



# **HUMAN RIGHTS IMPLICATIONS OF EXTRACTIVE INDUSTRY ACTIVITIES IN UGANDA**

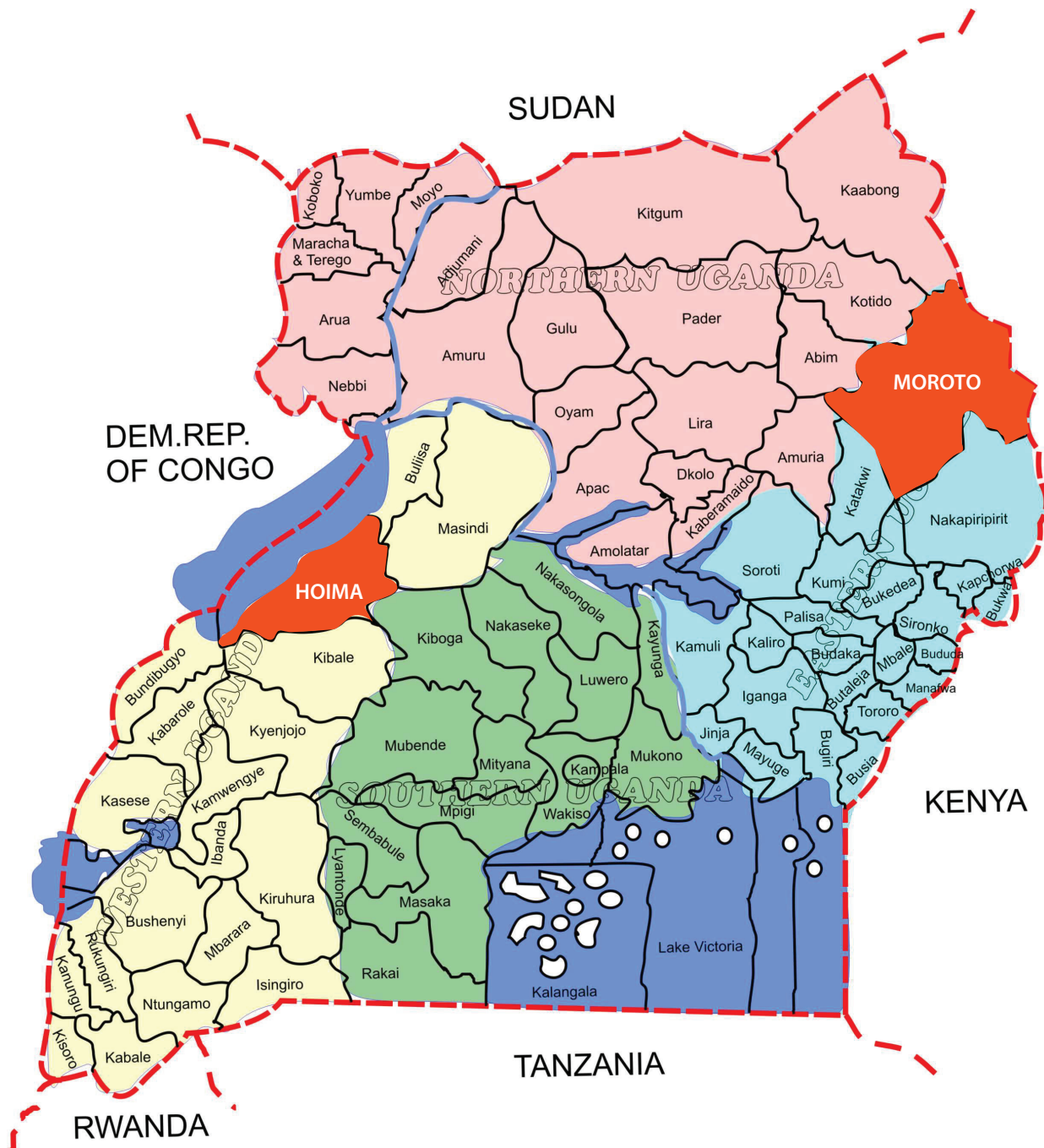
## **A Study of the Mineral Sector in Karamoja and the Oil Refinery in Bunyoro**



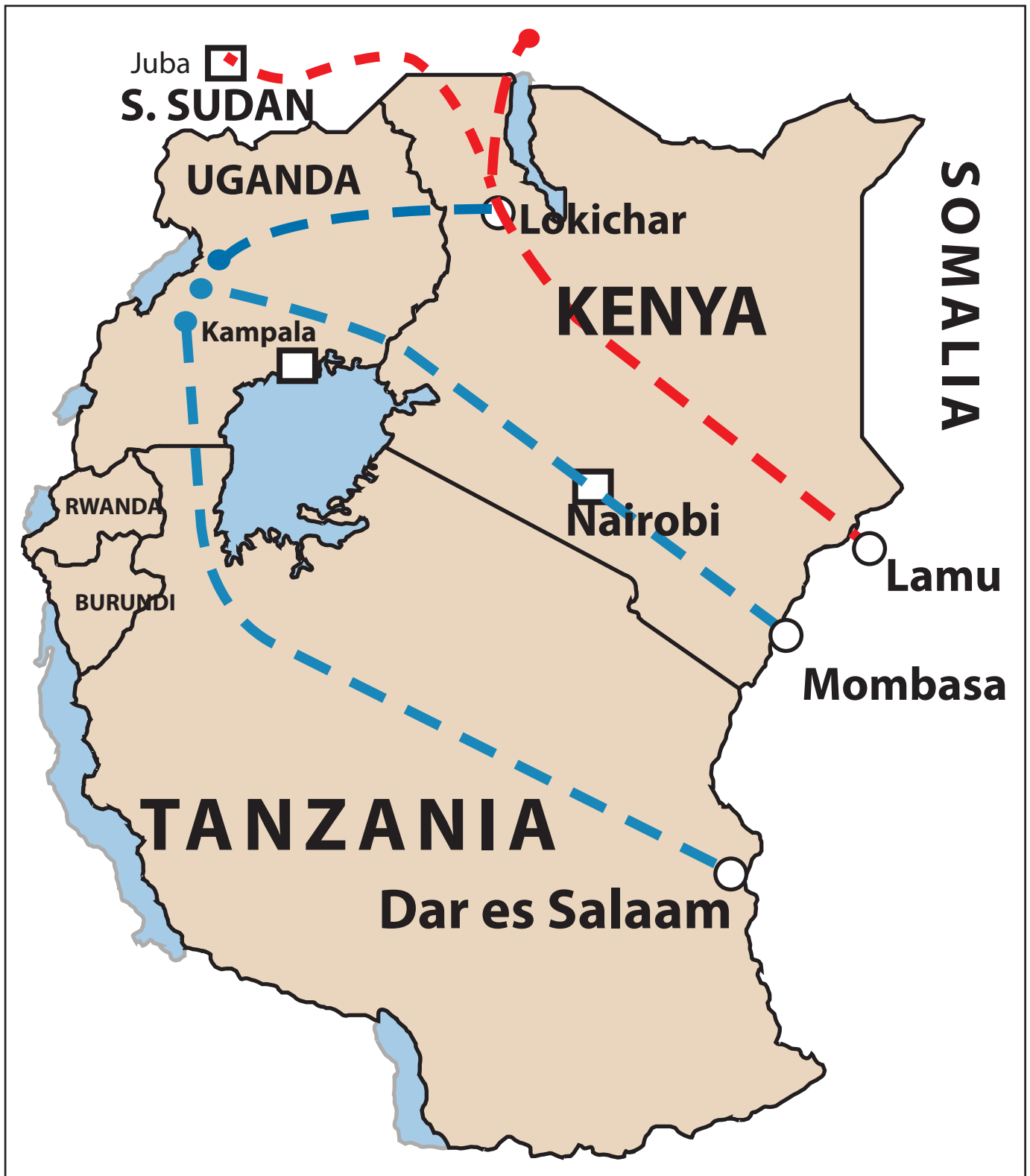
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# MAP OF UGANDA SHOWING DISTRICTS



# MAP OF EAST AFRICA SHOWING PROPOSED PIPE LINES



**Avocats Sans Frontières** (ASF) is an international non-governmental organisation committed to enhancing access to justice for the most vulnerable and marginalised people in society.

