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THE EMERGING CUSTOM OF HUMAN RIGHTS-BASED DEVELOPMENT: A MODEL AGREEMENT FOR SUCCESSFUL EXPLOITATION OF LAKE ALBERT’S OIL RESERVES

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Abstract: The 2006 discovery of oil reserves beneath Lake Albert on the border between the Democratic Republic of the Congo and Uganda has spawned both tension and attempts at cooperative development. History demonstrates that the process of exploiting natural resources is almost inevitably interwoven with violations of the human rights of local populations. This Note catalogs the possible human rights violations that can occur with the development of a natural resource such as oil, and discusses the growing pattern and practice of using human rights-based planning in international development agreements. The author proposes that incorporating human rights-based planning into the development agreement between the Democratic Republic of the Congo and Uganda may help to prevent violations of the recognized rights of the population in the Lake Albert region.

INTRODUCTION

In 2006, Canada’s Heritage Oil Corporation discovered oil reserves beneath Lake Albert, one of Africa’s seven great lakes.¹ The discovery brought as much tension as it did hope: Lake Albert sprawls across the indistinct border between the Democratic Republic of the Congo (DRC) and Uganda.² The countries’ overlapping claims are set amidst a region that has been fraught with conflict for years, fueled in part by

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² See Do You Want to Share or to Fight? The Question Posed by the Oil Find in Lake Albert, Economist, Aug. 25, 2007, at 45 [hereinafter Share or Fight?].
disputes over valuable natural resources. For the moment, DRC and Uganda have agreed to resurvey the watery border and collaborate on oil exploration and development, including the building of a pipeline.

History, however, warns of additional problems that will require a cooperative solution: oil exploitation has been consistently linked to environmental degradation, human rights abuses, and local conflict. Indigenous populations in oil-rich regions in Ecuador, Equatorial Guinea, and Nigeria have all suffered negative repercussions from development, including destruction of their livelihoods, the taking of land without compensation, involuntary resettlement, and in some cases, violent repression and protest. These harsh by-products are violations of the local population’s fundamental rights, including the right to adequate living conditions, the right to earn a livelihood, and the right to property, which are enshrined in treaties and customary international law.

The 2006 oil strike has already negatively impacted the economic rights of the Lake Albert-area inhabitants: their ability to fish is devastated and they are restricted from certain areas. Continued oil development will likely create fundamental changes to the environment, which will further damage the local population’s livelihood and property rights. Yet just as the experiences of other states foretold of the conflicts in development, the emerging custom of human rights-based

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9 See, e.g., Inter-Am. C.H.R., supra note 5, ch. VIII.
development poses a solution. A human rights approach to oil exploitation would enable DRC and Uganda to minimize the risk of violations of rights, and address problems that do arise through a strategy that promotes social sustainability.

This Note thus proposes human rights-based policies, programs and standards that DRC and Uganda should incorporate into their 2007 oil development agreement. Part I outlines the oil agreements between DRC and Uganda, and each country’s human rights obligations under international law. Part I also demonstrates the empirical link between oil exploitation and human rights violations, and provides an overview of customary international law. Part II discusses the human rights violations that are likely to occur in DRC and Uganda, and how other states have used human rights-based development to mitigate such effects. Part III applies human rights-based development planning to the exploitation of oil reserves in Lake Albert.

I. Background

A. Existing Oil-Sharing Agreements

DRC and Uganda have two agreements regarding shared oil reserves. A bilateral agreement signed in 1990 pledged cooperation in petroleum exploration in the Lake Albert region (1990 Agreement). DRC and Uganda agreed to negotiate in goodwill the development of any discovered oil reserves, relying on continued cooperation as opposed to a strict delimitation of the shared border.

In 2006, Heritage Oil Corporation (Heritage Oil) struck oil in the Ugandan waters of Lake Albert. Heritage Oil owns a fifty-percent share in two exploration licenses on the Ugandan side of the lake, and has a Production Sharing Agreement with DRC for exploitation on the

12 See OHCHR, supra note 10, at 19.
14 See Uganda News Release, supra note 4; Nyakairu, supra note 13.
15 See Nyakairu, supra note 13.
16 See Heritage Third Quarter Results, supra note 1.
Congo side.  U.K.-based Tullow Oil P.L.C. (Tullow Oil) has an interest in three concessions in Ugandan waters. Tullow Oil also has a production sharing agreement with DRC. At present, no exploration has taken place in DRC-controlled waters.

