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*Erasmus*

**LARGE-SCALE LAND TRANSACTIONS IN  
KARAMOJA REGION, UGANDA: A RIGHT  
TO FOOD PERSPECTIVE**

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# Contents

<i>List of Tables</i>	<i>Error! Bookmark not defined.</i>
<i>List of Figures</i>	<i>Error! Bookmark not defined.</i>
<i>List of Maps</i>	<i>v</i>
<i>List of Appendices</i>	<i>Error! Bookmark not defined.</i>
<i>List of Acronyms</i>	<i>vi</i>
<i>Abstract</i>	<i>vi</i>
<b>Chapter 1: Introduction</b>	<b>1</b>
1.0. An Overview of Access to Land and the Right to Food	1
1.1. The Problem	1
1.2. Why it Matters	2
1.3. Objectives of the Study	3
1.4. Research question:	3
1.4.1. Sub-Questions	3
1.5. Site of the Study	3
1.6. Structure of the Paper	4
<b>Chapter 2: Contextualising Large Scale Land Transactions and the Right to Food</b>	<b>5</b>
2.0. Introduction	5
2.1. Background and Demographic Characteristics	5
2.2. Pastoralism and Large-Scale Land Transactions	5
2.3. Conflicts, Disarmament and the Proliferation of Mining Companies	6
2.4. An Exploration of the Legal and Policy Framework	7
2.5. Summary	8
<b>Chapter 3: Research Methodology</b>	<b>9</b>
3.0. Introduction	9
3.1. Research Strategy and Sources of Data	9
3.2. Methods of Data Collection	9
Primary Data	9
Secondary Data	10
3.3. Data Analysis	10
3.4. Scope and Limitations	11
3.5. Research Ethics and Positionality of the Researcher	11
3.6. Summary	11
<b>Chapter 4: Theorising Access to Land and the Right to Food</b>	<b>12</b>
4.0. Introduction	12
4.1. Large Scale Land Transactions	12
4.2. Contested Nature of Land Rights	13
4.3. Normative Content of the Right to Food	15

4.4. Human Rights Based Approaches to Development	17
4.5. Legal Consciousness	19
4.6. Legal Translation in Pluralist Normative Orders	20
4.7. Summary of the Chapter	21
<b>Chapter 5: Empirical Findings on Access to Land and the Right to Food</b>	<b>22</b>
5.0 Introduction	22
5.1. Implications of Lack of Access to Land on the Pastoralist Right to Food	22
5.1.1. Denial of Access to Common Grazing Grounds	22
5.1.2. Reduction in Livestock Numbers	23
5.1.3. Destruction of the Environment	24
5.2. Pastoralists Perceptions of Land Laws	24
5.2.1. Experiences with the Law	24
5.2.1. Knowledge and Perceptions towards the Law	25
5.3. Actors and their Roles in LSLT	26
5.3.1. The Central Government	26
5.3.2. The Mining Companies	26
5.3.3. Civil Society Organisations	27
5.3.4. Karimojong Pastoralists	28
5.4. Summary	29
<b>Chapter 6: Analysing the nexus between Access to Land and the Right to Food</b>	<b>30</b>
6.0. Introduction	30
6.1. Right to Food: Invoking State Obligations	30
6.2. Conflict between Communal and Individual Property Rights	31
6.3. Pastoralist Experiences with the Law: A Split-Consciousness	32
6.4. Processes and Actors: A Human Rights-Based Analysis	33
6.4.0. Applying the HRBA Principles to Large Scale Land Transactions	33
6.4.1. Reference to International Human Rights Norms	33
6.4.2. Transparency and Accountability	34
6.4.3. Participation in Land Transaction Processes	34
6.4.4. Equality and Non-Discrimination	34
6.5. Compromising Relationships between the Actors	35
6.6. Chapter Summary	36
<b>Chapter 7: Concluding Remarks</b>	<b>37</b>
<b>REFERENCES</b>	<b>39</b>

## List of Maps

Map 1.1 Map of Uganda

45

# List of Acronyms

ACHPR:	African Charter on Human and Peoples Rights
CESCR:	Convention on Economic, Social and Cultural rights
CEDAW:	Convention on Elimination of Discrimination Against Women
DRC:	Danish Demining Group
FGD:	Focused Group Discussion
FAO:	Food and Agricultural Organisation
GIZ:	Deutsche Gesellschaft für Internationale Zusammenarbeit
HRBA:	Human Rights Based Approach to Development
HRW:	Human Rights Watch
ICCPR:	International Convention on Civil and Political Rights
IMF:	International Monetary Fund
IRC:	International Rescue Committee
KDF:	Karamoja Development Forum
LEP:	Legal Empowerment for the Poor
MOU:	Memorandum of Understanding
NFA:	National Forestry Authority
NUSAF:	Northern Uganda Social Action Fund
NGO:	Non-Governmental Organisation
OHCHR:	Office of the High Commissioner for Human Rights
LSLT:	Large Scale Land Transactions
UBOS:	Uganda Bureau of Statistics
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
UWA:	Uganda Wildlife Authority
WB:	World Bank

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## **Abstract**

This paper uses the socio-legal approaches of Legal Consciousness, Legal Translation and the Human Rights-Based Approach to development to address the question of access to land and the realisation of the right to food. This is in the context of an indigenous Karimojong pastoral community in Uganda, where large chunks of land have been allocated by the government to mining companies. Accordingly, the influence of international human rights norms on state behaviour at the local level is analysed.

The empirical findings of the study illustrates how lack of access to land has affected the pastoralists' realisation of their right to food, through denial of access to grazing grounds, contamination of water sources and lack of access to wild fruits. This is a consequence of a mismatch between the indigenous pastoralists' conception of property rights; coupled with limited knowledge of the existing laws and procedures, and inadequate monitoring and control mechanism by the state. The none-fulfilment of the right to food is also attributed to limited involvement of the affected communities in the processes of land transactions. The paper argues that whereas the adoption of international human rights standards in relation to property rights and the right to food are necessary for addressing human rights concerns at the local level, the process of framing these norms to suit the local context determines its effectiveness.

## **Relevance to Development Studies**

The link between development and human rights has attracted considerable scholarly attention. This relates to among others, large scale land transactions for various purposes, including mining. One central aspect of this is the role of law, which can be a double-edged sword; as an instrument for emancipation of the poor or as a tool of oppression by the ruling elite (Trubek: 2006:446).

Understanding the link between development and human rights is more relevant for a developing country like Uganda, where due to globalisation and other factors, there is a proliferation of foreign investors, including mining companies, scrambling for land (Ratner 2002:449). In addition, the increasing complicity of multinational corporations in violating the rights of indigenous land owners is a subject that has attracted attention from development actors (Ratner 2002:446). This research is therefore relevant to development studies in the sense that it offers insights on the unique challenges of indigenous pastoralists arising from the dispossession from their lands.

## **Keywords**

Land, Property rights, Right to Food, Pastoralism, Mining, Large-Scale Land Acquisitions, Legal translation, Legal consciousness, Human rights-based approach to development, legal pluralism



# Chapter 1: Introduction

## 1.0. An Overview of Access to Land and the Right to Food

Land is considered a fundamental resource. It is not only a source of food and shelter to many, but also enhances access to other resources like water and wild fruits (Wickeri and Kalhan 2010:1). Consequently, access to land is instrumental to the enjoyment of various human rights (ibid: 1). This is even more true for indigenous peoples who rely on land for subsistence, with limited livelihood options (Edelman 2013:1518). Despite the importance attached to land, debates surrounding the subject have been limited to its economic aspects (Baglioni and Gibbons 2013:1560).

However, the recent surge in large scale land acquisition for various purposes, especially in Sub Saharan Africa, presents a potential threat to rural livelihoods (De Schutter 2011: 249). Large-scale land transactions in Sub-Saharan Africa is attributed to the world food crisis, a consequence of the structural adjustment programmes imposed on developing countries by the International Monetary Fund and the World Bank, leading to liberalisation of the agricultural sector; and the removal of subsidies among others (Golany 2008:5). The increasing phenomenon of large-scale land transactions complicates access to land by indigenous communities. What does this development mean for an indigenous pastoralist community whose major grazing grounds are being given away to mining companies for mineral exploration?

Using the case of the right to food, this paper explores the implications of large-scale land acquisition for mining purposes on the realisation of the right to food in the context of an indigenous pastoralist community of North-Eastern Uganda, the Karimojong. The research adopts a Human Rights-Based Approach to Development (HRBA), Legal Consciousness and Legal Translation as components of a framework to assess the implication of allocating large pieces of land to mining companies, on the pastoralist enjoyment of the right to food. This is based on the experiences of community members with the land acquisition processes and its effects on their livelihoods.

The HRBA to development was chosen as a starting point for this analysis because it offers a holistic assessment of the process as well as the outcome of a development intervention based on international human rights standards as the benchmark (Ako et al 2013:46). Legal consciousness helped to gauge people's knowledge and understanding of the law as well as their experiences with the laws regarding land and the right to food in Uganda (Hertogh 2004:460). The concept of legal translation was used to gain an understanding of whether international human rights norms relating to the right to land and food was adopted to suit the context and peculiarities of the pastoralist community (Merry 2006:38).

### 1.1. The Problem

Land among the indigenous Karimojong community is communally owned with rights vested with entire communities rather than individuals (Muleke et al

2013:4). Most of the land in Karamoja is used for livestock grazing. This livelihood is, however, facing an imminent threat from large-scale land acquisitions for mining purposes. The allocation of large swaths of communal grazing grounds to mining companies, coupled with government policies restricting free movement of pastoralists, leaves limited options for pastoralism (HRW 2014:29).

Some studies have noted that prior to the current land rush for mining purposes, up to 12 per cent of the total land area in Karamoja had already been gazetted as Central Forest Reserves, 21.2 per cent as wildlife reserves and 25 per cent of the land has been allocated to various mining companies (Rugadya 2010:3). Moreover, most of these lands are presumed to be unutilised and idle (Franco et al 2010: 512). In addition, the Ugandan government policies seem to favour foreign investors when it comes to acquiring land for various investment projects such as mineral exploration (Joireman 2007:464). The Karimojong situation is also complicated by a legal framework that vests all rights over minerals with the central government irrespective of the land ownership (Houdet et al 2014:2).

As highlighted above, large-scale land acquisitions have largely been driven by economic reasons and most studies have looked at it in economic terms (Borras et al: 2010:509). By implication, these land deals are seen as avenues for increasing global food and energy production whilst bringing economic development to the indigenous land owners (Borras et al 2010:510). By approaching the problem from a human rights perspective, I link access to land and the right to food, thereby invoking state obligations under international human rights law relating to the right to property and to food (Golay and Biglino 2007:44).

Although this study is within the broad theme of the relationship between human rights and development, a narrow focus on the nexus between access to grazing land and enjoyment of the right to food in the context of a pastoralist community was taken. The link between these two variables of large-scale land acquisition for mining purpose and realisation of the right to food, coupled with the unique status of the Karimojong as a nomadic pastoralist community, reveals key human rights concerns. In using the concept of legal consciousness I examine the knowledge and perceptions of the pastoralist towards the law and their experiences with the law. I complete this analysis with the concept of legal translations; looking at the influence of international human rights norms on state behaviour.

