

**Natural Resource Ownership and Use Rights  
Under Civil, Islamic, and Customary Legal Systems**

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Villagers around Lake Albert had high hopes for how oil would transform their region. Companies pledged new roads, schools and health clinics. But nearly a decade after the discovery of oil [in Uganda], little of that promised infrastructure has been built. Meanwhile, exploratory drilling has ruined crops and killed off fish, eroding people's livelihoods. Oil companies have made cash payouts to affected families, but that money has sometimes increased tensions among family members and torn through the social fabric of villages.<sup>1</sup>

The discovery of oil in Uganda in 2006 represented both a blessing and a curse for the east African nation. Oil promised to bring significant change to much of the country—providing electricity to the ninety percent of the Ugandan populace that still lived without it, expanding the paved roadway system, enhancing educational initiatives, and potentially meeting Uganda's budgetary commitments for up to twenty years.<sup>2</sup> However, as the quote above reflects, the environmental and social consequences of inadequate distribution of fiscal resources temper the potential benefits of the oil industry. Oil is a finite resource that may assist Uganda in moving towards energy independence but politicians must resist “corrupt schemes” that inherently exist alongside such opportunities.<sup>3</sup> Instead, Uganda's goal should be to create a “durable capacity for the country so that future generations would also benefit from this resource.”<sup>4</sup> President Museveni recognized the dual roles oil could play in his country—either a blessing, “transform[ing] the[] region,” or a curse, causing instability in Uganda and interfering with the social cohesion of oil-affected communities.<sup>5</sup> The role oil fills will depend on the distribution of resources.

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<sup>1</sup> May Jeong, *Uganda: Oil Brings Quick Cash, Dashed Hopes*, AL JAZEERA AM., May 30, 2015, <http://america.aljazeera.com/articles/2015/5/30/uganda-oil-brings-fast-cash-dashed-hopes.html>.

<sup>2</sup> *See id.*; Patience Akumu, *Ugandans Fear Curse of Oil Wealth as it Threatens to Blight 'Pearl of Africa'*, THE GUARDIAN, Dec. 28, 2013, <http://www.theguardian.com/world/2013/dec/29/ugandans-oil-blight-pearl-africa>.

<sup>3</sup> *President Museveni Addressing the Parliament on the Oil Debate*, ST. HOUSE OF UGANDA (Feb. 27, 2012), <http://www.statehouse.go.ug/media/audio/president-museveni-addressing-parliament-oil-debate>.

<sup>4</sup> President Yoweri Museveni, *Speech to Parliament* (Dec. 13, 2012) (transcript available at <http://www.newvision.co.ug/news/638180-president-museveni-s-speech-to-parliament-in-full.html>).

<sup>5</sup> Jeong, *supra* note 1.

As international investors and foreign companies hoping to profit from the discovery of oil continue to arrive in Uganda, it becomes essential for the Ugandan government to make informed and appropriate decisions allowing for sustainable revenue streams to benefit international entities as well as the Ugandan people. The Ugandan government must look outside of its own borders to learn best practices in developing the natural gas and oil industry. Venezuela and Saudi Arabia, as the location of the two largest oil deposits in the world and each possessing almost a century of experience in the extractives industry, may represent the ideal exemplars. This Paper will examine, however, whether political decisions and legal frameworks can be transposed across borders and implemented in regions with distinct historical and cultural realities. Can Venezuela and Saudi Arabia, with markedly different cultural contexts, effectively serve as models for Uganda's continuing development of its own, more limited extractives industry?

This question can be posed even more broadly: would an international legal framework regulating natural resource ownership and use rights be successful? The benefits are clear—foreign investors and entities operating in various legal systems worldwide would know what to expect, how to operate in order to maximize profits, and the relevant legal boundaries, regardless of location. Further, the ease of operating in numerous legal systems may spur development in under-utilized countries possessing natural resources but lacking necessary legal frameworks to provide a stable operating environment. However, the question remains, can a uniform legal framework—either internationally or transposed from one system to another—be implemented in vastly distinct legal systems?

By looking to natural resource ownership and use rights in Venezuela, Uganda, and Saudi Arabia, relative differences and similarities in civil, customary, and Islamic legal systems can be

identified. Using the oil industry as a specific example, this analysis will look at the ways in which each system distributes oil and gas revenues among the citizenry. Each country vests ownership of mineral resources in the State; however, the manners of distribution differ in each system. Without an intimate knowledge and respect for individual countries' legal systems, histories, and cultures, foreign corporations operating within the oil and natural gas industry may harm, rather than bolster their host communities. Understanding why and how a legal system developed allows for more efficient decision-making and peaceful work relationships within the host countries, ideally contributing to sustainable, or sustained, development.

## **I. History as the Dominant Force in the Development of Unique Characteristics Across Legal Systems**

### ***a. Venezuela and the Civil Code System***

To appropriately understand property law in Venezuela, it is necessary to go back to the “foundations of modern western property law.”<sup>6</sup> In the beginning of the Roman Empire, land was held communally; however, in the fifth century B.C., the common land was divided among the citizens.<sup>7</sup> Most of the land went to patricians, with plebeians and other conquered peoples struggling against such an unequal distribution of land.<sup>8</sup> To address a lack of land used for agricultural production—essential to the livelihoods of Roman citizens and conquered peoples—the Roman Empire undertook military campaigns to conquer additional land for redistribution to the people.<sup>9</sup> Despite the original intention of the campaigns, this land again went to patricians,

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<sup>6</sup> Thomas T. Ankensen & Thomas Ruppert, *Tierra y Libertad: The Social Function Doctrine and Land Reform in Latin America*, 19 TUL. ENVTL. L.J. 69, 72 (2006).

<sup>7</sup> *See id.* at 73.

<sup>8</sup> *See id.* The patricians held the majority of wealth and power in the Roman Empire and the continued amassing of land only augmented their political power. *See id.*

<sup>9</sup> *See id.* at 74.

creating latifundiums, or large personal estates.<sup>10</sup> Additional attempts at agrarian reforms were undertaken to address the unequal land distribution, with some becoming law; however, these laws were not implemented or acted upon as those who held the land also held the power, limiting any real change in land distribution.<sup>11</sup> Because of these “entrenched interests,” reforms addressing unequal land distribution failed, “a policy failure that would be repeated in the ensuing millennia.”<sup>12</sup>

Rome’s influence, however, did not end at its borders or with the fall of the Roman Empire. Roman law influenced the development of Spanish law.<sup>13</sup> The *Codigo de las Siete Partidas* (“Partidas”), “[t]he first true Spanish code” created under Alfonso X of Castile in the thirteenth century, formed the basis for all later Spanish jurisprudence.<sup>14</sup> While the works of the Roman emperor Justinian laid the foundation of the *Partidas*, the Roman influence extended beyond the compilation of the code, also forming the root of instruction of civil law at Spanish and colonial universities.<sup>15</sup> The Spanish conquistadors, colonization, and the incorporation of the *Partidas* into the *Recopilación de las Leyes de las Indias* in 1530 (“*Recopilación*”) later extended Rome’s existing influence on Spain across the Atlantic Ocean to Venezuela.<sup>16</sup> The *Recopilación* served as the source for most of the public law in Spanish colonies.<sup>17</sup> However, after several modifications and the implementation of additional versions of the *Recopilación*, the *Partidas* proved to be the “most common source for supplying rules of decision” as it was available with

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<sup>10</sup> *Id.* The latifundios of Latin America derive from this name and idea; Venezuela in particular defines “latifundios” as “any uncultivated or idle rural land that exceeds 5000 hectares.” *Id.* at 74 n.17.

<sup>11</sup> *See id.* at 74-76.

<sup>12</sup> *Id.* at 76.

<sup>13</sup> Dylan O. Drummond, Lynn Ray Sherman, & Edmond R. McCarthy, Jr., *The Rule of Capture in Texas – Still so Misunderstood After All These Years*, 37 TEX. TECH L. REV. 1, 29-30 (2004).

