of the ICERD defines racial discrimination which has the tendency to exclude, restrict or offer preferential treatment based on grounds of race, colour, descent, national or ethnic origin which would ordinarily prevent the enjoyment and exercise of human rights on an equal footing in the political, economic, social, cultural or any other field of public life. Pursuant to this Article, states are obligated to ensure that everyone enjoys human rights like any member of society. Article 2(c)⁹⁰ enjoins states to take affirmative action in eliminating racial discrimination.

Subsequently CERD a body mandated with the duty to monitor compliance of ICERD by states was established. Nigeria has signed and ratified ICERD. A number of states have reviewed and amended their laws and policies which negatively affected Indigenous persons. New Zealand was a subject of an “Early warning procedure” in 2001 in the context of New Zealand’s Foreshore and Seabed Act (2004) against the Maori. Similarly, in March 2006, the CERD issued a decision against the United States to stop any further violation of the land rights of Western Shoshone.⁹¹

For Kenya, CERD in 2011, made an observation that the Government of Kenya was yet to respond to the decision of the African Commission on the forced eviction of the Endorois and Ogiek communities from their ancestral lands without any adequate redress contrary to Article 5 of the ICERD⁹² For Nigeria in their concluding observation of 29 March 2007, CERD concluded that Nigeria had not provided it with specific information about the list of minorities and precise figures about the ethnic composition of Nigeria to enable it assess how the ICERD provisions are being complied with. CERD further observed that Nigeria’s Constitution doesn’t define racial discrimination in Nigeria’s domestic laws. Lastly in its comment No. 18 of March

⁹⁰ Ibid

⁹¹ CERD, Early warning and Urgent Action Procedure Decision, (68) United States of America, 11 April 2006

⁹² Ibid fn 107

27/2007, CERD observed that Nigerians Land Use Act 1978, be repealed and a new legislation be adopted which complies with the principles set out on the ICERD on the exploitation and management of land.

Although Uganda's Constitution provides against racial discrimination, as a country with many tribes and indigenous people who are customarily attached to their ancestral lands, this chapter highlights the experiences relevant to the Ugandan situation in the Albertine Graben and specifically in Buliisa and Hoima that are predominantly occupied and owned by Banyoro. The experience of Kenya & Nigeria in relation to the ICERD bestows a duty on to Uganda's government to guarantee people's land rights in the oil operation areas.

2.2.4 The role of ICCPR and HRC

As earlier noted in this research, international instruments allude to the protection of land rights of the Indigenous peoples. The ICCPR provides for people's right to dispose of their wealth and natural resources at Will. Under Article 26, all persons are entitled to equal protection under the law and prohibits discrimination on grounds of race, colour, sex, language, origin or any other status. States are obligated to adopt legislation that gives effect to convention. The HRC as a body established by the Convention to monitor compliance of the provisions of the convention by states, made a comment in its decision in the case of *Aerela & Nakkalajarvi vs Finland*⁹³ that Article 27 of the convention protects Indigenous peoples land rights. The HRC further maintained in its General comment No.3 of 26 April 1994 on the rights of minorities that "... culture manifests itself in many forms and among them is the attachment of their land which is looked at as sacred".

Specifically, for Kenya the HRC in reference to Endorois community's case, noted that Kenya must adopt appropriate laws, policies and practices to safeguard Indigenous peoples from being evicted from their lands without consultation and resettlement.

It expressed concerns about the land rights of people of Ogiek and Endorois who were continuously being evicted despite their dependence of those lands for survival. The HRC then recommended that Kenya should take account of and respect the land rights of Indigenous peoples to their ancestral lands. For Nigeria the HRC also recommended that Nigeria should review its entire legal framework towards the protection of human rights in compliance with

⁹³ HR, *Aerela & Nakkalajarvi vs Finland* (779/1997), communication of 24th Oct 2001

principles set of in the ICCPR. It can be noted that these international instruments contribute to the realization of land rights as a human right. Placing a burden on states to domesticate these international provisions, paves way for their enforcement.

2.2.5 The role of ICESCR and the CESCR

Like the ICCPR, the ICESCR provides that nothing should stop people from their means of subsistence. The CESCR a body mandated to monitor states' compliance of the ICESCR provisions, also noted in their general comment No. 21 of the 21st December 2009 that cultural rights are intertwined with other human rights. It further observed that there is a linkage between Indigenous peoples, the land territories and resources which they have historically and contemporarily occupied and acquired⁹⁴. The ICESCR in a similar way as the two instruments herein above discussed, further prohibits discrimination in the enjoyment of human right. It also requires states to repeal their domestic laws that enhance discrimination based on colour, ethnicity, and religion.

Although the CESCR condemned Kenya's delay towards implementing the decision of the African Commission about the land rights of the Endorois community, in the same spirit it was impressed by the fact that Kenya's Constitution provides that all international treaties, signed and ratified by Kenya such as the ICESCR are now directly enforceable before Kenyan domestic courts.

2.2.6 The Role of African Charter in protecting land rights

The African charter is the overarching framework for the promotion and protection of human rights in Africa.⁹⁵ The charter uniquely maintains a balance between collective rights of people and individual rights like other commissions in the world. The African Commission in one of its reports recognized that rights to land and natural resources are important for the survival of Indigenous peoples. Not only that but also in invoking its mandate in the case of *Social and Economic Rights Action Centre (SERAC) & Centre for economic and social rights (CESR) vs Nigeria*⁹⁶ the commission observed that failure to involve the Ogoni people in the context of the exploitation of oil and gas on their traditional lands was in violation of their right to

⁹⁴ E/C/12/GC/21; at para 36

⁹⁵ Baimu E: The African Union: Hope for better protection of Human Rights in Africa. Africa Human Rights Law Journal.2001 pg 31

⁹⁶ Application No. 155/96

freely dispose of their natural resources and wealth which is contrary to African Charter. It further observed that the Nigerian Government was in violation of Article 14 of the Charter.

