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DEMOCRATISATION

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UGANDA'S NASCENT OIL INDUSTRY AND THE
PROTECTION AND PROMOTION OF HUMAN RIGHTS

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ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NEMA	National Environment Management Authority
NHRIs	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UNDP	United Nations Development Programme
UN	United Nations

ABSTRACT

This thesis analyses the human rights implications associated with Uganda's nascent oil and gas industry. It highlights Uganda's past human rights record and analyses the threats and opportunities with a view to identifying measures which can be taken to prevent the occurrence of human rights violations. In this regard, a comparison with other African oil producing countries and their performance in the protection and promotion of human rights is made. This helps in shedding light on the consequences of the oil industry on human rights and to identify preventive measures which should be undertaken to avoid reactionary approaches to human rights violations.

The thesis identifies the peoples' rights to participation, self -determination and development as prerequisites for the full realisation of all other rights if an inclusive process that fosters transparency and accountability is adopted. A crucial role in this process of realising popular participation may be taken by the Uganda Human Rights Commission.

By focusing on the process, the thesis makes a contribution to the prevention of human rights violations at an early stage, ignites an early discussion on protection of human rights and provides a basis for further research on specific human rights issues associated with the oil industry.

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INTRODUCTION

“Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation”.

(Professor John Ruggie, Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises.)

1.0 Overview

The discovery, exploration and extraction of oil presents both opportunities and challenges not only in the strict economic development terms but to the protection and promotion of human rights as well. Whereas it is a topical issue in Uganda at the moment, there is little attention, at least unequivocally, to the protection and promotion of human rights. Yet, Uganda joins a growing list of other African countries such as Nigeria, Sudan, Angola and Chad where the exploration and extraction of oil has had far reaching ramifications on the protection and promotion of human rights. It is crucial to note from the outset that the protection and promotion of human rights entails both proactive and reactive approaches. In most cases, human rights violations are addressed after they have occurred, yet critical steps could have been taken to prevent or at least minimise the extent of the violations. The oil and gas industry is a development venture in which, if a human rights based approach to development is adopted, protection of human rights could be guaranteed within the entire oil management process thereby dealing with the root causes of human rights violations instead of waiting to address them after they have occurred. In the case of Uganda, oil exploration is still on going and extraction expected to commence at a future date. This thesis therefore seeks to analyse the likely impacts of the nascent oil industry on human rights in Uganda and the human rights protection mechanisms in place. The major aim is to avoid human rights violations through an inclusive approach that caters for citizens' participation in the disposal of their natural resources. The key assumption here is that if a human rights based approach to oil exploration is adopted in the process leading to the full scale

production of oil, potential human rights violations could be addressed before they actually occur.

1.1 Background to the oil industry

Whereas efforts to explore oil in Uganda dates back to 1920 and the first drilling of Waki B1 by the Anglo European Investment Company of South Africa in 1938¹, confirmation of commercial oil reserves in the country was in 2006 in the Western part of Uganda.² The first productive well was struck on the 6th of January 2006 by Hardman Resources Company at Mpuuta Oil Field in Hoima district³ and the official announcement was made by President Yoweri Museveni on 8th October 2006. “Museveni’s announcement was the first acknowledgement by a government official that Uganda has oil reserves, bringing it into Africa’s oil producing club alongside countries like Nigeria, Equatorial Guinea, Sudan and Chad, although with fewer barrels”⁴ As already stated, extraction is expected at a future date and government is currently assembling the necessary infrastructure ahead of commercial production. However, as arrangements for commercial exploitation are under way, the nascent oil sector has become a topical issue drawing wide attention from various stakeholders both local and foreign. There are fears that if the sector is not handled properly, it could turn out to be a resource curse. Reacting to the various pessimistic voices on the occasion to publicly announce the discovery of oil, Uganda’s President Yoweri Museveni said “There is a lot of nonsense that oil will be a curse. No way. The oil of Uganda cannot be a curse. Oil becomes a curse when you have got useless leaders and I can say we don’t approach that description by even a thousandth of a mile. The oil is a blessing for Uganda and money from it will be used for development”⁵. Seven years have passed since the first official announcement of the discovery of oil. During this period, further exploration

¹ Uganda’s Petroleum Upstream Sector: Implementation of the National Oil and Gas Policy , by Mr. Ernest .N.T. Rubondo, Commissioner, Petroleum Exploration and Production Department, January 2012, available at www.petroleum.go.ug (Consulted on 26th February 2013).

² Refer to the National Oil and Gas Policy for Uganda, p1.

³ Oil in Uganda-Oil timeline, <http://www.oilinuganda.org/categories/oil-timeline> Consulted on 11th May 2013.

⁴ Uganda announces Oil discovery, <http://www.iol.co.za/news/africa-uganda> (consulted on 26th February 2013).

⁵ Uganda announces oil discovery, available at <http://www.iol.co.za/news/africa/uganda-announces-oil-discovery-1.296822?ot=inmsa.ArticlePrintPageLayout.ot> (consulted on 11th May 2013).

work has continued as well as the general planning process ahead of commercial extraction. Available literature shows that a few studies that have so far been conducted are hinged on the likely consequences of the nascent oil industry and seem to be largely influenced by the experiences from other oil producing countries in Africa. Some of the studies conducted include, Righting Resource –Curse Wrongs in Uganda: The case of oil discovery and the management of popular expectations,⁶ Bracing for the Boom: Translating Oil into development in Uganda⁷, promoting Environmental Conservation amidst oil activities in Uganda⁸ and Oil in Uganda, International Lessons for Success⁹. This thesis seeks to contribute to the on-going preliminary studies except it deviates from what has so far been tackled and takes a human rights perspective.

Based on his findings and reflections on the likely impact of the oil industry, Mosbacher remarked, “Despite President Museveni’s optimistic promises, many observers fear that a lack of transparent procedures in the handling of early oil contracts has Uganda on the verge of becoming the newest resource cursed African State”¹⁰. It should also be noted that until October 2011, developments within the oil sector were largely a preserve of the executive arm of government. Production Sharing Agreements (PSAs) with Multi National Oil Companies had been secretly signed and yet there was no adequate legal framework to regulate the sector. There were also allegations of corruption to the effect that some ministers had been bribed in the course of signing the production sharing agreements.

Amidst growing allegations of corruption and opaqueness in which the executive was handling the issue of drilling concessions, despite the process being in its infancy stages, concerned Members of Parliament signed a petition to recall Parliament which was on recess at the time to deliberate on the future of the Oil Sector in Uganda. This resulted in a Resolution of Parliament in respect of the regularisation of the Oil Sector and other matters incidental thereto of 11th October 2011. This resolution, inter alia,

⁶ Kiiza, et al 2011.

⁷ Mosbacher, 2012.

⁸ By African Institute for Energy Governance

⁹ Shepherd, 2013.

¹⁰ Mosbacher, 2012 p56.

called for instituting an adhoc committee of Parliament to investigate the bribery allegations, called upon government to join the Extractive Industries Transparency Initiative and to put a moratorium on executing oil contracts and/ or transactions be put on the executive arm of government until the necessary laws have been passed by parliament to put into effect the oil and gas policy.¹¹

The above brief background shows how the nascent oil sector is already marred with corruption allegations and lack of transparency. The issues raised in the Parliamentary resolution if not well addressed by the relevant institutions of government could have far reaching implications on the protection of human rights as well. It is worth noting that no study has been conducted so far in relation to the human rights implications of the oil industry in a country whose human rights record is just picking up from an unfortunate past.

1.3 The Nexus between Oil extraction and Human Rights

The newly independent Uganda¹² was characterised by gross violations of human rights which were moreover state inspired.¹³ The human rights violations included extra judicial killings, torture, enforced disappearances and looting of individuals' property. Some scholars contend that even the starting point for adopting the African Charter on Human and Peoples Rights (ACHPR) was because of the gross human rights violations in Uganda in the period after independence¹⁴. Yet from 1986 until 2006, the Northern Part of Uganda witnessed one of the longest civil wars in Africa that left about two million people displaced at the peak of the insurgency, about 100,000 killed, property destroyed and countless victims of sexual violence. It should be noted that in some countries where the oil sector has not been properly regulated such as Nigeria, it has resulted in gross violations of human rights. This has been largely due to marginalisation of the people by the successive Nigerian Governments coupled with

¹¹ Resolution of Parliament in respect of the regularisation of the Oil Sector and other matters incidental thereto available in the Hansard at www.parliament.go.ug (consulted on 26th February 2013).

¹² Uganda became independent on 9th October 1962 from the British colonialists who had occupied it from 1894.

¹³ Report of the Commission of inquiry into violations of human rights in Uganda from 1962 to 1986.

¹⁴ Viljoen, 2012, p158.

lack of transparency and corruption in the management of the oil sector. Yet in some other countries such as Norway, it has been a blessing. Norway's success story has been attributed to high levels of transparency in which everybody's participation was guaranteed and a stable democracy by the time oil was discovered.¹⁵ It is therefore pertinent to examine the human rights implications associated with Uganda's oil industry at an early stage.

Before a discussion of the human rights implications associated with the oil industry is made, it is important to recall that the protection and promotion of human rights was originally affected by ideological differences between the capitalist and socialist states and prominence was given to civil and political rights. That notwithstanding, the contents in the International Bill of Human Rights namely, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were aimed at ensuring that both civil and political rights and economic, social and cultural rights are respected, protected and fulfilled in equal measures although the practice was different from what had been put on paper. Both Covenants capture peoples' sovereignty and right over their natural resources.¹⁶ Article 21 of the African Charter on Human and Peoples' Rights equally provides for the peoples' right to freely dispose of their wealth and natural resources.¹⁷ The sovereignty of the people over their natural wealth and resources is also contained in the United Nations General Assembly Resolutions 1803, 3201, 3202 and 3281. In the 1993 Vienna Declaration and Programme of Action, the interdependence, interrelatedness and indivisibility of human rights was re-echoed¹⁸. In his report to the UN World Summit, Kofi Annan, former Secretary General of the United Nations stated that the notion of Larger freedom encapsulates the idea that development, security and human rights go hand in hand and that not only are they imperative but they also reinforce each other.¹⁹ The interdependence and interrelatedness between human rights therefore shows that, while the oil industry can

¹⁵ Bategeka, 2008,p8.

¹⁶ Articles 1 of both the ICCPR and the ICESCR.

¹⁷ Article 21, ACHPR.

¹⁸ Vienna Declaration and Programme of Action,para5.

¹⁹ Kofi,2005,p5.

be generally perceived to be purely an economic activity, there are associated human rights issues not only of economic nature, but civil, political, social and cultural dimensions as well.

In view of the undisputed nexus between the oil industry and human rights, the ongoing human rights violations in other oil producing African countries and the scenario in Uganda in which the oil sector is being considered as a harbinger to development but not from a human rights perspective, this thesis therefore seeks to analyse the possible impact of the oil industry on human rights in Uganda and the current human rights protection mechanisms in place. In this regard, a human rights based approach to oil management becomes critical. A brief conceptual understanding of the human rights based approach to development becomes imperative.

1.4. Conceptual framework: A human rights based approach.

A human rights based approach is a conceptual framework for the process of human development normatively based on international human rights standards and operationally directed to promoting and protecting human rights.²⁰ A human rights based approach focuses on empowering rights holders to hold the duty bearers accountable by taking into account not only the outcome but the entire development process right from time any development project is conceived. It is the notion of its inclination on the process that human rights are guaranteed at project conception level. It therefore provides a useful point of departure for any measures aimed at both preventing the occurrence of human rights violations and protection of human rights. This is because the human rights based approach is based upon the widely agreed principles of universality and inalienability of human rights, interdependence and interrelatedness, equality and non- discrimination, participation and inclusion, accountability and the rule of law²¹.

²⁰ OHCHR-Frequently asked question on the HRBA to development cooperation,p15.

²¹ Idem,p36.

1.5 RESEARCH QUESTIONS

This thesis focuses on the nexus between exploration and extraction of oil and the protection and promotion of human rights by posing the following questions:

- What measures should be taken to avoid potential human rights violations?
- Is there a right for the people to participate in the on-going oil exploratory and preparatory processes?
- Which role can the Uganda Human Rights Commission play to ensure peoples participation and protection of their rights in the whole process.

1.6 Methodology

This research is based on a literature review. Literature reviewed includes published materials about the on-going preparations for the extraction of oil in Uganda, Constitutional provisions relating to oil extraction, laws passed by Parliament, resolutions of Parliament, books, journals, human rights instruments, case law, newspapers, magazines, official documents and human rights reports. Information was also obtained from internet sources and websites. Due to limited time and geographical distance from Austria to Uganda, it was not possible to conduct primary data research in Uganda. However, secondary sources of data on preliminary studies conducted provided useful information. I also used my own personal experience as a staff member of the Ugandan Human Rights Commission on the prevailing situation and discussions on the oil question in Uganda. The findings elaborated in this thesis therefore provide a useful point of departure for further in-depth research into the human rights implications of Uganda's nascent oil sector by focusing on specific human rights issues.

1.7 Limitations

The oil industry is still in its infancy stages in Uganda. It is difficult to link any specific human rights violations to the oil sector at the moment. However, consistent with the focus of this thesis, this could not deter me from analysing the issue since the process is as important as the outcome. The fact that exploration work is still in progress and extraction is yet to commence however, presents some challenges.

This thesis does not address specific human rights issues but rather an inclusive process. This entails challenges of dealing with a wide scope of information. Owing to this challenge, the focus throughout the thesis rotates around how the process leading to the extraction and production of oil should follow a human rights based approach so as to take care of the full spectrum of human rights that an inclusive process seeks to safeguard such as freedom of speech and expression, free disposition of natural wealth, the right to self-determination, right to life, freedom of association, right to property, right to privacy, right to information and civic rights and activities. This is based on the indivisibility, interdependence and interrelatedness of human rights.

Besides, exploration and extraction of oil has a lot to do with economic growth, economic development and the performance of the economy in purely economic development terms. This thesis does not attempt in any way to deal with the economic analysis of the oil and gas industry from the economics perspective. Rather, its focus is restricted to the human rights implications of the industry alone.

Given the fact that the exploration process is on-going and finalisation of the preliminary stages is a process and not an overnight event, preliminary findings could be overtaken by events between now and the near future. However, the fact that it has now taken the Ugandan government seven years of preparing for commercial extraction, that time period is long enough to draw relevant conclusions on which direction the sector is taking. In this regard, while certain aspects might change, formidable steps already taken could heavily impact on the future operations. Bearing this in mind, this thesis serves as one of the preliminary steps in undertaking further research on a wide range of the human rights implications of the nascent oil and gas industry.

Finally, interpretation of the findings has been largely based on the impact of oil and gas industries in other oil producing African countries. Basing on these countries' score cards in terms of democratic credentials and corruption perceptions indices over a number of years by Freedom House and Transparency International respectively, they share similar characteristics with Uganda. By implication, there is a high probability that what happened and continues to happen regarding exploitation of oil and the

protection of human rights in those countries could happen in Uganda as well. As Morbecher observed, no country of Uganda's size has seen positive governance outcomes resulting from an influx of oil wealth.²² He further notes that making comparisons between Uganda and Norway or Canada would be largely useless since those countries were so much more developed when they welcomed oil into their economies.²³

1.8 Outline:

Chapter one analyses the potential human rights violations that might occur as a consequence of the activities related with the exploration and extraction of oil. Aware of the fact that it is difficult to simply speculate, threats and opportunities based on the preliminary studies that have already been conducted, current concerns as reflected from parliamentary proceedings and debates within the public by various actors are analysed. The chapter also makes a comparative analysis with other oil producing countries majorly in Africa to lend credence to the issues at hand.