## **1.2. Why it Matters**

The debate on the linkage between human rights and development has been going on in academia and among policy makers for some time. One such area where this is manifested is in relation to large-scale land transactions for investment purposes; an increasing occurrence especially in the global south (Biglino and Golay 2013:1631). Although all this is done in the name of development, its impact on vulnerable people such as pastoralists requires careful scrutiny. As noted by Crawford and Andreassen, “for a long-time, human rights and international development lived in splendid isolation” (Crawford and Andreassen 2015: 662). Although most studies have been done on land

grabbing in Uganda such as by Opiyo (2015), they mostly relate to fertile agricultural land where the rural poor practice crop cultivation, in different contexts, and mostly considered in economic terms.

This study seeks to bring the human rights dimension to the debate by introducing voices of pastoralists as a way of gaining insights into the implications of land acquisition has had on their human right to food. It is hoped that the study will help to illuminate some of the existing human right issues inherent in such development projects, which are often ignored in the interest of economic gains.

### **1.3. Objectives of the Study**

The main objective of this research was to explore the link between large-scale land acquisition for mining purposes and the realization of the right to food for Karimojong pastoralist communities. This was based on the pastoralists' perceptions and experiences with the existing legal and policy frameworks regarding land and the right to food, assessment of the role of all the actors in the land deals and establishing the link between this and the right to food. Taking into account the dual imperative, that research should meet the expected academic outcomes whilst offering new insights on how the problem can be addressed (Jacobsen et al 2003:186), this research seeks to strike a balance between the academic requirements and the policy relevance of access to land and the right to food.

### **1.4. Research question:**

How has Large-Scale Land Acquisition for mining impacted on the ability of indigenous Karimojong pastoralists to realise their right to food?

#### ***1.4.1. Sub-Questions***

- i. How has large-scale land acquisitions affected the pastoralists' realisation of right to food?
- ii. How do the indigenous Karimojong pastoralists experience and perceive human rights in general, and land rights and the right to food in particular?
- iii. To what extent has international human rights norms been applied by the government of Uganda and other actors, in protecting the rights to food and land of indigenous Karimojong communities?

### **1.5. Site of the Study**

This study was conducted in Rupa sub-county, Moroto district in Karamoja, North-Eastern Uganda. Moroto district, with a population of 103, 432 is one of the most food insecure districts in Uganda (UBOS 2016: 52). In a report by

the School of Public Health, Makerere University<sup>1</sup>, 46 per cent of the households in the Seven (7) districts of Karamoja region were reportedly food insecure, with Moroto district the second highest with 54 per cent. On the sources of livelihoods, the report indicates that 68 per cent of the population bought food from the market. Further, the report recommends cattle restocking as a means to addressing the food and nutrition problem in Karamoja (School of Public, Makerere University).

In addition, Moroto district has the highest concentration of mining companies, as compared to other districts in Karamoja region. In Rupa Sub County, there are three active mining companies namely; Dao Marble Limited (DML) a Saudi and Kuwaiti company, Jan Mangal Limited, an Indian company dealing in gold, and African Minerals Limited, also dealing in marble. The activity of Dao Marble limited is estimated to have led to the loss of more than 600 hectares of vegetation within Rata mining site, where the project is located (Houdet et al 2014:48). Consequently, I chose Moroto due to its record as the district with one of the highest rates of food insecurity in the region. Coincidentally, it also has the highest concentration of mining companies.

## **1.6. Structure of the Paper**

This paper is organised into seven chapters. This chapter introduced the research problem, objectives and research questions. In the next chapter I give a contextual background of large-scale land transactions, with a focus on Uganda and Karamoja in particular. Chapter three discusses the methodological approach employed in the study. In chapter four, I present the different theoretical and analytical frameworks used in this study, showing their relevance and application. Chapter five presents the empirical findings based on primary data from field work and a review of secondary sources. In chapter six, I analyse these findings using the theoretical and analytical frameworks mentioned earlier. Finally, chapter seven contains my concluding observations.

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<sup>1</sup> <<https://www.wfp.org/content/uganda-karamoja-food-security-and-nutrition-assessment-july-2016>> accessed on June 20<sup>th</sup>, 2016

# **Chapter 2: Contextualising Large Scale Land Transactions and the Right to Food**

## **2.0. Introduction**

This section describes the context in which the present study was executed. It is divided into five sections. The first section provides the demographic information. This is followed by a description of pastoralism as the main livelihood of the Karimojong, insecurity, disarmament and the advent of mining companies. Lastly, I give an overview of the legal framework governing land and mining.

## **2.1. Background and Demographic Characteristics**

The natives of Karamoja in North-Eastern Uganda, known as the Karimojong, are estimated to be about 1.2 million according to the 2014 Uganda Population and Housing Census, and they occupy a total land area of 10,550 square miles, which is approximately 10 per cent of the total land area of Uganda (UBOS 2016). According to the World Directory of Minorities and Indigenous Peoples and African Commission, the Karimojong and related groups are considered indigenous people (HRW 2014, African Commission 2005: 19).

Karamoja region remains one of the poorest and most remote parts of the country, with most socio-economic indicators falling below the national averages (Houdent et al 2014:21). This is a result of years of marginalisation by the central government, harsh climatic conditions and subsequent droughts and crop failure (UBOS 2016). For instance, up to 82 per cent of the population survive on less than one dollar a day, compared to the national average of 31 per cent (HRW 2014:32). For a long time, the region and its people had minimal contact with the central government (Knighton 2009: 10).

To appreciate the dynamics of present day land issues in Karamoja, it is imperative to situate it in a historical context (Edelman et al 2013:1521). Colonial policy in Uganda deliberately excluded the Karimojong from the mainstream development programmes (Knighton 2009:17). The same exclusionary policies were carried on by the post-colonial Government policies that were negatively predisposed towards the pastoralist lifestyles of the Karimojong, terming it as backward and primitive (ibid). Consequently, programmes initiated by the government aimed to discourage this lifestyle and make the pastoralists adopt crop cultivation (Houdet et al 2014:23). The marginalization by the central government, coupled with the harsh climatic conditions, has often led to famine after years of persistent crop failure. In 2009 for example, it was estimated that 970,000 people required food aid to survive (HRW 2014:32).

## **2.2. Pastoralism and Large-Scale Land Transactions**

Pastoralism as an economic system is estimated to be practiced in more than 100 countries worldwide, Uganda inclusive, with between 100 to 200 million people involved (IUCN 2011: vii). In Uganda, the Karimojong are one of the

leading pastoralists' communities. The livelihood of the Karimojong is centred on live-stock, in addition to small-scale crop cultivation in the green belts (HRW 2014:25). A 2008 report by the Uganda National Bureau of Statistics (UBOS), and the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF), estimates that Karamoja region alone has 1.3 million cattle, constituting 19.8 per cent of the overall national total. The same report puts the number of goats in the region at 2,025,300, which is 16.3 per cent out of the national total of 12,449,670. Additionally, it has the highest number of sheep in the country with a total of 1,685,500 (49.4 per cent) out of a national total of 3,410,370 (UBOS 2008:11).

The Karimojong homesteads, commonly known as *Manyattas*<sup>2</sup> are permanent settlements, with mobile kraals in search of pasture (HRW 2014:28). As Human Rights Watch observed, "the people of Karamoja regard themselves as cattle keepers. Livestock is essential to both cultural identity and livelihoods" (HRW 2014:29). The livestock economy was until recently, managed and controlled by the traditional elders, whose role has been noted as critical in sustaining this lifestyle (HRW 2014:30). Although the post-colonial government policies seem not to support pastoralism, the harsh climatic conditions, that is unfavourable for crop cultivation still makes pastoralism the only viable source of livelihood for the Karimojong (HRW 2014:29). Linking this with land, it's clear that sustaining a pastoralist lifestyle requires large open grazing grounds, with limited restrictions on access. The availability of vast swaths of untitled communal land in Karamoja thus, favours cattle grazing (Knighton 2009:2).

Government Policy has however, focused on restricting pastoralists' movements within and across borders (HRW 2014:29). Pastoralism is thus facing a threat from government policies favouring sedentary lifestyles and the increasing pressure on land (IUCN 2011:8). It has also been noted that formal law does not consider the complexities inherent in pastoral land rights (IUCN 2011:5). The increasing unfavourable environment for the practice of pastoralism is a result of deliberate government policy, and industrial large scale land acquisitions (Hinton 2011:6). By pushing for sedenterisation of Karimojong lifestyle, the policy makers ignore the rationale and potentials of pastoralism (Hinton et al 2011:47). Kratli has postulated that "...it is necessary to understand the pastoralist production system as working model rather than as a system to be replaced" (Kratli 2010:4).

### **2.3. Conflicts, Disarmament and the Proliferation of Mining Companies**

Over the years, competition over pasture and water for livestock became a source of conflict and insecurity between the Karimojong and their neighbours, as well as, among the different ethnic groups within Karamoja. This was compounded by the acquisitions of small arms and light weapons by the Karimojong pastoralist (HRW 2014: 35). Following years of insecurity, the government of Uganda successfully carried out a disarmament exercise, beginning

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<sup>2</sup> These are homesteads made of grass-thatched huts, belonging to one extended family

in the year 2001, to rid the locals of illegal guns (HRW 2014:36). While disarmament has brought relative peace in the region, it has created a favourable environment for the proliferation of mining companies intent on exploring the vast mineral potential that could not be explored initially due to the insecurity (HRW 2014:36). Approximately 13 per cent of the total land area in Karamoja is under mineral exploration (Hinton 2011:5). It is estimated that more than 50 different types of minerals exist in the region and by 2014; about 20 foreign mining firms had been given exploration licences or full mining licenses to operate in the region (Houdet et al 2014:1).

## **2.4. An Exploration of the Legal and Policy Framework**

The legal framework relevant to this study includes the Constitution of the Republic of Uganda, 1995, the Land Act 2002 and the Mining Act 2003. The Constitution of the Republic of Uganda, in article 237 vests land ownership in the citizens of Uganda where it states: “Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution” (GOU 1995). Sub Article 3 recognises four different forms of land tenure systems, namely; customary, leasehold, free hold and Mailo land tenures (GoU 1995). Article 26 recognises the right to own property. The same article protects against compulsory deprivation of property; except when it is required for public use or in the interest of defence and natural security. In both cases, adequate compensation before the compulsory acquisition of property is a prerequisite (GoU, 1995). Other associated rights protected under the constitution include the right to a clean and healthy environment (article 39), and the right to access information (article 41) (GoU 1995). General objectives and directive principles of state policy, under objective number 14 also covers some aspects related to the right to food. Article 40 of the constitution has been interpreted to refer to the right to food though it does not explicitly point it out (Tumushabe 2007:19).

Meanwhile, the Land Act 2002 under Sections 15 and 22 provides mechanism through which ownership of customary land can be formalised by issuing certificates of customary ownership and formation of communal land associations to manage land under the customary systems (Gou 2002). Section 70 confers upon government rights over the waters and springs (GoU 1995). Consequently, the Mining Act 2003, under section 3 gives the Ugandan government powers over all the minerals in the country (GoU 2003). This law provides that any mineral right given to an entity must specify the type of mineral, the duration within which such a license is valid and the amount of land required for that activity (GOU 2003). Moreover, Section 20 of the Mining Act gives powers to the commissioner of geological surveys and mines to issue license in respect to mineral exploration. Under Section 14, the commissioner has express right of entry to any land where mineral exploration is taking place for purposes of inspections. The mining act further gives the rights of access to the land owners to the mining sites. It states:

The owner or lawful occupier of any land within an area which is the subject of a mineral right shall retain the right to graze stock upon or cultivate the surface of such land, so far as the grazing or cultivation does not interfere with the proper working such area for prospecting, exploration or mining

purposes and in so far as the grazing or cultivation does not constitute a danger or hazard to the livestock or crops (Section 80 [1] of the Mining Act, 2003).