ASF's primary goal is to contribute to the establishment of institutions and mechanisms that allow for access to independent and impartial justice capable of guaranteeing the protection of fundamental human rights (civil, cultural, economic, political and social)

With over six years' presence, the ASF Mission in Uganda continues to fulfil its mandate by implementing activities aimed at

- Promoting access to justice for marginalised people and vulnerable communities;
- Supporting Uganda's transitional justice process
- Promoting the application of international justice principles and fulfilment of the Government of Uganda's obligations

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## List of Abbreviations and Acronyms

<b>ACCORD</b>	African Centre for the Constructive Resolution of Disputes
<b>ACHPR</b>	African Charter on Human and People's Rights
<b>ASF</b>	Avocats Sans Frontières
<b>CAO</b>	Chief Administrative Officer
<b>CNOOC</b>	China National Offshore Oil Cooperation
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisation
<b>DGF</b>	Democratic Governance Facility
<b>DGSM</b>	Department of Geological Survey and Mines
<b>DRC</b>	Democratic Republic of Congo
<b>EARRDS</b>	East African Regional Refineries Development Strategy
<b>EIA</b>	Environmental Impact Assessment
<b>ERP</b>	Economic Reform Programme
<b>FWEL</b>	Foster Wheeler Energy Limited
<b>GoU</b>	Government of Uganda
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IRR</b>	Internal Rate of Return
<b>JLOS</b>	Justice Law and Order Sector
<b>LC</b>	Local Councillor
<b>MEMD</b>	Ministry of Energy and Mineral Development
<b>NEMA</b>	National Environment Management Authority
<b>NPV</b>	Net Present Value
<b>PEPD</b>	Petroleum Exploration and Production Department
<b>RAP</b>	Resettlement Action Plan
<b>RDC</b>	Resident District Commissioner
<b>SFI</b>	Strategic Friends International
<b>UBOS</b>	Uganda Bureau of Statistics
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UDHS</b>	Uganda Demographic and Health Survey
<b>UHRC</b>	Uganda Human Rights Commission

<b>UNGP</b>	United Nations Guiding Principles on Business and Human Rights
<b>UPA</b>	Uganda Planning Authority
<b>UPDF</b>	Uganda People's Defence Forces

## Executive Summary

Natural resource exploitation and extraction is a fast-growing industry in resource-rich Africa, with adverse results for communities living in or around project affected areas. Activities carried out by various actors involved in natural resource exploitation and extraction – including government entities and private companies; have led to complex violations and abuses<sup>1</sup> affecting an array of human rights, the environment, and social and economic development, with long-term and sometimes irreversible effects on people living in and around project-affected areas.

The violations and abuses have included forced displacement of communities, destruction of property, livestock, death and physical injuries, and environmental degradation resulting from harmful practices such as dumping of untreated chemical waste. These primary violations in turn lead to secondary harms with long-lasting consequences, such as the inability to realise other human rights, especially economic, social and cultural rights: loss of housing, destruction of livelihoods, loss of economic opportunity, lack of access to education for the children and young people, and repercussions on health resulting from environmental pollution.<sup>2</sup>

In Uganda today, the situation reflects regional trends and contexts. The recent discovery of oil deposits amidst an already resource-rich country, coupled with the government's push to expedite economic growth and

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<sup>1</sup> Using the human rights framework, the State as the duty-bearer has obligations; when it does not uphold these obligations, it can lead to human right violations. Non-State actors, such as companies, have responsibilities to obey the law and respect human rights; when they do not, this can lead to human rights abuses.

<sup>2</sup> Useful jurisprudence on these issues can be found in the African Commission on Human and People's Rights, when it examined human rights and environmental impact of development projects undertaken within the mining and extractive industry in the SERAC case (see *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria* 60 (ACHPR 2001)). This case addressed the multiple and egregious human rights abuses and violations of the Ogoni people by the Nigerian Government and Shell Corporation, resulting in forcibly displaced communities, destruction of homes and looting property, physical injuries, and extrajudicial killings of community members. The Commission found Shell liable for its negligent operations, resulting in environmental degradation, which in turn led to community dispossession of their lands affecting their livelihoods. The Commission also found that community members were vulnerable to health risks and complications as a result of land contamination from Shell's activities.

development, has become a breeding ground for conflict. Land and resource conflicts in Uganda have morphed as the government and private sector's drive to fully exploit the country's natural resource wealth to gain maximum profits often contradicts its human rights obligations, with long-lasting consequences on surrounding communities and the environment.

Extractive activities with harmful human rights outcomes are being launched throughout Uganda and, given national and regional trends, will continue unabated with few possibilities for government oversight and protection of human rights as long as: (1) the situation is not well-documented, analysed and appropriate recommendations made to ensure that such practices are brought in line with the Constitution and international human rights standards and obligations; (2) the communities continue to be disempowered and unable to defend their rights; and, (3) no legal representation is afforded these communities to prevent conflicts or represent their interests in courts where necessary.

At present, there is a lack of information about these practices and trends and their full human rights impacts. Without a clear understanding amongst key stakeholders and the public that such projects present direct violations to human rights and the environment, and that there exists a legal framework that can be used to defend these rights and environment, challenging such practices will remain difficult if not impossible.

The overall objective of this study is to generate greater public understanding of the situation of natural resource exploration and exploitation in Uganda and the consequent human rights implications. Based on this improved public understanding, this study is meant to create awareness amongst key State decision-makers about their human rights obligations in the field of extractive industries and natural resource exploitation, and to generate greater understanding of the human rights implications that such projects have for the most vulnerable members of society.

## INTRODUCTION

As part of its overall Economic Reform Programme (ERP), Uganda started to implement a liberalisation policy in 1987 to attract foreign investment to the country. This contributed to the increase of the industrial sector's<sup>3</sup> share of GDP from 1% in 1990 to 24.2% in 2008/2009.<sup>4</sup> Several studies have recognised that the extractive industry sector, especially oil production, could double or triple Uganda's current export earnings.<sup>5</sup> Although full-scale production is not expected to start until 2016-2017, the potential of oil to increase national wealth is already central in the government's long-term planning agenda. The National Planning Authority's "Uganda Vision 2040" presents a vision in which where 80% of roads in Uganda will be paved (as opposed to the current 4%), all Ugandans will live in planned settlements, tourism income will increase to US\$12 billion a year (as opposed to the current US\$622 million a year), and four international airports and many high-speed trains will link Uganda to ports in neighbouring countries, all thanks to oil revenues.<sup>6</sup>

The positive impacts for the macro economy have overshadowed the growing concerns that not only are most people in Uganda not benefitting from such growth, but also that this growth is harming human rights. Experiences in

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<sup>3</sup> Manufacturing, construction and mining sectors

<sup>4</sup> JM Motovu et al., 2011. *Realising the Millennium Development Goals through Socially Inclusive Micro-Economic Policies: Assessing Development Strategies to Achieve MDGs in the Republic of Uganda*: United Nations Department of Social and Economic Affairs 11-13

<sup>5</sup> J. Kathman & M. Shannon (2011) *Oil Extraction and Potential for Domestic Instability in Uganda* 12(3) *African Studies Quarterly* 27.

<sup>6</sup> Uganda Planning Authority (UPA), (2007) *Vision 2040: A Transformed Ugandan Society from Peasant to a Modern and Prosperous Country within 30 years*.

Democratic Republic of Congo (DRC),<sup>7</sup> South Africa,<sup>8</sup> and Sierra Leone<sup>9</sup> demonstrate that the mineral and extractive industries do not necessarily bring widespread benefits to the majority of the population, and often negatively impact the living standards and thus the economic, social and cultural rights of those people closest to the extraction sites.<sup>10</sup> Civil and political rights are also threatened when communities are impeded or harassed and threatened for organising against such activities.<sup>11</sup> It is noted that women in affected communities are often the most impacted and the least likely to be able to access justice.