<sup>14</sup> John W. Carlson, *Putative Spouses in Texas Courts*, 7 TEX. WESLEYAN L. REV. 1, 2 (2000) (quoting MARIAN BONER, A REFERENCE GUIDE TO TEXAS LAW AND LEGAL HISTORY 9 (1976)); Adam J. Kosto, *Las Siete Partidas*, 44 AM. J. LEGAL HIST. 493, 493-94 (2000) (book review).

<sup>15</sup> *See* Drummond, et al., *supra* note 13, at 31.

<sup>16</sup> *See* Carlson, *supra* note 14, at 2.

<sup>17</sup> M.C. Mirow, *Borrowing Private Law in Latin America: Andres Bello’s Use of the Code Napoleon in Drafting the Chilean Civil Code*, 61 LA. L. REV. 291, 295 (2001).

additional commentaries created in the mid-sixteenth century.<sup>18</sup> The Partidas was far easier to understand and implement than the Recopilación because of the commentaries. Through the Partidas and its general acceptance in the colonies, vestiges of Roman law survived and thrived.

With the conquest of the New World, Spanish conquistadors continued the problem of land concentration in the hands of the elite.<sup>19</sup> When the Spanish arrived, they found that indigenous societies' land tenure systems were similar to the feudal tenure systems found in Europe, "vest[ing] power over land in elites."<sup>20</sup> The Spanish co-opted these tenure systems and additionally implemented the encomienda systems, designed to encourage conquest and reward those loyal to the Crown.<sup>21</sup> The encomienda granted the encomendero (the possessor of the grant to the land) the right to use the area and to receive tribute from the indigenous people occupying the land.<sup>22</sup> Thus, the encomienda system was not designed to give encomenderos *ownership rights* but, instead, *use rights*.<sup>23</sup> In practice, however, encomenderos treated the property as their own, alienable private property, rather than the property of the state.<sup>24</sup>

The Spanish additionally implemented repartimientos. Like encomiendas, repartimientos did not grant clear title to the land.<sup>25</sup> The framework of repartimientos was similar to that of encomiendas, except broader. Repartimientos allowed "the grantee to demand that the indigenous inhabitants of the area labor in mines, cultivate crops, or construct public works."<sup>26</sup> Repartimientos provided one more avenue for the landed elites to benefit from the subjugation of

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<sup>18</sup> *Id.*

<sup>19</sup> See Ankersen & Ruppert, *supra* note 6, at 76.

<sup>20</sup> *Id.* at 76-77.

<sup>21</sup> See *id.* at 80.

<sup>22</sup> See *id.* Much like the attempts at reform under Roman law, the purpose of the encomienda system was to protect the right of indigenous people to use the land for subsistence farming in return for the tribute given to the encomendero; however, the practice of this responsibility was rarely upheld. See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> *Id.*

the indigenous people, despite the fact that the land technically belonged to the State, not the individual.

The Spanish conquistadors and the *encomienda* system created an unequal distribution of land among the people in Latin America; “latifundios . . . dominated New World land tenure.”<sup>27</sup> The Spanish Crown attempted to address the property distribution issues through manipulation of land policy, beginning “a legacy of state intervention in land tenure and property rights that continued through independence to present day Latin America.”<sup>28</sup> Venezuela’s historical and cultural context normalized continuing state intervention in property law, allowing for manipulation with the goal of addressing societal issues tied to either landlessness or concentration of land in the hands of a few, a precursor to the “social function doctrine” that would be implemented in modern Venezuela.<sup>29</sup>

Independent codification began after many South American countries gained independence from Spain.<sup>30</sup> Andres Bello, a Venezuelan, was charged with the drafting of Chile’s code.<sup>31</sup> Adopted as a whole by Venezuela, Bello’s Chilean Civil Code of 1855 relied heavily on the Code Napoleon but incorporated French legal ideals into the legal and historical context of Chile.<sup>32</sup> While still bearing the title of a civil code system, Venezuela supplements the

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<sup>27</sup> *Id.* at 80, 82. For a definition of latifundios, see *supra* note 10.

<sup>28</sup> Ankersen & Ruppert, *supra* note 6, at 83.

<sup>29</sup> *See id.* at 87-88. For a discussion of the “social function doctrine” or the requirement to give land for social interest reasons as implemented in Venezuela, see *infra* notes 35-39 and accompanying text.

<sup>30</sup> *See* Mirow, *supra* note 17, at 295; Maria Luisa Murillo, *The Evolution of Codification in the Civil Law Legal Systems: Towards Decodification and Recodification*, 11 J. TRANSAT’L L. & POL’Y 163, 164 (2001).

<sup>31</sup> *See* Mirow, *supra* note 17, at 297.

<sup>32</sup> *See id.* at 291-92. *But see* Jorge Sánchez Cordero, *The Reception of Legal Systems in the Americas: Diversities and Convergences*, 24 TUL. EUR. & CIV. L.F. 231, 237 (2009) (stating that Bello “completely abandoned the adoption or adaptation of the French Code civil”).

legal provisions found in its civil code with a supreme Constitution, special laws, and regulations that possess the force of law.<sup>33</sup>

With respect to private property, the civil codes of most Latin American countries, including Venezuela, incorporate the Napoleonic Code's view of private property protections, prohibiting the deprivation of property unless required for public necessity and the private owner receives just compensation for the compulsorily acquired land.<sup>34</sup> Under the Venezuelan Civil Code, individual property rights are guaranteed unless a public utility or social interest presents itself; no person is obligated to give up their property or allow others to use their property, *except in the case of a public utility or social interest*, through trial, or prior compensation.<sup>35</sup> Special laws determine what constitutes public utility or social interest under this section,<sup>36</sup> and confiscation of property is prohibited, except as allowed under the Constitution.<sup>37</sup>

The Ley de Minas defines extractive substances as falling under “material of public utility.”<sup>38</sup> The primary legal framework regulating oil and natural gas additionally identifies the activities within the oil and natural gas industry as incorporating public utility and social interest.<sup>39</sup> Under this designation, the Venezuelan government possesses the ability to acquire

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<sup>33</sup> See, e.g., CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 7; NORTON ROSE FULBRIGHT, *Ten Things to Know – Investing in the Venezuelan Oil and Gas Industry*, NORTONROSEFULBRIGHT.COM, <http://www.nortonrosefulbright.com/knowledge/publications/108816/ten-things-to-know-investing-in-the-venezuelan-oil-and-gas-industry> (last visited on Nov. 2, 2015). For examples of special laws and regulations, see generally Law No. 3782 art. 3, Ley de Minas, Septiembre 28, 1999, GACETA EXTRAORDINARIA [G.E.] (Venez.) [hereinafter “Ley de Minas”]; Decreto No. \_\_\_\_\_, Reglamento Orgánico del Ministerio de Energía y Petróleo, 2005, <http://www.menpet.gob.ve/repositorio/imagenes/file/normativas/leyes/reglamentoorganicoMEYP.pdf> (last visited Jan. 15, 2016).

<sup>34</sup> See Ankersen & Ruppert, *supra* note 6, at 93.

<sup>35</sup> CÓDIGO CIVIL DE VENEZ. [CÓD. CIV.] [CIVIL CODE] § 547 (“Nadie puede ser obligado a ceder su propiedad, ni a permitir que otros hagan uso de ella, *sino por causa de utilidad pública* o social, mediante juicio contradictorio e indemnización previa. Las reglas relativas a la expropiación por causa de utilidad pública o social se determinan por leyes especiales.”) (emphasis added). The provisions included in Venezuela’s civil code echo similar ones guaranteed in Venezuela’s Constitution. See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 115.

<sup>36</sup> CÓD. CIV. § 547 (Venez.).

<sup>37</sup> CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 116.

<sup>38</sup> Ley de Minas art. 3.