However, the Mining Act does not offer protection to such land owners in case of loss arising from their grazing of animals within the mining area (Section 80 [2] of the Mining Act, 2003). Sections 81 and 82 and 83 have provisions for rent or lease of such lands by the owners to the mining companies. Sections 86 and 87 protect the rights of the land owners to water sources (Mining Act, 2003).

In terms of policy, the objective of land reforms in Uganda is to facilitate economic development through the formalisation of land tenure systems, protection of vulnerable people, access to land and uniformity in land tenure systems (Joireman 2007:473). The creation of individual property rights is therefore intended to facilitate this interest (Knighton 2006:2). However, the above notwithstanding, rural communal land owners still remain vulnerable since the weak status of landownership 'opens opportunities for the state, settlers, or capitalists to seize it' (Howard-Hassman 2013:187).

## **2.5. Summary**

This chapter described historical, economic, social and legal context within which this research was conducted. Having considered the background to large scale land transactions, I describe the methodological approach used in this study in the next chapter.



## **Chapter 3: Research Methodology**

### **3.0. Introduction**

In the previous chapter, I discussed the context of this study. In this chapter I will present the methodological approach that I adopted for the study. These include the research strategy, methods of data collection and analysis, scope and limitations of the research, ethical considerations and my own positionality.

### **3.1. Research Strategy and Sources of Data**

This research is largely qualitative in nature. I use the HRBA and the socio-legal approaches of Legal Consciousness and Legal Translation as the frameworks for analysis. In assessing the implications of the large-scale land acquisitions on the right to food, I relied on the international human right norms relating to the right to food, largely drawn from the International Covenant on Economic, Social and Cultural Rights (CESCR), as the benchmark. The HRBA was adopted to analyse the process of land acquisition and the actions of states and other stakeholders in respect to the right to food. In so doing, I relied on the HRBA principles of participation, accountability, equality and non-discrimination; amongst others. This approach was also useful in mapping out the key actors and their roles in the land deals.

The concept of legal consciousness as used here evaluates the pastoralists' understanding and perceptions of the right to land, the right to food and the linkages between the two. Further to, I used legal translation to assess the existing legal framework regarding land and the right to food in Uganda; evaluate considering how it has been influenced by international human rights norms. In particular, I considered whether the framing of such legal norms relating to the right to food and land are sensitive to the unique needs of a pastoralist community, whose land is owned communally and who survive on animal products.

### **3.2. Methods of Data Collection**

#### ***Primary Data***

Field research was conducted in Rupa Sub-county in Moroto district, Uganda during the month of July 2016. The methods of data collection were Focused Group Discussions (FGDs) and in-depth qualitative interviews with key informants. Guiding questions were generated from the three research questions to facilitate the interviews and the FGDs.

I travelled to Uganda during the first week of July 2016 and proceeded to Moroto district where I first met the district local government officials. Thereafter, I proceeded to the Rupa Sub County headquarters where I introduced myself and explained the purpose of my study. The sub county chief identified contact persons in the villages where data collection was done. Four (04) FGDs were conducted in Nakabath, Nakiloro and Rata villages. FGDs “involve interviewing more than one person at a time... (O’Leary 2004: 165). The

interviewer plays the role of facilitating the group to discuss the questions relevant to the interview (ibid). Consequently, a total of 32 pastoralists participated in the FGDs. 14 of the participants were male, while 18 were female. Participation in the FGD was based on random selection of the participants from the three villages. The FGDs were held in Ngakarimojong<sup>3</sup>. Since I am not fully fluent in Ngakarimojong language, I employed the services of a young university graduate to translate.

In addition to the FGDs, I conducted five (05) key informant interviews with participants drawn from the District Local Government, Civil Society Organisations and other local leaders. An in-depth interview is “a qualitative research technique that involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea...” (Boyce 2006:3). Zina O’Leary further defines an interview as “a method of data collection that involves researchers asking respondents open ended questions” (2004:162). Out of the five key informants, 01 was female while the rest were male. All the key informant interviews were conducted in English.

I made attempts to obtain interviews with representatives of two mining companies operating in Rupa Sub County, but these were not successful. The manager of DAO promised to schedule an interview but after following it up with him several times, he couldn’t find a suitable time, claiming to be busy. During a visit to Jan Mangal mining site in Nakabath, I found that the company closed its operations a year ago, and the soldiers manning the equipment at the site had no idea when the operations would resume. I went ahead to search for the websites of the two companies, but did not find the one of Jan Mangal. DAO’s website<sup>4</sup> had very limited information regarding their mining activities. It seems the website is only targeted at marketing their products.

### ***Secondary Data***

I also reviewed secondary data that was relevant to my study. Specifically, I considered the legal and policy framework regarding land in Uganda. In particular, I focused on constitution, the land Act, the mining act and other relevant legislations; official government reports and independent research reports. Furthermore, I considered empirical studies conducted in the same or similar context with my study. Some of the reports I reviewed were by Human Rights Watch (HRW), Ecological Christian organisation (ECO), and International Union for the conservation of Nature (IUCN).

### **3.3. Data Analysis**

The data obtained from the field was first recorded in a note book and later transcribed. The analysis was done by grouping the responses into themes that were in line with the research objectives and the three research questions.

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<sup>3</sup> Ngakarimojong is the local dialect widely spoken in Karamoja.

<sup>4</sup> <<http://www.daomarbles.com/>> accessed on October 29th, 2016

### **3.4. Scope and Limitations**

Although large scale land acquisitions have implications on other human rights, this study focused only on the right to food. This is because while deprivation of land is a threat to many human rights including the right to property and to cultural heritage; the right to food is the most directly threatened by large scale land acquisitions (Golay and Biglino 2013:1630). This is more so in rural settings like Karamoja, where people rely on land for subsistence.

Secondly, I did not disaggregate the findings in respect to the various groups, such as women, men, children or any other category. This was based on my assumption that the research population was all affected in the same way by denial of access to land. I particularly considered access to land and the right to food at household level and not at an individual level. There was thus, no control group to attribute the problem to the variables that are the focus of this study. As noted by Jacobsen, it is possible that there could be some other extraneous variables at play (Jacobsen et al 2003:194).

In terms of the geographical scope, the study was limited to Rupa Sub County in Moroto districts.

### **3.5. Research Ethics and Positionality of the Researcher**

Land being a very sensitive matter, it is sometimes difficult and even risky to access information from the companies and district local government authorities. In this regard, I was able to use my previous contacts while working in Karamoja region as a human rights investigator with the national Human Rights Commission of Uganda, as an entry point to the local government authorities.

However, while my increased access to the community was useful in obtaining interviews, I also took into consideration the potential risks of bias and being misunderstood. I was able to forestall any complications arising from this by articulating the objectives of the research, stating that this was purely for academic purposes and was not connected to my previous work or that of any other organisation. I also used the local leaders at the sub county. Rupa sub county authorities were very receptive and also gave me an introduction letter to use while approaching the communities and the mining sites.

### **3.6. Summary**

This section presented the methodological approach adopted in this study, the methods of data collection and analysis, limitations and ethical considerations encountered during the field research and how they were addressed. I also indicted how the data attained from the field was analysed. Having explained the research approach, I now turn to discuss the theoretical and analytical frameworks used in this study in the next chapter.

# Chapter 4: Theorising Access to Land and the Right to Food

## 4.0. Introduction

This section is divided into six sub-sections with the first three dedicated to discussions on the contemporary debates on large-scale land transactions, right to land and the right to food in that order. These will be followed by discussions on the three analytical frameworks that are adopted in the study namely; HRBA, legal consciousness and legal translation in the same order. The chapter concludes with a summary of the three approaches and the relationships between them, as used in the study.

## 4.1. Large Scale Land Transactions

Large-Scale Land Transactions, otherwise also referred to as land grabbing or large scale land acquisitions has been defined in many ways. However, for the purpose of this paper, I will adopt the definition by Golay and Biglio which considers it as “widespread, rapid increase of commercial land transactions that involve the acquisition or long-term lease of large areas of land by investors, particularly when these are disproportionate to the average size of other land holdings in the area under scrutiny” (2013:1630).

The world has witnessed a surge in large-scale land transactions in the recent past. (Makki and Geisler 2011:1). The World Bank estimates that large-scale land acquisition increased tenfold since the 2007 food and oil crisis (Wily 2011:735). This is attributed to many factors such as the rise in global capitalism (Baglioni and Gibbons 2013:1561, Zoomers 2010:432). Whereas this is a general trend world over, its impact has been felt more in Sub-Saharan Africa (Wily 2011:737). The upsurge in large scale land acquisitions has also been linked to the neoliberal policies of international financial institutions, notably, the International Monetary Fund (IMF) and the World Bank (Joireman 2007:463). It is also associated with Marx’s concept of ‘primitive accumulation’ (Hall 2013:1583). Accordingly, land is viewed as a commercial property subject to the market forces of demand and supply (Knighton 2009:1).

Inherent in these land deals, is the role of the state in the developing countries. Wily points that “while foreign enterprise becomes the proxy for discontent, the issue is more fundamentally between people and the state, albeit made opaque by steadily emergent aligned rural class formation in which majority rural poor are characteristically the main losers...” (Wily 2011: 572). Moreover, in many developing countries, states, in their effort to attract foreign investments tend to favour foreign companies at the expense of the local land owners (Ratner 2001:462). With the state playing the role of a middleman, the deals take advantage of the weak security of tenure, especially in the rural areas (Wolford et al 2013:190). Moreover, with globalisation, it is increasingly becoming difficult for most states to exert control over multinational companies (Ratner 2001:460). Through their alliance with the state, multinational corporations become complicit in human rights violations (Kobrin 2009: 351).

One school of thought that justifies large scale-land acquisitions postulate that the lands involved are free and idle (Baglioni and Gibbon 2013: 1561). The land deals are marketed as an opportunity to open up idle rural lands for investment with a promise of modernising (Baglioni and Gibbons 2013:1558), and as a necessity for development (Borras and Franco 2013:1723). According to this perspective, land acquisition guarantees continuous food supplies by utilizing idle land (McMichael 2014:37). The assumption implicit in this reasoning is that by putting these seemingly idle land into large scale production activities, the benefits will trickle down to the local communities. Although in principle, this appears convincing, the peculiar context of certain marginalised groups, such as pastoralist, who in addition to owning land communally requires open boundaries, may be negatively affected (Borras et al 2015:601).

However, opposition to large scale land transactions has been premised on the belief that it dispossesses marginalised groups, posing a threat to their subsistence (Cotula and Leonard 2010:1). In particular, a pertinent question about who benefits from such deals in reality has been posed (De Schutter, in McMichael 2014: 37). In addition, since most large scale transactions, especially those intended for agricultural production, targets increased food production for exports, its argued that such deals alienates the poor from land and mainstream economy instead of improving their livelihoods (De Schutter 2010: 249, Wisborg 2013:1203).

There is also divergence of opinion on the responses to the global land grab. While international financial institutions like the World Bank propose a code of conduct to guide land deals (Borras and Franco 2010:508), McMichael suggests that processes of food production and environmental conservation should be controlled by local land owners (2014:35). Wisborg on the other hand, advocates for a human rights approach to land grabbing (2013:1201). He argues that guaranteeing the procedural rights such as equality and non-discrimination and access to justice, can curtail negative effects of large scale-land transactions (Wisborg 2013:1203).

