

The State of Corporate Accountability in Uganda

A Baseline Study Report for the Uganda Consortium on Corporate Accountability



September
2016

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Corporate Accountability*



**UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY**

U C C A

September 2016

Cover photo: *Community members working at the Tororo Cement mining site in Moroto district*

LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
CBO	Community Based Organizations.
CCCC	China Communication Construction Company.
CEHURD	Centre for Health Human Rights and Development
CISCO	Civil Society Coalition on Oil
CNOOC	China National Offshore Oil Corporation
ECO	Ecological Christian Organization
EIA	Environmental Impact Assessments
EITI	Extractive Industries Transparency Initiative
EOC	Equal Opportunities Commission
ERA	Electricity Regulatory Authority
ETO	Extra-Territorial Obligations
ILO	International Labour Organization
IRC	Industrial Relations Court
ISER	Initiative for Social and Economic Rights
IUCN	International Union for Conservation of Nature
LBT	Legal Brains Trust
MNC	Multinational Corporations
NEMA	National Environment Management Authority
NFA	National Forestry Authority
NGO	Non-Government Organization
NODPSP	National Objectives and Directive Principles of State Policy
NSSF	National Social Security Fund
OECD	Organization for the Economic Co-operation and Development
PILAC	Public Interest Law Clinic, School of Law, Makerere University
RDC	Resident District Commissioner
SERAC	Social and Economic Rights Action Centre
TNC	Transnational Corporation
UCCA	Uganda Consortium on Corporate Accountability
UHRC	Uganda Human Rights Commission
UIA	Uganda Investment Authority
UNGPs	United Nations Guiding Principles on Business and Human Rights
UWA	Uganda Wildlife Authority
VPSHR	Voluntary Principles on Security and Human Rights

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ACKNOWLEDGEMENTS

This report was prepared under the auspices of the Uganda Consortium on Corporate Accountability (UCCA), consisting of the Centre for Health, Human Rights and Development (CEHURD), the Initiative for Social and Economic Rights (ISER), Legal Brains Trust (LBT), and the Public Interest Law Clinic of the School of Law, Makerere University (PILAC). The consortium is hosted by ISER and coordinated by Mr. Arnold Kwesiga.

The UCCA would like to express its gratitude to all those who participated in, and worked tirelessly on, this project from its inception and field work to the completion of this baseline report. This report could not have been completed without the support of other groups and individuals, too numerous to be named individually but whose support we value immensely. Our funders deserve special acknowledgment for their generous financial support.

The whole research team comprised Prof. Danwood Chirwa, Dr. Christopher Mbazira, Mr. Arnold Kwesiga, Ms. Salima Namusobya, Ms. Dianah Ahumuza, Mr. James Zeere, Ms. Fiona Orikiriza, Ms. Allana Kembabazi, Mr. Joshua Kisawuzi, Ms. Dora Kukunda, Ms. Miriam Atim, Mr. Eriya Nawenuwe, Mr. Joseph Byomuhangi and Mr. Simon Ssenyonga. We thank the research team for undertaking the field research and collecting data for this report. Special thanks go to Prof. Chirwa for leading the research, including developing the research tools and authoring this report, and Mr. Arnold Kwesiga for managing and coordinating this project.

Mr. Steven Jjuko, Ms. Mariam Nakiganda and Ms. Jacque Nakiyingi were responsible for all the logistical support to the project, for which the UCCA is thankful.

A wide range of state institutions, corporations and civil society organisations were interviewed for this report. The UCCA deeply appreciates their openness, kindness and trust to interact with the field researchers and willingness to share their experiences around matters of corporate accountability. This report would not have been completed without their input.

Lastly and more importantly, we would like to acknowledge the hospitality and enthusiasm displayed by the three communities of Moroto, Lake Albert region and Mukono interviewed for this study. Agreeing to participate in focus groups and interview sessions was demanding of their time. We do not take their generosity for granted. It is our hope that the issues canvassed in this report will assist the different sectors in coming up with mechanisms that better protect, respect and fulfil the rights of these and similarly affected communities.

Due diligence was exercised in presenting and interpreting the information obtained for this research accurately. Any errors and omissions in this report should not be attributed to any of the interviewees, but to the UCCA alone.

Uganda Consortium on Corporate Accountability
September 2016

PREFACE

‘Corporate social responsibility’ as a phrase has come to be synonymous with corporations engaging with the communities in which they operate, usually connoting charitable acts. It is a mechanism—albeit largely voluntary, that gives back to the community through addressing key community needs in health, education or infrastructural challenges. Nevertheless, the concept of corporate social responsibility lacks the key element of corporate accountability as envisaged in both the domestic and international legal frameworks. To ensure the protection of, and respect for, human rights by business and corporations, accountability must encompass more than voluntarism. It is increasingly necessary to recognise that both corporate responsibility and accountability are essential elements of sustainable development.

While there has been a great deal of discourse on corporate social responsibility, the same cannot be said of the discourse on corporate accountability, a notion that has become especially relevant in a context where foreign direct investment and globalisation have become dominant. The significance of this report must be seen in this context. The notion of corporate accountability remains largely unexplored in the Ugandan context, especially as it relates to the applicable legal, policy and regulatory framework. The impact of corporations on the rights of communities and the efforts of civil society organisations to promote corporate accountability are questions that have not been addressed adequately or at all in Uganda.

The findings of this report are evidence of the impact of corporations on poor communities, both negative and positive, that should compel all of us to take the notion of corporate accountability seriously. In all communities, where multinational and local corporations have set up businesses, human rights abuses and violations have been noted. In the Albertine region where oil exploration and production is taking place, in the Karamoja region where minerals such as limestone, marble and gold are being mined, and in Mukono where corporations are engaged in stone quarrying, field researchers were presented with evidence of corporate violations. The results of these case studies suggest that human rights are being sacrificed to promote business.

I hope that this report will provide a basis for public engagement on the issue of corporate accountability that may lead to a re-examination of the legal, regulatory and policy framework for conducting business. It is essential that corporations are regulated adequately and business is conducted in a manner that is consistent with and promotes human rights.



Salima Namusobya

Executive Director

Initiative for Social and Economic Rights (ISER)

EXECUTIVE SUMMARY

The recent discoveries of minerals in Uganda and the aggressive push by the government for foreign direct investment have seen an increase on emphasis on the role of business and corporations in the country's economy and development efforts. This development invites the question of the relationship between business and human rights or people's welfare. It is in this context that this study sought to investigate the state of corporate accountability in Uganda. The investigation was organised around three specific questions. The first was whether Uganda has adopted adequate normative standards for corporations and whether those standards, if any, are enforceable. The second question was about the impact of corporate activities on the communities around which they work and how communities respond to them. The last question sought to find out what civil society organisations in Uganda have done to address the question of corporate accountability.

These questions were addressed by focusing on three major mining centres – Moroto, Mukono and Lake Albertine region – and nine major companies involved in mining there. In Moroto, the study focussed on three limestone mining companies – DAO Africa Ltd, Mechanised Agro Ltd and Tororo Cement – and one gold mining company Jan Mangal Ltd. In Mukono, the study investigated the stone quarrying in Nakisunga by Seyani Brothers and Tong Da China International. In the Lake Albert region, the investigation concentrated on the oil-related developments that have taken place there and three main oil companies – China National Offshore Oil Corporation (CNOOC), TOTAL E&P and Tullow Oil. Interviews were held with company representatives, members of the communities, relevant government authorities and civil society organisations.

The study reveals that corporations play both a positive and negative role in these rural communities. Members of the respective communities acknowledged several positive impacts of corporations on their lives including the expansion of business and employment opportunities, facilitating access to services such as transport, water and telecommunications, and improving infrastructure such as roads. The communities lauded some corporations for their corporate social responsibility initiatives such as offering scholarships, building health centres, boreholes and schools, and facilitating access to electricity. However, the communities also highlighted concerns about most of these corporations such as the exploitation of local miners and employees; failure to provide protective gear to local miners and to provide medical care to local miners injured on the mining sites; abuses of land rights and laws; environmental pollution; corruption; failure to provide employment to local people; discrimination of local employees; causing social discord and erosion of moral values; failure to consult with them or to involve them in decisions concerning the acquisition of land, investment permits and mining licences and in the conduct of environmental impact assessments.

Evidently, these concerns cut across all human rights, especially economic, social and cultural rights. What is more, the corporate abuses and violations complained of are happening with the knowledge of, and sometimes committed with the involvement of, the government. They also suggest that the failure by the government to implement the economic, social and cultural rights of the citizens exacerbates poverty especially in rural areas which exposes local people to exploitation by corporations.

To engage with corporations or to hold them accountable, communities have used protests, demonstrations and petitions with varying degrees of success. In some cases, traditional forums such as a council of elders have been used. Others have sought the assistance of civil society organisations or increased their voice by forming associations or community-based organisations. It is clear, however, that a better coordinated national effort is needed to harness and bolster local efforts to tackle the problem of corporate human rights violations comprehensively and consistently.

For their part, civil society organisations have viewed the idea of corporate accountability largely indirectly through the prism of environmental protection, land rights, community livelihoods, conflict resolution, governance, participation and access to information. Despite the existence of some notable efforts, corporate accountability has not yet been taken up as the central concern of civil society organisations, especially as it relates to the protection of economic, social and cultural rights and linking corporate violations to poverty and underdevelopment.

On paper, the Ugandan Constitution expressly provides that human rights apply to non-state actors. This means that corporations have human rights obligations and can, as a result, be held accountable for them. However, the nine corporations studied here do not clearly recognise that they have obligations in relation to the rights the Constitution recognises. That said, a lot more needs to be done to understand what the Constitution means for corporations and how citizens can use constitutional rights to demand accountability from them. It is also clear that the constitutional ideals and principles have not been fully integrated into the legislative frameworks regulating business in general and the extractive industry in particular.

In the end, this report makes various recommendations to address these concerns. These recommendations are addressed primarily to the government, corporations and the Corporate Accountability Consortium under whose auspices this study was conducted.

“20 years ago, ‘human rights’ and ‘business’ was very rarely used in the same sentence. Human Rights was the business of Government while companies just had to mind their own business.”

FIDH

CHAPTER ONE

INTRODUCTION

INTRODUCTION

1.1 Introduction

In Africa, perhaps more than anywhere else, the debate on corporate accountability takes on an added significance given the continent's long history of subjugation, exploitation and abuse at the behest of foreign states, corporations and individuals. Due in part to weak legal systems, unstable political systems, the absence of the rule of law and state capture, many foreign corporations come to do business in Africa with minimal regulation and accountability. Indeed, MNCs in Africa have been accused of sponsoring wars or conflicts, ransacking the continent of its mineral wealth and other resources – worse still—at the expense of the environment, causing the displacement of local people and committing many other human rights violations.¹

Uganda has in the last decade seen a remarkable increase in foreign direct investment, especially in the agriculture, hunting, forestry and fisheries sectors, construction industry, finance and business service sectors, manufacturing sector, mining and quarrying.² The recent discovery of oil and gas deposits in Uganda has widened the scope for further foreign direct investment and the concomitant upsurge in foreign corporations' involvement in the Ugandan economy.³ The increasing prominence of corporations in Uganda's economy has been made possible by the liberalization of its economy which has included the privatisation of state enterprises. Because of the individual or collective economic power corporations wield and increased participation in the provision of public services, they now play an influential role in shaping public policy. Consequently, the welfare of the Ugandan people presently does not just depend on the decisions of elected public officials or government bureaucrats; it also depends in large measure on the unelected and politically unaccountable business executives, some based outside the country. The emphasis on promoting business, including corporate activities, has in turn brought to the fore the well-known clash between achieving economic goals and improving the welfare of the people.

1.2 Aims of this Study

This study investigates the legal and policy framework governing the practice of corporate accountability in Uganda. This broad question is tackled from four entry points. The first is the state. Here the study

¹ See eg *Wiwa v Royal Dutch Petroleum Co* 226 F 3d 88 (2000), cert denied, 532 US 941 (2001); *Social and Economic Rights Action Centre & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (SERAC case); Human Rights Watch 'The price of oil: Corporate responsibility and human rights violations in Nigeria's oil producing communities', (2009), available at <https://www.hrw.org/reports/1999/nigeria/nigeria0199.pdf> (accessed 20 February 2016); Z Koba & S Hattingh 'The neo-liberal plunder of Zambia: South Africa joins the fray', available at <http://ccs.ukzn.ac.za/files/Zambia-neoliberal.pdf> (accessed 20 February 2016).

² See eg note 1 above. See also J Berman 'Boardrooms and bombs' (2000) 22(3) *Harvard International Review* 28; J Sherman 'Private sector actors in zones of conflict: Research challenges and policy responses' New York, FAFO Institute - International Peace Academy, 2001; P Swanson 'Fuelling conflict: The oil industry and armed Conflict; Economies of conflict – private sector activity in armed conflict' Fafo-report 2002, available at http://www.fafo.no/~fafo/media/com_netsukii/378.pdf (accessed 2 July 2016); I Bannon & Paul Collier *Natural resources and violent conflict: options and actions* (Washington D.C.: World Bank, 2003).

³ On the expectations raised by the discovery see L Bategeka, J Kiiza & S Sswewanyana 'Oil discovery in Uganda: Managing expectations', available at <http://mak.ac.ug/documents/EPRCUDICPaper.pdf> (accessed 20 February 2015).

seeks to find out two things: whether Uganda has adopted relevant normative standards for corporations and whether those norms are enforceable. From these two questions flow several incidental questions. If the state has adopted or recognised some normative standards for corporate accountability, how has it done so? What are those standards, what is their status and what do they say? If these standards are enforceable, by what mechanisms are they enforceable, how do those mechanisms work and how effective are they or have they been?

The second entry point is the corporations themselves. This part of the research is interested in how corporations understand corporate accountability for human rights. It asks whether corporations recognise that they have responsibilities towards human rights including to economic, social and cultural rights. How is such recognition reflected in practice?

The third entry point is the lived experience of the communities. This aspect of the research seeks to investigate the impact of corporate activities on local communities from the perspective of the local communities themselves. How do communities experience corporations in Uganda? Have they experienced any violations of human rights at the behest of corporations? How do local communities seek redress for such violations? What strategies do they use? What challenges do they face?

The fourth entry point is civil society organisations. Here the study aims to find out about the extent of civil society interest in corporate accountability for human rights in Uganda. How involved is civil society in corporate accountability? What principles do they use to hold corporations accountable? How do such norms relate to human rights in general and economic, social and cultural rights in particular? What strategies do civil society organisations use to hold corporations accountable? How effective have those strategies been?

In addressing these questions, the study hopes to provide a comprehensive picture of the state of corporate accountability in Uganda. If the record of corporate accountability is good, the study will highlight the good practices that must be maintained or that other countries might emulate. If the record is not good, the study hopes to uncover the reasons therefor and suggest the ways in which corporate accountability in Uganda could be improved.

1.3 Methodology

The questions posed above require a consideration of a vast body of legislative and policy measures, and regulatory mechanisms. Before that can be done, the concept of corporate accountability, its theoretical and legal foundation and problems it gives rise to, have to be unpacked. Such a discussion will lay the foundation for the examination of the applicability of the concept in Uganda. The next step is to give account of the manner in which this concept features in international law. This part of the study will require consideration of the formal sources of international law— treaties, declarations, principles and guidelines, general comments and recommendations, concluding observations, complaints and reports. This discussion will reveal the obligations Uganda has in international law in relation to corporate accountability for human rights.

As the core of this study is about corporate accountability in Uganda, it is critical to investigate how this debate has manifested itself in Uganda, at the level of constitutional law, statutory and other laws, court jurisprudence, quasi-judicial enforcement and general practice, and at the level of the lived experience of the people and the activities of civil society. A study of the Ugandan Constitution and case law is necessary to establish the extent to which constitutional rights are applicable to non-state actors and the means by which such application is effectuated. It will also be necessary to investigate the extent to which the common law and statutory law have been used to hold corporations accountable and how common law and statutory mechanisms of accountability relate to each other, in terms of priority and procedure. The analysis of the statutory provisions will aim to reveal not only what norms are available for corporations but also what institutions and mechanisms have been established for enforcing those norms.

In investigating the experience of the communities and civil society with corporations, the study deployed empirical research methods. Three research sites were chosen, all in the extractive industry but involving different kinds of extractive activities – oil and gas, gold, marble, limestone and stone quarry. The sites are Moroto, Lake Albert region and Nakisunga, Mukono, each of which has gained national attention because of their natural wealth. These three sites were chosen based on a preliminary survey of the existing media and other reports of the impact of corporations on human rights. The research focused on the main corporations working in these areas and the experiences of the communities around the mining sites of these corporations. It also interviewed civil society organisations working in these areas specifically and at the national level but with a focus on the extractive industry. The field research on civil society organisations also drew on the personal knowledge of the members of the Consortium on this project – the Centre for Health, Human Rights and Development (CEHURD), the Initiative for Social and Economic Rights (ISER), the Legal Brains Trust (LBT), and the Public Interest Law Clinic (PILAC).

The field research in Moroto took place on 14 – 17 March 2016. Four corporations were investigated. The first is DAO Africa Ltd, an Egyptian company, which first focused on mining marble and is now into limestone. Mechanised Agro Ltd is a Ugandan company that mines limestone for tiles and other products. The two companies are located less than 20 km apart, and they provide a good basis for comparing the impact of corporations on communities. The third company is Tororo Cement, which is located about 50 km away from Moroto town. It also is involved in limestone mining. This company has a different business model from the first two, as far as the relationship between it and the artisanal miners working on its mining site is concerned. This business model raises unique problems, as will be seen in this report. The last company investigated is Jan Mangal Ltd, which was involved in gold mining between 2012 and 2015. We were able to interview a representative of each of these companies except Jan Mangal Ltd. This company had abandoned its mine by the time field researchers went to Moroto. But we obtained information about this company from previous reports and interviews with community members, civil society organisations and government officials in Moroto. We also interviewed about 10 civil society organisations⁴ in Moroto, the Uganda Human Rights Commission's regional office in

4 These included Mercy Corps, the Miners' Association, International Rescue Committee, Danish Aid, Caritas Uganda, and Karamoja Women and Children in Mining and Peace.

Moroto, and Moroto District Council, and held focus groups with local miners (each composed of ten members) on the mining sites of Tororo Cement (one focus group of members) and DAO Africa Ltd (two focus groups – one composed of male members, and the other composed of female members). Field researchers visited the mining sites of Tororo cement, DAO Africa Ltd and Mechanised Agro Ltd.

The field research in Nakisunga, Mukono district took place on 24 March 2016. Seyani Brothers and Tong Da China International are the two companies investigated. They both carry on a stone quarrying business there. Seyani Brothers allowed field researchers to interview one employee only but company officials on the mining site refused to be interviewed. As for Tong Da China, the interview with its company representative failed due to language problems. However, field researchers managed to interview one employee. In addition, several community members and the head teacher at Sempape Memorial Primary School, near the mine were interviewed.

The field research in Hoima and Buliisa took place from 29th to 31st March 2016. Three major companies – CNOOC, TOTAL E&P and Tullow Oil – are involved in oil exploration there. CNOOC is a Chinese oil and gas company. TOTAL E&P has been in Uganda for decades. Tullow Oil entered Uganda with the acquisition of Energy Africa in 2004. Two focus group discussions of community members were held, one composed of females and another of males. Also interviewed were five organisations,⁵ Kaseta Parish and the Uganda Human Rights Commission regional office. The Team also visited White Nile Consults, a waste management plant. However, employees on site declined to speak to field researchers without clearance from management. The same happened at Environserve Uganda Limited. It was observed though that Environserve is located a little farther away from the communities while White Nile is not.

Field researchers asked the company representatives about their company history especially as it related to the mining activities in the areas they were operating in, to explain what they thought were the benefits they contributed to their communities, what challenges they experienced in doing business, whether they were aware of any human rights complaints against them, how they resolved complaints, and whether they had corporate codes of conduct or corporate social responsibility commitments. They also asked communities to explain how the activities of corporations affected them, how they responded to the impacts and what challenges they faced, if any. For their part, civil society organisations were asked about their main areas of work, whether they focused on corporate accountability, what issues of corporate accountability they had come across, what strategies they have used to address those issues, the challenges they had experienced, and how corporate accountability could be enhanced in Uganda.

⁵ These were National Association of Professional Environmentalists, African Institute for Energy Governance, Buliisa Initiative for Rural Development Organisation, Navigators of Development Association and Global Rights Alert.

I.4 Conclusion and Outline

There is no doubt that the issue of corporate accountability is germane in Uganda and requires investigation. As the government is aggressively promoting foreign direct investment and business as a means of improving the national economy and addressing poverty, corporations have gained unprecedented support from the government. One is left to ask: at what costs is the promotion of business and corporations taking place in Uganda? Are human rights the sacrificial lamb of economic development or are they enhanced by corporate activities?

I.4.1 Structure of the Report

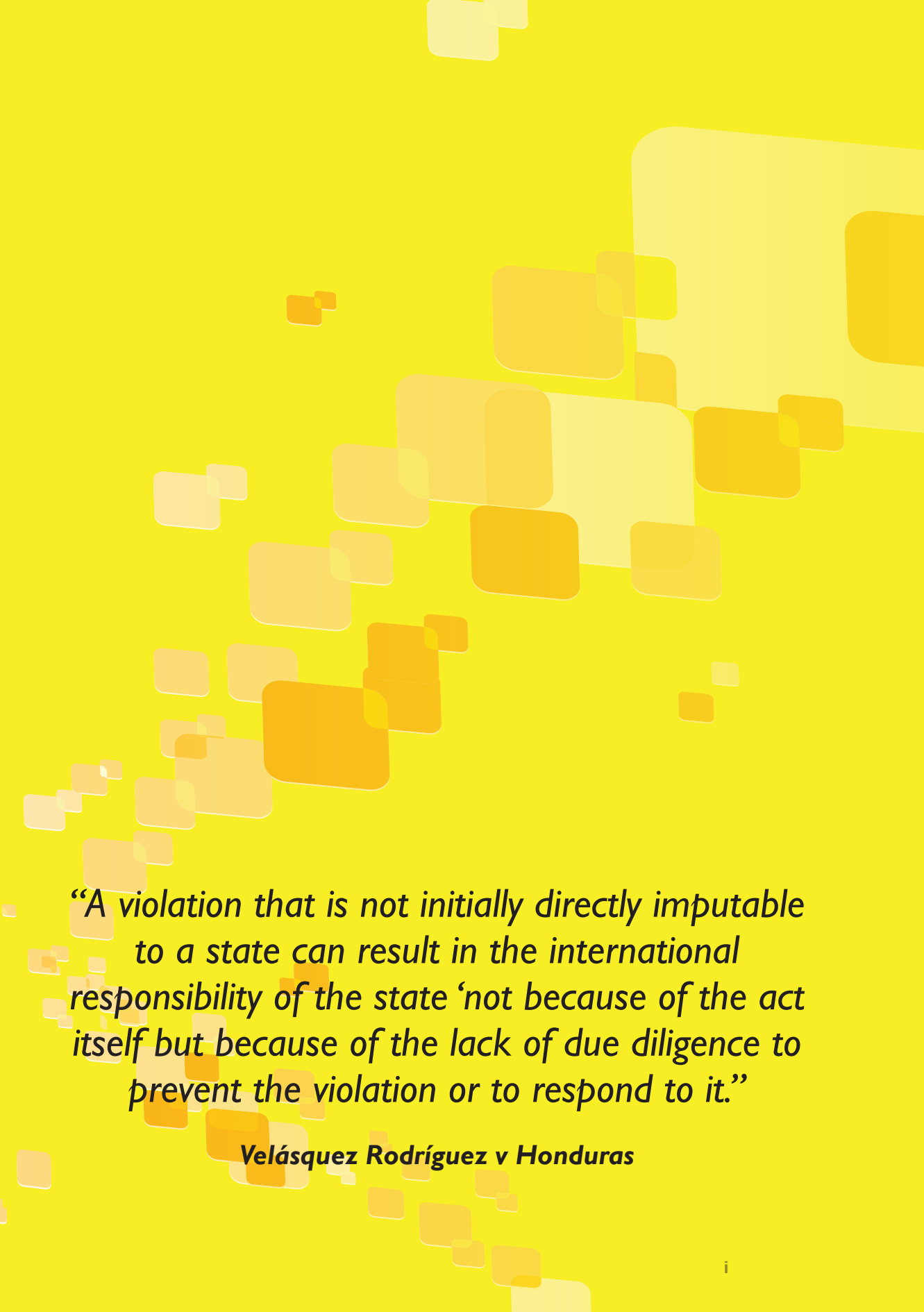
The report is divided into seven chapters, of which this introduction is one. The next chapter provides a brief overview of the philosophical debate about the application of human rights to state and non-state actors as a precursor to a discussion of how international human rights address the issue of the responsibility of corporations for human rights. This chapter draws some lessons from the strategies that international human rights law has used to promote corporate accountability and from the ongoing renewed efforts to bolster the normative standards for corporations.

Chapter three then shifts to Uganda's constitutional framework for corporate accountability. Does the Ugandan Bill of Rights apply horizontally or to corporations? What rights can be considered binding or applicable to corporations? What mechanisms of recourse and vindication of rights does the Constitution put in place for victims of corporate human rights violations?

This discussion leads to chapter four, which is about what Parliament has done to bolster the framework for holding corporations accountable for human rights. What norms do the statutes codify? What devices and mechanisms have statutes established for monitoring compliance by corporations of their human rights obligations?

Chapter five shifts to a discussion of the practice of corporate responsibility and accountability in Uganda. How do corporations behave in practice? How have they affected the community? Here, the study presents the findings of the empirical investigations in the Lake Albert region, Moroto and Nakisunga (Mukono). The chapter analyses these findings to illuminate the major issues in corporate accountability in Uganda.

Chapter six presents the results of the field study of the work of civil society on corporate accountability in Uganda. This chapter will help to further highlight the main issues regarding corporate accountability in Uganda and the interventions that may be taken to address them. The final chapter draws final conclusions and makes some recommendations.



“A violation that is not initially directly imputable to a state can result in the international responsibility of the state ‘not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it.’”

Velásquez Rodríguez v Honduras

CHAPTER TWO

CORPORATE ACCOUNTABILITY IN INTERNATIONAL HUMAN RIGHTS LAW

CORPORATE ACCOUNTABILITY IN INTERNATIONAL HUMAN RIGHTS LAW

2.1 Introduction

The issue of corporate accountability has sharply divided the human rights world into those who support binding human rights obligations for corporations and those who do not. This chapter recalls in brief outline the nature of the conceptual dispute that underlies this division. This will lead to a discussion of how international human rights law addresses the issue of the responsibility of corporations for human rights. The approach used in this chapter is historical; the aim being to show how the issue has evolved overtime. There is, however, a broader objective that the chapter seeks to achieve, namely, to draw some lessons from the strategies that international human rights law has developed to promote and advance the notion of corporate accountability. These strategies can inform and be domesticated in national laws, procedures and practices.

2.2 Non-State Actors and Human Rights: Theoretical Debate

Human rights have traditionally served as a bulwark against the state, not against non-state actors.⁶ While this principle is a central pillar of the liberal conception of human rights, it predates modern liberalism by more than two millennia, traceable to ancient Greek philosophy.⁷ At the domestic level, the public/private distinction rests on the thought that the constitution, the supreme law in which human rights are normally enshrined, essentially creates public institutions and establishes the rules governing how they should relate to each other and to the citizen. The constitution, according to this view, is not meant to regulate private conduct, only public conduct.⁸ At the international level, international law is also regarded as the law that regulates the conduct of states and the relations between states, not private conduct or the relations between private actors. On this view, only states are subjects of international law. Individuals and other non-state actors can benefit indirectly from international law as objects but not primary subjects.⁹

Critical to this distinction is the thought that the public sphere that constitutional law and international law regulate consists of unequal power relations between individuals on the one hand and the state

6 See, eg, Van Dijkhorst J in *De Klerk & Another v Du Plessis & Others* 1994 (6) BCLR 124 (T) at 130D–131D, who stated: ‘Traditionally bills of rights have been inserted in constitutions to strike a balance between governmental and individual liberty’. See also *Retail, Wholesale and Department Store Union v Dolphin Delivery Ltd* [1986] 2 SCR 573, 593: ‘In deciding that the Charter does not extend to private action, the Supreme Court of Canada has affirmed the normal role of a constitution. A constitution establishes and regulates the institutions of government and it leaves to those institutions the task of ordering the private affairs of the people.’

7 M Thornton ‘The cartography of public and private’ in Margaret Thornton (ed) *Public and Private: Feminist Legal Debates* (Oxford: Oxford University Press, 1995) 2.

8 See *De Klerk & Another v Du Plessis & Others*, note 6 above; *Retail, Wholesale and Department Store Union v Dolphin Delivery Ltd*, note 6 above.

9 See G Manner ‘The object theory of the individual in international law’ (1952) 46 *American Journal of International Law* 428, 443 – 444; L Oppenheim *International law: A treatise* (London: Longmans, 1955) 3; J Dugard *International law: A South African perspective* (Cape Town: Juta & Co Ltd, 2000) 1–3; A Orakhelashvili ‘The position of the individual in international law’ (2001) 31 *Western California International Law Journal* 241, 252–3.

on the other.¹⁰ The weaker party is the individual who submits to the rule by the state at the domestic level and rule by states at the international level. The rights that constitutional law and international law protect are thus meant to protect the individual from abuse by the state or states of their position of power and authority. The private sphere is, by contrast, regarded as the realm of freedom and equality. Individuals are considered free, autonomous and rational to make free choices about their lives without interference from the state.¹¹ Or, if a person abuses the rights of another person, the state has the duty to come to the aid of the victim, and hence restore the parity of power between them. This is done by providing legal mechanisms by which disputes are settled peacefully and by establishing laws prohibiting private conduct that is deemed unacceptable for purposes of maintaining a social and political community.

Critiques of the exclusion of the application of human rights to non-state actors start by attacking the assumption of the public/private divide that private relations entail equality and freedom. Feminist theorists have argued that the private sphere is constituted by unequal power relations between men and women.¹² By ignoring the gender based inequalities, the divide has been used by constitutional law and international law either to allow men to dominate the public sphere, where women have been historically excluded, and the private sphere, where women have been relegated or as a pretext for ignoring the abuses of human rights that take place in the private sphere.¹³ Similarly, children's advocates have also highlighted the vulnerability of children in their homes and communities shown how they are prone to abuse more from their own parents, relatives and other individuals than from the state.¹⁴ The inequalities prevalent in the workplace, where employees play second fiddle to the employer, no longer require demonstration.¹⁵

If the private sphere is unequal just like the public sphere, human rights must then be relevant to both. Most theories of rights hold that rights predate the state, and hence that they exist whether there is a state or not. This means that constitutions and international law need not concern themselves solely with the public sphere. Indeed, constitutions have increasingly recognised the application of

10 Thornton, note 7 above. H Steiner & P Alston 'Comment on some characteristics of the liberal political tradition' in H Steiner & P Alston (eds) *International human rights in context: Law, politics and morals* (New York: Oxford University Press, 2000) 361, 363.

11 D Sidorsky 'Contemporary reinterpretations of the concept of human rights' in D Sidorsky (ed) *Essays on human rights: Contemporary rights and Jewish perspectives* (Philadelphia: The Jewish Publication Society of America, 1979) 89; Steiner & Alston, note 10 above.

12 See eg C Pateman 'Feminist critiques of the public/private dichotomy' in SI Benn & GF Gaus (eds) *Public and private in social life* (New York: St Martins Press, 1983) 281; Thornton, note 7 above.

13 K Engle, 'After the collapse of the public/private distinction: Strategizing women's rights' in D Dollmeyer (ed) *Reconceiving reality: Women and international law* (Washington DC: American Society of International Law, 1993) 141, 143-4; DQ Thomas & ME Beasley 'Domestic violence as a human rights issue' (1993) *Human Rights Quarterly* 36.

14 Barbara B Woodhouse 'From property to personhood: A child-centred perspective on parents' rights' (1997-98) *Georgetown Journal on Fighting Poverty* 313; Michael DA Freeman 'Taking children's rights more seriously' (1992) 6 *International Journal of Law and the Family* 52; John Eekelaar 'The emergence of children's rights' (1986) 6 *Oxford Journal of Legal Studies* 161.

15 Marx, for example, argued that the economic structure of society was endemic with socio-economic power imbalances such that human rights were a tool of oppression by the bourgeoisie against the proletariat. See K Marx 'Critique of the Gotha programme' in R Tucker (ed) *The Marx- Engels reader*, 2nd ed, (New York: WW Norton, 1978) 528.

constitutional rights to private actors. Similarly, international law has increasingly widened the range of its subjects beyond states and began to confront the problem of business enterprises.

2.3 Corporations in International Law

The problem of non-state actors in general and business in particular and human rights is not new. Over the years international law has responded to this problem in three main ways: self-regulation, expansion of state responsibility and direct corporate responsibility.¹⁶

2.3.1 Self-Regulation

Although international law has traditionally insisted that non-state actors fall outside the concern of international law, it has encouraged MNCs to regulate themselves so that they respect human rights. This is the context in which the International Chamber of Commerce adopted Voluntary Guidelines for International Investment in 1972. For its part, the United Nations established the Centre on Transnational Corporations in 1974 to elaborate a UN Code of Conduct for MNCs which never saw light of day due to lack of consensus among states.¹⁷ The absence of a UN Code of Conduct meant that individual companies or groups of them were left to develop their own codes on a voluntary basis. Examples of such codes include the Sullivan Principles adopted in 1977 by 12 corporations from the United States working in apartheid South Africa, the McBride Principles adopted by corporations from the United States working in Northern Ireland, and the Slepak Principles, the Miller Principles and the Macquidora Standards of Conduct.¹⁸ These codes have influenced the development of many other corporate codes of conduct throughout the world.