The commission therefore emphasized the need for the general body of international human rights law to take into account the peculiar circumstances of Africa's economic, social and cultural needs.

In an attempt to demonstrate the willingness to protect land rights of the indigenous people in Africa, in the Kenyan case of the *Centre for minority rights Development (Kenya) & Minority Rights Group (on behalf of Endorois Welfare Council) vs Kenya (Endorois case)*⁹⁷ where the Endorois of Kenya claimed that they were forcibly removed from their traditional and ancestral lands, without prior consultations and payment of adequate compensation to them by the Kenyan Government, the African Commission held that the Endorois culture and traditional way of life were intrinsically linked with their ancestral lands like Bogoria and the surrounding area. That disconnecting the Endorois people from their land by evicting them, hinders them from exercising their cultural and religious rights and in the same vein their rights to natural resources are also violated.

2.3 Other Conventions

2.3.1 International Labour Organization Convention no.169 of 1989.

This is a key instrument in the evolution of concepts of land rights in International Law. It recognizes the special relationship between indigenous people and their land, requires states to adopt special measures or protection on their behalf; provides safe guards against the arbitrary removal of indigenous people from their traditional land with procedural guarantees and it includes other provisions related to the transmission of land rights and respect for customary practices.

The convention recognizes and protects tribal people's land ownership rights. It sets a series of UN minimum standards regarding consultation and consents. It is a well-known fact that governments and corporations craving for the resources beneath the land occupied by millions of indigenous people are forcing them off their land. This convention came to stop them. It provides that people should own the land they live on use it and make decision about projects

⁹⁷ Application No. 276/03

that affect them⁹⁸. The convention further directs States to recognize the inherent rights of people on their land and resources. This norm has been articulated by the UN treaty supervision bodies in country reviews and in examination of cases concerning resource extraction on indigenous lands. During the adoption of the UN declaration on the rights of indigenous people, the duty to consult people was generally accepted by States including Uganda.

In Bolivia for example, the Bolivian Constitution of 2009 recognizes that exploitation of non-renewable natural resources must be conducted in consultation with the affected community “*in good faith and upon agreement.*”⁹⁹

In 2005, Norway and the Norwegian Sami Parliament¹⁰⁰ just like Bolivia, signed a consultation agreement which sets out consultation procedures that “*apply in matters that may affect Sami interests directly.*” The agreement states in Section 6 that the consultation procedures “*shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures*”¹⁰¹

2.3.2 The African Charter on Human and People’s Rights (ACHPR)

At the African continent, this Charter commonly known as the Banjul Charter is the leading instrument from which rights of indigenous people can be deduced. It promotes and protects Human rights and basic freedoms in the African continent without distinction of any kind based on ethnicity, colour, age, language, sex etc. Much as it does not explicitly provide for the right to land, other rights there is allude to it for example Article 21 of the charter provides for the right to freely dispose of wealth and Article 14 provides for a right to property.

2.3.3 The United Nations’ Declaration on the Rights of Indigenous People (UNDRIP)

In 2007, the UN general Assembly adopted the Declaration on the Rights of Indigenous Peoples which states that indigenous people have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.¹⁰²

⁹⁸ Indigenous and tribal people’s rights in practice; a guide to ILAW convention no.169, ILAW 2009 available on wILAW.org accessed on 10th March 2020.

⁹⁹ Constitution of Bolivia, arts 30 (15), 352, 403

¹⁰⁰ This is the representative body for the people of Sami heritage in Norway. It acts as an institution of Cultural authority for the indigenous Sami People.

¹⁰¹ EMRIP, Study on participation, information from Norway

¹⁰² Elisabeth W, Anil K; Land Rights Issues in International Human Rights Law; Institute for Human Rights and Business, pg 4

Uganda is a signatory to the United Nations Declaration on the Rights of Indigenous People which affirms the Right of indigenous people to enjoy the full rights guaranteed in the various UN human rights instruments. The declaration also enumerates a number of rights guaranteed to indigenous people which include: the right to self-determination, in matters relating to indigenous peoples' international and local affairs, civil and political rights as well as social economic rights. The UN declaration on the Rights of indigenous people's calls upon States to consult with Indigenous peoples to obtain their free, prior and informed consent, prior to the approval of any project affecting their lands and resources.

Article 1 of UNDRIP states that indigenous peoples have the right to full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the UDHR and international human rights law.

Article 10 of UNDRIP states that indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 32 of UNDRIP states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

Article 32(2) provides thus that states shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Burger provides that if the above provisions are not complied with, it may lead to resistance from the indigenous people on grounds that their rights have not been protected.¹⁰³ It is important for governments and companies to enter into negotiations with the legal owners to determine the conditions under which economic activities can take place.¹⁰⁴ To Julian, if the procedure is not followed, the decision of states to grant mining or other exploration and

¹⁰³Julian Burger, 'Indigenous Peoples, Extractive Industries and Human rights' Human Rights Centre, University of Essex, United Kingdom 2014 pg.15

¹⁰⁴Ibid

exploitation concessions to companies on lands that are traditionally owned and occupied by indigenous peoples, may metamorphose into conflicts between the licensee and the people since PAPs have a right to demand for accountability on how their land will be used, and for adequate compensations for the use of their land from which their rights derive.

In the case of the *Maya Indigenous Communities Vs Belize*¹⁰⁵ the Inter-American Commission and Court of Human Rights (IACHR) and the African Commission on Human and Peoples' Right noted that, although countries may assign ownership of sub-surface mineral and water rights to the state, it does not imply that indigenous peoples do not have rights in relation to the process of mineral exploration and exploitation, nor does it imply that the authorities have freedom to dispose of such resources at their discretion.