In Uganda, studies and reports on the natural resource industry and human rights situation have highlighted the exacerbating social and political tensions, as well as the multitude of human rights concerns, abuses and violations – civil, cultural, economic, political and social, among other risks, including environmental.<sup>12</sup> With the stakes so high, there is wide recognition of the need to ensure human rights protection in Uganda’s mining and extractive industry.

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<sup>7</sup>DRC’s Mining Code (2002) has led to forced relocations and evictions as a result of legal superiority of mining permits over individual land titles. Despite this glaring injustice, minimal or no measures are put in place to protect the human of land holders.

<sup>8</sup> In the 2012, officials from the South African Police Forces and Lonmin Security staff, in an attempt to disperse striking miners and members of the National Union of Mineworkers at the Marikana mine, shot and killed 44 people and injured an estimated 78 others. The workers were on strike demanding for better pay and working conditions. See D. Smith and T. Macalister “South African Police Shoot Dead Striking Miners” in *The Guardian* (17 August 2012) available at <http://www.theguardian.com/world/2012/aug/16/south-african-police-shoot-striking-miners> (last accessed 02 May 2014)

<sup>9</sup> In a recently released report, Human Rights Watch describes how hundreds of families from the agriculturally rich Tonkolili mine area were relocated to flat and rocky parcels of land near a quarry by the African Minerals Limited with the backing of the Sierra Leone government. As a result, residents were no longer able to cultivate crops and engage in income generating activities that once sustained them. See Human Rights Watch, 2014. *Whose Development? Human Rights Abuses in Sierra Leone’s Mining Boom* (Feb 2014) [http://www.hrw.org/sites/default/files/reports/sierraleone0214\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/sierraleone0214_ForUpload.pdf) (accessed 2 May 2014)

<sup>10</sup>Institute of Human Rights and Development in Africa (IHRDA), (2012) *IHRDA Statement on Extractive Industries and Human Rights in Africa* at the 51st Ordinary Session of the African Commission on Human and Peoples’ Rights, 18 April- 2 May 2012, Banjul, Gambia available at <http://www.ihrda.org/2012/04/3060/> (accessed 2 May 2014).

<sup>11</sup>*Op cit*

<sup>12</sup> W. Okumu (2010) *Uganda May Face an Oil Curse*. Africa Files, 1 June 2010.

However, and despite the scrutiny and constant media coverage of the growing natural resource industry, including oil policies, laws, and production agreements, little attention has been given to the legal recourse available for affected people and communities.

Using a human rights-based analysis, this report looks at the human rights violations, abuses and concerns resulting from mining and extractive industry activities in Karamoja and Bunyoro, and how affected people and communities can access justice.

## **Methodology**

The research was conducted through qualitative and quantitative methods including focus group discussions, key informant interviews, review and analysis of relevant reports and other literature, and review and analysis of media reports.

Rigorous empirical research on extractive industries and human rights implications is challenging, as most business deals are shrouded in secrecy, and realities shift rapidly as approved investments undergo major changes or are even discontinued<sup>13</sup>.

### **Key informant Interview**

The key informants interviewed were selected to get information and opinions from representatives of key stakeholders. Interviews were conducted with district officials, staff of relevant government ministries, parliamentarians and Civil Society Organisations (CSOs).

### **Focus Group Discussions**

Focus group discussions were held with different demographic groups, including community elders, clan leaders, artisanal miners, Local Council (LC) I, chairpersons and their deputies in the affected communities, and members of affected communities.

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<sup>13</sup> For instance, when the author arrived in Karamoja, Jan Mangal Uganda Ltd (a gold mining company) had suspended work for the last three months for reasons unclear to the locals.

Effort was made to ensure that women were equally represented in discussions and had the opportunity to express themselves in safe surroundings.

ASF is also conscious that “the community” does not always speak with one opinion, and discussions and interviews were held to ensure that marginalised community members were also able to voice their opinion and talk about their experiences, and that more powerful community members could not dominate the discussions.

### **Field Visits**

Field visits were conducted in two districts with active extractive industry operations and related development activities. To ensure that the research concentrated Uganda’s main extractive industries, a visit to northeast Uganda addressed the impact of mining industries on human rights; while a visit to the western region concentrated on the impact of oil and gas exploration and extraction on human rights.

The areas selected for research were:

*Moroto:* three sites were visited: the Rupa Gold mine (Nakabat and Nakiliro villages) under exploration licence owned by Jan Mangal Uganda Ltd; Dimension Stones mines in Ratta village under exploration licence held by DAO Uganda Ltd; and limestone quarries in Kisiro village (Tapach) with a mining licence held by Tororo Cement Uganda Ltd.

*Hoima:* ten villages were visited in Kabaale Parish, Buseruka sub-county, all located within the 29 sq. km proposed for the construction of the oil refinery. These villages include: Nyamasoga, Nyahaira, Katooke, Bukona A & B, Nyakasenini, Kitegwa, Kabakeete, Kyapuloni, and Kagera.

## **FINDINGS ON THE HUMAN RIGHTS SITUATION IN PROJECT-AFFECTED AREAS IN KARAMOJA AND BUNYORO SUB-REGIONS**

The emerging extractive industries and associated developments have resulted in numerous human rights concerns in host communities, including loss of land and evictions, without compensation and/or relocation; lack of timely and efficient information to enable communities to protect, negotiate and participate in decisions about land ownership, use and management; and extractive industry activity impact on the environment and subsequent health risks. While the human rights issues were similar in both Hoima and Moroto, impacts on project-affected communities varied. This section details the findings in the districts visited by ASF during the field research.

### **1. Background**

#### **1.1. Mining in Karamoja Sub-region**

The Karamoja sub-region, located in northeast Uganda, consists of seven districts<sup>14</sup> and is mineral rich – with over fifty different types minerals, including: gold, silver, copper, iron, gemstones, limestone and marble,<sup>15</sup> with most minerals found in the Moroto district.

Up-to-date information on mineral developments in Karamoja is unavailable, because the Department of Geological Surveys and Mines did not include Karamoja in an aeromagnetic survey of 80% of Uganda,<sup>16</sup> due to instability in the region at the time of the survey. Despite this information gap, the Ministry of Energy and Mineral Development has issued 136 Exclusive Prospecting

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<sup>14</sup> Abim, Amudat, Kaabong, Kotido, Nakapiripirit, Napak and Moroto

<sup>15</sup>For more information see <http://www.uganda-mining.go.ug/magnoliaPublic/en/GeologyMining/MineralOccurrences.html> (accessed 9 May 2014)

<sup>16</sup> Frere, Martin, (2009). *Aeromagnetic 80% Survey of Uganda Report*, Department of Geological Surveys and Mines, Government of Uganda; also see GTK Consortium (Draft January 2012); *New Potential Targets for Mineral Exploration*, MEMD Sustainable Management of Mineral Resources Project, Department of Geological Survey & Mines.

Licences and 15 mining leases<sup>17</sup> to mining companies in Karamoja,<sup>18</sup> covering approximately 25% of the total land area in Karamoja.

The sub-region is inhabited by the Karamojong<sup>19</sup>, agro-pastoralists who, due to the region's arid climate,<sup>20</sup> traditionally practice pastoral migration. Therefore, the importance of land for the survival and way of life of the Karamojong cannot be overemphasised. Their net productivity and their ability to access water and food, the most basic of human rights, has become increasingly difficult as "successive private and government agency action has appropriated traditional grazing areas to establish national parks, wildlife reserves, protected areas, government or military and ranching facilities"<sup>21</sup>.

## **1.2. Oil Refinery in Hoima**

The discovery of oil in Uganda has been one of the exciting breakthroughs over the last few years. To advance exploration and production, the government of Uganda decided to build a refinery in Kabaale Parish, Buseruka sub-county, Hoima District in west Uganda along the eastern shores of Lake Albert, near the international border with DRC.