2.3.2 State Responsibility

The second response has taken the form of the expansion of the doctrine of state responsibility. Before 1945, human rights fell within the exclusive domain of state sovereignty.¹⁹ This meant that no state had a right to criticise another state for the status of human rights in the latter's state. However, a state, under the auspices of the doctrine of state responsibility, had a duty in international law to protect the rights of aliens in its territory. Although international law did not have a common standard for the treatment of nationals, the doctrine of state responsibility afforded non-nationals the right to equal treatment with

¹⁶ See DM Chirwa 'The long march to binding obligations of transnational corporations in international human rights law' (2006) 22(1) *South African Journal on Human Rights* 76.

¹⁷ See R Mayne 'Regulating TNCs: The role of voluntary and government approaches' in S Picciotto & R Mayne (eds) *Regulating international business: Beyond liberalization* (London: Palgrave Macmillan, 1999) 235, 240.

¹⁸ See generally JF Perez-Lopez 'Promoting international respect for workers' rights through business codes of conduct' (1993) *Fordham International Law Journal* 1; E Westfield 'Globalization, governance and multi-national enterprise responsibility: Corporate codes of conduct in the 21st Century' (2002) 42 *Virginia Journal of International Law* 1075.

¹⁹ However, international law recognised some exceptions to this rule. One of them was the doctrine of humanitarian intervention developed in the seventeenth century which allowed states to use force to protect prevent another state from committing gross violations of human rights against its nationals.

nationals or in accordance with international standards of justice.²⁰

In its original incarnation, the doctrine of state responsibility was constrained in several ways.²¹ Firstly, only the alien's state of nationality was entitled to hold the host state accountable for the injury sustained by its national.²² Secondly, since there was no universal human rights upon which all individuals could rely, the wrongs upon which state responsibility was based were restricted to the principle of equal treatment or unarticulated international standards of justice. Thirdly, the conduct for which a state could be held responsible was of the state itself or its agents but not of non-state actors.

As international law - with the creation of the UN system of human rights, began to confer direct rights on individuals, the doctrine of state responsibility was radically transformed. The internationalisation of human rights meant that states did not enjoy unquestionable sovereignty over domestic affairs concerning human rights. All states were now interested in the human rights situation in all other states. Violations of human rights committed by a state in its own territory could thus be the subject of inter-state complaints, investigation by international human rights monitoring bodies, or censure by inter-governmental bodies such as the UN, Commission of Human Rights or Human Rights Council.²³ More importantly, the individual by himself or herself could now enforce human rights against any state before various international bodies.

But it is arguably in the substantive grounds upon which the state could be held responsible that the doctrine has undergone the most dramatic transformation. As traditionally conceived, the general rules of state responsibility were firmly tied to the notion of state action.²⁴ This meant that the state could only be held responsible for the wrongful acts of the state itself and the wrongful acts of non-state actors only if the conduct of the latter could be imputed to the former. The recognition of the duty to protect in international human rights law has meant that the state can be held responsible for the wrongful acts of non-state actors even when those acts cannot be attributed to the state.

The duty to protect human rights was given concrete expression and applied for the first time in *Velásquez Rodríguez v Honduras*,²⁵ in which the Inter-American Court of Human Rights held that a

20 See FVG Amador 'State responsibility: International responsibility' (1956) 2 *Yearbook of the International Law Commission* 173, 199 – 200.

21 For a detailed discussion see DM Chirwa 'State responsibility for human rights' in MA Baderin & M Ssenyonjo (eds) *International human rights law: Six decades after the UDHR and beyond* (Surrey: Ashgate, 2010).

22 See the *Mavrommatis Palestine Concessions* case (1924) PCIJ, Series B, No 3. Confirmed in *Case Concerning Payment of Various Serbian Loans Issued in France*, Series A, Nos 20/21, 29). See also *Panevezys-Saldutiski Railway* case, Judgement, Orders and Advisory Opinions (1939) PCIJ, Series A/B No. 76.

23 In *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Articles 74 and 75), Advisory Opinion OC-2/82, 24 September 1982, Inter-Am Ct HR (Series A) No. 2 (1982), para 29, the Inter-American Court of Human Rights said: '... modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States.'

24 DM Chirwa 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' (2004) 5(1) *Melbourne Journal of International Law* 1, 10.

25 [1988] Inter-Am Court HR (Ser C) No 4.

violation that is not initially directly imputable to a state can result in the international responsibility of the state 'not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it.'²⁶ According to this case, due diligence requires the state to 'take reasonable steps to prevent human rights violations or to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.'²⁷

This duty has since been invoked in a number of cases involving corporations.²⁸ For example, in *SERAC*,²⁹ the African Commission on Human and Peoples' Rights (African Commission) found Nigeria to be responsible for failing to take or implement measures to prevent environmental pollution by oil companies in Ogoniland. In *Yanomami v Brazil*,³⁰ it was argued that the government of Brazil had allowed massive penetration of outsiders into the area traditionally inhabited by the Yanomami Indians, which had a devastating socio-economic impact on the Indians, including the introduction of new diseases, prostitution and venereal diseases. The Inter-American Commission on Human Rights found Brazil responsible for violating several rights including the right to life, the right to health and the right to residence and movement. In *López Ostra v Spain*,³¹ it was alleged that a plant for the treatment of liquid and solid waste caused noise and air pollution resulting in unbearable living conditions and serious health problems. The European Court of Human Rights found Spain responsible for failing to secure the right to private and family life of the applicant even though Spain did not cause the pollution itself.

Thus, in its current form, the doctrine of state responsibility compels the state to regulate non-state actors including MNCs in a way that was not possible under the traditional doctrine. The state is obligated, firstly, to prevent violations of human rights from occurring, whether at the instance of itself or its agencies or at the instance of corporations and other private actors and, secondly, to address such violations when they occur.

This duty falls primarily on host states – the states in which corporations are operating – and secondarily on home states – states of origin of the corporations present in more than one state. It is easier for the host state to regulate corporations operating within its territory because it is the state that has the legitimacy to adopt laws and other measures that corporations are expected to follow. Home state responsibility is more difficult to establish because it requires extra-territorial regulation, which is illegitimate in international law. A state interfering with the regulatory systems of other states is liable to accusations of infringing upon the sovereignty of other states. Nevertheless, some states have tried to create the possibility of holding non-state actors responsible with their home legal system

26 *Ibid* para 72.

27 *Ibid* para 74.

28 See eg *Francis Hopu and Tepoaitu Bessert v France* Human Rights Committee, Communication No 549/1993, UN Doc CCPR/C/60/D/549/1993 (29 July 1997); *Mayagna (Sumo) Awas Tingni Community v Nicaragua* [2001] Inter-American Court Human Rights (Ser C) No 79; *Guerra v Italy* (1998) I European Court of Human Rights 210, 26 EHRR 357.

29 Note I above.

30 Res 12/85 (5 March 1985) as contained in the Inter-American Commission on Human Rights, Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.66 (1984–85).

31 (1994) 303-C European Court of Human Rights (Ser A) 41; 20 EHRR 277.

for violations committed abroad. For example, the United States through its Alien Tort Claims Act³² presents a possibility of holding corporations liable for human rights violations committed by their subsidiaries abroad.³³ In Australia and England, the common law duty of care has been used to hold corporations liable for personal injuries such as cancer contracted due to exposure to asbestos by employees of their subsidiaries abroad.³⁴

2.3.3 Principles on Extra-Territorial Obligations of States

The notion of home state responsibility discussed above has now evolved into what is called extra-territorial obligations of states. Traditionally, states exercise jurisdiction over their territories. However, international law has evolved such that states may be held to account for actions and omissions having an adverse impact on human rights outside their territorial jurisdiction. Such actions may consist in directly supporting corporations that commit violations in other countries or omitting to control or regulate corporations registered in their countries and operating abroad where they commit human rights violations. There is indeed both literature and judicial decisions affirming this principle.³⁵ The idea of extra-territorial obligations has recently been clarified in great detail in the *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* (ETO Principles).³⁶ In these principles, it is indicated, among other things, that a state has obligations to respect, protect and fulfil economic, social and cultural rights in situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law.³⁷ Principle 24 of the ETO Principles provides as follows:

All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures. All other States have a duty to refrain from nullifying or impairing the discharge of this obligation to protect.

32 28 USC § 1350 (2004).

33 See eg *Romero v Drummond Co. Inc.* 552 F.2d 1303 (2008); *Doe v Exxon Mobil Corp* No. 09-7125 2011 WL 2652384 (D.C. Cir. 08-07-2011); *Flomo v Firesetone Natural Rubber Co* 643 F.3d 1013 (7th Cir. 2011). However, cases under this Act take a long time to prosecute. For example, the case brought by South African plaintiffs against American banks that operated in South Africa during apartheid was commenced in 2002 and remain to be concluded to date. For a recently commentary on the apartheid case see Christin Gowar 'The Alien Tort Claims Act and the South African Apartheid litigation: Is the end nigh' (2012) *Speculum Juris* 54.

34 See eg *Dagi v The Broken Hill Proprietary Company Ltd (No 2)* [1997] 1 VR 428; *Connelly v RTZ Corporation plc* [1998] AC 854; *Lubbe v Cape plc* [2000] 4 All ER 268. For limitations of both home state and host state responsibility, see Danwood M Chirwa 'State responsibility for human rights' in Mashood A Baderin & Manisuli Ssenyonjo (eds) *International Human Rights Law: Six decades after the UDHR and beyond* (Surrey: Ashgate, 2010) 397, 407–410.

35 See for instance *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 I.C.J. Reports 136. See also cases relating to Uruguay, cited at O. DE SCHUTTER, A. EIDE, A. KHALFAN, M. ORELLANA, M. SALOMON and I. SEIDERMAN, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly*, 1084, 1105.

36 As adopted by a group of international law experts in November 2011.

37 Principle 9(a).

The duty articulated in Principle 24 is applicable to home states of transnational corporations and other business enterprises. On the basis of this, states should be in position to sanction the activities of non-state actors domiciled in their jurisdiction for abuses occurring outside the territory of the state in issue. Under Principle 38, states have obligations to: (a) ensure remedies are available for groups as well as individuals; (b) ensure the participation of victims in the determination of appropriate remedies; and (c) ensure access to remedies, both judicial and non-judicial, at the national and international level.

2.3.4 Direct Responsibility of Non-State Actors

2.3.4.1 Soft-Law Norms and Mechanisms

Despite the conventional view that international law does not bind non-state actors, efforts in international law to regulate corporate behaviour started many decades ago. For example, in 1976, the Organisation for the Economic Co-operation and Development (OECD) adopted Guidelines for Multinational Enterprises (OECD Guidelines). A year later, in 1977, the International Labour Organisation (ILO) adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Tripartite Declaration). Both these documents have been revised since they were adopted.³⁸ From the initial concern with laying down principles relating to information disclosure, bribery, consumer interests, environment, employment, competition and taxation, the OECD Guidelines now state that business enterprises should respect human rights by avoiding infringing on the human rights of others and addressing adverse human rights impacts with which they are involved; within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address them when they occur; find ways to mitigate or prevent adverse human rights impacts; make policy commitments to human rights; carry out human rights due diligence appropriate to their size, nature and context of their operations and severity of risk of adverse impact on human rights; and cooperate in efforts to provide remedies for adverse human rights impacts.³⁹ The main mechanism for promoting the implementation of the OECD Guidelines are the National Contact Points, which also has the responsibility of handling enquiries concerning all matters covered by the Guidelines.

For its part, the ILO Declaration (as amended up to 2006) espouses various principles and rights including those relating to employment promotion, equality of opportunity and treatment, security of employment, training, conditions of work, health and safety, and industrial relations. One means by which implementation of the Declaration is promoted is through periodic surveys. Corporation, governments, employees and employers are occasionally asked to respond to a detailed questionnaire on their experience of implementing the Declaration. Responses to the questionnaire inform the development of recommendations by the ILO Governing Body. The Declaration also makes provision for an interpretation procedure. A request for interpretation may be triggered by a concrete dispute and may be made by a member state, a national organisation or an international organisation of employers

³⁸ Of all revisions and updates to the OECD Guidelines, the 2000 revision was the first to make specific references to human rights. The last update to the Guidelines was made in 2011. It elaborates on the general reference to human rights made in 2001 and tries to incorporate the Protect, Respect and Remedy Framework of the UN Secretary General's Special Representative. The ILO Tripartite Declaration was amended in 2000 and 2006.

³⁹ See part IV of the Guidelines.

or employees.

In addition to these two initiatives, the UN Global Compact was established by the then UN Secretary General Kofi Annan in 1999. Like the OECD Guidelines and ILO Declaration, the Global Compact makes explicit reference to human rights, and calls upon businesses to support and respect internationally proclaimed human rights within their spheres of influence and to make sure that they are not complicit in human rights abuses. It then identifies four labour principles, three environmental standards and one principle relating to corruption, bribery and extortion that it asks businesses to promote and commit to implementing. The UN Global Compact has no enforcement mechanisms. Instead, it is promoted primarily through policy dialogues between business, labour and NGOs; encouraging companies to report on their activities; facilitating local networks; and supporting partnerships between companies, the UN agencies and civil society organisations.

All these three initiative espouse what are called soft-law norms because they are contained in documents that do not create binding obligations on states in international law. Given their status as non-binding principles, corporations can implement them voluntarily, although some forms of soft enforcement mechanisms, mentioned above, have been created for some of them.

2.3.4.2 Towards Binding Norms

2.3.4.2.1 The UN Norms

Continuing concerns about the activities of MNCs led the UN Sub-Commission on the Protection and Promotion of Human Rights to establish a working group on the working methods and activities of MNCs on 28 August 1998.⁴⁰ At its first meeting held in August 1999, the working group decided to draft a code of conduct for corporations based on human rights.⁴¹ As debate ensued on the code, the working group agreed that a non-binding code would not suffice.⁴² It thus sought authority from the Sub-Commission to draft binding norms concerning human rights and MNCs, which was granted in 2001.⁴³ In 2003, the working group concluded its draft entitled: 'UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights'.

Unlike all the previous efforts referred to earlier, the UN Norms sought to commit MNCs and other business enterprises to a broad spectrum of rights. For example, it stated:

Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and to contribute to their realisation, in particular the right to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realisation of those rights.⁴⁴

40 UN Sub-Commission on the Protection and Promotion of Human Rights' Resolution 1998/8, UN Doc E/CN.4/Sub.2/1998/8 (1998).

41 Sub-Commission on Protection and Promotion of Human Rights' Resolution 2001/3 of 15 August 2001.

42 UN Doc E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1 para 21.

43 Para 4 (c) & (d) of the Sub-Commission on the Protection and Promotion of Human Rights' Resolution 2001/3 of 15 August 2001.

44 Para 12.

While recognising that the primary responsibility to fulfil human rights lies with states, the UN Norms sought to obligate MNCs and other business enterprises ‘within their spheres of influence’ to ‘promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognised in international as well as national law’.⁴⁵ The Norms envisaged the establishment of a system of periodic reporting and verification by the UN as the main mechanism by which the implementation of the Norms would be monitored.⁴⁶

When the UN Norms were presented to the UN Sub-Commission for consideration at its March-April session in 2004, they received considerable support from civil society organisations,⁴⁷ but concerted criticism from international business organisations and some influential states.⁴⁸ Much of the criticism focused on the laxities in the drafting of the Norms, especially the attempt to bind MNCs and other business enterprises to both negative and positive obligations in relation to all human rights and the failure to delineate the scope of the beneficiaries of such rights and duties. In the end, the UN Commission on Human Rights decided not to endorse the Norms, arguing that it had not given authority for their development.⁴⁹ Instead, it requested the UN Secretary General to appoint a special representative on the issue of business and human rights to identify and clarify standards of corporate responsibility and accountability, define the notions of complicity and sphere of influence and compile a compendium of best practices of states and MNCs and other business enterprises.⁵⁰

2.3.4.2.2 Ruggie’s Protect Framework and Principles

Pursuant to the Resolution E/CN.4/RES/2005/69 of the Commission on Human Rights, in July 2005, the then UN General Secretary Kofi Annan appointed Professor John Ruggie as the Special Representative of the Secretary General on Human Rights and Transnational Corporations and Other Business Enterprises. By mid-2008, the Special Representative proposed a ‘Protect, Respect, Remedy’ Framework for corporations which was welcomed by the Human Rights Council, which had by then replaced the Commission on Human Rights. Three years later, the Human Rights Council endorsed the Special Representative’s Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.⁵¹

Both the Framework and Principles are rooted in the idea that business enterprises do not have direct human rights obligations. The state is the primary and only direct bearer of such obligations. Business enterprises can be held accountable for human rights only indirectly through the state’s performance of its primary obligations. In this way, the Special Representatives Framework and Principles differ

45 Para 1.

46 Para 16.

47 See ‘Statement of support for the UN Human Rights Norms for Business’ delivered at the 60th Session of the Commission on Human Rights, 15 March – 23 April 2004, Geneva.

48 Including the International Chamber of Commerce, the United States Committee on Irrigation and Drainage, the International Organisation of Employers, the United States, the United Kingdom, Egypt, India and Saudi Arabia. See Frances Williams ‘Company norms “must be on UN rights agenda”’ *Financial Times*, 8 April 2004, 9.

49 Although the working group was given authority to draft the Norms by the Sub-Commission, the latter was not given such authority by the Commission to which the latter owed its authority and mandate.

50 UN Commission on Human Rights Resolution E/CN.4/RES/2005/69.

51 HRC Resolution A/HRC/RES/14/4, 6 July 2011.

markedly from the approach of the UN Norms, the OECD Guidelines, the ILO Tripartite Declaration and the UN Global Compact. The Special Representative's Framework and Principles are anchored in the state's duty to protect and, hence, on the expanded doctrine of state responsibility. They rest on the assumption that if the state was to be effective in implementing its duty to protect, concerns about corporate human rights violations would not arise. It is an assumption that evokes an abiding faith in the ability and capacity of all states to hold corporations accountable and in the good will of all corporations.

However, even the strongest states are finding it difficult to regulate business enterprises in the modern complex globalised environment.⁵² In some cases, the corporations that commit human rights violations have more global influence and financial resources than some states which make penalising those states and not the corporations themselves unjust. The upshot of this brief discussion of the Special Representative's Principles and Framework is that the doctrine of state responsibility cannot constitute the only means by which corporate wrongs should be addressed. Other strategies ought to be deployed to complement them.

2.3.4.3 The Possibility of a Treaty for Business Enterprises

Due in part to the concerns alluded to above, it did not take long after the Human Rights Council endorsed the Special Representative's Framework and Principles before it established, in 2014, an open ended Inter-Governmental Working Group on Transnational Corporations and other Business Enterprises with respect to human rights.⁵³ The Human Rights Council mandated the working group 'to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'.⁵⁴ The establishment of the inter-governmental working group not only shows the dissatisfaction of states with the exclusive focus on state responsibility as a means of addressing corporate human rights violations but also demonstrates that soft norms and mechanisms, self-regulation and state responsibility have not been successful in addressing human rights concerns raised by corporations.

2.4 Conclusion

It is now difficult to deny that corporations have human rights obligations. Even on current interpretation of international law, it has to be admitted that at the very least corporations have indirect human rights obligations. The idea of state responsibility has expanded to impose regulatory responsibilities on states to ensure that corporations do not commit human rights violations and that when they do so, they are held to account accordingly. The multiplicity of voluntary corporate social responsibility

⁵² The 2007 credit crunch and terrorism are examples of conduct of private actors that even the strongest states could not prevent or redress. For a detailed discussion of the regulatory problems of corporations see, DM Chirwa 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' (2004) 5(1) *Melbourne Journal of International Law* 1, 26 – 8; Fleur Johns 'The invincibility of the transnational corporation: An analysis of international law and legal theory' (1994) *Melbourne University Law Review* 893, 396; D Kokkini-Iatridou & P de Waart 'Foreign investment on developing countries: legal personality of multinationals in international law' (1983) 14 *Netherlands Yearbook of International Law* 87.

⁵³ HRC Res. 26/9 of 26 June 2014.

⁵⁴ *Ibid.*

initiatives attests to the growing acknowledgement by corporations themselves of the importance of doing business ethically and in a manner that respects human rights. The revival of interest among states in a possible treaty elaborating human rights obligations of corporations lends credence to countries, such as Uganda, whose constitutions recognise the application of constitutional rights to corporations.



“The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.”

Article 20(2) 1995 Uganda Constitution

CHAPTER THREE

CORPORATIONS ACCOUNTABILITY FOR HUMAN RIGHTS UNDER UGANDAN CONSTITUTIONAL LAW

CORPORATIONS ACCOUNTABILITY FOR HUMAN RIGHTS UNDER UGANDAN CONSTITUTIONAL LAW

3.1 Introduction

The previous chapter has outlined the evolution of the notion of corporate accountability for human rights from its hazy beginnings to current international efforts to reduce it into treaty law. The chapter also revealed some of the tools that have been developed to ensure that corporations do not violate human rights or that they are held to account when they do so. This chapter now considers the manner in which the Ugandan Constitution defines human rights in order to address the question whether human rights have application to corporations. If human rights have relevance in the private sphere, what rights and duties are corporations bound by and how should they be enforced? Relatedly, how has the legal practice in Uganda responded to the Constitution's approach to corporate accountability?

3.2 Which Rights are Corporations Bound by?

Uganda's Constitution is unique in at least two respects. Firstly, it recognises all the three categories of rights – civil and political, social, economic and cultural, and at least one third generation right.⁵⁵ Secondly, the rights in the bill of rights are expressly stated to be applicable to non-state actors.⁵⁶ This means that, in principle, corporations have obligations in relation to the human rights recognised under the Constitution.

Although Article 20(2) of the Constitution provides that 'the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons', not all provisions in the bill of rights are applicable to non-state actors or to all non-state actors. The applicability of a constitutional right to non-state actors depends on the nature of the right, the manner in which it has been formulated and the nature of the duty at hand.

It is clear that some of the civil and political rights enshrined in the Constitution do not bind non-state actors including corporations.⁵⁷ For example, the right of access to information expressly provides that it relates to information held by the state or its agencies or organs.⁵⁸ Some of the specific guarantees of personal liberty are directed at state institutions involved in the administration of justice.⁵⁹ Similarly, the right to a fair hearing is couched in the context of public judicial proceedings. The right to participate

⁵⁵ See chapter four of the Constitution. For a discussion of the protection of economic, social and cultural rights in Uganda, see C Mbazira 'Hybrid protection of economic, social and cultural rights in Uganda' in DM Chirwa & L Chenwi (eds) *The protection of economic, social and cultural rights in Africa: International, regional and national perspectives* (Cambridge: Cambridge University Press, forthcoming). The only third generation right recognised is the right to a clean and healthy environment. See article 39 of the Constitution.

⁵⁶ Article 20(2).

⁵⁷ This argument is subject to the exception that these rights still entail an implied general or universal obligation to refrain from interfering with the enjoyment of these rights. This general obligation can be infringed by the state as well as non-state actors.

⁵⁸ Article 41 of the Constitution.

⁵⁹ See article 23(2)-(9) of the Constitution.

is expressly stated to be relevant in the affairs of government.⁶⁰ So too is the right to just and fair administrative action intended to apply to decisions of public bodies taken while implementing legislation or performing public functions.⁶¹

The civil and political rights that apply to both state and non-state actors are defined using universal terms, eg, 'no person shall ...', 'all persons are ...', 'every person has ...', 'men and women have...', 'every Ugandan citizen', etc. Thus, for example, the rights to equality and freedom from discrimination; the right not to be deprived of life; the right not to be deprived of personal liberty; the right to freedom from torture, cruel, inhuman or degrading treatment or punishment; freedom from slavery, servitude and forced labour; the right to own and not to be deprived of property; freedom of conscience, expression, movement, religion, assembly and association are applicable to both the state and non-state actors.⁶² Indeed, some of these rights, such as freedom from slavery and servitude, are concerned with egregious human rights violations that have historically been committed by private actors.

The application of economic, social and cultural rights and third generation rights to corporations and other non-state actors is considered more objectionable than the application of civil and political rights. This is because these rights are assumed to carry enormous positive obligations that even states find difficult to discharge immediately or within a short period of time. However, the Ugandan bill of rights was seemingly crafted bearing this objection in mind. The range and scope of the economic, social and cultural rights and third generation rights it recognises are limited and most likely carefully chosen. Of the typical economic, social and cultural rights, only the right to education and the right to culture are expressly recognised in the bill of rights,⁶³ while of the third generation rights, only the right to a clean and healthy environment is recognised.⁶⁴ In addition to these, the Constitution recognises the general economic rights to a lawful occupation, trade or business, and workers' rights to form and join trade unions, to collective bargaining, to withdraw labour and, in the case of female workers, to protection during pregnancy.⁶⁵ It also recognises the general social rights relating to marriage and family. The additional economic, social and cultural rights the bill of rights recognises are those of special groups. For example, women are guaranteed the right to full and equal dignity and the right to equal treatment.⁶⁶ Children are entitled to the right to basic education, protection from social and economic exploitation, and not to be deprived of medical treatment, education or other social benefit.⁶⁷ Persons with disabilities have the right to respect and human dignity.⁶⁸ All these rights are crafted using universal terms, implying that they bind private actors including corporations.

60 Article 38 of the Constitution.

61 See article 42 of the Constitution. It is possible, however, for a private actor to be subjected to judicial review if the decision under review was made while exercising a public function. Otherwise, a private actor cannot be bound by this right in respect of any decision arising from the exercise of private functions.

62 See articles 21(1), 22(1), 23(1), 24(1), 25(1), 26(1), 27(1), and 29(1) of the Constitution.

63 See articles 30 and 37.

64 See article 39.

65 See article 40(2)–(3) of the Constitution.

66 See article 33.

67 See article 34.

68 Article 35.

TABLE I: SUMMARY OF RIGHTS APPLICABLE TO CORPORATIONS

Civil and Political Rights	Economic, Social and Cultural Rights	Solidarity or Group Rights
<ul style="list-style-type: none"> • The right to equality before and under the law and the right not to be discriminated against; • The right not to be deprived of life intentionally; • The right not to be deprived of personal liberty; • The right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment; • The right not to be held in slavery or servitude and not to be required to perform forced labour; • The right to own property and not to be compulsorily deprived of property unless certain conditions are met; • The right not to be subjected to an unlawful search, an unlawful entry of one's premises, or to interference with the privacy of a person's home, communication or other property. • Freedom of thought, conscience and belief, including academic freedom; • Freedom of speech and expression; • Freedom to practice any religion and manifest religious practices; • Freedom of assembly and to demonstrate; • Freedom of association; and • The right to move freely throughout Uganda, to enter and return to Uganda, and to a passport or travel document. 	<ul style="list-style-type: none"> • The right of all persons to education; • The right of men and women to marry; • The right of children not to be separated from their families or guardians; • The right of women to be accorded full and equal dignity; • The right of women to equal treatment and equal opportunities; • The right of children to basic education; • The right of children not to be deprived by any person of medical treatment, education, social or economic benefit; • The right of children to protection from social or economic exploitation, and not to be employed or be required to perform work that is hazardous, likely to interfere with their education or their health or development; • The right of person with disabilities to respect and human dignity; • The right to belong to, enjoy, practise, profess or promote any culture, language, tradition or religion; • The right to practise one's profession and carry on any lawful occupation, trade and business; • The right to form or join a trade union; • The right to collective bargaining and representation; • The right to withdraw one's labour; • The right to be accorded protection during pregnancy and after birth; • The right to work under satisfactory, safe and healthy conditions; • The right to ensure equal pay for equal work; and • The right to ensure every worker is accorded rest and reasonable working hours. 	<ul style="list-style-type: none"> • the right to a healthy environment

3.3 Which Human Rights Obligations Bind Corporations?

A close analysis of the Ugandan bill of rights reveals that especially onerous obligations arising from positive rights are clearly and expressly imposed on the state. For example, the duty to take affirmative action is specifically assigned to the state.⁶⁹ The duty to provide facilities and opportunities necessary to enhance the welfare of women is also imposed on the state as is the duty to protect women.⁷⁰ The same is the case with the duty to take appropriate measures to ensure that persons with disabilities realise their full mental and physical potential.⁷¹ By contrast, where the Constitution intends a private actor to be bound by potentially onerous positive obligations, it does so explicitly. For instance, Article 34(2) states that the responsibility to ensure the child receives basic education is the responsibility of the state and parents. The right of children to be cared by parents must also be considered to bind parents who must provide such care.⁷² Lastly, special protection to orphans and other vulnerable children is envisaged to be provided through the law.

In general, the more exacting positive obligations implicit in all human rights are set out in the National Objectives and Directive Principles of State Policy (NODPSPs). NODPSPs elaborate positive obligations of the state in relation to all categories of rights. Because of their wide breadth, they present an opportunity through which some of the economic, social and cultural rights not expressly recognised in the bill of rights, such as the rights of everyone to health, food, water, housing and social security, could be read into the Constitution.⁷³

However, since the NODPSPs are expressly stated to be obligations of the state, they may not easily be extended to corporations. Thus, for purposes of enforcing the economic, social and cultural rights that are not expressly included in the Constitution directly against corporations, NODPSPs might not be of much use. One therefore has to rely on the resources that are already within the bill of rights, such as the right to a clean and healthy environment,⁷⁴ the right to property,⁷⁵ the right to culture,⁷⁶ and the right not to be subjected to interference with the privacy of one's home, correspondence, communication or other property.⁷⁷

Nevertheless, NODPSPs are relevant to corporations to the extent that NODPSPs require or expect the state to adopt secondary norms that corporations or non-state actors must respect and uphold. NODPSPs require the state to take various measures to implement the provisions of the Constitution. For example, while requiring the state to facilitate rapid and equitable development by encouraging

69 Article 32 of the Constitution.

70 See article 33(2)–(3).

71 This duty is stated to be of the state and society. It can be argued that society is used as a collective entity such that it does not designate individuals or artificial persons severally.

72 See article 34(1) of the Constitution.

73 See C Mbazira 'Hybrid protection of economic, social and cultural rights in Uganda' in DM Chirwa & L Chenwi (eds) *The protection of economic, social and cultural rights in Africa: International, regional and national perspectives* (Cambridge: Cambridge University Press, forthcoming).

74 Article 39.

75 Article 26.

76 Article 37.

77 Article 27(2).

private initiative and self-reliance and stimulating agricultural, industrial, technological and scientific development,⁷⁸ it requires the state to further the cause of social justice by regulating the acquisition, use and disposition of land;⁷⁹ to ‘protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora’;⁸⁰ to ensure that ‘all development efforts are directed at ensuring the maximum social and cultural well-being of the people’;⁸¹ and to ensure that ‘all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food, security and pension and retirement benefits’.⁸²

In conclusion, all corporations and non-state actors have the duty to respect the rights recognised in the Ugandan Constitution. Corporations would be violating this duty if they interfere with the enjoyment of these rights. As to the extent to which corporations are bound by positive obligations, this will depend on a number of factors, including the manner in which the relevant human right is couched by the Constitution, the nature of the alleged violation, the nature of the corporation, and the relationship between the corporation and the victim of the alleged violation.

3.4 MECHANISMS OF ENFORCING THE BILL OF RIGHTS AGAINST CORPORATIONS

3.4.1 Direct Constitutional Actions

3.4.1.1 What the Ugandan Constitution says

Uganda is one of a growing number of African countries⁸³ that have Constitutions that explicitly state that their bills of rights have horizontal application. As noted earlier, Article 20(2) of the Ugandan Constitution states: ‘The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs of government and by all persons.’⁸⁴ According to this Article, constitutional rights do not just bind the state; they also bind all persons. Such persons could be natural or artificial such as corporations. In saying that constitutional rights shall be respected and upheld by all persons, the Constitution means to say that non-state actors are directly bound by these rights without the intermediary of any other law. Constitutions that do not intend their bills of rights to apply to non-state actors do not include a provision like Article 20(2). They simply say something to the effect that the bill of rights shall bind the state or its organs.⁸⁵

78 NODPSPs IX and XI(ii).

79 NODPSPs XI(iii).

80 NODPSPs XIII.

81 NODPSPs XIV(a).

82 NODPSPs XIV(b).

83 See, for example, article 18 of the Constitution of Cape Verde; section 12(1) of the Constitution of Ghana; section 15(1) of the Constitution of Malawi; section 8(2) of the Constitution of South Africa; section 5(1) of the Constitution of the Gambia; article 20(1) of the Kenyan Constitution.

84 Emphasis added.

85 See eg. article 32(1) of the Canadian Charter of Rights and Freedoms; the United States’ Fourth Amendment to the Constitution, see *United States v Cruikshank* 92 US 514, 554–5; article 1(3) of the Basic Law for the Republic of Germany.

If constitutional rights bind non-state actors including corporations, can a constitutional right be invoked directly as a basis of a constitutional cause of action or as a defence to a constitutional cause of action? Direct invocation of constitutional rights, also known as a direct constitutional claim, occurs when a constitutional right is pleaded as a basis of an action or a defence to an action such that the right can be applied directly to the dispute itself and not indirectly through its application to law (statutory or common law). On the face of it, Article 50(1)-(2) of the Ugandan Constitution provides support for the possibility of direct constitutional actions against non-state actors. This article provides that any person who claims that a constitutional right has been infringed or threatened is entitled to apply to a competent court for redress. Such constitutional claims may also be brought in a representative capacity by any person or organisation.

On the other hand, Article 50(4) states that 'Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.' The laws referred to in this article include those enacted after the Constitution was adopted and those inherited from the previous constitutional order. It could be argued that this article codifies the subsidiarity principle, which holds that resort to constitutional norms and the procedures of enforcing them must be had only as a matter of last resort after exhausting secondary norms and procedures, i.e, legislative and common law norms and procedures. Without recognising such a rule, the constitutional role allocated to Parliament would be rendered nugatory.