Similarly in the case of the Inter-American Court in the case of *Saramaka people v Suriname*,¹⁰⁶ it was the conclusion of the Court that the state had “*a duty, from the onset of the proposed activity, to actively consult with the Saramaka people in good faith and with the objective of reaching an agreement, which in turn requires the State to both accept and disseminate information in an understandable and publicly accessible format.* While the Court recognizes that the form of consultation may depend on the nature of the project, it recognizes that large-scale developments require the state to obtain the affected people’s consent. The Court stated that: “*in addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramaka, in accordance with their traditions and customs*”¹⁰⁷

¹⁰⁵ Case 12.053, Inter- Am. C.H.R., Report No. 78/00

¹⁰⁶ Judgement of November 28,2007

¹⁰⁷ IACHR, 2007, para 137

2.3.4 The Convention on the Elimination of Discrimination against Women (CEDAW)

Article 16 of CEDAW invite state parties to take all necessary measures to ensure that spouses have equal rights in the ownership acquisition, management, administration, enjoyment and disposition of property. It however does not explicitly mention land rights but these are embedded in the right to property. The CEDAW committee in its comment observed that land rights are central to the fulfilment of women's human rights¹⁰⁸. This is because land rights have a close relationship with other rights and they are essential to women's living conditions and economic empowerment.

The Ugandan constitution for example provides for equality between men and women. In addition, the Land Act cap 227 as amended under section 39A prohibits any dealing in family land without spousal consent.

2.4 Conclusion

Human rights are a basis for securing dignity and equality for all. Broadly the Human rights bill of rights is comprised of the UNDHR, ICCPR and the ICESCR. These instruments set out a range of freedoms and rights which include but not limited to protection from deprivation of property, right to a clean and health environment and to an effective remedy. Transnational companies that respect Human rights tend to have a strong health and safety performance. They are usually more acceptable by local communities of where they operate from as opposed to those that have no respect for human rights. The later face resistance and hostilities from the indigenous people.

To prevent adverse negative effects and maximize positive human rights impacts, these transnational oil companies have joined government and civil society to establish a multi-stakeholder initiative such as the Extractive Industries Transparency initiative (EITI), the voluntary principles for security and Human rights and the global Oil and Gas industry organization for environmental and social issues.¹⁰⁹

To realize the 'protect, respect and remedy' framework on the UN guiding principles on Business and Human rights countries like Uganda should domesticate these principles and

¹⁰⁸ Gilbert Jeremi page 13

¹⁰⁹ Avocats sans Frontiers: Business, Human Rights and Uganda's Oil and Gas Industry; A briefing of the existing gaps in the legal and policy frame work; 2015 page 5.

initiatives into National laws and policies so that they are enforceable in the National courts.

CHAPTER THREE: THE NATIONAL LEGAL FRAMEWORK ON THE PROTECTION OF LAND RIGHTS IN THE OIL AND GAS INDUSTRY OF UGANDA

3.0 Abstract

As the extractive industries continue to generate revenue for oil producing countries like Uganda the requirement for transitional oil companies to respect human rights has increasingly become a significant topic of national and international discussion. Respecting and protecting Human rights guard a country against the resource curse because it ensures that all indigenous communities are not left out. This chapter has made a comparative analysis between Nigeria and Kenya to understand the effectiveness of the laws in the protection of land rights in the perspective of the oil and gas industry.

3.1 A COMPARATIVE ANALYSIS BETWEEN NIGERIA AND KENYA IN THE APPLICATION OF THE LAW REGARDING THE PROTECTION OF LAND RIGHTS.

It has been discovered that the protection of land rights has been achieved through acknowledging and upholding fundamental human rights. In order to give the reader a proper understanding of this chapter, it is important that a brief background about these two countries is given. The researcher has chosen Nigeria because it ranks among the top 10 gas flaring countries in the world. Its experience helps a country like Uganda that is still in its early development stages of the industry to benchmark on how to protect people and their surrounding environment. In addition Nigeria is compared with Kenya because Uganda and Kenya are in the same region however Kenya's oil and gas industry is quite older than that of Uganda.

3.1.1 NIGERIA

Nigeria is a multi-ethnic African state found in the West of Africa with a population of about 170m people. Before the colonial period the predominant law was customary law. There were pre-existing states which were merged to form Nigeria in 1914.¹¹⁰ So, the colonial rule

¹¹⁰ Afigho AE. The consolidation of British Imperial Administration in Nigeria: 1900-1918

introduced the English law and Islamic laws which co-existed with customary law.¹¹¹ It was such a coincidence that in the same period that Nigeria obtained its sovereignty, commercially viable oil reserves were discovered. When it attained its independence in 1960, it became a subject of International human rights law with obligations enshrined in the UN Charter, UDHR & ECHR.

Subsequent Nigerian Constitutions have continued to provide rights enshrined in the different International instruments of ICCPR, ICESCR, ACHPR most of which are in Chapter 4 of the Nigerian Constitution of 1999 (as amended). Nigeria also has domesticated these rights into an Act called the “African Charter on Human and People’s Rights (Ratification and Enforcement) Act No. 2¹¹². This therefore means that these human rights provisions are enforceable directly before the Nigerian courts of laws. However, like many other Constitutions of other countries, Section 1 (3) of the Nigerian Constitution proclaims Supremacy where any other laws are in conflict with the Constitutions.¹¹³

When Nigeria became a sovereign state, Abuja which was previously occupied by other indigenous tribes like the Igbira, the Koro, the Gade, the Bassa, the Ajiri Afo, the Gwandara, the Gbagyi and the Amwamwa,¹¹⁴ became Nigeria’s administrative capital because it was in the central part of the Republic of Nigeria. Abuja land constitutionally was placed in the Federal government of Nigeria¹¹⁵ causing the indigenous people to be displaced from their ancestral lands because their customary land rights were terminated. This automatically brought in land rights issues which were to be addressed by the government in power.

3.1.2 KENYA

Kenya is a multi-ethnic country and one of the countries in the East African Community (EAC) that is estimated to have about 47.6.m people¹¹⁶. Before Kenya was declared a British protectorate on 15th June 1895, the dominant law was customary law. However, colonialism

¹¹¹ Elias TO. The Impact of English law on Nigerian Customary law, Nigeria: Nigerian Ministry of Information: 1958 pg 7-8

¹¹² Cap A.9 laws of the Federation of Nigeria: 2004

¹¹³ No treaty which has been signed and ratified by Nigeria’s domestic jurisdiction unless such has been enacted as legislation by the Nigerian legislature.