Congolese President Joseph Kabila and Ugandan President Yoweri Museveni signed an agreement in 2007 (2007 Agreement) that largely reiterated the commitments in the 1990 Agreement. Both countries pledged to create a joint committee to resurvey the common border, establish a joint security force on Rukwanzi Island, and cooperate in the exploration and exploitation of shared oil reserves.

B. Oil Exploitation and Human Rights Violations

There is no shortage of examples of how oil exploitation can irreparably degrade the environment, and deprive the local population of fundamental economic rights. Nigeria, the largest oil exporting nation in Africa, is one of the worst examples of development-related human rights abuses. After decades of unresolved pollution and land disputes with the federal government, the Ogoni, an ethnic group in one of the oil-rich regions, peacefully mobilized to protest against oil development policies. The government responded by creating a special security force that forcefully silenced any opposition and committed wide-spread human rights abuses. Oil exploitation continued with no regard for the rights of the local population: the construction of pipelines and wells altered the environment, often polluting waterways with spills and other waste, while residents watched as their land was essentially “taken” from them and their fishing livelihoods were de-

20 See Nyakairu, supra note 13; Tullow Oil plc, supra note 19.
21 See Uganda News Release, supra note 4.
22 See id.; Oil Tensions Ease, supra note 4.
23 See O’Neill, supra note 6, at 99, 102, 108–09, 111, 112; Inter-Am. C.H.R., supra note 5, ch. VIII.
24 See O’Neill, supra note 6, at 100.
25 See id. at 97–117; The Price of Oil, supra note 5, at I.
26 See O’Neill, supra note 6, at 113; The Price of Oil, supra note 5, at I.
27 See O’Neill, supra note 6, at 113; The Price of Oil, supra note 5, at I.
stroyed.\textsuperscript{28} Today, the frustration and disenfranchisement manifests in armed rebels who wreak havoc in the delta states.\textsuperscript{29}

Ecuador’s oil development resulted in similar, egregious rights abuses.\textsuperscript{30} The indigenous population has title to oil-rich lands in the Oriente region, but neighboring development of those resources caused significant damage to the local ecosystem.\textsuperscript{31} The resultant pollution caused wide-spread health problems and interfered with the indigenous people’s agricultural and fishing practices.\textsuperscript{32}

These tragic examples chronicle the oil-related environmental degradation that can deprive local populations of sustainable resources for their livelihoods, as well as their land.\textsuperscript{33} Although human rights abuses are not necessarily inevitable, abuse is more likely to occur during early stages of economic transition.\textsuperscript{34} DRC and Uganda will need to construct drill sites and pipelines as they transition into oil exploitation, and such construction can alter the environment, thus risking derogation of human rights.\textsuperscript{35} Moreover, political pressure can provoke rights abuses as society transitions from a fishing, agrarian and trading economy to an oil-based one.\textsuperscript{36}

C. Primary Sources of Congolese and Ugandan Human Rights Obligations: International and National Instruments

The three fundamental economic rights that are implicated in oil development are the right to adequate living conditions, the right to earn a livelihood, and the right to property.\textsuperscript{37} These rights are recognized by DRC and Uganda in international and regional agreements, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples’

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\textsuperscript{28} See O’Neill, supra note 6, at 97–117.
\textsuperscript{29} See id.
\textsuperscript{31} See Barrera-Hernandez, supra note 30, at 49–50.
\textsuperscript{32} See id.; O’Neill, supra note 6, at 99, 102, 108–09, 111, 112.
\textsuperscript{34} See id.; Inter-Am. C.H.R., supra note 5, ch. VIII.
\textsuperscript{35} See Donnelly, supra note 34, at 312, 313, 316–17.
\textsuperscript{36} See, e.g., O’Neill, supra note 6, at 99, 102, 108–09, 111, 112.
\end{flushright}
Both countries also uphold these rights in their national constitutions. DRC and Uganda have thus internalized obligations to protect these rights and should use preventive or compensatory actions to do so.