The decision to construct a refinery follows the East African Regional Refineries Development Strategy (EARRDS) report,<sup>22</sup> which recommends developing an inland refinery to optimise benefits of oil exploitation to the region. A similar conclusion was drawn in the Foster Wheeler Energy Limited

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<sup>17</sup> The largest mining leases are held by Tororo Cement Ltd. Other active exploration in Karamoja involves smaller Ugandan and foreign venture capital-funded companies working on a much smaller scale. Other companies appear to be speculators, holding exploration licences with the intent of selling them larger exploration investors; Mining and Mineral Sector in Karamoja. For more information, see MEMD, "Computerised Mining Cadastre & Registry System" on mineral rights issued in Uganda, available at [www.uganda-mining.go.ug/magnoliapublic/en/mineral-rights-registry-system.html](http://www.uganda-mining.go.ug/magnoliapublic/en/mineral-rights-registry-system.html).

<sup>18</sup>For more information, see <http://www.uganda-mining.go.ug/magnoliaPublic/en/GeologyMining/MineralOccurrences.html>.

<sup>19</sup> Karamojong are made up of eight ethnic groups: Labwor, Matheniko, Jie, Bokora, Pain, Dodoth, Pokot and Tepeth.

<sup>20</sup> The region, approximately 27,200 sq. km, is dominated by large semi-arid plains, with low annual rainfall and high temperatures.

<sup>21</sup>Ministry of Land, Housing and Urban Development, (2013) *Uganda National Land Policy*, paragraph 59.

<sup>22</sup> East African Community Secretariat, (2008) *Strategy for the Development of Regional Refineries (Final Report)*.

(FWEL) feasibility study<sup>23</sup> on the development of a greenfield refinery, which reiterates that a refinery is a more commercially viable option with a Net Present Value (NPV) of US\$3.2 billion at a 10% discount rate and an Internal Rate of Return (IRR) of 133%.

In light of the findings, the Ministry of Energy and Mineral Development (MEMD), under the auspices of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act<sup>24</sup> started the process to develop the refinery through the acquisition of 29 sq. km of land through implementation of a Resettlement Action Plan (RAP)<sup>25</sup> by Strategic Friends International.<sup>26</sup> The general objective of the RAP is to provide the framework for managing resettlement and compensation of the 7,118 residents of Kabaale Parish who will be displaced as a result of the government's acquisition of the land for the construction of the refinery.

Other activities in the region include the appraisal of six discoveries by Total Exploration and Production (Total E&P);<sup>27</sup> appraisal by Tullow Uganda Operations;<sup>28</sup> and development of the Kingfisher field by China National Offshore Oil Corporation (CNOOC). According to the Petroleum Exploration and Production Department (PEPD) Senior Communications Officer, MEMD and CNOOC started this development on the basis of the Kingfisher field Production Licence approval issued to CNOOC in 2013<sup>29</sup>.

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<sup>23</sup> Foster Wheeler Energy Limited (2011) Feasibility Study on the Development of a greenfield Refinery, MEMD, The Government of the Republic of Uganda.

<sup>24</sup> The Act of 2013 provides the legal foundation for developing the oil refinery in Uganda.

<sup>25</sup> Petroleum Exploration and Production Department (PEPD) also indicated that an environment baseline survey was completed, a lead investor for the refinery will be procured by June 2014, and that the first phase of the refinery is expected in 2017/18.

<sup>26</sup> Strategic Friends International is a limited liability company registered in the Republic of Uganda which offers consultancy services. Strategic Friends International Limited offers services in Capacity Building and training, Strategic Planning, Research and Survey studies, Project design, planning, monitoring and evaluation (see <http://www.sfi.co.ug/>)

<sup>27</sup> Total E&P has submitted an application for a production licence for one of the fields

<sup>28</sup> Tullow Oil took over explorations from the Hardman Resources Company and Heritage Oil and Gas Ltd, and has submitted an application for a production licence.

<sup>29</sup> Discussion with the Senior Communications Officer of the Petroleum Exploration and Production Department, Ministry of Energy and Mineral Development, 10 April 2014.

There are also plans underway to develop a 205 km refined products pipeline from the refinery to Buloba, west of Kampala; in addition, a crude oil export pipeline has also been proposed. This follows recommendations contained in a PEPD-commissioned study to evaluate the development of pipelines and storage facilities for crude oil and gas. According to the study, a northern and a southern route were identified. Consequently, three possible routes are being evaluated: northern route to Lamu, a parallel pipeline to Mombasa in Kenya; and a southern route to Dar es Salaam in Tanzania. The proposed pipeline projects will ultimately lead to further displacement of households with land located on the proposed routes.

Since the first commercial discovery, the MEMD has recorded significant increase in investment in Uganda, and expects a further increase during field development, production, refinery and pipeline development. However, these developments have led to a number of human rights concerns, including the displacement and relocation of 7,118 people; and impact of the petroleum company activities on the environment, especially since the Albertine Graben is an ecologically sensitive area with an enormous amount of biodiversity.<sup>30</sup>

## **2. The Human Rights Framework**

Uganda, a signatory to most international and regional human rights treaties,<sup>31</sup> has an obligation to ensure that the rights and freedoms enshrined in the Universal Declaration of Human Rights (UDHR) and the various international and regional treaties are respected, protected and fulfilled by all State organs and agencies. This obligation is reiterated under Article 20(2)<sup>32</sup> of the Constitution of the Republic of Uganda. These obligations include the

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<sup>30</sup>Kathman & Shannon (see footnote 6 above).

<sup>31</sup> Uganda has signed or ratified all the international and regional treaties, but still has not ratified most optional protocols to many of these treaties, including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, limiting an important avenue for rights-holders to seek justice.

<sup>32</sup> Article 20(2) of the Constitution of the Republic of Uganda, 1995

duty for the State to prevent third parties, including business entities, from infringing on the rights and freedoms of rights-holders.

The United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>33</sup> affirm that business enterprises have a responsibility to respect human rights and places on States the duty to ensure that business enterprises respect human rights. The UNGPs describe State duties to include “appropriate steps to prevent, investigate, punish and redress” human rights abuses “through effective policies, legislation, regulations and adjudication.”<sup>34</sup> The UNGPs suggest due diligence as an operational means for business enterprises to respect human rights, although the specific options available to States to ensure business enterprises due diligence is not specified.<sup>35</sup>

The other two pillars in the UNGPs relate to the responsibility of businesses to respect human rights, and the need for greater access to effective remedy by victims. Each of these pillars is essential for a preventative and remedial system, but more efforts are required to ensure that these principles are adequately domesticated and fully implemented at the national level.

At the regional level, the African Charter on Human and Peoples’ Rights (ACHPR) provides the framework for the protection of collective rights of African peoples to freely dispose of their natural resources, and the right to a general satisfactory environment favourable to their development.<sup>36</sup> This includes the duty to consult people who may be affected by extractive industry projects, to notify and seek consent by community members prior to project implementation and to take preventative measures not to interfere with peoples’ rights to development and healthy environment.

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<sup>33</sup> Special Representative on Business and Human Rights, John Ruggie, (2011) *Guiding Principles on Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, unanimously adopted by the United Nations Human Rights Council, A/HRC17/13.

<sup>34</sup> Ibid.

<sup>35</sup> De Schutter et al., 2012. *Human Rights Due Diligence: The Roles of States*.

<sup>36</sup> Articles 21 and 24 of the African Charter on Human and Peoples’ Rights

In response to a worrisome trend of extractive industries in the region and the harmful effects on human rights and the environment, the African Commission on Human and Peoples' Rights adopted a resolution in 2009 creating a specialised body to monitor and prevent harmful practices by State and non-State actors in this sector.<sup>37</sup>

The Working Group on Extractive Industries, Human Rights and the Environment has since been meeting to fulfil its mandate of human rights protection and prevention, offering recommendations to State parties on compliance with obligations under the Charter regarding natural resource usage.

Establishment of the Working Group by the African Commission shows the importance of this issue in the region, and ensures that human rights implications of extractive industries is well understood and that it translates into rights protection through policy and legal frameworks.