<sup>39</sup> See Ley Orgánica de Hidrocarburos art. 4, Mayo 26, 2015, GACETA OFICIAL DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [G.O.] [hereinafter “Ley Orgánica de Hidrocarburos”].



private land in the event of the discovery of extractive substances. Venezuela's legal framework broadly encompasses the oil and natural gas industry as a "public utility," granting the State significant control over the ownership of land. Echoing the Spanish colonizers' repartimientos system, the State controls the extraction and benefits of the natural resources found within the land, ultimately possessing ownership and use rights. However, the modern-day system guarantees just compensation to the original owner of the land, seemingly addressing some of the inequality of the past. Rather than requiring a tribute to be paid to the Crown to live and work the land, the State now is statutorily mandated to pay the original owner to acquire the property.

Although the right to private property is recognized and protected, with respect to natural resource ownership and use rights, certain provisions in the Civil Code and the Constitution provide the government with broad discretion as to expropriation of property at both the surface and sub-surface levels. Venezuela's constitution allows "expropriation of property with little or no compensation under certain circumstances."<sup>40</sup> Unlike the compulsory acquisition provisions that require just compensation, the State may also acquire land through other means without incurring a requirement to pay the owner of the land.

Land rights in Venezuela are divided into two parts: (1) surface-to-air rights and (2) subsurface rights.<sup>41</sup> The Constitution vests property rights of any "[m]ineral or hydrocarbon deposits of any nature that exist within the territory of the nation" in the Republic of Venezuela.<sup>42</sup> Original ownership of any mineral or extractive substance belongs to the Republic of Venezuela, rather than the owner of the surface rights. It would seem from this delineation of

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<sup>40</sup> John G. Sprankling, *The Global Right to Property*, 52 COLUM. J. TRANSNAT'L L. 464, 464, 487 & n.110 (2014) (citing CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 115, 116).

<sup>41</sup> See Ley de Minas art. 10 ("[L]a corteza terrestre se considera dividida en dos (2) partes: el suelo, que comprende la simple superficie y la capa que alcanza hacia abajo hasta donde llegue el trabajo del superficiario en actividades ajenas a la minería, y el subsuelo que se extiende indefinidamente en profundidad desde donde el suelo termina. Las actividades mineras realizadas en el subsuelo no generan compensación para el superficiario, salvo que afecten al suelo u otros bienes.").

<sup>42</sup> CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 12.

sub-surface ownership to the State in the event of discovery of minerals or oil, the State would only be required to pay just compensation for the surface rights to owners under the “public utility” doctrine; the State would not be required to consider the value of the sub-surface property in determining “just compensation.”<sup>43</sup> The Constitution also allows the State to enter and exploit natural resources found in the protected lands of indigenous people.<sup>44</sup>

The Constitution, the 2001 Hydrocarbons Law (amended in 2006), and other laws and regulations related to oil and natural gas control the industry in Venezuela.<sup>45</sup> As the State owns the natural resources of the country, Article 113 of the Constitution grants the State the ability to give limited concessions, or use rights, to allow for exploitation and extraction.<sup>46</sup> State and municipal governments do not have the power to regulate oil or gas activities; the relevant laws reserve control of the oil and gas industry to the national government in Venezuela.<sup>47</sup> The Hydrocarbons Law, as amended, reiterates that ownership of any hydrocarbons found within the national territory vests in State.<sup>48</sup> The law additionally provides that all primary activities (exploration, extraction, gathering, initial transportation, and storage of hydrocarbons) fall within the scope of (i) the Venezuelan State, (ii) companies that are owned wholly by the State, or (iii) “mixed companies” in which the State as a shareholder controls more than fifty percent of the shares.<sup>49</sup> In other words, within Venezuela, the State maintains control over all aspects of oil and

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<sup>43</sup> See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 12; CÓD. CIV. § 547 (Venez.); Ley Orgánica de Hidrocarburos art. 4; Ley de Minas art. 10.

<sup>44</sup> See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 120.

<sup>45</sup> See Juan Jose Delgado & Gabriela Maldonado, *Venezuela: Oil & Gas Regulation 2015*, ICLG.CO.UK, <http://www.iclg.co.uk/practice-areas/oil-and-gas-regulation/oil-and-gas-regulation-2015/venezuela> (last visited Nov. 2, 2015).

<sup>46</sup> CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 113. The Ley Orgánica de Hidrocarburos also grants the State primary control over the activities, refineries, licenses, and entities (both individuals and companies) involved in the oil and natural gas industry. See Ley Orgánica de Hidrocarburos art. 10-17.

<sup>47</sup> See Carlos Omaña & Arnoldo Troconis, *Oil & Gas 2015: Venezuela*, LATINLAWYER.COM, <http://latinlawyer.com/reference/topics/47/jurisdictions/24/venezuela/> (last visited Nov. 2, 2015).

<sup>48</sup> See Ley Orgánica de Hidrocarburos art. 3.

<sup>49</sup> Ley Orgánica de Hidrocarburos art. 22.

gas, from ownership, to extraction, to storage. Finally, as the minerals are State property, all revenue derived from the extractives industry is revenue of the State.<sup>50</sup>

Although this represents only a general overview of natural resource law and oil and natural gas law, it is clear that the ownership of these resources vests in the state, with many of the use rights also reserved for the State and state-owned, or majority-operated, entities. With such a legal framework, citizens of Venezuela seem to have no right to ownership or use of natural resources, even if such resources are found and extracted from their privately owned property. Control of the land, through ownership and use rights of natural resources, remains with the State, limiting the benefits enjoyed by the citizens. Such dispersal echoes the land distribution and manipulation of land use policies found throughout the history of Venezuela.

#### ***b. Islamic Law and Saudi Arabia***

“Islam is an entire way of life: a religion, an ethic, a lifestyle, and a legal system all in one.”<sup>51</sup> The Kingdom of Saudi Arabia adopted the Hanbali school of Islamic law as Saudi Arabia’s official school of Islamic jurisprudence after Abdul Aziz ibn-Abdul Rahman Al Faisal Al Saud (“King Abd al-Aziz”) established Saudi Arabia as a monarchy in the early twentieth century.<sup>52</sup> The Saudi state, however, extends even further back than that, dating to the middle of the eighteenth century, to a time when the communities and tribes of central Arabia formed a semi-unified state through a religious reform movement, Wahhabism.<sup>53</sup> It was King Abd al-Aziz’s conquest of the Hijaz (a region centered around Mecca and Medina, the two most holy

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<sup>50</sup> See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZ. art. 167.

<sup>51</sup> David J. Karl, Note, *Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know*, 25 GEO. WASH. J. INT’L L. & ECON. 131, 134 (1992).

<sup>52</sup> *Id.* at 141.

<sup>53</sup> See Abdulaziz H. Al-Fahad, *Ornamental Constitutionalism: The Saudi Basic Law of Governance*, 30 YALE J. INT’L L. 375, 378 (2005). “The success of the [religious reform] movement varied over time and space.” *Id.*

Muslim cities)<sup>54</sup> and his political prowess in implementing “modern state structures and laws” in the region that ultimately provided the true cohesion for the development of the Saudi state in the early twentieth century.<sup>55</sup>

King Abd al-Aziz recognized that the more traditional forms of governance employed by the tribes in central Arabia “proved inadequate for this more worldly and exposed region.”<sup>56</sup> By rejecting the traditional norms and customs and, instead, implementing modern political structures and forms of governance, King Abd al-Aziz intended to secure his claim and right to govern the Hijaz against other Muslim claimants.<sup>57</sup> The first constitution of the Saudi state, the Hijazi constitution, declared the region as a “consultative, Islamic State,” adopting the established Islamic traditions of the tribes within a more modern, political structure.<sup>58</sup> King Abd al-Aziz rejected the customary laws and traditions of the area’s inhabitants in order to propel the Saudi state into the modern age. Although these traditional structures were rejected, the underlying religious foundations continued within the modern political structures imposed by King Abd al-Aziz.