D. Emerging Customary International Law

A custom in international law is established by a pattern of state practice that implies general consent to a binding principle of international law. The creation of a customary norm is much like creating a snowball by rolling the core down a wintery hill: as more and more states adopt similar practices, the pattern of practice grows into a consensus. Consensus is not determined by the passage of time, but rather by the extent to which state practices are uniform both internally (the same state implements the same practice over time) and collectively (a pattern of practice amongst states). Relatively uniform practice can create a binding custom on states, but the extent to which the custom becomes a rule is largely dependent on whether states believe that the conduct is legally permissible or creates legal obligations. This *opinio juris sive necessitates* defines when a pattern of practice becomes customary international law.

An emerging custom is a snowball in the making—a common practice adopted by different states in similar situations, but one that has not been repeatedly used by the same states, uniformly applied by a substantial number of states, or incurred legal effects. Although

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39 See *Constitution de la République Démocratique du Congo* Preamble, arts. 30, 34, 35, 48, 54, 58; *Constitution of the Republic of Uganda* arts. 26, 40.
40 See *Moser et al.*, *supra* note 11, at 48.
44 See *Filartiga*, 630 F.2d at 880–81; *ILA Report 2000, supra* note 41, at 745.
45 See *Filartiga*, 630 F.2d at 880–81; *ILA Report 2000, supra* note 41, at 745.
46 See *ILA Report 2000, supra* note 41, at 731–34.
the emerging custom is not yet legally binding, the common practice expresses preferred outcomes, and can serve as a soft law precedent.47

A substantial number of states have recognized and applied a human rights-based approach to development, which integrates human rights norms into the plans and operations for growth.48 State action has largely been through the articulation of human rights-centered policies, and the actual mechanisms in development programming have varied.49 Human rights-based development is thus an emerging custom, because it is a common practice adopted by different states in similar situations, but one which still has significant variation and no legal effects.50 Although not yet binding, human rights-based development is an important precedent for DRC and Uganda as they move forward with oil exploration and development.51

II. Discussion

The empirical link between oil exploitation and environmental damage and human rights abuses indicates that DRC and Uganda face a real risk of violating their obligations under international human rights law through oil development activities.52 The growing practice of human rights-based development can be a valuable soft law precedent for addressing those anticipated violations of human rights and promoting sustainable society in the Lake Albert region.53

A. DRC and Uganda: The Risk of Human Rights Violations

The current burdens on the Congolese and Ugandan populations who live and work along the shores of Lake Albert presage the human rights violations that commonly occur during the exploration and de-

50 See id.
51 See OHCHR, supra note 10, at 15–18; Moser et al., supra note 11, at 37–41.
52 See, e.g., ICESCR, supra note 7, arts. 6 §§ 1–2, 11 § 1; O’Neill, supra note 6, at 99, 102, 108–09, 111.
53 See OHCHR, supra note 10, at 15–18, 19; Moser et al., supra note 11, at 37–41.
development of oil reserves. The situations in Nigeria and Ecuador are representative of the relationship between oil development and infringements of the right to adequate living conditions, the right to earn a livelihood and the right to property.

The development of oil reserves beneath Lake Albert will require the building of new infrastructure similar to that in Nigeria and Ecuador, such as the drilling of additional wells to draw on subsurface oil, and the construction of a pipeline to transfer reserves to the coast for export. The massive excavation and construction can unavoidably alter waterways and drainage patterns, which can lead to flooding during the rainy seasons, pollution of water sources through waste run-off, and the spread of diseases. Such conditions can thus infringe the local population’s right to adequate living conditions.

The exploitation of oil reserves also poses a substantial risk of pollution from leaks and spills, which can destroy agrarian and fishing livelihoods. Thousands of Nigerians living in the delta region watched helplessly as leaking pipelines polluted the water and killed or drove away the fish that were their livelihood. Similarly, a substantial Congolese and Ugandan population relies on fishing in Lake Albert for both subsistence and trade. Local fishermen already face restriction related to the oil-inspired border dispute: an August 2007 ban on fishing at night negatively impacts the income of approximately 20,000 fishermen who rely on a nighttime harvest of a particular kind of fish. Future environmental degradation like that in Nigeria could further deprive thousands of Congolese and Ugandans of their right to earn a livelihood.