International human rights laws also provide for the right to remedy. This right encompasses the individual right to have violations effectively investigated; to provide equal and effective access to justice; and to provide effective remedies, including reparations.<sup>38</sup> The obligation to protect the rights of victims of violations is affirmed in several international and regional human rights instruments, in particular the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the ACHPR.<sup>39</sup> This means

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<sup>37</sup> Resolution No. 148 of the African Commission on Human and Peoples Rights (Banjul, November 2009).

<sup>38</sup> A remedy pertains to the means by which a right is enforced, or a violation of a right is prevented, redressed or compensated. Remedies vary from the right to lodge a complaint to an administrative, judicial or quasi-judicial body to monetary compensation. See the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights Art 26(1); and ICCPR Art 2(3); see also N. Roht-Arriaza (1990), *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*. California Law Review 78(2), 474

<sup>39</sup> UDHR Art 2 provides that everyone is entitled to rights and freedoms set forth in the Declaration; ICCPR Art 2(1) contains a less precise provision obligating states to "undertake to respect and to ensure rights to all individuals within its territory and subject to its jurisdiction"; and Art 1 of the ACHPR obligates states to "recognise rights, duties and freedoms contained in the charter and to adopt measures to give them effect". See also the Convention on the Rights of the Child, article 12.

that the State must enact regulations for businesses to end impunity for human rights abuses, including through constitutional, labour, land, and environmental laws. Forming an integral part of these laws must be the human rights principles of transparency, participation, access to information, non-discrimination and anti-corruption measures.

### **3. Impact of extractive industries on project-affected people**

During the field research, it was observed that the State's duty to protect the rights of individuals and groups affected by the activities of extractive industries in Hoima and Moroto, has in most cases not been fulfilled, resulting in numerous human rights concerns for the project-affected communities.

#### **3.1. Citizen Participation in Development**

The Constitution of Uganda under the National Objectives provides that the State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes affecting them. Mirroring this obligation, the Constitution of Uganda provides for the right of every Ugandan to access information in State possession.

However, communities in Moroto indicated that they do not have any knowledge or information on mineral assessments and or the issuance of mineral rights<sup>40</sup> in the district.

*We do not have any information from the government or their representative on the mining occurrences that we witness on our land. Strangers come, disrespect us, ignore us, and take over our land...*<sup>41</sup>

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<sup>40</sup> According to section 2 of the Mining Act, a "mineral right" is a prospecting licence, an exploration licence, a retention licence, a mining lease or a location licence. Section 8 of the Mining Act further provides that prospecting exploration and mining shall be carried out only under a prospecting licence, an exploration licence, a retention licence, a mining lease or a location licence, as the case may be.

<sup>41</sup> Focus group discussion with elders in Moroto town conducted on 4 March 2014.

Local government officials also indicated that they have no information on issuance of mineral rights in the area, which is an activity undertaken by the central government; unless the local administration requests such information, the central government is not obliged to provide any information.<sup>42</sup>

*We only get to know that a licence has been issued when a mining company approaches us and asks us to sign it off. That is the only involvement we have in relation to the mineral sector, so we have no information to share with the local communities.*<sup>43</sup>

During a focus group discussion with elders in Moroto, they indicated that the few attempts at consultation done by various companies were not in good faith, as company officials and local political leaders tried to gain acceptance by making promises of sinking bore holes, building schools and hospitals, but never fully explaining the implications of mineral right.

*Tororo Cement promised to drill a borehole but where is it? They promised a hospital but only bought an ambulance that is packed year round. They make promises that they have no intention of fulfilling...*<sup>44</sup>

According to the chairman of the Karamoja Mining Association, companies take advantage of the people's ignorance about their rights, their illiteracy and poverty to mislead them into forfeiting their rights.<sup>45</sup> The absence of information and consultations, and therefore communities' low levels of knowledge regarding the mineral rights, continues to create tension over land and land resources in Moroto.

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<sup>42</sup> Interview with Cosmas Ayepa, Deputy LC V Chairman Moroto District conducted on 4 March 2014 in Moroto District (LC V is the abbreviation for Local Council, which is a form of local elected government within the districts of Uganda; LC V (or L 5) is the highest level, and is responsible for an entire district. On the contrary for example, LCI is responsible only for a village).

<sup>43</sup> Discussions with the Chief Administrative Officer of Moroto District on 4 March 2014.

<sup>44</sup> Group discussion with communities in Kisiro village conducted on 6 March 2014.

<sup>45</sup> Interview with Simon Peter Nyakiro, Chairman of the Karamoja Mining Association, conducted on 6 April 2014.

ASF observes that the continued failure to provide affected communities with timely and sufficient information or engage them in consultations prior to commencing operations, immensely reduced the opportunities for these communities to demand and defend their rights when interacting with the government and the mineral rights holders; additionally non-disclosure contributed to the continued non-participation of affected communities in the decision-making processes on issues that directly affect them.

Secrecy about oil company operations and their dealings with the government has proved to be problematic both at the national and regional levels. For instance, in 2010 there was a parliamentary revolt over the undisclosed terms of agreements between the oil companies and the government that were not made public. Parliamentarians accused some cabinet ministers of taking bribes from the companies in exchange for oil deals.<sup>46</sup> After several verbal clashes and debates, in 2012, the government disclosed aspects of the oil deals it had with international oil companies to parliamentarians, but details of the agreement remained confidential due to “commercial interests” sparking further speculation about corruption and how these deals benefit the average person in Uganda.

This secrecy and lack of information is also replicated at the local levels. There has been only minimal efforts, and in some cases no efforts, to enable community members to understand the legal requirements, procedures, processes, and the entire management framework of the oil and gas industry in the region. For instance, the RAP which is the most important document detailing terms and conditions for resettlement and compensation is not available to the average person. Even the district leadership does not have access, leaving a huge communications void.<sup>47</sup> The RAP should not only be made available to the affected populations and their leadership, but should

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<sup>46</sup> BBC Africa, “Uganda MPs Block Oil Deals after Corruption Claims” (updated 12 October 2011) available at <http://www.bbc.com/news/world-africa-15266613> (accessed 12 May 2014).

<sup>47</sup> Discussion with Winfred Ngabiirwe, Global Rights Alert & Onesmus Mugenyi, ACCORD in Kampala on 12 February 2014.

also be translated into languages that people understand so that they can make informed decisions.

In addition, the community in the refinery areas claim that rates used for the valuation of their property was not communicated to them, and some claim that even after the completion of the property valuation there was no feedback on the value of their property, so they had no idea how much money they would get. This has led to dissatisfaction among the local community, who question why the valuation team did not allow them to raise complaints before displaying details of the valuation.<sup>48</sup>

The local population in the affected areas have also complained that the compensation agreements are in English and that there was no way to translate the content to them; the majority of people cannot read or write English. There were allegations that some women thought they had signed land use agreements, yet they were actually signing for compensation of destroyed crops, while others signed without knowing what they were signing for.<sup>49</sup>

*There is a huge communication gap between the people and the government and also the oil companies. Documents that should be made public are kept secret, even the Resettlement Action Plan is secret, we have a copy now but we did not obtain that copy in a clear manner, in fact, the MEMD could accuse us of stealing it. It is this information gap that encourages speculation and it is the reason why affected communities are sometimes misled.*<sup>50</sup>

The MEMD indicated that it has developed a communication strategy to deal with all communication matters, but it is not yet operational.<sup>51</sup> The oil

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<sup>48</sup> Uganda Human Rights Commission, December 2013. *Oil in Uganda – Emerging Human Rights Issues – Special Focus on Selected Districts in the Albertine Graben*

<sup>49</sup> Ibid.

<sup>50</sup> Civil society participant at the DGF-CSO Action Planning Meeting on Governance of Natural Resources, Protea Hotel, Kampala, 10 April 2014.

<sup>51</sup> *Op cit* page 23.

companies, in particular Total E&P and Tullow, have established Community Liaison Offices in Nebbi and Hoima districts to ease communication and access to information between the oil companies and the community members.<sup>52</sup> However, the liaison office in Hoima is located approximately 80km away from the affected community, rendering it inaccessible for practical use.