In light of the above debates, I find the argument that the lands subject to these transactions are idle and unutilised not convincing. As pointed out in earlier sections of this study, for certain groups like pastoralists, land ownership is communal and their lifestyle requires open boundaries. This does not necessarily mean the land is idle. It is therefore, difficult to believe that such deals would lead to social transformation for marginalised groups. Regarding the responses to the Large-scale land transactions, I am in agreement with the propositions by Wisborg to approach this from a rights based perspective. This is in spite of the weaknesses inherent in this approach, in as far as implementation is concerned (Wisborg 2013:1201). Land transactions must be based on human rights principles (Golay and Biglino 2013:1636). But first, I want to turn to the debates regarding the human right to land. I will return to this later in this chapter.

## **4.2. Contested Nature of Land Rights**

Debates on land rights have centred on whether it is a human right or legal right. The Commission on Legal Empowerment for the Poor for example advances the theory of land as a legal right, with emphasis on securing individual

rights through titling (2008:69). It highlights four building blocks as prerequisites for secure property rights namely; system of rights with specific obligations, governance structures, free and functioning market and an instrument of social policy (LEP 2008:66). According to this perspective, a legal right to land safeguards peasants' security of tenure, hence, leading to empowerment (Deininger et al 2008:593). As Howard-Hassman observed;

...if a peasant's land is securely his own, he can feed himself and his family in normal time, only relying on the state or other agencies in emergencies. If his property rights are not secure, his land can be forcibly seized by the state or by local elites... (Howard-Hassman 2013:188).

In addition, security of tenure is seen as a means of enhancing access to credit by the poor, which in the long run promotes their economic development (Goldstein 2008:3).

This perspective has however been challenged. Musembi for example asserts that this would only benefit local elites to the detriment of indigenous peoples, whose land is communally owned, who will end up being alienated from their land (2007: 1457). While acknowledging the importance of individual property rights, Howard-Hassan cautions against consideration of land only as a legal right, as it entrenches inequality between the rich and the poor by protecting those who already have property, as opposed to helping those people who have no access to land (2013:186).

This brings us to the second perspective that advocates for the consideration of access to land as a fundamental human right. Whereas there is no recognizable right to land under international law, it can still be derived from the right to property, and instrumentally; from its links to the right to food (De Schutter 2010:306). By implication, this means land possesses a dual nature of rights, which is both strategic and intrinsic. Howard Hassman explains that strategic human rights are those rights considered necessary for the realisation of other rights, while intrinsic rights are those not linked to enjoyment of other rights (2013: 181). The right to land is therefore, seen as strategically linked to the realisation of the right to food and intrinsically, as a component of property rights (De Schutter 2010:304).

Taking the intrinsic nature of the human right to land, I now turn to consider its framing in international human rights instruments. My starting point is the Universal Declaration of Human Rights (UDHR). Article 17 of the UDHR provides for everyone's right to own property either alone or in association with others (Van Banning 2004:2). However, the two subsequent international human rights instruments, namely the International Covenant on Civil and Political Rights (ICCPR) ratified by Uganda in 1995, and the International Covenant on Economic and Social and Cultural Rights (ICESCR), ratified by Uganda in 1987 do not have provisions relating to the right to property (Van Banning et al 2004). At the African regional level, Article 14 of the African Charter on Human and People's Rights, which Uganda ratified in 1986, provides for the right to property that can only be abrogated subject to the conditions in the charter. Specifically, the ACHPR provides that indigenous peoples have rights to:

Own, use, develop and control the lands, ... and resources that they possess by reason of traditional ownership or other traditional occupation or use, as

well as those which they have acquired (ACHPR art: 26, in Van Banning et al 2004).

The glaring omission of property rights in the ICCPR and ICESCR has been attributed to the negative association of property rights with individual property rights of the rich (Howard-Hassman 2013:182). Considering the weak status of property rights under international law, Howard-Hassman proposes a separate international human rights convention for the protection of property rights, including land (2013:181).

From a strategic level, land has been linked to people's ability to provide their basic necessities such as food and by extension, their livelihoods and other social benefits, as is the case with indigenous peoples (Howard-Hassman 2013:189). Securing property rights is thus, important for poverty alleviation (LEP 2008:64). Writing in the context of the famine in Zimbabwe in the aftermath of the expropriation of farms from white farmers, Howard-Hassmann further equates the effects of large-scale land acquisitions to crimes against humanity, when it lead to starvation (2013:194), adding that "the state must protect ownership of property, even if it does not fulfil a right to have property" (2013:192). It can thus, be argued that the human right to food can by extension be interpreted to mean the right to land (Wisborg 2013:1202).

Considering the implications of these theoretical distinctions on their realisation of the right to food, this study takes the perspective of land as a human right, taking into account both the intrinsic and instrumental nature. This is because a human rights approach to land considers the human rights principles and procedural safeguards, in relation to land acquisitions (Golay and Biglino 2013:1631). Guaranteeing access to land is thus instrumental to the realisation of the right to food through the interrelatedness of rights (Golay and Biglino 2013:1636), as will be discussed in the next section.

### 4.3. Normative Content of the Right to Food

Debates on the right to food have considered it from two perspectives namely; as an international human right norm and as a moral obligation (Dreze 2004:1723). It has also been claimed that right to food has attained the status of customary international law (Tumushabe 2007:12). I begin by discussing the right to food as an international human rights norm. I have adopted the definition provided under Article 11.1 of the CESC<sup>5</sup> that considers the right to food as "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (CESCR). The expression "adequate food" is considered a relative standard while "freedom from hunger" is seen as absolute (Narula 2005:707, Niada 2006:151). Furthermore, Article 11.2 establishes 'the fundamental freedom from hunger and malnutrition' (CESCR). This is further elaborated in General Comment 12 by the CESCR:

'The right to adequate food is realised when every man, woman and child, alone or in community with others, have physical and economic access at all

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<sup>5</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> accessed on 9<sup>th</sup> November 2016.

times to adequate food or the means of its procurement' (Comment 12, Para 6).

This gives a broader and comprehensive interpretation of the right to food. The Committee on ESCR has broken down the definition of the right to food into components such as adequacy, sustainability, availability and access. Adequacy relates to the appropriateness of the food; sustainability is related to food security while availability is about people's ability to either feed themselves from their land or natural resources or through the market (Comment 12). Accessibly refers to both physical and economic access, while economic access is about the ability to purchase from the market for all, including vulnerable people's access to food (Mechlem 2004:639).

In terms of obligations, the CDESCR general provision under Article 2 requires that 'the state takes steps to achieve progressively the full realisation of the right to adequate food' (General Comment 2<sup>6</sup>). Specifically, the state has to respect the right to food by ensuring existing access, to protect by controlling the actions of third parties that may interfere with people's access to food and to fulfil the right by providing food where individuals are not able to access food due to factors beyond their control (Mechlem 2004:639). The obligation to fulfil the right to food is of an immediate nature, not subject to progressive realisation (Mechlem 2004:640).

Even though recent developments have seen these obligations extended to non-state actors, states have historically been the primary duty bearers (Hamm 2001:1016). There is however, a growing consensus that non-state actors can also be held culpable as duty bearers (Dreze 2004: 1726). Paragraph 27 of General Comment 3 states "as part of the obligation to protect people's resource-base for food, states parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food" (Comment 12).

Relating this to the context of this study, these general provisions regarding the right to food imply that large scale land acquisitions should not inhibit peoples enjoyment of the right to food (Golay and Biglino 2013:1633). There is therefore, an important linkage between the right to food and access to such natural resources as land. A human right to food calls for enhancing access to such means of producing food as land and other natural resources (Golay and Biglino 2013:1633). Similarly, the right to food is linked to human dignity and to other related human rights such as the right to life (Dreze 2004: 1727). In this regard, access to land has been emphasised as an important means to the realisation of the right to food, since hunger is seen as an outcome of deprivation over resources required to produce food (Golay and Biglino 2013: 1634, Narula 2005:722).

As pointed out earlier, the right to food is also linked to the concepts of food sovereignty and food security. A key question in this linkage is whether

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[http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo3ThenatureofStatesParties'obligations\(article2,para1\)\(1990\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo3ThenatureofStatesParties'obligations(article2,para1)(1990).aspx) accessed on 9<sup>th</sup> November 2016



food security leads to the realisation of the right to food or vice versa (Mechlem 2004:633). Food security refers to “a situation that exist when all people, at all times have physical, social and economic access to sufficient, safe and nutritious food that meets the dietary needs and food preferences for an active and healthy life (UN-FAO, cited in Patel 2009:665). Components of food security include “availability of staple foods, stability of supplies and access to supplies (Mechlem 2004:636). Conversely, food sovereignty has been defined as the ability of people to control the means and systems of production, marketing and other food related policies (Patel 2009:663). Food sovereignty is concerned with ‘the right of people to healthy and culturally appropriate food produced through ecologically sound and sustainable systems’ (Shattuck et al 2015:422).

Although these theoretical conceptions have the same objective of ensuring availability, acceptability and safety of food (Mechlem 2004:643), this study takes the perspective of the right to food as an international human right. This is because, while food security and food sovereignty are necessary conditions for the realisation of the right to food, the human right to food offers more in terms of the legal obligations it imposes on states and non-state actors. Moreover, food security and food sovereignty are based on a moral obligations, and are articulated in non-binding policy declarations, yet the right to food is anchored on binding international human rights instruments (Mechlem 2004:643). Thus, while food security remains a matter of policy aspirations that are subject to change, the right to food is a legal obligation with accountability measures (Mechlem 2004:643). Taking food as a human right places the processes and policies relating to food through the lens of international human rights norms, with emphasis on rights-based principles such as equality and non-discrimination (Van Esterik 1999:225), which I discuss further in the next section.

#### **4.4. Human Rights Based Approaches to Development**

To broaden understanding of the implications of large scale land acquisition on the right to food, a holistic approach like the HRBA is required (Zoomers 2010:432). Suffice to note; there is no common rights-based approach but rather, a broader umbrella concept with a set of standards (Miller 2016: 6). The HRBA has been defined as “principles that justify demands against privileged actors, made by the poor or those speaking on their behalf for using national and international resources and rules to protect the crucial human interest of the globally disadvantaged” (Gauri et al (2012:3). Unlike needs whose realisation is a matter of charity, the realisation of human rights is both a moral and legal of obligation, drawn from various international human rights instruments (Cornwall et al 2004:1417, Rand 2007:4). In using the HRBA therefore, the ultimate goal of development is the fulfilment of human rights (Gauri et al 2012:4). By implication, all processes and outcomes must adhere to international human rights standards of accountability, empowerment, equality and non-discrimination amongst others (Hamm 2001:1011).

At the centre of the HRBA, is the link between development and human rights (Hamm 2001:1005). The adoption of the HRBA aims to ensure that

economic growth leads to the realisation of human rights (Osmani 2005:118). As noted by Ako and others, the HRBA is the point of convergence between development interventions and the struggles for the realisation of human rights (2013:48). Miller also suggests that that rights-based approach is the medium through which human rights is introduced into the development agenda (2016:5).