Indeed, in *Bukenya Church Embrose v Attorney General*,⁸⁶ the Constitutional Court held that only Parliament was empowered to make laws for the enforcement of rights and freedoms under the Constitution. Nevertheless, the absence of such laws or the failure by Parliament to enact such laws did not suspend the enforcement of constitutional rights and freedoms. This holding means that until Parliament fulfils its responsibility, litigants have to rely on the existing procedures as may be adapted and modified to give full effect to the right in question.

Following this case, a bill entitled 'The Human Rights (Enforcement) Bill 2015' was drafted and is currently awaiting debate and approval of Parliament. According to section 4(1), the High Court has the jurisdiction to hear and determine any application relating to the enforcement or violation of human rights.' Subsection (2) of this section provides that: 'The High Court shall not exercise its powers under this section if it is satisfied that adequate redress for the alleged violation of is available to the person concerned under any other law.' This provision codifies the subsidiarity rule. It means that in Uganda, direct constitutional actions against corporations may not be admissible unless it is proven that no other law provides adequate redress for the violation in issue.

3.4.1.2 The Principle of Subsidiarity in Comparative Perspective

The position in Uganda can be compared with that of South Africa and Ireland. In South Africa, the Constitution states that a provision in the bill of rights may bind natural or juristic persons 'if and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.' Nevertheless, the possibility of direct constitutional actions against non-state

86 Constitutional Petition No 26 of 2010 (unreported).

actors such as corporations has been expressly recognised by the Constitution which states:

When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court –

» in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and

» may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).⁸⁷

These provisions are a paradigmatic expression of the principle of subsidiarity rule.

Unlike the South African Constitution, which expressly recognises the application of the bill of rights to non-state actors and the rule of subsidiarity, the Irish Constitution does not expressly state that it binds non-state actors. However, Irish courts have held that it does so impliedly.⁸⁸ Still, Irish courts have also recognised the value of the subsidiarity principle. In *Hanrahan v Merck Sharp & Dohme (Ireland) Ltd*,⁸⁹ Henchy J stated:

So far as I am aware, the constitutional provisions relied on have never been used in the courts to shape the form of any existing tort or to change the normal onus of proof. The implementation of those constitutional rights is primarily a matter for the State and the courts are entitled to intervene only when there has been a failure to implement or, where the implementation relied on is plainly inadequate, to effectuate the constitutional guarantee in question. In many torts – for example, negligence, defamation, trespass to a person or property – a plaintiff may give evidence of what he claims to be a breach of a constitutional right, but he may fail in the action because of what is usually a matter of onus of proof or because of some other legal or technical defence. A person may of course, in the absence of a common law or statutory cause of action, sue directly for breach of a constitutional right (see *Meskeil v C.I.E.* IR 121); but when he founds his action on an existing tort he is normally confined to the limitations of that tort. It might be different if it could be shown that the tort in question is basically ineffective to protect his constitutional rights.⁹⁰

The first rationale for the principle of subsidiarity lies in the fact that constitutional norms tend to be general and hence lack the specificity needed to apply them to concrete cases. By contrast, statutes and the common law tend to be more specific and easier to apply to concrete cases. The second rationale is that the legislature has the primary responsibility of implementing the general provisions of the constitution by putting in place appropriate legislative measures. Consequently, if courts admit direct constitutional claims where there are existing statutory and common law-based causes of action, they face two criticisms. The first relates to courts engaging in law making or arrogating to themselves more power than they are entitled to. The second is of rendering statutory law and the common law nugatory and hence undermining the legislature and previous court jurisprudence, or of raising the possibility of confusing or incoherent jurisprudence that might result from litigating the same facts under different causes of action.

87 Section 8(3).

88 *Education Company of Ireland Ltd v Fitzpatrick (No 2)* [1961] IR 345, 368. See also *The State (Quin) v Ryan* [1965] IR 70, 122; *Attorney general (Society for the Protection of the Unborn Child (Ireland) Ltd) v Open-Door Counselling Ltd* [1988] IR 593, 622.

89 [1988] ILRM 629.

90 *Ibid.*

3.4.1.3 The Legal Practice in Uganda

The case law on the application of the bill of rights to non-state actors in Uganda remains scanty. It is therefore not possible to draw general conclusions on a handful of cases that address this question either directly or indirectly.

In *Attorney General v. Ssemomwami Ssemenda Dick*,⁹¹ the High Court conceded that Parliament has the power to enact laws to provide for procedures for the vindication of fundamental rights. It cautioned, however, that Parliament's power cannot be exercised to hinder the effective realisation of these rights; instead, it should be exercised to facilitate the realisation of fundamental rights. This means that Parliament has a duty to codify effective remedies and procedures that victims of human rights can use to vindicate their rights. Where the remedies and procedures enacted by Parliament or available under the common law do not address all aspects of the right in issue, the legal constraints imposed by those remedies and procedures can be challenged for constitutionality.

*Baleke Kayira Peter & Others v Attorney General and Others*⁹² is unique in that it directly addresses the issue of the horizontal application of the Ugandan bill of rights to a non-state actor. The plaintiffs to the cases, acting in their own right and in a representative capacity (for other villagers) were owners of customary land in four villages. They had been forcibly removed from their land without any compensation. They claimed that the eviction was carried out by Uganda's soldiers, who beat them and destroyed their possessions, homesteads and food. As a result of the eviction, they were exposed to hunger and lacked access to housing. The Attorney General was sued as a representative of the Uganda Investment Authority, which is a state agency responsible for promoting and facilitating investment and business in Uganda. The second defendant was Kaweri Coffee Plantations Ltd, a company owned by German investors, Nueman Kaffe Group. The third defendant was a local Ugandan who had sold the land in issue to the Ugandan Investment Authority for onward transfer to the company of the German investors.

The plaintiffs claimed that as lawful occupiers of the land, their forceful eviction from their land was unlawful. In addition, they claimed that the defendants were vicariously liable for the eviction of the plaintiffs. As a result, they claimed damages for the unlawful eviction, which included damages for the property lost during the violent eviction.

Upon examination of evidence, the High Court found that the plaintiff's claim of unlawful eviction had been made out. The court held that the plaintiffs were lawful occupiers of the land as they had a legally valid customary interest in the land. The court also found in favour of the plaintiffs that the eviction had been carried out in a violent manner, destroying the evictees' property and foodstuffs, harassing and beating some of them. In a rather bizarre twist, he exonerated the Ugandan Investment Authority, Kaweri Coffee Plantation and the seller of land from responsibility, placing the blame wholly in the hands

91 Civil Appeal No 65 of 2004 (unreported), relying on a case from Guyana, *Ali v Teaching Service Commission* [1993] 3 LRC 225. The judge also cited the following local cases in support of this dictum: *Rwanyarare & Others*, HC Misc Appl No 85 of 1993; *John Oketch v Attorney General* HC Misc Appl No 124 of 1999; *The Environmental Action Network v Attorney General and NEMA*, HC Misc Appl No 39 of 2001.

92 Civil Suit No 179 of 2002 (Kaweri case).

of the lawyers of Kaweri Coffee Plantation against whom he made an order for damages.

There are several positives to take away from this case. The first is that violations of human rights sometimes implicate the state and non-state actors acting in complicity. In this case, the unlawful acquisition of land was facilitated by a state agency, the Uganda Investment Authority, and the eviction was carried out by state soldiers. For its part, the company and its lawyers did not exercise due diligence to ensure that there were no existing claims on the land or that the state would not allocate to them land that had been acquired by violent means or fraud. To effectively address cases of human rights violations committed by the state and a non-state actor acting in complicity might require an action that cites both these actors as defendants to the same action. This might render the private and public distinction in the application of human rights irrelevant in such an instance.

The second positive is that the case a non-state actor was found to have contributed directly to violations of human rights against innocent villagers. This opens up the possibility of direct actions against non-state actors. While the case was based on unlawful eviction, the court also invoked section 26(2) of the Constitution, and found that the land in question had been acquired compulsorily without providing compensation to the owners. This case shows then that direct and indirect actions can be used in the same cause to enforce human rights.⁹³ The unlawful eviction claim was based on the common law while the unlawful acquisition claim was based on the Constitution.

It remains to be seen whether these positives will influence future developments in this area. If adopted, the Human Rights (Enforcement) Bill would codify the approach that requires litigants to rely on other causes of action before invoking direct constitutional actions. Nevertheless, a few comments on the case discussed above can be made. Firstly, the manner in which the judge conducted himself in this case borders on professional misconduct. The judge declined to recuse himself in this case even though he was clearly placed in a position of conflict of interest. The lawyers of one of the defendants were representing the Uganda Law Society in a case to dismiss the judge from the bench based on a claim that he had been disbarred in the United Kingdom. The judge manifestly misconducted himself by making an order of damages against the lawyers of the defendants even though the lawyers were not parties to the case, had not been allowed to defend themselves and had not been informed that they were parties to the case.

In many respects, the case was also a missed opportunity. The facts alleged many abuses of human rights that took place during the eviction, but it appears that the plaintiffs did not plead specific violations of those rights. Although the plaintiffs raised the case of vicarious liability for the actions of soldiers, it seems they did not present the alternative argument that the state had breached the duty to protect the rights of its citizens. This would have invited the judge to confront his view that there was no evidence

⁹³ *Onegi Obel & Achwa Valley Ranch Ltd v Attorney General & Gulu District Local Government*, HC-02-CV- CS-0066-2002, provides support to this principle, even though this case does not involve a non-state actor as a defendant. The Ministry of Works constructed a road across the farm of the plaintiff, cutting it into half. The plaintiff claimed that this reduced the value of his property and adversely affected his farming activities. No notice and compensation, he claimed, had been given to him. The High Court found the defendants responsible for trespass, for violating the Land Act, and for violating s 26(2) of the Constitution.

that the soldiers were acting with the knowledge or authority of the government. What is perhaps more concerning is that, although there was ample evidence of involvement of government structures, including the Army and Office of the Resident District Commission (RDC) of Mubende, the judge appeared bent on exculpating the state, moreover in a patronizing manner.

3.4.2 Common Law Actions against Corporations

One way of addressing violations of human rights by corporations is by relying on the common law and statutory causes of action. Through this method, the constitutional provisions are not pleaded directly against corporations. Common law or statutory norms are relied upon because they mirror those that constitutional rights promote and protect.

In Uganda, several common law causes of action exist to protect constitutional rights. For example, trespass is a common law action that essentially vindicates the right to an undisturbed enjoyment of property, land or possession.⁹⁴ As Kaweri⁹⁵ discussed above shows, Ugandan law on eviction also protects the right to property. The tort of nuisance is also recognised, which aims to protect a range of rights such as the right to property, the right to privacy, the right to health and the right to a healthy environment. In *Senabulya Francis & Night Parking v Thomas Conningham*,⁹⁶ for example, the High Court said: 'It is a principle of the law of torts that any person who carries out any activity that interferes with an occupier's beneficial use of his land commits a private nuisance. Nuisance extends to invasions by water, noise, smells, vibrations and even high frequency interference with television screens.'⁹⁷ For its part, the tort of negligence can be used to vindicate the right to physical integrity and security of the person. For example, in *Jane Kabuwo v Uganda Railways Corporation*,⁹⁸ the plaintiff, a pregnant vegetable trader aged 20, was a passenger on the defendant's train. As she alighted from the train, she fell out and the train crushed both her legs, a traumatic experience that also resulted in the still birth of her baby. The defendant corporation was found liable for negligence.

However, common law actions and statutory actions do not always accommodate all aspects of constitutional rights. In such a case, one can choose to institute a direct constitutional claim or stick with the existing common law or statutory claim but call in aid the provisions of the Constitution to expand those existing claims.⁹⁹ The latter option is called the 'third-party effect' of the Constitution. It uses open-ended terms within the common law to expand the application of those concepts so that the human rights elements not already recognised as part of the common law or statutory law are protected. The notions of good faith, fairness and reasonableness are some of the terms used for this purpose.¹⁰⁰ The third-party effect doctrine also calls upon the courts to interpret the common law and

94 See eg *Justine EMU Lutaya v Stirling Civil Engineering Co Ltd*, Civil Appeal No 11 of 2003, (2003) UGSC 39.

95 Note 93 above.

96 Civil Appeal No 019 of 2008.

97 References omitted.

98 Civil Suit No 258 of 1992.

99 *Hanrahan v Merck Sharp & Dohme (Ireland) Ltd*, note 90 above.

100 See *Brisley v Drotsky* 2002 (4) SA 1 (SA); *Afrox Healthcare Bpk v Strydom* 2002 (6) SA 21 (SCA); D Bhana & M Pieterse 'Towards a reconciliation of contractual law and constitutional values: Briskley and Aprox revisited' (2005)

statutory law in order to give effect to the spirit and objects of the bill of rights or underlying values of the Constitution.¹⁰¹ In these two ways, it seeks to influence the substantive rules of private law such that private relations are not rendered immune from the fundamental values of the Constitution.¹⁰²

Article 274(1) of the Constitution provides that ‘the operation of the existing law after the coming into force of the Constitution shall not be affected by the coming into force of [the] Constitution;’ however, ‘the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.’ According to article 274(2), the expression ‘existing law’ means ‘the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of the Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date’. This provision in effect requires that the common law is developed to bring it in conformity with the rights protected by the Constitution.

In a number of cases Ugandan courts have used section 274 to modify the provisions of statute adopted before the 1995 Constitution in order to bring them in line with the Constitution.¹⁰³ For example, in *Advocates for Natural Resources Governance and Development & Others v Attorney General and Uganda National Roads Authority*,¹⁰⁴ the Constitutional Court held that section 7(1) of the Land Acquisition Act, Cap 226, had to be read in line with article 26 of the Constitution which requires that compensation is paid before government can expropriate land. This meant that prior compensation is now both a statutory and constitutional requirement.¹⁰⁵

122 (4) *South African Law Journal* 865; FDJ Brand ‘The role of good faith, equity and fairness in the South African law of contract: The influence of the common law and the Constitution’ (2009) 126(1) *South African Law Journal* 71; HA Strydom ‘The private domain and the bill of rights’ (1995) 10 *South African Public Law* 52 at 59; A van Aswegen ‘The implications of a Bill of Rights for the law of contract and delict’ (1995) 11 *South African Journal on Human Rights* 5; Irene Kull ‘The principle of good faith and constitutional values in contract law’, available at http://www.juridicainternational.eu/public/pdf/ji_2002_1_142.pdf (accessed 20 April 2016);

101 In the *Lüth Case* (1958), 7 BVerfGE 198, for example, the Federal Constitutional Court of Germany stated that: It is equally true, however, that the Basic Law is not a value-neutral document.... Its section on basic rights establishes an objective order of values, and this order strongly reinforces the effective power of basic rights.... Thus it is clear that basic rights also influence [the development of] private law. Every provision of private law must be compatible with this system of values, and every such provision must be interpreted in its spirit. Reproduced in Kommers DP *The constitutional jurisprudence of the Federal Republic of Germany* (2ed) (1997) 361–368. See also *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) para 40.

102 See eg Dennis Davis *Democracy and Deliberation: Transformation and the South African Legal Order* (Kenwyn: Juta, 1999) 161–2; Basil Markesinis ‘Privacy, freedom of expression, and the horizontal effect of the Human Rights Bill: Lessons from Germany’ (1999) 115 *Law Quarterly Review* 47; Stefan Oeter ‘Fundamental rights and their impact on private law – Doctrine and practice under the German Constitution’ (1994) 12 *Tel Aviv University Studies in Law* 7; Kenneth M Lewan ‘The significance of constitutional rights for private law: Theory and practice in West Germany’ (1968) 17 *International and Comparative Law Quarterly* 571.

103 See eg *Attorney General v Osotraco Ltd*, Court of Appeal, Civil Appeal No 32 of 2002 (unreported); *Pyarali Abdul Rassaul Ishmail v Adrian Sibbo*, Constitutional Petition no 9 of 1997 (unreported).

104 Constitutional Petition No 40 of 2013 (unreported).

105 However, in *Law and Advocacy for Women in Uganda v Attorney General*, Constitutional Petitions Nos 13/05 & 05/06; [2007] UGCC 1 (5 April 2007), the Attorney General conceded that certain provisions of the Penal Code of Uganda on adultery were discriminatory against women. In order to cure the inconsistency, he invited the court to read the offensive provisions down by making appropriate modifications as required by article 274. The Court declined the invitation, holding that under article 137 of the Constitution, whenever legislation is

In addition to article 274, there are other provisions in the Constitution that could be construed as requiring the development of existing laws. Firstly, article 2 of the Constitution of Uganda provides that the Constitution is the supreme law of Uganda and hence that any law or custom that is inconsistent with it shall, to the extent of that inconsistency, be invalid. The power to scrutinise all law or customs for constitutionality necessarily include the authority of the courts to adopt an interpretation of law that brings it into conformity with the Constitution. Secondly, article 126(1) of the Constitution vests judicial authority in the judiciary and states that such authority derives from the people and shall be exercised in conformity with the law and the values, norms and aspirations of the people. Arguably, the 'the values, norms and aspirations' referred to in this article are the fundamental principles and values enshrined in the Constitution.

Although there is a dearth of case law showing that the courts in Uganda have developed the common law or statutory law in the light of constitutional values or principles to hold corporations accountable, there is some evidence showing that courts can do this with respect to the conduct of non-state actors. In *Mifumi (U) Ltd & 12 Others v Attorney General and Kenneth Kakuru*,¹⁰⁶ for example, one judge of the Constitutional Court of Uganda – Kavuma JA – was prepared to hold that customary law must be interpreted in the light of the norms, values and aspirations of progressive people and societies in Uganda, which justified a liberal approach to the rules of evidence regarding rules of African customary law.¹⁰⁷ This case concerned the constitutionality of the customary practices of bride price, a practice that involves private parties. The majority decision in the Constitutional Court held that the customary practice was not unconstitutional. On appeal, the Supreme Court held that payment of the bride price per se was not unconstitutional but requiring it to be refunded upon divorce was unconstitutional.¹⁰⁸ Accordingly, constitutional principles were used to alter a body of law that ordinarily applies to relations between private individuals.

3.4.3 State Action and State Responsibility

As noted in chapter two, a state may be held responsible for the actions of corporations or non-state actors in two main ways: firstly, where it has been proven that the conduct of the private actor can be attributed to the state and thus qualifies as state action, and secondly, where the state fails in its duty to protect its citizens.

The state action doctrine applies where there is 'a sufficiently close nexus between the State and the challenged action of the required entity.'¹⁰⁹ Such nexus will exist where the private entity exercises

found to be in contravention with the Constitution, the court has a duty to strike it down. While this approach is appropriate in situations where the offensive law cannot be saved without requiring extensive law making or where its revision raises issues of policy, it is inappropriate where what needs to be done to save the existing law is pretty straightforward.

¹⁰⁶ Constitutional Petition No 12 of 2007.

¹⁰⁷ This judge used this holding only for purposes of holding that the courts should take judicial notice of some rules of customary law. However, he failed to apply the same liberal approach when determining whether the bride price was inconsistent with the Constitution.

¹⁰⁸ *Attorney General and Kenneth Kakuru v Mifumi (U) Ltd & 12 Others* Constitutional Appeal No 02 of 2014.

¹⁰⁹ *Jackson v Metropolitan Edison Co* 419 US 345, 351 (1974).

powers that have traditionally been performed by the state,¹¹⁰ or acts pursuant to the coercive power of the state or under significant encouragement of the state.¹¹¹ State action will also be found where acts of a non-state actor take place with the participation or involvement of the state ‘through any arrangement, management, funds or property.’¹¹²

The state action doctrine rests on the notion of the duty to respect human rights. In Uganda, the duty to respect constitutional rights is expressly recognised under article 20(2) of the Constitution, which provides that; ‘The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons.’ The state might violate the duty to respect by interfering with the enjoyment by individuals or groups of their constitutional rights, either through its own acts or through partly its own acts and the acts of non-state actors.

However, this basis of the state responsibility for partial actions of the state and non-state actors has not yet been tested in Ugandan courts. Unlike the duty to respect and promote, which are expressly recognised under article 20(2) of the Constitution of Uganda, the duty to protect human rights is not. Nevertheless, article 45 of the Constitution states that the duties relating to the fundamental rights and other human rights specifically mentioned in chapter four does not exclude others not specifically mentioned. As the duty to protect is now well established in international law, it must be regarded as forming part of the duties that Uganda has within its constitutional framework. As noted earlier, the duty to protect requires the state to exercise due diligence to prevent human rights violations and to react to them.¹¹³ The reactionary measures encompass the investigation and punishment violations and the provision of appropriate remedies to victims.¹¹⁴

Thus far, the duty to protect remains to be litigated in Ugandan courts, although violations of human rights by non-state actors that could be redressed via this duty are common in Uganda. As we have seen above, in *Baleke Kayira Peter & Others v Attorney General and Others*,¹¹⁵ there was clear evidence that the state’s defence forces were used in the violent eviction that resulted in the deprivation of access to homes, land, foodstuffs and other possessions. Surprisingly, the lawyers for the applicants did not invoke the duty to protect in order to hold the state responsible for the actions of the soldiers. On his part, the judge was remiss in refusing to draw a connection between the soldiers’ actions and state responsibility by claiming lack of proof that the soldiers were acting under the instructions of the state. The soldiers presented themselves at all material times as agents of the state, claiming to enforce a court order, and it is their primary responsibility to ensure law and order and security. Our research also revealed that soldiers have from time to time been deployed to protect the interests of corporations when communities hold protests over disputes over land with corporations operating in their areas. In this

110 *Ibid*, 352. See also *Nixon v Condon* 286 US 73 (1932); *Terry v Adams* 345 US 461 (1953); *Marsh v Alabama* 326 US 501 (1946); *Evans v Newton* 382 US 296 (1966).

111 *Blum v Paretsky* 457 US 991, 102 S.Ct 2777, 73 L.Ed.2d 534.

112 *Cooper v Aaron* 1958, 358 US 1, 4; *Burton v Wilmington Parking Authority* 365 US 715, 716–724.

113 See *Velásquez Rodríguez v Honduras*, note 25 above.

114 *Ibid*.

115 Note 93 above.

particular case, the soldiers did not only fail to ensure that the eviction was carried out humanely; they were actually the ones who perpetrated the abuses. The state clearly failed in its duty to prevent the violations. It also failed to investigate the violations and provide remedies to the victims when the violations came to its attention.¹¹⁶

In short, the facts of this case raised the responsibility of the state on the basis both of the state action doctrine, because the acts of the soldiers were in effect state action and of the duty to protect, because the state failed to prevent and react to the violations. The research conducted for this study disclose a similar pattern of state involvement or complicity in, or failure to prevent or react to, the violations committed by corporations in the extractive industry, as will be shown in chapter five.

3.5 Conclusion

The Ugandan Constitution has great potential for promoting corporate accountability. Its bill of rights is expressly stated to be applicable horizontally. This means that corporations can bear human rights obligations. What rights and duties bind corporations and other non-state actors is not an easy question to answer. But this chapter has shown that a large proportion of the rights that the Constitution recognises can apply to corporations, at least as they engender the duty to respect those rights.

A more complex question is whether the Constitution allows direct constitutional actions against corporations. The relevant constitutional provisions are not clear on this, but the few cases that have been brought to court thus far show that the courts are open to accepting such direct constitutional actions. However, it may be necessary to clarify the rules on this issue so that litigants do not bypass more relevant common law and statutory causes of action for addressing corporate violations of human rights. In other countries like South Africa and Ireland, the principle of subsidiarity of constitutional norms has been used to require proof that common law and statutory remedies are incapable of fully addressing the corporate wrong at hand before a constitutional cause of action can be launched. Of course, this principle need not be adhered to strictly to avoid forcing plaintiffs to rely on causes of action that do not fully address their violations.

The notions of state responsibility and third-party effect of the constitution remain unexploited in Uganda. With respect to state responsibility, it is disappointing that the state's duty to protect human rights, an important device for holding corporations indirectly accountable for human rights, was not invoked and used by the High Court in *Kaweri*.¹¹⁷ The concept of the third-party effect of the bill of rights would help in developing the common law so that it effectively addresses the human rights obligations of corporations. This discussion shows that there is a lot of potential under Ugandan constitutional law to uphold corporate accountability, but that potential has not yet been tapped.

¹¹⁶ For comparative case law, see *Minister of Safety and Security v Hamilton* 2004 (2) SA 216 (SCA); *Transnet Ltd t/a Metrorail v Rail Commuters Action Group* 2003 (6) SA 349 (SCA); *Van Eeden v Minister of Safety and Security (Women's Legal Centre Trust, as amicus curiae)* 2003 (1) SA 389 (SCA); *Van der Spuy v Minister of Correctional Services* 2004 (2) SA 463 (SE); *Saaiman v Minister of Safety and Security* 2003 (3) SA 496 (O); *Rail Commuter Action Group v Transnet Ltd t/a Metrorail* 2003 (5) SA 518 (C); *Carmichele v Minister of Safety and Security* 2003 (2) SA 656 (C).

¹¹⁷ Note 93 above.

“The owner or lawful occupier of any land within an area which is the subject of a mineral right shall retain the right to graze stock upon or to cultivate the surface of such land, so far as the grazing or cultivation does not interfere with the proper working in such area for prospecting, exploration or mining purposes; and in so far as the grazing or cultivation does not constitute a danger or hazard to livestock or crops.”

Section 80(1) Mining Act

“The Executive Director shall within ten days of receiving the comments of the lead agency, and if he [or she] is satisfied that the environmental impact statement is complete, invite the general public to make written comments...”

Environmental Impact Assessment Regulation 19(1), S.I. No. 13/1998

Any expropriation of property must be made under a law which makes provision for “prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property”, and also ensure a right to access to a court of law by any person who has an interest or right over the property.

Article 26, 1995 Uganda Constitution



CHAPTER FOUR

STATUTORY NORMS AND MECHANISMS

STATUTORY NORMS AND MECHANISMS

4.1 INTRODUCTION

This chapter provides a snapshot of the existing statutory norms relevant to corporations and the mechanisms available to enforce these norms. Statutory norms and mechanisms are significant for corporate accountability in two ways. First, as has been seen in the preceding chapter, the Ugandan bill of rights has horizontal application to non-state actors. Statutory norms are critical to elaborating the nature of the obligations of non-state actors and how those obligations may be enforced or their implementation monitored. Second, the last chapter also showed that the state's duty to protect the rights of citizens requires the state to regulate non-state actors. Regulatory mechanisms are normally established via statute.

The chapter will provide a brief outline of the norms the various statutes espouse by sector. It will also provide an overview of the regulatory, monitoring or enforcement mechanisms established by each statute. Towards the end of the chapter is a discussion of the main cross-cutting regulatory or enforcement mechanisms. The ultimate question the chapter addresses is whether the existing laws adequately codify the constitutional duty to protect and the notion of corporate accountability for human rights.

4.2 HEALTH

As noted in chapter three, the Ugandan Constitution does not expressly recognise everyone's right to health. But it recognises the right to a clean and healthy environment¹¹⁸ and the right of children not to be deprived of medical treatment.¹¹⁹ Uganda has two major Acts that address the broad field of health: the Public Health Act¹²⁰ and the Tobacco Control Act, 2015. Neither Act uses human rights language. Instead, both sets of laws are largely about regulation and control of various aspects of health, and not directly about facilitating access to health care or protecting the right to health as such.

4.2.1 Public Health

The Public Health Act seeks to consolidate the law governing the preservation of public health. It makes provision for measures to prevent and suppress infectious diseases, epidemics and venereal diseases, regulates sanitation and housing, including specifying the duties of local authorities to prevent and remedy any danger to health arising from unsuitable dwellings, and makes special provision for matters dealing with sewerage and drainage.¹²¹ The Act also makes provision for the prevention and destruction of mosquitoes, and protection of foodstuffs, water and food supplies.¹²² Crucially, the Act imposes a duty on every local authority to take 'all lawful, necessary and reasonably practicable measures' to prevent

118 Article 39.

119 Article 34(3).

120 Chapter 281.

121 Sections 74 – 92.

122 Sections 93 – 103.

pollution dangerous to health of any supply of water which the public within its district has a right to use for drinking or domestic purposes.¹²³

Section 134 of the Public Health Act expressly provides that where any provision of this Act has been contravened by a company, the secretary or manager of that company may be summoned and be held liable for the contravention and its consequences. The Act also vests considerable obligations and powers on local authorities including the duty and discretion to prosecute any contravention of, or the offences stipulated in the Act.¹²⁴

4.2.2 Tobacco Control

The Tobacco Control Act is directly targeted at tobacco producers, sellers and users. It codifies the right to a tobacco free environment and prohibits smoking in public places, workplaces and means of public transport.¹²⁵ It also establishes a comprehensive ban on tobacco advertising, promotion and sponsorship and laces restrictions on the sale, supply and use of tobacco products.¹²⁶

The implementation body for the Act is the Tobacco Control Committee whose duties include coordinating and monitoring tobacco control interventions, protecting tobacco control policies from commercial interests of the tobacco industry and advising the responsible Minister on policies and legislative measures regarding tobacco control.¹²⁷ The Committee is also the national coordinating mechanism for the effective implementation of the World Health Organisation's Framework Convention on Tobacco Control.¹²⁸ The Act requires the tobacco industry to provide reports to the Committee.¹²⁹ In addition, the Minister is empowered to appoint officers to ensure compliance with the Act, who have the power to enter any place and to examine and confiscate tobacco products.¹³⁰ Public health officers, environmental inspectors, standards inspectors and customs officers are recognised as authorised officers for this purpose.¹³¹

4.3 ENVIRONMENT AND WILDLIFE

The Ugandan Constitution recognises the right to a clean and healthy environment.¹³² Although not always directly, aspects of this right are addressed in three main Acts: the National Environment Act,¹³³ National Forestry and Tree Planting Act,¹³⁴ and the Wildlife Act.¹³⁵

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- 123 See section 103.
 - 124 Section 136.
 - 125 See sections 11 and 12.
 - 126 See sections 14 – 17.
 - 127 See Part II of the Act.
 - 128 Section 5.
 - 129 Section 43.
 - 130 Section 26.
 - 131 *Ibid.*
 - 132 Article 39.
 - 133 Chapter 153.
 - 134 Act No 8 of 2003.
 - 135 Chapter 200.

4.3.1 Environment

The National Environment Act provides for the sustainable management of the environment. Among its most crucial provisions is the recognition of the right to a healthy environment and its concomitant duty of every person ‘to maintain and enhance the environment’, including the duty to inform the relevant authority of activities that may affect the environment significantly.¹³⁶ The Act also sets out several principles of environment management.¹³⁷

To protect these principles and the right to a clean and health environment, the Act makes provision for various safeguards and measures. It establishes the National Environment Management Authority (NEMA) which is the ‘principal agency’ responsible for the coordination, monitoring and supervision of all environmental activities. The functions of the NEMA include coordinating the implementation of government policies, initiating legislative proposal, standards and guidelines, and proposing environmental policies.¹³⁸ The NEMA may delegate its duties by statutory instrument to a lead agency, a technical committee, the executive director or any other public officer.¹³⁹

Among the more specific tools of ensuring respect for the right to a healthy environment is the device of Environmental Impact Assessments (EIAs). The Act requires developers of certain projects to undertake an EIA where the lead agency, in consultation with the executive director, is of the view that the project may have, is likely to have, or will have a significant impact on the environment.¹⁴⁰ Such an assessment has to be done by experts approved by the authority.¹⁴¹ The guidelines relating to the procedure of considering the impact assessments and the participation of the public, especially those most affected by the project, shall be made by the authority. The NEMA is also responsible for the review and approval of EIAs required from developers by section 19. Failure by a developer to prepare an EIA is a criminal offence.¹⁴²

The Act also makes provision for environmental audits of all activities that are likely to have a significant effect on the environment and for environmental monitoring.¹⁴³ It also empowers the NEMA to establish environmental standards, including air quality standards, water quality standards, standards for the discharge of effluent into water, standards for the control of noxious smells, standards for the control of noise and vibration pollution, standards for subsonic vibrations, solid quality standards, and standards for minimisation of radiation.¹⁴⁴ However, one may be exempted from complying with these standards by applying for a pollution license.¹⁴⁵ The Act also makes provision for the issuance of environmental restoration orders.¹⁴⁶

136 Sections 3(1) and (2).

137 Section 2.

138 See Part III.

139 Section 6(2).

140 Section 19.

141 Section 19(4).

142 Section 96.

143 See sections 22 and 23.

144 Sections 24 – 32.

145 Sections 57 – 64.

146 See Part IX of the Act.

4.3.2 Forestry

The National Forestry and Tree Planting Act provides for the conservation, sustainable development and management of forests, including the promotion of tree planting. It requires the preparation of a management plan for every forest reserve, reviewable every five years and subject to the approval of the responsible Minister,¹⁴⁷ which must set out, among other things, the management objectives of the forest, the measures to be taken for the sustainable management of the forest and the involvement of local communities in the management of the resources.¹⁴⁸

The Act establishes the National Forestry Authority headed by a board of directors appointed by the responsible Minister. The Authority may establish forestry committees while the board may appoint advisory committees.¹⁴⁹ Headed by an executive director appointed by the Minister, the Authority is responsible for the development and management of all central forest reserves. It is also required to control and monitor industrial and mining developments in these forests, cooperate and coordinate with the NEMA and other lead agencies in the management of forest resources, and promote local community participation in the management of central forest reserves.¹⁵⁰

The Act grants every citizen a right to access any information relating to its implementation.¹⁵¹

4.3.3 Wildlife

The Wildlife Act¹⁵² provides for the sustainable management of wildlife and promotion of public participation in wildlife management. It vests ownership of wild animals and plants in the government on behalf of the people,¹⁵³ provides for the protection of certain animal and plant species,¹⁵⁴ for wildlife user rights,¹⁵⁵ and regulates the hunting and trapping of animals and the trade in species and specimens.¹⁵⁶ The Act requires environmental impact assessments to be undertaken in respect of any project that may significantly affect wildlife. Such assessments have to be undertaken in terms of the National Environment Act unless the NEMA is the developer.¹⁵⁷ In addition to environmental impacts assessments, environmental audits may also be required.¹⁵⁸

The Uganda Wildlife Authority is the principal body entrusted with the function of implementing the Act.¹⁵⁹ The Authority must, inter alia, ensure the sustainable management of wildlife conservation areas,

147 Ministry of Water and Environment

148 Section 28.

149 Sections 52, 55, 62 and 63.

150 Section 54.

151 Section 91.

152 Chapter 200.

153 Section 3(1).

154 Sections 27 and 28.

155 Sections 29 – 44.

156 Section 45 – 56.

157 Sections 15 and 16.

158 Section 16.

159 Sections 4 and 5.

develop policies on wildlife management, coordinate the implementation of government policies in the field, establish policies and procedures for the sustainable utilisation of wildlife by and for the benefit of communities, control and monitor industrial and mining developments in wildlife protected areas.¹⁶⁰

The Act also provides for the appointment of local government wildlife committees by local government councils.¹⁶¹ The executive director of the UWA is required to draw up management plans for each wildlife protected area with public input.¹⁶²

Decisions made by the Authority in terms of the Wildlife Act are liable to appeal to the Wildlife Appeal Tribunal.¹⁶³

4.4 LAND AND SETTLEMENT

The Ugandan Constitution recognises the right of everyone to own property individually or in association with others.¹⁶⁴ It also prohibits arbitrary deprivation of property. The Land Acquisition Act, Cap 226, provides for expropriation of land without guaranteeing payment of compensation before the expropriation can be concluded.¹⁶⁵ In *Advocates for Natural Resources Governance and Development & Others v Attorney General and Uganda National Roads Authority*, it was held that this section had to be interpreted as incorporating the constitutional requirement that compensation is paid before expropriation can take place.