¹¹⁴ Sylvanus B; The role of international law in Protecting land Rights of Indigenous Peoples in Nigeria and Kenya: A Comparative Perspective; 2019

¹¹⁵ Section 279(2) of the Constitution of the Federal Republic of Nigeria of 1999

¹¹⁶ <https://tradingeconomics.com> accessed on April 15, 2020

brought in international law¹¹⁷ and hence pluralism.

The Kenyan Independent Constitution of 1963 made no provision for International law or international human rights in the domestic legal system of Kenya¹¹⁸ thereby making Kenya's journey for international human rights law not an easy one. It was as a result of the influence of the UN Charter, UNDHR and ECHR, that the 1969 Constitution of Kenya brought in International Human Rights.¹¹⁹ Prior to the 2020 Kenyan constitution, no treaty could have the force of law in Kenya until it had been domesticated into law. However currently the Constitution of Kenya and of many other countries like Uganda affirms its supremacy over any other law be it international in case of conflict. So, Kenya being a country with many indigenous people e.g. the Endorois and the Ogiek, a lot of legal developments concerning land rights have come up at both regional and international level.

The researcher has found comments of treaty monitoring bodies on the developments in Kenya relevant in this research hence studying them as below;

This chapter shall analyse the relationship between business and Human rights in the development of Uganda's Oil and Gas sector. The researcher established the extent to which Uganda's Oil and Gas legislation conforms to the United Nations Guiding Principles on Business and Human rights (UNGPS) which are the global standards for preventing and addressing the risk of adverse impacts on Human rights linked to Business¹²⁰. The three pillars of the UN guiding Principles on Business and Human Rights are; The state's duty to protect against Human rights abuses by third parties, including Business enterprises through appropriate policies, regulation and adjudication; the corporate responsibility to respect Human rights which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they come; and the need for greater access by victims to effective remedy, both judicial and non-judicial

The analysis below evaluates Uganda's Legal and Policy Framework against the UNGPS

¹¹⁷ Trignor RL Colonial Transformation of Kenya: The Kamba Kikuyu & Maasai from 1900-1939 Princeton University press: Princeton; 2015 pg 10-50

¹¹⁸ Orago NW. The 2010 Kenyan Constitution and the Hierarchical place of international law in the Kenyan domestic legal system; a comparative perspective. African Human Rights Survey for International Human Rights law Journal 2013pg 416417

¹¹⁹ Sylvanus Barnabas; The Role of International Law in protecting land rights of Indigenous peoples in Nigeria & Kenya: A comparative perspective; 2019

¹²⁰ UNGPS to implement the United Nations 'protect, respect and remedy' framework (Switzerland: United nations Human rights council

against the UNGPS to determine the country's compliance.

3.2 UGANDA

3.2.1 Introduction

The realization of land rights in the oil and gas industry is an important aspect especially to the indigenous people who are affected with the oil and gas activities and developments. The need for protection of land rights is important for all the sectoral participants in the industry, who include among others Government & IOCs, to ensure that the working arena is free from conflicts which can affect the operations of the industry highlighted in chapter four. Uganda's oil resources are onshore i.e. it is on the surface of land and all the developments are on the land. These greatly have affected the indigenous people's livelihood and a result conflicts have arisen especially where the land owners feel their rights have been infringed upon. Many have been displaced, undercompensated and forcefully evicted from their land.

Uganda has an elaborate legal and policy framework that provides for indigenous people's rights as guaranteed under Chapter 4 of the Constitution of the Republic of Uganda 1995 as amended. These rights are further highlighted in the different statutes, Rules and Regulations, policies and guidelines, among others. This chapter is identifying the extent to which Uganda's oil and gas legal framework attempts to protect people's land rights while highlighting the gaps that could be the cause of the challenges faced by the people in the Albertine Graben.

3.2.2 The Constitution of Uganda¹²¹

Article 237 provides for the land ownership and it provides thus that; Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.¹²² Clause 2 allows noncitizens to own land in form of a lease hold tenure. Government may, subject to Article 26 of this Constitution, which guarantees a right to own property and adequate compensation acquire land in the public interest; in trust for the people and the conditions governing such acquisition shall be as prescribed by Parliament.¹²³

Article 244 (1)¹²⁴ creates the doctrine of Trust. It provides that Government has control over

¹²¹ The 1995 Constitution of Republic of Uganda

¹²² The 1995 Constitution of Republic of Uganda, Article 237 (1)

¹²³ The 1995 Constitution of Republic of Uganda, Article 237 (2) (a)

¹²⁴ The 1995 Constitution of Republic of Uganda

all minerals and petroleum in, on or under, any land or waters in Uganda on behalf of the people of Uganda. Where any land in Uganda is discovered to have minerals or petroleum, it creates a competing interest with the land owner because the owner owns the land while Government owns the resources underneath in trust for the people. It is a principle of the law that public interest over rides private interest. However, Article 26(2), then guarantees adequate compensation. This means that where land is found to have minerals it ceases to belong to the land owner.

Noticeably, there are no specific provisions in regard to the management of the two competing interest i.e. the land owner's exclusive possession and Government's right to access such land to extract the resources. This has created a lot of conflicts especially when Government passes over its access rights to the licensee to exploit the resources. The existing institutional and legal systems fail to recognize the legal interests and rights of communal land owners in the face of multinational business interests. As a result, there is an increase in land grabbing, violent evictions and displacement of thousands of communal land owners and consequently a spate of court cases against government.¹²⁵ The Oil in Uganda, a local online newsletter reveals that an increase in land grabbing, evictions and violent displacements of customary landowners by international business entities is in collusion with local businessmen and elites from Kampala.¹²⁶

3.2.3 Uganda National Land Policy¹²⁷

This policy addresses contemporary land issues in Uganda wherein it provides that Government shall pay prompt, adequate and fair compensation to the ethnic minorities that are displaced from their ancestral lands. Government in its use of the land is supposed to recognize and protect the right of ancestral lands of these ethnic groups. It is also supposed to protect pastoral lands from indiscriminate appropriation by an individual or institutions under the guise of investment.