Saudi Arabia’s jurisprudence is “one of the strictest interpretations of sharia.”<sup>59</sup> The Hanbali school severely constrains the use of *ijtihad*, or juristic reasoning.<sup>60</sup> Instead, the scholars and students of the Hanbali school focus principally on the primary sources of Islamic law, the

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<sup>54</sup> See William Ochsenwald, *Hijaz*, in OXFORD BIBLIOGRAPHIES (Apr. 24, 2012), <http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0085.xml>.

<sup>55</sup> Al-Fahad, *supra* note 53, at 379.

<sup>56</sup> *Id.*

<sup>57</sup> See *id.* at 379, 381.

<sup>58</sup> *Id.* at 379.

<sup>59</sup> Toni Johnson & Mohammed Aly Sergie, *Islam: Governing Under Sharia*, COUNCIL ON FOREIGN RELATIONS, July 25, 2014, <http://www.cfr.org/religion/islam-governing-under-sharia/p8034> (last visited October 7, 2015). The Hanbali school is the most orthodox of the Islamic schools and is embraced by Saudi Arabia and the Taliban. See *id.*

<sup>60</sup> See Arthur J. Gemmill, *Commercial Arbitration in the Islamic Middle East*, 5 SANTA CLARA J. INT’L L. 169, 171, 176 (2006). “The Hanbali school strictly adheres to the *Qur’an* and the *Sunna* in hopes of avoiding the use of opinion.” Jacqueline McCormack, *Commercial Contracts in Muslim Countries of the Middle East: A Comparison with the United States*, 37 INT’L J. LEGAL INFO. 1, 6 (2009).

Qur'an and the Sunnah, which are divine sources and therefore “immutable.”<sup>61</sup> Further, the Qur'an, as the primary source and “bedrock of Islamic jurisprudence,” contains very little actual law within its pages, requiring use of the Sunnah to further develop the Islamic legal system.<sup>62</sup> The divine nature of these sources restricts the ability of the Islamic jurists to interpret and amend laws in response to modern developments and “contemporary values and needs.”<sup>63</sup>

Although, the structure of the Hanbali school and its adherence to the divine sources principally limits the ability of the law to respond to contemporary societal changes, the Islamic legal system is a product of Islamic culture, with its focus on “ensuring that people live according to God’s will.”<sup>64</sup> Therefore, the view is not that the law must change to adapt to contemporary society. Instead, according to the cultural reality of Saudi Arabia and the aim of the Islamic legal system, the law’s intent is to bring “contemporary” society into conformity with religious law.<sup>65</sup> Saudi Arabia’s Basic Law of Governance, which functions much like a constitution, further instills the importance of the Islamic faith in all aspects of life.<sup>66</sup> Although the Basic Law of Governance functions like a constitution, Saudi Arabia identifies the Qur'an and Sunnah as the supreme Constitution of its country, not the Basic Law of Governance.<sup>67</sup>

With respect to property rights, the Basic Law of Governance specifies that “[t]he state protects freedom of private property and its sanctity. No one is to be stripped of his property except when it serves the public interest, in which case fair compensation is due.”<sup>68</sup> Like the

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<sup>61</sup> Karl, *supra* note 51, at 135, 140-41.

<sup>62</sup> *Id.* at 137-38.

<sup>63</sup> *Id.* at 135-36.

<sup>64</sup> *Id.* at 136-37.

<sup>65</sup> *See id.* at 137.

<sup>66</sup> Basic Law of Governance (No. A/90) art. 8 (Saudi Arabia) (“Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari’ah.”).

<sup>67</sup> *See About Saudi Arabia: Basic System of Government*, ROYAL EMBASSY OF SAUDI ARABIA, [https://www.saudiembassy.net/about/country-information/government/basic\\_system\\_of\\_government.aspx](https://www.saudiembassy.net/about/country-information/government/basic_system_of_government.aspx) (last visited Nov. 3, 2015).

<sup>68</sup> Basic Law of Governance (No. A/90) art. 17 (Saudi Arabia).

discussion above regarding the civil law system in Venezuela and that below of the formal legal system in Uganda, Saudi Arabia protects the right to private property but allows for compulsory acquisition of land in the face of a “public interest” and the receipt of fair compensation. This echoes the protection of private property found in the Qur’an, which advises against the negligent or knowing seizure of someone else’s property.<sup>69</sup> “[O]ne of the greatest evils prevailing in the world is the practice of devouring other men’s property by means of falsehood, fraud and litigation.”<sup>70</sup> Obtaining another’s property by means of fraud or falsehood, or merely contributing to the wrongful acquisition of property, makes one a usurper in the eyes of God.<sup>71</sup> Such a prohibition recognizes an inviolable right to the ownership and protected use of private property, without the risk of interference. Additionally, under the Qur’an, property is alienable, indicating lasting ownership rights.<sup>72</sup> The Basic Law of Governance and Qur’an generally protect an individual’s continuing right to ownership of private property, free from outside interference or manipulation.

While the Qur’an recognizes private property rights and protections, the ownership and use of land ultimately belongs to Allah.<sup>73</sup> This contrasts directly with the ultimate individual or state ownership in Venezuela or clan ownership in Uganda. Further, the Qur’an provides that property acquired in a war must be shared among close relatives, the needy, and travelers as well as with Allah; an accumulation of property is not intended to remain in the hands of the acquirer

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<sup>69</sup> See Qur’an, *Al-Baqara* [The Cow] 002:188, <http://www.usc.edu/org/cmje/religious-texts/quran/verses/002-qmt.php> (“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people’s property.”).

<sup>70</sup> Qur’an, *Al-Baqarah* 2:190, 248, <https://www.alislam.org/quran/tafseer/?page=248&region=E1&CR=EN,E2> (last visited Nov. 3, 2015).

<sup>71</sup> See *id.*

<sup>72</sup> See Qur’an, *An-Nisa* [Women] 004:033, <http://www.usc.edu/org/cmje/religious-texts/quran/verses/004-qmt.php> (“To (benefit) every one, We have appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things.”).

<sup>73</sup> “And know ye that your possessions and your progeny are but a trial; and that it is Allah with Whom lies your highest reward.” Qur’an, *Al-Anfal* [Spoils of War, Booty] 008:028, <http://www.usc.edu/org/cmje/religious-texts/quran/verses/008-qmt.php>.

only but must be shared.<sup>74</sup> The Qur'an requires equitable dispersal of wealth and benefits, with Allah and other individuals. Property should not be accrued individually but gathered for the benefit of all. Therefore, in an Islamic legal system, all of society would share in the wealth of the nation.

Aligning with these tenets of the Qur'an, the State vests ownership of "[a]ll God's bestowed wealth . . . [as] the property of the state as defined by law."<sup>75</sup> This provision of the Basic Law of Governance goes on to explain that the law will define the manner of "exploiting, protecting, and developing such wealth" of the natural resources found within the borders of Saudi Arabia with the interests of "security and economy" of the country as the guiding principle.<sup>76</sup> Saudi Arabia's setting in the Arabian Peninsula and the inability of the people to pursue an agricultural or subsistence living, alongside a high unemployment rate, requires a sizeable portion of the population to depend upon the government for basic needs.<sup>77</sup> Pursuant to the requirements in the Qur'an, much of the population shares in the oil revenues owned and controlled by the state through provision of state services.<sup>78</sup> Saudi Arabian law does not simply say that wealth should be used for the "security and economy" of the whole nation without associated action, the system's embodiment of Islamic law requires the state to actually provide for their people or be in contradiction to the teachings of the Sunnah and requirements of the Qur'an.

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<sup>74</sup> Qur'an, *Al-Anfal* [Spoils of War, Booty] 008:041 ("And know that out of all the booty that ye may acquire (in war), a fifth share is assigned to Allah,- and to the Messenger, and to near relatives, orphans, the needy, and the wayfarer,- if ye do believe in Allah and in the revelation We sent down to Our servant on the Day of Testing,- the Day of the meeting of the two forces. For Allah hath power over all things.").