### **3.2. Right to Property**

The right to own property alone or together with others is recognised under the international and national human rights laws. The UDHR provides for the right to own property individually and in association with other people, and protection against arbitrary deprivation of property.<sup>53</sup> The provisions of the UDHR are reiterated under Article 26 of the Constitution which inter alia prohibits compulsory deprivation of property, except when it is necessary for public use or in the interest of defence, public safety, public order, public morality or public health.

The Constitution further states that compulsory acquisition of property should be done under a law which provides for prompt payment of fair and adequate compensation before taking possession or acquisition of the property and for a right of access to a court of law by any person who has an interest or right over the property. During ASF's field survey, the right to property was found to be negatively impacted when extractive industries and associated development projects were undertaken in the research areas.

The Mining Act restricts the exercise of any mineral rights except with the written consent of the owner or lawful occupier or the duly authorised agent of the owner or lawful occupier of that land.<sup>54</sup> Although the Act requires

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<sup>52</sup> The oil companies complained about the sheer number of civil society organisations (CSOs) knocking on their doors and asking the same questions. The companies are encouraging CSOs to form coalitions to ease communication.

<sup>53</sup> Article 17 of the Universal Declaration of Human Rights

<sup>54</sup> Mining Act 2003, Section 78(1): “) The holder of a mineral right shall not exercise any of his or her rights under that mineral right (...) in respect of or on any land which is the site

consent, the mineral right holder may only be considered a trespasser if the mineral right holder cannot provide evidence to the lawful owner or occupier of such mineral right; it does not make any provision regarding the consequences for failure by a mineral rights holder to get required consent before commencing activities.

Additionally, the Act obliges a holder of a mining lease, a type of mineral right; requiring exclusive use of the whole or any part of a mining area to obtain a land lease or other rights to use the area for a definite period.

However, affected community members in Moroto indicated that the mining companies did not show proof that they held licences to conduct activities in the areas and that this led to hostilities between the communities and the companies.<sup>55</sup>

For instance, the chairman of the mining association of Karamoja indicated that Jan Mangal Uganda Ltd arrived without any prior contact with the local government or the community in Moroto, and had not even acquired an exploration licence from the central government. The chairman then organised a demonstration on the company's premises that led to discussions between the company, the local community, the MEMD, local government officials, and clan leaders in the area. Eventually, the company secured an exploration licence for the areas in Nakiloro and Nakabat. This case demonstrates the importance of requiring proof of licences, as it provides an opportunity for affected communities to engage with the companies and State agencies.

According to communities in Rata village, DAO Uganda Ltd. began explorations without any contact or discussions with the local communities;

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of, or which is within two hundred metres, or such greater distance as may be prescribed, of any inhabited, occupied or temporarily unoccupied house or building, or any land – (i) within five metres or such greater distance as may be prescribed, of land which has been cleared or ploughed or otherwise prepared in good faith for the growing of, or upon which there are growing agricultural crops; or

(ii) which is the site of, or within one hundred metres, or such greater distance as may be prescribed, of any cattle dip, tank, or similar body of water”.

<sup>55</sup>Discussion with community members in Nakibat, Rupa sub-county undertaken on 5 March 2014

this led to confrontations between community members and DAO Uganda Ltd staff. These confrontations resulted in meetings between DAO and the households occupying the land under exploration; these households were eventually compensated by DAO, who then used this compensation as a basis for a surface rights agreement, and the basis to apply for a mining lease.<sup>56</sup>

Tororo Cement Uganda Ltd. also started operations without showing proof of a licence to the local communities. The elders in the region set up several meetings with company officials to obtain information, but company officials consistently failed to turn up for the meetings, resulting in Moroto district government officials intervention in the matter in April 2009. The district leadership halted the company's activities and demanded proof that they were cleared to operate in the area, proof that was eventually provided by Tororo Cement.

The Jan Mangal (U) Ltd, Tororo Cement Uganda Ltd, and DAO Uganda Ltd situations in Moroto clearly indicates gaps in the Mining Act with regard to protecting communities from mineral investors who, due to the laxity in the legal framework, can enter a community and commence activities without the requisite mineral right issued by the MEMD.

Additionally, the Mining Act should make it mandatory for a mineral right applicant to get consent of a land owner or lawful occupier before the mineral right is awarded. This will increase the chances that extractive companies engage with local communities before they acquire the right to commence their operations.

As a further safeguard, government procedures oblige mining licence holders to report to district offices and have their licence signed before the company can start its operations in that district. According to the Chief Administrative Officer (CAO) of Moroto, despite this requirement, the district is not party to the discussions between the companies and land owners, leaving land owners

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<sup>56</sup> Human Rights Watch (Feb 2014), *How Can we Survive Here? The Impact of Mining on Human Rights in Karamoja, Uganda*, page 15.

at a disadvantage with unequal bargaining powers compared with the mining right holders.

### **3.2.1. Displacement and Relocation**

One of the most observable consequences of the extractive industries in Uganda has been displacement of communities. In both Moroto and Hoima districts, community members highlighted displacement as a key concern. In Moroto, local communities indicated that mining companies holding licences in the region erected perimeter fences around areas covered by their licence, denying them access to their ancestral grazing grounds.

Customary tenure – land tenure governed by the customs, rules and regulations of a community<sup>57</sup> – is the predominant land tenure system in Moroto. According to section 3(1) of the Uganda Land Act, those to whom customary tenure is applicable are governed by rules generally accepted as binding and authoritative by the people to which it applies. In this instance, the land is communally owned, which means that the household is the primary owner of the land and may include extended members of the family. Communal land includes gardens and pastures, grazing areas, burial grounds and hunting areas<sup>58</sup>.

Despite the communal ownership of land in Moroto, once a company is granted mineral rights<sup>59</sup> by the Department of Geological Survey of Mines (DGSM), there is no requirement for the company to consult households and/or communities before carrying out the activities. This has resulted in communities being denied access to their land, and in some cases, evictions from lands. In Rupa sub-county in Moroto district, communities from

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<sup>57</sup> Section 1(l) of the Land Act defines Customary Land Tenure as “a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which are described under section 3”, the Land Act (as amended), Chapter 227, 2000.

<sup>58</sup> M.A. Rugadya, (2007) *Land and Gender Survey in Uganda*, page 6.

<sup>59</sup> Section 2 of the Mining Act defines “mineral right” to include a prospecting licence, and exploration licence, a retention licence, a mining licence or a location licence. Section 8 of the Mining Act further provides that prospecting, exploration and mining shall be carried out only under a prospecting licence, an exploration licence, a retention licence, a mining lease or a location licence.

Nakabat, Nakailiro and Ratta villages were denied access to their lands as a result of activities by Indian owned Jan Mangal Uganda Ltd and DAO Uganda Ltd. According to the cultural elders from Rupa sub-county, since the two companies started their activities in villages, there has been heavy deployment of Uganda People's Defence Forces (UPDF) soldiers around the mines, coupled with fences erected around the companies' activity areas. Residents have been prevented from accessing their lands.

In Hoima, the community members from Kabaale Parish in Buseruka sub-county from the ten affected villages,<sup>60</sup> who have yet to be compensated or relocated, indicated that they were informed by Strategic Friends International (SFI) that they could not grow crops, or construct new or renovate temporary housing on land that was demarcated for the oil refinery.

For example, Maria, a resident of Nyamasoga village who lives in a run-down hut with half of its roof destroyed, said that she could not renovate her home because SFI had informed them during a meeting that the people who were still left on the land should not grow crops, renovate huts or erect new structures. Maria, like many other residents awaiting compensation or relocation, live isolated from each other in forested areas that have become overrun with wild animals, as they can no longer clear the area for cultivation or cut the grass or surrounding bushes, as directed by SFI; this security factor has affected the residents' freedom of movement, as they are under constant fear of attack from buffalos, elephants and lions from the nearby game reserve.