In operationalizing Article 244 (1) of the Constitution¹²⁸ on minerals and petroleum resources, the Uganda National Land Policy lays down strategies to be implemented by government in

¹²⁵ Edward Ssekika, "Oil: a year of court battles, slow progress" Weekly Observer, 30th December, 2014 <http://observer.ug/business/38-business/35701--oil-a-year-of-court-battles-slow-progress>

¹²⁶ Oil in Uganda, Oil and Land Conflicts in the Albertine. http://www.oilinuganda.org/wp-content/plugins/downloads-manager/upload/oil_in_uganda_newsletter_march.pdf

¹²⁷ Ministry of Land and Urban development 2015

¹²⁸ The Constitutional (Amendment) Act No.11 of 2005. Replacement of Article 244 (1).

ensuring appropriate management and governance of strategic natural resources. The following strategies are set out in Clause 30 of the policy. 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-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.

Further the Policy in Section 5 emphasizes openness and access to information as fundamental rights given the potential impacts of oil discovery on individuals and communities. It commits to promote high standards of transparency and accountability in licensing, procurement, exploratory development production, and all oil operations. It promises agreements between owners and the prospecting/drilling firms to cover compensations for land surface interests as the main means of accessing land for related activities. In recognition of the potential of oil discovery and associated industries including distribution on land, the policy proposed acquisition of land by oil companies or government. Furthermore, the policy pledges to take into account the interest of communities where oil and gas production is undertaken in sharing of royalties.

These provisions appear sufficient to remedy the current injustices faced by customary landowners in the oil rich region and reinforce the right to protection from deprivation of property and to culture and similar rights. However, the decision of government to retain 93% shares from royalties, only relinquishing a paltry 6% to be shared between local governments in the oil producing region may be too little to guarantee the desired financial benefits

optimization.¹²⁹

Government rewards cultural institutions with a relatively insignificant 1%, while it completely ignores communal land owners and victims of violent evictions and displacements.¹³⁰

There is no legal recognition of traditional mechanisms for dispute resolution or customary law as a framework for the processing of disputes under customary tenure. The government must demonstrate the political will to protect and remedy the violations faced by customary land owners. The government should re-in state district land tribunals suspended by the judiciary in 2006 for lack of adequate budgetary support.

3.2.4 National Oil and Gas Policy for Uganda¹³¹

The purpose of the policy is to set standards for the future governance of oil in Uganda. Among its guiding principles is to create lasting benefits for Ugandans. Its government's duty to inter-alia ensure optimum participation in oil and gas activities, that oil and gas activities are carried out in a more sustainable manner that conserves the environment and biodiversity and to ensure mutual beneficial relationships between all stakeholders in the development of a desired oil and gas sector. This policy led to the formulation of the subsequent legislations that govern all the oil and gas operations of exploration, exploitation, development, production, processing and transportation and all these impact on land ownership because Uganda's natural reserves are onshore.

3.2.5 Petroleum Exploration, Development and Production) Act 2013¹³²

The upstream law is explicit on surface rights. This Act governs the exploration of petroleum in Uganda and processes which must be taken before, during and after. This Act provides the exploration of petroleum in Uganda and processes which must be taken before during and after. This includes the rights of land owners when a third party is given a petroleum Licence over their land.

Section 135 provides that "a holder of a licence cannot exercise any rights under their licence without the written consent of the landowner."¹³³ Extensively, the provision attempts to provide

¹²⁹ The Public Finance Management Act No.3 of 2015. Section 75

¹³⁰ Ibid Section 35.

¹³¹ Ministry of Energy and Mineral Development (MEMD), National Oil and Gas Policy for Uganda (2008)

¹³² The Petroleum (Exploration, Development and Production) Act 2013

¹³³ Ibid

for the co-existence of petroleum development with landowner's rights. Notably **Section 136** enables landowners in an exploration area to retain the right to graze stock or to cultivate the surface of the land insofar as the grazing or cultivation does not interfere with petroleum activities or safety zones in the area.¹³⁴

Section 137 Provides for the rights to subsurface activities. It provides thus that a land owner or licensee with a different licence other than one under this Act shall, with regard to an exploration or development area, retain the right to movement and other activities where the subsurface activities do not interfere with an exclusive right, or with petroleum activities in the area. The land owner is free to move on the land and do simple activities that do not fundamentally affect the land. This therefore means that the land owner doesn't enjoy all rights incidental to ownership e.g. a right to exclusive possession because his possession and usage is subject to the rights of a licensee. The challenge then becomes that once a license is granted on one's land, the land owner is looked at as a trespasser because his movements are seen to be interfering with mining activities. The land owner cannot enjoy exclusive possession of his land.

Section 138 of the upstream law enables a petroleum production licence holder to acquire exclusive rights over a block in a development area.¹³⁵ This law in one way disarms the landowner's opportunity to negotiate for an enhanced value of their property by subjecting it to the government valuer's determination. This is because the government valuer is by law instructed to disregard the increase in the value of land as a result of the presence of petroleum after all it is in public interest which includes the land owner.