In chapter two, the legal frame work based on an inclusive process that if not properly addressed could potentially result in violations of a wide range of human rights is discussed. Mindful of the in- exhaustive list of human rights, some of the human rights that could be violated as a result of a non-inclusive process include, the right to freedom of speech and expression, right to a clean and healthy environment, the right to property, the right to free disposition of natural wealth, the right to self-determination, the right to privacy, the right to life, the right to information, other civic rights and activities such as freedom of assembly and association and generally the right to development. In view of the fact that protection of human rights transcends national borders, the chapter highlights the relevant international and regional human rights instruments that obligate Uganda to adopt human rights based approach to oil extraction. By so doing, available recourse mechanisms beyond the national human rights protection mechanisms that potential victims of human rights violations could turn to are explored.

²² Mosbacher, 2012 p17.

²³ Mosbacher , 2012 p21.

Desirous to make a contribution through the available institutional frameworks for the protection and promotion of human at the national level, chapter three deals with the role of the Uganda Human Rights Commission (UHRC). This is in recognition of the fact that the UHRC can play preventive and protection roles both now and in future. In this regard, the commission's preventive role with a special focus on how it can contribute to an inclusive process that enables the various stakeholders to participate in the decision making processes is analysed. The last part of this chapter analyses the protection function of the UHRC in readiness of the potential human rights violations that might occur.

The thesis ends with a section on conclusions and recommendations. The recommendations call for a transparent and inclusive process as an early step towards protection of a wide spectrum of human rights that could be violated by the government's secretive dealings and marginalisation of the people especially in the region where oil has been explored.

CHAPTER ONE

2. THREATS AND OPPORTUNITIES

Introduction

There is a tendency by governments to embark on huge development programmes as one way of poverty reduction as a matter of charity and not obligation. This approach, good as it may sound, tends to undermine the protection of human rights since it becomes practically difficult to hold a given government and non-state actors accountable in case of human rights abuses resulting from huge development programmes such as the oil and gas industry²⁴. Uganda's National Oil and Gas Policy goal is "to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society"²⁵. Whereas the policy goal is geared towards poverty eradication, it is silent, in explicit terms, on the human rights obligations of the Government of Uganda.²⁶ Kofi Annan, The Former Secretary General of the United Nations once remarked, "Whenever we lift one soul from a life of poverty, we are defending human rights. And whenever we fail in this mission, we are failing human rights"²⁷. Still emphasising the importance of upholding human rights in the pursuit of development, his report to the UN World Summit of 2005 noted among others that, "we will not enjoy development without security, we will not enjoy security without development and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed"²⁸.

Exploration of oil is always greeted with a lot of enthusiasm in countries whenever it is found. However while the oil industry may lead to a country's development, improved standards of living and respect for human rights, the possibility of oil leading to

²⁴ Failure to incorporate human rights in development projects especially at this point in time, is contrary to Uganda's international human rights obligations and commitments.

²⁵ Ministry of Energy and Mineral Development, The National Oil and Gas Policy for Uganda, p1.

²⁶ Idem.

²⁷ Human Rights Dimension of poverty, available at <http://www.ohchr.org/EN/issues/poverty> (consulted on 12th March 2013)

²⁸ Kofi, 2005,p5.

underdevelopment and human rights abuses remains high as well²⁹. Nigeria and Venezuela are two countries where one finds a paradox of poverty amidst plenty and the attendant violations of human rights³⁰. Several other studies indicate that when oil is discovered, especially in Africa, the instinctive assumption is that it can only be a good thing and result in the rapid improvement of peoples' lives by enhancing existing infrastructure or setting up new ones altogether. To the contrary, studies suggest that real Gross Domestic Product (GDP) and the population's standard of living nearly always decline where oil is discovered.³¹ This view is equally held by Paul Collier, in his book, the Bottom Billion. Whereas his analysis takes note of the potential contribution to prosperity resulting from the discovery of natural resources, he hastens to add that where discovery of natural resources has led to the desired development, it has been the exception and not a norm.³²

The protection and promotion of human rights is basically premised on proactive and reactionary approaches.³³ While the reactionary approach usually addresses human rights violations after they have occurred, the proactive one seeks to prevent the occurrence of human rights violations. While the two approaches are mutually reinforcing, I prefer the proactive one since the cost of addressing human rights violations after they have occurred is always high and undesirable. One way of proactively enhancing protection and promotion of human rights is through applying the human rights based approach to development.

It is therefore important to analyse Uganda's nascent oil industry and gauge, at an early stage, the extent to which human rights issues are being considered. The deliberate consideration of respect and protection of human rights may spur the much desired all round development as espoused by both development and human rights experts. This would place the oil industry in a position that does not trample on human rights in the

²⁹ The Corporate Human Rights Impact Assessment: Top Down and Bottom Up, International Affairs Review available at <http://www.iar-gwu.org/node/61> (consulted on 21st February 2013)

³⁰ Oil Led Development: Social, Political, and Economic consequences, available at http://iis-db.stanford.edu/pubs/21537/No_80_Terry_Karl_Effects_of_Oil_Development.pdf (consulted on 29th December 2012)

³¹ Kamugisha et al 2008 p1.

³² Collier, 2007, p 38.

³³ Clarence et al, 2006, p4.

pursuit of growth and development but rather contribute to the eradication of poverty not as a question of charity but a pressing human rights issue.³⁴

In this chapter, focus will be on current concerns by various stakeholders in Uganda and the link between these concerns and human rights with reference to other oil producing countries especially in Africa and an analysis of available opportunities to protect human rights.

2.1 Current concerns and their implications on human rights.

Given the special nature of oil as a natural resource and the anticipated benefits likely to accrue from its extraction, exploration and development of the oil industry is a topical issue in Uganda. One policy analyst has noted that if Parliament, civil society and academia were to put just half the energy, time and resources, they have so far put on the oil debate in other key critical sectors of the economy such as agriculture, manufacturing and tourism; Uganda would be at a higher level of growth and development.³⁵ The current concerns include but are not limited to: lack of transparency by government and oil Companies including allegations of corruption, the fate of the local communities within the oil wells areas in terms of their land, impending displacement and compensation, the likely impact of oil extraction on the environment and the health of the people and sharing of oil revenues with the local governments in the oil producing districts. Summed up together, these concerns would, inter alia, constitute one of the major threats associated with most oil producing countries which turns oil into a resource curse. It was against this background that Uganda's Parliament picked interest in the management of the oil sector³⁶. Besides, they pose a threat to the management of the oil and gas industry and its expected contribution to early poverty reduction and consequently, the protection of human rights.

³⁴ Report by the UN Special Rapporteur on extreme poverty and human rights, available <http://www.ohchr.org/EN/issues/poverty> dimensions (consulted on 12th March 2013).

³⁵ Interview by Samuel Apedel with Francis Kamulegeya, Country Leader, Price WaterHouse Coopers Uganda, available at <http://www.newvision.co.ug/news/638083-uganda-s-oil-can-only-buy-an-ipsum-per-person-over-25-years.html> (consulted on 14th December 2012).

³⁶ Resolution of Parliament in respect of Regularisation of the oil sector and other matters incidental thereto, available at <http://thisisafrica.files.wordpress.com/2012/02/resolution-of-parliament-on-the-oil-sector-oct-112011.pdf> (consulted on 16th November 2012).

2.1.1 Lack of transparency and allegations of corruption

Although the emergence of the oil and gas industry is expected to contribute to a country's development, states that have the greatest resource endowments and especially oil exporting countries also have extraordinarily high levels of corruption³⁷. For instance, studies have revealed that with incomes of \$35 billion per year in Mexico, \$30 billion in Venezuela and \$22 billion in Nigeria, coupled with weak state capacity and rule of law, the temptations for abuse are immense as there is little institutional restraint³⁸.

According to the World Bank, huge spending and contract allocation associated with the oil business tends to engender corruption in some countries³⁹. It has also been observed that apart from scoring low on the Human Development Index, countries which depend on oil revenues tend to exhibit high levels of corruption because of misappropriation of resources by corrupt leaders, have greater probability of conflict in any five year period, have larger shares of their population in poverty, devote a greater share of government spending to military spending and are more authoritarian than those with more diverse sources of wealth⁴⁰. In Uganda, there are fears that lack of transparency at a stage where the necessary infrastructure for the exploration and eventual extraction of oil is being put in place could lead to corruption and violations of human rights. In the words of Terry L.Karl, corruption takes place not only at the production and export stage through secret signature bonuses and opaque financial arrangements, but also as a result of extremely high and difficult to absorb investments at the upstream stage (exploration and extraction) as well as at the trading or downstream stage, where massive resources tend to disappear through price transfers that are difficult to track⁴¹.

³⁷ Terry, 2007, (80), p18.

³⁸ Idem, p 18.

³⁹ The impact of oil and gas discovery on communities with emphasis on women, available at www.g-rap.org/docs/oil.../netright-akosua-darkwah-2010pdf (consulted on 15th March 2013).

⁴⁰ Palley , Lifting the Natural Resource Curse, available at <http://www.globalpolicy.org/component/content/article/198-natural-resources/40112.html> (consulted on 6th April 2013)

⁴¹ Idem , p19.

The issue of lack of transparency and allegations of corruption was a key subject of debate by Uganda's Parliament which resulted in calling upon Government to join the Extractive Industries Transparency Initiative (EITI) in its Resolution of 11th October 2011. In the same resolution, an adhoc Committee of Parliament was instituted to investigate allegations of corruption by three Cabinet officials namely the Minister of Foreign Affairs, the Minister of Energy and Mineral Development and the Prime Minister regarding their dealings with foreign oil companies carrying out oil exploratory activities in Uganda⁴².

In its 2012 Corruption Perceptions Index, Transparency International ranks Uganda at 130 out of 176 countries⁴³. Other oil producing least developed countries such as Angola, Nigeria and Venezuela were ranked 157th, 139th and 165th respectively⁴⁴. This dismal performance does not auger well in terms of handling oil transactions that are associated with bigger sums of money from multinational companies which tend to have bigger budgets than those of some African countries⁴⁵. The fears that Uganda's oil industry could be plagued by corruption are also to be found in the many corruption scandals which have hit the country in the recent past. Commenting on this particular issue, Uganda's former Minister of Finance, Planning and Economic Development and currently Senior Presidential Advisor on finance and economic planning, Ezra Suruma said "We've been rather naive in our approach of whether oil money will not turn into a curse. The prospect of oil money mixing with the severe political instability that has characterized most of Uganda's 50 years of self-rule is frightening. Oil frightens me as a

⁴² Although the adhoc Committee had been given three months to finalise its work, by the time of writing this thesis, (more than one year later) it had not yet produced its report, raising more fears among stakeholders in the oil industry that the committee could have been compromised.

⁴³ Corruption perceptions index 2012, available at www.transparency.org/cpi2012/results (consulted on 12th March 2013).

⁴⁴ Idem.

⁴⁵ For instance it has been reported that development of oil wells in Uganda will cost oil companies UGX 37 trillion (equivalent to approximately US \$148,000,000). This is more than two times Uganda's 2012/2013 Financial Year budget which was UGX10,862 trillion (approximately US \$ 4,344,800) with 25% of this being donor funded. See, Imaka, Oil blocks to cost firms shs 37 trillion available at <http://www.monitor.co.ug/News/National/Oil-blocks-to-cost-firms-Shs37-trillion/-/688334/1740198/-/yuh6x/-/index.html> (consulted on 6th April 2013) and PWC, Uganda's FY 2012/2013 Post Budget Analysis, p11, available at <http://www.pwc.com/ug/en/pdf/pwc-uganda-2012-budget-bulletin.pdf> (consulted on 6th April 2013).

possible source of instability if it is not carefully managed⁴⁶. He further reflected on a number of financial scandals by government officials including the 2007 Commonwealth Head of Governments Meeting (CHOGM), the national identity card project, and the Global Aids and Vaccines Initiative funds⁴⁷ and said “ it is easy to think that the oil money will be wasted. The threat of corruption is real and let us not pretend that it cannot happen with the oil windfall.”⁴⁸

Various stakeholders have been requesting for information on production sharing agreements in vain⁴⁹. There appears to be a cloud of controversy surrounding the right to access to information and the confidentiality clauses within the production sharing agreements. The Uganda government remains tight lipped in making the agreements public. This has attracted several applications in courts of law by different stakeholders in a bid to access them⁵⁰. Concerned stake holders argue that secrecy in executing oil agreements leaves the public interest at the discretion of the executive and might be a breeding ground for grand corruption in the oil and gas industry.

It is therefore important to analyse the human rights implications associated with lack of transparency and corruption. Exploring the relationship between corruption and human rights, one academic scholar observed, “Guaranteeing human rights in general and ensuring non-discrimination and participation in particular are useful preventive tools for corruption as they ultimately empower the society and create social accountability”⁵¹. What can however be said, is that there appears to be a potential for oil producing countries to be corrupt. Countries such as Nigeria, Angola and Sudan contain vast quantities of oil and other natural resources and have proved to be some of the most corrupt as they derive their power from the natural resources instead of their

⁴⁶ Musoke, Tough choices over oil, available at <http://www.independent.co.ug/cover-story/6493-tough-choices-over-oil> (consulted on 7th March 2013).

⁴⁷ All these corruption scandals have been a subject of investigation by the Auditor General of Uganda, the Inspector General of Government and the Public Accounts Committee of Parliament.

⁴⁸ Idem.

⁴⁹ Contracts curse: Uganda’s Oil agreements place profit before people, p5, available at <http://www.carbonweb.org/showitem.asp?article=376&parent=39> (consulted on 16th November 2012).

⁵⁰ Magistrate’s court ruling in the matter of Access to Information Act 2005 and in the matter of complaint against the decision denying access to prospecting and exploitation agreement in Uganda.

⁵¹ Gebeye, 2012, Working paper No.70, p2.

people⁵². It would also appear, based on what is happening in Uganda at the moment that the country's nascent oil and gas industry could be hit by corruption and the attendant human rights violations⁵³.

2.1.2 Land, displacement and compensation.

The oil and gas industry is by nature a huge undertaking that often compels governments to relocate the local populations, sometimes against their will when oil is discovered or mid-way during extraction. According to the UN Special Rapporteur on the right to adequate housing, acquisition of land and eventual displacement of people for purposes of oil extraction can be termed as development induced displacement and that at the core of development induced displacement is the loss of land and a home⁵⁴. As construction of facilities and infrastructure necessarily requires resettlement of populations, displaced people are rarely provided with explanations and information regarding their resettlement, meaningful and adequate compensation, or basic necessities in their new home sites⁵⁵. Development induced displacements have taken place for instance in Sudan and Nigeria in the context of oil exploration and extraction. In Sudan, the government used helicopter gunships to curb resident opposition and relocated large populations groups to "peace camps" in Darfur, Western Sudan in which an estimated three million people were displaced⁵⁶.

According to Human Rights Watch "forced displacement of the civilian population and the death and destruction that have accompanied it, are the central human rights issues relating to oil development in Sudan"⁵⁷. In Nigeria, 80,000 people were displaced in

⁵² Corporate Human Rights Impact Assessment: Top Down-Bottom-Up, available at <http://www.iar-gwu.org/node/61> (consulted on 21st February 2013).

⁵³ Corruption and human rights: Making the connection, available at, http://www.ichrp.org/files/reports/40/131_web.pdf (consulted on 18th March 2013).

⁵⁴ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Para.27. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/115/83/PDF/G0411583.pdf?OpenElement>

⁵⁵ Corporate Human Rights Impact Assessment: Top-Down and Bottom-Up, available at <http://www.iar-gwu.org/node/61> (consulted on 21st February 2013).