The main law that seeks to protect the right to own property is the Land Act 1998,¹⁶⁶ as amended by Act No 1 of 2010. This Act provides for land tenure, ownership and management. It recognises four main forms of land tenure: customary, freehold, *mailo*¹⁶⁷ and leasehold.¹⁶⁸

As is the case in many other African countries, customary land tenure is generally regarded as insecure. As a result, holders of this type of tenure struggle to obtain credit using customary land as security. Uganda's Land Act tries to make customary land tenure more secure by allowing a holder of customary

160 Section 5.

161 Section 12.

162 Section 13.

163 Section 86.

164 Section 26.

165 Section 7.

166 Chapter 227.

167 According to section 1(t) of the Act, *mailo* land tenure means 'the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1900 Uganda Agreement and subject to statutory qualifications, the incidents of which are described in section 3'. Section 3(4) defines it as 'a form of tenure deriving its legality from the Constitution and its incidents from the written law which – (a) involves the holding of registered land in perpetuity; (b) permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant; and (c) enables the holder, subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title set out in subsections (2) and (3) and subject to the same possibility of conditions, restrictions and limitations, positive or negative in their application, as are referred to in those subsections.'

168 Section 4.

land – any person, family or community – to apply for a certificate of customary ownership.¹⁶⁹ Once granted, the certificate of customary ownership is conclusive evidence of the customary rights and interests specified by it.¹⁷⁰ It allows the holder to lease the land or a part of it, grant usufructuary rights over the land or a part of it for a limited period, mortgage or pledge the land or a part of it, subdivide the land, sell the land or a part of it or disposing of the land by will, unless the certificate imposes restrictions on any of these rights.¹⁷¹ In addition to these rights, the holder of a certificate of customary tenure may apply for the land to be converted into freehold title.¹⁷²

Many land disputes in Uganda have their source in these provisions on customary land. Especially in places where there is communal land ownership, certificates of customary ownership serve as a stepping stone to private ownership, sometimes depriving the larger community of communal land. The institutions entrusted with the power to decide on these certificates of customary land ownership appear to lack the legitimacy required in the context of African traditional leadership structures. It is parish committees which are empowered to hear applications for certificates of customary ownership or conversion of customary land into freehold.¹⁷³ The land board then makes the final decision based on recommendations of the parish committees.¹⁷⁴ The provisions of the Land Act are opaque regarding the degree to which the general public is involved in its proceedings. There is some requirement to publish a notice in a prescribed form and on the land in issue before a certificate of customary ownership land can be made,¹⁷⁵ but no positive duty to actively consult the community. With respect to conversion, the requirement to publish a notice does not even apply.

The Act also provides for the establishment of communal land associations led by management committees. Associations may hold land on behalf of a community and set aside areas for common land use in line with a common land management scheme adopted by the community concerned. Associations must be registered by a district registrar who is also empowered to intervene when disputes arise in the association.¹⁷⁶

Apart from establishing land committees,¹⁷⁷ the Act establishes district land boards in line with article 240 of the Constitution, which are responsible for, among other things, holding and allocating land in the district which is not owned by any person or authority, and facilitating the registration and transfer of interests in land.¹⁷⁸ The boards are responsible for the issuance of certificates of customary ownership based on recommendations of the land committees.

169 Section 4.

170 Section 8(1).

171 Section 8(2).

172 Section 9.

173 Sections 6 – 9.

174 *Ibid.*

175 See section 6.

176 Sections 16–28.

177 Sections 64 to 67.

178 Sections 56 – 62.

The Act establishes the Land Fund managed by Uganda Land Commission mainly to assist tenants by occupancy acquire title and interest in land and to resettle persons rendered landless by government action, natural disasters or any other causes.¹⁷⁹

Pursuant to article 238 of the Constitution, the Act establishes the Uganda Land Commission comprised of at least five commissioners appointed by the President with the approval of Parliament. The function of the Commission is to hold and manage land vested in or acquired by the government both within and outside Uganda in line with government policy and directives of the Minister.¹⁸⁰

Land disputes in Uganda are to be resolved by land tribunals: district, sub-county and urban land tribunals. Sub-county and urban land tribunals have jurisdiction over land disputes in rural and urban areas subject to a prescribed land value.¹⁸¹ At the apex of the system are district land tribunals chaired by a person qualified to be a Grade I Magistrate and comprising of members appointed by the Chief Justice on the advice of the Judicial Service Commission. The tribunals have jurisdiction to determine any disputes relating to land disputes under the Act, including those relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Commission or other authority with responsibility relating to land; the amount of compensation to be paid for land acquired under section 42; and disputes in respect of land beyond the jurisdiction of sub-county tribunals.¹⁸² Appeals from sub-county and urban land tribunals lie to district land tribunals whose decisions can in turn be appealed to the High Court.¹⁸³

4.5 LABOUR

Article 40(1) of the Ugandan Constitution requires Parliament to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions, the right to ensure equal work for equal pay, and the right to rest and reasonable working hours. Several Acts address these rights and other labour issues. These are the Employment Act 2006, the Occupational Safety and Health Act 2006, the Workers Compensation Act 2000, the National Social Security Fund Act,¹⁸⁴ the Labour Unions Act 2006, and the Labour Disputes (Arbitration and Settlement) Act 2006. Given that labour rights are directly applicable to non-state actors such as corporations, these Acts regulate not only public employment but also private employment. However, the Employment Act, the Occupational Safety and Health Act, the Workers Compensation Act and the National Social Security Fund deal principally with formal employment and not informal employment. In the Ugandan context, as we will see later, this is a major oversight, and has left informal workers without legislative protection.

179 Section 42.

180 Sections 47 to 56.

181 Sections 81 – 87.

182 Sections 75 to 80.

183 Section 88.

184 Chapter 222.

4.5.1 Employment

This Employment Act prohibits forced labour, discrimination and sexual harassment in employment.¹⁸⁵ However, it does not expressly prohibit slavery or slave-like practices or economic exploitation. The only form of exploitation it prohibits is child labour. The Act prohibits the employment of children aged below 12 years and permits the involvement of children aged between 12 and 14 years for ‘light work’ only.¹⁸⁶ All in all, it states that children may not engage in work that is injurious to their health, dangerous or hazardous or otherwise unsuitable.¹⁸⁷ The Employment (Employment of Children) Act Regulations 2012 provide further protection for children in the context of employment.

In addition to these provisions, the Act regulates contracts of employment,¹⁸⁸ payment of wages,¹⁸⁹ and prohibits the employment of migrant workers who are illegally resident in Uganda.¹⁹⁰ It also makes provision for the right to weekly rest,¹⁹¹ the length of working hours per week,¹⁹² annual leave and public holidays,¹⁹³ sick leave with pay,¹⁹⁴ maternity and paternity leave,¹⁹⁵ and termination of employment by notice or via a disciplinary procedure.¹⁹⁶

The Labour Advisory Board, chaired by a person appointed by the Minister, performs the role of advising the Minister on employment and industrial relations matters referred to it by the responsible Minister.¹⁹⁷

From a monitoring point of view, labour officers are the first point of call, especially for complaints alleging an infringement of any right under the Act. Appeals from their decision lie to the Industrial Relations Court.¹⁹⁸ Labour officers also have the power to inspect places of employment and to order, with the approval of the Commissioner for Labour, remedial action where there is a threat to the health or safety of workers and close down a work place where there is imminent danger to the health or safety of workers.¹⁹⁹ Labour officers also have power to settle grievances and institute civil or criminal proceedings in the Industrial Relations Court.²⁰⁰ The Act creates criminal offences for fraudulent acts and failing to provide requested information to the labour officer. Fines imposed for these offences may go towards compensation for any loss suffered by an employee.²⁰¹

185	Sections 5 – 7.
186	Section 32
187	<i>Ibid.</i>
188	Part IV.
189	Sections 40 – 50.
190	Section 37.
191	Section 51.
192	Section 53.
193	Section 54.
194	Section 55.
195	Sections 56 – 7.
196	Section 58 and Part VII.
197	Sections 21 to 23.
198	Sections 93 and 94.
199	Section 11.
200	Section 12 to 14.
201	Section 16.

4.5.2 Occupation Safety and Health

The Occupational Safety and Health Act²⁰² is an act that is directly aimed at corporations. As the name suggests, the Act promotes and protects the safety and health of employees at the workplace. It provides that employers have a duty to protect workers from dangerous aspects of the employer's undertaking and to ensure that the work environment is free from any hazards.²⁰³ As such, the employer has an obligation to take safety and health measures for the benefit of employees,²⁰⁴ to monitor and control the release of dangerous substances into the environment,²⁰⁵ to provide protective gear to employees,²⁰⁶ to supervise the health of workers,²⁰⁷ and to provide safe premises for work.²⁰⁸

The Act provides for the appointment of a Commissioner responsible for the administration of the Act and inspectors who are empowered to inspect and examine workplaces or suspected workplaces.²⁰⁹ Inspectors also have the power to prosecute or conduct charges, information or complaints arising under the Act.²¹⁰

The Occupational Safety and Health Board provides expert advice to the responsible Minister²¹¹ on matters concerning occupational safety and health, welfare and the working environment.²¹² The Minister may also appoint an advisory panel for advice or assistance.²¹³ The Minister is empowered to make regulations for the appointment of safety representatives whom every employer must consult in the making and sustenance of arrangements aimed at enhancing the safety and health of employees. Safety representatives may request employers to establish safety committees for a workplace with at least 20 employees.²¹⁴

4.5.3 Workers' Compensation

Whereas the Occupational Safety and Health Act uses offences as the main means of addressing occupation safety and health, the Workers Compensation Act provides for compensation to workers who suffer injury or contract certain diseases during their course of employment.²¹⁵ The Minister is required to appoint a medical arbitration board in consultation with the director general of health services and chaired by a registered medical practitioner.²¹⁶ The duty of the board is to settle disputes

202 This Act repeals the Factories Act, Chapter 220. See section 121.

203 Section 13(1).

204 Section 14.

205 Section 18.

206 Section 19.

207 Section 21.

208 Section 26.

209 Section 3.

210 Section 16.

211 Minister of Gender, Labour and Social Development.

212 Section 10.

213 Section 11.

214 Sections 15 and 16.

215 Section 3.

216 Section 13(4).

regarding the assessment of disability.²¹⁷ The Act requires employers to notify the labour officer of the death of a worker or any accident causing injury that may entitle a worker to compensation under the Act.²¹⁸ An employer and a worker may agree on compensation; failure to reach an agreement entitles an aggrieved worker to approach a Magistrate Court.²¹⁹ It is a requirement under the Act that all employers be insured in respect of liability under the Act.²²⁰

4.5.4 Social Security

The National Social Security Fund Act establishes the National Social Security Fund (NSSF), governed by a board of directors appointed by the responsible Minister,²²¹ whose main function is to operate and manage the fund into which contributions shall be made for the benefit of workers. The Act provides for both compulsory and voluntary registration of employers and employees.²²² The Minister is empowered to specify any class or description of eligible employees or employers as members of the fund and contributing employers respectively.²²³ An eligible employee is defined as any person above the age of 16 and below 55 who is declared by the Minister to be such an employee and any farmer or artisan who is a member of a cooperative society.²²⁴ As is clear from the foregoing, this fund is largely for employees in the formal sector. There is no general provision for social security in Uganda outside the context of formal employment. And yet the informal sector absorbs a larger share of Ugandan labour force. According to the Uganda Household Survey of 2009/2010, a total of about 3.5 million people were employed in the informal sector in Uganda.²²⁵ This translates to about 59 per cent of Uganda's total work force.²²⁶

4.5.5 Trade Union Rights

The Labour Unions Act regulates the establishment, registration and management of labour unions, in order to give effect to the constitutional right to form or join trade unions, to collective bargaining and to withdraw labour.²²⁷ It entrenches the right of employees to organise and prohibits employers from interfering with their right of freedom of association. Such interference amounts to a criminal offence attracting a fine and imprisonment for up to 4 years.²²⁸ Labour unions must be registered by

217 Section 13.

218 Section 10.

219 Sections 13 and 14.

220 Section 18.

221 Minister of Finance, Planning and Economic Development

222 Sections 7 and 10.

223 Section 7.

224 Section 6.

225 Uganda Bureau of Statistics 'Uganda National Household Survey report 2009/2010 Report', available at http://www.ubos.org/UNHS0910/chapter12_the%20informal%20sector.html (accessed 2 July 2016).

226 See Danish Trade Union Council for International Development Cooperation 'Uganda labour market profile 2014', available at http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp_uganda_2014_final_version.pdf (accessed 2 July 2016).

227 Article 40(3).

228 Sections 3 – 5.

the Registrar of Labour Unions. The Registrar has investigative powers to ensure compliance with the right of employees to organise and associate freely. Appeals against decisions of the Registrar lie to the Industrial Relations Court.²²⁹

4.5.6 Dispute Resolution

Labour disputes are resolved in terms of the Labour Disputes (Arbitration and Settlement) Act 2006 and the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedures) Rules 2012. The Act recognises the right of employees to lawful industrial action subject to certain restrictions.²³⁰ It also has specific provisions for industrial action in essential services.²³¹

The main mechanism for resolving labour disputes is the Industrial Relations Court which is the specialist court in labour matters. The Act states that the court has jurisdiction to adjudicate any dispute under the Act or question of law referred to it.²³² Parties may be represented by an advocate, a labour union or an employers' association.²³³ However, the Industrial relations Court is not bound by the ordinary rules of evidence.²³⁴ Its rules of procedure and evidence are comprehensively set out in the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. Appeals against the decisions of this court, which lie to the Court of Appeal, are permissible only on a question of law or jurisdiction.²³⁵

Before the Industrial Relations Court assumes jurisdiction, labour disputes may be resolved by labour officers through voluntary procedures of conciliation and mediation.²³⁶ A labour officer may refer labour disputes to the Industrial Relations Court only if, a month after receipt of the dispute, the dispute remains unresolved or there is no prospect of conciliation.²³⁷ Parties may refer the matter to the Industrial Relations Court if referral is not made by the officer eight weeks after he or she received it.²³⁸

Lastly, labour disputes may be resolved through a board of inquiry appointed by the responsible Minister. The board may inquire into employer-employee relations, and the working conditions or terms of employment of an employee.²³⁹ The board, which may be a single person, has the same powers relating to evidence as the IRC.²⁴⁰ Upon receipt of the report of the board, the Minister may publish the findings

229 Sections 15, 20 and 21.

230 Section 30.

231 Sections 33 – 37.

232 Section 8. The court is composed of five members: a chief judge and a judge (both presidential appointees), an independent member, a representative for employers nominated by the federation for employers, and a representative for employees nominated by the federation for labour unions (all appointed by the Minister). Section 10.

233 Section 20.

234 Section 18.

235 Section 22.

236 Sections 12 and 13 of the Employment Act. See also section 4 of the Labour Disputes (Arbitration and Settlement) Act.

237 Section 5(1) of the Labour Disputes Act.

238 Section 5(3) of the Labour Disputes Act.

239 Section 25 of the Labour Disputes Act.

240 Section 25(4) of the Labour Disputes Act.

and, where it relates to a labour dispute make recommendations to the parties concerned.²⁴¹ The Minister may refer disputes to the IRC if the recommendations are not implemented by either party.²⁴²

4.6 FOOD

The Food and Drugs Act²⁴³ is more of a consumer protection law than a legal measure aimed at implementing various aspects of the right to food and the right to health, both of which are not recognised expressly as fundamental rights in the Ugandan Constitution. It is therefore not surprising that the Act's main regulatory scheme is rooted in criminal sanctions. The Act creates various offences relating to the preparation and sale of injurious foods and adulterated drugs, false labelling or advertisement of food and drugs, improper sale of food and drugs, and sale of food unfit for human consumption.²⁴⁴ These offences can be committed by any person, including legal persons. Section 29 specifically provides that where an offence prescribed under this Act has been committed by a body corporate 'with the consent or connivance or negligence of any director, manager, secretary of a body corporate,' he or she and the body corporate are both liable for prosecution and punishment.

As the Act relies primarily on criminal sanctions,²⁴⁵ the main means of its enforcement is criminal prosecution. This enforcement mechanism is supported by the power of authorised officers to enforce the Act's standards by procuring samples and inspecting suspicious premises.²⁴⁶

4.7 EDUCATION

The Ugandan Constitution recognises the right to basic education and the general right to education in the bill of rights. However, it does so without providing any details as to what is guaranteed by these rights. Uganda has adopted two Acts, dedicated to the implementation of these rights. The first – Education (Pre-primary, Primary and Post-primary) Act²⁴⁷ – is, as the name suggests, a comprehensive Act on the development and regulation of pre-primary, primary and post-primary education and training. The second – Universities and Other Tertiary Education Institutions Act²⁴⁸ – governs higher education. Both Acts regulate the provision of both public and private education services.

4.7.1 Pre-primary, Primary and Post-Primary Education

The Education (Pre-primary, Primary and Post-primary) Act lays down general principles and standards relating to pre-primary, primary and post-primary education applicable to both public and private education institutions. In addition, the Act has specific provisions on private pre-primary, primary and

²⁴¹ Section 26(1) of the Labour Disputes Act.

²⁴² Section 27.

²⁴³ Chapter 278.

²⁴⁴ Sections 2 to 6.

²⁴⁵ This approach may be criticized on several grounds. Firstly, it is questionable whether the fines stipulated in the Act are deterrent enough for the infractions it proscribed. Secondly, the Act does not make an effort to codify positive measures the state needs to implement to ensure full respect and fulfilment of the right to food.

²⁴⁶ See sections 18 – 25.

²⁴⁷ Act No 13 of 2008.

²⁴⁸ Act 7 of 2001, as amended in 2003 and 2006.

post-primary education. These include requirements for establishing a private school, procedures for registration of private schools²⁴⁹ and provisions on the management of private schools.²⁵⁰

The Minister of Education and Sports is responsible for ensuring that national policies and objectives are implemented and observed at all levels of education including the initiation of policies and reforms of education, ensuring that the decentralised education services are in harmony with the national policy on education, and appointing relevant agencies to implement the Act.²⁵¹ The Act requires the registration and licencing of all teachers by the Director of Education.²⁵²

The Directorate of Standards, supported by inspectors of education, has the responsibility to ensure that all education institutions comply with the education standards espoused by the Act or developed pursuant to it.²⁵³ Furthermore, the Act empowers the Permanent Secretary to cancel the registration of any private school if he or she is satisfied that it does not comply with the stipulated education standards.²⁵⁴ The Act creates an offence for any person who operates a private school without registration or whose registration has been cancelled or makes an unauthorised extension to an existing private school.²⁵⁵

4.7.2 Tertiary Education

Like the Education (Pre-primary, Primary and Post-primary) Act, the Universities and Other Tertiary Education Institutions Act prescribes the conditions under, and procedures by, which private tertiary education institutions may be registered and allowed to operate.²⁵⁶ Failure to comply with those conditions may result in the refusal or revocation of a licence to operate a private tertiary education institution. The Act also creates an offence for any person who establishes and operates a university or tertiary institution without appropriate authorisation.²⁵⁷ The body entrusted with the responsibility to enforce and develop higher education standards for both private and public higher education institutions is the National Council for Higher Education.²⁵⁸

4.8 EXTRACTIVE INDUSTRY

4.8.1 Mining

The Mining Act 2003 has comprehensive provisions on mining and mineral development, covering matters of ownership of minerals and mining rights. Unlike the Land Act which vests all public land in the state as a public trustee, the Mining Act vests all minerals in the government regardless of any right

249 Section 32 – 36.

250 Section 44.

251 Section 3.

252 See Part V of the Act.

253 Sections 46 – 7.

254 Section 36.

255 Section 40.

256 See eg sections 96 – 103.

257 Section 108.

258 See eg sections 5, 119 – 129.

of ownership by any person of the land on which the minerals are found.²⁵⁹ This does not mean that an owner of land on which minerals have been discovered loses that land by virtue of such discovery. Such a land owner can either claim compensation for the land, where the holder of mining rights offers to purchase the land,²⁶⁰ or claim royalties or compensation for loss of the value of or damage to the land caused by the mining activities, where the land owner keeps the land.²⁶¹

However, the Act does not provide much guidance on the calculation of compensation. It also sets a very short prescription time for claims for compensation – one year.²⁶² Crucially, the Act does not directly address the situation of minerals located on communally-owned land.

The Mining Act regulates the acquisition of mining rights. No person may explore, prospect for, mine or dispose of any mineral without a licence.²⁶³ Only Ugandans and liquid companies registered in Uganda can hold a mining licence.²⁶⁴ The Act sets some notable requirements for an application for prospecting, exploration and retention licences. Among these are the adequacy of resources and provision for the employment and training of Ugandan citizens.²⁶⁵ It would appear that an environmental impact assessment is not required to be undertaken before an exploration licence can be granted. With respect to an application for a retention licence,²⁶⁶ the applicant has to provide a full feasibility study and assessment by appropriate experts on the impact of the mining operations on the environment and the means of minimising any adverse effects.²⁶⁷ However, section 108 of the Act suggests that a holder of an exploration licence or mining licence has to carry out environmental impact assessment of his or her proposed operations in accordance with the National Environmental Act. In addition, he or she has to carry out annual environmental audits and keep records describing how the operations conform to the approved environmental impact assessments. Lastly, the Act states that every exploration licence or mining lease shall have a condition that the holder shall submit an environmental restoration plan of the exploration or mining area that may be damaged or adversely affected by his or her operations.²⁶⁸

While these provisions are commendable, it must be noted that there is no provision for public participation, notice or consultation in the mining licensing procedure. The important task of approving, varying and revoking mining licences is entrusted to a single individual, the Commissioner for the Geological Surveys and Mines Department.²⁶⁹ The Act does not also make provision for vetting of the applicants based on their record of human rights and environmental protection. Moreover, although the Act asks applicants to say something about employment and training plans for Ugandans, it does not require proof of a record of corporate social responsibility from the applicant.

259 Section 3.

260 Section 81.

261 Sections 82 and 83.

262 See section 82(3).

263 Section 4.

264 Section 5.

265 See sections 26(h), 28(3)(c).

266 This is a licence one needs to proceed from exploration to actual mining.

267 Section 35(2)(a)(ii).

268 Section 110.

269 See sections 28, 36 and 43.

As far as enforcement of its principles is concerned, the Act gives the office of the Commissioner for the Geological Surveys and Mines Department powers of inspection of land or premises used for mining operations and examining prospecting, exploration or mining operations,²⁷⁰ the power to order appropriate remedies for dangerous or defective operations,²⁷¹ and the responsibility to enforce environmental standards.²⁷² In carrying out these duties, the Commissioner is assisted by the Inspector of Mines and other authorised officers.²⁷³

4.8.2 Petroleum

The main law governing oil and gas in Uganda is The Petroleum (Exploration, Development and Production) Act 2013.²⁷⁴ The Act vests all the property in, and the control of, petroleum in its natural condition in the government on behalf of the republic²⁷⁵ and prohibits the unlicensed exploration or development of petroleum.²⁷⁶ Unlike mining licences, which are granted by a commissioner, petroleum activities can only be undertaken by interested persons through Production Sharing Agreements developed by the Minister and which must be submitted to Cabinet for approval.²⁷⁷

The Act grants the mandate to manage various aspects of petroleum to the Minister of Energy, the Petroleum Authority of Uganda as well as the National Oil Company. The Minister is among others mandated to grant and revoke licenses and develop policy and regulations.²⁷⁸ On its part, the Petroleum Authority's mandate includes: monitoring and regulating petroleum activities; reviewing and approving proposed exploration; advising the Minister on negotiations of agreements and licenses; administering agreements; and ensuring compliance with licenses.²⁷⁹ In conducting its functions, the law requires the Petroleum Authority to be open and objective; fair and reasonable; non-discriminatory; and to promote fair competition.²⁸⁰ In addition, the Authority is expected to be independent in the discharge of its functions.²⁸¹ All licensees are expected to comply with the directives of the Authority.²⁸²

On its part the National Oil Company is established under the Companies Act, 2012 as wholly owned by the State to manage Uganda's commercial aspects of petroleum activities and the participating interests of the State in the petroleum agreements.²⁸³ The functions of the Company are detailed to include: handling commercial aspects of petroleum; manage marketing of the country's share of petroleum; and

270	Section 14(1).
271	Section 65.
272	Sections 109 – 112.
273	Sections 13 – 14.
274	Act No. 3 of 2013.
275	Section 4 (1).
276	Section 5.
277	Sections 6.
278	Section 8.
279	Section 9.
280	Section 11.
281	Section 12.
282	Section 16.
283	Section 42

manage the business aspects of petroleum.²⁸⁴

The law provides for various types of licenses and permits. These include: reconnaissance permits;²⁸⁵ petroleum exploration licenses;²⁸⁶ petroleum production licenses;²⁸⁷ drilling and designation of wells licenses;²⁸⁸ and production permits.²⁸⁹

There are a number of provisions that impose obligations that may be relevant in the context of business and human rights. Part X imposes liability for damage due to pollution. Among others, the law allows for a claim of damages against a licensee who causes pollution.²⁹⁰ Other provisions on pollution relate to exceptions for liability,²⁹¹ liability by a person without a license,²⁹² and the court with jurisdiction to entertain claims for pollution.²⁹³

The Petroleum Act has provisions that deal with some aspects of land rights as detailed in Part XI. For instance, a licensee is not allowed to exercise any rights on land without the consent of the land owner in the circumstances indicated in section 135.

The provision in section 135 to a certain extent protect the property rights of private individuals that may find themselves in circumstances where oil activities may affect either their property rights or user rights in land. However, it should be noted that the law as stipulated in section 135 does not give sufficient guidance to the parties on how the rights and duties could be negotiated and the entitlements of the land owner. This to a certain extent exposes private land owners who may not have bargaining powers owing to their poverty and ignorance of the law, among others. The only mitigation is that failure to agree may be referred to the Minister for resolution.²⁹⁴ However, a judicial or quasi-judicial process would be much better than subjecting disagreement to the discretion of the Minister.

The law also guarantees the right to surface activities which includes the right to graze stock upon the land or cultivate the surface of the land in so far as this does not interfere with the petroleum activities or a safety zone in the area.²⁹⁵ In addition, the Act provides for payment of reasonable compensation by a licensee to a landowner for any disturbance or damage to the surface of the land due to petroleum activities.²⁹⁶

284 Section 43.

285 Sections 48 - 51.

286 Section 52 - 68.

287 Sections 69 - 92.

288 Section 93 - 95.

289 Section 96.

290 Section 52.

291 Section 132(2).

292 Section 131.

293 Section 134.

294 Section 135(3).

295 Section 136.

296 Section 139.

Other obligations imposed on a licensee relate to health and safety as detailed in Part XII of the Act. Among others, the law provides that petroleum activities shall be conducted in such a manner as to enable a high level of safety to be maintained and further developed in accordance with technological developments, best petroleum industry practices, the Occupational Health and Safety Act, 2006 and any other applicable law.²⁹⁷

An assessment of the above provisions of the Petroleum (Exploration, Development and Production) Act shows that to a certain extent the Act is capable of protecting the rights of Ugandans that may brush with business activities related to the exploration and production of oil. It should be noted however, that the Act does not address the problems of property, health and the environment in a manner that looks at these as human rights issues. Nonetheless, the provisions can be read in ways which bring in other rights including those protected by the Bill of Rights. This though is largely dependent on how the law is implemented and may only result from judicial constructions, which may not come easily.

4.9 WATER

The right to water is one of the socio-economic rights not expressly recognised by the Ugandan Constitution. Unsurprisingly, the Water Act²⁹⁸ uses a minimalist conception of this right. It states that a person may, 'while temporarily at any place or being the occupier of or a resident on any land where there is a natural resource of water, use that water for domestic use, fighting fire or irrigating a subsistence garden.'²⁹⁹ In addition, the occupier of land may, 'with the approval of the authority responsible for the area, use any water under the land occupied by him or her or on which he or she is resident or any land adjacent to that land.'³⁰⁰ These two rights, the Act says, do not authorise any person to construct any works.³⁰¹ This narrow conception of the right to water explains why the Act does not directly address the state's broader responsibility to facilitate access to water, especially to those that cannot afford such access using their own means, and robust procedural guarantee to protect existing access to water. The Act focuses instead on the control and management of water.

According to the Water Act, all rights to investigate, control, protect and manage water vest in the government.³⁰² Accordingly, the Act regulates the use, protection and management of water resources and supply in order to promote the rational management and use of waters, to promote the provision of a clean, safe and sufficient supply of water for domestic purposes, to allow for the orderly development and use of water resources, and to control pollution.³⁰³

The Act has specific provisions for non-state actors. For example, it states that no person may construct any works to take or use water without authority from the director responsible for water.³⁰⁴ In making his or her decision on an application for water works, the director has to consider any objection raised

297 Section 142(1).

298 Chapter 152.

299 Section 7(1).

300 Section 7(2).

301 Section 7(3).

302 Section 5.

303 Section 4.

304 Section 18.

or make consultations with any person or public authority.³⁰⁵ The consideration of objections suggests that the application procedure is expected to be transparent and open to public participation, but the consultation requirement does not specify who is entitled to be consulted. Once the permit is granted, the holder is prohibited from causing water pollution and enjoined to prevent damage to the water source and water contamination.³⁰⁶ The director may suspend or vary a water permit if in his opinion the water available in an area is or is likely to become 'insufficient in quantity or quality needs of the persons using or seeking to use it from that source.'³⁰⁷

The Act also regulates waste discharge. The authority to prescribe 'what waste may not be discharged, what trades may not discharge waste and classes of premises from which wastes may not be discharged' lies with the Minister.³⁰⁸ But the authority to grant waste discharge permits is vested in the director for waste discharge. As is the case with water permit applications, in considering the applications for such permits, the director is obligated to consider objections to the application and consult any person or public authority which he or she sees fit.³⁰⁹ Here too the consultation seems to be discretionary but the Act assumes that the application procedure will be transparent for it to be able to generate objections.

It is an offence for any person to cause or allow water to be polluted or waste to come into contact with water or to be discharged directly or indirectly into water, unless that person obtained permission to do this.³¹⁰ The Act creates a civil cause of action against any person or public authority who commits the acts constituting the offence described above.³¹¹ The Act also prescribes the offence of unlawful taking of water.³¹²

The Water Policy Committee, chaired by the Permanent Secretary of the ministry responsible for natural resources, is responsible, among other things, for assisting the minister in the coordination of hydrological and hydrogeological investigations; coordinating the water action plan; reviewing laws relating to water; advising the minister on disputes between agencies involved in water management referred to it; and preparing guidelines or conditions concerning water discharge permits.³¹³ The Director of Water Development is responsible for the issuance and revocation of permits for the construction or operation of hydraulic works subject to standard conditions generally aimed at sustainable water use.³¹⁴ The Minister has the power to review all decisions of the director upon request.³¹⁵

305 Section 18(4). However, the Minister may exempt any public authority or a class of persons or works from the requirement to seek authority to construct water works. See section 19.

306 Section 20.

307 Section 22.

308 See section 28.

309 Section 29(4).

310 Section 31. It also creates other offences relating to taking water for purposes other than those authorized by the permit, or for causing water to be wasted or misused. Section 39.