Section 139 is to the effect that a licensee shall pay compensation to the land owner for Disturbance Rights. Compensation for any disturbance of the Land owner's rights and for any damage done to the surface of the land due to petroleum activities, will be given to the land owner and this compensation should be adequate and clear.¹³⁶ There is also a risk that some landowners may not be compensated for disturbance of their rights and for any damage done to the surface of the land as a result of oil and gas related activities, if complaints or claims are made four years after the fact of the upstream law.¹³⁷

¹³⁴The Petroleum (Exploration, Development and Production) Act 2013, S 136

¹³⁵The Petroleum (Exploration, Development and Production) Act 2013

¹³⁶The Petroleum (Exploration, Development and Production) Act 2013, S 139(1)

¹³⁷The Petroleum (Exploration, Development and Production) Act 2013, Section 139 (2)

3.2.6 Land Acquisition Act ¹³⁸

The Government can acquire land compulsorily on the grounds of public interest. The land owners must be paid fair and adequate compensation before the Government can take possession of the property.¹³⁹ The Land Acquisition Act provides for the procedure of compulsory land acquisition in Uganda. Land owners who are aggrieved can go to the courts of law for an appropriate remedy. Land acquisition is usually in public interest not in the interest of particular individuals or groups¹⁴⁰ **Section 5(1)** of the Act provides that all persons claiming an interest in land have a right to claim for compensation. **Section 3 (3)** is to the effect that the copy of the declaration is served to the person to be compensated i.e. the Registered owner, the controlling authority or the occupier. This means that the persons owning an interest in the land is notified and notice is served to owners of interests in the land for them to follow up compensation.

In Uganda National Roads Authority (UNRA) v Irumba Asumani and Magelah Peter.¹⁴¹

Brief Facts: The Government acquired land compulsorily for purposes of upgrading the Hoima-Kaiso-Tonya Road. UNRA took possession of the land prior to compensating the deprived persons. This case challenged Section 7(1) of the Land Acquisition Act, 1965, which allowed the Government to take possession of such land without payment of prior compensation. The Supreme Court held that when it comes to compulsory acquisition of land, compensation is key and must be paid to persons with an interest in the land before the government takes possession, both physical and legal. The Supreme Court of Uganda stated that Section 7(1) of Land Acquisition Act which permitted the government to take possession of private land before compensation is inconsistent with Article 26 (2) (b) of the Constitution.

Sheema Cooperative Ranching Society & 31 others v the Attorney General High Court.¹⁴²

Briefly: The Claimants were the registered owners of land in the Ankole - Masaka Ranching Scheme. The Government compulsorily acquired their land following a policy to restructure the ranches for the purpose of resettling landless people. Persons were resettled on the land without payment of fair and adequate compensation to the land owners. Court held that fair,

¹³⁸ Cap 226 Laws of Uganda

¹³⁹The 1995 Constitution Articles 237 (2) and Article 26 (2)

¹⁴⁰ (1958) EA 536.

¹⁴¹Supreme Court Appeal No 2 of 2014

¹⁴²Civil Suit No.103 of 2010

timely and adequate compensation must be paid to persons with an interest in the land at market value upon compulsory acquisition. Certain procedures must be followed before compulsory acquisition can be lawful. The Government did not do so in this case. Also, the process of compensation was not transparent since the persons affected did not know what was taking place. They were not approached to give their views and the award given for compensation was not disclosed.

3.2.7 The Land Act Cap 227

The Land Act Cap 227 provides for the tenure, ownership and management of land and other related or incidental matters. In pursuance of the Constitution, the Law vests all land in Uganda into the citizens¹⁴³ there are 4 land tenure systems recognized in Uganda, and these are customary tenure, freehold tenure, Mailo and leasehold tenure. The Act further defines the rights and powers of lawful occupants and bonafide occupants under sections 29, 30 and 31. It places natural lakes, rivers, groundwater, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological or touristic purposes for the common good of citizens of Uganda under trust of government. Where land is to be acquired for public use, the law goes ahead to provide for the mechanism of entering into a formal arrangement of compulsory acquisition, the procedure is well laid under the Land Acquisition Act.

3.2.8 The Mining Act, 2003

The mining Act regulates mineral exploration and extraction and vests all ownership of minerals in the country to the Government of Uganda. The act provides for mineral agreements and prospecting licenses (Part 11). The holders of a mineral dealer's license are, under section 71, liable to pay royalties due on any minerals bought, received or exported. The Act under section 98(2) provides for the sharing of royalties amongst central government, local governments owners or lawful occupiers of land subject to mineral rights in the manner specified in the second schedule to the Act. Of the 3% of Royalties, the central government receives 80 percent; local government receives 17 percent and the owners or lawful occupiers of land subject to mineral rights are entitled to 3 percent. The Mining Act has been singled out as the strongest precedent to the proposed derivation formula for the oil and gas sector in

¹⁴³ Article 237 of the conflicts have morphed in Uganda since the Government's and private sector's interest to exploit Constitution of the Republic of Uganda, 1995

Uganda and indeed share of land owners. To some extent much as the land owners receive the least of the Royalties, the fact that the law provides for them to receive something is a recognition of their right to own land rich in resources.

3.3 Conclusion

The discovery of commercially viable oil deposits in the Albertine Graben since 2006 has negatively impacted on local communities and consequently leading to numerous grievances.

Land and resource the natural resource wealth often conflicts with Human rights obligations and this creates long lasting consequences on the surrounding communities and environment. Many communities in the mid-Western region of Uganda have been negatively affected by Uganda's emerging Oil industry and many complaints have been consequently launched with the central government. Land use patterns in the Albertine is changing but unfortunately it is not accompanied by appropriate reforms in policies, laws and institutions. Uganda needs to ensure that the current land reform initiatives which often coincides with political and economic reforms as a result of democratization help to establish needed changes in land rights as well as legal and institutional frameworks.¹⁴⁴

¹⁴⁴ Ogwang T; The management of Social tensions and community grievances in the Albertine region of Uganda; Pg 285

CHAPTER FOUR: FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.0 Abstract

The above analysis has demonstrated that Uganda's Oil and Gas Laws fall short of protecting and promoting fundamental Human rights and Freedoms enshrined in the Uganda's constitutional framework. Uganda's current policy and legal regime fails the compliance test in regard to the UN guiding principles on business and Human rights. A number of human rights issues ranging from lack of transparency and accountability, non-disclosure of information, Land grabbing, low and delayed compensation, land conflicts between international expatriates and the local people, are affecting the realization of the desired sustainable economic development. Therefore, deliberate measures need to be taken to ensure that sustainable economic development recognizes land rights. Firstly this chapter shall highlight the findings of the study and thereafter raise the necessary recommendations.