⁵⁶ Idem.

⁵⁷ Human Rights Watch: Sudan, Oil and Human Rights, p36.

October 1993 because of the resistance by the local people over the negative effects of continued extraction of oil in their communities⁵⁸.

According to Constitution of the Republic of Uganda, land belongs to the citizens of Uganda but in accordance with the land tenure systems provided in the constitution⁵⁹. The constitution further provides that the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda⁶⁰. However, this provision is subject to Article 26 of the same constitution which provides for, among others, prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property and a right of access to a court of law by any person who has an interest or right over the property. Whereas land on where oil has been discovered was already under government's control through the Uganda Wild Life Authority (in tandem with the provisions of article 237 of the constitution), surrounding land where government wants to build an oil refinery is privately owned by the people. It is this land that is already a subject of discussion in relation to displacement and compensation of the owners. Bunyoro Kitara Kingdom however is also claiming ownership of the land where oil has been discovered reasoning that the kingdom has been in place for over 1000 years before present day Uganda and by extrapolation the Uganda Wild Life Authority came into existence just of recent after Uganda attained independence⁶¹.

Available reports indicate that government is embarking on building a refinery in Hoima district and construction of roads to facilitate the transportation of oil is under way. While there is information from the government on an action plan to compensate the people whose land will be compulsorily acquired for building the refinery,⁶² there are already concerns by other local people whose land was acquired for the construction

⁵⁸Decision of the African Commission on Human and Peoples Rights in communication 155/96 by the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) V. Nigeria. available at <http://www.cesr.org/downloads/AfricanCommissionDecision.pdf>

⁵⁹ Constitution of the Republic of Uganda, Article 237.

⁶⁰ Idem, Article 244, p172

⁶¹ Bategeka, et al, 2008, p16.

⁶² News and events, available at <http://www.petroleum.go.ug> (consulted on 25th March 2013)

of the road to the oil wells⁶³. This matter is now before the Hoima District Local Government Council for consideration. While moving the motion in the district council, the Kitoba sub county woman councillor is quoted to have said, “My people are getting as little as Shs3,700 for a plot of land with crops. A permanent commercial building is being compensated for as little as Shs800,000,”⁶⁴. The district council subsequently passed a resolution in which it among others demanded that “ the exercise for compensation for people affected by the road project be reviewed. People who were given little compensation should get their balance after re-evaluation of their respective properties.”⁶⁵ This particular issue regarding compensation of people whose land was acquired for road construction would appear to be revealing underhand methods in which it was carried. This is reflected in the statement by The Minister of State for Bunyoro Affairs, Mr Ernest Kiiza, who said that the President had tasked him to investigate alleged irregularities in compensations on the Hoima-Kaiso-Tonya Road. He is quoted to have said, “I have begun handling the assignment. I have already met the Works minister, Mr Abraham Byandala. He has discussed the matter with UNRA. We shall soon meet the chief government valuer and then come down to interact with the affected people”⁶⁶.

While this is happening to people whose land was acquired by government, there are also reports of land that is being acquired by the elite who mostly comprise of high ranking senior government officials and other wealthy people who come from the capital in Kampala and other areas⁶⁷. The reports of land grabbing and inadequate compensation concerning the road project compelling the district council to pass a resolution halting the ongoing compensation shows how the available regulatory framework is not being followed. The involvement of the President and the Ministers

⁶³ Mugerwa, Hoima Council petitions Government over oil road compensation, available at <http://www.monitor.co.ug/News/National/Hoima-council-petitions-government/-/688334/1714272/-/x3p2e7/-/index.html> (consulted on 8th March 2013).

⁶⁴ Uganda shillings 3,700 is equal to approximately one Euro and 800,000 shillings is equivalent to about 250 Euro.

⁶⁵ Idem.

⁶⁶ Idem.

⁶⁷ Matsiko, Land grabbing in oil region, available at <http://www.independent.co.ug/cover-story/5831-land-grabbing-in-oil-region> (consulted on 8th March 2013).

for Bunyoro Affairs (area where the oil region is) and that of works would also seem to suggest that the compensation issue is being handled at political level contrary to the requirements of Article 26 of the 1995 Constitution of the Republic of Uganda and the Land Acquisition Act Cap 226, Laws of Uganda. Article 26 of the 1995 Constitution of the Republic of Uganda states, (1) Every person has a right to own property either individually or in association with others.(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:(a) The taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for-(i) prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property and (ii) a right of access to a court of law by any person who has an interest or right over the property. The Land Acquisition Act that operationalises this article requires that any disputes regarding compensation be referred by the Attorney General to courts of law for determination⁶⁸.The Minister in charge of the region is not provided for in the law to resolve matters related to compensation.

Besides, this would also contravene Uganda's international commitments and obligations in respect to displacement, housing and compensation as enshrined in the Pinheiro principles especially those relating to national procedures, institutions and mechanisms for adequate compensation in a nondiscriminatory manner⁶⁹, the UN Guiding principles on Internal Displacement (in case of the refinery)⁷⁰ and the position of the Committee on Economic, Social and Cultural rights concerning security of tenure which guarantees legal protection against eviction, harassment and other threats⁷¹.

⁶⁸ Sections 2 (3), 8(3)and 11(3). Sections 13-16 provide details for legal proceedings.

⁶⁹Pinheiro principles, Principle 12 available <http://2001-2009.state.gov/documents/organization/99774.pdf> (consulted on 6th April 2013).

⁷⁰ UN Guiding principles on Internal Displacement available at <http://ochanet.unocha.org/p/Documents/GuidingPrinciplesDispl.pdf> (consulted on 6th April 2013)

⁷¹ Committee on Economic, Social and Cultural Rights General Comment Number 7 paras, 4-5. Available at <http://www1.umn.edu/humanrts/gencomm/escgencom7.htm> (consulted on 6th April 2013).

2.1.3 Oil, environment and human rights

Consideration of the environment as a human rights issue is a relatively recent development. This is because the 19th century efforts to codify international human rights law, did not consider the environment as a human right. This perhaps explains why the 1948 UDHR is explicitly silent on environmental rights⁷². However, a close scrutiny of how interrelated and interdependent human rights are, reveals that such rights as freedom of speech, freedom of expression and right to information among others⁷³ are critical in raising environmental concerns in a development undertaking such as the oil and gas industry. However, the need to protect the environment and its connection with human rights in the pursuit of development is now a matter of international concern.⁷⁴ This concern is also reflected in the 1992 United Nations Conference on Environment and Development which was held in Rio de Janeiro, Brazil. Principle 4 of the Rio Declaration states “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”. At the dawn of the new Millennium in 2000, Heads of State and Government adopted eight development goals of which goal number seven is to ensure environmental sustainability⁷⁵. Perhaps what might be viewed as a follow up to the efforts by the international community in this regard, was the June 2012 United Nations Conference on Sustainable Development⁷⁶ and the appointment of a UN Independent Expert on Human Rights and the Environment⁷⁷.

⁷² Report of the UN Independent Expert on Human Rights and the Environment, p4, para 7, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf (consulted on 19th March 2013).

⁷³ Idem.

⁷⁴ Declaration of the UN Conference on the Human Environment and in particular principle 1, available at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503> (consulted on 10th March 2013)

⁷⁵ MDGs, available at <http://www.unmillenniumproject.org/goals/> (consulted on 8th April 2013).

⁷⁶ Report of the United Nations Conference on Sustainable Development and in particular Resolution 1 on the “Future we Want”, available at <http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf> (consulted on 6th April 2013).

⁷⁷ Human Rights Council Resolution 19/10 Human rights and the environment of 22nd March 2012, available at <http://daccess-dds->

In his preliminary report to the Human Rights Council, the UN Independent Expert on Human Rights and the Environment among others notes that “All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfill our aspirations or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment”⁷⁸.

The link between oil exploration, the environment and human rights is also contained in the Report of the UN Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste⁷⁹.

The impact of oil exploration on the environment and human rights has been documented in various oil producing countries and seems to be largely negative. In most cases, the health of the local populations near oil installations and pipelines is affected and local livelihoods such farming and fishing destroyed⁸⁰. Some of the reported impacts of oil on the environment include examples from Ecuador, Columbia and Nigeria. In Ecuador, the Cofan Indian Tribe reports the contamination of its drinking supply, in Columbia at least 2.1 million barrels of petroleum have been spilled since 1987 totaling to approximately eleven times as much oil which was spilled in the Exxon Valdez disaster of 1989 thereby causing severe damage to the tropical ecosystem including air pollution, soil erosion, sedimentation and the disturbance of wild life habitats⁸¹.

[ny.un.org/doc/RESOLUTION/GEN/G12/131/59/PDF/G1213159.pdf?OpenElement](http://www.un.org/doc/RESOLUTION/GEN/G12/131/59/PDF/G1213159.pdf?OpenElement) (consulted on 6th April 2013)

⁷⁸ Idem.

⁷⁹ Report of the special Rapportuer on the human rights obligations related to environmentally sound management and disposal of harzadous substances and waste, pp 7-13 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-48_en.pdf (consulted on 20th February 2013).

⁸⁰ Terry, Working Paper Number 80 (2007) p26.

⁸¹ Idem p26.

The Niger Delta oil producing Region of Nigeria has been described as one of the best known example of the local impact of oil exploration⁸². According to Amnesty International, the level of poverty in contrast with the wealth generated by oil, has become one of the world's starkest and most disturbing examples of the resource curse⁸³. This starkest level of poverty is partly attributed to oil spills, waste dumping, and gas flaring which are reported to be endemic in the Niger Delta⁸⁴. The report further states that pollution has affected the area for decades and has damaged the soil, water and air quality affecting many people, particularly the poorest and those who rely on traditional livelihoods such as fishing and agriculture and that the human rights implications are serious, under reported and have received little attention from the Government of Nigeria or the Oil Companies⁸⁵. Some scientists believe that the incomplete combustion of the flares has resulted in acid rain that has a result damaged crops and rain water and oil spillages estimated at an average of three per month have destroyed streams, farm lands, aquatic life and even killed human beings-it is said that thousands of villagers have been killed in pipeline explosions including over 700 people in one leak alone in October 1998⁸⁶. It should be noted that the devastating impacts of oil exploration in Nigeria have taken place not merely because of an absence of a legal framework since the constitution of the Federal Republic of Nigeria among others states, "Exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented"⁸⁷. This contrast between what the constitution provides and what is actually happening could be attributed to corruption and an inadequate monitoring and regulatory framework as a reflection of lack of good governance, a fact which has also been cited in the report of the working

⁸² Idem p27.

⁸³ Amnesty International, 2009, p9.

⁸⁴ Idem.

⁸⁵ Amnesty International, 2009, p9.

⁸⁶ Terry, Working Paper No.80, 2007, p27.

⁸⁷ Section 17(1) d, Constitution of the Federal Republic of Nigeria, 1999.

group on Extractive Industries ,Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights⁸⁸.

According to Human Rights Watch, in the early stages of oil exploitation in Sudan, warnings by Sudanese environmentalists of possible damage because of the methods employed by the oil companies were ignored⁸⁹. However, the government later on appointed the Minister of Labour to examine the likely environmental hazards that could result from the commercial exploitation of oil⁹⁰. It is important to note that although this was done and the subsequent legislation passed in 2000, it was too weak to enforce. As all this was being done, oil exploitation continued and it is said the water table in the Sudd, the largest freshwater wetland in the world, was affected by the construction of the roadbeds and the survey excavations which eventually led to the drying out of parts of the stream.⁹¹

Elsewhere, the Amazon region of Ecuador is one of the regions that has suffered grave environmental degradation due to oil exploration⁹². It is reported that one of the oil companies, Texaco, contaminated the rivers culminating into high rates of cancerous tumors, auto-immune diseases, birth defects and spontaneous miscarriages to the indigenous populations⁹³.

As the exploration of oil takes centre stage ahead of commercial exploitation, it is pertinent to examine Uganda's preparedness in terms of ensuring environmental sustainability. There are growing voices of pessimism that the devastating impact of the oil industry in the Niger Delta or what happened in Colombia and Sudan might take Uganda by surprise if precautionary measures are not taken in advance to avert negative consequences on the environment. Coincidentally, just as the Niger Delta is home to one of the largest wetlands in the world with mangrove swamps, Sudan with the Sudd,

⁸⁸ Report of the African Commission Working Group on Extractive Industries, Environment and Human Rights Violations, (from EITI) page 1 available at <http://www.achpr.org/sessions/52nd/intersession-activity-reports/extractive-industries/> (Consulted on 20th June 2013).

⁸⁹ Human Rights Watch, 2003, p375.

⁹⁰ Idem, p378.

⁹¹ Idem, p384.

⁹² Margo, 2013, p3

⁹³ Idem.

Uganda's Albertine Oil Graben is equally home to a myriad of both flora and fauna with seven out of the ten national parks found in the area⁹⁴.

The National Environmental Management Authority⁹⁵ (NEMA) is the principal statutory organ that is charged with the responsibility of coordinating, monitoring, supervising and regulating all environmental matters in Uganda.⁹⁶ In its 2008 State of the Environment Report, NEMA noted that in spite of the Environmental Impact Assessments (EIAs) conducted and other mitigation measures adopted, the current oil exploration activities are already having negative impacts on the environment⁹⁷. Within the Albertine Graben, there are already fears by the local communities over the impact of the exploration work, despite the fact that all activities are still in their infancy stages. Available information indicates that the oil waste is currently being dumped in some approved sites pending relocation after government approves the necessary legal processes to hire companies to deal with oil wastes. While that is being done, the impact on the environment is already being felt. For instance one of the former Field Environmental Officer of Tullow Oil, an Oil company operating in the area remarked, "When I worked there, I found that every single animal or insect that got into the waste that was its end. It is so corrosive"⁹⁸. There are also fears that the government through NEMA lacks the required capacity to deal with the oil wastes and protect the environment. The interactions between NEMA officials and some of the oil companies operating in the region has left the ability of NEMA officials to hold the oil companies accountable being questioned. To some, there is already conflict of interest which might compromise the regulatory role by NEMA. The Buliisa District Local Government chairman is quoted to have said, "You can say that Tullow and Petroleum Production and Exploration Department (PPED) officials are almost the same body and you can as well add there NEMA—a weak institution, ill-equipped and handling the same sector. PPED personnel are more like Tullow employees, they are always together. There are

⁹⁴ Kamugisha, et al 2008(4) p3.

⁹⁵ Established by the National Environmental Act, Cap 153 laws of Uganda.

⁹⁶ The environment –friendly products and services directory, available at <http://www.ecoprofiles.org/ad-details.php> (consulted on 26th March 2013).

⁹⁷ National Environmental Management Authority, 2008, State of Environment Report for Uganda p130.

⁹⁸ Mastiko, Living in fear of Oil waste, available at <http://www.independent.co.ug/features/features/5926-living-in-fear-of-oil-waste> (consulted on 7th March 2013).

fears that our officers can easily be compromised.”⁹⁹ Perhaps the example of Douglas Oluoch, a farmer in Purongo sub-county, Nwoya District, who is reported to have said that Heritage Oil dumped tonnes of waste in a pit on his land, just a few kilometres from Murchison Falls National Park, after paying him Shs 750,000 and claiming that the waste was not harmful but would act as “a fertilizer” might be one of the indicators of what might turn out to be a bigger problem as it is said that although he was told that the waste would be safe, months after they had buried it on his land, NEMA officials visited his farm and advised him and his family not to eat the cassava he had planted on the site of the pit¹⁰⁰.