In light of these linkages, proponents of the HRBA have pointed out its potentials for development. Cornwall and Musembi for example argue that by making reference to international law, with obligations on the state, HRBA empowers citizens to claim for rights (2004:1416). Peter Uvin considers the empowerment of the rights holder as one of the key strengths (2007:602). While Osmani refers to the invocation of international human rights norms as an added value (2005:121). Gauri and his co-authors draw on the intrinsic and the instrumental values inherent in the adoption of the HRBA. The intrinsic value, they explain, refers to the moral obligation that the HRBA enlists on the side of the duty bearers to promote rights while the instrumental value arises from the empowering aspect of the HRBA on the side of the rights claimants (2012:2). Relating to the right to food, the HRBA has also been proposed as an appropriate response to large-scale land acquisition, in light of the relationship between access to land and the right to food (Borras et al 2010: 522).

The above positive attributes notwithstanding, there are doubts regarding the success of the HRBA as a development approach. Ako et al for example point out that the HRBA principles like participation and accountable are already embedded in other development approaches (2013: 49). The other concern regards the complexity arising from the plurality of legal norms and systems that define rights, coupled with limited access to legal institutions and mechanism for redress by the poor (Cornwall and Musembi 2004:1418). The HRBA is also said to assume that rights can only be claimed within a legal system and thus, ignores the political nature of rights, that goes beyond legal structures and norms (Cornwall and Musembi 2004:1418).

Regardless of the above critiques, the strength of the HRBA is its reference to international human rights standards and norms (Uvin 2007:598). In relation to the right to food for example, the HRBA makes it obligatory for duty bearers to fulfil their responsibilities, as compared to food security approaches (Tumushabe 2007:15). As Cornwall and Musembi assert "...monitoring and accountability procedures must not only extend to states but also to the global actors such as donor community, intergovernmental organisations, international NGOs and Transnational corporations" (2004:1418).

My choice of the human rights HRBA is premised on the non-transactional nature of rights, where rights holders have inherent rights that should not be traded off in land transactions (Golay and Biglino 2013:1631). As suggested by Golay and Biglino, the procedural requirements regarding negotiations leading to land acquisitions should be taken into account (2013:1636). In addition, the use international human rights norms as a benchmark give an added impetus for HRBA in assessing the link between large-scale land transactions and the right to food. This requires assessing how international norms works are experienced in the local contexts, as I will discuss in the last two sections of this chapter.

## 4.5. Legal Consciousness

As one of the approaches in socio-legal studies, legal consciousness refers to “all the ideas about the nature function and operation of the law held by anyone in society at a given time” (Hertogh 2004: 460). Nielsen defines it as peoples’ conceptions of the workings of the law and how it influences their daily lives (2000:1059).

The concept rose to prominent in the 80s and 90s as part of the law and society studies (Silbey 2005:324). It traces its origin to the American scholar Roscoe Pound and has focused on “individual experiences with the law and legal norms, decisions and legal compliance...” (Hertogh 2004:457). The underlying assumption in the study of legal consciousness is that people’s expectations of the law and their experiences of the law shape their attitude towards the law (Hertogh 2004:458, Nielsen 2000:1056). Perceptions on what the law is and what it should be, depends on whether one is looking at it from the perspective of the people charged with the responsibility of administering it, or from the general public whose expectations of the law is that it should serve their interest (Hertogh 2004:458).

There are two dominant perspectives on legal consciousness; namely the American and European conceptions. The American conception, that focuses on people’s perception of the law is contrasted with the European conception of legal consciousness; popularised by Eugen Ehrlich, which is about what people think the law is (Hertogh 2004: 459). Therefore, while the American conception is about experiences with the written law, the European conception does not impose a definition of law on the subjects of research but seeks to understand it from their point of view (Hertogh 2004: 459). Legal consciousness thus, has more to do with the attitude that people hold towards the law, which in a way has a bearing on the legitimacy of a given law (Hertogh 2004:464). This implies that there is no common or uniform legal consciousness across social and racial groups (Nielsen 2000:1055). Status influences attitude towards the law (Nielsen 2000:1061). Further, the way the law is understood among ordinary citizens influences their daily lives (Nielsen 2000:1059). It has also been argued that the study of legal consciousness is consistent with the Neo-Marxist conception of law as an instrument to rationalise the actions of the ruling class (Merry 1986:254). Moreover, it could also be taken as a function of legal culture (Cowan 2004:932).

Past studies of legal consciousness have also centred on the centrality of the law, ignoring other social variables (Cowan 2004:930). Nielsen for example used it to study offensive public speech in the US (Nielsen 2000: 1060). Although legal consciousness was previously based on the presumption that legal knowledge can be measured and that it is possible to predict peoples actions in relation to the law, recent developments in the field have expanded the scope of its studies to include the overall perception of the law that people have, that transcends what is in the law books (Hertogh 2004:461). It can thus, be viewed as an extension of debates on the “instrumentalist view of the law as opposed to the indeterminate character of the law” (Hertogh 2004:465, Nielsen 2000:1058).

For this study, I seek to extend its application to the link between access to land and the realisation of the right to food. As discussed, Legal conscious-

ness takes into account the views of those below (Hertogh 2012:224). By exploring the legal consciousness “organically” from the participants understanding and not from the researcher’s perspective (Nielsen 2000:1060), I sought to gauge the experiences of the pastoralist based on their personal attachment to land. In addition, since access to land is to some extent determined by social class, this framework is suited to assess how perceptions about the law varies across social classes. Legal consciousness is related to the concept of legal translation, which I discuss in the next section.

#### **4.6. Legal Translation in Pluralist Normative Orders**

Before delving into a discussion on what legal translation is, I want to first expound on the concept of legal pluralism (Merry 1988:889). Legal pluralism is defined as “a situation in which two or more legal systems coexist in a social field” (Merry 1988:870). This classical definition is linked to the imposition of European legal systems on the local systems that existed prior to colonialism (Merry 1988:870). It emanates from the recognition that prior to the introduction of formal legal systems, indigenous systems already existed (Merry 1988:869).

However, in this study, the concept of “new legal pluralism” as advanced by Merry, which “places at the centre of investigations the relationship between the official legal system and other forms of ordering that connect with, but are in some ways, separate from and dependent on it” is adopted (1988:873). But the problem is that competing legal systems are a potential source of conflict (Tamanaha 2008:376). Bearing this in mind, Von Benda – Beckman poses very pertinent questions: is it possible for more than one legal system to operate within a given setting? If yes how exactly does it work? How do we define a legal system from other social practices (2002:39)? To answer these questions, I consider the framing and translation of international human rights legal regimes at the local level, through legal translation.

Sally Merry defines legal translation as the process through which international human rights norms become relevant and applicable in addressing local social justice issues (Merry 2006:38). International Human rights law is seen as the mirror for influencing standards at the domestic level. These norms are drawn from a number of international human rights instruments and conventions, in addition to soft laws like declarations (Merry 2006:38). Therefore, the influence of these norms on state behaviour a key characteristic of legal translation approaches, with questions such as why do some states have better human rights records compared to others (Risse and Sikkink 1999:1)?

Legal translation studies analyse the interaction between the global and the local, with emphasis on upward and backward translation (Merry 2006:39). It considers “human rights language extracted from the universal and adapted to national and local communities” (Merry 2006:39). It has been viewed as having emancipatory, especially backward translations from local language, perceived weak to a seemingly more powerful ones reveals the power relations implicit in languages (Merry 2006: 42). Furthermore, legal translation brings social justice issues from the local to the global arena while at the same time taking the normative standards from the global to the local (Risse and Sikkink 1999:5).

Legal translation does not assume an automatic adoption of the global standards within the local context but rather, expects it to go through a process of “norms socialization” (Risse and Sikkink 1999:4). As noted by Merry, translation may take two forms; replication “process through which the imported institutions remain largely unchanged from its transnational prototype” (Merry 2006:44), and hybridity that refers to a “process that merges imported institutions and symbols with local ones” (Ibid: 44). One of its strategies, according to Sally Merry, is vernacularization; defined as the process through which international ideas are “adopted through local institutions and meanings” (Merry 2016:34). Indigenization involves “shift in meanings” (Merry 2016:39). Risse and Sikkink, based on Merry’s conceptualisation suggest a three-step approach of what they called norms socialization where “international human rights norms are internationalised and implemented domestically”(Risse and Sikkink 1999: 5).

Salley Merry considers translators as “those who translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violations” (Merry 2006:39). For that matter, legal translation goes beyond the material and structural factors to look at the social constructions as determinants for acceptance of international norms. As stated by Risse and Sikkink “while materialistic theories emphasize economic or military conditions or interests as determining the impact of ideas domestic politics and state behaviour, social constructivists emphasise that ideas and communicative processes define in the first place which material facts are perceived as relevant” (Risse and Sikkink 1999:7).

The application of legal translation in this study is premised on the fact that despite the Eurocentric origin of most human rights doctrines, they have increasingly become important tools for social justice initiatives in the global south (Merry 2006:38). In using legal translation, I considered the framing of the right to food and right to land, drawing from the international human rights standards; and considered their relevance in the local context.

## **4.7. Summary of the Chapter**

This chapter presented the contemporary debates regarding large scale land transactions, and the normative framework relating to the right to food. I have demonstrated the relationship between large scale land transactions, land and property rights and the right to food. The key point is that the right to food is dependent on clearly defined land rights, which protect indigenous communities from the current land global land grabs. In terms of the analytical framework, the human rights based approach to development; legal consciousness and legal translation were introduced, showing the linkages between the three. The central message is that, the effectiveness of the HRBA in realising the right to food depends on the knowledge and perceptions people hold towards the law. This is also a function of how such norms drawn from the international level are framed and adopted in a given context, in this case among the pastoralist.

## Chapter 5: Empirical Findings on Access to Land and the Right to Food

For a pastoralist, the right to food is synonymous with owning a cow, if you take away a pastoralist's cow or deny him the means of raising them; you have denied them food (Key informant, Rupa Sub County).

### 5.0 Introduction

In this section, I present the empirical findings of the study. The section is divided into three sub sections. I begin with the implications of access to land on the right to food, bringing in voices of the pastoralist, as well as, those of other stakeholders. In the second section, I present findings relating to the laws and pastoralist experiences with it. The last section of the chapter presents the key actors and their roles, and the processes involved in land transactions.

### 5.1. Implications of Lack of Access to Land on the Pastoralist Right to Food

#### *5.1.1. Denial of Access to Common Grazing Grounds*

The study revealed that when the mining companies commenced their operations in the two villages, they prevented them from grazing animals at the site and engaging in artisanal mining of gold, saying they had acquired ownership over all the land. In Rata village, although the community reported that they signed an MOU with DAO prior to the commencement of their mining activities that included allowing them access to the mining site for grazing and small scale mining, this was not honoured by the mining company. These concerns were also reiterated by the Committee on Economic, Social and Cultural Rights, in its concluding observation on Uganda's initial report, where they noted with concern the denial of access to ancestral lands by indigenous peoples and pastoralists (CESCR 2015)<sup>7</sup>. Most research participants reported that by giving away their ancestral lands to the mining companies, government wanted to eradicate pastoralism and replace it with crop cultivation. In their view, was not sustainable considering the poor climatic conditions in their area. An official from Moroto district local government stated that:-

When you deny a pastoralist a grazing area, you are affecting the food security of that person' (Key informant interview, Moroto district).

Furthermore, the pastoralists reported having been denied access to common watering points. For the case of Nakabath and Naliloro villages, Jan Mangal, the gold mining company reportedly installed a water pump along the river and diverted much of the water for their operations, leaving very little for the ani-

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<sup>7</sup><https://documents-dds.ny.un.org/doc/UNDOC/GEN/G15/150/73/PDF/G1515073.pdf?OpenElement> accessed on October 16th, 2016

mals. Kemp et al have emphasised the importance of water in the mining industry and the complexity between the water needs of the mining companies against the human rights concerns of the local people (2010:1553). They assert that “water security is essential to the business of mining. The operational needs of mining and the human rights needs of the local people intersect in a complex and sometimes conflicting way” (Kemp et al 2010:1553). In the words of one FDG participant;

We were not allowed to access water from the mining site and the streams where we use to water before the *muhindis*<sup>8</sup> came (FGD participant, Nakabath village).