Furthermore, the devastating environmental changes caused by development activities in some countries have been linked to unlawful takings of private land, which amount to a deprivation of the individual’s right to property. Local populations may be forced to resettle

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54 See Grainger, supra note 8; Inter-Am. C.H.R., supra note 5, ch. VIII.
55 See O’Neill, supra note 6, at 97–117; Inter-Am. C.H.R., supra note 5, ch. VIII.
56 See Share or Fight?, supra note 2, at 45; Inter-Am. C.H.R., supra note 5, ch. VIII.
57 See O’Neill, supra note 6, at 108–12; Inter-Am. C.H.R., supra note 5, ch. VIII.
58 See Inter-Am. C.H.R., supra note 5, ch. VIII.
59 See O’Neill, supra note 6, at 108–09, 111, 112.
60 See id. at 99, 102, 108–09, 111, 112.
62 See id.
63 See O’Neill, supra note 6, at 88, 97–117.
64 See id. at 108–09, 111, 112; Inter-Am. C.H.R., supra note 5, ch. VIII.
when the land becomes uninhabitable and their ability to earn a livelihood is diminished.\textsuperscript{65} Also, the needs of oil exploitation may necessitate state-seizure of private land.\textsuperscript{66} In addition to resettlement, the displaced population is entitled to adequate compensation for lost property.\textsuperscript{67} The state that lacks a resettlement plan for oil-related development activities, and is otherwise unprepared to compensate the local population for seized land, violates the individuals’ right to property.\textsuperscript{68} Resettlement and compensation plans will pose a special challenge for DRC and Uganda, where years of fighting between government and rebel forces have internally displaced large numbers of persons and placed an enormous strain on national resources.\textsuperscript{69}

B. Evidence of an Emerging Custom and a Solution

A number of states have acknowledged a rights-based approach as a norm for the preferred outcome of protecting human rights during development.\textsuperscript{70} Human rights approaches have been applied by states individually and through their participation in international organizations.\textsuperscript{71} The World Bank and various divisions of the United Nations, including the UN Development Program, require or encourage states to incorporate certain provisions into development agreements in order to protect human rights.\textsuperscript{72} State parties to those agreements explic-
itly consent to and adopt this practice in their development planning and operations. Much of state practice consists of verbal acts regarding the policies of an international organization, such as the World Bank’s policy regarding involuntary resettlement. Some states have also acted by implementing these policies through development agreements with the international organization.

The practices of the World Bank and the United Nations represent the essential consensus of state practice, and one defining element of customary international law. Each division of an international organization derives its authority from the agreement of a substantial number of member states. The policies and practices of those organizations thus represent the consensus of a number of states. The policies and practices can therefore support the emergence of a custom in international law.

Human rights-based development can be categorized into three main attributes: development policies aimed at fulfilling human rights; programming that focuses on both the holders of the rights (rightsholders) and the entity obligated to protect and promote those rights, such as the state (duty-bearers); and human rights-based standards to evaluate projects. The UN Development Program’s Millennium Project exemplifies the creation of human rights-conscious development policies. The Millennium Project developed ten goals (Millennium Development Goals) representing fundamental human rights that are

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76 See IIA Report 2000, supra note 41, at 730; David A. Wirth, Partnership Advocacy in World Bank Environmental Reform, in The Struggle For Accountability 51, 56 (Jonathan A. Fox & L. David Brown eds., 1998); see also Weiss, supra note 47, at 352 (noting that the “guidelines, principles and recommended practices” of multinational organizations “are sometimes influential legal instruments”).

77 See Filartiga, 630 F.2d at 881–82, 884.


79 See id.; Wirth, supra note 76, at 56.

80 See OHCHR, supra note 10, at 13–16.

81 See id. at 8; Millennium Project Plan, supra note 72, at 2–3, 7–8, 118, 119, 120.
to be advanced through development agreements. For example, the first Millennium Development Goal to alleviate extreme poverty and hunger protects economic rights such as the right to earn a livelihood and the right to property. The Millennium Project’s success relies on participant states’ integration of those human rights-based policies into development plans, and the Project, therefore, makes numerous programming recommendations, such as the use of human rights assessments.

The World Bank’s pipeline project in Brazil and Bolivia is an example of programming that targeted rights-holders. The pipeline project posed a unique planning challenge, because similar development in the region had caused involuntary resettlement and infringements of the rights of the indigenous peoples. Although human rights-based approaches were not conditions of the loan agreement, the project addressed anticipated problems through the creation of community-based organizations that consulted the local population on regulations and assessments. The project also addressed resettlement and compensation for land loss by granting more secure land rights and paying a share of project funds to local landowners in exchange for an easement for the pipeline to pass through their land. The overall success of these mechanisms was noted in follow-up evaluations conducted by the World Bank.