From the international human rights law perspective, the right to a clean and healthy environment is provided for in the International Covenant on Economic, Social and Cultural Rights¹⁰¹ and the African Charter on Human and Peoples Rights.¹⁰² At domestic level, the 1995 Constitution of the Republic of Uganda provides for the same both in the Directive Principles and Objectives of State Policy and in the bill of rights under chapter four.¹⁰³ These provisions can only be of advantage to the affected people if they are empowered to participate in influencing the oil exploitation process. This requires input from different stakeholders as will be discussed in chapter three.

2.1.4. Sharing of Oil revenues and the potential for conflict

It is very easy to ignore the voices of the local population by central governments or if not, there is always an assumption that their voices are being reflected in what their elected representatives say. However, there are several cases especially in Africa, where discrimination and uneven distribution of resources has been responsible for fuelling local resistance and sometimes resulting into armed rebellion with secessionist tendencies¹⁰⁴.

⁹⁹ Cfr. Supra footnote 98.

¹⁰⁰ Idem.

¹⁰¹ Article 12.

¹⁰² Articles 16 and 24.

¹⁰³ Article 39.

¹⁰⁴ Terry, 2007(80),p28.

According to Terry.K. Lal, natural resources and war are linked partly because rents from oil can be an impetus for going to war and that oil revenues can be a catalyst for a conflict that might not have otherwise happened¹⁰⁵. If the oil revenues are not equitably distributed, it could be a potential for local protests, emergence of armed groups and general instability. Sometimes, it is the relationship between the Government and the oil companies that tend to favour the rise of insurgents or support for the opposition so as to be favoured. There are several examples of oil rich countries where this has been the case. For example in the Republic of Congo, an opposition group was financed by Elf, Aquitaine, a French oil company to the tune of 150 million dollars to support its takeover of government so that the company could receive more favourable treatment under the new regime and it happened¹⁰⁶. Other examples where the impact of oil has contributed to the outbreak of civil wars as a result of unequal distribution of resources and grievances over land expropriation, environmental damage and corruption are Algeria, Angola, Indonesia, Yemen, Sudan, Nigeria and Iraq¹⁰⁷.

As already noted, Uganda's history has been characterised by conflicts related to distribution of resources. Whereas there has not been a specific conflict within the Albertine Graben Oil region, voices of marginalisation similar to those that triggered the Lords Resistance Army civil war in northern Uganda are frequently heard. This makes the emergence of militant groups a possibility. But most importantly, it should be recalled that the Albertine Graben is found in Bunyoro Kitaro region historically known for having resisted colonial subjugation by the British imperialists. When Bunyoro's King, Kabalega was defeated, the region was marginalised. It is against this background that Bunyoro Kitaro kingdom is calling for a special share of the oil revenue¹⁰⁸. In the northern part of Uganda, there have been secessionist calls by the local leaders on account of being marginalised by the central government. Commenting on this matter, a political and social critique said, "We perhaps need to understand that the attraction of

¹⁰⁵ Idem.

¹⁰⁶ Idem.

¹⁰⁷ Idem, p29.

¹⁰⁸ Mugerwa, Oil probe reaches Bunyoro, available at <http://www.monitor.co.ug/News/National/-/688334/1412110/-/ahe1s4z/-/index.html> (consulted on 27th March 2013).

these politicians talking about the breakaway seems to be the recent discoveries of huge oil deposits in Amuru with more prospects of finding more deposits in West Nile”¹⁰⁹.

It has also been observed that where oil is regionally concentrated and where benefits accrue to the nation while most adverse effects are local, secessionist wars are more likely¹¹⁰. Available literature shows that in the Sudan, war was triggered by President Numeiry’s decision to place newly discovered oil fields in the country’s christian south¹¹¹ under the control of the Muslim north. In Indonesia, the Aceh Freedom Movement has denounced the government for stealing Aceh’s oil and natural gas resources as the main reason for its separatist struggle. In Nigeria, Biafara’s move to secede only occurred after the government had made fiscal decisions treating oil as a centralised rather than a regional asset.¹¹² The same applies to the Cabinda region in Angola.

There are also fears that the government is already militarising the oil by deploying the national army, the Uganda Peoples Defence Forces (UPDF) under the command of the Presidents first son to guard the oil region. Government on the other hand says, it is its duty to guard the oil region and that the existence of the UPDF should instead be applauded. A pressure oil group in Hoima district, the hub of the oil producing region, Bunyoro Local Oil Advocacy Group is reportedly under strict surveillance from the office of the Resident District Commissioner (Representative of the President in the District) on allegations that its work is inciting the population against government¹¹³. One of the analysts said “militarisation and personalisation of oil resources among the ruling families has produced disastrous effects in Nigeria, Equatorial Guinea, Chad and Angola among other African countries”¹¹⁴.

¹⁰⁹ Odoobo, Nile Republic is idle talk. Available at http://observer.ug/index.php?option=com_content&view=article&id=23959:nile-republic-is-idle-talk (consulted on 28th February 2013).

¹¹⁰ Terry, 2007(80), p29.

¹¹¹ This was before the south of Sudan became independent on 9th July 2011.

¹¹² Idem, p29.

¹¹³ Mastiko, Guns in Oil Region, available at <http://www.independent.co.ug/cover-story/5968-guns-in-oil-region> (consulted on 8th March 2013.)

¹¹⁴ Idem.

Other analysts think, the government is worried that the Allied Democratic Forces (ADF), a rebel group against the government of Uganda operating in the Democratic Republic of Congo (DRC) could take advantage of the public discontent over the oil activities in the region to recruit disgruntled locals into the rebel outfit. This, it is feared, could plunge the region into perpetual insecurity, which could send the country several decades backwards.¹¹⁵ It is against this background that some concerned stakeholders have suggested that the government should guard against human rights violations and marginalising the communities in the oil region because these can be a source of reinforcements for the ADF or for the people there to create their own militias¹¹⁶.

Mores studies cast a shadow of fear in light of attempts to keep the local population at bay in the oil transactions. In a recent report titled, ‘Oil Discovery in Uganda: Managing Expectations’, the Economic Policy Research Centre at Makerere University, alluded to unrest and conflict, noting that oil abundance in developing economies typically generates valuable rents that tend to trigger violent forms of ‘greed-based’ insurgencies and secessionist wars¹¹⁷.

In view of the impacts that have been seen in other oil producing countries based on marginalisation of the local people in terms of revenue sharing and the current security concerns in Uganda, it is important to factor in such issues as the oil and gas sector moves towards the production stage. Given the huge negative impact that civil wars of secessionist nature or mere armed groups formed as a result of marginalisation place on the enjoyment of human rights, transparent and accountable leadership in the management of the nascent oil and gas industry would go a long way in shielding the Ugandan people against such likely human rights abuses. Transparency and accountability ought to be emphasised as a preventative measure since they are two concepts that are process based in order to realise the desired outcome.

¹¹⁵ Cfr. Supra footnote .113

¹¹⁶ Idem.

¹¹⁷ Bategeka,etal, p4.

2.2 Opportunities

The foregoing discussion has largely highlighted what is being perceived as threats likely to come about as a result of oil exploration. As seen, the cause for fear is not without reason since most oil producing African countries which more or less share similar geographical, economic, political, historical and democratic credentials with Uganda have performed poorly in the management of natural resources including oil. This position was recently reiterated by the former UN Secretary General, Kofi Annan in his address to the UN Security Council when he stated that “For years, we have seen that natural resources have been a presence in – and at times a driver of – internal or regional conflicts in Africa. Over the past 15 years alone, rivalry for access to natural resources has fuelled wars and rebellions in Sierra Leone, Liberia the Democratic Republic of Congo, Sudan and South Sudan, and elsewhere. Oil has also played an important role in the recurring violence in the Niger delta. This close and recurrent association between natural resources and war has led some people to describe the discovery and exploitation of natural resources in Africa as a curse¹¹⁸”. He was however quick to add that viewing the presence of natural resources and oil in particular as a vehicle for conflicts, wars, human rights violations or indeed being a mere blessing is a narrow way since opportunities are abound if such resources are well managed. In this context, he further remarked, “Such a view is far too simplistic. For every conflict, one can find several contrasting examples of African countries where natural resources are now fuelling sustained high growth and are improving their citizens’ daily lives. Natural resources are neither a curse nor a blessing. They are simply a source of opportunity. They can be used for tremendous good or they can be wasted”¹¹⁹.

¹¹⁸UN Security Council debate on conflict and natural resources: Remarks by Kofi Annan, available at <http://africapgresspanel.org/index.php?cID=999> (consulted on 21st June 2013).

¹¹⁹ Idem.

Uganda therefore still has a chance to avoid what has happened in other African countries since commercial production is yet to begin. While all threats if addressed at an early stage could potentially translate into opportunities, it is important to outline a few of the anticipated opportunities in tandem with the promotion and protection of human rights. Some of the available opportunities to avoid the resource curse are both process based and substantive in nature. Process based opportunities include the time that is still available to put in place the desired regulatory framework, learning from countries which have performed better in the management of their natural resources such as Norway, Chile and Botswana, and ensuring transparency in all activities related to oil production¹²⁰.

Substantive opportunities include both the physical and social infrastructure that Uganda is bound to generate out of oil revenues such as schools, hospitals, roads and energy generation among others¹²¹. A proper harnessing of the procedural and substantive aspects would greatly serve to enable the country get rid of the resource curse and greatly contribute to the promotion and protection of human rights. The substantive opportunities are those deemed vital for ensuring both human and sustainable development and as Kofi Annan explains can be summed into “economic and social development; peace and security; and the rule of law and respect for human rights”.¹²²

From economic and social development perspective, improved standards of living would be enhanced through increased funding for social sectors such as health, education and agriculture. This would have an impact on the enjoyment of among others the rights to a clean and healthy environment, social security, education, health, life and development.

¹²⁰ Serphered, p3.

¹²¹ See also, Mugerwa, Oil opens new chapter for Hoima residents, available at <http://www.monitor.co.ug/SpecialReports/Oil-opens-new-chapter-for-Hoima-residents/-/688342/1901520/-/c36gqtz/-/index.html> .

¹²² Cfr. Supra footnote 118.

In terms of peace and security, the oil industry is bound to improve Uganda's bargaining power at both regional and international levels especially if the oil revenues are properly utilised to transform the country into a developing or a developed country. Through increased revenues the country could become less dependent on donor funds and therefore be in position to position itself as a regional power capable of defending itself against any external kind of aggression and even be in position to influence both regional and international affairs in a more robust ,confident and respectable manner.

Regarding the rule of law and respect for human rights, the country could generally improve its respect for international human rights obligations by virtue of building strong national institutions through increased domestic revenue and its new position on the international scene.

In view of the concerns by the key stake holders in Uganda, there exists a potential for the oil industry to lead to both respect and protection of human rights. However, the on-going discussions and concerns are so far not encouraging. It would appear, there is still a lot of effort needed to guard against what has occurred in Nigeria, Sudan and other African countries from happening in Uganda. It is therefore important to examine Uganda's human rights obligations in line with its current legal framework. This would serve as a starting point to partly protect Ugandans against the likely human rights violations associated with the oil and gas industry. In this regard, the next chapter analyses the human rights legal framework that can be applied in a bid to nurture a human rights compliant oil and gas industry.

CHAPTER TWO

3. THE LEGAL FRAME WORK TOWARDS A HUMAN RIGHTS

COMPLIANT OIL INDUSTRY

“The International human rights legal framework to which all states have subscribed, must be seen as part of the solution and the baseline commitment on development”

(Louise Arbour, Former High Commissioner, UN OHCHR)

Introduction:

The nexus between oil exploration/extraction and human rights has already been highlighted in the introduction. After analysing the threats that might lead to violation of human rights in chapter one, it is important to reiterate the well-known state obligation to protect, respect, promote and fulfil human rights under international human rights law. This obligation becomes even more compelling where a state is in a joint venture with multinational oil companies. The state –oil companies’ relationship therefore presents a delicate situation of balancing the state obligations with its business interests as this tends to make it practically difficult for the state to hold oil companies accountable for human rights violations. Such a relationship would leave any human rights defender suspicious of the state’s ability to effectively meet its obligations. It is against this background that this chapter seeks to analyse the legal framework that should be a basis for ensuring a transparent process in the handling of oil affairs as one of the available safe guards against violations of human rights by both the state and oil companies. The chapter therefore focuses on the people’s right to participation in the affairs of government, the peoples’ right to self-determination and free disposition of their wealth and natural resources and the right to development as process related collective rights. It is in the pursuit of these collective rights that individual rights are either respected or violated as well. This is in further recognition of the undisputed international consensus that all human rights are universal, indivisible, interdependent

and interrelated¹²³ and that the right to development is an integral part of fundamental human rights¹²⁴. In examining the state's primary responsibility to protect, respect and fulfil fundamental freedoms and human rights, I will refer to both the legally binding and non-binding but very useful international, regional and national human rights instruments. Selected case law by the African Commission on Human and Peoples' Rights relating to exploitation of natural resources by states and private companies will equally be analysed to buttress the issues under discussion and to provide real scenarios regarding exploitation of natural resources and the enjoyment of human rights.

3.1 Peoples participation and the right to participation

It is a well-known democratic principle that the authority of any democratic government is derived from the will of the people. Unfortunately, quite often, the term people is invoked to suit the interests of those in leadership positions and the issue of peoples participation in making decisions that affect their lives and dignity might soon lose meaning as several leaders continue to claim to be fighting for peoples welfare while in actual sense all their actions tend to suit their personal interests. In most cases, the actual interests of the people remain at the periphery as they are hardly involved in a meaningful manner. If the peoples' right to participation is to be of any significance, it is important to first contextualise what peoples participation entail which should then result in uplifting the welfare of the people in a broader sense than the narrow symbolic ways of participation.

3.1.1 What is participation?

Interestingly, the term participation just like human security and terrorism falls within the category of commonly used concepts but without a universal definition. It therefore remains a matter of scholarly debate depending on the context of its application. The African Charter for Popular Participation in Development and Transformation does not define the term participation but goes ahead to outline how lack of or inadequate participation has been partly responsible for underdevelopment in Africa. In asserting

¹²³ Vienna Declaration and Programme of Action, 1993, para 5.

¹²⁴ Vienna Declaration and Programme of Action para 10.

the role of the people in popular participation, the charter starts with a statement of lamentation to the effect that over centralisation of power and impediments to the effective participation of the overwhelming majority of the people in social, political and economic development is what characterises the political context of social economic development in Africa¹²⁵. The charter goes ahead and states that popular participation must be practiced in all walks of life.¹²⁶ According to UNDP, Participation means that people are closely involved in the economic, social, cultural and political processes that affect their lives¹²⁷. Participation is often narrowly interpreted to mean focusing on an individual project as an event instead of considering it as a continuous process that affects people's dignity and lives all the time¹²⁸. It is also important to note that in order for people to participate whether as individuals or as groups, the people need to be empowered in economic, social and political terms without any form of discrimination¹²⁹. For purposes of this thesis, I agree with both the description by the African Charter for popular participation and UNDP's definition. Participation should be all round to encompass all spheres of life. Whereas participation seems to be gaining support from various actors in the governance processes, it is yet to reach a level that reflects the real will of the people. As a result, the majority of the people remain in marginalised positions and this is partly responsible for the human rights violations that we see emanating from the failure by those in authority to listen to the voices of people and most especially the extremely vulnerable.