In addition, in Nakabath and Nakiloro, the research participants noted that due to the excavation work by the Jan Mangal, deep pits were left uncovered, making it dangerous for them to graze their animals. This, together with the contamination of water sources made the water unsafe for their animals.

Before they came, we were using the water flowing on the Nakiloro stream but when the Mhundi came, they started extracting piped water from the same stream, which led to the drying of the stream (a FGD participant from Nakiloro Village).

These findings are in line with previous research conducted by Human Rights Watch. In their 2014 report, they cited the contamination of water sources in both Rata and Nakabath mining sites and the denial of access to grazing grounds, as one of the concerns raised by the pastoralist (HRW 2014:72). Similar actions by mining companies were reported in other contexts such as, the oil-rich Niger delta where oil spills from the activities of the Royal Dutch shell were noted to have affected water sources and farmlands of the Ogoni people (Narula 2005:720).

### **5.1.2. Reduction in Livestock Numbers**

Research participants also pointed out the reduction in their livestock numbers due to limited grazing grounds and as a coping mechanism, they have ventured into charcoal burning, which is a threat to their environment. The same concerns were reiterated by the Officer in-charge of livelihoods at Rupa Sub County in Moroto district. He noted that the level of food security in the sub county had fallen by an estimated 50 per cent, since the mining activities started in the sub county.

The people of Nakabath do not have food; they use to survive on cattle products and small scale mining. Food insecurity has also led to low level of school enrolment, as most children abandon school to go and look for petty jobs either in the mining sites or in Moroto town. Koryangatunyo and Nakiloro are the most affected, with marble extraction activity on-going (Key informant interview with the Livelihoods officer, Rupa Sub County, Moroto district).

The above findings are supported by a recent food and nutrition assessment report conducted by the United Nations World Food Programme and

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<sup>8</sup> This is commonly used to describe people of Asian origin in Uganda.

UNICEF in Karamoja region. The assessment noted that up to 48 per cent of households in Karamoja region depend on food aid, Moroto emerging among the top two (WFP 2016:9). In Moroto district 17 per cent of the households were reported to be food secure, 43 per cent marginally food secure, 33 per cent marginally food insecure and 7 per cent food insecure (WFP 2016:32). A more revealing finding of the assessment was the relationship between livestock ownership and food security. The report noted that up to 53 per cent of the households in Karamoja did not have livestock and that cases of child stunting was less prevalent in households with livestock, compared to those without livestock (WFP 2016:20).

This finding not only reinforces the link between access to land and the right to food, but the role of livestock in realising the right to food. The Uganda Investment Authority (UIA) estimates that livestock keeping is a source of livelihood for 4.5 million people in Uganda (UIA 2009:1). Considering that access to land and its resources is key in realising the right to food, with agriculture and livestock development as the primary means, such statements are not farfetched (Niada 2006:131).

### **5.1.3. Destruction of the Environment**

During a key informant interview with an official from Karamoja development Forum (KDF), it was reported that most companies operating within Rupa Sub County do not have clear environmental impact assessment. There are also no clear mitigation measures for severe damage to the environment arising from mining. The study could not verify this information with the companies, since they were not willing to be interviewed. However, during visits to the two mining sites, the effects of the mining activities on the environment were evident. In Nakabath gold mining site, there were open pits left after the mining operations. One research participant reported;

They came with big graders and destroyed the surface soil and pasture and dug deep pits. When we saw this, we shifted to a nearby land but they kept on following us saying that the all the land in the area belonged to them (FGD participant, Nakabath).

These findings are consistent with the results of a 2014 study by the International Union for the Conservation of Nature and Natural Environment (IUCN), which noted that the destruction of the vegetation by the mining companies in Moroto district had affected livestock rearing (Houdet et al 2014:5). A similar study conducted in Uganda, Ghana and Nigeria noted that such practices as open pit mining destroyed the land surface, causing pollution to the environment and was detrimental to both livestock and crop rearing (Aldinger 2014:354).

## **5.2. Pastoralists Perceptions of Land Laws**

### ***5.2.1. Experiences with the Law***

The study findings reveal that whereas the key informants, most of whom were drawn from civil society and Moroto district local government had some knowledge about the land and mining laws in Uganda, majority of the pastoral-



ist had very limited knowledge. This was not only in relation to land and the right to food, but also their human rights and fundamental freedoms. These concerns were reiterated by Danchurchaid, a Danish aid agency operating in Moroto district (Dan Church aid 2011)<sup>9</sup>. In addition, an FDG participant stated,

I do not know of any laws regarding land, but what I know is that no one should enter into another person's land without his or her knowledge (FGD participant in Rata village).

Another participant from Nakiloro, when asked to mention some of the human rights that he was aware stated:

We have rights to access minerals on our land. Freedom of movement is a human right. We should be free to move and collect firewood, to sell and buy food, as well as graze our animals on our land without any restrictions from anybody since the land belongs to us (FGD participant, Nakiloro).

The participants also expressed dissatisfaction with the existing laws governing land. One key informant stated:

Although the constitution states that land is vested in the people, the mining Act says that what is beneath the land belongs to government. It is only the surface that belongs to the people; the original lands owners cannot even access the surface (Key informant Interview, Rupa Sub County).

These findings are consistent with the observations by the UN Committee on Economic, Social and Cultural Rights, in its initial report on Uganda, where it noted with concern, the inadequate legal protection of the land rights of pastoralist, indigenous peoples and women. Of particular concern was the customary land right. The committee recommended recognition of indigenous peoples land rights and calls for free, prior and informed consent before any development intervention on indigenous peoples lands (CESCR 2015:4)<sup>10</sup>.

### ***5.2.1. Knowledge and Perceptions towards the Law***

The study reveals that prior to imposition of formal laws; land was traditionally governed under customary arrangements, with elders playing a big role. The study also revealed that although customary land rights is recognised under the law, government policy is in favour of the formalisation of such titles into individual property rights. The research participants expressed fear that the government, through introducing formal land titles would destroy their communal system of managing land, which is a potential threat to the traditional authority of the elders in land administration. Moreover, they complained of lack of not being compensated for the land taken by the companies. One key informant stated:

The council of elders should be able to regulate land usage. No community should lease out their communal land without consulting everyone in the

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<sup>9</sup> <<https://www.danchurchaid.org/news/news/land-is-essential-for-pastoralist-in-the-karamoja>> accessed on October 16th, 2016

<sup>10</sup> <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/73/PDF/G1515073.pdf?OpenElement> > accessed on October 16th, 2016.

community, and also the neighbouring communities, since these resources are shared (Key informant, Rupa Sub County).

The pastoralists also exhibited a fairly good understanding of their right to land, but did not have faith in the current legal framework which they think doesn't offer them total ownership. As stated by one participant;

The existing land laws favour investors; even the little rights given to communal land owners under the law are not respected by the companies and the government (Key informant interview, Rupa Sub County).

Human Rights Watch in its 2014 report indicated that even though land rights of customary owners are recognised in law, in practice, they are not easy to actualise (HRW 2014:65). The same report highlights the fears by the pastoralists that the legal requirement for the formalisation of such land tenure would affect the communal nature of land use (HRW 2014: 67). A study by the Ecological Christen Organisation (ECO) in Karamoja also noted that communal land ownership is under threat from large scale land acquisitions under individual titles (Hinton 2011:8).

### **5.3. Actors and their Roles in LSLT**

#### ***5.3.1. The Central Government***

The study found out that the government of Uganda plays a very central role in large scale land deals, based on the powers conferred upon it by the constitution and other related laws. The Mining Act for example, confers a lot of powers to the central governments, through the Ministry of Energy and Mineral Development in regard to land with mineral deposits. The central government is therefore a key player when it comes to the allocation of land to the mining companies.

The study revealed that prior to the recent mineral rush in the region; the government had already claimed vast pieces of land all over Karamoja region for various purposes. One key informant noted that, "much of the land in Karamoja region has been taken over by government agencies such as Uganda Wild Life Authority, National Forestry Authority" (Key informant interview, Rupa Sub County). The study established that the local government administration play a very minimal role, limited only to facilitating the implementation of decisions already take at the centre. However, in relation to mitigating the effects of land deprivation on the pastoralist, especially in relation to the right to food, the study discovered that Rupa Sub County local government has been implementing a number of programmes. This included the distribution of seeds worth 25,000 acres, and mobilizing the community to cultivate crops. Vulnerable households were also reportedly given food aid.

#### ***5.3.2. The Mining Companies***

The present study identified a number of mining companies, all of whom are foreign-owned, and actively engaged in mining activities in Rupa Sub County, Moroto district. These include DAO Limited, a Ugandan subsidiary of a Saudi and Kuwaiti Construction Company has interest in marble extraction within Rata village. Jan Mangal, also a Ugandan subsidiary of an Indian Jewellery

company with interest in gold mining around Nakabat village<sup>11</sup>, African Minerals Limited also with interest in marble and also operates within Rupa and Katikekikle Sub Counties. In addition, Tororo cement Limited has interest in marble, with its activities based in Tapach Sub County, all in Moroto district. This study focused only on two of the mining companies, that is, DAO and Jan Mangal.

The relationship between the mining companies and key figures within both the central and local governments came out prominently during the study. One participant in a key informant interview noted that Jan Mangal, reportedly had a “god-gather”, former speaker of Moroto district Local Council, while DAO was linked to the former Moroto district Local council chairperson as their “god father”. It was noted that due to these linkages, most district leaders get compromised; they neither have the power nor the moral authority to check on the excesses of these companies. The above findings are also consistent with a report from a previous study by Human Rights Watch that revealed the compromising relationship between the mining companies and key figures in governments. The alleged links between Jan Mangal and the then Minister in charge of lands and housing, Hon. Sam Engola and with then district speaker was noted (HRW 2014:57).

### ***5.3.3. Civil Society Organisations***

The study also identified a number of Civil Society Organisations working on issues related to land, mining and pastoralism. One of the organisations actively involved in land and pastoralist rights is KDF. KDF is part of a consortium of civil society organisations supported by the German Development Cooperation (GIZ) to implement projects on mining, land and pastoralism in Karamoja. Its focus is on the rights of small scale miners and the communities around the mining sites. It is involved in advocacy work centred on access to land for pastoralist within Karamoja in general.

The other organisation is Riamiriam Civil Society Network. Their focus is on coordinating various organisations working in Karamoja region on the issues of governance and human rights, peace and conflict transformation and livelihoods. They are also involved in strengthening the traditional land management systems, through action research aimed at improving land polices for the benefit of the pastoralists. Other areas include ensuring tenure security within the customary tenure system and assessing the capacity needs of the traditional land management system, targeting the council of leaders.

However, the study established that although there are many international development agencies operating in the district, only one, German agency (GIZ), was actively involved in land rights and mining in Moroto district. GIZ as the lead agency operates on four thematic areas namely; traditional land management, mining, borders and pastoralism. This project is implemented in partnership organisations such as KDF and Riamiriam.

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<sup>11</sup> At the time of conducting this field research, the company had stopped its operations.