The World Bank’s Operational Policies now explicitly require borrower states to engage in human rights-conscious development planning to address involuntary resettlement, and thus propose programming aimed at duty-bearers. Operational Policy 4.12 recognizes that involuntary resettlement is related to two fundamental human rights:

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82 See Millennium Project Plan, supra note 72, at 2–3, 7–8, 118, 119, 120.
83 See id. at 7–8 (discussing how empowering poor people with property rights can enable the use of infrastructure and human capital that is vital to growth in agriculture and other economies); see also Bujal Charter, supra note 38, arts. 14, 21 (regarding the right to property), ICESCR, supra note 7, art. 6 (recognizing, implicitly, the right to earn a livelihood).
84 See Millennium Project Plan, supra note 72, at 118, 119, 120.
88 See Inf. Crossroads, supra note 85, at 73.
89 Id.
the right to property and the right to earn a livelihood. The World Bank obligates borrower states, as a condition of the loan agreement, to respect these human rights in development plans, and directs that states should explore alternative project designs, engage in resettlement planning with affected groups, and set aside sufficient resources to compensate involuntary resettlement.

Chad and Cameroon, as duty-bearers, implemented Operational Policy 4.12 as required under their loan agreements with the World Bank for oil development and construction of a pipeline, and experienced some success in addressing losses of property and livelihoods. Both countries used periodic human rights assessments to gauge effects on livelihoods and real property, although the monitoring needed improvement. Chad and Cameroon enacted compensation plans to address the involuntary taking of land and paid sufficient compensation to some of the affected individuals. Chad also developed agricultural training programs to offset losses of livelihoods and land.

The European Union’s (EU) trade and investment policies are examples of how human rights may be used as a standard to assess performance in development. For example, the 2000 Cotonou Agreement on trade and development between EU member states and 77 foreign states provides that human rights violations trigger a dialogue

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92 Operational Policy 4.12 states that involuntary resettlement is defined by the taking of land, which can result from a “loss of income sources or means of livelihood, whether or not the affected persons must move to another location” among other factors. See id.

93 See id.

94 See Cameroon Loan Agreement, supra note 75, at 9, 20, 39; Chad Loan Agreement, supra note 73, at 10, 17, 19, 20, 44; Robert Barclay & George Koppert, Chad Resettlement and Compensation Plan Evaluation Study: Main Report, at v–vii (Jan. 2007) [hereinafter Chad Resettlement Study]. Despite some success, the project was terminated in August 2008 due to Chad’s failure to meet other conditions of the financing agreement. See Press Release, World Bank, World Bank Statement on Chad-Cameroon Pipeline (Sept. 9, 2008), available at www.worldbank.org (follow “News” hyperlink; then follow “Press Releases” hyperlink; then input September 9 2008 into the search browser).


96 See IAG Report 2007, supra note 95, at i; Chad Resettlement Study, supra note 94, at v–vi.

97 See Chad Resettlement Study, supra note 94, at 5-1–5-5.

between state parties, and, if they persist, can result in sanctions or sus-
pension of development projects.99

III. Analysis

The policies and procedures established and implemented by other
states provide a useful framework for amending DRC and Uganda’s
2007 Agreement.100 The incorporation of human rights-based develop-
ment policies, programming addressed to both rights-holders and duty-
bearers, and human rights standards to guide project evaluations could
minimize anticipated infringement of economic rights, consistent with
DRC and Uganda’s obligations under international law.101

A. Policies

The process of amending the 2007 Agreement must begin with the
acknowledgment of the fundamental rights of the Lake Albert popu-
lation.102 DRC and Uganda’s task would benefit from following the ex-
ample of the Millennium Project.103 Formation of the Millennium Pro-
ject’s goals began with recognition of empirical links between certain
phenomena and poverty.104 Those phenomena thus became the goals
or policies to be addressed through development projects.105 Similarly,
the experiences of other states have already demonstrated the well-
established link between oil exploitation, environmental degradation,
and resulting violations of certain economic rights.106 The local popu-
lations in the Lake Albert region, most notably the fishermen, have al-
ready suffered damage to their means of livelihood from initial oil-
related activities.107 Thus, DRC and Uganda have a starting point from
which to form development policies: oil exploitation in Lake Albert
should not damage the environment so as to infringe on the right to