3.1.2 The right to participation

The right to participation is provided for in several human rights instruments and is at the core of democratic governance and realisation of a wide range of other human rights. It is in this context that the right to participation should not be interpreted in a narrow sense of political participation by simply standing for an elective position or mere casting of votes. This view is also shared by Morris Kiwinda who states that the right to participation serves as an important bridge between three key elements namely

¹²⁵ African Charter for Popular participation in development and transformation, 1990, P4,para,6.

¹²⁶ Idem, p8, para15.

¹²⁷ UNDP Human Development Report 1993, p21.

¹²⁸ Idem.

¹²⁹ Idem.

the rule of law, democracy and human rights as strong pillars of good governance¹³⁰. He further argues that it would be detrimental to confine the meaning and scope of the right to participation within the narrow parameters of political participation or mere holding of periodic elections.¹³¹ I concur with this argument as the right to participation should be broadly interpreted if it is to reflect processes and results in an inclusive way. It should also be understood as a way of life that encompasses the social, political and cultural dimensions as well¹³². While proclaiming the UDHR on 10th December 1948, the UN General Assembly described it inter alia, as a common standard of achievement for all peoples and all nations thereby signifying its enduring importance in the observance of human rights¹³³. Article 21(1) of the UDHR is about peoples' right to participation. It states, "Everyone has the right to take part in the government of his country directly or through freely chosen representatives". On the other hand, the right to participation is also found in the ICCPR which Uganda ratified in 1995 and is therefore bound by its provisions¹³⁴. Article 25 of the ICCPR states that "Every citizen shall have the rights and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives". At the African regional level, the African Charter on Human and Peoples Rights (ACHPR) which was adopted by the Organisation of African Unity, now the African Union on 27th June 1981 in Nairobi, Kenya and entered into force on 21st October 1986 is the most authoritative regional human rights instrument in Africa. The Charter is binding to all African States with the exception of South Sudan which is yet to accede to it¹³⁵. Uganda was among the first countries to ratify the ACHPR on 10th May 1986 just five months before it entered into force¹³⁶. On the issue of peoples' right to participation, Article 13 (1) states, "Every citizen shall have the right to participate freely in the government of his country, either

¹³⁰ Morris Kiwinda Mbonye, 2011, p33.

¹³¹ Cfr. Supra footnote 130, p33.

¹³² UNDP Human Development Report 1993, p22.

¹³³ Preamble of the UDHR.

¹³⁴ UN OHCHR, Uganda and the UN Human Rights Mechanisms, p27.

¹³⁵ South Sudan seceded from The Sudan on 9th July 2011. Although it is yet to accede to the Charter, the Human Rights Committee has held that countries created out those bound by a treaty, do inherit the treaty obligations as well.

¹³⁶ Ratification table, available at <http://www.achpr.org/instruments/achpr/ratification/> (consulted on 12th April 2013).

directly or through freely chosen representatives in accordance with the provisions of the law”. At the national level, Article 38(1) of the Constitution of the Republic of Uganda reads, “Every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with the law”.

All the above different but equally important legal provisions are at the core of a human rights based approach as far as peoples participation in the governance process is concerned. The international, regional and national concern for peoples’ participation could not have been by mistake. As discussed in chapter one, secrecy surrounding decision making in the nascent oil sector is already a growing concern. While participation can be direct by individuals or through their chosen representatives as the various human rights instruments require, both individual and representative participation seem to be inadequate within the early management of Uganda’s oil and gas industry. In one of the recently conducted studies, a member of parliament from one of the constituencies in the oil regions is reported to have decried the lack of participation not only directly by the people but the peoples’ representatives as well. He remarked “Put us on board now and we see the process to the end. Even if the oil project is good, people could reject it. We expect action now-improve roads. Oil discovery is something good but if not handled well, it will end up the Nigerian style. People expect benefits but they are not seeing them. They expect participation and involvement, but they are not seeing them. We are being distanced from the oil business. There is discontent already. And if this is not managed well, explosive conflicts will emerge”¹³⁷. In view of the growing recognition of the role of business enterprises on the protection of human rights, the provisions of the ICCPR relative to business and human rights and in particular the oil and gas industry have been a subject of comprehensive analysis by the Castan Centre for Human Rights Law in general ¹³⁸ and the right to participate in public life in particular¹³⁹.

¹³⁷ Bategeka, et al 2008,p20.

¹³⁸ Castan Centre for Human Rights law, Human Rights translated 2008 pp1-84.

¹³⁹ Idem, pp73-75.

The right to participation therefore is at the core of a human rights based approach in respect to making decisions that affect the people. It is important to note that meaningful participation enhances transparency and information sharing which are key vital requirements in the management of the oil and gas industry. Transparency and participation could also have serious implications on the exercise of freedom of speech, expression and assembly. Distancing people from free and meaningful participation might therefore have far reaching negative implications on the future of the oil industry if not adequately addressed at an early stage. Of course, mere presence of the right to participate in the human rights instruments is one thing and implementation another. This is why this thesis deals with the issue by highlighting the normative framework to reawaken the consciousness of the actors within the oil and gas industry as a step towards dealing with the inaction of those who are meant to act. How implementation can be done will be discussed in chapter three.

3.2 The right to self-determination and free disposal of wealth and natural resources.

Closely connected to peoples' right to participation is the right to self-determination and free disposal of their wealth and natural resources. In fact, self-determination has always been a result of the failure to respect meaningful and free participation of the people in affairs that affect them. While it is beyond the scope of this thesis to engage in a deep analysis of the peoples' right to self-determination and free disposal of their natural wealth and resources, it remains important to briefly highlight the conceptual part of it before its applicability in the context of Uganda's oil industry is analysed.

The right to self -determination has been described as being contradictory in nature, perhaps because it entails both internal and external dimensions¹⁴⁰. Internally, self-determination is used as a vehicle for enfranchisement and is a reflection in international law of a movement that began with the American and French Revolutions in their struggle against oppression clamouring for a government responsible to the

¹⁴⁰ Cassese, 1995 p1.

people¹⁴¹. Externally, self-determination takes the form of challenging the established authority with calls for secession¹⁴². Yet, self-determination as an anti-colonial postulate meant that people under colonial rule would be able to gain their independence¹⁴³. Another way of understanding self-determination is the principle of freedom of ethnic or religious groups constituting minorities in sovereign states exercising their right to create an independent state or to join groups existing in another state¹⁴⁴. For purposes of this thesis, while external self-determination might be worth noting for purposes of the oil rich regions and what could happen in the future, it is my considered opinion that it is too early to engage in such as a discussion. This is notwithstanding preliminary conclusions and views by some analysts as already discussed in chapter one that if people in the oil region are marginalised; it might lead to calls for secession¹⁴⁵. Of interest to me now, is examining the right to self-determination as a democratic principle legitimising governments of modern states in which people have a say to not only choose their own rulers but on how they should be governed in all spheres of life whether social, political, economic or cultural.¹⁴⁶

The significance and special position embedded in the notion of peoples' right to self-determination is reflected in the fact that two international covenants were adopted on the same day with a common article despite the bipolar world view at the time. Article 1 of both the ICCPR and the ICESCR states that “(1) All people have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no means may a people be deprived of its subsistence”. Uganda is a party to both covenants without any reservations. It is therefore obligated to respect the provisions enshrined therein.

¹⁴¹ Idem,p11.

¹⁴² Idem p5.

¹⁴³ Cfr. Supra footnote 142, p1.

¹⁴⁴ Idem,p33.

¹⁴⁵ Bategeka,et al 2008,p28.

¹⁴⁶ Idem,p33.

In relation to Uganda's nascent oil industry and the peoples' right to self-determination, it is important to distinguish between the Articles 1 and 27 of the ICCPR and Article 20(1) of the ACHPR which also provides for the peoples' the right to self-determination. This is because while the ICCPR does not recognise peoples' rights and minorities' rights in the same way, the ACHPR does not make any distinction between minorities and peoples¹⁴⁷. By implication, the people of Uganda can seek to exercise their right to self-determination both as a people or an ethnic group that considers itself as a minority without legal challenges. Besides, the Constitution of the Republic of Uganda guarantees the protection of rights of minorities as well¹⁴⁸. It is important to contextualise the right to self-determination from two angles in light of Uganda's nascent oil industry. First, that of peoples' rights that should include all the people of Uganda and second, the ethnic group within the oil region that has persistently stated that it suffered marginalisation at the hands of the British colonialists thereby impoverishing the region. While the Banyoro ethnic group may not qualify as a minority whose protection is guaranteed under Article 27 of the ICCPR and Article 36 of Uganda's constitution, they may find a soft landing under Article 32 of the Constitution which provides for affirmative action in favour of marginalised groups. However, one question that might be raised is whether this group has all along qualified as a marginalised group or issues of marginalisation are arising now because of the discovery of oil. Whatever the case, the Banyoro will have to prove that they deserve affirmative action. But as already discussed in chapter one, there appears to be solid ground for the Banyoro people to request for special consideration from the oil revenues on account of the historical injustices suffered at the hands of the British colonialists¹⁴⁹. The discovery of oil might just be one of the opportune moments that has availed itself to the Kingdom of Bunyoro in its long held agitation for affirmative action from the central government.

¹⁴⁷ Viljoen, 2012, pp221-226.

¹⁴⁸ Constitution of the Republic of Uganda, Article 36,p50.

¹⁴⁹ Ayebale, Bunyoro suit: Queen given ultimatum to respond ,available at <http://www.monitor.co.ug/News/National/Bunyoro-suit--Queen-given-ultimatum-to-respond/-/688334/1852224/-/9jctc9/-/index.html> (consulted on 13th May 2013)

The peoples' right to self-determination further requires to be critically analysed against the available legal channels since it entails a high potential of affecting a number of other rights as well. As I have just pointed out, while the people within the oil region are already calling for special consideration, there are other Ugandans from the other parts of the country who think the discovery of oil and the revenues likely to accrue there from should be for the benefit of the whole country as a 'people'.¹⁵⁰ This is understandable since the Constitution of Uganda vests the control of all minerals and petroleum in the government on behalf of the Republic of Uganda. However critics of the anti Banyoro quest for special consideration ought to read the constitution as a whole by taking into account Articles 32 and 36 on affirmative action and protection of minorities accordingly. Besides, Article 244(3) states, "minerals, mineral ores and petroleum shall be exploited taking into account the interests of the individual land owners, local governments and the Government". This particular provision shows that the Constitution already provided for special consideration of the people in the affected region notwithstanding the fact 'minerals, mineral ores and petroleum' belong to the central government and therefore to all people of Uganda.

In case of ambiguities surrounding the right to self-determination and to free disposal of natural resources at the national level, the ACHPR is unequivocal. Article 20 (1) of the ACHPR states that "All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy, they have freely chosen". This provision was already tested and interpreted in the case of Katangese peoples' congress v Zaire¹⁵¹. A precedent was therefore set and this should be used as a basis in similar matters arising from state parties to the ACHPR. In this case, the African Commission on Human and Peoples Rights decided that Article 20(1) of the Charter had not been violated to allow for

¹⁵⁰ Mwesigye, District bosses renew fight over oil royalties, available at http://www.observer.ug/index.php?option=com_content&task=view&id=25198&Itemid=114 (consulted on 9th May 2013).

¹⁵¹ Communication 75/92, available at <http://caselaw.ihrrda.org/doc/75.92/view/> (consulted on 13th May 2013)

secession but noted that if there had been strong evidence of persecution, consistent human rights violations and people denied a meaningful say in government, then there would have been a valid reason to pray for secession¹⁵². This case is said to have lent support to an interpretation of ‘peoples’ which includes minority groups within a state¹⁵³ since the ACHPR does not differentiate peoples and minorities as already discussed above.

The ACHPR further guarantees the peoples’ right to free disposition of their wealth and natural resources. This is found in Article 21. It states,

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case, shall the people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources.

A close scrutiny of the wording of article 21 reveals that disposition of wealth and natural resources should aim at benefitting the people as a community (“...this right shall be exercised in the exclusive interest of the people”). The article also caters for

¹⁵² Viljoen, 2012, p225.

¹⁵³ Cfr. Supra footnote 152, p225.

remedies in case violations have already taken place as it provides for mechanisms of lawful recovery and adequate compensation in case of any infringement. Section 2 of the Article highlights the aspect of ‘promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law’ and section 5 calls upon ‘States parties to eliminate all forms of foreign economic exploitation particularly that is practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources’. These two provisions should be of interest to the Ugandan government in its dealings with the multinational oil companies and at the same time the relationship between the oil companies and the people. By implication, a ‘State party should not act arbitrarily in exercising the right to freely dispose of its wealth and natural resources’¹⁵⁴ and should strive to protect the people against foreign economic exploitation by international monopolies. This provision refers to the oil companies which should not step on peoples rights.

The right to free disposal of wealth and natural resources was a subject of determination by the African Commission on Human and Peoples Rights in the case of Social and Economic Rights Action Centre and the Centre for Economic and Social Rights /Nigeria¹⁵⁵. This case was in respect to violations of human rights of the Ogoni people in the Niger Delta in Nigeria. In its decision delivered during the 30th Ordinary Session, the African Commission on Human and Peoples Rights held that the Federal Republic of Nigeria was responsible for violating Article 21 of the Charter. The ingredients present in this case clearly show how state parties to the ACHPR ought to take precautionary steps to protect their citizens in a bid to exercise the right to free disposal of wealth and natural resources. As Justice Nobwine has noted, the non-participation of the Ogoni people and the absence of any benefits accruable to them in the exploitation of oil resources by the Nigerian government and the oil companies was a breach of its obligations under the Charter to exercise this right in the exclusive interest of the people and to eliminate all forms of foreign economic exploitation

¹⁵⁴ Nobwike, 2005, p139.

¹⁵⁵ Communication No. 155/96, (2001). Available at <http://www.achpr.org/communications/decision/155.96/> (consulted on 13th April 2013).

thereby failing to enable the people to fully benefit from the advantages derived from their natural resources¹⁵⁶. Commenting on the contributions of this decision to human rights jurisprudence, Justice Nobwike noted that it reaffirmed the indivisibility of rights, recognised group rights, and advanced the justiciability of economic, social and cultural rights¹⁵⁷.

The relevance of this case in the nascent oil and gas industry in Uganda is multifaceted. As already noted, Nigeria's historical past both in terms of the democratisation credentials and political economy is no different from that of Uganda. With that fact in mind, the Uganda government has signed PSAs with oil companies which by virtue of the wording "production sharing agreements" automatically refers to a joint venture. As pointed out in chapter one, one of the political leaders in Buliisa, a district within the oil region has already expressed fears that government officials from the petroleum department and the oil companies are seen to be relating in a manner that may not guarantee the independence and ability of the former to effectively monitor and regulate the activities of the latter. This arrangement of the government working directly with the oil companies could be a potential source of conflict thereby affecting its ability to uphold its human rights obligations. In the Ogoni case, the petitioners noted that, neglect by the Nigerian government to monitor the oil companies was hardly surprising given the governments direct role in oil operations¹⁵⁸.

The case law of the African Commission on Human and Peoples Rights regarding the management of the oil industry by the Federal Republic of Nigeria and the Oil Companies therefore provides a legal justification for the Ugandan Government to adopt a rights based approach in the oil and gas sector. It can be said, while little or no attention was paid to human rights issues concerning the Ogoni people, the African Commission on Human and Peoples Rights was in position to make a pronouncement on the various provisions of the ACHPR that were violated as a result of oil and gas extraction in the Niger Delta and particularly Article 21. It would therefore not be a wise idea for the people of Uganda to suffer similar violations yet the states obligations

¹⁵⁶ Cnf. Supra footnote 155.

¹⁵⁷ Nobwike, 2005, pp139-140.