311 Section 31(4).

312 Section 98.

313 Sections 10 and 29(5).

314 Division 4.

315 Section 38.

4.10 ENERGY

Unlike the Water Act which recognises the right to water, albeit in a narrow sense, the Electricity Act³¹⁶ does not expressly recognise the right to energy or electricity. Curiously, unlike the Water Act, however, it commits the government to promoting, supporting and providing rural electrification through public and private sector participation in order, among other things, to achieve equitable regional distribution access to electricity and to maximise the economic, social and environmental benefits of rural electrification subsidies.³¹⁷ Thus, it requires the Minister to prepare a sustainable and coordinated rural electrification strategy, to set up the Rural Electrification Fund and make regulations for its management, and to maintain a national rural electrification database for monitoring progress and planning of rural electrification.³¹⁸ To protect consumers, the Act regulates tariffs for electricity.³¹⁹

Compared to the procedures on mining and petroleum licences, this Act establishes arguably the most open and transparent licencing procedure. For example, there is provision for the publication of a notice of an intention to establish a project for which a licence is required and for an invitation to be made to directly affected parties or public agencies to make comments within a fixed period not less than 30 days.³²⁰ The Electricity Regulatory Authority is also empowered to make a public invitation for applications for a licence through a fair, open and competitive procedure.³²¹ This Act is also notable in that the licence applications are required to include information on, among other things, 'the impact of the project on public interests and possible mitigation', 'the results of assessments, including environmental impact assessments, and studies carried out and reports of those assessments and studies', and 'impacts of the project on private interests, including the interests of affected landowners and holders of other rights'.³²² Clearly, this procedure shares the faults of the other licensing procedures described earlier to the extent that the application procedures do not look at the applicant's record of human rights and corporate social responsibility, but it represents a potentially more open, transparent and responsive system.

The Electricity Regulatory Authority, headed by a chairperson appointed by the Minister,³²³ is mandated to issue licences for the generation, transmission, distribution or sale of electricity as well as the ownership or operation of transmission systems.³²⁴ The Act also establishes the Electricity Disputes Tribunal, which is chaired by a chairperson qualified as a judge of the High Court appointed by the Minister in consultation with the Judicial Service Commission, to hear all matters relating to the electricity sector.³²⁵

316 Chapter 145.

317 Section 62.

318 Sections 63 – 64.

319 See section 75.

320 Section 30(2) – (3).

321 Section 32.

322 Section 33.

323 Sections 4–5.

324 Section 10(a).

325 Part XIII, especially sections 93 – 5.

4.11 INVESTMENT AND BUSINESS

Uganda promotes both foreign and local investment by creating more favourable conditions for investment in terms of its Investment Code Act.³²⁶ The Act establishes the Uganda Investment Authority, which works under the general supervision of the responsible Minister³²⁷ and is responsible for the promotion and supervision of investments including the issuance and revocation of investment licences and certificates of incentives.³²⁸ The Authority does not have the power to sanction investors apart from its power to revoke a licence (subject to the approval of the Minister) upon breach of a condition or discovery of false representation.³²⁹

The Act prohibits a foreign investor from operating a business in Uganda without an investment licence. It also prohibits foreign investors from carrying on the business of crop production, animal production or acquiring lease on land for purposes of such production.³³⁰

The application procedure for an investment licence is a closed one insofar as it does not require any publication of the application or the involvement of the general public in it. However, the procedure has some notable requirements for applicants related to their potential contribution to Uganda's development. For example, the applicant has to indicate the estimated number of persons to be employed, the qualifications, experience, nationality and other particulars of all project management and staff, incentives expected, and the viability of the business.³³¹ Furthermore, the Authority is required to consider whether the applicant will generate new earnings or savings for foreign exchange, use local materials and services, create employment opportunities in Uganda, introduce advanced technology or upgrade indigenous technology, contribute to local or regional socio-economic development and other objectives the Authority considers relevant.³³² The investors licence may be subjected to conditions related to these factors and those related to measures to ensure that the business operations do not cause injury to the ecology or environment.³³³ The permissive language used by the Act in this regard is to be regretted, but if used appropriately these conditions would go a long way to promote corporate accountability. As is the case with other licence applications, it must also be mentioned that there is no express requirement to consider the human rights and corporate social responsibility record of the investor. It is also unclear whether the investors' permits and conditions are open to public inspection. If they are not, civil society and the general public may not know what commitments investors made and to hold them accountable accordingly.

Apart from the possibility of varying and revoking an investment licence, the Code prescribes criminal

326 Chapter 92.

327 Ministry of Finance Planning and Economic Development.

328 Sections 2 and 6.

329 Section 20.

330 Section 10(2). There are exceptions to these prohibitions, such as that the foreign investor may provide materials or assistance to Ugandan farmers in crop and animal production or lease land for purposes of certain specified activities. See section 10(2).

331 See section 11(1).

332 Section 12.

333 Section 18.

sanctions where a corporation –

- ‘knowingly or negligently gives false or misleading information;’
- ‘refuses or neglects to provide information which the authority may reasonably require for the purposes of the enforcement of this Code;’ or
- ‘refuses without lawful excuse to admit an officer or an agent of the authority into the premises of [its] business enterprise or otherwise obstructs any inspection by an officer or agent of the authority.’³³⁴

In general, the Act promotes the amicable settlement of disputes between foreign investors and the government through negotiations or arbitration.³³⁵ Where the parties to a dispute do not agree on the mode or forum for arbitration, an aggrieved party may make an application to the High Court.³³⁶

Overall, the Uganda Investment Authority plays a dual, conflicting, role. While promoting and facilitating investment and business, it also plays a monitoring and enforcement role. The latter function is particularly difficult to fulfil where the Authority has actively encouraged an investor to establish a business in Uganda, granted it substantial incentives and facilitated its access to land and acquisition of permits and licences. In particular, the Authority does not have express powers to address complaints that citizens may have against investors related to the environment, employment practices, and human rights in general.

4.12 CROSS-CUTTING AUTHORITIES

Having surveyed the statutory norms, the mechanisms of monitoring the implementation of those forms and the available remedies, this section provides an overview of state institutions with monitoring and remedial powers that cut across various fields. The idea, again, is to consider the applicability of these powers to the activities of corporations.

4.12.1 The Uganda National Bureau of Standards

The Uganda National Bureau of Standards Act³³⁷ establishes the Uganda National Bureau of Standards and provides for standardisation of commodities. The functions of the Bureau include formulating national standard specifications for commodities and codes of practice, and promoting standardisation in commerce, industry, health, safety and social welfare.³³⁸ The standards developed by the Bureau are binding on natural and legal persons. This is clear from the broad powers of inspection that the inspectors have and the offences the Act creates.³³⁹ The Act states in particular that where an offence is committed by a corporation with the knowledge, consent, authority or connivance or negligence of a director, manager, secretary or any officer of the company, both the corporation and the relevant officer

334 Section 35(1) as read with subsection (2).

335 Section 28.

336 Section 28.

337 Chapter 327.

338 Section 3(1).

339 See eg sections 14, 26, 27, 30.

shall be liable for the offence.³⁴⁰ The Act also attributes criminal liability to the employer for offences committed by an employee acting within the scope of his or her employment where it is proved that the offences were committed with the employer's knowledge, authority, consent or connivance.³⁴¹

The National Standards Council is the governing body of the Bureau. The Council is responsible for the general administration of the Bureau as well as the formulation and implementation of its policies.³⁴² The Council is also in charge of the issuance and cancellation of distinctive and standard marks.³⁴³ The decisions of the Council are reviewable by the responsible Minister whose decision is final.³⁴⁴

4.12.2 The Uganda Human Rights Commission

The Uganda Human Rights Commission is established by Article 51 of the Constitution. In addition to articles 52 – 58 of the Constitution, the Commission is regulated by the Human Rights Commission Act 1997.

The Commission has broad investigative powers. On its own initiative or following a complaint by any person or group of persons, it can investigate any violation of human rights.³⁴⁵ Since the Ugandan bill of rights has horizontal effect, this provision must be taken to mean that the Commission can investigate violations of human rights committed by state and non-state actors either severally or jointly. In addition, the Commission can engage in research aimed at enhancing respect for human rights and recommend to Parliament measures to promote human rights.³⁴⁶ Other functions of the Commission include monitoring the government's compliance with international obligations on human rights and raising public awareness on human rights.³⁴⁷

Where the Commission finds that a human right has been infringed, it can order the release of a detained or restricted person, payment of compensation, or any other legal remedy or redress.³⁴⁸ The Commission's orders have the effect of an order of courts of law.³⁴⁹ Although the Commission is guaranteed independence, the chairperson and all commissioners are appointed by the President, with the approval of Parliament.³⁵⁰

4.12.3 The Equal Opportunities Commission

The Equal Opportunities Commission was established as an independent body by the Equal Opportunities Act 2007 pursuant to Article 32(2) of the Constitution. Its singular purpose is to monitor

340 Section 28.

341 Section 29.

342 Section 8.

343 Sections 17, 20 and 24.

344 Section 25.

345 Article 52(1)(a) of the Constitution.

346 Article 52(1)(c) – (d) of the Constitution.

347 Article 52(1)(e) – (h) of the Constitution.

348 Article 53(2) of the Constitution.

349 Section 8(3) of the Human Rights Commission Act.

350 Section 3 of the Human Rights Commission Act.

the implementation of the constitutional requirement to eliminate discrimination and inequalities and to take affirmative action in favour of marginalised groups.³⁵¹ The commissioners are appointed by the President, subject to approval by Parliament.³⁵²

The Commission's mandate extends over both the public and private sectors. The Commission has a duty to ensure that the policies, laws, programs, plans, activities, practices, traditions, cultures usages and customs of the government, private sector, civil society and communities are consistent with the constitutional imperative to provide equal opportunities and take affirmative action for the benefit of marginalised groups.³⁵³ The Commission has investigative powers which can be activated by the commission itself or by any person or group of persons.³⁵⁴ In addition to these powers of investigation, the Commission has promotional powers to raise public awareness on equality, non-discrimination and affirmative action.³⁵⁵ It can also hear and determine complaints alleging non-compliance with the duty to take affirmative action and provide equal opportunities.³⁵⁶ The Commission can 'rectify, settle or remedy any act, omission, circumstance, practice, tradition, culture, usage or custom that is found to constitute discrimination, marginalisation or which otherwise undermines equal opportunities through mediation, conciliation, negotiation, settlement or other dispute resolution mechanism.'³⁵⁷

4.13 CONCLUSION

It is clear that Uganda has taken a wide range of measures to regulate various fields in which corporates feature as key actors. Particularly noteworthy is the fact that these legislative measures span across the socio-economic rights recognised in the bill of rights and those not expressly recognised. The norms elaborated in these Acts invariably apply to non-state actors, especially corporations. Various devices, mechanisms and institutions have been set up to ensure compliance with these norms. They range from inspection officials and procedures, criminal offences, investigations, environmental impact assessments, and environmental audits, to licensing and permit requirements and procedures, complaints mechanisms, legal causes of action, and independent monitoring or regulatory bodies. If effectively implemented, these devices and mechanisms would go a long way in curbing corporate violations of human rights.

The discussion in this chapter has also revealed some gaps in the norms and mechanisms of enforcement. One of the gaps lies in the normative grounding of some of the statutes. There is a noticeable normative inconsistency between the Acts dealing with health, education, the electricity, environment, food, labour, land and water. The statutes dealing with the environment, water and labour are, even though tenuously at times, grounded in the corresponding human rights. The statutes on health, education, food and land are not similarly grounded. Almost all statutes pay less attention to the state's duties to respect, protect and fulfil the applicable rights, especially the duty to provide access. Thus, for example, the Electricity

351 See sections 2 and 3.

352 Section 5(2).

353 Section 14 of the Equal Opportunities Act.

354 Section 14(2)(a).

355 Section 14(2)(c) – (f).

356 Sections 14(3) and (4).

357 Section 14(3).

Act has provisions that suggest the state's prioritisation of rural electrification, but the Water Act and Food Act do not address themselves to the state's duty to provide access to water and food to the poor. As will be seen in later chapters, the failure by the state to fulfil its own obligations relating to socio-economic rights has resulted in many people being left in poverty and vulnerable to exploitative practices by corporations.

In the case of the environment, the requirements of environmental impact assessments and environmental audits seem to be well provided for. However, these procedures do not make explicit provision for the consideration of the impact of corporate activities or projects on human rights. They also seem to rest the primary responsibility of carrying out the impacts assessments on corporations, the sole responsibility of the state having been limited to merely ensuring that the assessments have been done properly. What is of concern is that there is no clear provision for public participation in both procedures just as there is no clear guarantee of the right of access to information in relation to both. Whether in practice all corporations involved in mining were required to carry out an environmental impact assessment and have been subjected to annual environmental audits is a question that needs to be investigated further. However, as this study later shows, some of the corporations investigated have consistently broken basic environmental standards with impunity, which suggests perhaps that the enforcement mechanisms are not working properly.

As will be seen in later chapters, corporations have sparked numerous land disputes, especially in areas where customary land is the predominant tenure. The provisions of the Land Act dealing with customary ownership certificates, though well intended, are prone to abuse by those keen to sell customary land to corporations. Unfortunately, the procedures by which customary land can be certificated are lax and opaque.

In the labour sector, several laws have buttressed the protection of labour rights and social security. However, some of the key rights, such as the prohibition of economic exploitation, slavery and slave-like practices, have not been expressly codified. Also, these laws have largely targeted the protection of employees in the formal sector, ignoring the large informal employment sector in Uganda where the more vulnerable employees are to be found.

The laws governing the promotion of investment and extractive industry putatively contain noble provisions aimed at encouraging ethical business by using such tools as licencing and permits. For foreign companies, in particular, these devices can serve a critical regulatory role. But, as has been seen in this chapter, critical gaps exist. Firstly, as prior noted, the Uganda Investment Authority performs a dual, conflicting role – to promote foreign investment in Uganda and to entice, issue certificates of incentives to, support and assist investors, on the one hand, and to monitor and regulate them, on the other hand. Secondly, the licensing and permit procedures in mining and petroleum are not uniform, both in their requirements, role of various state institutions and regulatory mechanisms. Under the Mining Act, for example, granting a mining licence is a function that has been entrusted to a single official – the Commissioner for the Geological Surveys and Mines Department. Under the Petroleum Act, this function is performed by the responsible Minister and the government as a whole has confusingly also been granted simultaneous power to enter into agreements with corporations interested in petroleum

exploration and exploitation. Thirdly, under both Acts, especially the Petroleum Act, the procedures for obtaining licences appear to be reclusive. As a result, civil society and the general public may not know the noble commitments that corporations make in relation to employing local citizens, to training locals, and to procuring goods and services from Uganda, and therefore be able to hold them accountable effectively. Crucially, the investor, mining and petroleum licencing procedures do not vet corporations by reference to the human rights records of the corporations or of their corporate social responsibility. This means that dubious corporations may be granted licences. As the next chapter shows, this is not an idle concern in the case of Uganda.

In the next chapter, the discussion shifts to the experience of corporations in the extractive industry in Uganda. This will present a picture of how corporations translate, or fail to translate, the constitutional and statutory norms discussed in the previous chapters and this chapter into practice.

“Moving around Karamoja region, you continue to witness how we live in abject poverty amidst plenty of riches”

Remarks from a community member in Moroto

“Businesses do not operate in isolation; businesses operate in an environment where there are other stakeholders who have interest in their operations. Businesses need the co-operation of these stakeholders in order to survive and operate profitably.”

Capital Markets Authority - Uganda

CHAPTER FIVE

THE IMPACT OF CORPORATIONS ON COMMUNITIES IN UGANDA

THE IMPACT OF CORPORATIONS ON COMMUNITIES IN UGANDA

5.1 Introduction

This chapter turns attention to the lived experience of the people vis-a-vis corporate activities in Uganda. In what ways have corporations impacted on the lives of the communities in Uganda? As noted in the introduction to this report, our interests do not lie only in uncovering the impact of corporations on human rights. We are also interested in investigating the ways in which communities respond to corporate impacts and how corporations interact with communities. For corporations, we asked whether they recognise their human rights responsibilities and corporate social responsibilities. We also investigated how corporate activities are intertwined with government action or inaction.

As noted in the methodology, this field research was structured around three locations – Nakisunga in Mukono, Moroto in Karamoja, and Hoima and Buliisa in the Lake Albert region. Mukono is an emerging stone quarry centre, while Moroto is fast becoming a mineral hub for Uganda. The Lake Albert region has gained attention because of the oil and gas discoveries in that area. The mining activities in these areas have attracted significant corporate interest. This field research was designed around nine companies operating in these areas and their respective communities.

5.2 Quarry Mining in Nakisunga, Mukono

5.2.1 Introduction

Nakisunga is a sub-country in Mukono District, which lies about 34 km east of Kampala. Mukono has become one of Uganda's stone quarry hubs. For purposes of this research, we concentrated on two quarry sites – at Namuyenje, operated by Seyani Brothers Ltd, and at Namaiba, operated by Tong Da China International. One company which also carries out stone quarrying in Mukono and has not been included in this study is China Communications Construction Company (CCCC). We took a strategic decision to investigate only one of the two Chinese companies. However, as the results of this study reveal below about Tong Da China International and the case brought by CEHURD which accuses CCCC of violating the rights of communities to health and environment shows,³⁵⁸ these Chinese companies have raised similar concerns.

Seyani Brothers, owned by Kenyan brothers, was first registered in Kenya in 1978, and moved to Uganda in 1991. It now is also registered in Rwanda and Tanzania. As Seyani Brothers refused to be interviewed, we were unable to establish when it started quarrying in Nakisunga. According to locals, Tong Da China International is a Chinese company which started stone quarrying in Mukono in 2009.

³⁵⁸ For a brief summary of the case, see Mathias Heilke 'From baby steps to realising rights: A case of Bamutakudde and Kiryamuli villages', available at (accessed 2 July 2016).

5.2.2 Impact of Quarry Activities

Members of the community noted a number of positive impacts of the activities of the two companies. The companies have provided employment opportunities to locals and Ugandans generally. According to the chairperson of the Namaiba Village Committee, Tong Da China International, in particular, provides material support to residents such as building materials and money to support the construction of wells and schools and burials rites. The authorities at Sempape Memorial Primary School said that the company had facilitated the connection of electricity to the school and donated boxes of toys to children, contributed money to the construction of a water tank on the school, and is generally cooperative when issues are raised with it.

However, the quarrying by both companies is being done at a huge cost to the environment and the community. Community members complained that the blasts, which take place three times every month, are too loud for the wellbeing of the community especially pregnant women. It is not just the noise pollution caused by the blasts that community members complained about. The blasts also generate a lot of dust, which is unhealthy for the people, their livestock and the environment in general. Additionally, the blasts cause intense vibrations. Some interviewees reported that their houses have developed cracks due to the blasts, while others said that the shards from the blasts have broken their houses and pose a danger to the security of the people in general. These were confirmed by the UCCA team which visited some of the houses. It was also evidenced that other community members have had to replace the roofs of their houses because of the damage caused by the blasts. Apart from these environmental, health and security hazards posed by the blasts, community members also cited disruption of the normal course of life as another significant impact of stone quarrying. Normally, a public announcement is made before the blasts are made requiring community members to leave their homes to a safe place which is about 2 km away and to come back only after the blasts have been completed. Sometimes, the blasts fail, and when people return to their homes, they are asked to leave again for another try. These disruptions and dangers, some residents claimed, have caused loss of rental income to property owners in the area as tenants have sought accommodation elsewhere quieter and safer.

One of the earliest casualties of the advent of stone quarrying companies in Nakisunga was the local primary school which had to be moved from its original location to a new place. As a result, some children have to walk longer distances to school than they did before. Although Tong Da China International was expected as part of the school's relocation agreement to pump water to the school, it failed to do so, which resulted in water shortages at the school. This forced the school to invest in water harvesting.

Both companies face labour-related complaints from workers. For example, the worker field researchers were allowed to interview at Seyani Brothers said that he had worked for the company for five years without a written contract and that he knew no employee who had a written contract. At both companies, employees said that they do not receive medical treatment or assistance from the company, beyond first aid, when they get injured in the course of their employment. They explained that it was not easy for them to challenge their employers because of their tenuous employment status and the perception that the companies have political backing.

5.3 Gold, Marble and Limestone Mining in Karamoja

5.3.1 Introduction

Karamoja is a region in the north eastern part of Uganda that is inhabited by pastoralist tribes. For long trapped in cycles of violence, it remains probably the poorest region of Uganda, economically neglected by both the colonial and post-colonial governments. Once seen as a backward region populated by peoples steeped in the indigenous ways of life, Karamoja has now become economically important to the country because of its mineral wealth, which includes large deposits of limestone, gold, uranium, marble, graphite, gypsum, iron, wolfram, nickel, copper, cobalt, lithium and tin.³⁵⁹

This study focused on four companies that are or have been involved in mining limestone, marble or gold around Moroto, Karamoja. The first two companies are DAO Africa Ltd and Mechanised Agro Ltd, which stand less than 20 km apart, and about 12 and 20 km away from Moroto respectively. DAO is owned by Egyptians and has been in Moroto for over 10 years, first mining marble and exporting it to China, Dubai and Egypt, and now focussing on grinding limestone for making paint, mattresses, chalk and other products. Mechanised Agro Ltd is owned by Ugandans and has been in Moroto since November 2015. It mines blocks of limestone which are transported to Kampala where they are turned into tiles and terrazzo.

Also involved in mining limestone is Tororo Cement Ltd, which lies to the south of Moroto, 50 km away. Tororo Cement has mined limestone in Tororo since 2005/6. Unlike the other two companies, Tororo Cement only excavates large blocks of limestone and allows members of the community to break them to smaller transportable pieces which the company buys from them.

The last company investigated is Jan Mangal Ltd, a company owned by an Indian national, which was involved in mining gold in Moroto from 2012 until the mine was abandoned in 2015 after the owner left the country. A senior official at the Ministry of Energy said that the owner of Jan Mangal has now returned and mining resumed in Moroto.

5.3.2 Impact

5.3.2.1 Marble and Limestone Mining: DAO Africa Ltd

Both the company's site manager and community members agreed that mining has made some positive economic contribution to Rupa village by providing employment to some of the local people and thus giving them a means of maintaining a livelihood. The minimum salary offered to employees was about 500 000 Ugandan shillings (approximately US \$ 150). However, there was disagreement on the extent to which the company has provided employment. The company's site manager said that the company provides employment to Ugandans in general and Karamojong in particular. He claimed that the

³⁵⁹ 2011 survey by the Uganda Geological Survey and Mines. See also Uganda Investment Authority 'Karamoja investment profile 2016' 2, available at <http://www.ugandainvest.go.ug/wp-content/uploads/2016/04/uia-Karamoja-profile.pdf> (accessed 2 July 2016).

company initially employed 15 locals out of the 40 employees on site in Rupa. But due to abscondment by local employees after receiving a salary, this figure has reduced to fewer than 8. Local miners disputed this narrative. They accused the company of employing Ugandans from outside Karamoja and foreigners at their expense. It is non-payment of salaries not abscondment, claimed the local miners, that has strained the relations between local employees and the company. Some of the interviewees claimed to have once been employed by DAO and their salaries remain unpaid to date.

More specifically, local miners accused the company of favouring foreign employees in its practices. They claimed that at the time the company employed about 30 Egyptians, the terms of employment offered to the Egyptians were more superior to those of local employees, in terms of both salary and security of tenure. They cited as an example the fact that the Egyptians were given written contracts while local employees were not. However, due to non-payment or delays in payment of salaries, they alleged, the foreign employees abandoned the company for a newly established rival company, Mechanised Agro Ltd.³⁶⁰

The company also said that it has constructed two boreholes for the community and allowed local miners to break smaller stones for their own use or sale. Both these claims were also disputed by the community, who said that one of the boreholes has never been completed and that the only operational borehole available in the area was constructed by the government. According to the community, the agreement between the company and the community in terms of which the company is entitled to mine large stones and leave small ones to local miners was reached after a community protest against the company. The community said that the company came to the area without prior notice and consultations with the community which was already living in that area. The end of the protest was marked by the conclusion of a memorandum of agreement between the community and the company whose terms made provision for the sharing of stones with artisanal miners.

While the company adhered to the agreement on the sharing of stones in the past, the community now accuses it of breaking it by establishing a limestone grinding company which uses small limestones. That the company has since 2015 mined small stones was confirmed by the company's site manager, whose take on the agreement was that the community is supposed to move to another part of the hill where they can excavate their own stones. This interpretation seemed to contradict an existing practice whereby the company has mined large stones and allowed local miners to break smaller stones on the same site for a number of years.

Apart from breaking the stone-sharing agreement, the local community also claimed that the company has failed to build a road, boreholes, clinic and school as was promised in the memorandum of agreement.

³⁶⁰ The company disputed this claim, saying instead that the Egyptian employees stopped working because the company's marble exporting business had become less viable which precipitated a halt in production. The employees were asked to wait until production resumed, but they lacked patience and joined a rival company. When we visited the Mechanised Agro Ltd, the Egyptian workers confirmed that they left DAO due to non-payment of salaries.

As regards the business of mining small stones by local miners on DAO's mining site, the miners lamented that they lack tools for breaking the stones and protective gear. Injuries happen frequently but the wounded do not have access to medical treatment. They spend many hours to produce a pile of stones, which are bought cheaply by transporters, especially Tororo Cement. According to the local miners, a load of 7 tonnes takes about a week to produce, for which they are paid 60–70 000 Uganda shillings.

5.3.2.2 Limestone Mining: Mechanised Agro Ltd

Unlike DAO Africa Ltd, Mechanised Agro Ltd did not encounter any community backlash when it came to Moroto. The company attributes this stroke of fortune to having followed all the required procedures and consulted the community before it began its operations. In all fairness to DAO Africa Ltd, the difference in community reaction most probably lies in the fact that DAO's mining site is located within the vicinity of local communities, while Mechanised Agro Ltd's mining site is located away from villages. This partly also accounts for the absence of local miners at the mining site of Mechanised Agro Ltd. The site manager also confirmed that the company has not struck any deal concerning the sharing of stones similar to DAO Ltd's most likely because the community has not made any demand to this effect.

Mechanised Agro Ltd employs 34 people, 23 of whom are Egyptians, the ones formerly employed by DAO. The Egyptian workers do the technical work of cutting and excavating limestone blocks. The remaining 11 employees are Ugandan. According to the site manager, three of the Ugandan workers were local, although he could not say whether they were Karamojong. The company buys charcoal and food from the community and provides the community water from its borehole. However, the site manager could not explain why the company itself fetches water from Moroto and not from the borehole.

The site manager said that all employees are yet to receive appointment letters. He also claimed that the company did not have a corporate code of conduct, because it had just been incorporated.

5.3.2.3 Limestone Mining: Tororo Cement Ltd

Like DAO Ltd, Tororo Cement faced community backlash when it started its operation in Tororo. In response to community protests against the company, the government deployed soldiers to guard the company, the community claimed. Government soldiers provided security to the company for a considerable period of time. Despite the presence of soldiers on the company's premises, the community managed to secure an agreement with the company in terms of which the company would excavate large stones and let the community to break the stones for which they would be paid. The community claimed that the company further agreed to provide a medical clinic on the mining site, to build a school in the area, and to construct boreholes for use by the community.

About 11 years down the line, the company and community tell different stories about the impact of the mining taking place in Tororo. The company maintains that it has provided a means of living in the area as many community members are involved in the breaking of stones from which they derive some income. It also claimed that for some time the company provided a mobile clinic to local miners and

stopped when the community failed to employ a nurse. The company also claimed that it constructed two boreholes for the community. The company further claimed to have built a shed on the mining site, but the community sold it away. In addition, the company said that it provides transport to the community and repairs the roads. From its perspective, 'life was not bad for the community' with its presence in Moroto.

The community disagrees with the company's take on its impact on the community. Firstly, the community cites various violations of the memorandum of understanding they reached with the company. Chief among these is the allegation that the company had agreed to move the stone excavator around the area so that the community as a whole benefits from the business of breaking stones. Since the company brought the excavator, it has remained on one mining site. As a consequence, community members who live far from the mining site are unable to benefit from the economic opportunities.

The community also accuses the company of having failed to provide a clinic. Contrary to what the company alleged, the community insisted that the company had agreed to provide a medical clinic, which it has not done to date. For a few months, they admit, the company provided an ambulance which took the injured to a government clinic. The ambulance is no longer operational. As a result, miners do not get treatment when they sustain injuries when breaking stones. Contrary to the claim by the company, the community says that the company is yet to construct the boreholes it promised. However, the leader of Karamoja Women and Children in Mining and Peace confirmed that the company constructed 2 boreholes but noted that they do not produce any water. She also confirmed that the company constructed a semi-permanent school of grades 1 to 4, but the school is of poor quality and not functional. She also said that the mobile clinic the company claimed to have provided was functional for a very short duration, probably a month, and did not provide medical treatment but rather merely took patients to a local government hospital.

The exploitation of the community was arguably the most damning complaint of the community against the company. They lamented the fact that they are paid a pittance for the stones they break. For a truck load of 22–23 tonnes, they get paid 150 000 shillings, for 28–29 tonnes 170 000 shillings, and for 30–31 tonnes 220 000 shillings. The company said that the price of the load is increased annually, but confirmed that no increase had been made for 2016. Apart from being paid a trifle, the company loads the stones without prior permission from the local miners and hence sometimes loads several piles belonging to several miners, prompting disputes among community members about the sharing of the money the company pays for a full load. In the words of some interviewees, the economic exploitation they have experienced at the hand of Tororo Cement has tarnished the image of the company so much that it is better that the company be closed and mining resumed under a different company after a new agreement with the community.

According to on-site observations of the field researchers, workers on Tororo Cement's mining site range from children to very old people. They work the whole day, mostly in scorching sun. There is neither a shed nor a water pump on the site for them to rest, cool off or prepare food. The miners work in a highly dangerous environment without any protective gear, using basic instruments to break

very large stones. To soften the rocks, for example, they burn parts of the stones with firewood and strike the burnt part with the hammer while the stone is still hot. The risk of being hit by hot shards flying from the impact of the hammer are very high, and indeed many accidents do occur, some of which have resulted in death or serious wounds, according to the testimony of the local miners.

Despite the direct link between the local miners and the company, Tororo Cement claims that it is not responsible for their working conditions. It refuses to provide them with protective gear, just as it denies responsibility for their health, arguing that they are independent contractors.

5.3.2.4 Gold Mining: Jan Mangal Ltd

Jan Mangal Ltd was registered in Uganda by an Indian businessman who owns a company in India under a similar name carrying on a jewellery business. It is widely believed in Moroto that the company came to Uganda after it got stranded in the Democratic Republic of Congo and its owner met a Ugandan cabinet Minister and a prominent businessman. With that initial political backing and suspected corruption, the company came to Moroto in 2012 with heavy machinery ready to begin mining gold without a mining licence and without the prior knowledge of the community. The original location Jan Mangal earmarked for its mining operations was already occupied and used by local artisanal miners. Community opposition to Jan Mangal led government to send soldiers to provide security to the company. After negotiations with the community, the company was moved to a different location and the company made several corporate social responsibility commitments to the community, including agreeing to provide water, build a school and employ local people.

As mining was about to commence, Jan Mangal erected its water pumps on a water source that the community had been using, depriving them of access to water. Throughout the duration of its operations, the mine was heavily guarded by the company's own security personnel and by the government's soldiers. Access to the mine was so strict, it is claimed, that local community members could not know who worked at the mine and how much gold was being mined. Some interviewees claimed that the secrecy around gold mining by Jan Mangal was fomented with political backing under a cloak of corruption, which meant that government regulatory officials could not effectively monitor the company's activities.

In 2015, Jan Mangal unexpectedly abandoned its mine, leaving its equipment on site and employees stranded and without pay. Foreign employees were particularly affected. According to a civil society activist, some of the employees took the company to court, which authorised the sale of some of the company's assets.

A senior official in the Department of Mines at the Ministry of Energy claimed that the mine was closed temporarily due to the illness of the proprietor of Jan Mangal. The owner of the company had gone abroad for business engagements, where he fell sick for a long time. Due to insufficient management structures on the ground, chaos and disruption ensued at the mine. The official further claimed that the proprietor of Jan Mangal has now returned and resumed mining in Moroto. If this account of the senior official at the Ministry of Energy is to be believed, it paints a picture of Jan Mangal as a sole proprietorship where there is no separation between the shareholder and the company.

Some interviewees cited several labour-related malpractices that have occurred at Jan Mangal. They include claims of discrimination against local employees. This is confirmed by the 2014 report of International Union for Conservation of Nature, which documents the fact that Jan Mangal employed a total of 30 employees, three of whom were women and eight were Indian nationals. The report also claims that Ugandan employees were paid significantly less than Indian nationals for work of similar value.³⁶¹

5.4 OIL AND GAS IN THE LAKE ALBERT REGION

5.4.1 Introduction

The Lake Albert region lies to the west of Uganda, and provides the border between the Democratic Republic of the Congo and Uganda. The region has become a key developmental destination for major oil companies following the discovery of crude oil in that region in the early 2000s. By 2014, the government estimated that the oil reserves in that region totalled 6.5 billion barrels of which about 1.8 and 2.2 barrels were recoverable.³⁶²

Over the past few years, a number of developments have taken place or been planned to facilitate the oil exploration. These include the construction of the Hoima-Kaiso-Tonya Road, completed in 2014. Other associated developments include a planned refinery and waste management plant. Reports indicate that about 484 hectares of land were taken away from local people by a speculator who wanted to facilitate the construction of a waste management plant by an American company, McAlester Energy Resources Ltd.³⁶³ In March 2014, the government acquired about 530 hectares of land in Kyakabuga for the construction of the refinery.³⁶⁴ Uganda being landlocked, its oil has to be transported to a neighbouring country that has a sea port. Unsurprisingly, in August 2015, Kenya and Uganda announced a plan to construct a 1380 kilometre pipeline that will start from Hoima in Uganda, pass through Turkana and end at Lamu in Kenya.³⁶⁵

Three major oil companies are involved in oil exploration in this region. Tullow Oil is a leading independent oil and gas exploration and production company, headquartered in London. The company focuses on finding and monetising oil in Africa and the Atlantic Margins. It boasts of a portfolio of over 120 licences spanning 22 countries. Tullow Oil shares are listed on the London, Irish and Ghanaian Stock Exchanges. Tullow acquired three Ugandan exploration licences in 2004 following the acquisition of Energy Africa. The Group added further equity and operatorship to the licences in the Lake Albert Rift Basin when it acquired Hardman Resources in 2007.³⁶⁶ In April 2016, it was agreed by the Governments of Uganda and Kenya that the two countries would develop separate, stand-alone export pipelines for

361 J Houdet et al *Cost benefit analysis of the mining sector in Karamoja, Uganda* (Kampala: IUCN, 2014) 65.

362 Luke Patey 'Oil in Uganda: Hard bargaining and complex politics in east Africa', OEIS Paper WPM 60, October 2015, 9.

363 Oil in Uganda 'Oil timeline', available at <http://www.oilnuganda.org/categories/oil-timeline> (accessed 25 July 2016).