4.1 Findings

The aspects to do with the protection of land rights in the oil and gas industry of Uganda was the basis for this research. The researcher analysed the extent to which land rights are protected by the oil and Gas laws of Uganda. The researcher has identified the following;

1. The researcher realized that land rights are not given a priority in the promotion and accreditation of the oil and gas dealings in Uganda today. They are among the least things to be dealt with in the oil and gas industry. Failure of realizing these rights has caused various conflicts in the Albertine Graben region where oil and gas industry developments are located and are taking place.
2. Irrespective of the dealing with the IOC's, the researcher realized that the government is just bothered about the oil deals that it makes with the IOCs irrespective of the fact that the realization of land the rights of the indigenous people is at stake.
3. The availability of oil and gas resources was discovered by Hardman Resources Company at Mputa in Hoima district in January 2006, stretching from south western Uganda sitting on Lake Albert up to the west Nile in North western Uganda. Since the exploration works began by various oil companies which included Tullow, CNOOC, and Total, several human rights abuses and abuses on the environment have been reported. These include but not limited to forceful evictions, delayed compensation,

low compensation rates.

4. The discovery of oil and gas in the Albertine also caused the opportunists to grab land. The speculators rushed to acquire freeholds with a purpose of selling it to the international oil companies at higher prices and earn more. Many indigenous people were left landless because they were duped into selling their land to the speculators who paid peanuts. That notwithstanding, payments were in small instalments which ended up being useless to them. They misused the money and did not buy more land.
5. It has been discovered that in some oil exploration and refinery areas people were never consulted during the determination of the compensation rates. There was no participation of the indigenous people as the law requires, and a few leaders that were involved engaged in corruption tendencies and did not ably represent the interests of the PAPs. As such compensation for the perennial crops didn't take into consideration the fact that they provide income to the local people.
6. In Nebbi, the machine used by Total in the exploration activities was too heavy and the vibrations which could go as far as 2kmss, made a lot of noise, created a lot of dust and the fumes from machines caused the crops to rot and the farmers even contracted diseases.
7. Forceful evictions; After the discovery of the oil resources in the Graben, exploration started and government started preparing the ground for the oil refinery which was to be located in Kabaale parish Buliisa district. This meant that people who were settling in those areas were to vacate and government was to compensate them. They had an option of either being given money or being relocated by government. Some of them refused to move because they felt that the compensation process was not fair. But these were forcefully evicted subject to compensation. Others accepted to vacate as they wait for compensation which took so long and others have never been compensated. This was a total violation of their right to own property under Article 26 of the constitution of Uganda. Clause 2 of the same Article provides for adequate compensation before vacate. This is not however what is happening in the Graben. It's handled vice versa, compensation comes after vacation.
8. About 85% of land in the Graben is owned customarily but it is individually owned or controlled. Much as the law provides for an application for a certificate of customary ownership, most of the customary owners in the Graben are ignorant about the whole

process of acquiring these certificates to prove their interests. So, it becomes cumbersome to prove their ownership and this has led to low compensation. People need to be sensitized about the need to register their interests in land as the Land Act and Registration Titles Act provide. The speculators have taken advantage of their ignorance and have bought their land cheaply registered it leaving the former occupants landless. The process of registration itself is lengthy and expensive, and with the increased threat by land grabbers, the customary owners decide to give away their land cheaply instead of losing it to the grabbers. Worse still, the little money they get from the sale is misappropriated and cannot even help them acquire more land elsewhere hence leaving them devastated.

4.2 Recommendations

1. The Ministry of Energy in collaboration with partner agencies should ensure that indigenous persons are involved in the selection of activities, designs and implementation processes in order to minimize the adverse effects of the oil and gas activities on them,. This will enhance the principle of participation and consultation as enumerated in the ILO convention.
2. As identified by the researcher, having good laws in the books is of no use if the same are not being effectively implemented. This creates a gap between what ought to be and what is. Therefore, implementation of these laws intended to protect peoples land rights should be enhanced for the industry to achieve positive results. There is need for close monitoring and supervision of the industry's activities right from the start.
3. Uganda as a new country that has joined the list of oil producing countries, a lot of land acquisition is taking place in the Albertine Graben. It is therefore important that as a signatory to many international human rights conventions, the laws governing the sector should recognize and promote the rights of the indigenous people as landowners. Much as the industry requires a lot of land and Government and other participants in the industry are acquiring land in the Graben, it is important to secure land holders' property rights as a guarantee that their land will be used sustainably. This reduces the anxiety that land will be taken away from the local owners arbitrarily. As a result it makes the land owners to make sane decisions and surrender their land for investment with a hope of their reversionary right especially if it has been acquired by international

companies which are non-citizens who under Article 237(2) of the Constitution can only acquire leases for not more than 99 years.¹⁴⁵

4. Protection of the indigenous people's land rights should be a priority at all stages of exploration of the resources and it should be a duty of every stake holder in the industry. There is need to impose direct obligations on corporations under international law by seeking to clarify and progressively codify the duties of states to protect human rights against corporate violations.¹⁴⁶
5. Issues of land tenure and titling are important for indigenous people. It has been accepted worldwide that indigenous people have the basic right to manage their lives, development and resources in a distinctive manner with the framework of a multi-cultural state. This is a special rights approach that links the recognition and enjoyment of these right to a particular ethnic or cultural identity. It is argued that indigenous people have original or immemorial rights to their land and resources. Therefore, before a project is introduced in their area which requires acquisition of vast land, it is imperative that the indigenous people be actively involved to own it and guide of their ancestral norms. Otherwise this can pose a challenge to the intended development.
6. Similarly, Oil companies are equally required to protect and respect and also provide remedies to victims of their corporate quest for the exploration of natural resources in Uganda.
7. IOCs should work closely with government and civil societies to consult and secure free, prior and informed consent through community engagements on land issues.
8. The law should ensure that the government establishes a compensation fund. Government should require oil companies to contribute a minimal percentage of their economic rents periodically to that fund. This will help in compensating adequately the PAPs.
9. The government ought to develop and implement measures for effective assurance of enjoyment of all land rights by all citizens. To keep the citizens updated about the ongoing activities that are likely to affect them, there is need for improving on access to information that may not be necessarily prejudicial to the state.
10. There should be use of all the available alternative dispute resolution mechanisms.