¹⁵⁸ Communication 155/96, p4.

in this area were already determined in the present case. It was because of this and other similar cases that the African Commission decided to establish a Working Group on Extractive Industries, Environment and Human Rights Violations¹⁵⁹. The working group is expected to among others work on the prevention and reparation of violations of human and peoples' rights by extractive industries¹⁶⁰. This therefore serves as a useful point of reference in the quest to adopt human rights based approach to oil exploration and extraction in Uganda. However the lessons from Nigeria can only yield the desired results if applied within the process of setting up the regulatory framework and not later on.

In a nutshell, the peoples' right to self- determination and to free disposal of wealth and natural resources is associated with a cascading effect that extends to the enjoyment of other rights in the oil exploitation business. Given their corollary nature, it becomes of paramount importance to pay extra attention to the process of oil exploration and extraction at an early stage as a buffer to violations of human rights that could result from non- adherence to peoples internal self -determination and participation in the free disposal of their wealth and natural resources.

3.3 The Right to Development:

Several present day sources traces the origins of codification of the right to development to the former President of the UN Commission on Human Rights, Judge Keba M'Baye's lecture at the International Institute of Human Rights, Strasburg in 1972¹⁶¹. He defined the right to development as "The recognised prerogative of every individual and every people to enjoy in just measure the goods and services produced thanks to the effort of solidarity of the members of the community"¹⁶². But that was an individual's perception of a human right whose content had never been a subject of debate by states,

¹⁵⁹ Resolution ACHPR/Res148/XLVI/09.available at <http://www.achpr.org/mechanisms/extractive-industries/> (consulted on 16th April 2013).

¹⁶⁰ Idem.

¹⁶¹ The right to development, a review of the current state of the debate for the Department of International Development available at <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2317.pdf> (consulted on 21st May 2013).

¹⁶² Right to Development, available at http://www.williamfelice.com/literature/78071/WFF_-_Development_encyclopedia_article (accessed on 21st May 2013).

academia and other thinkers. It can therefore be said that Judge Keba's view marked the beginning of a protracted journey towards understanding what he actually meant by the right to development. Since then, the content and meaning of this right has greatly metamorphosed into a substantive right first as of binding nature at the African regional level in the African Charter on Human and Peoples Rights¹⁶³ and subsequently as of a persuasive nature in the UN Declaration on the Right to Development¹⁶⁴. Although the ACHPR unequivocally provides for the right to development, it remained silent on its precise content and meaning. Further elaboration was later to be found in the United Nations Declaration on the Right to Development from which even the African Commission on Human and Peoples Rights could refer for a comprehensive interpretation based on its mandate that allows it to draw inspiration from international law on human and peoples' rights such as the UN Charter and specialised agencies of the UN and other instruments adopted by the United Nations of which the parties to the ACHPR are members¹⁶⁵.

3.3.1 What is the Right to Development?

The UN Declaration on the Right to development defines the right to development in Article 1 (1) as "...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised". Section 2 of the same article further explains the contents of the right to development. It states, "The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources". These provisions clearly show that development is meant for the people who should freely and meaningfully participate in

¹⁶³ ACHPR, article 22. The Charter was adopted on 27th June 1981 and entered into force on 21st October 1986.

¹⁶⁴ Adopted by the General Assembly through General Assembly Resolution 41/128 of 4th December 1986.

¹⁶⁵ Article 60 of the ACHPR.

how development interventions are planned, managed and implemented. Indeed, Article 2 of the Declaration categorically recognises the human person as the central subject of development and makes it a right as well as a duty for states to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals by not only ensuring peoples participation but also in the fair distribution of the benefits resulting there from¹⁶⁶.

The interface between the right to development and other human rights is captured both in the preamble and Article 8 of the Declaration. The Preamble to the Declaration recognises development as a comprehensive economic, social , cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting their from. Article 8 ,among others, calls upon states to undertake at the national level, all necessary measures for the realisation of the right to development and to ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. States are further implored to encourage popular participation in all spheres as an important factor in development and in the full realisation of all human rights¹⁶⁷.

However, just like the concept of participation, the right to development is too often a slogan used to make politicians, diplomats and bureaucrats feel good at the expense of translating it into tangible outcomes for the most vulnerable and impoverished people¹⁶⁸. For Uganda's case, implementation of the right to development is a matter of obligation given its binding nature stemming from Article 22 of the ACHPR and the commitments made within the meaning of the UN Declaration on the Right to Development.

Within the context of understanding the right to development as comprehensive in nature, without which all other rights are at stake, the provisions of the UN Declaration

¹⁶⁶ Article 2 , UN Declaration on the Right to Development.

¹⁶⁷ Idem, Preamble and Article 8.

¹⁶⁸ Marks, 2003, p19.

on the Right to Development outlined above clearly show that the realisation of the right to development is synonymous with peoples' rights to self-determination, free disposal of natural resources, active, free and meaningful participation, non-discrimination, food, health and education in particular and enjoyment of all human rights in general. It is for this very reason that the exploration and extraction of oil in Uganda whose goal is achievement of early poverty reduction and creation of lasting value to society should be seen in the context of the right to development that sets the pace for the realisation of all other rights. Deliberate consideration of human rights standards and a human rights language in the design of the process leading to full commercial extraction of oil becomes an obligation and not a matter of choice.

At the African regional level, the African Charter on Human and Peoples Rights, also provides a fertile ground for mainstreaming human rights in development projects as a matter of obligation. This is captured in one of the preambular paragraphs, where the Charter states in part, "... it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights"¹⁶⁹. The charter further states under Article 22 that,

1. All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively to ensure the exercise of the right to development.

The provisions of this article, makes it an obligation for Uganda as a state party to the ACHPR to ensure the realisation of the peoples' right to development. Again, it is important to recall the goal of Uganda's National and Oil Gas policy of achieving early poverty reduction and creating lasting value to society. The import of this goal is nothing but realising the peoples' right to development. However, negation of

¹⁶⁹ Preamble to the ACHPR.

putting in place deliberate efforts to ensure that this right is achieved could be a potential for causing the violation of this right. While the debate on the precise normative content of right to development remains a matter of concern at the international level,¹⁷⁰ “the charter makes the collective (peoples), the holders of the right to development and not the individual”¹⁷¹. “In so doing, the charter addresses the conceptual concerns that the right to development as an individual right does not add to the human rights discourse as it merely provides a summary of existing social economic rights, and that, as an animating concept, it does no more than reconfirm the notion of indivisibility and interdependence”¹⁷². Villaroman also asserts that the right to development is a collective right that entails inter alia, the right of the people to an independent process of economic development.¹⁷³ While the focus of this thesis is not to analyse the right to development per se, the oil and gas industry’s major aim is to achieve development. This makes it relevant to comment on the right to development since the oil and gas industry’s main goal is that of realising development objectives. The way the process is handled therefore will immensely determine whether development will be achieved, whether it will be sustainable development or not and generally the wide range of fundamental human rights and freedoms.

The decision of the African Commission on Human and Peoples Rights in the case of Centre for Minority Rights Development (Kenya) and Minority Group International /Kenya¹⁷⁴ regarding the right to development of the Endorois people of Kenya is instructive for a country like Uganda that is at the initial stages of exploring oil as a natural resource.

In this case, the Kenyan government was dragged before the African Commission on Human and Peoples’ Rights by the already named two mentioned NGOs over

¹⁷⁰ Notwithstanding the existence of the UN Declaration on the right to development, 1986, there is still an open ended working group to further examine the actual meaning of this right.

¹⁷¹ Viljoen, 2012, p226.

¹⁷² Idem.

¹⁷³ Villaroman, 2011, p23.

¹⁷⁴ Communication No.276/03, (2009), Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of the Endorois Welfare Council)/Kenya available at <http://www.achpr.org/communications/decision/276.03/> (consulted on 13th April 2013).

allegations of having forcefully displaced an indigenous community-the Endorois people. They had allegedly been displaced from their ancestral land without adequate compensation. All this was done in pursuit of a mining project by the government. There was no prior consultation, let alone adequate and effective compensation.

The African Commission on Human and Peoples Rights delivered its decision on this matter during its 46th Ordinary session held from 11th to 25th November 2009 in Banjul, The Gambia. The Commission held the Kenyan Government responsible for having violated among others Article 22 of the African Charter. This decision has been described as the first comprehensive interpretation of the right to development by an international adjudicatory body¹⁷⁵ and for containing a ground breaking statement on the potential contribution of human rights based approach to development¹⁷⁶. The decision has further been described as having provided guidelines for the application of the right to development in concrete terms¹⁷⁷. The commission paid particular attention to both matters of procedure (process or means) and substance (outcome or end)¹⁷⁸.

It is important at this stage, to reflect on this finding by the Commission in light of Uganda's nascent oil sector. What is currently happening in Uganda as already stated is a matter of procedure whose outcome can only be realised in the near future. In view of the fact that a violation of either the procedure or substantive elements constitutes a violation of the right to development¹⁷⁹, this calls for the adoption of a human rights based approach to development as a proactive measure to dealing with human rights violations that may occur arising out of the exploration and extraction of oil. In emphasising the importance of adopting a rights based approach to development, the Commission stated that realising the right to

¹⁷⁵ Viljoen, 2012, p227.

¹⁷⁶ Indegenous peoples Human Rights in Africa: The Pragmatic Revolution of the African Commission on Human and Peoples Rights, available at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8009640> (consulted on 16th April 2013).

¹⁷⁷ Idem,p227.

¹⁷⁸ Idem,p227.

¹⁷⁹ Idem,p227.

development must be equitable, non-discriminatory, participatory, accountable and transparent¹⁸⁰. As stated in chapter one, the current concerns relating to Uganda's nascent oil and gas industry are greatly hinged on inadequate application of these principles. Yet, the issue of relocating people to build an oil refinery, ownership of land by the Uganda Wild Life Authority where some of the oil wells are located is being contested by the Bunyoro Kitara Kingdom and generally the current discussions between the government and the oil companies are largely being carried out secretly by the executive arm of government¹⁸¹. The provisions of the ACHPR violated by the Kenyan State, remains potentially available for similar violation by any other ratifying state in which Uganda is not insulated against this possibility. It would henceforth be useful if this precedent is used to promote and protect people's rights' in Uganda. This therefore calls for deliberate preventive measures to be undertaken.

At the national level, protection and promotion of human rights and the role of the people in development is provided for both in the National Objectives and Directive Principles of State Policy and the substantive provisions of the 1995 Constitution of the Republic of Uganda. In the National Objectives and Directive Principles of State Policy, fundamental and other human rights and freedoms¹⁸², gender balance and fair representation of marginalised groups¹⁸³, the right to development¹⁸⁴, the role of the people in development¹⁸⁵, the role of the state in development¹⁸⁶, balanced and equitable development¹⁸⁷ and protection of natural resources are specifically provided for¹⁸⁸. In order to give full legal effect to the objectives and directive principles of state policy, the constitution further states that Uganda shall be

¹⁸⁰ Para, 277 of the decision.

¹⁸¹ Bategeka, et al 2008, p16.

¹⁸² Constitution of the Republic of Uganda, Principle V.

¹⁸³ Idem, principle VI.

¹⁸⁴ Idem, Principle IX.

¹⁸⁵ Idem, Principle X.

¹⁸⁶ Idem, Principle XI.

¹⁸⁷ Idem, Principle XII.

¹⁸⁸ Idem, Principle XIII.

governed based among others on those objectives and requires Parliament to make relevant laws in that regard¹⁸⁹.

Article 244 of the Constitution is about Minerals and petroleum. This article among others mandates parliament, under clause two, to make laws to regulate the exploitation of minerals and petroleum but most importantly, clause three, specifically provides for exploitation of minerals, mineral ores and petroleum while taking into account the interests of individual land owners and local governments.

In fulfilment of the requirements of article 8A and 244 of the Constitution, government adopted the National Oil and Gas Policy in 2008 and this was followed by tabling of three bills in Parliament in 2012, namely the Petroleum (Exploration, Development and Production), The Petroleum (Refining, Gas processing, Conversion, Transportation and Storage) Bill and the Public Finance Bill. By the time of writing this thesis, apart from the Public Finance Bill, the other two bills had already been passed by Parliament but with insufficient oversight mechanisms, low levels of transparency and accountability, insufficient adjudication mechanisms and inadequate environmental protection¹⁹⁰. The early observations by the UHRC that the legal and regulatory framework already put in place contains inadequate safeguards to protect human rights might require an early review in order to take care of the human rights requirements.

3.4 Oil companies and respect for human rights.

With the current 3.5 billion barrels of oil confirmed, up from 2.5 billion in 2006, and exploration work still in progress, extraction and production of oil is poised to be a long term venture between the government of Uganda and the oil companies. Currently, three multinational oil companies have established offices in Uganda and they are undertaking oil exploration activities. They include Tullow Uganda Ltd, Total E&P Uganda B.V and China National Offshore Oil Corporation (CNOOC) Uganda Limited. While the state's international human rights obligations to protect,

¹⁸⁹ Constitution of the Republic of Uganda, Article 8A.

¹⁹⁰ UHRC 15th Annual Report to Parliament, 2012 p118.

respect, and fulfil are clearly known, international law tends to deal with corporate responsibility for human rights indirectly or through informal soft law instruments that companies may be able to adhere to directly¹⁹¹. Luckily, there is increased attention by the international community to hold business enterprises accountable for their human rights violations. As Carin notes, the agenda now recognises that companies have human rights responsibilities which comprise both compliance with law and internalisation of human rights related social expectations that states have duties to ensure that businesses do not harm human rights¹⁹². Although the available human rights mechanisms are largely voluntary and not legally binding, they are a step in a right direction and should be supported and implemented. It is therefore pertinent to outline the available mechanisms through which the oil companies can be held accountable for not only human rights violations but also taking preventive measures to avoid committing human rights violations.

The role of multinational business enterprises in the protection of human rights gained prominence at the international stage during the 1960's and 1970's¹⁹³. This level of discussions resulted in two different documents which marked an important milestone for the protection of human rights by multinational business enterprises. The first was the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises that were first adopted in 1976 and revised on 27th June 2000.¹⁹⁴ The second document was the International Labour Organisation (ILO) Tripartite Declaration of principles concerning Multinational Enterprises and Social Policy which was adopted in November 1977 and amended in November 2000¹⁹⁵. Since then, several other instruments have been adopted¹⁹⁶ and the current wave of economic globalisation in which multinational companies are increasingly venturing into business transactions with governments has attracted

¹⁹¹ Feyter, 2009, p77.

¹⁹² Human Rights International Legal Discourse, pp3-4.

¹⁹³ ILO Multinational Enterprises Declaration, p3, para 8.

¹⁹⁴ Feyter, p78.

¹⁹⁵ Idem

¹⁹⁶ See also, the Voluntary Principles on Security and Human Rights, the Natural Resources Charter, The Equator Principles, The Maastricht Principles on Extraterritorial obligations of States in the area of Economic, Social and Cultural Rights, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights and the UN Global Compact.

the attention of the UN to examine the impact of business on human rights¹⁹⁷. It was in this context that through Resolution 8/7, a Special Representative of the Secretary General was appointed to guide the United Nations on how to address the issue of business and human rights¹⁹⁸.

The Special Representative initially worked on the framework from 2005-2008 and eventually crowned his work by issuing the Guiding Principles in 2011. It is important to note that whereas the guiding principles do not create new obligations under international law, they are the first ever global blue print in the area of business and human rights. They provide a framework for prevention and remedial action in the protection of human rights and have been welcomed by OECD, Governments, Business Enterprises, Civil Society organisations and other UN Special procedures¹⁹⁹.