364 *Ibid.*

365 Patey, note 354 above, 12.

366 See <http://www.tullowoil.com/operations/east-africa/uganda> (accessed 2 July 2016).

their oil resources. In Uganda, Tullow is working with the Government of Uganda and other partners on the construction of a Uganda-Tanzania pipeline.

TOTAL SA is one of the 5 major international oil and gas companies, with more than 90000 employees worldwide, and it operates in more than 130 countries. TOTAL E&P Uganda is a wholly owned affiliate of TOTAL SA. It has now started upstream activities in Block I³⁶⁷ in the Lake Albert region, in partnership with Tullow Uganda Ltd and CNOOC Uganda Ltd. TOTAL SA started operating in Uganda in 1967, but it was only in 2012 it embarked on exploration and production activities. TOTAL E&P has a 33.33 per cent interest in four blocks in the Lake Albert region where oil reserves have been found.

CNOOC is reportedly a third largest oil company in china, established by the Chinese government in 1982 and now operating in many countries. Although China owns a controlling stake, the company was registered on the New York and Hong Kong stock exchanges and is thus now owned in part by private individuals or entities. CNOOC was licensed to explore oil in Uganda in September 2013. It acquired a one-third interest in Tullow Oil Uganda Operations Ltd in February 2012.³⁶⁸ CNOOC now holds a one-third interest, together with Tullow and Total E&P, in Block EA1/1A (where Total is the operator), Block EA2 (where Tullow is the operator), and Block Kingfisher Discovery Area (where CNOOC is the operator).³⁶⁹

5.4.2 Impact

In Hoima, community members and civil society representatives acknowledged that considerable developmental improvements have been made since the discovery of oil and gas in the area and the coming of the big oil companies. They cited the increased job opportunities, the construction of schools and health centres, and better transport services. Some corporations were praised for their social responsibility commitments. CNOOC Uganda Ltd, for example, was lauded for distributing seedlings to communities, raising awareness on HIV/Aids and providing scholarships to poor learners who are performing well in school. Tullow, too, offers scholarships for masters' students. Members of the community praised TOTAL E&P for giving fair compensation for crops and supporting artisanal miners. Other things the communities reported to have benefitted from include the improved infrastructure such as the Kabwoya all weather road constructed by CNOOC Uganda Ltd and the Kaiso-Tonya road. New hotels have been built and the local economy has enjoyed a major boost. The media and civil society organisations have also benefited from capacity building initiatives taking place from time to time there.

But, as has been the case with other areas where corporations operate in Uganda, the developments and oil related activities taking place in the area have raised wide-ranging human rights concerns. We were unable to pin each human right concern to any of the three corporations under study, but it is

367 A block (termed under the law as an Exploration Area, EA) is an area where potential and/or proven deposits of oil exist.

368 CNOOC 'Grievance and Complaints Handling Procedures.'

369 *Ibid.*

clear from the evidence that these concerns are associated with the development of the oil industry in the area.

As noted above, for the oil explorations and exploitation to take place in Hoima and Buliisa, new infrastructure had or has to be built. These included new roads, a pipeline, the oil companies and a waste management plant. All these needed and still need land. Unlike in Hoima, where most oil deposits are in forest reserves, in Buliisa, the oil wells are on land which is already owned, mostly by local people. There have thus been perennial controversies about the land expropriations that took place, involving the amount of compensation that was paid, with civil society organisations claiming that the compensation was inadequate. There have also been many complaints of fraudulent acquisition of land to take advantage of the compensations schemes. Some people were supposed to be relocated, but the relocation has not yet taken place. For example, about 93 families who were expected to be relocated to make way for the construction of a pipeline have not yet been moved, making it difficult for them to access basic services such as schools and medical health centres. Even if the relocation were to take place, some local activists claim that the relocation plans do not take into account the traditional way of life of the affected communities.

Some of the community members were evicted. The evictions involved destruction of their property and intimidation of civil society organisations that tried to defend the affected communities. These evictions took place without the involvement of local government which meant that the evictees were left without national or local government support.

Although in general there has been an increase in job opportunities in the area, in the oil companies themselves, there have been few opportunities for locals as these companies prefer foreign experts. Locals are mostly involved in casual work, underpaid and without written employment contracts. The influx of new people into the area has led to an increase in HIV infections, prostitution and sexual abuse of young girls. Domestic violence and family breakups have increased as moral decadence has set in with increased money and social life in the area.

There have also been concerns about damage to the environment. For example, the road constructions involved stone blasts that caused damage to property and people. Some interviewees also complained of air pollution. Civil society organisation also raised concerns about the veracity of the environmental impacts assessments undertaken. These concerns highlight the costs of unchecked development.

5.5 ANALYSIS AND REFLECTIONS

5.5.1 Corporations and Economic Benefits

The most oft-cited benefit of direct foreign investment and business enterprises are primarily economic in nature. Foreign direct investment and corporations contribute to economic growth, expand employment opportunities, boost local economies, and increase the tax base for the state, the argument goes.³⁷⁰

370 See generally John H Dunning 'Re-evaluating the benefits of foreign direct investment', available at <http://>

In all the three research sites investigated in this study, the corporations cited these benefits. On their part, even as the communities expressed disquiet at the manner in which the corporations worked, they generally acknowledged the positive role that corporations play in their lives. If anything, much of their criticisms were aimed at encouraging corporations to make a greater contribution to their communities.

Our field research suggests that the claim that corporations contribute to the creation of employment opportunities and increasing the revenue for the state is exaggerated at times. In Moroto, Mechanised Agro Ltd could not prove that a proportion of its employees are from Moroto or the Karamoja region. More than two-thirds of its employees (23 out of 34) are Egyptians. For a while, DAO Africa Ltd also relied on Egyptian technicians in its marble excavation business. That has now changed, but most of its Ugandan employees are not from Karamoja, which is something local people find hard to come to terms with. Jan Mangal also employed a number of Indians who were paid much better than Ugandan employees. Tong Da China International has also employed many Chinese nationals. It is no wonder that when field researchers visited the company's quarry site, no interviews could take place because of language barriers.

As far as contributing to tax revenue, Uganda in its drive to attract foreign direct investment not only offers free land to some corporations, in many cases foreign corporations are given generous tax holidays. In Moroto, only Tororo Cement has posted profits and paid royalties to the government, part of which has trickled back into the local communities. Other companies such as DAO Africa Ltd and Jan Mangal have not paid any royalties.

Overall, it seems that corporations are better appreciated when communities in which they are visible or operate see some concrete benefits, even where it can be proven that corporations contribute to national socio-economic wellbeing in general. The distribution of benefits corporations are able to generate between local and national constituencies is therefore crucial.

5.5.2 Nature of the Human Rights Violations

As chapter five has shown, even where corporations have made some positive contributions, they also have had an adverse impact on communities in multifarious ways. These impacts cut across the human rights divide. Almost all companies operating in the areas under study have been implicated in unfair or abusive labour practices. In some cases, such as the case of Tororo Cement, the labour abuses are egregious, approaching the heights of slavery. What is striking is that Tororo Cement has managed to subjugate and exploit the local population without using the toolkit of the slave master – the whips and shackles. Instead, chronic poverty has chained local people to the mining site of Tororo Cement where they toil in hard labour as 'independent contractors' in exchange for a pittance. These poor conditions

unctad.org/en/Docs/iteitv3n1a3_en.pdf (accessed 1 June 2016); Claire Mainguy & Soeren Jeppesen 'Is the impact of FDI similar in all developing countries? South Africa and Mali' in E Rugraff et al (eds) *Transnational corporations and development policy: Critical perspectives* (Basingstoke, Hampshire: Palgrave Macmillan, 2009) 176–201; Eric Rugraff & Michel W Hansen 'Multinational corporations and local firms in emerging economies: An introduction' in Eric Rugraff & Michel W Hansen (eds) *Multinational corporations and local firms in emerging economies* (Amsterdam: Amsterdam University Press, 2011) 13, 15–6.

of work expose the workers to other denials of their rights, such as human dignity, the right to health, the right to food, the right to rest and leisure, the right to family and the right to a community life. The use of child labour in the breaking of stones has also been noted.

Corporations have also significantly disrupted community life in Uganda. In Nakisunga, the stone blasts not only threaten the physical and psychological wellbeing of the people and their property, they also disrupt their normal course of community, family or private life. In Moroto, several people said that the advent of corporations has marked the beginning of degenerate moral behaviour, which has worsened since. Community members lamented the increase of alcoholism, encouraged as they claimed, by some corporations such as Tororo Cement that sometimes use alcohol as a mode of payment for goods or services. Others cited an increase in prostitution and HIV infections.³⁷¹

Land and the environment have been the most prominent casualties of corporate activities. Uganda has increasingly become a land depressed country as its population has increased.³⁷² This problem has been exacerbated by the growing interest in mining.³⁷³ Dao Africa and Jan Mangal's land disputes with the local communities described in chapter five represent a tip of the land problems in Uganda. While land grabbing is becoming institutionalised, the disregard for the environment displayed by some mining companies such as Jan Mangal, Seyani Brothers and Tong Da China International is substantial.

Clearly, these violations cut across all generations of rights. While the most common violations in the areas are economic, social and cultural, and from the third generation category, communities are often also subjected to violations of their civil and political rights – such as the right to protest, freedom of association and freedom of assembly. These violations are committed when they organise to protest against the activities of corporations.³⁷⁴

5.5.3 The Development Challenge and State Complicity

Most of the human rights violations described above occur against the backdrop of endemic poverty and daunting development challenges faced by the communities and the country as a whole. Karamoja, for example, has long lagged behind other parts of the country in development.³⁷⁵ Lacking basic

371 Independent evidence suggests that there indeed has been an increase in HIV infections in Karamoja. Reports that HIV prevalence has increased in the last decade from 3.5% to 5.3%. See USAID 'Strengthening Uganda's systems for treating AIDS nationally: Increasing access to health care services in the Karamoja sub-region, Uganda' 1, available at http://sustainuganda.org/sites/sustainuganda.org/files/Karamoja%20brief%20_June%202014.pdf (accessed 31 May 2016).

372 See eg Frank Place and Keijiro Otsuka 'Population pressure, land tenure and tree resource management in Uganda' EPDT Discussion Paper No 24, 1997, available at https://www.researchgate.net/publication/5056106_Population_Pressure_Land_Tenure_and_Tree_Resource_Management_in_Uganda (accessed 30 May 2016), also published in (2000) 76(2) *Land Economics* 233–51.

373 See Human Rights Watch 'Uganda: Rights at risk in new mining region: Urgent need to protect indigenous land rights in Karamoja', 3 February 2014, available at <https://www.hrw.org/news/2014/02/03/uganda-rights-risk-new-mining-region> (accessed 30 May 2016).

374 The government unleashed the armed forces to protect DAO Africa Ltd, Jan Mangal and Nueman Kaffe Group.

375 According to Uganda Danish Church Aid, '[t]he districts of Karamoja have the highest Human Poverty Indices (HPI) with Nakapiripirit and Moroto having 63.5% while Kotido has 53.8% compared to the national average

infrastructure such as roads, clinics, schools, water and electricity, Karamoja has one of the lowest rates of literacy in Uganda.³⁷⁶ The majority of the people still practice nomadic pastoralism in a context of harsh environmental circumstances, decades of political neglect and isolation, diminishing land resources and increased interference with their way of life by the government and other actors.³⁷⁷ All the companies interviewed in Moroto – Tororo Cement Ltd, Dao Africa Ltd and Mechanised Agro Ltd – cited as major challenges to their business the lack of electricity, poor roads, lack of access to water and lack of technical skills among local communities.³⁷⁸ All these factors conspire to create harsh conditions of living for the people and for doing business in the country.

The exploitation of local miners, disregard for the environment, disruption of community life, land grabbing and evictions can in one sense be seen as a means by which corporations meet the high costs of doing business in poor communities. In another sense, one could be justified in saying that these violations are happening as a result of the state's failure to realise the economic, social and cultural rights of rural Ugandans. It is quite clear that local people feel compelled to subject themselves to exploitation by companies in a desperate effort to gain temporary relief from the pangs of chronic poverty.

What is most disturbing is that these violations are occurring with the knowledge of the government and, in some cases, with government complicity. As has been noted earlier, the government sent soldiers to protect the Jan Mangal, Tororo Cement and DAO Africa when communities demonstrated against these corporations. In Kaweri,³⁷⁹ the facts of the case show that the eviction and human rights abuses that accompanied it were executed and committed by government soldiers. In Nakisunga, the stone blasts are unmistakable and their effects obviously disastrous for the environment and the local communities. And yet, these kinds of violations continue to occur. This hints at problems of lack of implementation of the available laws (where the laws are adequate), the failure of the regulatory and investigative procedures, lack of political will to address the violations, or indeed open disregard for the rights of the people.

Lastly, there is the issue of the conflicting role of the Uganda Investment Authority. Tasked with the promotion of investment in Uganda, the Authority has been implicated in incidences of land grabbing

of 37.5%'. See <https://www.danchurchaid.org/where-we-work/africa/uganda> (accessed 30 May 2016). Other estimates suggest that about 74.2% of the population in Karamoja eke out a living below the poverty line while the national average is 19.7%. Samuel Okiror 'Tackling poverty and drought in Uganda' (2015), available at <https://www.unisdr.org/archive/45188> (accessed 30 March 2016).

376 According to the Chronic Poverty Research Centre, Karamoja 'harbours the highest adult illiteracy rate of 86% and 71% for Moroto and Nakapiripirit, respectively, with literacy and numeracy rates below one percent among primary school girls and boys'. See Chronic Poverty Research Centre 'Understanding chronic poverty and vulnerability issues in Karamoja region: A desktop study' (2008) 8, available at http://www.drt-ug.org/book_files/Understanding%20Chronic%20Poverty%20in%20%20Karamoja.pdf (accessed 30 May 2016).

377 Chronic Poverty Research Centre, *ibid*, 20–22.

378 As an indication of the costs involved, it has been reported that DAO's mining runs on two-generators that consume about 20,800 litres per month. See 'Uganda set for marble export', available at <http://www.monitor.co.ug/Business/Prosper/Uganda-gets-set-for-marble-export/-/688616/2061046/-/o7oask/-/index.html> (accessed 22 May 2016). This figure compares favourably with what Mechanised Agro Ltd said about the amount of diesel its generators consume.

379 Note 93 above.

and unlawful evictions for the benefit of corporations.³⁸⁰ Although an official from the Authority noted that it only buys private land which it leases to investors, some of the private land it has bought has been from owners who had questionable title due to existing customary land rights claims to the land.³⁸¹ Yet, the government is entrusted with the constitutional duty to protect its citizens. This aspect of responsibility remains to be understood by and integrated in the goals and methods of the Authority.

5.5.4 Corporate Accountability and Social Responsibility

As seen in chapter five, a total of nine companies were targeted for investigation by this field study. From interviews with company personnel, employees and communities and a perusal of their websites, where these were available, it was established that only three of these corporations openly acknowledge the notion of corporate social responsibility. These are CNOOC, TOTAL E&P and Tullow Oil, all of which are multinational corporations. CNOOC and TOTAL E&P have codified corporate social responsibility principles, although the nature and sources of those principles differ. On its global website, CNOOC states that it 'is committed to building a safe workplace for employees and providing quality products and services to the market in a safe, efficient and environment-friendly way, and thus 'continues to contribute to the sustainable social development and the environmental protection'.³⁸² These commitments are elaborated upon in its 'Health, Safety and Environment Handbook'.³⁸³ CNOOC also states that as part of its policy to pursue 'the harmonious development of people, the company, the society and the environment,' it is committed 'to maximizing [its] contribution to economic development, ecological environment protection, and social progress for a better human future'.³⁸⁴ For Uganda, it claims to have 'sponsored free medical service to over 1400 local people in Hoima District and Kingfisher Oilfield'.³⁸⁵ Although CNOOC accepts the notion of corporate social responsibility, its principles are not based directly on human rights. Neither are the principles themselves couched in human rights language.

TOTAL E&P's corporate principles fall into two broad categories. The first is a set of internal principles which the holding company has prescribed for all subsidiaries around the world to abide by. The second is a corporate code of conduct that makes specific mention of human rights. Not only does the code commit the company to respect all applicable national and international laws and norms,³⁸⁶ the human rights norms it refers to are seemingly broad, ranging from employee rights, to the rights of communities, environmental rights, property rights and human security-related rights.³⁸⁷ TOTAL E&P is also a member of the IPIECA, the global oil and gas industry association for environmental and social issues. It has for

380 See, eg, the *Kaweri* case, note 93 above. In Moroto, interviewees also mentioned an ongoing land dispute, currently in the High Court, involving the Uganda Investment Authority.

381 Again, the *Kaweri* case, *ibid*, is an example in point.

382 CNOOC 'QHSE', available at <http://www.cnooc.com.cn/col/col6441/index.html> (accessed 30 May 2016).

383 Available at <http://www.cnooc.com.cn/data/skins/english/hsehandbook.pdf> (accessed 30 May 2016).

384 CNOOC 'Corporate citizenship', available at <http://www.cnooc.com.cn/col/col6461/index.html> (accessed 30 May 2016).

385 CNOOC 'Community building', available at <http://www.cnooc.com.cn/col/col6461/index.html> (accessed 30 May 2016).

386 Total Code of Conduct, 8.

387 Total Code of Conduct, 12–13.

several years, implemented the recommendations contained within the Voluntary Principles on Security and Human Rights (VPSHR).

For both companies, their corporate social responsibility commitments are not readily available on local websites. The Ugandan website of TOTAL E&P says nothing about its corporate social responsibility and code of conduct. CNOOC, on the other hand, does not have a local website. Again, for both companies, information is not readily available about the complaints mechanisms and remedies that the respective companies have in cases where the principles they claim to uphold are violated by the company, its employees or agents.³⁸⁸ TOTAL E&P's Code of Conduct makes provision for the Group Ethics Committee, but this committee is not empowered to hear complaints from members of the community and to grant remedies. As a single committee for the whole TOTALE&P group of companies, it appears too removed from local contexts in which breaches of the code occur. However, TOTAL E&P has another initiative aimed at facilitating conflict resolution in communities. Likewise, CNOOC has a policy for engaging with communities, which even its contractors are expected to observe.³⁸⁹

It is unclear whether Tullow Oil has a specific code of conduct. If it has, its website does not have it. However, the company produces annual reports on how its work impacts on health and safety, the environment, social investment and employment. In these reports is a clear acknowledgement of corporate social responsibility, albeit that there is no explicit reference to human rights. With regard to the 2015 annual report, Tullow Oil refers to what it has done in Ghana and Kenya, but does not provide specific details on what it has done in Uganda.³⁹⁰

The next three companies are seemingly multinational, but their links to their parent corporations are tenuous or difficult to trace. DAO Africa Ltd appears to be linked to the DAO Group of the Middle East³⁹¹ but it is not listed as an associated entity on the latter's website.³⁹² Within Uganda, the company is registered under several names,³⁹³ which further obscures its identity. Furthermore, the company does not maintain any website. The site manager interviewed was not aware of any corporate code of conduct the company has. As noted earlier, the company has not delivered on the social responsibility commitments it made to the local community.

388 After a validation workshop for this report, a representative from CNOOC sent us a copy of the company's grievance and complaints handling procedures. While it does not use human rights language, it clearly gives examples of the kinds of complaints that it can address, including those involving access to land, damage to land, livestock or other property, loss of livelihood, cultural infringements, and environmental damage. However, the complaints mechanism lacks independence and is controlled by the company. It also does not specify what remedies are available to complainants.

389 See CNOOC 'Community Relations Guidelines for Contractors'.

390 Tullow Oil PLC '2015 Corporate social responsibility report: Creating a shared prosperity', available at http://www.tulloil.com/Media/docs/default-source/5_sustainability/tullow-oil-2015-corporate-responsibility-report.pdf?sfvrsn=2 (accessed 2 July 2016).

391 Some link it to that group of companies, see eg Guardian Sustainable Business Blog 'Mining companies in Uganda must consult to keep their license to operate', *The Guardian*, available at <http://www.theguardian.com/sustainable-business/blog/mining-uganda-karamoja-consult-communities-licence-operate> (accessed 30 May 2016); ICR Newsroom 'Uganda: New plant to lower cement prices', 6 December 2012, available at <http://www.cemnet.com/News/story/151174/uganda-new-plant-to-lower-cement-prices.html> (accessed 30 May 2016).

392 See http://daogroup.net/associated_entities.html.

393 Eg DAO Marble Ltd, DAO Africa Ltd and DAO Uganda Ltd.

Jan Mangal Ltd started functioning in Uganda before it was given a mining licence, having moved from another African country. After operating for less than three years, it abandoned the mine, apparently due to the illness of its owner. During the hiatus, employees were left stranded and the mine unattended. During its operation, the company did not have a corporate code of conduct. Neither did it keep its corporate social responsibility commitments it made to the local communities. Tong Da China International is a Chinese company, whose international links cannot be traced. It is a relatively new company in Uganda with no clear history of corporate special responsibility. However, unlike DAO and Jan Mangal, Tong Da China International has reportedly kept some of its corporate social responsibility commitments.

Unlike the companies discussed above, whose owners hail thousands of miles from Uganda, Seyani Brothers is an east African company, first registered in Kenya in 1978 and has operations in Tanzania, Uganda and Rwanda. Nonetheless, regional proximity has not made it more socially responsive than corporations from overseas. The company's website does not say anything about corporate social responsibility or its codes of conduct. Furthermore, its conduct in Nakisunga does not indicate that it is more conscious of the impact of its activities on the communities compared to the other companies.

Mechanised Agro Ltd and Tororo Cement are owned by Ugandans and are therefore local companies. The former was established in 2015. It is new and has no record of corporate social responsibility. Its employees still do not have contracts. It also does not have a cooperate code of conduct. Tororo Cement Ltd was previously owned by the government and became privately owned in 1995 as part of the privatisation drive at the time. The company's website does not say anything on corporate social responsibility except a vague claim that it is an environment friendly company. The company's assistant to the site manager at Tororo said that she was not aware that the company had a corporate code of conduct. As has been noted earlier, the company has not kept all its social responsibility commitments it made to the local community to build a workable school, clinic and boreholes.

This analysis shows that the more established multinational corporations such as TOTAL, CNOOC and Tullow are more sensitive to the need to recognise corporate accountability and social responsibility than new and relatively unknown companies. This suggests that international reputation makes a difference to company policies on corporate accountability or social responsibility. If reputation is not critical to a corporation's success, it is less likely going to accept and abide by human rights, let alone corporate social responsibility principles. The analysis also suggests that the licensing authorities either do not conduct due diligence checks on the companies applying for mining licences at all or do so poorly if they do. If they carried out such checks, some companies such as Jan Mangal would not have been granted a mining licence for a crucial mineral as gold. Indeed, six of the companies studied have no record of corporate social responsibility. Lastly, the fact that serious environmental damage is being caused by mining companies in all the three areas studied suggests that environmental laws, especially environmental impact assessments, are not being implemented and enforced.

5.5.5 Community Responses and Access to Remedies

The most common way by which the communities have responded to the various human rights violations committed by corporations revealed in this report has been demonstrations. This response has yielded some notable positive results. For example, sometime in 2014, the community in Nakisunga demonstrated against the stone blasts conducted by the corporations in that area. These demonstrations were diffused by an agreement reached with the community, committing the corporations to carry out the blasts during weekends only. At the beginning of their mining operations, DAO Africa Ltd, Jan Mangal Ltd and Tororo Cement Ltd all faced community opposition and demonstrations, arising from land disputes and lack of prior consultations with the community. In the case of Jan Mangal, the company was moved to another area to mine gold. In the case of all the three companies, the protests resulted in the conclusion of memoranda of agreement with the respective communities in terms of which the corporations undertook certain social responsibilities to the communities. In addition, DAO Africa Ltd agreed to share stones with the community while Tororo Cement agreed to excavate large stones, allow the community to break them into smaller stones and then buy the stones from the community.

While these successes are significant, the status of the memoranda of agreement remains obscure and contested. The members of the communities interviewed did not seem to know what exactly the agreements say and whether they were binding. The companies did not give the impression that they regarded these agreements as having any legal status. No wonder, all the corporations have generally ignored these agreements.

In isolated cases, the communities have used petitions to register their unhappiness with the activities of corporations. For example, in April 2008, it was reported that a group of residents in Nakisunga submitted a petition to the National Environmental Management Authority (NEMA) against Seyani Brothers, complaining that the stone blasts posed a risk to their lives, livestock and the environment in general.³⁹⁴ This petition resulted in a decision by NEMA to halt the blasts until an environmental impact assessment was conducted.

In Moroto, the communities have also tended to use traditional leaders as a means of engaging with corporations. For example, the price negotiation for the purchase of stones by Tororo Cement from the communities is done by the Karamoja Council of Elders. The council has also been involved in land disputes involving the companies operating in that region. However, whether the council of elders was an effective and transparent mechanism of engagement with corporations was considered as an open question by some of the interviewees.

As some of the mining activities of the corporations have impacted directly on artisanal miners, these miners have, with the help of civil society organisations, formed miners associations.³⁹⁵ These associations have served as an intermediary between corporations and artisanal miners, and helped to advance the

³⁹⁴ See Alex Bukumunhe 'Uganda: NEMA blocks quarrying', *New Vision*, 29 April 2008, available at <http://allafrica.com/stories/200804300242.html> (accessed 30 May 2016).

³⁹⁵ According to the Director of Karamoja Women and Children in Mining and Peace, three such associations have been formed thus far.

rights and interests of local miners. The associations have also become a potential solution to the problem of sharing of royalties among community at the sub-county level where it has become difficult in a context of nomadic and communal land holding to identify beneficiaries of royalties at that level.

The communities also engage with the district councils from time to time, although their perception of the power of the district council was not very optimistic. Many interviewees expressed the view that district councils did not exercise real power with respect to corporations because corporations are perceived to enjoy political backing from the central government in Kampala. The perception of collusion between corporations and government authorities in the upper echelons of political power is widespread among community members and shapes the responses they take. It is therefore not surprising that the communities have tended to avoid engagement with political agents such members of parliament or counsellors in their struggles against corporations.

In Moroto, there is a branch of the Uganda Human Rights Commission. However, the communities have not submitted complaints against corporations at that office. The legal officer from the Commission attributed this to lack of information among communities about the role of the Commission. In Nakisunga, there is a labour office close by in Mukono. However, that office too has not received labour complaints against Seyani Brothers and Tong Da China International. An employee of Seyani Brothers said that it is difficult for employees to lodge complaints at the labour office or in court because they do not have security of tenure. On its part, the labour office complained of political interference in its work, citing as an example instances where employers have tended to deal directly with government officials bypassing the office.

Some interviewees cited political manipulation of the community as an impediment to collective action against negative corporate impacts. An example of this can be seen in the petition submitted by a group of residents from Nakisunga in 2008 (cited earlier), complaining about the negative impacts of the stone blasting in the area. Another group of residents led by a chief petitioned the Minister of Trade challenging the decision of NEMA halting the stone blasting.³⁹⁶ With the earlier petition undermined, the environmental damage has continued to take place unabated to date.

What have not been used much by the communities are the courts. While this issue requires further investigation, there are obvious access-to-justice problems at play. The communities affected by corporate activities in these areas are extremely poor, and largely illiterate. Although they clearly have some knowledge of their rights, the formal court system, procedures and remedies are unfamiliar to them. Added to this is the problem of financial and physical accessibility.

However, there have been some exceptions. The Kaweri case³⁹⁷ is an example where a community had to go to court to seek redress for an unlawful and inhuman eviction. Another example is an ongoing case brought by CEHURD against CCCC, a Chinese company, alleging violations of the rights to health and a healthy environment caused by stone quarrying in Mukono.³⁹⁸

396 Bukumunhe, note 386 above.

397 Note 93 above.

398 Heilke, note 350 above.

5.6 CONCLUSION


Corporations are affecting communities in both positive and negative ways in Uganda. The communities concede that they have experienced some benefits from the incursion of corporations into their areas. These benefits range from enhanced business and employment opportunities, to better services such as transport, water and telecommunications, and improved infrastructure such as roads.

However, communities also complain about many obvious violations of human rights that corporations commit on their own or in collusion with the government. They cite instances of economic exploitation of local miners and employees, delayed or non-payment of wages, failure to provide protective gear to local miners, and failure to provide medical care to local miners injured while breaking stones for corporations. Corporations have heightened land disputes and increased the pressure on land. Often, they have been given or bought land under suspicious circumstances or at the expense of local communities. Some communities have been inhumanely and harshly evicted from their land while others have had their land expropriated and been paid insufficient or no compensation. Some corporations are damaging the environment blatantly without any fear of censure. While only three of the corporations studied have clear corporate social responsibility commitments, the rest do not and when some of them were forced into making some social commitments to the communities in which they operate, they largely ignored those commitments.

The increase in job opportunities does not necessarily mean an increase in the job quality. As this chapter has shown, community members and activists complain about the lack of job opportunities for local people as corporations prefer to employ foreign experts. Where Ugandan employees are recruited, they do not necessarily come from the area the corporations are working. Most time, corporations are employing Ugandans as casual workers and not in higher level positions. Communities also complain about the increasing social discord that corporations cause – prostitution, alcoholism, HIV/Aids, abuse of young girls and family breakdown.

These abuses and violations are happening with the knowledge of, and sometimes committed with the collusion of, the government. In particular, the failure by the government to implement the economic, social and cultural rights of the citizens has created a general environment of acute poverty in some areas that has made doing business in those areas extremely expensive and corporations to exploit the local people in order to cover the costs of their businesses. The challenge for corporate accountability in Uganda is thus the challenge of finding ways of holding both the state and corporations accountable for their respective human rights obligations.

Communities in Uganda have not accepted these violations without a fight. On the contrary, they have tended to use protests, demonstrations and petitions from time to time with varying degrees of success. In some cases, traditional forums such as a Council of Elders have been used. Others have sought the assistance of civil society organisations or increased their voice by forming associations or community-based organisations. It is clear, however, that a more national coordinated effort is needed to harness these efforts and tackle the problem of corporate violations of human rights comprehensively and consistently.



“Community buyout by the government often happens which can derail progress on planned interventions on corporate accountability. Often investors and government use local elites to silence or compromise the communities.”



CHAPTER SIX

CIVIL SOCIETY

CIVIL SOCIETY

6.1 Introduction

Having detailed the ways in which corporations have impacted on human rights in Uganda, this chapter will now address the question of the civil society engagement with corporations. The aim is to establish whether civil society has recognised the significance of the issue of corporations and human rights and the extent to which civil society has made this issue a central focus of its work. What are the key issues of corporate accountability in Uganda? What strategies have been used to address those issues? What challenges have been encountered? In addressing these questions, the overall aim is to find out whether there are any gaps that would warrant a dedicated project on corporate accountability in Uganda.

6.2 Civil Society in the Field

6.2.1 The Lake Albert Region

As noted in chapter five, Hoima has attracted public attention, and expectedly the watchful eye of civil society, in Uganda since oil reserves were discovered a few years ago. A number of NGOs and CBOs have set up offices in the Albertine region. They include Global Rights Alert, Navigators of Development Association, Buliisa Initiative for Rural Development Organisation, Midwestern Regional Centre for Democracy and Human Rights, Midwest Regional Anti-Corruption Coalition, African Institute for Energy Governance, and the National Association of Professional Environmentalists, among others.

These organisations see the following as the main issues that oil exploration and exploitation and its associated developments have raised in the Lake Albert region:

- Land disputes arising from expropriations and land grabbers hoping to gain from compensation promised by the expropriations;
- Resettlement problems arising from the land expropriations;
- Compensation disputes about the amounts of compensation and related procedures;
- Unlawful and inhumane evictions;
- Social impacts of increased economic activities in the area;
- Environmental impacts of the oil exploration and exploitation;
- Sharing of benefits from the natural resources;
- Governance problems relating to the exploration and exploitation of the oil and related activities; and
- Access to basic services such as health care, education, food, water and land.

In tackling some of these issues, NGOs have used various strategies. For example, Global Rights Alert has used litigation, albeit not regularly, to protect the rights of communities evicted from their homes to cater for the developments taking place in Rwamutonga. It also has mobilised the communities around specific causes and engaged directly with corporations. One of the successes it cites is the engagement with CNOOC that led to the corporation cutting their support to McAlister, an American company contracted to build a waste management plant in Rwamutonga.

Navigators of Development Association has initiated joint venture meetings with different stakeholders to discuss human rights violations as they arise which has now been taken over by the government and corporations. It has also been involved in empowering communities to claim their rights and to address environmental degradation. This organisation has also encouraged corporations and the government to join the Extractive Industries Transparency Initiative (EITI) in order to promote transparency.

Buliisa Initiative for Rural Development Organisation engages with oil companies on land rights, facilitates access to justice by members of the communities, and provides support to individuals presenting compensation claims. The organisation intends to carry out an environmental impact assessment when oil production starts.

Midwestern Regional Centre for Democracy and Human Rights is largely involved in civil education and information dissemination. It uses volunteers to monitor human rights impetetrations and to provide civil education on human rights. It mobilises communities to participate in public decision-making processes and empowers local NGOs.

Midwestern Regional Anti-Corruption Coalition focuses on corruption, good governance and environmental sustainability, and promotes greater participation of citizens in the oil and gas sector. The organisation also promotes good governance in the forestry sector.