<sup>75</sup> Basic Law of Governance (No. A/90) art. 14 (Saudi Arabia).

<sup>76</sup> *Id.*

<sup>77</sup> See Hossein Esmaeili, *On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System*, 26 ARIZ. J. INT'L & COMPARATIVE L. 1, 42 (2009).

<sup>78</sup> *See id.*

### *c. Uganda and the Customary Law System*

Although Uganda possesses a similar colonial legacy as Venezuela, unlike Venezuela, customary law within Uganda thrives to present day.<sup>79</sup> The 1995 Constitution of the Republic of Uganda identifies customary land tenure as one of the four land tenure systems within the country, recognizing customary institutions' authority.<sup>80</sup> Based on three main principles, customary land tenure acknowledges that: (1) everyone is entitled to land; (2) all inherited land is family land, not individual property; and (3) the clan maintains the power of oversight, ensuring that everyone receives the land rights they are due and protecting the interests of children and future generations.<sup>81</sup> The considerations and focus of customary land tenure directly contradict the provisions and foundations that underlie Venezuelan property ownership—customary land tenure maintains a community-centered, agricultural focus whereas property ownership and use within the civil law system revolves around individual rights and responsibilities. Customary land tenure aligns more closely to the property considerations in the Islamic legal system; all should be able to benefit from the wealth. However, in Saudi Arabia “all” refers to all citizens in the nation, while, in Uganda, it encompasses clan members only.

Before delving into the ownership and use rights protected within the Ugandan customary legal system, it is necessary to acknowledge the supremacy of the Constitution in Uganda. Article 2(2) specifies that any law or custom that is inconsistent with the provisions of the Constitution will be held void.<sup>82</sup> When the Constitution was initially ratified, it required that any existing law had to be modified, adapted, or qualified to “bring it into conformity with th[e]

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<sup>79</sup> The British gained rights to Uganda in 1890, declaring it a protectorate in 1894. *Uganda profile – Timeline*, BBC, June 16, 2015, <http://www.bbc.com/news/world-africa-14112446>. Uganda did not gain independence from the British until 1962, remaining under the control of the British for over half a century. *See id.*

<sup>80</sup> CONST. OF THE REPUBLIC OF UGANDA (1995), art. 237(3), 246.

<sup>81</sup> *See* LAND & EQUITY MOVEMENT IN UGANDA, *Let's Face Up to Land Grabbing: Why is Customary Protection Failing to Prevent Land Grabbing?* (Sept. 2009), <http://land-in-uganda.org/lemu/document-archive/4-why-is-customary-protection-failing-to-prevent-land-grabbing/>.

<sup>82</sup> CONST. OF THE REPUBLIC OF UGANDA (1995), art. 2(2).



constitution.”<sup>83</sup> Because of such provisions, when analyzing the ownership and use rights found within customary law, one must always keep in mind the framework of the Ugandan constitution. Although customary law is incorporated into the formal legal system, it must conform and comply with the “dominant legal culture.”<sup>84</sup>

Much like the property guarantees of the Venezuelan Constitution, the Qur’an, and the Basic Law of Governance in Saudi Arabia discussed above, the Constitution of the Republic of Uganda protects private property ownership rights, while allowing for certain instances of compulsory acquisition.<sup>85</sup> Although Venezuela’s Civil Code, Saudi Arabia’s Basic Law of Governance, and the Constitution of the Republic of Uganda all limit the ability to acquire private property to reasons related to public utility or social interest, Uganda’s constitution moves farther, granting the Ugandan Parliament the power to pass additional laws and augment the acceptable methods of compulsory acquisition of land.<sup>86</sup> In practice, these distinctions most likely function similarly. The broad definition of “public utility and social interest,” as used by Venezuela, indicates the ease with which Venezuela’s National Assembly can designate industries and resources as falling within the domain of the Venezuelan state.<sup>87</sup> Also, the Qur’an’s designation that all property ultimately belongs to Allah and must be shared for the mutual benefit of all people would similarly allow Saudi Arabia to broadly decide what resources

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<sup>83</sup> CONST. OF THE REPUBLIC OF UGANDA (1995), art. 247.

<sup>84</sup> Fatmata S. Kabia, Note, *Behind the Mirage in the Desert – Customary Land Rights and the Legal Framework of Land Grabs*, 47 CORNELL INT’L L.J. 709, 714 (2014).

<sup>85</sup> See CONST. OF THE REPUBLIC OF UGANDA (1995), art. 26(2) (“No person shall be compulsorily deprived of property or any interest in or rights over property of any description except where the following conditions are satisfied – (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality, public morality or public health; and (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for – (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and (ii) a right of access to a court of law by any person who has an interest or right over the property.”).

<sup>86</sup> See CONST. OF THE REPUBLIC OF UGANDA (1995), art. 26(2).

<sup>87</sup> See *supra* notes 35-40 and accompanying text.

and property can be taken from individuals.<sup>88</sup> Although the language differs between the three systems, the functional effect most likely is equivalent.

Customary land in Uganda is untitled; there are no formal papers of ownership.<sup>89</sup> To undertake a land transaction, rather than going to a public records office, the interested buyer must go to the local community and determine that the seller is the rightful owner of the land by talking to the community members, the Local Council (the formal authority), and customary authorities.<sup>90</sup> The owner of the land may either be the clan as a whole, a head of the family, or an individual or household (if the land was allocated to them to use permanently).<sup>91</sup> Women possess strong ownership and use rights under customary law: single women claim land from their parents, while married women claim land through their husbands from their parents-in-law.<sup>92</sup> Additionally, widows become the head of the household upon their husband's death as well as the "manager" of the family land.<sup>93</sup>

Although there are some overarching similarities between customary land tenure systems, individual characteristics vary greatly across regions. In Acholi, a district in northern Uganda, the Ker Kwaro Acholi (the customary authorities) documented the "key principles and practices of customary tenure in Acholi" in recognition of the "many years of conflict and displacement [that] have lead [sic] to the weakening of traditional systems and practices and have left many

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<sup>88</sup> See *supra* note 74 and accompanying text.

<sup>89</sup> See LAND & EQUITY MOVEMENT IN UGANDA, *Accessing Land for Development: A Guide to Compulsory Acquisition and Other Alternatives: Understanding Customary Law* (Aug. 2009), <http://land-in-uganda.org/lemu/document-archive/3-understanding-customary-law-aug-2009/>.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> LAND & EQUITY MOVEMENT IN UGANDA, *supra* note 81.

<sup>93</sup> LAND & EQUITY MOVEMENT IN UGANDA, *supra* note 81. Although customary law contains these seemingly strong protections, women often face land rights' violations in northern and eastern Uganda. The in-laws of widows often take over the land upon the husband's death, despite customary protections to the contrary. See *id.* Further, if the issue is brought to the clan authorities, they may side with the in-laws or ignore the case. See *id.* In the event the clan authorities do find in favor of the widow, the in-laws may ignore the decision. See *id.* Customary authorities often do not know their own place within the formal legal system and women are hesitant to go to the State court system for resolution, which would risk the wrath of the clan. See *id.*

people with vulnerable rights to land.”<sup>94</sup> Acholiland suffered come of the worst devastation due to its location relative to the position of the Lord’s Resistance Army, led by Joseph Kony, an Acholi from Gulu, Uganda.<sup>95</sup>

Beginning in 1996, the Ugandan government moved more than one million people into camps, due to the implementation of a policy designed to “protect” the Acholi from Kony.<sup>96</sup> From the original 1.1 million people living in camps in Acholiland, about 184,000 still remain in the camps as internally displaced persons (“IDPs”).<sup>97</sup> This cultural context becomes extremely relevant when looking to the PPCT in Acholiland. Section 1(f) specifies that land will remain in the family or household “*for emigrant family members (and future unborn) to return to.*”<sup>98</sup> All Acholi clan members “irrespective of the status, age or gender” have the right “to return to family land after a period of *emigration, displacement, or divorce.*”<sup>99</sup> Due to the massive internal displacement of the Acholi people, the Ker Kwaro Acholi included rights in the PPCT to assist with the reintegration that is happening today and will continue to occur. The Iteso, Kumam, and Lango people face similar historical insecurity; this history lead to instances of boundary disputes, land grabbing, and conflict between community members who migrated long ago but return to sell clan land.<sup>100</sup> The Kumam PPRR and PPRR in Lango Region specifically state that

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<sup>94</sup> Principles and Practices of Customary Tenure in Acholiland [hereinafter “PPCT in Acholiland”], pmbi., <http://land-in-uganda.org/lemu/document-archive/principles-practices-rights-and-responsibilities-pprr-of-customary-land-tenure-in-acholiland-region-jun-2008/>.