Although no fences were erected or security forces deployed to guard the oil refinery lands in Kabaale Parish, the community has been denied full access to and use of their lands due to the delay in finalising the compensation and

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<sup>60</sup> Bukoona, Kagera, Part of Nyamasoga, Kabakeete, Nyahaira, Kyapuloni, Kitegwa, Katooke, Nyakasenini

relocation process; the directives SFI and representatives from the MEMD<sup>61</sup> gave to the community on the activities individuals could undertake on the land earmarked for the refinery; and the presence of wild animals in the area.

The Mining Act provides that the owner or lawful occupier of any land in an area subject to mineral rights shall retain the right to graze and cultivate the land as long as the cultivation does not interfere with the licence holders' activities, or if it is hazardous for animals or crops.<sup>62</sup> The directives from SFI in Hoima and the construction of fences in Moroto by the mining companies are in contravention of the communities' rights as laid out by the Mining Act.

During a focus group discussion in Kitegwa, participants noted that they felt like "visitors who had over-stayed their welcome." They further noted that

*We live on lands that belonged to us but now do not belong to us because the government needs the lands for the refinery; however, we have nowhere to go because government has not provided us with the compensation to acquire land elsewhere.*

In contrast to Kitegwa, entire communities in neighbouring Buliisa District were forcefully evicted<sup>63</sup> from their lands by security forces and police<sup>64</sup> from

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<sup>61</sup> The community identified Bashir Hangi the representative from MEMD. Further investigations revealed that Bashir Hangi is the Refinery Project Communications Officer from the MEMD

<sup>62</sup>Section 80 (1) of the Mining Act

<sup>63</sup> Forced evictions are "defined as the permanent or temporary removal against their will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." UN Committee on Economic, Social and Cultural Rights (1996) General Comment 7 on the right to adequate housing: forced evictions.

<sup>64</sup> According to court records, the security and police personnel identified by the pastoralists during the eviction were General D. Tinyefuza (coordinator of intelligence), Major General Kale Kayihura (Inspector General of Police), Kato Matanda Hussein (Resident District Coordinator), and Hon. Stephen Mukitale Birahwa (General of Police). For details on the case, see *Dr Kasirivu Atwooki & 4 Others V. Grace Bamurangye Bororoza & 53 Others*, Court of Appeal Civil Application No. 85/2008; *Grace Bamurangye Bororoza & 53 Others v. Dr Kasirivu Atwooki & 5 Others* Court of Appeal Civil Application No.44/2008; In this case the applicants sought an injunction against the respondents stopping their eviction from the lands. The injunction was granted pending finalization of the main suit in the high court in Masindi, however, in 2011 before the high court made its ruling in the main suit the respondents violently evicted the applicants from their lands in Buliisa.

their lands on 11 December 2011 to make way for oil exploration activities in the area.

According to the chairperson of the evicted Balalo pastoralist community, whose evictions from Kichope, Kataleba and Waiga villages in Buliisa district (an area approximately 30 sq. km) were carried out with the excuse that the Balalo had settled in a game reserve; yet these were exactly the areas where oil companies were undertaking exploration activities. When ASF's team visited the site of the eviction, they found that only the Balalo had been targeted during evictions, while the neighbouring communities had not been evicted, nor had they been disturbed by government personnel.

According to the Mining Act, usufructuary rights - the rights of a land owner or lawful occupier to graze and cultivate- can be revoked for the duration of the mining and/or exploration activity, if the land owner or occupier's activities interfere with prospecting, exploration or mining. However, during discussions with eviction victims and with the police, it was unclear what form of interference was presented by the pastoralists; neither were there documented complaints from the Exploration Company and the MEMD.

In addition, these evictions were carried out contrary to provisions and spirit of the National Land Policy, which recognises the need to guarantee and protect the rights of pastoral communities, and provides strategies to protect the pastoral land from indiscriminate appropriation by individuals or corporate institutions under the guise of investment.<sup>65</sup>

### **3.2.2. Right to food**

Both in Moroto and Hoima districts, the *de facto* and implied denial of individuals and communities to freely access and utilise their lands has

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<sup>65</sup> Uganda National Land Policy; Para 60 and 61 (iii) "60: Land rights of pastoral communities will be guaranteed and protected by the State 61. To protect the land rights of pastoralists, government will take measures to [...] (iii) Protect pastoral lands from indiscriminate appropriation by individuals or corporate institutions under the guise of investment

resulted in incidences of household hunger, as households' ability to produce food through agriculture is compromised by the activities of extractive industries and the proposed refinery. In addition to the impact on people's right to adequate food, displacements and relocations have also had an impact on affected populations' rights to safe water. In Moroto and Hoima, respondents observed that they were experiencing difficulties accessing water, a difficulty they associated with mining company activities and land acquisition for the oil refinery, respectively.

### **3.2.3. Right to clean and safe water**

In Moroto, availability of water, like access to pasture, is a continuous concern, and people fear that the scarce water resources will be depleted by the mining activities in the area. For instance, communities in Nakabat in Rupa sub-country, near the Jan Mangal Uganda Ltd mines, expressed concern that the Nakiloro River (one of the few perennial rivers in Moroto and the community's only source of water) will dry up as a result of Jan Mangal Uganda Ltd activities. They noted that the company pumps large amounts of water into their compound and this has greatly affected the river water levels. These actions are contrary to the Mining Act, which provides *inter alia* that wetlands or water sources shall not be obstructed, dammed, diverted, polluted or otherwise interfered with directly or indirectly<sup>66</sup>.

In Hoima, residents of Kabaale Parish complained that after December 2012, when the last compensation tranches were paid to some community members, there have been no further efforts to ensure that boreholes, in the area where the oil refinery will be located, are serviced and kept functional, a duty of the LC. In Kitegwa, the women complained that the borehole pumps in their community had broken down, and when they sought assistance from the LC I's office,<sup>67</sup> they were informed that the pumps could not be repaired

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<sup>66</sup> Section 86 of the Mining Act, 2003.

<sup>67</sup> LCI (or Local Council 1) is the lowest level of Local Council (see above), and is in charge of a village or a neighbourhood.

because the area on which the remaining communities inhabited belonged to the “oil refinery” and that they would soon have to vacate the land.

The human right to water is recognised as part of article 11, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which lists various rights necessary for realising the right to an adequate standard of living, “including adequate food, clothing and housing”. According to the Committee on Economic, Social and Cultural Rights, the word “including” suggests that this list is not exhaustive and that the right to water is clearly part of the right to an adequate standard of living, especially given its importance to ensure the right to life<sup>68</sup>. At the national level, the right to water is recognised in the Constitution which states that “the State shall take all practical measures to promote a good water management system at all levels”,<sup>69</sup> placing an obligation, by virtue of Article 8A,<sup>70</sup> on the GoU to ensure that all people in Uganda can access safe and clean water.

#### **3.2.4. Right to prompt payment of fair and adequate compensation**

Compulsory deprivation of property or any interest in or right over property of any description is only permissible within the framework established under Article 26 of the Constitution and the Land Acquisition Act, which provides inter alia for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.<sup>71</sup>

The acquisition of the 29 sq. km in Kabaale parish in Buseruka sub-county has necessitated the use of the constitutional framework for compulsory land acquisition contained in the Land Acquisition Act for the proposed establishment of the oil refinery. According to the local council leaders in the affected areas, once the land was identified, a survey was carried out to determine how many households were affected, the measurements of their

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<sup>68</sup> Committee on Economic, Social and Cultural Rights, (2002) “General Comment15: The Right to Water”. E/C.12/2002/11

<sup>69</sup> National Objective XXI of the 1995 Constitution of the Republic of Uganda

<sup>70</sup> Article 8A of the Constitution provides that Uganda shall be governed on principles of national interest, national objectives and directive principles of state policy. The Constitution of Republic of Uganda as Amended (2006)

<sup>71</sup>Article 26 (b) of the 1995 Constitution of Uganda and Section 6 of the Land Acquisition Act

land, and their valuation. Following the valuation process, those who accepted the valuation results were given compensation claim forms, and acknowledgement of payment forms. According to affected community members, the requirement that the payment acknowledgment forms are signed prior to actual remittance of money was cause for suspicion, since they feared that they might get evicted without payment, with no proof.