In line with the States obligations to respect, protect and fulfil, the guidelines require states, to inter alia, put in place appropriate steps to prevent, investigate, punish and redress mechanisms through effective policies, legislation, regulations and adjudication²⁰⁰. The oil companies are equally expected to adhere to the corporate responsibility to respect human rights through non infringement and due diligence²⁰¹. The guiding principles require the business enterprises and in this case the oil companies to avoid contributing to human rights violations, take preventive measures and ensure remedial action for the human rights violations which have already occurred. It should be noted that the UN framework to protect, respect and remedy, seeks to foster a human rights culture within business enterprises and hold them accountable for violations of human rights.

¹⁹⁷ UN Guiding principles on business and human rights para1.

¹⁹⁸ Human Rights Council Resolution 8/7 Mandate of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf (consulted on 18th May 2013).

¹⁹⁹ Guiding principles-Para 4

²⁰⁰ Idem(state).

²⁰¹ Idem(corporate responsibility)

It should be borne in mind that the state duty to protect human rights is that of conduct which extend to third parties such as the oil companies.²⁰² States, and in this case the government of Uganda is required to take appropriate steps to prevent, investigate, punish and redress human rights abuses through effective policies, legislation, regulation and adjudication.²⁰³ What is most critical at this time in Uganda oil industry is to pay special attention on what has been done or is being done to prevent the likely occurrence of human rights violations within the seven years of preparatory work since oil was discovered. While the answer would rely in policies, legislation and regulations as the UN Guiding principles require, it appears this is still lacking as seen in chapter one.

To respect human rights as enshrined in the UN Framework falls squarely within the scope of the business enterprises and in this case the oil companies. The oil companies are expected to avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved in either through prevention or mitigation²⁰⁴. In order to ensure respect, the guiding principles make it a requirement to at least at the very minimum respect all internationally recognised human rights as enshrined in the bill of human rights namely the UDHR, ICCPR and the ICESCR plus the principles concerning fundamental rights in ILO's Declaration on Fundamental Principles and Rights at work.²⁰⁵ In order to ensure respect for human rights, the principles further call for a policy commitment and human rights due diligence on the part of the business enterprises(oil companies)²⁰⁶. Moreover, the principles underscore the critical importance of initiating human rights due diligence as early as possible given the fact that human rights risks can be increased or mitigated at the stage of structuring

²⁰² UN Guiding principles on business and human rights, p3.

²⁰³ Cfr. Supra footnote 201,p3.

²⁰⁴ Idem,p13.

²⁰⁵ UN Guiding Principles on Business and Human Rights,p13.

²⁰⁶ Idem, pp 16-24.

contracts or other agreements on top of being inherited through mergers or acquisitions²⁰⁷.

In order to foster this culture, the business enterprise needs to be reminded of their human rights obligation to deliberately form part of their daily business operations as a matter of necessity. Oil companies could therefore be required to among others sign human rights compliant agreements as an initial step and then exercise due diligence in all their programmes and activities. Failure to exercise due diligence was one of the reasons why the district court in The Netherlands held Shell Nigeria accountable for the human rights violations committed in the Niger Delta²⁰⁸. It is clear therefore that a human rights impact assessment becomes compelling for the oil companies at the early stage of Uganda's nascent oil industry as it is one of the key safeguards against violations of human rights throughout their operations. Just as the guiding principle envisage mergers, this has already taken place in Uganda with Heritage farming down its operations to Tullow oil which has even been already marred with controversies surrounding the payment of capital gains tax. Tax evasion could negatively impact on the enjoyment of human rights as it reduces on revenues to government and therefore investments in projects meant for the welfare of the people to live in dignity. The issue of capital gains tax has been a matter of arbitration both in Uganda and at the International centre for arbitration in London. This incident simply shows how crucial a human rights impact assessment can go in preventing or mitigation impacts of similar occurrences both now and in future.

The third component of the UN Framework is about remedy. What ought to be considered is that remedies cannot simply be provided if adequate measures are not put in place in advance. First of all, oil companies have to first acknowledge that their activities can lead to human rights violations. This can be possible through a human rights impact assessment as already noted above. The guiding principles outline mechanisms in which remedies can be sought by victims of human rights

²⁰⁷ Idem.

²⁰⁸ Shell Nigeria Case: Court acquits firm on most charges available at <http://www.bbc.co.uk/news/world-africa-21258653>

violations namely state based judicial mechanisms, state based non judicial grievance mechanisms and non-state based grievance mechanisms²⁰⁹. In order to ensure access to each of the different mechanisms of remedies, both the state and the oil companies have to take deliberate steps to put in place a framework that ensure that all the mechanisms are operational, effective and accessible. Uganda's oil industry stands at a point where all these ought to be done.

The UN Guiding principles on business and human rights therefore forms part of the most recent soft law instruments that national governments, multinational companies and all business enterprise ought to take advantage of in order to not only safeguard the human rights of the involved people but to minimise risks to their business ventures as well. Risk minimisation is very important for the profitability and ownership of the projects being implemented. Failure to involve the local people sometimes ignites resistance of business ventures occasionally leading to protests, destruction and even sudden closure. Such occurrences inevitably impact on people's human rights and should as much as possible be avoided.

Although the presence of a human rights legal framework and actual implementation are two different issues, the availability of the legal framework remains critical if duty bearers are to be held accountable. It is on the basis of the legal framework that advocacy and promotional activities to prevent the violations of human rights can be undertaken. As discussed in this chapter, it is important for the government of Uganda and the oil companies to bear in mind that the process leading to full scale commercial exploitation of oil entails important elements of people's participation, self-determination, free disposal of their wealth and natural resources and the right to development so as to ensure the full realisation of all human rights. The basis to adopt a human rights based approach in a bid to forestall human rights violations is well provided for in the human rights legal framework at the international, regional and national levels. However, as is often the case and based on threats to the oil industry as seen in chapter one, coupled with the findings by the Uganda Human Rights Commission on the human rights implications of the

²⁰⁹ UN Guiding principles on business and human rights, pp 27-35.

oil management laws recently passed by Parliament, there seems to be already inadequate adherence to the human rights standards that require effective participation by the people and transparency by the government and oil companies in the exploration and extraction of oil activities. This rather lukewarm reception might not auger well with the protection of human rights when full scale production begins.

In view of the apparent gaps in terms of what the government and oil companies are expected to do as preventive steps against violations of human rights, the role of various stakeholders to ensure compliance with human rights obligations and commitments becomes more urgent than before. One key player at the national level in the protection and promotion of human rights is the Uganda Human Rights Commission. The next chapter therefore examines the role of the Uganda Human Rights Commission in the protection and promotion of human rights in relation to the nascent oil and gas industry.

CHAPTER THREE

3. THE ROLE OF THE UGANDA HUMAN RIGHTS COMMISSION

“NHRIs can help ensure that national development, poverty reduction, and MDG policies and strategies are not only grounded within human rights but are also implemented according to human rights standards and principles”²¹⁰

Introduction:

In a situation where transparency and free and meaningful participation are under threat because of the authority and power of the state and oil companies coupled with inadequate regulatory mechanisms, the role of strong and effective national institutions charged with oversight and watchdog functions becomes pertinent. It is through effective checks and balances that accountability by the duty bearers becomes possible. As discussed in chapters one and two, if the threats facing the effective exploitation of oil are to be addressed, the existing legal framework that guarantees peoples' participation has to be strictly enforced. Implementation of the international, regional and national human rights legal framework for the protection and promotion of human rights is now a responsibility of NHRIs in many countries around the world and continues to attract the support of the United Nations human rights protection machinery as well²¹¹. Whereas the responsibility to respect, protect and promote human rights lies with the states, the task is so complex that it brings together other kinds of national institutions such as the Human Rights Commissions, Judiciary, Ombudsperson offices, Parliament, educational institutions with human rights programmes at all levels

²¹⁰ Clark, et al , UNDP-OHCHR Toolkit for collaboration with NHRIs.

²¹¹ Vienna Declaration and programme of Action, Para 36 and General Assembly Resolution 48/134 of 20th December 1993 in which the Paris principles relating to the status of national institutions were adopted.

as well as civil society organisations²¹². Of all these bodies, NHRIs within the meaning attached to them by the Paris principles, occupy a unique position²¹³.

In Uganda, UHRC is the National Human Rights Institution (NHRI) responsible for the protection and promotion of Human Rights and will be the focus of this chapter²¹⁴. After a brief overview as to why the UHRC was established, the promotion and protection functions of the UHRC will be analysed with special reflection to the challenges, threats and opportunities associated with the exploration and extraction of oil as discussed in chapter one. Consistent with the need to adopt a human rights based approach to oil exploration, the chapter seeks to further show that development programmes aimed at poverty reduction can actually embrace human rights principles and standards thereby squarely placing a curtain in the face of violations before they actually occur. Aware of the fact that it is not possible to completely prevent violations of human rights from occurring, the chapter will also briefly explore the protection role as well. In this way, the current and future roles of the UHRC in the framework of oil exploration and extraction will be articulated.

4.1. Background to the formation of the UHRC.

The formation of UHRC has its roots in the many years of Uganda's political turmoil, constitutional instability, civil wars and the associated human rights violations²¹⁵. It was on a recommendation of the Commission of inquiry into violations of human rights (CIVHR) in Uganda from 1962 to 25th January 1986 that the UHRC was established.²¹⁶ The CIVHR released its report on 10th October 1994 at the very period in which a Constituent Assembly (CA) was in session debating the draft constitution that had been compiled by the Uganda Constitutional Commission. Given the healing process the country was witnessing, the recommendation by the CIVHR was adopted by the CA and the new Constitution of the Republic of Uganda, that was promulgated on

²¹² NHRIs, History, Principles, Roles and Responsibilities, p2.

²¹³ Idem.

²¹⁴ Article 51 of the 1995 Constitution of the Republic of Uganda.

²¹⁵ The Commission of inquiry into violations of human rights in Uganda was established on 16th May 1986 just within three months after a five year guerrilla war that brought President Yoweri Museveni to power on 26th January 1986. See, The Commission of Inquiry Act, Legal Notice No.5 of 1986.

²¹⁶ Report of the Commission of Inquiry into Violations of Human Rights in Uganda, 1994, p582.

8th October 1995 not only contained a full chapter on protection and promotion of fundamental and other human rights and freedoms²¹⁷ but also provided for the creation of the Uganda Human Rights Commission, its functions, powers, independence and general administration²¹⁸. Of particular interest to me, is the fact that the creation of the UHRC to promote and protect human rights was among others intended to fill a vacuum that existed prior to its establishment. This was based on the findings by the CIVHR that the wide spread violations of human rights occurred at a time when there was no competent authority to protect and promote human rights.

The UHRC therefore has a Constitutional mandate to promote and protect human rights in Uganda. It has been noted that when NHRIs are in compliance with the Paris Principles, they become cornerstones of national human rights promotion and protection systems²¹⁹. UHRC was accredited by the International Coordinating Committee of NHRIs with an “A” status implying that it complies with the Paris principles relating to the functioning of NHRIs²²⁰. The promotional and protection functions found in Article 52 of the Constitution of the Republic of Uganda deserve attention in any discussion aimed at preventing human rights violations that might result from the exploration and extraction of oil. It would also be important to consider how the protection role of the UHRC might be of relevance in the entire framework of the nascent oil industry. This would place the very important, but often neglected issue of placing human rights at the same footing with other development goals in the management of the oil and gas industry.

4.2 The promotional role of the UHRC.

As already highlighted in Chapter one, promotion and protection of human rights usually takes place either proactively by preventing the human rights violations from

²¹⁷ Constitution of the Republic of Uganda, Chapter four, Articles 20-50.

²¹⁸ *Idem*, Articles 51-58.

²¹⁹ UNDP-OHCHR, NHRIs Toolkit, pp1-2.

²²⁰ Chart of the status of National Institutions accredited by the International Coordinating Committee of National Institutions for the promotion and protection of human rights, accreditation status as of May 2012, available at [http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20\(30%20May%202012\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20(30%20May%202012).pdf). (consulted on 23rd April 2013)

occurring or in a reactionary manner to redress on going violations or those that have already occurred. The proactive approach remains a preferred option and is at the heart of the human rights based approach to development. The UHRC has also already considered the role of taking a proactive approach in addressing potential violations of human rights. This is reflected in its current strategic investment plan where it particularly stated that ,”UHRC recognises that as much as it has the responsibility of reacting to issues as they emerge, it ought to begin to anticipate change rather than to react to it”²²¹. It is important to note that the various provisions calling for precautionary measures within the protection framework to avoid irreparable harm in various human rights instruments such the ACHPR²²² resonates well with the desire to halt violations from taking place while remedial action is being taken. It would therefore be a better option to put in place mechanisms to prevent the occurrence of human rights violations instead of relying on reactionary measures. This section therefore analyses this issue from the UHRC’s promotional role perspective and how it might be of relevance in light of the budding oil and gas industry in Uganda.

Four out of the eight functions of the UHRC as provided for in the Constitution of the Republic of Uganda directly relate to the promotion of human rights. They include:

- To establish a continuing programme of research, education and information to enhance respect of human rights²²³.
- To create and sustain within society the awareness of the provisions of the constitution as the fundamental law of the people of Uganda²²⁴.
- To educate and encourage the public to defend the constitution at all times against any forms of abuse and violation²²⁵ and
- To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights as free people²²⁶.

²²¹ UHRC Strategic Investment Plan 2013-2017 ,p2.

²²² Rules of procedure of the African Commission on Human and Peoples’Rights, Rule 98.

²²³ Article 52 (c).

²²⁴ Idem, (e).

²²⁵ Idem,(f).

As discussed in chapter two, these four functions provide the highly needed ground to engage the various stake holders in participatory activities in which their voices can be heard by the government and even oil companies. It is therefore important to analyse how the promotional mandate could be translated into a prevention tool through inclusive participation so as to realise full protection of all human rights.

The current discussions on the role of the oil and gas sector attracted wide public attention after the special session of Parliament on regularisation of the oil and gas industry as explained in the introduction to this thesis. Based on available literature, preliminary research, education and information on what is happening in the oil sector has generally been done by civil society organisations (CSOs). Unfortunately, some of the CSOs that picked interest in advocating for transparency in the management of the oil and gas industry have been under constant threat and attacks from the President with threats of being deregistered²²⁷. These threats were equally highlighted by the UHRC in its 15th Annual Report to Parliament²²⁸. The attack on CSOs especially those linked to oil could have several implications to the future of their efforts in trying to hold the government accountable. It is possible that the research conducted by Non-Governmental Organisations on the on-going oil exploration could be rendered useless if the government is not willing to implement the recommendations made²²⁹. There is a proliferation of many groups aimed at creating awareness but all seem to lack the spine that can hold the government accountable. Some of these groups include the Civil Society Coalition on Oil, Bunyoro Local Oil and Gas Advocacy Group, and African Institute of Energy and Governance. Even the Parliamentary Forum on Gas and Oil, a loose association of Members of Parliament has not been spared by the Government. The members of parliament belonging to the ruling regime who were behind the recall of parliament to discuss the regularisation of the oil sector were recently expelled from

²²⁶ Cfr. Supra footnote 222,(g).

²²⁷ Speech by President Museveni to Parliament of 13th December 2012, Para. 1. Available at <http://www.newvision.co.ug/news/638180-president-museveni-s-speech-to-parliament-in-full.html> (consulted on 24th April 2013).

²²⁸ Idem, pp107-110.