The African Institute for Energy Governance is an advocacy organisation focussing on energy rights, equity and governance. It supports litigation, mobilises and sensitises communities on land and energy rights, engages with local leaders on oil and gas exploration, and has engaged in civic education and empowerment of the communities and state officials. Apart from providing support for litigation, it has also petitioned the Uganda Human Rights Commission on issues within its mandate.

Although the National Association of Professional Environmentalists focusses on environmental protection, it provides relief to communities displaced and left stranded by the evictions made to pave the way for a pipeline planned to go through Buliisa and Hoima to Tanzania. The organisation has also been involved in advocacy around compensation for expropriated land and on waste management.

While these organisations frequently encounter and address issues of corporate accountability, they do so indirectly as they pursue their agenda on environmental protection, the protection of land rights, the promotion of good governance and public participation, and the protection of general human rights.

6.2.2 Moroto

As noted earlier, Karamoja remains a most underdeveloped region in Uganda. The end of the disarmament process in 2011 marked a formal end of a long period of armed conflict in Karamoja that impeded development efforts and worsened the living standards for the people in that region. Because of these two factors, it is not surprising that Moroto hosts a wide range of international organisations working on peacebuilding and conflict resolution, governance, climate change and people's resilience, natural resources management, economic recovery and development. They include Mercy Corps, the

International Rescue Committee, the Danish Church Aid and the Food and Agriculture Organisation. There are also local organisations operating in the area, some of which have headquarters in Kampala. They include Ecological Christian Organisation (ECO), Caritas Uganda, Karamoja Women and Children in Mining and Peace, RIAM RIAM, Karamoja Development Forum and several artisanal miners' associations.

As is the case in the Lake Albert region, most of these organisations do not work directly on corporate accountability. However, from their experience in the area, they identified the following as issues that corporations working in Moroto have raised:

- » The land question – how the government allocates land to corporations in a context where there is a communal land tenure system;
- » The use of the state's coercive resources against communities protesting against corporations;
- » The problem of dubious investors such as Jan Mangal Ltd;
- » The complicity of Ugandan businessmen and politicians in the abuses committed by corporations;
- » The lack of implementation of existing laws against corporations or the absence of adequate laws;
- » The exploitation of locals;
- » Non-fulfilment of corporate social responsibility commitments;
- » Environmental pollution;
- » Lack of transparency in the allocation of mining rights;
- » The use of child labour; and
- » Rape and harassment of women on mining sites.

These organisations use various strategies to achieve their goals. They include providing services to communities, empowering communities through training on livelihood techniques, providing livelihood support, facilitating conflict prevention and resolution, provide mediation services, monitor mining activities, and engage district councils and other players.

6.2.3 Kampala

Most of the national NGOs in Uganda are based in Kampala. This study reveals that because of their general focus on the extractive industry, a number of NGOs tackle aspects of corporate human rights violations either directly or indirectly. They include Global Rights Alert, the Ecological Christian Organisation (ECO), Civil Society Coalition on Oil (CISCO) and Advocates for Natural Resource Governance and Development, among others.

Global Rights Alert is a human rights NGO whose primary work centres on access to information, access to justice, citizen's participation in extractive resources governance, government accountability and transparency, and mining exploration and extraction. Its main strategies are advocacy, community mobilisation and engagement, litigation through its partners, facilitating or providing relief to communities in desperate need, and litigation.

ECO's central concern lies in natural resources governance, with a special emphasis on policy and ecological dimensions. Its main strategies include policy advocacy, working in collaboration with the department of geological survey and mines, promoting access to information, research on specific themes, providing assistance to artisanal miners (such as in acquiring licences), creating local forums for discussing pressing issues in the

mining sector, and international engagement such as in the African Union.

CISCO is a network of 58 organisations (international, national and community-based), hosted by ACODE and established in 2008. It focuses on oil and gas governance, and works on the following specific sub-themes: oil and gas exploration monitoring, land justice, gender, environmental protection and state corruption. Its main interventions are research, capacity building, advocacy and litigation (which are done mostly by its members).

Advocates for Natural Resource Governance and Development uses the right to a clean and health environment and works with communities to monitor the impact of corporations on pollution and climate change. It engages in community sensitisation on the dangers of extractive industries and on environmental preservation. In addition, it engages with government agencies on matters concerning the environment and in strategic litigation.³⁹⁹ This organisation also trains judicial officers on litigation involving corporations.

6.2.4 International Organisations

Several international organisations have directly or indirectly worked on corporate accountability in Uganda. They include Action Aid Uganda, Human Rights Watch and the International Union for Conservation of Nature (IUCN).

Established in Uganda in 1982, Action Aid Uganda has evolved from a charity organisation to one that uses a human rights-based approach to combating poverty and ensuring women's wellbeing. As part of its broad focus on poverty and women's wellbeing, Action Aid has encountered issues of corporate accountability around oil and gas such as land disputes, governance and livelihood problems arising from mass evictions of communities. Thus far, it has deployed the following strategies: advocacy focusing on policy reform and campaigns to bring about specific action, lobbying and engagement with relevant institutions and corporations, providing legal assistance to communities affected by evictions and other abuses, and providing direct relief services.

In 2014, Human Rights Watch released a report on the impact of mining on human rights in Karamoja.⁴⁰⁰ The report catalogues a wide range of human rights abuses and violations that the state and corporations have been committed in Karamoja in that region. Most of these violations are confirmed by the current report. In the same year, IUCN released its own report detailing the environmental and social economic impacts of mining in Karamoja, focussing more specifically on DAO Marble Ltd, Tororo Cement, Jan Mangal Ltd, African Minerals Ltd and artisanal mining.⁴⁰¹ Although both reports have been

³⁹⁹ The organised cited cases it has commenced against Hima Cement relating to a refinery set up at Queen Elizabeth National Park, and another concerning pollution of Lutembe Wetland as examples.

⁴⁰⁰ Human Rights Watch 'How can we survive here? The impact of mining on human rights in Karamoja, Uganda', 3 February 2014, available at <https://www.hrw.org/report/2014/02/03/how-can-we-survive-here/impact-mining-human-rights-karamoja-uganda> (accessed 30 May 2016).

⁴⁰¹ J Houdet et al 'Cost benefit analysis of the mining sector in Karamoja, Uganda', 2014, IUCN, available at <https://www.gibs.co.za/news-events/articles/Documents/CBA-Karamoja-Mining-Final-IUCN-ISS-Irishaid-Synergiz.pdf> (accessed 30 May 2016).

widely published, not much has been done to tie the findings of these reports to specific activities and advocate for greater corporate accountability in Uganda.

6.3 General Challenges Faced by Civil Society


In mapping out what civil society in Uganda is doing about corporate accountability, this study also sought to understand the challenges that civil society organisations face in working on this issue. The following were the most common challenges cited by civil society organisations:

- » Managing community expectations. Especially in the mining sector, communities expect a lot of benefits from the mining activities taking place in their areas. Managing their expectations is primarily a government responsibility but this becomes a challenge for civil society organisations whose specific strategies might not be directed at bringing about specific tangible benefits to the community.
- » Lack of information around mining, which makes the identification of specific human rights violations difficult. This problem arises from the dearth of research on corporate accountability in Uganda.
- » Government-imposed bottlenecks, such as the requirement to obtain permission from certain government functionaries before carrying out a study in communities, impede the operations of civil society.
- » Lack of a clear legal framework for corporate accountability.
- » Corporate bureaucracy, which requires approval from certain company officials in order for researchers to talk to company employees or officials.
- » Government backlash arising from a negative attitude that sees NGOs monitoring the extractive industry as opponents of development in a context where the government is pro-investment.
- » Restrictive laws for the operation of NGOs.
- » Lack of a critical mass of engaged local leaders who can mobilise communities to fight corporate abuses on a sustained scale.
- » Sometimes victims of violations are so poor and in urgent need of relief, which civil society is unable to provide.
- » Community buyout by the government often happens which can derail progress on planned interventions on corporate accountability. Often investors and government use local elites to silence or compromise the communities.
- » General lack of good governance, transparency and accountability in the country.
- » Judicial processes in Uganda are cumbersome, time-consuming and unreliable.

6.4 Conclusion

There is an increasing civil society awareness of the domestic corporate accountability issues in Uganda. With the growth of the extractive industry, sparked in recent years by the discoveries of minerals and oil and gas, Uganda has escalated its pro-investment agenda. Civil society organisations have followed

developments in the extractive industry, largely through the prism of environmental protection, land rights, community livelihoods, conflict resolution, governance, participation and access to information. Although notable efforts have been made by some organisations to hold corporations accountable for such things as evictions, pollution and land grabbing, corporate accountability has not yet been taken up as the central concern of organisations. This has meant that the concept is not addressed in its totality at the legal and policy levels, as well as at the level of enforcement of the applicable laws and policies. Crucially, linkages between access to basic services or economic, social and cultural rights and corporate activities have not yet been strongly established, in order to map out where the responsibilities of the state and corporate end and begin and coincide.



“States must protect against human rights abuse within their territory and/ or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication .”

UNGPs



CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

7.1 Introduction

In Uganda, the discovery of minerals and the push for foreign direct investment have combined to create an environment for increased corporate participation in the economy. The Uganda Investment Authority was created with this specific aim. This study investigated three specific questions. The first was whether Uganda has adopted relevant normative standards for corporations and whether those norms are enforceable. This question was considered at the level of constitutional law and statutory law. The second was about the impacts of corporate activities on the communities around which they work. Related to this question is the issue of how communities address negative impacts of corporations and whether corporations recognise that they have responsibilities towards human rights. The last question sought to find out what civil society organisations in Uganda have done to address the question of corporate accountability. These questions were addressed by focusing on three major mining centres – Moroto, Mukono and the Lake Albert region – and nine major companies involved in mining there. This chapter provides a summary of conclusions and some recommendations.

7.2 SUMMARY OF CONCLUSIONS

7.2.1 Positive Impact of Corporations

The study confirmed some of the benefits that corporations are usually associated with. The communities recounted a wide range of positive impacts of corporations on their lives. These benefits include more business and employment opportunities, better services such as transport, water and telecommunications, and improved infrastructure such as roads. The communities lauded some corporations for their corporate social responsibility initiatives such as offering scholarships, building health centres, boreholes and schools, and facilitating access to electricity.

7.2.2 Negative Impact of Corporations

While noting these positive benefits, communities cited many concerns about corporations. These concerns effectively amount to accusations of violations of a wide range of human rights. Communities complained that some corporations, especially those in Moroto, exploit local miners and employees. For example, DAO Africa Ltd and Tororo Cement were accused of failing to provide protective gear to local miners and to provide medical care to local miners injured while breaking stones on their mining sites. As more corporations have been allowed to come and establish businesses in Uganda including in rural areas, so has the pressure on land increased. Consequently, land disputes have increased, leaving the vulnerable stranded in some cases and without redress. Some communities have been inhumanely and harshly evicted from their land while others have had their land expropriated and been paid inadequate or no compensation.

One of the major negative impacts of corporations working in the extractive industry has been environmental pollution and ruin. Although the laws provide for environmental impact assessments and annual environmental audits, some corporations seem to be causing pollution and other forms of

environmental damage with impunity and without censure. This has evidently been the case with Seyani Brothers and Tong Da China International in Nakisunga.

The often-cited benefit of corporations, and acknowledged by local communities, is that they create job opportunities. However, local communities noted some concerns even about this benefit. Some said that the jobs offered to locals are manual jobs. Others argued that corporations do not offer many jobs to local people and that they prefer to employ foreign experts. Indeed, some of the corporations we interviewed on this question, such as DAO Africa Ltd, Tororo Cement and Mechanised Agro Ltd, failed to show that they do employ a significant proportion of local people or indeed Ugandans in general. Where Ugandan employees are recruited, they do not necessarily come from the area the corporations are working. Most time, corporations are employing Ugandans as casual workers and not in higher level positions. Accusations of discrimination between local and foreign employees were also made by some local community members, thereby confirming what some previous studies had found.

Communities also complained about the increasing social discord that has happened since corporations came to their areas. They point to increased prostitution, alcoholism, HIV/Aids, abuse of young girls and family breakdown as some of the concerns in their communities.

The negative impacts that corporations have had on these communities cut across all human rights, especially economic, social and cultural rights. What is more concerning is that the corporate abuses and violations are happening with the knowledge of, and are sometimes committed with the involvement of the government. It could be argued in fact that the failure by the government to implement the economic, social and cultural rights of the citizens has left many people in severe poverty especially in rural areas which exposes them to exploitation. The underdevelopment of the rural areas where mining is taking place also means that it is expensive for businesses to operate there. As a result, corporations exploit the local people to defray part of the costs of their businesses. The challenge for corporate accountability in Uganda is thus a challenge of finding ways of holding both the state and corporations accountable for their respective and intersecting human rights obligations.

7.2.3 Corporations and Corporate Accountability

Of the nine companies studied, only three – TOTAL SA, CNOOC and Tullow Oil openly acknowledge the notion of corporate social responsibility. Of these three, only TOTAL makes express reference to human rights as a source of its corporate social responsibility commitments. Similarly, TOTAL and CNOOC have procedures for engaging with communities. In addition, CNOOC expects its contractors to abide by its community engagement procedures and has an internal mechanism for addressing complaints that can be submitted by any members of the community. However, the mechanism is wholly controlled by the company and does not specify what remedies may be granted. As for TOTAL and Tullow Oil, they do not have a concrete complaints procedure by which communities can seek redress for human rights violations committed or alleged to have been committed by them.

The other six do not openly acknowledge the notion of corporate social responsibility. This does not mean that all of them do not engage in acts that are socially responsive. Tong Da China International,

for example, was praised by some community members that it does good things to the community. DAO Africa Ltd, Tororo Cement and Jan Mangal Ltd were forced by their respective communities to enter into a memorandum of understanding which stipulated certain corporate social responsibilities. However, these corporations have yet to fully meet these commitments.

7.2.4 Community Responses

Communities have used various strategies to engage with corporations or to hold them accountable. They have used protests, demonstrations and petitions from time to time with varying degrees of success. In some cases, traditional forums such as a Council of Elders have been used. Others have sought the assistance of civil society organisations or increased their voice by forming associations or community-based organisations. It is clear, however, that a more national coordinated effort is needed to harness these efforts and tackle the problem of corporate violations of human rights comprehensively and consistently.

7.2.5 Civil Society Responses

Civil society organisations in Uganda have picked up an interest in the extractive industry, which this study concentrated on. They have viewed the idea of corporate accountability largely indirectly through the prism of environmental protection, land rights, community livelihoods, conflict resolution, governance, participation and access to information. Some organisations have tried to protect communities from evictions, pollution and land grabbing at the hand of corporations or the state as part of its effort to clear the way for corporations. Others have also used litigation to enforce health rights and environmental rights. In working on these issues, civil society organisations have often incurred negative reaction from the government which sometimes views them as anti-development.

Many factors limit the effectiveness of civil society organisations in Uganda. However, most of the organisations interviewed were positive that concerted work on corporate accountability is needed and that there is scope for constructive engagement with the government and corporations on this issue. This study established that despite some existing efforts, corporate accountability has not yet been taken up as the central concern of civil society organisations, especially as it relates to the protection of economic, social and cultural rights and linking corporate violations to poverty and underdevelopment. This has meant that the concept is not addressed in its totality at the legal and policy levels, as well as at the level of enforcement of the applicable laws and policies.

7.2.6 Constitutional Recognition of Corporate Accountability and Procedures

The Ugandan Constitution is on paper one of the best Constitutions as far as corporate accountability is concerned. Its bill of rights is expressly stated to be applicable horizontally. This means that corporations can bear human rights obligations and can, as a result, be held accountable for them. The rights for which corporations can be held accountable include the right to a healthy environment; the right not to be subjected to discrimination; the right to freedom from torture, cruel, inhuman and degrading treatment;

the right not to be deprived of property; the right to education; cultural rights; the right of children to protection of economic exploitation; and labour rights.

However, it remains unclear whether all these rights can be enforced directly against corporations by way of a direct constitutional action. The few cases decided on this show that the courts accept such direct constitutional actions but they do so without considering the relevant debate on the issue. In other countries like South Africa and Ireland, the principle of subsidiarity of constitutional norms has been used to require proof that common law and statutory remedies are incapable of fully addressing the corporate wrong at hand before a constitutional cause of action can be launched. The draft Human Rights (Enforcement) Bill points in this direction and will thus help to settle this issue. However, its provisions do not address all relevant issues. For example, it does not differentiate between actions against the state and non-state actors, let alone address issues of joint actions against the state and non-state actors. It also does not address the issue of how to use alternative causes of action in the same case.

The notions of state responsibility and third-party effect of the Constitution have not yet been used to foster corporate accountability despite the fact that there is a lot of room for their role in the Ugandan constitutional context. With respect to state responsibility, it is disappointing that the state's duty to protect human rights, an important device for holding corporations indirectly accountable for human rights, was not invoked and used by the High Court in *Kaweri*.⁴⁰² For its part, the concept of the third-party effect of the bill of rights would help in developing the common law so that it effectively addresses the human rights obligations of corporations.

7.2.7 Statutory Norms and Mechanisms

Uganda has taken a wide range of statutory measures to regulate various fields in which corporates feature as key actors. These legislative measures span across the socio-economic rights recognised in the bill of rights and those not expressly recognised, although most of the statutes do not use human rights language. Various relevant devices, mechanisms and institutions have been set up to ensure compliance with the norms these laws codify. They include inspection officials and procedures, criminal offences, criminal and other investigations, environmental impact assessments, environmental audits, licensing and permit requirements and procedures, complaints mechanisms, legal causes of action, independent monitoring or regulatory bodies. If effectively implemented, these devices and mechanisms would go a long way in curbing corporate violations of human rights.

As is to be expected, there are, however, some notable gaps in the legislative measures. One glaring gap lies in the deficiencies in the normative grounding of some of the statutes. For example, the Acts dealing with the environment, water and labour are, even though tenuously at times, grounded in their corresponding human rights. The statutes on health, education, food and land are not similarly grounded. Almost all statutes pay less attention to the state's duties to respect, protect and fulfil the applicable rights, especially the duty to provide access. Thus, for example, the Electricity Act has provisions that

402 Note 93 above.

suggest the state's prioritisation of rural electrification, but the Water Act and Food Act do not address themselves to the state's duty to provide access to water and food to the poor. The failure to articulate the responsibility of the state to fulfil its socio-economic rights obligations is not only at odds with what the Constitution requires in its directive principles of state policy; it has also contributed to the continuing situation of endemic poverty among rural dwellers who are then exploited by corporations.

The notable provisions on environmental impact assessments and environmental audits are undercut by the failure to include a focus on human rights in the assessments or audits. The fact that much of the responsibility for these impact assessments rest on corporations has raised doubts about the credibility of the assessments, especially when local people can see obvious environmental pollution being committed by some corporations without incurring a penalty or other sanction.

The provisions of the Land Act dealing with customary ownership certificates, though well intended, do not seem to be adequate to prevent abuse by those who are keen to sell customary land to corporations. The degree to which land laws are able to facilitate access to land by the poor and provide protection of their rights in land is central to managing the rising land crisis.

In the labour sector, several laws have buttressed the protection of labour rights and social security. However, some of the key rights, such as the prohibition of economic exploitation, slavery and slave-like practices, have not been expressly codified. Also, these laws have largely targeted the protection of employees in the formal sector, ignoring the large informal employment sector in Uganda where the more vulnerable employees are to be found.

There is no doubt that Uganda cannot solve its development challenges without the private sector. At the same time, Uganda cannot achieve its development goals by neglecting its own people. At the moment, the government's pro-investment agenda is being pursued without much emphasis on ethical business and promoting respect for human rights by both the government and corporations. In particular, the laws regulating the extractive industry are not adequate to ensure that mining is done without violating environmental standards and human rights. The licencing requirements under the Mining Act and the Petroleum Act are not uniform and the procedures for obtaining licences appear to be reclusive especially under the Petroleum Act. It seems that under both Acts, the investment, mining and petroleum licencing procedures do not make provision for the vetting of corporations based on their previous human rights records. These shortfalls make it understandable that communities have experienced wide-ranging human rights abuses and violations at the hand of corporations in the extractive industry.

7.3 RECOMMENDATIONS

To address the shortcomings and concerns expressed above, the study makes several recommendations. These recommendations are organised around three main stakeholders: the State, Corporations and the Uganda Consortium on Corporate Accountability under whose auspices this study was conducted.

7.3.1 The State

To address the concerns highlighted above, the report recommends that the state:

- » Prioritises the enactment of the Human Rights (Enforcement) Bill 2015, taking into account all submissions from civil society organisations and other stakeholders, to make the horizontal application of the bill of rights workable;
- » Raises public awareness on the human rights responsibilities of corporations and other non-state actors, including by encouraging corporations to adopt corporate codes of conducts that allow communities to engage with corporations and to make tangible corporate social responsibility commitments which they must keep;
- » Clarifies the role of the Uganda Investment Authority with regard to ensuring that corporations conduct business consistently with the rights the Constitution protects;
- » In accordance with the Constitution, integrates more explicitly the human rights obligations that corporations have in the various regulatory laws concerning investment and business, the extractive industry, the protection of the environment and wildlife, the provision of such services as water, electricity, food, education, health, and the protection of land and labour rights;
- » Strengthens the statutory provisions on environmental impact assessments and audits by, among other things, requiring all corporations and other relevant actors to consider the impact of their projects and businesses on constitutionally protected rights;
- » Strengthens the regulatory regime for the extractive industry, especially the various licensing procedures and the processes of concluding mining agreements with corporations and allocating land to corporations, more especially where the mining will take place, where there are community settlements. These procedures need to be more transparent, allow more public consultations and participation, and insulated from corruption and manipulation. They also need to take into account the previous human rights records of the corporations applying for investment and other licences.
- » Addresses the situation of informal workers to protect their rights including the notion of independent contractors which some of the corporations are exploiting;
- » Mounts a credible investigation into and address existing accusations of exploitation, violations of memorandum of agreements with communities, discrimination against local people, land grabbing, unpaid or inadequate compensation for expropriated land and other human rights violations the communities have made against certain corporations;
- » Displays greater commitment to combating poverty and implementing the economic, social and cultural rights;
- » Acknowledges the duties to protect its citizens from human rights violations committed by corporations and other actors, and when they occur, to investigate them, hold the culprit accountable and provide civil redress to victims; and
- » Adequately supports the various constitutional and statutory monitoring and enforcement mechanism for human rights and ensure that they operate freely and without interference in practice.

7.3.2 Corporations

For corporations, the report recommends that they recognise their constitutional and statutory human rights obligations by doing the following:

- » Adopt corporate codes of conduct that expressly acknowledge the constitutional rights that all corporations are bound by in Uganda. These codes must make provision for the consideration of complaints from communities or individuals adversely affected by the corporation's activities;
- » Link their corporate social responsibility commitments to their constitutional and statutory obligations and ensure that they keep those commitments, including providing decent employment and business opportunities to local communities and Ugandans, and ensuring respect for the environment, labour rights, socio-economic rights and land rights, amongst other constitutionally recognised rights;
- » In particular, refrain from exploiting local communities, damaging the environment, evicting communities inhumanely, unlawfully or unfairly, disrupting the social fabric of communities and other forms of human rights violations;
- » Engage directly and constructively with communities when there are disputes between them and the communities in which they work; and
- » Support and cooperate with enforcement or regulatory bodies and civil society organisations to ensure that all the relevant laws are complied with.

7.3.3 Uganda Consortium on Corporate Accountability

It is clear that there is a gap within civil society regarding the question of corporate accountability. The Consortium needs to fill this gap by making corporate accountability its sole and exclusive focus, which existing efforts have not done. There is a wide range of things that the Consortium could concentrate on. Here is a summary of the main ones.

7.3.3.1 Litigation

There is a huge scope for litigation of two types. The first is public interest litigation to clarify the meaning and import of the provisions governing the application of the bill of rights to corporations. These provisions need to be clarified as they relate to the nature of the obligations of corporations and what rights corporations are bound by. There is also a need to clarify what techniques can be tapped to promote corporate accountability or to ensure that corporations are held accountable. In particular, it remains to be determined whether direct constitutional actions are possible or whether the state can be held responsible under the duty to protect for its failure to protect its citizens from corporate violations. If the common law and statutory mechanisms can be used, to what extent the bill of rights can play a role in bolstering those mechanisms? In general, the linkage between poverty or lack of implementation of economic, social and cultural rights and corporate violations is something that could best be tested or highlighted through public interest litigation.

The second form of litigation that needs to be taken is representative action— to support and vindicate the rights of the various communities that have suffered and will continue to suffer serious human rights committed by corporations. It is clear that most poor people are suffering in silence despite the egregious nature of the violations because they lack access to justice and civil society organisations with a dedicated focus on corporate accountability.

7.3.3.2 Advocacy and Monitoring

The Consortium needs to raise public awareness on corporate accountability, targeting state agencies, corporations and the general public, especially in the communities which are being impacted directly by corporations. The constitutional provisions on corporate accountability for human rights will remain words on paper with no tangible practical impact unless all sectors of society know about these provisions.

There are some specific areas that the advocacy campaigns could focus on. The first is the law making authorities such the Uganda Law Reform Commission and Parliament. The draft Human Rights (Enforcement) Bill is one law that needs to be scrutinised carefully before it is passed. There are many other laws that require revision and amendment as this report has shown. The second area of focus encompasses the various institutions of monitoring and regulation. Engagement with these institutions to ensure that they perform their functions or that they are given support would improve the state of corporate accountability in Uganda. The third focus is corporations themselves. Both local and international corporations seem not to care much about, or be aware of, their constitutional obligations in relation to human rights. This could be attributed to lack of public or government pressure or lack of knowledge of what the Constitution says. Engagement with corporations could change the situation.

In addition, the Consortium could create a corporate accountability initiative such as a code or core principles that corporations could be asked to subscribe to or civil society organisations can use to measure and rank corporations. There is also a need to mobilise and coordinate communities and their local formations to take up the issue of corporate accountability more effectively. Last but not the least, there is need for concerted public engagement and public awareness about human rights violations as they occur and community struggles with corporations.

7.3.3.3 Research

There is a dearth of information on corporate accountability in Uganda. Even with this study and previous studies of Human Rights Watch and the IUCN, a lot more research needs to be done to understand all aspects of corporate accountability in Uganda. Some of the burning research questions include the following:

- » The acquisition of land and the means by which poor people are removed from land by corporations or state authorities on behalf of corporations;
- » The possible complicity and collusion of the state in corporate violations of human rights;
- » The effectiveness of the various regulatory mechanisms for corporations such as the Uganda Human Rights Commission, the Uganda Investment Authority, the Uganda Geological Survey and

Mines, the Directorate of Environmental Affairs and others;

- » The extent to which corporations acknowledge and abide by constitutional rights in Uganda;
- » The transparency and integrity of investment and mining licencing procedures; and
- » The collection and distribution of royalties from mining companies.



ANNEX 1

BUSINESS AND HUMAN RIGHTS TOOLKIT: AN AUDIT OF UGANDA's PERFORMANCE

ANNEX I

BUSINESS AND HUMAN RIGHTS TOOLKIT: AN AUDIT OF UGANDA'S PERFORMANCE^{1*}

Introduction

This legal framework audit on Uganda's performance in the field of business and human rights was compiled basing on the Danish Institute for Human Rights (DIHR) and Corporate Accountability Roundtable (ICAR)'s Toolkit in their 2014 National Action Plans (NAPs) Report on Business and Human Rights.² The audit focused on reviewing the entire legal framework relating to business and human rights at the national, regional and international level, to map out Uganda's obligations. There were also reviews of other initiatives and standards that Uganda has taken up, as well as the national laws and policies enacted to protect fundamental human rights and ensure that non-state actors such as corporations protect, respect and remedy human rights. It is for this reason that the National Baseline Assessment template which draws from and aims to be consistent with existing guidance on assessment of current state of implementation of the United Nations Guiding Principles on Business and Human rights (UNGPs) was relied on to carry out this audit.³ This template provides criteria, indicators and scoping questions by which to assess how far current laws, policies and other measures at the national level establish the state's duty to protect human rights under the UNGPs and international business and human rights principles. The Toolkit is intended to act as a "building block" towards the evolving business and human rights principles arising from the UNGPs. The Toolkit is premised primarily on the use of qualitative indicators. However, there is room for expansion and reliance on quantitative indicators and benchmarks at the national level and eventually on the regional and international levels. Attempts were also made to compare initiatives from other jurisdictions that have relied on the template, and successfully relied on the Toolkit as noted in the South African 'shadow' baseline study emulating the status of business and human rights in that jurisdiction.⁴ The Toolkit is highly informative, thorough in the analytical process and yet provides a simple and systematic mode of data presentation.

¹ * This Audit was compiled by School of Law, Makerere University students Miriam Atim, Joseph Byomuhangi, Dora Kukunda, Eriya Nawenuwe and Simon Ssenyonga.

² The Danish Institute for Human Rights and International Corporate Accountability Roundtable, "National Action Plans on Business and Human Rights A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks," June 2014, pp 88-148, accessed at <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.

³ *Ibid.*

⁴ Centre for Human Rights, University of Pretoria and International Corporate Accountability Roundtable (ICAR), "Shadow" National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks, South Africa, April 2016, accessed at <http://icar.ngo/wp-content/uploads/2016/04/Shadow-SA-NBA-Final.pdf>.

A LEGAL FRAMEWORK AUDIT OF UGANDA'S PERFORMANCE IN THE FIELD OF BUSINESS AND HUMAN RIGHTS

I.I INTERNATIONAL INSTRUMENTS	DATE OF SIGNING AND RATIFICATION	BRIEF	IMPLEMENTATION
<p>International Covenant on Civil and Political Rights. (ICCPR)</p> <ul style="list-style-type: none"> • Optional Protocol I. • Optional Protocol II. 	November 21, 1987	<p>The ICCPR emphasizes principles of equality of all people as well as freedom of enjoyment of civil and political rights.</p> <p>Some of these rights include, the right to life, freedom from torture or cruel and inhuman treatment, the right to liberty and security of the person, freedom against slavery or forced labor, the right to hold opinions, the right to freedom of expression and assembly, among others</p>	<ul style="list-style-type: none"> • The 1995 Uganda Constitution out rightly provides for Civil and Political rights in the bill of rights. • Article 137 provides for Constitutional interpretation. (3)A person who alleges that— (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate. • Article 50 provides for the enforcement of rights and freedoms by the Courts <i>Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.</i> • The courts have played an important role in implementing civil and political rights to address present day human rights violations. Eg <i>Charles Onyango Obbo and Another v AG</i> • Civil Society Organizations have also played a role in advocating and creating awareness among the masses about these fundamental human rights. • Human Rights Enforcement Bill 2015.