#### ***5.3.4. Karimojong Pastoralists***

The indigenous Karimojong pastoralist in the two villages where this research was conducted claim ownership of the land that is now used by the mining companies. The study however, revealed lack of participation by the pastoralists in decisions regarding the land give transactions. They reported that they only learnt of the presence of the mining companies in their communities when they brought mining equipment and asked them to vacate their land. They are therefore; more of victims of large scale land acquisitions, with limited powers to claim for what they believe rightly belong to them or to negotiate such deals. An FDG participant noted;

When DAO came here, they did not consult us to get our views on their project. We learnt of their coming when we saw them bringing heavy machinery and their staff to the site (FGD, Rata village).

Looking at the Mining Act, there is no requirement for prior consultation with the land owners at the exploration stage. However, such consultations are required when actual mining commences (HRW 2014: 47). Section 108 of the mining act requires that careful consideration of the rights of the land owners, including payment of royalties should be made (GOU 2003). In practice however, this does not take place. In the words of one key informant,

Even though the law provides for consultation of the local land owners before a decision is taken to give away land to investors, such consultations never take place. They by-pass the local people and deal with the “big people” in Kampala (Chairman LC III, Rupa Sub County).

As already mentioned in previous sections, the pastoralists lacked knowledge regarding the procedures through which land ownership can be transferred. Nevertheless, when asked how best land transactions in their communities should be handled, the pastoralist indicated that they wanted their local leaders at the sub county level to negotiate on their behalf. One FGD participant explained:

We feel that since we are illiterate, the local authorities should negotiate on our behalf. The negotiations should start from the bottom here, with our local leaders (FGD participant, Nakiloro village).

Related to the above is the information gap between the communities and the mining companies. The local communities reported limited knowledge of the agreements that these companies sign with the central government. They felt that the mining companies were taking advantage of their ignorance to claim large swathes of land beyond what was allocated to them by the government. Where attempts to disseminate some information to the pastoralists were made, it was rather conflicting. For example, in Nakiloro, the research participants revealed that DAO had told them that the company did not buy the land but was only renting it. However, they could not tell to whom he was paying rent since none of the locals had received such payment. On another occasion, the same company reportedly claimed ownership of the whole village. An FGD participant stated;

The Arabs<sup>12</sup> are claiming that they own land in the whole village, we don't know who gave them the land. Some man called Hajji Siraj had initially requested us for land, but he later sold it to the Arabs without our knowledge (FGD participant, Rata village).

The information asymmetry revealed in this study draws parallels with a 2002 scenario when the government de-gazetted parts of the land formerly used as wildlife protected area. Local elites allegedly withheld all the information regarding this from the pastoralist deliberately and allocated themselves the de-gazetted land (Rugadya and Kamusiime 2013:35). A study by Uganda Land Alliance also noted that the pastoralists in Karamoja are vulnerable to manipulation due to limited information (ULA 2009).<sup>13</sup> Meanwhile, the IUCN, in a separate study noted that the absence of participation was a key obstacle to the success of pastoralist struggles for land rights (Hinton 2011: vii).

## 5.4. Summary

This chapter presented the empirical findings based on field research and review of secondary data. It has demonstrated that allocation of former grazing land to the mining companies has affected the pastoralists' realisation of their right to food. This is a consequence of inadequacy in the laws and lack of participation of stakeholders in the processes of land acquisition. In the next chapter, I analyse how these findings relate to the theoretical and analytical arguments presented earlier in this paper

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<sup>12</sup> This is in reference to DAO marble mining company where most of the workers are Egyptians Arabs

<sup>13</sup> <<http://www.landcoalition.org/sites/default/files/documents/resources/c0043-ula-uganda-en-v20150418.pdf>> accessed on 21st October 2016

# **Chapter 6: Analysing the nexus between Access to Land and the Right to Food**

## **6.0. Introduction**

In this section, I analyse the study findings presented in the previous chapter using the theoretical and analytical frameworks explained in chapter four. I begin with an analysis of access to land and the right to food, drawing on state obligations under international human rights law. I will then discuss the existing legal frameworks regarding property rights and the pastoralist experiences with those laws using the concepts of legal consciousness and legal translation. The last section will draw on the principles of the HRBA to analyse the key actors, roles and processes in land transactions.

## **6.1. Right to Food: Invoking State Obligations**

The findings reveal weaknesses inherent in state-centric nature of obligations relating to the right to food. The normative framework on the right to food places specific obligations on states parties to protect, promote and fulfil the right to food. As observed by Nolan, activities of third parties have been found to fall within the ambit of human rights violations (2009:229). While the state has the primary obligations towards its citizens; and corporations have secondary obligations (Niada 2006:165), the state's capacity to regulate private actors against rights violations and to hold them accountable whenever they do so, is still lacking as demonstrated in this study (Nolan 2009:229). Moreover, it has been proven that multi-national companies can violate human rights by their actions, yet there is no clear mechanism for rights holders to directly hold them to account (Nolan 2009:251). Narula suggests that failure by the government to protect its citizens from actions by third parties amounts to a violation of the right to food (Narula 2005:710).

In the present study, it is clear that the government of Uganda ought to have considered the implication of transferring pastoralists' land to mining companies, in the absence of alternative livelihoods measures. The specific obligation at stake is the obligation to protect. Under this obligation, "states are required to put in place measures to prevent third parties from interfering with the enjoyment of human rights" (Nolan 2009:227). Taking steps in this regard implies that the state should put in place policies and legislations favourable to the enjoyment of the right to food (Robertson 1994: 695). These include setting up effective monitoring and control measures, including redress mechanisms (Robertson 1994:696). The African Court on Human and People's Rights has reinforced this argument, holding state culpable of human rights violations by third parties (Nolan 2009:38). State actions that fall within this include "entering into an international agreement and bilateral investment treaties detrimental to some nationals access to food" (Niada 2006:154). Thus, it can be argued that although the Ugandan government has taken steps in form of legislation and policies, it has failed to effectively monitor the activities of the mining companies. For this study, the resource argument that ESCR like the right to food cannot be realised immediately due to lack of resources (Rob-

ertson 1994:694), does not hold. What was required is that the state at least prevents the mining companies from interfering with the enjoyment of the right to food by the pastoralist.

The findings of this study also demonstrate the failure by the state and third parties to consider the indivisibility and interrelatedness of human rights. The right to food is instrumental in nature; since it facilitates the realisation of other human rights it facilitates the enjoyment of other rights like health and life (Niada 2006:143). Its component of availability refers to people's ability to feed themselves or produce their own food through the utilization of their God-given natural resources, including land (Niada 2006:152). Meanwhile, sustainability on the other hand requires that while effort should be put in ensuring that the present generation enjoys their right to food, consideration for the future generation is required (Niada 2006:152).

## **6.2. Conflict between Communal and Individual Property Rights**

One other issue manifested in this study is the conflict between the customary land ownership and the international trend of formalisation of land titles into individual property rights. The formalisation of customary tenure into individual private property goes against the predominant social practice of the Karimojong pastoralists whose land is owned communally. This is a common challenge when international norms and formal national legislations are superimposed on an already legally pluralistic society. Through legal translation, the international norm of individual property right is presented as a form of empowerment for the poor. However, due to plurality of legal norms within the local context, there is always resistance from those who wield power at the local level who may see it as a threat to their positions. (Merry 2006: 38). For example, the Karimojong elders, who have for many years been in charge of land administration feel threatened by the move to formalise their land ownership.

Related to the above are weaknesses arising from reliance on the law as an adequate safeguard for poor people's rights. A strong legal and policy framework has been flaunted as a prerequisite for protecting poor people's rights (Risse and Sikkink 1999:3). This is premised on the belief that the law can be used to emancipate the poor. The Commission on Legal Empowerment for the Poor (LEP), in its report entitled "*Making the Law work for everyone*" calls for the securing of individual property rights as a means of uplifting the poor out of poverty (LEP 2008:67). However, as this study indicates, this is not always the case. The study shows that government's attempt to formalise communal land ownership through individual titles has instead, been exploited by local elites and mining companies as a conduit to disposes them of their land. Silbey has challenges the idea that the law alone can be an antidote to violation of poor people's rights, citing "an inherent structural connection between the legal form and the forms of inequality and domination characteristics of industrial capitalism" (Silbey 2005:325). Moreover, initiatives aimed at making the law work for the poor have been noted to ignore the social practices of the intended beneficiaries of development interventions, leading to a misalignment of social practice with the legal provisions (LEP 2008:67).

The nature of the legal framework regarding land also relates to the framing of land and property rights. Framing is defined here as “assigning meanings to and interpretation relevant to events and conditions in ways that are intended to mobilize potential adherents and constituents” (Merry 2006:41). The research findings point to the fact that the way land rights have been conceived in Uganda assumed that all communal land owners, including the pastoralist, would eventually be willing to convert their land into individual titles. As pointed out in the report by the Commission on LEP, efforts at legal reform should not adopt a one size fits all approach because the peculiarities of the context makes it difficult to achieve uniformity in land administration (LEP 2008:69).

### **6.3. Pastoralist Experiences with the Law: A Split-Consciousness**

The findings of the present study reveal that knowledge of human rights and the overall legal framework depended on the level of literacy. While most of the key informants had some formal education, majority of the pastoralists in the focused group discussions had never been exposed to formal education. Their level of knowledge and experiences with the law therefore, varied. This is analogous to what Hertogh describes as a “split consciousness” on the law, under which the expectations of what the law is and what it’s functions are, vary across social groups (Hertogh 2004:458). As argued by the Commission on LEP, legal protection of property rights alone does not address the insecurity of tenure for the poor. Such guarantees require that the rights holders know their rights and provisions of the law, followed by fair implementation (LEP 2008:69).

It is also evident from this research that knowledge and experiences of the law is a function of power relations within a given context. The unequal power relations between the pastoralist on the one hand, and government officials, mining companies on the other hand, results in different experiences with the law. As observed by Silbey, “...despite aspirations of due process and equality before the law, the “haves” regularly and systematically “come out ahead” (2005:324). In this case, it is clear that the mining companies are benefitting from the law, more than the indigenous pastoralist land owners. Silbey has argued that those who have the material resources and are powerful, benefit from the law, more than the poor who can’t afford to claim for their rights using the legal system’s and institutions (Silbey 2005:325). Consequently, enacting laws, without addressing the structural inequalities that exist may only perpetuate further marginalisation of the poor (LEP 2008:64). This is more so in situations where communal land ownership is not adequately protected in law (LEP 2008:65). Law as an instrument of power thus eventually perpetuates social inequality (Silbey 2005:324).

Another significant interpretation drawn from this study is that Knowledge about the law is linked to access to justice for the poor. The key informant interviews and the Focused Group Discussions revealed that, no attempt was made by the indigenous pastoralists to use legal means to claim for their land rights. As Hertogh noted, where knowledge of the law is limited, it may not be relevant to the struggles of vulnerable people like indigenous pas-



toralists in this case (2012:222). This is the reality in most developing countries, where majority of people do not know what the law is and thus can't seek its protection (LEP 2008:19). Taking into account Hertogh's definition of legal consciousness "what people know as the law and what they experience as the law" (Hertogh 2012:223), it becomes difficult to gauge peoples experiences of what they don't know. Consequently, in order to utilise the law to address the social injustices being perpetuated against them, the poor require rights consciousness which is formed through the transfer of international human rights norms from the global to the local context (Gauri 2012:11). The Commission on LEP noted,

Lack of sufficient information about legal rights and the entitlement, and about available legal services is thus problematic for the poor themselves and also causes justice services to be insufficiently responsive to the needs of the poor (LEP 2008:20).