<sup>95</sup> See *Joseph Kony: Profile of the LRA Leader*, BBC (Mar. 8, 2012), <http://www.bbc.com/news/world-africa-17299084>.

<sup>96</sup> See *History of the War: 1986 to Now*, INVISIBLE CHILDREN, <http://invisiblechildren.com/conflict/history/> (last visited Nov. 2, 2015).

<sup>97</sup> UNITED NATIONS HIGH COMM’R FOR REFUGEES, A TIME BETWEEN: MOVING ON FROM INTERNAL DISPLACEMENT IN NORTHERN UGANDA 7 (2010)

<sup>98</sup> PPCT in Acholiland pt. 2, § 1(f) (emphasis added).

<sup>99</sup> PPCT in Acholiland pt. 2, § 3(a)(vi) (emphasis added).

<sup>100</sup> See Principles, Practices, Rights and Responsibilities for Customary Tenure Management in Teso Region [hereinafter “PPRR in Teso Region”], foreword, <http://land-in-uganda.org/lemu/document-archive/principles-practices-rights-and-responsibilities-pprr-of-customary-land-tenure-in-teso-region-jun-2009/>; Kumam Principles, Practices, Rights and Responsibilities for the Customary Land Tenure Management [hereinafter “Kumam PPRR”], foreword, <http://land-in-uganda.org/lemu/document-archive/principles-practices-rights-and-responsibilities-pprr-of->

upon the return of IDPs, anyone occupying the IDP's land must vacate the land either voluntarily or upon request of the returned IDP.<sup>101</sup> Under the Kumam PPRR and the PPRR in Lango Region, land rights remain with the original occupant if they were forced out of their home due to war or political instability, regardless of the length of time that has passed since they originally occupied the land.<sup>102</sup>

According to Acholi customary law, once land is allocated to a family or household, it can never be taken back; the "rights exist in perpetuity."<sup>103</sup> If land is allocated to people who do not have children, the ownership of the land reverts back to the family or household for reallocation upon their death.<sup>104</sup> Unlike the Acholi's allocation of land ownership rights to a family or household, the Iteso vest ownership in the respective "clans of Teso to hold and manage in trust for the past, present and future people of Teso."<sup>105</sup> Individuals and families primarily possess use rights of the land.<sup>106</sup> Although families may possess ownership rights, this ownership is subject to the oversight of the village clan committee.<sup>107</sup> An individual or head of household may not sell customary land, except for "good reason," which includes medical treatment, school fees, and dowries, and even then, the intention to sell must be discussed with other members of the family; ultimately, the chairperson of the village clan committee also must

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customary-land-tenure-in-kumam-oct-2009/; Principles, Practices, Rights, and Responsibilities of Customary Tenure in Lango Region [hereinafter "PPRR in Lango Region"] foreword, <http://land-in-uganda.org/lemu/document-archive/principles-practices-rights-and-responsibilities-pprr-of-customary-land-tenure-in-lango-region-apr-2009/>.

<sup>101</sup> See Kumam PPRR pt. 4, § 13; PPRR in Lango Region pt. 4, § 9(b).

<sup>102</sup> Kumam PPRR pt. 4, § 12(a)(v), 13; PPRR in Lango Region pt. 4, § 8(a)(v), 9.

<sup>103</sup> PPCT in Acholiland pt. 2, § 1(e).

<sup>104</sup> PPCT in Acholiland pt. 2, § 1(g).

<sup>105</sup> PPRR in Teso Region pt. 2, § 2.

<sup>106</sup> PPRR in Teso Region pt. 3, § 3-8.

<sup>107</sup> PPRR in Teso Region pt. 2, § 2, pt. 4, § 11(b).

agree to the sale.<sup>108</sup> The Iteso's permissible reasons to sell are similar to those of the Kumam; however, the "good reasons" of the Kumam are far more limited than those of the Iteso.<sup>109</sup>

The PPCT in Acholiland, the Kumam PPRR, the PPRR in Lango Region, and the PPRR in Teso Region specify that all clan members have the right to live on family land and use it, or communal land, for basic survival purposes, such as farming and collecting resources from communal areas.<sup>110</sup> Although the PPCT in Acholiland does not contain any further provisions relating directly to the ownership and use rights of natural resources, the clear focus of the PPCT on land ownership as an inviolable right for families indicates that, for the Acholi people in Uganda, land remains their source of livelihood, producing the food and resources needed for day-to-day life.<sup>111</sup> The Kumam, Lango, and Teso customary practices focus on the same objectives, specifying that the sale of land cannot be motivated by "bad reasons" as the land is meant to benefit the present and future generations of those communities.<sup>112</sup> Although these customary laws do not specify the framework regulating the ownership and use rights of natural resources, it is easy to use the overarching goal of protecting land for use by future generations and apply it in determining the ownership and use rights with respect to natural resources, like oil, within the customary land tenure system. Only the land of the Acholi's in Gulu extends into the blocks for oil exploration, drilling, and extraction licensed by the Ugandan government to

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<sup>108</sup> PPRR in Teso Region pt. 1, § 1, pt. 2, § 2(a), (b), pt. 5, § 26.

<sup>109</sup> Compare Kumam PPRR pt. 1, § 3 (identifying good reasons for sale of land as "serious medical treatment and a request after the clan fails to assist one to raise school fees for a person at *the stage of sitting a national examination*") (emphasis added), and pt. 6, § 15 (prohibiting the consent to sale of land in numerous circumstances), with PPRR in Teso Region pt. 1, § 1 (defining "good reasons" to sell land as "medical treatment, school fees, dowry, and payment in execution of a court order and for viable economic business"), and pt. 2, § 2(b) (requiring a good reason and the consent of the majority of family members to allow the sale of land).

<sup>110</sup> See PPCT in Acholiland pt. 2, § 3(a); Kumam PPRR pt. 2, § 4, pt. 7, § 20, 22; PPRR in Lango Region pt. 7, § 15(d), 17(a)(viii); PPRR in Teso Region pt. 4, § 11.

<sup>111</sup> See generally PPCT in Acholiland.

<sup>112</sup> See Kumam PPRR pt. 5, § 14(d), pt. 7, § 22(f); PPRR in Lango Region pt. 5, § 10(d), pt. 7, § 17(vi); PPRR in Teso Region pt. 2, § 2.

foreign corporations.<sup>113</sup> The Iteso, Kumam, and Lango reside in central Uganda, to the east of the Albertine Graben, the primary oil-affected region; however, the location of the Kumam, Lango, and Iteso communities does not mean they will be able to completely avoid the effects of the extractives industry in Uganda as their communities still fall within the direct path of the proposed Uganda-Kenya pipeline.<sup>114</sup>

Although customary law centers on the direct connection between land ownership and use rights and the traditional livelihoods of the community, requiring that all decisions on land transactions should be made to protect the land for future generations, the customary laws in these areas will most likely be ignored in favor of the formal legal system. While Uganda provides for a method of obtaining a Customary Certificate of Ownership,<sup>115</sup> which theoretically protects customary land within the formal legal system, the process “remains prohibitive in terms of financial, legal, and social resources and therefore cannot be undertaken by the common Ugandan villager—a significant barrier in protecting himself or herself from exploitation and land alienation.”<sup>116</sup> The process and difficulty in successfully obtaining a Customary Certificate of Ownership indicates the precarious nature of customary land rights, despite constitutional and statutory protections. Even Uganda’s President Yoweri Museveni stated “[y]ou tell those villagers to get out. You cannot stop the State from accessing its assets.”<sup>117</sup> Without formal

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<sup>113</sup> See Angelo Izama, *Tracing Uganda’s Oil Journey from 1913-2013*, DAILY MONITOR (Dec. 31, 2013, 2:00 AM), <http://www.monitor.co.ug/News/National/Tracing-Uganda-s-oil-journey-from-1913-2013/-/688334/2129680/-/12oyml5z/-/index.html>.