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99 Id.; see Partnership Agreement Between the Members of the African, Caribbean and
Pacific Group of States of the One Part, and the European Community and its Member
States, of the Other Part art. 96, June 23, 2000, 2000 O.J. (L 317) 3 [hereinafter 2000
Cotonou Agreement].
101 See OHCHR, supra note 10, at 15–20; Moser et al., supra note 11, at 37–38, 48.
102 See OHCHR, supra note 10, at 15; Moser et al., supra note 11, at 17–18.
103 See OHCHR, supra note 10, at 8; Millennium Project Plan, supra note 72, at 1–12.
104 See Millennium Project Plan, supra note 72, at 1–12.
105 See OHCHR, supra note 10, at 8; Millennium Project Plan, supra note 72, at 1–12.
106 See O’Neill, supra note 6, at 97–117; Inter-Am. C.H.R., supra note 5, ch. VIII.
107 See Jaramogi & Kayizzi, supra note 61.
adequate living conditions, the right to earn a livelihood, and the right to property. 108

The establishment of a rights-based policy sets the boundaries for development activities by highlighting the key issues that must be addressed in programming. 109 For example, DRC and Uganda have identified the specific rights-holders who should be targeted in programming as the population living within range of the development activities that could be affected by changes to waterways from construction of the pipeline, as well as possible oil leaks and spills. 110 An additional group of rights-holders is composed of fishermen whose livelihood is currently dependent on the viability of Lake Albert. 111

B. Programming for Rights-Holders and Duty-Bearers

State action pursuant to World Bank development agreements has provided numerous programmatic details to protect the human rights in the suggested 2007 Agreement policy amendment. 112 Moreover, the shortcomings of prior attempts can provide valuable information. 113 For example, an oil spill in Cameroon highlighted the need for measures targeting duty-bearers, in order to prevent environmental damage from infringing on adequate living conditions. 114 DRC and Uganda can take these proactive steps by providing for management training to prepare local authorities to effectively deal with oil leaks and spills. 115 Funding the construction of local fire departments and emergency first aid centers could minimize the degree of damage. 116 Preventive measures can also be adopted in relation to rights-holders, such as the dissemination of emergency information to the public and creation of a hotline or reporting center to ensure that locals have the means to promptly report environmental hazards. 117 A multi-faceted emergency plan can thus ensure that accidents are contained and do not erode local living conditions. 118

108 See Bujal Charter, supra note 38, arts. 14, 21; ICESCR, supra note 7, arts. 6 §§ 1–2, 11 § 1.
109 OHCHR, supra note 10, at 28.
110 See O’Neill, supra note 6, at 97–117; Inter-Am. C.H.R., supra note 5, ch. VIII.
111 See OHCHR, supra note 10, at 15.
112 See, e.g., Chad Resettlement Study, supra note 94, at v–vii.
113 See IAG Report 2007, supra note 95, at 33–34.
114 See id.
115 See id. at 33.
116 See id. at 34.
117 See id. at 33.
118 See id. at 33–34.
Monitoring has been perhaps the most successful tool for addressing the effects of development on the right to a livelihood and the right to property, and it can be employed by both duty-bearers and rights-holders. Monitoring by rights-holders was implemented in pipeline projects in South America and Africa through the creation of community-based groups. By establishing local organizations, DRC and Uganda can create a direct information network between the Lake Albert population and duty-bearers. Rights-holders can thus provide information on the day-to-day effects of oil development, and suggest reforms to address new needs.

DRC and Uganda, as duty-bearers, should also employ top-down monitoring by conducting frequent social impact assessments to gauge the effects of development on livelihoods and land claims. The availability and quality of current resources, such as fish, which are related to local livelihoods, can be determined by conducting a social impact assessment prior to initiating new development activities. Additionally, a risk analysis would better enable DRC and Uganda to plan for the anticipated extent of environmental change and impact to livelihoods and property. Regular social impact assessments throughout the project can reveal changes in resources and land that may affect economic rights and require modification of development activities. Furthermore, the success of loss-mitigating programs may be inferred from maintained livelihoods.