¹⁴⁵ The 1995 Constitution of Uganda

¹⁴⁶ Iris Marion Young, Responsibility and Global Labour Justice, 12J. of Political Philosophy, 365,387, (2004)

Especially arbitration and mediation in case of failure to reach an amicable resolution when there is a need for such at the ongoing developmental activities which might affect the indigenous people with their right to fruitful enjoyment of land.

11. The government should carry out consultation programs with the people especially the indigenous people so that they carry out activities that are in harmony with the peoples demand and requirements as far as their rights that accrue to the use of the land are concerned.
12. Uganda should ratify and domesticate most of the International Conventions that provide for the protection of the right to land like the International Labour Organization Convention 169 on indigenous and tribal peoples.
13. There is need for the government of Uganda to establish a regulatory framework to ensure that future investment and trade include mandatory human rights assessments and due diligence requirements. This is vital especially for the realization and protection of these human rights.
14. There is need for the adoption of the multi- stake holder dialogue approach, an initiative by the government to exercise and divulge by the IOCs and the indigenous people affected by the oil and gas activities.
15. There is need for the government must demonstrate a political will to protect and remedy the violations faced by customary land owners in the region. Land tribunals suspended in 2006 should be reinstated to handle such issues because courts are already clogged with a lot of work.
16. Formation of Communal Land Associations to register existing lands as areas of common land use as provided for in the Land Act, 1998 is perceived as the most optimal mechanism of securing communal land in the districts. It is considered effective given the current context of oil activity and speculation which has rendered it susceptible to land grabbers.
17. Communal Land Associations should be administered by an independent committee elected by adult suffrage in the community assembly. The committee should be constituted of positions that will ensure interests of all stake holders in the area are taken care of and selection criteria should be transparent to promote accountability. Regulations, sanctions and incentives formulated through effective participatory processes ought to be put in place for proper administration of communal land.

18. Conflicts on communal land were traditionally resolved through existing elders' councils of the different clans living in an area. However this is no longer the position; Local Councils and formal courts are currently addressing most of the conflicts on communal land. The community has a negative perception of the current system because of the high costs involved and corruption fears. Therefore there is need for massive sensitization of the people about the need of acquiring such properties in public interest but of course and most importantly ensuring prompt but adequate compensation.
19. There is need for Local Governments to conduct an inventory of communal lands in their districts under the administration of the district land officer. He should come up with a detailed account of the beneficiary communities, traditional norms, values and codes of practice which shall guide the decision of the Minister while identifying land to be compulsorily acquired. Furthermore, local governments should support the documentation of customary rules, which could be gazetted as bye-laws to secure communal land. This should be the first step in setting an affirmative agenda for vulnerable communal groups in the Albertine region.
20. Local Government structures like the office of the Community Development Officer and District Natural Resource Officer should sensitize communities on the benefits and procedures of registering communal land. The inventory mentioned above will help the respective District Land Boards in identifying and caveating fraudulent land applications seeking to convert communal land to private property.
21. Sensitization of communal groups. The communities in the Albertine region need to be legally empowered through legal education and legal aid to raise consciousness and enable them secure their customary rights on communal land. This could be done by Non- Governmental Organizations and Community Based Organizations. Community groups ought to be assisted to generate governing constitution and through the application process for Communal Land Associations.
22. Training of local officials on laws, procedures and best practices. There are apparent capacity gaps amongst political and technical officials at the district and sub district levels, particularly, officials mandated with playing key roles in securing the land rights of the people. These include the RDCs, DLDs, the ALCs, the Sub county Recorders, LC 2s and LC 1s. This will stop them from indulging in illegal and irregular practices

ignorantly.

23. Training judicial officers and retool them in the existing customs on communal land in the region to ensure fairness in the dispensation of justice in communal land cases. In addition, the Judiciary needs to have more regular engagements with local communities using open days approach to build trust and confidence, address emerging issues and concerns of the local people on Judicial processes and enable communities to be more familiar with the functions of the Judiciary on communal land as they implement the outreach program.
24. There is need for continuous investigations of corrupt practices in Land Administration and Adjudication institutions.
25. Clarify the law of traditional authorities in communal land governance. The Ministry of Lands, Housing and Urban Development should formulate guidelines and regulations that define the functionality of traditional authorities to enable their effective involvement in communal land governance. Although the National Land Policy of 2013 recognizes the important roles that traditional institutions play, their functionality and how they relate with other land dispute resolution forums remains unclear.
26. The government should ensure that the land delivery services are delegated to the local authority level as part of taking services closer to people. This helps to make genuine adjustments that are timely especially to the people affected.
27. There is need for strengthening community management structures relating to land under customary tenure which accrue to the norms and customs of the indigenous people affected.

4.3 Conclusion

Uganda is in a unique and fortunate position because it has other countries it can benchmark from. It has the opportunity of learning from the mistakes of other African oil producing countries in relation to the land issue like Nigeria, Kenya and South Africa Bolivia among others. The phenomenon of Land rights protection undoubtedly has a profound impact on the whole industry in future. For Uganda to register a success story as an oil producing country, it must address the land issue that affects the citizens. Worldwide there is an upsurge in large scale acquisition of Land by individuals, organizations and countries.

Uganda is facing the same problem yet as population continues to grow, land continues to be scarce since land doesn't expand. All the challenges highlighted need to be addressed. Corruption which is at the fore front that leads to Land grabbing must be combated. Women's rights to land must be guaranteed because it's well known that women are at the bedrock of development. Gender mainstreaming must be emphasized. Involvement of the indigenous people in decision making especially the traditional and religious leaders that have control in the Graben must be adopted. Transparency and accountability, building social cohesion must also be dealt with.

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