<sup>114</sup> See Lily Kuo, *Kenya and Uganda Are Building the World’s Longest Heated Oil Pipeline*, QUARTZ AFR. (Aug. 13, 2015), <http://qz.com/478773/kenya-and-uganda-are-building-the-worlds-longest-heated-oil-pipeline/>.

<sup>115</sup> See Land Act, Cap. 227 (1998) § 5-8 (Uganda).

<sup>116</sup> CHITRANGADA CHOUDHURY, ET AL., COLUM. UNIV., SCH. OF INT’L & PUB. AFFAIRS, OIL: UGANDA’S OPPORTUNITY FOR PROSPERITY 79 (2012), <http://www.acode-u.org/documents/oildocs/Columbia%20University%20-%20Uganda%20OIL.pdf>.

<sup>117</sup> Kathleen Brophy, *Reinforce Citizens’ Land Rights First, Satisfy Commercial Interests After*, OIL IN UGANDA (Oct. 21, 2014), <http://www.oilinuganda.org/features/land/reinforce-citizens-land-rights-first-satisfy-commercial-interests-after.html>.

recording of land ownership, citizens holding land under customary tenure face significant uncertainty in their ownership and use rights.

Property insecurity in Uganda presents the most concerning aspect for the future development and sustainability of the extractives industry. Uganda has a strong history of cultural ties to the land; land represents individuals' livelihoods and a sign of wealth. However, with a large proportion of the Ugandan population holding land under customary land tenure, the development of the oil and natural gas industry will threaten the continued livelihood of many people as long as inadequate customary property protections remain.

## **II. Note on Differences in Oil Industry**

Beyond the significant differences in the legal systems and historical backgrounds of each country, it is also important to point out the relative development levels of the extractives industry in each country. Saudi Arabia has been developing their extractives industry for more than seventy-five years, beginning with the first oil concession granted in 1923, even before the Kingdom of Saudi Arabia was unified under one ruler.<sup>118</sup> Possessing a quarter of the world's known oil reserves, Saudi Arabia began exporting limited quantities of oil in 1939 after the discovery of oil in 1938.<sup>119</sup> In 1980, the Saudi government completed the purchase of Aramco (Arabian American Oil Company), acquiring one hundred percent of the participation interest in the company.<sup>120</sup> Despite Saudi Arabia's long history with extractive resources, Venezuela's extends even further, beginning in 1914 with the drilling of the first commercial oil well.<sup>121</sup> Like

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<sup>118</sup> See *Oil Industry*, COUNTRYSTUDIES.US, <http://countrystudies.us/saudi-arabia/40.htm> (last visited Oct. 27, 2015).

<sup>119</sup> *Oil*, ROYAL EMBASSY OF SAUDI ARABIA, <https://www.saudiembassy.net/about/country-information/energy/oil.aspx> (last visited Oct. 27, 2015).

<sup>120</sup> *History: Milestones*, SAUDIARAMCO.COM, <http://www.saudiaramco.com/en/home/about/history/milestones.html> (last visited Oct. 27, 2015).

<sup>121</sup> See *Venezuela*, OPEC.ORG, [http://www.opec.org/opec\\_web/en/about\\_us/171.htm](http://www.opec.org/opec_web/en/about_us/171.htm) (last visited Oct. 27, 2015).

Saudi Arabia, the Venezuelan government controls the petroleum industry, which was nationalized in 1976.<sup>122</sup> OPEC certified in 2012 that Venezuela's reserves were larger than Saudi Arabia's, granting the Venezuelan government control over the largest deposit of oil in the world.<sup>123</sup> Unlike the long history and well-developed extractives industries in Saudi Arabia and Venezuela, Uganda did not confirm the existence of commercially viable petroleum deposits until 2006 and is not expected to begin the bulk of its commercial production until 2017.<sup>124</sup>

Although the relative levels of development of the oil industry in each country may lend themselves to suggesting a potential framework for Uganda's future extractives industry policy, Uganda's unique historical and culture background must be accounted for. The legal systems possess some overarching similarities but the significant historical differences may prohibit effect transposition. Most likely, Venezuela's similar colonial backdrop would be the most effective model. It may be possible to plot a successful path forward for Uganda and other less-experienced, formerly colonized oil-producing countries worldwide by looking to Venezuela.

The history and cultural context of Saudi Arabia conditioned the people to anticipate the sharing of resources for a "greater purpose," whereas Venezuela's history of unequal land distribution and resources held in the hands of the elite ultimately created a class system with respect to ownership and use rights of natural resources taken from the land. Those that were not the landed elites only had use rights at the pleasure of the encomenderos. The historical and cultural context of Saudi Arabia and Venezuela differs significantly from Uganda. While nationalization of the oil and natural gas industry in both of these countries has allowed

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<sup>122</sup> See Cesar J. Alvarez & Stephanie Hanson, *Venezuela's Oil-Based Economy*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/world/venezuelas-oil-based-economy/p12089> (last visited Oct. 27, 2015).

<sup>123</sup> See Miguel Tinker Salas, *For Hints at Venezuela's Future: Follow the Oil*, N.Y. TIMES (Jan. 4, 2013, 5:53 PM), <http://www.nytimes.com/roomfordebate/2013/01/03/venezuela-post-chavez/for-hints-at-venezuelas-future-follow-the-oil>.

<sup>124</sup> See Silvia Antonioli, *Bulk of Uganda Commercial Oil Production to Start in 2017*, REUTERS (May 9, 2014, 2:30 PM), <http://www.reuters.com/article/2014/05/09/uganda-oil-idUSL6N0NV4AW20140509>.



sustainable development and continuation of the industry, the sheer size of their reserves in combination with their unique histories make their decisions in the oil and natural gas industry incompatible with an intended future framework for Uganda.

Protecting the land rights of ethnic groups under customary tenure should be at the forefront of the Ugandan government's developmental goals. The positives of gaining significant revenue from the oil and natural gas industry will fade in the face of an increasingly growing number of landless citizens moving to city centers seeking other avenues for sustaining themselves. Protecting the historical agricultural focus of the Ugandan economy will allow the oil and natural gas industry to supplement Uganda's economy, rather than envelop it. With a far smaller reserve than Venezuela and Saudi Arabia, Uganda cannot afford to entirely depend on the oil and natural gas industry to sustain the development and growth of the country as a whole.

### **III. Comparing Natural Resource Ownership and Use Rights Across Legal Systems**

Although the three systems share certain overarching elements—for example, the right to private property and state ownership of natural resources—the historical development of each country affects the implementation and details of these shared elements differently. In Venezuela, the legacy of unequal land distribution continues to plague contemporary society. State efforts to address this inequality historically normalized state intervention, foreshadowing Venezuelan state ownership and control of both the resources and revenues associated with oil and gas. Venezuela's strong state control implemented through the Civil Code and special laws regulating the extractives industry echoes its historical roots, much like Uganda's present reality reflects its own history.