Nonetheless, considering the empirical link between oil exploitation and environmental degradation, comprehensive amendments to the 2007 Agreement should include programs for rights-holders to adapt their livelihoods to changing conditions. Chad’s training programs on sustainable fishing practices had some success in preserving the right to a livelihood despite changing conditions. While DRC and

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119 See IAG Report 2007, supra note 95, at 5; Inf. Crossroads, supra note 85, at 73.
120 See IAG Report 2007, supra note 95, at 5; Inf. Crossroads, supra note 85, at 73.
121 See IAG Report 2007, supra note 95, at 5; Inf. Crossroads, supra note 85, at 73.
123 See Millennium Project Plan, supra note 72, at 119–20.
124 See OHCHR, supra note 10, at 19.
125 See id.
126 See Chad Resettlement Study, supra note 94, at v–viii.
127 See IAG Report 2007, supra note 95, at i; Chad Resettlement Study, supra note 94, at v–viii.
128 See, e.g., Inter-Am. C.H.R., supra note 5, ch. VIII.
Uganda should implement similar sustainable practices training now, there are already indications of significant reductions in fishing catches.\textsuperscript{131} Therefore, the 2007 Agreement should also prepare for the worst case scenario: job and skills substitution training, such as incorporating the local population into the labor force for the oil development project.\textsuperscript{132}

Similarly, the 2007 Agreement should provide for a full resettlement plan.\textsuperscript{133} Monitoring programs and satellite imagery can assist in the determination of property to be seized, as well as land rights that have been otherwise adversely affected.\textsuperscript{134} Compensation for loss of land may be paid through the revenues from oil development.\textsuperscript{135} Similar to the land claims database employed by Chad, the advanced preparation of a system to classify claims according to assessed value may shorten delays in delivering compensation; however, any system should remain flexible to adapt to unexpected changes, such as larger than anticipated land losses.\textsuperscript{136}

C. Standards for Evaluation

The articulation of DRC and Uganda’s human rights policy established a broad standard from which to assess future oil exploitation.\textsuperscript{137} Violations of advanced economic rights by either state should trigger a dialogue, if necessary with an intermediary party.\textsuperscript{138} Further violations and failure to redress prior violations where possible should incur sanctions, such as limitations on cooperative activities related to oil development.\textsuperscript{139} Yet, while the “violation” of certain economic rights is admirable in breadth, it begs the question of when a “violation” is deemed to occur.\textsuperscript{140} The 2007 Agreement could further tailor the threshold for a “violation” based on the findings of initial social impact assessments and risk analyses.\textsuperscript{141}

\begin{itemize}
\item \textsuperscript{131} See Grainger, \textit{supra} note 8.
\item \textsuperscript{132} See Chad Resettlement Study, \textit{supra} note 94, at v–viii.
\item \textsuperscript{133} See, e.g., World Bank Operational Manual, \textit{supra} note 65, OP 4.12.
\item \textsuperscript{134} See IAG Report 2007, \textit{supra} note 95, at 4–5.
\item \textsuperscript{135} See Inf. Crossroads, \textit{supra} note 85, at 73.
\item \textsuperscript{136} See IAG Report 2007, \textit{supra} note 95, at 5; Chad Resettlement Study, \textit{supra} note 94, at v–viii.
\item \textsuperscript{137} See OHCHR, \textit{supra} note 10, at 28.
\item \textsuperscript{138} See, e.g., 2000 Cotonou Agreement, \textit{supra} note 99, art. 96.
\item \textsuperscript{139} See id.
\item \textsuperscript{140} See id.
\item \textsuperscript{141} See OHCHR, \textit{supra} note 10, at 18.
\end{itemize}
CONCLUSION

It remains to be seen whether the discovery of shared oil reserves beneath Lake Albert will be a blessing or a curse for DRC and Uganda. It is in the common interests of both countries to find an equitable solution that will encourage foreign investment, ensure project safety, and create the necessary infrastructure for export. A solution to anticipated human rights violations will be necessary to ensure the successful completion of these goals. To this end, the emerging customary norm of human rights-based development should be the basis for amendments to DRC and Uganda’s 2007 Agreement. The policies and practices of international organizations and states reflect an emerging custom that also provides valuable amendment proposals. DRC and Uganda have unquestionable obligations to assure that the rights of the Lake Albert population are protected; moreover, they now have the knowledge to do so.