²²⁹ For instance ACODE, one of the NGOs specifically mentioned by President Museveni has been very active in researching on the impacts of oil on the environment and has made several recommendations which are meant for the Government to implement.

the party. Among other reasons cited by the National Resistance Movement, the ruling party was that they did not support the party position on matters of oil. In his speech of 13th December 2012 to parliament, President Museveni accused them of creating a parallel structure in Parliament alongside the Natural Resources Committee of Parliament vested with the authority to discuss and guide Parliament on issues of natural resources. Given these threats and the absence of a neutral body thus far to advise Government and Parliament, the UHRC could invoke the constitutional provision that allows it to establish a continuing programme of research, education and information to enhance human rights. This would not only be a question of fulfilling its mandate, but measuring up to a well-known view that while NHRIs can work with various organisations, they do not represent a specific interest group and therefore are better positioned to provide balanced messages on the promotion and protections of human rights²³⁰. Instead of waiting to deal with human rights violations after they have occurred, the UHRC as an independent and neutral organisation could conduct preliminary research on the extent to which human rights standards have been considered or not ever since exploration work started. This would boost the preparatory legal and regulatory framework at the national level by either strengthening the positive aspects or addressing loopholes before the situation gets out of hand. Most human rights violations tend to result from mishandling of potentially hotspot areas of which the oil and gas industry has already proved to be one not only in Uganda's case but in other countries such as Nigeria, Sudan, Chad and Angola as discussed in chapter one.

In a bid to exercise its function of formulating, implementing and overseeing programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of the rights and obligations as free people, the UHRC could embark on awareness creation programmes to both the duty bearers and the rights holders on their respective obligations, duties and responsibilities. The duty bearers worth targeting could be cabinet ministers and technocrats within the ministries of Finance, Planning and Economic development, the Ministry of Lands, Water and Environment, the Ministry of Justice, Ministry of Energy and Mineral development

²³⁰ UNDP-OHCHR NHRIs Toolkit p34.

and the District Local Governments within the oil producing regions. The rights holders would comprise, consistent with a rights based approach principle of identifying the most vulnerable, the people within the oil rich areas who are likely to be displaced because of construction of the oil refinery and the Bunyoro Kitara Kingdom that considers itself to have been marginalised by the Central Government. It is important to note that by targeting the duty bearers, the UHRC would be equipping them with knowledge, information and skills to enable them to be accountable to the people in the decisions they take regarding the development of the oil sector. On the other hand, by targeting the rights holders, it would empower them with knowledge on their human rights and therefore be able to fight for them. It is only an empowered population that can demand for their rights through a free, meaningful and open process. Moreover, UHRC could take advantage of the human rights based approach guidelines that were developed in conjunction with UNDP, OHCHR and Government to impress it upon the government to adopt a human rights based approach to oil exploration and development.

4.3 The protection role of the UHRC

The protection mandate of the UHRC is equally derived from article 52 of the Constitution of the Republic of Uganda. The UHRC is mandated to investigate at its own initiative or on a complaint made by any person or group of persons against the violation of any human right²³¹, to monitor the governments compliance with international treaty and convention obligations on human rights²³² and to order any legal remedy or redress if satisfied that there has been an infringement of a human right or freedom²³³.

The attack on members of Parliament of the parliamentary oil and gas forum and Advocates Coalition for Development and Environment (ACODE) among other human rights defenders is an early indicator that shows that more human rights defenders could be victims of the same in future. In one of her reports to the Human Rights Council, the UN Special Rapporteur on the situation of human rights defenders decried the

²³¹ Constitution of the Republic of Uganda, Article 52(1) (a).

²³² Idem, Article 52(1) (h).

²³³ Idem, Article 53 (2) (c).

increasing attack on human rights defenders because of their work on the environmental impact of extractive industries²³⁴. The same report highlights the threats towards women human rights defenders who were filming a documentary on the harmful impacts of oil in Nigeria²³⁵. The death of the leader of the Movement for the survival of Ogoni people in Nigeria was a result of his defence for the human rights of the Ogoni people against the negative effects of the oil industry in the Niger Delta. Defending human rights defenders on matters of the human rights implications of the oil and gas industry therefore is one of the critical areas in which the UHRC could pick interest even before full scale oil extraction begins. This is because the work of human rights defenders as already explained indeed began immediately when exploration work started. It is expected to increase with full scale extraction and processing.

While the tensions and suspicions between the government and civil society organisations and indeed any other stakeholders could be partly addressed through direct involvement by carrying out activities such as research by the UHRC as already pointed out, the UHRC could invoke its constitutional powers and mediate between the conflicting parties. This responsibility has also been highlighted by the UN guiding principles on business and human rights under the state-based non judicial grievance mechanism²³⁶. In order to effectively carry out this role, the UHRC might consider strengthening its capacity in the entire complaints handling system to take care of the emerging human rights issues both at the national and community levels. From a proactive point of view, the UHRC could initiate investigations at its own initiative on the allegations that are already being highlighted in the media. What is important to note however is that whereas the exploration of oil is in its infancy stages, its nexus with a wide range of human rights as provided for in the international human rights instruments to which Uganda is a party and the constitution of the Republic of Uganda is beyond question. Therefore, rather than wait for human rights violations to occur, a proactive approach would be better since reactionary approaches, though important as

²³⁴ Report of the Special rapportuer on the situation of human rights defenders A/HRC/1955 Pp123-126. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf (Consulted on 25th April 2013).

²³⁵ Idem, Para.82.

²³⁶ Guiding principles on business business and human rights,P30.

well, tend to offer remedies when violations have already occurred and quite often difficult to completely undo the harm caused in cases such as the right to life, freedom from torture and damage to the environment.

4.4 UHRC's institutional readiness to deal with the human rights issues related with the oil and gas industry.

Whereas the UHRC has a general mandate to deal with the protection of all human rights in Uganda, the nascent oil and gas industry is particularly an emerging one that might require special attention. It is a widely held view that most NHRIs tend to have an inclination on the protection of civil and political rights over economic, social and cultural rights²³⁷. Although exploration and extraction of oil has implications for the full spectrum of human rights as already discussed, it also places economic, social and cultural rights in a special position given issues related to land, property, compensation, labour rights, the environment and generally the entire notion of development as an integral part of human rights. Moreover the indivisibility, interdependence and interrelatedness of human rights is now a matter of international concern.

The human rights guaranteed within the Ugandan constitution are majorly civil and political rights. Economic, social and cultural rights are found in the national objectives and directive principles of state policy. However, as stated in chapter two, Article 8A of the constitution calls upon parliament to enact laws to give effect to the rights recognised in the national objectives and directive principles of state policy. These laws are yet to be enacted by Parliament. However, even in the absence of such laws, for purposes of handling economic, social and cultural rights associated with the oil and gas industry, the UHRC could invoke Article 45 of the Constitution of the Republic of Uganda which states, "The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned". In view of this constitutional provision, other human rights instruments both at regional and

²³⁷ UNDP-OHCHR, NHRIs Tool Kit, p84.

international levels to which Uganda is a state party such as the ICESCR, ICCPR and the ACHPR can be directly applied²³⁸.

Administratively, the UHRC embarked on a regionalisation programme to take services nearer to the people. At present, there are nine regional offices in various parts of the country with the Head Office situated in the capital city in Kampala. It has been a tradition of the Commission to open up new regional offices in areas deemed highly prone to human rights violations and whose people are at higher risk of their rights being violated. It was on this basis that the first regional office was opened in Gulu in northern Uganda to respond to challenges of the Lords Resistance Army that was involved in a civil war with the Uganda Peoples Defence Forces. Similar circumstances were equally considered in opening up of a regional office in Moroto ,Karamoja region to respond to the human rights violations resulting from among others cattle raiding by the Karimojong warriors. In other regions, particular attention was paid to accessibility where people had to trek for several hours to access UHRC services. In the end, some violations would go unreported due to inaccessibility. Given the UHRC's on-going regionalisation programme, it might be prudent to consider establishing a regional office in the oil producing region in Hoima District to be able to easily respond to the human rights concerns of the people in that region in general and those related to the oil industry in particular. The complexity of handling emerging human rights issues from the oil and gas industry might therefore require capacity building for the staff and strengthening the institutional framework to handle a familiar but increasingly challenging role.

The UHRC being a neutral and independent NHRI and in line with its mandate to protect and promote human rights in Uganda could take on a general responsibility charged with NHRIs to advise government, Parliament and all stakeholders on the human rights implications of the oil and gas industry in a deliberate, comprehensive and

²³⁸ The Committee on ESCR held a similar view in its General Comment No.9 on the Domestic application of the ICESCR, see para.4.available at <http://www.unhchr.ch/tbs/doc.nsf/0/4ceb75c5492497d9802566d500516036> (consulted on 20th May 2013)

structured way²³⁹. This would bring to the limelight that human rights should not only be referred to after violations have occurred but rather a cross cutting issue that ought to be deliberately considered in all development planning and programming processes. The Commission may consider developing a human strategy specifically tailored to addressing all human rights issues related to the oil and gas industry. Such a strategy would identify and define the role of all stake holders in the promotion and protection of human rights arising out of the oil and gas ranging from the the relevant ministries responsible for the management of oil production activities, the leadership of the oil companies, security agencies, parliament, civil society organisations and the media, among others. Such an agenda would rhyme well with the requirements of the African Human Rights Strategy for Africa, 2012-2014 that calls for effective participation of citizens in governance and development as a major contribution to the African Governance Architecture whose major goal is to promote and protect democracy, governance and human rights in Africa.²⁴⁰ Moreover, the Human Rights Strategy for Africa requires NHRIs within the member states of the African Union to play an important role in popularisation of human rights norms and mechanisms in addition to monitoring state compliance with regional human rights obligations.²⁴¹ A national human rights strategy for the promotion and protection of human rights associated with the oil and gas industry would therefore serve to clarify on the role of each stake holder in the oil industry which is expected to be operational for at least 30 years. This deliberate process could even entail production of human rights manuals in the areas of training the stakeholders and monitoring their compliance with human rights standards as a preventative measure to avoid risks of human rights violations and a protection tool as well.

²³⁹ UNDP-OHCHR, NHRIs Tool kit,p35.

²⁴⁰ Human Rights Strategy for Africa, p9, para 31, available at, [http://pa.au.int/en/sites/default/files/HRSA-Final-table%20\(EN\)\[3\].pdf](http://pa.au.int/en/sites/default/files/HRSA-Final-table%20(EN)[3].pdf) (Consulted on 20th June 2013)

²⁴¹ Idem, p10, para 38.

5. CONCLUSIONS AND RECOMMENDATIONS

The exploration and extraction of oil has a strong nexus with the protection and promotion of human rights whether civil, political, economic, social or cultural. The current concerns and threats reveal that the risk of the nascent oil industry to degenerate into a curse for the Ugandan people is high. This is reflected in the high levels of secrecy and inadequate access to information which are manifestly unfolding within the scope of early signing of production sharing agreements. As it has been highlighted, allegations of corruption have not spared the very early transactions and even the Parliamentary efforts to establish the truth seem to be falling in a similar trap. The adhoc committee of parliament that had been tasked to produce a report within three months from October 2011 has not yet delivered the much awaited report by the time this thesis was completed.²⁴² The biggest threat to protection of human rights in the oil and gas industry is corruption. This has been the case in Nigeria and if not dealt with decisively at early stages, it is bound to infiltrate Uganda's nascent oil and gas industry.

What is likely to make corruption thrive further is inadequate involvement of the key stakeholders in the participation of decision making processes. The role of the President features a lot in the oil transactions to the extent that one might think there are not state institutions mandated to handle oil activities. Parliament and all stake holders ought to interest themselves on the role of the president in the oil industry such that responsible state institutions do not get weakened and therefore fail to deliver on their mandate. One of the preventive tools to deal with the seemingly over involvement of the President in oil transactions and corruption is not the much recommended anticorruption agencies but rather a strong and vibrant population that demands for transparency and accountability. As seen, the level of participation in the decision making process by both the people and their representatives especially from the oil producing regions has been inadequate and superficial in nature. While there exists a strong human rights legal framework at the international, regional and national levels for peoples' participation, it

²⁴² Imaka, Legislators want 'retreat' to write oil report, available at <http://www.monitor.co.ug/News/National/Legislators-want--retreat--to-write-oil-report/-/688334/1881176/-/7m4lajz/-/index.html> (consulted on 13th June 2013)

appears that the implementation of the same is still very inadequate. While the government seems to be trying to put in place a legal and regulatory framework to enhance transparency and accountability, such efforts may remain on paper if the people are not empowered to hold the government and oil companies accountable. If the government and oil companies do not take preventive measures, it might lead to human rights violations which could otherwise have been avoided.

It can therefore be said that if Uganda is committed to contributing to early poverty reduction and creating lasting value to society through the oil and gas industry, then it should fully comply with its human rights obligations and commitments by applying a human rights based approach to oil exploration and extraction.

Despite the fact that this thesis has dealt with a very new economic activity with all the limitations at hand, it has attempted to address the human rights issues associated with the exploration and extraction of oil. It therefore provides a starting point for further research into different thematic issues in future. What I have done is to kick start the discussion by examining the on -going exploration and preparatory processes as a step towards prevention of human rights violations and minimising reliance on reactionary approaches when little can be done after irreparable harm has been caused. In line with the old adage, it can be concluded that prevention is better than cure. In this regard, the following recommendations to the relevant stakeholders are hereby made:

The Government of Uganda should without delay join the Extractive Industries Transparency Initiative. This will go a long way in dealing with the issue of secrecy and lack of transparency and ultimately accountability.

In view of the threats identified, the Uganda Human Rights Commission should conduct preliminary research aimed at ascertaining what is actually happening in the exploration and extraction of oil. The research findings should be used to facilitate a national dialogue on oil as one way of bringing together all the stake holders and apprise them of their duties and responsibilities as a preventive strategy.

The UHRC should invoke the constitutional powers to introduce a human rights based approach to oil exploration. Within the UHRC, adequate preparations should be made to

build its internal capacity to deal with the human rights implications arising out of oil exploration as a topical issue. In this regard, relevant trainings should be conducted and administrative arrangements to open a regional office within the oil producing region should be given priority.

The UHRC should also prepare a specific human rights manual on oil and human rights to enhance the promotion and protection of human rights associated with the oil industry in Uganda.

Although the UN Guiding Principles on business and human rights recommends processes for assessing human rights impacts to be incorporated within other processes such as risk assessments or environmental and social impact assessments to include all internationally recognised human rights²⁴³, this has not been done so far in Uganda's case. The oil companies should therefore carry out a Human Rights Impact Assessment whose results should guide them in the promotion and protection of human rights throughout the period of exploration and extraction of oil.

The Uganda Human Rights Commission should engage the Human Rights Committee of Parliament to guide Parliament on integrating human rights in subsequent oil related laws but also to review the already passed laws that have been found to be containing inadequate regulatory and protection mechanisms.

In conclusion, exploration and extraction of oil remains one of the huge economic activities undertaken by several governments both in Africa and other places in the world. While it has been a blessing for some countries, it has turned out to be a curse in most African countries. As it has been noted already, oil or natural resources are not the curse per se. It is how the governance processes are handled that determines the outcome. The process should therefore allow for an open, inclusive and transparent approach to be able to forestall any negative consequences associated with the

²⁴³ UN Guiding principles on business and human rights, Principle 18 ,p20.

exploitation of oil. In the words of Rene Cassin, “There is no task more urgent for the safeguarding of human rights than prevention”.²⁴⁴

²⁴⁴At the award ceremony for the Noble Peace Prize, on 11th December 1968 quoted by G. Fellous in the Marangopoulos foundation for human rights, Twenty years of activity, 2001,p245.

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