<p>International Covenant on Economic, Social and Cultural Rights. (ICESCR)</p>	<p>June 21, 1995</p>	<p>Art 2 of the ICESCR calls upon state parties to take steps towards progressive realization of ESCRs. These include; the right to work under satisfactory conditions, fair remuneration as well as the right to join trade unions, the right to adequate standards of living in terms of food clothing and housing, the right to the highest attainable standard of health and the right to education among others.</p>	<ul style="list-style-type: none"> • The Constitution provides for the right to education, rights of the family, rights of women and other vulnerable groups as well as the right to a clean and healthy environment and among others. Other ESCRs like the right to health are not specifically provided for but are stipulated in the National objectives and directive principles of State policy. • The Constitution allows for affirmative action of marginalized groups through the Equal Opportunities Commission (EOC). The EOC is also mandated to address inequalities and imbalances in economic opportunities. • There are a number of CSOs advocating for ESCRs, for example; the Initiative for Social and Economic Rights (ISER), the Refugee Law Project (RLP), the Foundation for Human Rights Initiative (FHRI), FIDA and the Centre for Health Human Rights and Development (CEHURD) among others. <ol style="list-style-type: none"> 1. <i>CEHURD, Prof. Ben Twinomugisha and Others v Attorney General</i> 2. <i>CEHURD and Mugerwa David v Nakaseke Local District Administration</i>
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<p>Convention on the Rights of Children.</p>	<p>August 17, 1990</p>	<p>In any matter concerning children, the best interest principle shall be of primary consideration.</p> <p>The CRC provides for rights such as; freedom of association, expression and assembly, the right to the highest attainable standard of health, adequate living and education, the right to rest and leisure and the right to protection against labor exploitation.</p>	<ul style="list-style-type: none"> • The Children Act Cap.59 is a Ugandan law drafted specifically to cater for the rights of children. • The Penal Code Act creates offences of defilement and kidnap. • The Ministry of Gender Labour and Social Development (MoGLSD) has a department of Children and youth, Gender and Community development, and a labor unit for handling child related issues including issues of child labor. • In 2006, the MoGLSD drafted the child labor policy aimed at eliminating all forms of child labor starting from the worst forms of child labor. • Under s.10 of the Local Government Council Act, for every local council, there is a Secretary for Children's Affairs. • The Uganda Police Force has a children and family protection unit (CFPU) to handle cases of child abuse and neglect among others.
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<p>Convention on the Elimination of all forms of Discrimination against Women. (CEDAW) (1979)</p>	<p>July 22, 1985</p>	<p>Seeks for appropriate measures to eliminate all forms of discrimination against women in order to ensure equality in the field of education, employment, health care, and other areas of economic and social life.</p>	<ul style="list-style-type: none"> Article 33 of the Constitution states that women shall be accorded full and equal dignity of the person with men. Advocacy by civil society has resulted in revision of some laws like the succession act and divorce act. <ol style="list-style-type: none"> 1. <i>Law and Advocacy for Women in Uganda v AG</i> 2. <i>Uganda Women Lawyers Association v AG</i> <ul style="list-style-type: none"> Human rights commission under Article 53. Equal Opportunities Commission under Article 32 Domestic violence Act 2009 Female Genital Mutilation Act 2010 The land Act 1998 was amended in 20004 to include spousal consent in relation to matrimonial property under s.40.
<p>International Convention against Torture. (1984)</p>	<p>November 03, 1986</p>	<p>All state parties are under an obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture. Under the CAT, there are no exceptional circumstances that may be invoked as a justification of torture.</p>	<ul style="list-style-type: none"> Art. 24 guarantees the right to respect for human dignity and protection from inhuman or degrading punishment. Prevention and prohibition of torture act, 2012

<p>Convention on the Rights of Persons with Disabilities. (2006)</p>	<p>September 25, 2008</p>	<p>The purpose of the convention is to promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities.</p> <p>The general principles of the convention are; respect for inherent dignity and individual autonomy, non-discrimination, full and effective participation and inclusion, equality of opportunity, and accessibility.</p>	<ul style="list-style-type: none"> • Art. 35 bestow a duty upon the state and society to take appropriate measures to ensure that persons with disabilities realize their full mental and physical potential. • The Persons with Disabilities Act provides for a free and fair environment when dealing with issues of persons with disabilities and to do away with any segregation, even in the working environment.
<p>International Convention on the protection of the Rights of Migrant Workers.</p>	<p>November 14, 1995</p>	<p>Migrant workers refers to a person who is to be engaged, is engaged or has been engaged in a remunerate activity in a state of which he or she is not a national.</p> <p>The convention protects the right to life, freedom of torture, freedom against migrant workers, the right to freedom of association, conscience and religion, equality with nationals of the state concerned before the courts and tribunals, the right to own property, among others.</p>	

International Convention on the Elimination of all forms of Racial Discrimination.	Not ratified.		
International Convention for the Protection of all Persons from Enforced Disappearances.	Not ratified.		
<p>International Labor Organization Conventions.</p> <ul style="list-style-type: none"> Forced Labor Convention, 1930. (No. 29) 	June 04, 1963	<p>This convention seeks to suppress the use of forced labor in all its forms within the shortest possible period. A five year transitional period was given to enable complete suppression to forced labor. (For Uganda, this period elapsed in 1968). Forced labor does not include: work exacted in virtue of compulsory military service, work which forms part of normal civic obligations of citizens, service exacted by a person as a consequence of a conviction in a court of law, services required in cases of emergency, and minor communal services performed by a community in the direct interest of that community.</p>	

<ul style="list-style-type: none"> • Convention concerning freedom of association and protection of the right to organize, 1948. (No. 87) 	June 02, 2005	<p>Gives workers and employers the right to establish and join organizations of their own choosing.</p> <p>Each member of the ILO must take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.</p> <p>Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.</p>	
<ul style="list-style-type: none"> • Right to organize and collective bargaining convention, 1949. (No. 98) 	June 04, 1963	<p>Adequate protection is given by this convention against any acts of interference by workers' and employers' organizations against each other, their agent, or members in their establishment, functioning or administration.</p>	
<ul style="list-style-type: none"> • Equal Remuneration Convention, 1951. (No. 100) 	June 02, 2005	<p>Equal remuneration for men and women for work of equal value refers to rates of remuneration without discrimination based on sex.</p> <p>The principle of equal remuneration is to be applied by means of national laws or regulations, legally established or recognized machinery for wage determination, collective agreements between employers and workers or, a combination of the above means.</p>	

<ul style="list-style-type: none"> Abolition of Forced Labor Convention, 1957. (No. 105) 	<p>June 04, 1963</p>	<p>All members that ratify this convention undertake to suppress and not to make use of any form of forced or compulsory labor-as a means of political coercion or education or punishment for holding political or ideological views opposed to the established political, social and economic system, as a method of using labor for economic development, as a means of labor discipline, punishment for those that have participated in strikes, or a means of racial, social, national or religious discrimination.</p>	
<ul style="list-style-type: none"> Discrimination (Employment and Occupation) Convention, 1958. (No. 111) 	<p>June 02, 2005</p>	<p>Discrimination under this convention includes any exclusion or preference made on the basis of race, color, sex religion, political opinion, national extraction or social origin which has the effect of impairing equality of opportunity or treatment in employment. Members undertake to declare a policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination thereof.</p>	

<ul style="list-style-type: none"> Minimum Age Convention, 1973. (No. 138) 	<p>March 25, 2003</p>	<p>The aim of this convention is to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental developments of young persons. (Uganda's minimum age for child labor is 14years).</p>	
<ul style="list-style-type: none"> Worst Forms of Child Labor Convention, 1999. (No. 182) 	<p>June 21, 2001</p>	<p>The term worst forms of child labor comprises: slavery such as sale and trafficking of children, debt bondage and serfdom, forced or compulsory labor, procuring children for illicit activities, child prostitution and pornography, as well as work likely to harm the health, safety or morals of children.</p>	

GAPS

ICCPR

Some laws and policies in Uganda clearly violate civil and political rights:

- Public Order and Management Act
- The Non-Governmental Organizations Act
- S. 24 of the Police Act that authorizes preventive arrests.

ICESCR

- Despite domestication signing and ratification, Economic, Social and Cultural rights have suffered from a doubt of their justiciability.
- These minimal rights have minimal representation in the national bill of rights, as majority of these are reflected in the National Objectives and Directives of State Policy.
- Litigation and advocacy has mainly been directed towards civil and political rights at the expense of Economic, Social and Cultural rights.

CEDAW

- Marriage and Divorce Bill is still on the shelves of Parliament after so many years of debate.
- The sexual offences bill is still before parliament. There is need for an act that addresses the rampant sexual offences that undermine the dignity of girls and women. This has extended to work place sexual offences.
- Three months maternity leave in public service needs to be enforced in the private sector of employment as well.

I.1.2 REGIONAL INSTRUMENTS

INSTRUMENT	DATE OF RATIFICATION	BRIEF
I. African Charter on Human People's Rights.	May 10, 1986	<ul style="list-style-type: none"> • Contains both civil and political rights as well as economic social and cultural rights which are also pointed out in the ICCPR and the ICESCR. • The Charter draws special emphasis to human rights (collective rights), like the right to a family as well a state duties towards the family. • Article. 21 all people shall freely dispose of their wealth and natural resources. This right is to be exercised in the exclusive interest of the people. Furthermore, state parties shall undertake to eliminate all forms of foreign economic exploitation. • Article. 22 all people have the right to economic, social and cultural development. <p>➤ <i>Case in point- Hoima and Buliisa oil and how it is being managed without consultation of the community and little regard to people's human rights.</i></p>

<ul style="list-style-type: none"> Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. (Maputo Protocol) 	<p>July 22, 2010</p>	<ul style="list-style-type: none"> Contains principles like the right to life, dignity and security of the person. Also contains prohibitions against harmful practices, right to access to justice and equal protection before the law. Provides for economic and social welfare rights like equal access to employment, equal remuneration, minimum work wage, combat sexual harassment at the work place, recognize the economic value of work off women a home, pre and post-natal maternity, etc. ➤ <i>Work and employment issues for women, and compensation and failure to involve women in the different economic and compensation issues in Hoima.</i> The Maputo Protocol clearly imposes an obligation on all state parties to ensure that the right to health of women including sexual and reproductive health is respected and promoted.
<ul style="list-style-type: none"> Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights. 		<ul style="list-style-type: none"> The court complements the protective mandate of the African Commission on Human and Peoples' Rights. The jurisdiction of the court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter.
<p>2. African Charter on the Rights and Welfare of a Child.</p>	<p>August 17, 1994</p>	<ul style="list-style-type: none"> The best interest principle and an avenue for children to provide their views in any proceeding, judicial or administrative where they will be affected. (Art. 4) Children entitled to freedom of expression, association and assembly. Right to education, leisure and recreation Right to enjoy the best attainable state of physical, mental and spiritual health Right to protection against all forms of economic exploitation and any work likely to be hazardous or to interfere with the child's physical, mental, moral or social development. Protection of children from armed conflicts and refugee children.

3. Convention Governing Specific Aspects of Refugee Problems in Africa.	July 24, 1987	
1.2 INTERNATIONAL AND REGIONAL SOFT LAW INSTRUMENTS		
1.2.1 International Instruments		
INSTRUMENT	BRIEF	
1. Universal Declaration on Human Rights. (UDHR)	<p>On December 10th 1948 the United Nations General Assembly adopted the declaration as a common standard of achievement for all persons and nations and has continued to provide a fundamental source of inspiration of national and international efforts to promote and protect human rights. Uganda, being a member of the United Nations, has ratified several UN Human Rights Conventions thus making a commitment to the Universal Declaration on Human Rights.</p> <p>The rights envisaged in the UDHR have been stipulated within the several statutes as well as the 1995 Constitution of Uganda. The UDHR also provided for the enactment of subsequent international human rights treaties for which the Ugandan government is equally a party to.</p>	
2. United Nations Guiding Principles on Business and Human Rights.	<p>A set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations. They were endorsed by the UN Human Rights Council in June 2011 therefore have been adopted by Uganda as a member of the United Nations.</p>	
3. U.N Declarations/ Principles.	<p>The United Nations Guiding Principles on Business and Human Rights establishes the State duty to protect. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. A big part of the responsibility is upon the government ranging from enacting suitable laws to engaging stakeholders.</p>	

<p>4. ILO Tripartite Resolutions</p>	<p>Uganda has been an ILO member since 1963. The tripartite resolutions are set up in such a manner that they bring together governments, employers and workers representatives to set labor standard, develop policies and devise programs promoting decent work for all women and men. As such, an equal voice is provided to all the stakeholders. Much as these resolutions are not subject to ratification and therefore binding, they are intended to have wide application and contain symbolic and political undertakings by all member states.</p> <ul style="list-style-type: none"> Declaration Concerning the Aims and Purposes of the ILO (Declaration of Philadelphia) (1944). This declaration was reached at in 1944 in Philadelphia to articulate the aims and purposes of the organization. ILO Declaration on Social Justice for a Fair Globalization (2008) Builds on principles recognized in the constitution of the ILO of 1994 and the declaration on Fundamental Principles and Rights at Work of 1998. This declaration expresses the contemporary vision of the ILO's mandate in the era of globalization. ILO Declaration on Fundamental Principles and Rights at Work (1998). A mandate undertaken by the governments, employers and workers to uphold and maintain basic human values that are necessary for the realization of social and economic rights. The declaration is accompanied by a follow-up. Declaration on Gender Equality. It was geared mainly towards the upholding and respect of women's rights in the working field in 1975. It does recognize an equal working opportunity and environment for women as well as elimination of all forms of discrimination which deny such equality. There were other declarations on gender equality issued in 1981, 1985, 1991, 2004 and 2009. Declaration Concerning the Policy of "Apartheid" of the Republic of South Africa (1964). This declaration was reached in 1964 for the elimination of all forms of apartheid in the labor matters in the Republic of South Africa. This declaration was updated in 1981, 1988 and 1991 and rescinded with the adoption of the Resolution concerning post-apartheid South Africa in 1994. Governing Body Declarations. Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The principles herein offer guidelines to MNEs, governments and employers' and workers' organizations in areas such as employment, training, conditions of work and life and industrial relations. Its provisions are reinforced by certain international labor conventions and recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible. It is important to note that the MNE Declaration puts into consideration the objectives of the 1998 Declaration.
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1.1.2 REGIONAL INSTRUMENTS	
INSTRUMENT	BRIEF
1. Pretoria Declaration on Economic, Social and Cultural Rights.	State parties to the African Charter on Human and Peoples Rights undertook to give full effect to the economic, social and cultural rights contained in the Charter.
2. Declaration on Gender Equality in Africa.	This solemn declaration was undertaken by members of the African Union, covering several gender issues as well as reiterating the earlier commitments made within the ACHPR.
3. Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel Inhuman or Degrading Treatment or Punishment in Africa. (The Robben Island Guidelines)	Consists of concrete guidance on how to implement the provisions of the African Charter on the prohibition and prevention of torture as well as providing redress for victims of torture, cruel, inhuman or degrading treatment or punishment. To ensure implementation of these provisions, a follow-up committee was set up by the African Commission.
4. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples Rights. (November 2010)	The guidelines adopted by the African Commission are intended to fully explain the content of the rights and nature of the states' obligations. It extends the implication of the Charter to certain rights such as the right to food, housing, water as well as social security. It also explains in details the duty to realize these rights.

GAPS

- The UNGPs avoids the failed attempt of the *UN Sub-Commission Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises* that impose an expansive array of state responsibilities into business.
- The National Human Rights Institutions (NHRIs) lack peculiar strategies to address the implications of business on human rights within their respective jurisdictions.
- Several, if not all, of these principles enunciated are of a soft law nature and therefore not binding on States. Similarly, their implementation is lacking as most state agencies and other stakeholders are unaware of their application and procedures of enforcement.

1.3 UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

It's the first global standard for preventing and addressing the risk of the adverse human rights impacts linked to business activity. It has three pillars:

- State duty to protect.

Against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication.

- Corporate responsibility to respect human rights.

This means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.

- Access to remedies.

The need for greater access by victims to effective remedy, both judicial and non-judicial.

1. Formal Statement of Support	None.
2. Implementation Structures	None.
3. Capacity Building	None.
4. Dispensation of information	None.

COMMENTARY

The UN Guiding Principles are organized under three pillars of the “Protect, Respect and Remedy” framework which emphasizes the multi-stakeholder nature of the issue and avoids the failed attempt of the norms to impose an expansive array of state responsibilities into business.¹ The UN Guiding Principles are in line with other international obligations and further elaborate the implications of existing standards and practices for states and businesses. They are related to the principles of the human rights based approach including participation, accountability, equality and non-discrimination, transparency, rule of law and respect for human rights, among others, which are embedded in Uganda’s 1995 Constitution as amended.

1.4 OTHER RELEVANT STANDARDS AND INITIATIVES	
1.4.1 STANDARDS	
<p>1. International Finance Corporation (IFC) Performance Standards The standards are as follows:</p> <ul style="list-style-type: none"> • Environmental and social assessment and management system. • Labor and working conditions. • Pollution prevention and abatement. • Community health, safety and security. • Land acquisition and involuntary resettlement. • Bio-diversity conservation and sustainable natural resources management. • Indigenous peoples. • Cultural heritage. 	<p>IMPLEMENTATION</p> <ol style="list-style-type: none"> On September 11th 1963, the IFC Board of Governors adopted Resolution No. 43 which was on membership of Uganda to the IFC.. Uganda National Roads Authority (UNRA) has adopted the IFC performance standards on environmental and social sustainability to deal with environmental and social risk management. Tullow Oil's commitment not to explore in world heritage sites (not to explore for or exploit hydro-carbon resources) within designated world heritage areas. In Uganda for example; Murchison Falls and Murchison Falls National Park. Tullow Oil is also working with several national and international conservation specialists to map habitats of critical conservation value. This effort has resulted in the draft of Uganda's first official red list of threatened species.
<p>2. Organization for Economic Co-operation and Development (OECD) guidelines for multinational enterprises A unique government backed corporate accountability mechanism aimed at encouraging responsible business behavior internationally. They define standards for socially and environmentally responsible corporate behavior. They also have a dispute resolution mechanism however, they are not legally binding.</p>	<p>Although the OECD has 42 adhering governments, Uganda is not a party to this. However, all countries are encouraged to adhere.</p>

<p>3. Multilateral Convention on Mutual Administrative Assistance in Tax Matters</p> <p>The Convention provides for all forms of administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. It guarantees extensive safeguards for the protection of taxpayers' rights.</p>	<p>On November 4, 2015, Uganda signed onto the convention becoming the 90th member.</p>
<p>4. United Nations Global Compact</p> <p>Derived from the UDHR, ILO's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the U.N Convention against Corruption.</p>	<p>The principles gauged upon fundamental aspects of corporate accountability.</p> <p>A. HUMAN RIGHTS</p> <ul style="list-style-type: none"> i. Business should respect and support protection of international human rights. ii. Businesses should make sure that they are not complicit with human rights abuses. <p>B. LABOR</p> <ul style="list-style-type: none"> iii. Businesses should uphold freedom of association and effective recognition of the right to collective bargaining. iv. Elimination of all forms of forced labor. v. Effective abolition of child labor. vi. Elimination of discrimination in respect of employment and occupation. <p>C. ENVIRONMENT</p> <ul style="list-style-type: none"> vii. Businesses should support the precautionary approach to environmental challenges. viii. Undertake initiatives to promote greater environmental responsibilities. ix. Encourage development and diffusion of environmentally friendly technologies. <p>D. ANTI-CORRUPTION</p> <ul style="list-style-type: none"> x. Businesses should work against corruption in all its forms including extortion and bribery.
<p>I.4.2 INITIATIVES</p>	

The Global Network Initiatives (GNI)²

A Non-Governmental Organization with dual goals of preventing internet censorship by authoritarian governments and protecting the internet privacy rights of individuals. The GNI principles are based on internationally recognized laws and standards for human rights, including the UDHR, ICCPR, ICESCR, among others.³

Six Principles

A. FREEDOM OF EXPRESSION

Freedom of expression and opinion is a human right and guarantor of human dignity. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. This right should not be restricted by governments, except in narrowly defined circumstances based on internationally recognized laws.

B. PRIVACY

- Is a guarantor of human dignity. Privacy is important to maintaining personal security, protecting identity and promoting freedom of expression in the digital age.
- Participating companies will respect and protect the privacy rights of users when confronted with government demands, laws or regulations that compromise privacy in a manner inconsistent with internationally recognized standards.

C. RESPONSIBLE COMPANY DECISION MAKING

- Requires companies to integrate these principles into company decision making and culture through responsible policies, procedures and processes.

D. MULTI TASK HOLDER COLLABORATION

- Development of collaborative strategies involving business, industry associations, civil society organizations, investors and academics, is critical to the achievement of these principles.
- Participants take a collaborative approach to problem solving and explore new ways in which the collective learning from multiple stakeholders can be used to advance freedom of expression and privacy.

E. GOVERNANCE, ACCOUNTABILITY AND TRANSPARENCY

- These principles require a governance structure that supports their purpose and ensures their long term success.

Participants will be held accountable through a system of transparency with the public and independent assessment and evaluation of the implementation of these principles.

GAPS

Implementation of these guiding principles by states and business enterprises is difficult since they are not binding. There is need for a general binding law on business and human rights.

I.5 National Laws and Regulations

I. THE 1995 UGANDA CONSTITUTION

- **Article 21(1)**; All persons are equal and all their rights shall enjoy equal protection of the law.
- **Article 24**; Respect of human dignity.
- **Article 25**; Protection from slavery, servitude and forced labor.
- **Article 50**; Enforcement of rights and freedoms by the courts.
- **Article 51**; Establishment of the Uganda Human Rights Commission.
- **Article 79(1)**; empowers Parliament to enact laws.

2. LABOR LAWS

i. Labor Unions Act

Provides for the establishment, registration and management of labor unions and under **Part I, Section 4** provides for the right of association for employees and **Section 5** spells out offences that contravene the rights provided.

ii. Minimum Wages (Advisory Boards and Councils) Act.

Part IV provides for the minimum wages advisory boards and wage councils. It regulates remuneration and conditions of employment to employees and in particular **Section 14** which provides for a penalty for failure to pay minimum wage or comply with employment conditions. Provides under **Part II** the duty to the Act is with Inspectors who have the mandate and powers to enter into premises of businesses to assess their compliance with the law. **Part III** provides for the duty of employers to protect workers, to establish safety committees, to provide protective gear inter alia. **Part IV** provides for the duty of employers to third parties.

<p>iii. Workers Compensation Act</p>	<p>Part II of Act provides for compensation to workers for injuries suffered and scheduled diseases incurred in the course of their employment. It also gives the circumstances under which an employer can be held liable for injuries sustained by employees. Part III provides for medical aid for employees and the liability of employees in that regard. Part IV provides for occupational liability with an employer's duty to report scheduled diseases and the mandate of the minister to amend the third schedule.</p>
<p>iv. Employment Act</p>	<p>The Act according to the long title is to revise and consolidate the laws governing individual employment relationships, and to provide for other connected matters.</p> <p>Part II provides for prohibition of forced labor i.e. no person shall use or assist any other person, in using forced or compulsory labor and defining forced or compulsory labor. Prohibition of discrimination at work and sexual harassment.</p>
<p>v. Labor Disputes (Arbitration and Settlement) Act.</p>	<p>Part III provides for the enforcement of the Act through the Directorate of Labor acting under the authority of the Minister; it provides for the role and powers of labor officers, inspection powers <i>inter alia</i>.</p> <p>Part IV provides for employment relationship in terms of the employment contract and implied terms and conditions.</p> <p>Part V provides for wages and related aspects and rights.</p> <p>Part VI provides for rights and duties in employment to wit between employers and employees.</p> <p>Part II of the Act provides for the referral of a labor dispute to the labor officer. The labor officer is mandated to write a report within two weeks and to refer the matter to the industrial court established under the same Act. It also proved for the mandate of the same Act.</p>

<p>vi. National Social Security Fund Act</p>	<p>An Act to provide for the establishment of a National Social Security Fund and to provide for its membership, the payment of contributions to, and the payments of benefits out of, the fund and for other purposes connected therewith.</p>
<p>3. Environmental Laws i. National Environment Act</p>	<p>Part II of the Act provides for principles of environmental management and the right to a decent environment. Part III provides for the establishment of the National Environment Management Authority. It also provides for the right to a decent environment. Part IV provides for environmental planning and Part V provides for environmental regulation.</p>
<p>ii. The Water Act</p>	<p>Part I provides for the use, protection and management of water resources and supply; to provide for the constitution of water and sewerage authorities; and to facilitate the devolution of water supply and further provides that all rights to investigate, control, protect and manage water in Uganda for any use is vested in the Government the Act.</p>
<p>iii. National Environment Forestry and Tree Planting Act.</p>	<p>It is an Act that provides for the conservation, sustainable management and development of forests for the benefit of the people of Uganda to provide for the declaration of forests reserves for purposes of protection and production of forests and forest produce.</p>
<p>4. PROPERTY AND LAND MANAGEMENT LAW i. Land Act.</p>	<p>Part II of the Land Act provides for the different land tenure systems under which land can be owned. It also provides for lawful and <i>bonafide</i> occupants. Part III provides for control of land use and provides for circumstances under which government can acquire land and use of land subject to environmental safeguards. Part IV of the Land Act establishes the Uganda Land Commission to manage public land in Uganda.</p>

<p>5. Health and Safety Law in Uganda.</p> <ul style="list-style-type: none"> • Occupational Health and Safety Act. 	<ul style="list-style-type: none"> • Section 13 creates an obligation for an employer to ensue health, safety and welfare of persons at the workplace. Such includes the endeavor to ensure a pollution-free working environment as well as the provision of Private Protective Equipment (PPE). • Part II of the Act also provides for a vibrant labor inspection system. Inspectors are allowed to enter, inspect and examine the work premises at any time during day or night. The commissioner is placed with the obligation to ensure that the administration of this Act is in order to improve and ensure health, safety, security and good working conditions at the enterprises, inspecting the enterprises and ensuring law enforcement. An employer who fails to facilitate the inspection of their facilities therefore commits a violation and is thus liable under the Act.
<p>6. Corporate and Securities Law.</p> <ul style="list-style-type: none"> • Capital Markets Authority Act. 	<p>Establishes the Capital Markets Authority which is a semi-autonomous body charged with the prime responsibility of developing all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for longer term investments in productive enterprises; the creation, maintenance and regulation through implementation of a system in which the market participants are self-regulatory to the maximum practicable extent and of a market in which securities can be issued and traded in an orderly, fair and efficient manner; the protection of investor rights; and the operation of an Investor Compensation Fund.</p>
<p>GAPS</p> <ul style="list-style-type: none"> • Much priority is placed on the investing bodies- the employers- and not the employees who may often be victims of human rights abuse during the carrying out of business. • There are huge gaps in human and financial resources of the regulatory and standard setting authorities to ensure that inspections and monitoring of business activities is undertaken periodically. Unfortunately, facilitation of these agencies is limited and this impedes their mandate to effectively monitor business operations to ensure respect for human rights. • With consideration to the amount of profits that most of these companies make, the fines put in place are mostly inadequate and do not have a deterring effect on these companies so as to afford them to uphold and respect human rights when conducting their business activities. 	

I.6 INVESTIGATIONS, PUNISHMENT AND REDRESS MEASURES

I. Sector Risk Assessment

The Ugandan government together with other state agencies has enacted various laws and policies to handle investigations, punishment procedures and redress measures in relation to business and human rights.

STATUTORY LAWS

- Constitution (1995).
- Petroleum (Exploration, Development and Production) Act 2015.
- The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.
- Petroleum Supply Act (2003).
- Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations, 1993.
- Land Act (Cap. 227).
- Water Act (Cap. 92).
- Public Health Act (Cap. 281).
- Occupational Safety and Health Act, 2006.

NEMA Act (Cap. 153)

Provides for regulations on environmental impact assessments.

REGULATIONS

- National Environment (Management Ozone Depleting Substances and Products) Regulations 2001.
- National Environment (Waste Management) Regulations 1999.
- National Environment (Standards of Disposing of Effluents into Water or on Land) Regulation 1999.
- National Environment (Wetlands, River banks and Lakeshores Management) Regulations 2000.
- National Environment (Noise Standards and Control) Regulations, 2003.
- Water Resources Regulations, 1998.
- Water (Water Discharge) Regulations

MAJOR POLICIES

- National Environment Management Policy, 1994.
- National Energy Policy, 2002.
- National Policy for the Conservation and Management of Wetland Resources, 1995.
- National Water Policy, 1999.
- Uganda Wildlife Policy, 1999.
- Uganda Forestry Policy, 2001.
- National Policy Framework for Industrial Sector, 2000.
- Disaster Management and Preparedness Policy.
- National Oil and Gas Policy, 2008.

REGIONAL AND INTERNATIONAL ENVIRONMENTAL LAW INSTRUMENTS

- **Stockholm Declaration, 1992**
Article 7 creates obligations to develop a National Implementation Plan. Uganda developed one in January 2009 and developments are ongoing in priority areas.
- **Rio Declaration, 1992**

<p>2. Police</p>	<ul style="list-style-type: none"> • Police Act Creates an obligation for the police to cooperate with other state agencies to ensure protection for the environment, and apprehend violators of the environmental laws and policies. • Creation of an environment police majorly to protect conservation areas. • Police has made press releases to sensitize the general public and state agencies about their duties towards environmental protection. Some of these press releases also name and shame defaulters.
<p>3. Vulnerable Groups Assessment</p>	<ul style="list-style-type: none"> • Uganda has made legislation to protect vulnerable groups such as the Land Act to protect women and the need for spousal consent before land can be sold. • The Constitution of the Republic of Uganda (1995) recognizes the rights of persons with disabilities and provides the basis for the enactment of laws and development of policies that address their concerns. • The Persons with Disabilities Act (2006) further reinforces and ensures that rights of PWDs are respected and mechanisms are put in place to ensure humane and dignified living and the work environment. • On September 25, 2008, Uganda signed and ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. The government has reported on the extent to which its laws and practices comply with human rights and obligations enshrined in the Convention. • The Government working with KOIS Development Consultants Ltd has also spearheaded a process and worked to compile a report on how far the Government has protected disabled people's rights in relation to business.

4. Labor, Health and Safety

- Uganda has established the Ministry of Gender, Labor and Social Development (MoGLSD). The Ministry *inter alia* has a Directorate of Labour, Employment and Occupational Safety and a Directorate of Social Protection. The Directorate of Labour, Employment and Occupational Safety is set up to complement service delivery in all sectors by ensuring that there are more employment opportunities, good working conditions and increased productivity at all levels to ensure sustainable approach to the development process.
- In 2004 the MoGLSD published the Occupational Safety and Health (OSH) profile. This covers most of the details listed in the ILO Convention 187 recommendation on the promotional framework for occupational safety and health. This particularly includes the OSH legislative framework, national policy review mechanisms, coordination, cooperation and collaboration, the OSH technical standards, guidelines and management, the system implementation and tools, promotion and elimination programs, educational, training and awareness raising structures, statistics of occupational accidents, policies and programs of employers and workers organizations, regular and ongoing activities related to OSH, general data and finally elements for input in the situation analysis.
- Parliament has enacted the Occupational Safety and Health Act, 2006 which under Section 13 makes it obligatory for an employer to ensure health, safety and welfare of all persons at the workplace. This includes safe working environment, take measures to keep the workplace pollution-free by employing technical measures, applied to new plant or processes in design or installation, or added to existing plant or process; or by employing supplementary organizational measures.
- Under the Occupational Safety and Health Act (2006), Section 13(2) (c) provides that an employer has responsibility to provide instruction, training and supervision. Further the same Act creates the Labor Inspection System (Part 2).

<p>5. Environment</p>	<p>Government has established the Ministry of Water and Environment</p> <ul style="list-style-type: none"> • The National Environment (Audit) Regulations 2009 provides for the preparation of annual environmental audit reports to government to articulate how business activities have impacted the environment and any restoration plans undertaken to address negative impacts. • The Environmental Monitoring Plan for the Albertine Graben 2012-2017 has been established as a guiding tool in tracking the impact arising from oil and gas-related developments. The plan establishes a number of environmental monitoring indicators. It also list five major valued ecosystem components including; aquatic, terrestrial, physical/chemical, society and management and business. • NEMA has established the Sensitivity Atlas Second Edition 2010 where the officials educate the locals in areas on their environmental rights to be protected when business corporations begin and even before. • Under Section 6 of the NEMA Act, the agency is meant to coordinate implementation of government policies and decisions of the policy committee, disseminate information relating to the environment and other obligations. This Section provides broad terms that ensure the role of NEMA in educating the people on their human rights in relation to business. • Multilateral Environmental Agreements like the Stockholm Convention on Persistent Organic Pollutants (POPs) creates an obligation for the NEMA under Article 7 to protect human health and the environment from chemicals that remain intact in the environment for long periods. These become widely distributed geographically and accumulate in fatty tissue of humans and wildlife. The Convention requires parties to take measures to eliminate or reduce the release of POPs into the environment. Uganda acceded to the convention on the 20th July, 2004 and was obligated to develop a National Implementation Plan (NIP) for managing the POPs. Various implementation activities are ongoing in the country in line with priority areas identified in the NIP.
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<p>6. Tax</p>	<ul style="list-style-type: none"> • The legal department of the Uganda Revenue Authority (U.R.A) has established a sensitization program on the tax laws (Income Tax Act, Income Tax (Amendment) Act) in Uganda and educated the locals where business corporations are established on the benefits that come with paying taxes by such corporations.
<p>7. Judicial Grievance Mechanisms</p>	<ul style="list-style-type: none"> • The Court System has established procedures through which the aggrieved can access the Magistrates Courts, High Court and other Courts of record. E.g In the Masindi High Court, Justice Byabakama handled a land eviction matter in Lwemitonga between <i>Global Rights Alert and Others v Joshua Tibagwa and Another</i>. • The Constitution allows any person who alleges violation of a constitutional rights to approach the courts for redress either under Article 50 or Article 137. • In Serere District, the Soroti High Court registrar issued an interim order on May 2nd 2016 restraining eleven business farmers from clearing, cultivating and burning trees for charcoal which interrupted the locals use and enjoyment of the land. • The World Bank has recently withheld funding for a road development project in Kamwenge after reports that the contractors were sexually abusing women and girls. • The Uganda Human Rights Commission through its tribunal is open to addressing grievances that arise in the context of business and human right. The Commission reports show that it has addressed cases of both civil and economic and social nature against businesses • The Equal Opportunities Commission, another statutory body, also has powers to address grievances related to equal opportunity, among others in the context of business.

<p>8. Non-Judicial Grievance Mechanisms.</p>	<ul style="list-style-type: none"> • The Uganda Human Rights Commission can investigate a complaint at its own initiative or based on a complaint, establish a continuing program of research and education, recommend to Parliament effective measures to promote human rights.(Article 53 of 1995 Uganda Constitution) The state has helped provide some information to support matters against business-related human rights violations. • Through the enactment of the IGG Act, the office of the Inspectorate of Government is an independent institution charged with the responsibility of eliminating corruption, abuse of authority and of public office.
<p>9. Legal Aid Assistance.</p>	<ul style="list-style-type: none"> • At District and County levels, legal aid camps have been run through partnerships with NGOs and CBOs for the hard to reach areas in Uganda. Examples of legal aid service providers include the Uganda Law Society, the Public Interest Law Clinic at the Makerere University, the Christian Lawyers Fraternity, the Uganda Association of Women Lawyers, among others. • The Uganda Law Society has a Legal Aid Project (LAP), which provides legal aid services to the vulnerable underprivileged persons. It also carries out human rights training and legal literacy education.
<p>10. Other Measures</p>	<ul style="list-style-type: none"> • Parliament has enacted laws governing small claim procedures for causes whose subject matter does not exceed ten million shillings in all matters of a civil and commercial nature (Rule 3 and 5 of the Judicature (Small Claims Procedure) Rules NO.25 OF 2011. • This can help settle matters concerning claims against government, claims in which specific performance is sought without an alternative claim for payment of damages and contracts of service and contracts for service. • These Rules under Rule 22 provide for mediation, arbitration or other forms of ADR.

GAPS.

- During the investigation process there has been coordination between state security operatives and business entities to frustrate execution of justice.
- Uganda is not a member of the OECDs therefore it is hard to monitor the standards therein, let alone being bound by principles laid out.
- The governance framework is vague, opaque and centralized, thus offering a fertile ground for corruption. Without an open governance framework in place, it cannot be verified that money is being democratically spent or financial decisions are taken for the good of the people.

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**UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY**

U C C A

UCCA Secretariat

Initiative for Social and Economic Rights (ISER)

Plot 60 Valley Drive, Ministers' Village, Ntinda

P.O Box 73646, Kampala -Uganda

Email: ucca@iser-uganda.org

Website: www.iser-uganda.org

Tel: +256 414 581 041