Thus, from the study findings, it can be concluded that since much of the land in the region is communally owned, some individuals take advantage of ignorance of the local people, coupled with the high level of illiteracy and lack of knowledge on the laws governing land, to dispossess the local community off their ancestral land. Moreover, as highlighted by the commission on LEP, majority of the poor live out-side the formal economy and are not protected by the law (LEP 2008: iii).

## **6.4. Processes and Actors: A Human Rights-Based Analysis**

In this section, I invoke the HRBA principles, including reference to international human rights standards, participation, accountability and equality and non-discrimination amongst to analyse the processes and actors involved in large-scale land transactions. As Ako et al writes, "...given its basis in international law, rights based approaches involve a move towards development as an entitlement and away from notions of benevolence and charity" (Ako et al 2013:49). For that matter, these principles should be taken into account at the level of policy and programme formulation (Gauri et al 2012:10). Osmani further notes that the stated goals should be at par with the goals set by the international mechanisms (Osmani 2005:115). These are further analysed as below:-

### **6.4.0. Applying the HRBA Principles to Large Scale Land Transactions**

#### ***6.4.1. Reference to International Human Rights Norms***

Whereas the government of Uganda has ratified most international human rights instruments such as the ICCPR, CESC, CEDAW, ACHPR; this study demonstrates that these alone cannot be effective if implementation, monitoring and control mechanism are weak or compromised. As noted by Gauri et al, ratification is insufficient for the realisation of a given human right (2012:5). The findings shows that such commitments were not fulfilled in as far as compensating land owners, involving them in processes leading to land acquisitions and offering them avenues to seek redress were concerned.

Taking the case of compensation for example, even though DAO was reported to have had some negotiations with the community where about 500 people were alleged to have been compensated, failure to give compensation to all the land owners, as reiterated by Human Rights Watch in its 2014 report, goes against the international benchmarks (HRW 2014:75). Therefore, much as Uganda is a signatory to most international conventions, their application in the overall process of land acquisition was lacking.

#### ***6.4.2. Transparency and Accountability***

The findings also point to the ineffectiveness of systems to ensure accountability and transparency in land transactions. The human rights based approach to developments advocates for accountability to the rights holders by the duty bearers (Osmani 2005:112, Gauri et al 2012:18). This includes recourse mechanisms in case of infringement of rights (Osmani 2005:116). The systems and mechanisms of accountability go beyond the state to third parties such as multinational corporations (Osmani 2005:117). As reiterated by Human Rights Watch, government's role in controlling the activities of non-state actors is weak (HRW 2014:83).

#### ***6.4.3. Participation in Land Transaction Processes***

Regarding participation, this study reveals that the individual agency of the right claimants is pertinent in as far as their human rights claims are concerned. Whereas the pastoralists felt that they were not involved in all the processes leading to the transfer of their lands to the mining companies, they also noted that because they are not educated, their local leaders should be able to negotiate in their behalf. Participation in processes of development is one of the key tenets of the HRBA. Crawford and Anderson have argued that rights-based approaches have the potential to create transformation among the poor by their participation in all decision making (Crawford and Anderson 2015:663, Ako et al 2013:47, Osmani 2005:113, LEP 2008:70). For this to be successful however there is need to address the structural inequalities and obstacles to participation among the marginalised.

These contestations regarding participation reveals the political nature of rights claims, that is, rights not merely as technical issue but mostly involving political decisions is also manifested in the present study (Crawford and Anderson 2015:665). Thus as noted by Narula, negotiations based on unequal power relations between the land owners and the multi-national corporations may not be effective (Narula 2005:698). The politics of participation in the rights based discourses requires empowering the vulnerable people (Ako et al 2013:48). As noted by Crawford and Anderson, empowerment, which is a key precondition for the success of participation, should start by addressing the structural inequalities (Crawford and Anderson 2015:663). Ako et al also cautions against efforts solely focused on promoting human rights claims at the local level without addressing the structural problems of unequal power relations which works against the poor and marginalised (2013:46).

#### ***6.4.4. Equality and Non-Discrimination***

In terms of equality and non-discrimination, this study considered whether there were elements of discrimination against the pastoralists. Although issues of discrimination were not easily noticed during the field study, it can still be

considered at a more general level that probably the lack of attention to the rights of indigenous land owners could be due to their situation of vulnerability. This is more so during the implementation stage of the interventions. The principle of equality and non-discrimination is meant to ensure that those vulnerable sections of the society who may not be able to benefit from development interventions or cope with the negative effects of such interventions are not left behind (Osmani 2005:115).

## **6.5. Compromising Relationships between the Actors**

A key deduction from this study relating to the actors, is the compromising relationship between the mining companies and the state agents. International human rights law has traditionally focused on states as the primary duty-bearers in as far as human rights protection and promotion is concerned (Ratner 2001:461). However, even though states have the primary responsibility to protect human rights, businesses are increasingly becoming more powerful than some states, with implications on human rights (Ruggie 2007:820). This is more so in developing countries where there is a proliferation of foreign investors, some of whom have a strong backing from the state or its agents (Ibid). The study reveals that the relationship between the companies and key government officials is characterised by patronage, bribery and corruption, to the detriment of the pastoralists. It is important to note that, with this kind of relationship, the state cannot effectively discharge its obligation to protect human rights.

Perhaps this justifies the call for an elaborate international human rights framework focusing on non-state actors as duty bearers. The HRBA makes a strong case for extension of international human rights obligations to third parties (Gauri et al 2012:3). This is because some of the multinational corporations are more powerful than the state, with average revenues doubling the annual GDP of most developing countries (Ratner 2001:462). Some writers have however, cautioned that by shifting these obligations to multinational corporations, there is a risk of absolving the state from its primary duty (Kobrin 2009:352). Businesses have also resisted the extension of human rights, beyond the usual corporate social responsibility (Kinley and Chambers 2006:449).

Furthermore, the relationship between governments and multinational corporations as evident in the present study, gives companies several advantages over the local land owners (Narula 2005:721). Taking into consideration the concept of the sphere of influence, where companies are expected to protect the human rights of the people affected by their activities, Narula argued that in situations where the state is compromised through corruption; they can't effectively regulate the activities of the mining companies (Narula 2005:726).

In terms of civil society roles, it can be deduced from the findings of this study that where there is a thin and weak presence of civil society, the state and other third parties cannot be effectively monitored. The role of civil society actors in changing the power dynamics has been highlighted by a number of writers (Crawford and Anderson 2015:665, Ako et al 2013:49). As revealed in the present study, while there are many international organisations operating within the district, only one, GIZ was found to be actively involved in issues of

land rights among the pastoralist. This is typical of most international development actors who play the role of translators (Merry 2006:43). Risse and Sikkink have noted the need for such transnational actors or rather, “transnational advocacy networks” to be conscious of peculiarities of the local context (Risse and Sikkink 1999:3, Risse and Sikkink 1999:8).

## **6.6. Chapter Summary**

This chapter analysed the findings of the study using the theoretical and analytical frameworks presented in chapter four. Key deductions from the findings are weaknesses in state-centric nature of state obligations, the mismatch between international human rights norms and the customary land ownership among the pastoralists, divergence in legal consciousness, compromising relationships between the state actors and the mining companies.

## Chapter 7: Concluding Remarks

This study explored the nexus between large scale land acquisitions and the realisation of the right to food in the context of an indigenous pastoralist community in Uganda. This is against the background of the proliferation of foreign mining companies in the region. Drawing insights from the broader debate on the relationship between development and human rights, the study was qualitative in nature, adopting the socio-legal approaches of legal consciousness and legal translation; and the Human Rights Based Approach to Development as tools to analyse problem. The study assessed how large-scale land transactions have affected the pastoralists' right to food, the legal and policy framework regarding land and the right to food was analysed to ascertain the influence of international human rights norms on state behaviour. This was followed by an assessment of the knowledge and perceptions of the pastoralist about these laws and policies.

Looking at the implications of all these on the right to food, the study considered the normative framework relating to the right to food as espoused in the international bill of rights, specifically the convention on economic, social and cultural rights. Specific findings reveal the denial of access to grazing grounds, loss of subsistence mining rights, inability to access wild fruits and honey. Environmental concerns, with consequences to livestock rearing were also noted. Consequently, the study recommends compulsory Environmental and social impact assessments to ensure that mining does not have adverse effects on the environment with future repercussions for the locals. Economic and social rights are premised on human agency, with belief in people's ability to emancipate themselves and realise these rights on their own, as long as the government puts in place a favourable environment (Niada 2006:146).

In terms of pastoralists experiences with the law, the normative standard of property rights, focusing on individual right to property as being promoted by the government of Uganda does not match with the traditional ways of life of the pastoralist. Land is owned according to clans so any such programmes of formalisation of customary land ownership should take this into account. The research found out that land at Kongatunyo grazing grounds for example was originally used as common grazing grounds for the local and nearby pastoralist communities; it also had sacred shrines where traditional functions and rituals were performed. Research participants recommended that certificates of titles should be issued in the names of clans. There is need to strike a compromise to enable the locals access the resources on the surface of the land as the mining companies access the minerals beneath the ground.

Related to the above is the fact that although Uganda has an elaborate legal framework, largely drawn from the international human rights norms relating to property rights and the right to food, this is not effectively implemented. This is exacerbated by the limited knowledge among the research participants on their fundamental human rights and freedoms in general and the specific laws and policies regarding land and the right to food. As elaborated in the previous chapters, the failure to effectively adhere to international human rights norms, coupled with the lack of awareness by the rights holders is detrimental to the realisation of the right to food. In this regard, most research par-

ticipants recommend addressing the information gap that exists between the pastoralist and the policy makers as key if the pastoralist land rights and the resultant right to food is to be realised. This will involve community sensitization on the legal provisions relating to land—they should be able to know what belongs to them and what is for the government or the investors. The community needs legal representation to help them get certificates of customary land.

Looking at the actors involved in land transactions, the present study was able to identify the mining companies, government of Uganda, civil society organisations and the affected communities as the people involved in or influencing land deals. Taking into account the human rights principles of participation and consultation of the people likely to be affected by a development intervention, the present study reveals a lack of community involvement in the land deals, with most processes done by the central government in Kampala. The findings concur with Niada's postulations that due to the political nature of rights as an expression of the aspirations and desires of the elite and ruling classes, it does not offer much for the people at the bottom of the pyramid (Niada 2006:144). The law in this case is used as an instrument of domination of the indigenous pastoralist by the elites. The government ought to have obtained views of the people likely to be affected.

The intricate relationship between the mining companies and key figures in both the central government and the districts were also manifested in the study. As pointed out earlier, this kind of relationship compromises the government in fulfilling its obligations of controlling the activities of the mining companies. Other parameters of assessment of the application of the HRBA, such as equality and non-discrimination, adoption of international human rights norms as well as ensuring systems of transparency and accountability were found to be lacking. Failure by states to protect its citizens from actions by third parties cast doubts on the ability of the international human rights instruments to protect vulnerable members of the society (Niada 2006:145). Generally, it can be concluded that the government of Uganda has failed in its international obligation to protect the pastoralist from the actions of the mining companies.

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Figure 1: Map of Uganda Showing Karamoja region



*Source: West Minister Theological Seminary<sup>14</sup>*

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<sup>14</sup> <<http://www.wts.edu/stayinformed/view.html?id=1287>> accessed on 9<sup>th</sup> November 2016