The many ethnic groups within Uganda have been subject to a history of foreign intervention and internal unrest. The current system, which relegates customary land tenure to a place below that of the formal land tenure system, despite constitutional protections to the contrary,<sup>125</sup> continues a history of foreign suppression and lack of recognition for local people's traditions and underlying interests. Uganda, as a country rich with natural resources, will always attract foreign investors and corporations, seeking opportunities to profit. Unfortunately, the customary legal system fails to protect land ownership and use rights for the rightful owners of land in Uganda.<sup>126</sup> Within this system, many times the very ownership within customary land tenure benefits the government or others that are seeking to profit from the extractives industry in the country. These citizens are often unaware of their own rights.<sup>127</sup> Because of the historical failure to address inequality between the governing power and the ethnic groups throughout Uganda, the inequality will continue.

In contrast to the vestiges of the colonial legacy present in both modern-day Venezuela and Uganda, King Abd al-Aziz's incorporation of traditional Islamic foundations into modern governance structures creates a very different system in Saudi Arabia. The historical basis of Islam continues to strongly affect modern Saudi Arabia. Saudi Arabia's foundation upon "divine sources" even more closely aligns Saudi Arabia's current legal system with its historical past. Like the other two systems, Saudi Arabia vests ownership of natural resources in the State. However, its establishment, encompassing the requirements of the Qur'an and the admonition to share resources among all peoples equally, allows for a mutually beneficial relationship between the State and citizens. Rather than a country with a background of colonial misappropriation and

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<sup>125</sup> See *supra* note 80 and accompanying text.

<sup>126</sup> See *supra* notes 115-117 and accompanying text.

<sup>127</sup> See Beatrice Ongode & Flavia Nalubega, *Oil Fuels Land Grabs in the Albertine Region*, OIL IN UGANDA (Sept. 12, 2014), <http://www.oilinuganda.org/features/land/oil-fuels-land-grabs-in-the-albertine-region.html> ("People here do not know the value of land . . . They do not know anything to do with land titles.").

subjugation, Saudi Arabia's foundation in Islamic law allows for this shared benefit, regardless of the State's ultimate ownership of natural resources.

The divergence within the legal systems, despite broad shared characteristics, relates directly to the history of each country. The colonial history of Venezuela and Uganda compared with Saudi Arabia's religious development specifically contributes to these distinctions. Such a clear divergence points to potential difficulties in transposing legal frameworks across borders. Uganda and Venezuela's shared colonial heritage may allow for an increased chance of success should Uganda choose to adopt certain Venezuelan provisions. However, focusing solely on which system will fit most precisely into Uganda's current system ignores the goal. Is the intention to continue Uganda's current system or to propel the country forward? The shared history between the two countries seems to have created similar challenges in protecting indigenous and customary land as well as an inability to share resources equally. Uganda must therefore look within its own borders and assess the goals of its people and balance those with the hopes of the government to achieve success in the oil and natural gas industry. Assuming Uganda's ultimate goal is to benefit all citizens equally, using Venezuela as a model for the extractives industry development will simply stagnate Uganda's progress, although Venezuela's system may align most closely with Uganda's.

#### IV. Globalization and the Pressure to Recognize a Global “Property Right”

Will there be a push to institute an international legal property framework as the world becomes increasingly globalized? “Developing nations have increasingly realized that respecting property rights may both encourage needed foreign investment and help their citizens escape from poverty.”<sup>128</sup> A global property right would avoid the uncertainty of operating within an unknown legal system and potentially diminish certain additional operating costs required to prepare to enter an unfamiliar system. A global property right, with widely understood and accepted rules, may better facilitate global production and trade. As global leaders within the oil and gas industry, can the legal frameworks present in Saudi Arabia and Venezuela be replicated in countries, like Uganda, with newly developing oil and gas industries? May Uganda, a relative newcomer to the industry, rely on the tried and tested frameworks present in Saudi Arabia and Venezuela with their nearly a century of experience? And can these frameworks be applied on an international scale?

A push toward recognizing a global property right has surfaced, with some arguing that such a global right has already been recognized.<sup>129</sup> Proponents point to international agreements and declarations that identify property rights as pre-existing natural rights, such as the “aspirational goals” included in Universal Declaration of Human Rights.<sup>130</sup> The United Nations Commission on Human Rights later attempted to make the “aspirational goals” binding obligations but failed, largely due to decolonization; former colonized countries were unwilling to agree to a global property right because it impeded their ability to expropriate property from

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<sup>128</sup> Sprankling, *supra* note 40, at 466.

<sup>129</sup> *See generally id.*

<sup>130</sup> *Id.* at 468-69.

former colonial authorities.<sup>131</sup> Successfully navigating distinct foreign legal systems requires an understanding of the historical, cultural, and social context in which the system developed.

The United Nations Commission on Human Rights' inability to secure a global property right raises an important point: when evaluating a proposed "global right," it is critical to consider the historical and cultural reality of all the affected countries. Due to vastly different historical and political realities as well as distinct legal systems, a blanket "right" implemented globally most likely will fail. Take the legal development of Saudi Arabia, Venezuela, and Uganda, for example. While sharing certain broad private property protections, the aspects related to natural resource ownership and subsequent dispersal of revenues among the citizens differ greatly, tied directly to the historical background of each country. This indicates that, although a broadly framed global property right may be acceptable worldwide, moving any farther beyond a general framework of such a right will collide with one or more legal systems worldwide. To have an international right, one must account for the discrepancies within foreign law; legal systems vary greatly on a country-by-country basis. Therefore, despite a growing worldwide pressure to recognize a global property right, the workings of such a right must be tailored to meet the realities of individual countries, considering the unique historical and cultural background of each country. Whether or not such a tailoring is possible remains to be seen.

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<sup>131</sup> *See id.* at 470-71.

## V. Conclusion

When thinking about the potential for international legal frameworks regulating property law, natural resource ownership, or the oil and natural gas industry, numerous concerns and considerations arise. The stark differences in the historical contexts, cultural realities, and goals of countries across the world quickly come into focus. Unless an international framework can be created with sufficient flexibility to account for such diversity, it will either be rejected or fail in implementation. If variations among legal systems require such flexibility, however, does that not defeat the purpose of an international legal framework? While the global economy continues to develop and cross-border trade and industry swiftly expand, such questions will continue to arise. Until these questions are answered and a suitable international framework is identified (*if* one is identified), comparative law will remain instrumental in providing a guide for the global citizenry and international or foreign corporations.

Comparative analysis in a pluralistic international system can provide information on the motivations and aspirations of individual countries. Implementing an international framework ignores the dynamic influences on the development of law in each country. Undertaking research and analysis within each system and ultimately evaluating similarities and variations across borders will provide a more nuanced understanding of the international system. Such studies will better equip individuals, corporations, and other entities to operate internationally; an international legal framework ignores the human component of the law.

Despite the importance of such examinations, comparative analyses of natural resource ownership and use rights seem to be scarce within the academic field, which is surprising, particularly in light of the potential revenue and profit associated with the discovery of oil and natural gas abroad. Such analyses will remain especially relevant as the use, sale, and export of

natural resources continue to remain at the forefront of discussions and policymaking worldwide. Additionally, as the availability of these resources decreases towards depletion, determining ownership and use rights will become even more essential.

“[G]lobalization does not primarily lead to universal homogenization, but rather to increased legal pluralism in ways that make legal research ever more challenging and complex.”<sup>132</sup> Although continuing globalization may increase pressure to recognize global property rights or other international legal frameworks, succumbing to this pressure fails to account for the diversity inherent in a global system. Accepting an international legal framework, although minimizing uncertainty by providing clear guidelines, simply seeks to avoid the work required to properly understand foreign legal systems. As Werner Menski said above, globalization will not minimize diversity but instead exacerbate it. International law will be unable to accommodate such diversity, while comparative law will. As globalization continues, comparative law’s relevance will continue to increase.

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<sup>132</sup> WERNER MENSKI, *COMPARATIVE LAW IN A GLOBAL CONTEXT: THE LEGAL SYSTEMS OF ASIA AND AFRICA* xi (2d ed. 2006).