Further investigation revealed that the community fears were well-placed; at the time of this research, five people in Nyahaira had been served with eviction notices, and yet they have not yet received compensation. According to the LC I chairperson, the five signed the compensation claim form and the payment acknowledgment form. Although no money was paid to them, letters arrived from Strategic Friends International informing them that they had been paid and had to vacate the area.

A person is legally bound by the contents of a document upon which his or her signature appears, regardless of whether he/she can read it. This general principle contained in the British case<sup>72</sup> of *L'Estrange v. Graucob (Ltd)*<sup>73</sup> posits that once a person signs a document containing contractual terms, it signifies that she/he has read the terms of the documents and understood them. Therefore, the requirement that affected community members sign payment acknowledgement forms prior to actual receipt of payment has created a situation where SFI can claim that everyone has been paid, and leave affected households vulnerable to evictions contrary to the provisions of Article 26 (b) of the Constitution. Because SFI is implementing the RAP for and on behalf of the GoU, the government has the obligation to ensure that sufficient safeguards are put in place to protect affected households from eviction without compensation.

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<sup>72</sup> British law continues to be a valid source of law in Uganda by virtue of Section 15 of the Judicature Act (Chapter 13), Laws of Uganda.

<sup>73</sup> *L'Estrange v Graucob (Ltd)* [1934] 2 KB 394

In Moroto, community members were not displaced from their lands; instead, mining companies set up perimeter fences, and deployed the army, who barred access to the mining operations areas. This is contrary to the provisions of Section 80(1) of the Mining Act, which allows the lawful owner or lawful occupant to retain surface interests in the land. The Mining Act provides that if a mineral rights holder requires exclusive use of whole or any part of the mining areas concerned he or she could acquire a land lease for a set period of time.

Although the Mining Act ensures that the land owner or lawful occupant has the option of requesting that the mineral rights holder gets a lease to allow them exclusive use of the land, the Act does not place an obligation on the mineral rights holder to apply for said lease; this is rather left to the land owner who may not have all the information necessary to defend his or her rights.

In a region with the lowest literacy levels in Uganda,<sup>74</sup> and correlating lack of knowledge and awareness of the legal procedures as a result of this illiteracy and other difficulties accessing information, placing the onus on the individual to ensure that an extractive industry gets a land lease means that mineral rights holders' have free reign to carry out their operations with little chance of being required to get a land lease for exclusive use of the said land.

In addition, the mineral rights holder is required to pay the owner or lawful occupier of land fair and reasonable compensation for any disturbance of the owner/occupier's rights, including damage to the land, and for crops, trees, buildings or works damaged during the course of such operations.<sup>75</sup> However, the onus is on the owner/lawful occupant to request for the said compensation.

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<sup>74</sup> According to a survey conducted by the Uganda Bureau of Statistics in 2011, the literacy levels in Karamoja stood at 11%, compared to the national level of 67%, UBOS Statistical Abstract 2011; also see the most recent Uganda Demographic and Health Survey (UDHS) (2011) available at [www.ubos.org](http://www.ubos.org)

<sup>75</sup> The Mining Act (2003) section 82; see also Mining Regulations (2004) sections 38 – 42.

Another challenge is the fact that the Mining Act does not make provisions for community member consent for customarily owned communal lands, such as grazing grounds. For such lands, a mineral rights holder can get consent from the Chief Administrative Officer who is not obliged to consult the surrounding community before giving consent. This explains why community members in areas such as Kisiro complain that since the start of concessions to Tororo Cement, no form of compensation has been received. Similarly, the elders in Karamoja stated that Jan Mangal and DAO started operations in the area without any compensation for the use of land, yet both companies use the Ugandan military to prevent the local communities from accessing the land. The elders also indicated that Jan Mangal fenced off vast areas of land without paying compensation.

The situation in Moroto warrants urgent action by the State to implement the provisions of the Land Policy, ensuring that pastoral land is held, owned and controlled by designated pastoral communities as common property under customary tenure, and protecting pastoral land from indiscriminate appropriation by individuals or corporate institutions.<sup>76</sup>

### **3.3.5. Fair and Adequate Compensation**

Another key consideration for the State to ensure when paying compensation is that the compensation be fair and adequate. In Kabaale Parish, Hoima District, some residents complained that compensation rates differed from village to village while others complained that the valuation processes excluded some of their properties and crops. The residents in the oil refinery affected areas also complained that compensation rates used in the valuation exercise were for the financial year 2010/2011 and therefore inadequate for compensation likely to be made in the financial year 2013/2014, due to inflation and speculation.<sup>77</sup>

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<sup>76</sup>Land Policy of Uganda, para 60 and 61

<sup>77</sup> Uganda Human Rights Commission, December 2013. *Oil in Uganda – Emerging Human Rights Issues – Special Focus on Selected Districts in the Albertine Graben*, 17; See also Global Rights Alert, *Sleepless Nights: The Fears and Dilemmas of Oil Refinery Project Communities*

The RAP acknowledges that its activities affect some cultural sites including graves, shrines and sacred places, and made commitments to shift all the cultural sites where affected households would settle, and pay compensation for the necessary rituals to be performed.<sup>78</sup> However, residents complained that the compensation rates given are not adequate to carry out these cultural activities. Several indicated that they were offered 200,000 Ugandan shillings (US\$80) for exhumation, transportation and reburial the remains of their dead.

According to the Chief Administrative Officer of Hoima, the MEMD indicated that the compensation rates used were based on the prevailing market prices of land within the district, and that the land within the same area that government is due to acquire for resettlement, costs less than what was paid to those who opted for compensation.<sup>79</sup> The government further indicated that the rates used for land and permanent structures were professionally determined by technical experts and approved by the Chief Government Valuer. For crops, trees and semi-permanent structures, the rates used were determined by the District Land Board with assistance of technical experts.<sup>80</sup>

However, in a recently concluded UHRC field survey, it was established that there were generalisations during valuation processes that resulted in under-valuation and errors. As a result, there are cases of unfair and inadequate compensation to some affected people, with consequences for their ability to acquire land in an area where they could maintain their ancestral attachment and continue to earn a living.<sup>81</sup>

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in the Face of Government of Uganda Resettlement Action Plan (November 2013) (Sleepless Nights Report) 26.

<sup>78</sup> Resettlement Action Plan, paragraph 5.8.

<sup>79</sup> Interview with the Chief Administrative Officer Hoima District

<sup>80</sup> Uganda Human Rights Commission, December 2013. *Oil in Uganda – Emerging Human Rights Issues – Special Focus on Selected Districts in the Albertine Graben*, 17.

<sup>81</sup> *Ibid.*

### 3.3.6. Prompt payment

The Resettlement Action Plan (RAP)<sup>82</sup> provides that its implementation will ensure principles such as adhering to national and international legal standards, participation, promoting options that quickly restore livelihoods, gender sensitivity, choice of either resettlement or compensation, minimising negative effects of cash compensation, and restoration of livelihoods, among others<sup>83</sup>.

During ASF's research, it was found that although the valuation exercise in the refinery area ended in June 2012, the signing of the compensation agreement was done a year later, and it is still unclear when some residents will receive payment for their land and property. According to the Sub-county Chief of Buseruka, out of the 2,473 people who opted for compensation, at least, 1,815 people have not yet received any compensation.

When asked to clarify on the delayed compensation, the MEMD indicated that government bureaucracy is the reason for the delayed payments, but that everything was being done to expedite the process. Nevertheless, this delay was causing the residents anxiety, and is contrary to the Constitutional framework, which provides for prompt payment before a person is disposed of his or her property.

### 3.3.7. Resettlement

According to the RAP survey report,<sup>84</sup> 26 households initially opted for resettlement, while 1,174 households preferred monetary compensation. Some people have since changed their minds and now 96 households have opted for resettlement. However, the households to be resettled still do not know when and where they will move, and this is causing them anxiety.<sup>85</sup>

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<sup>82</sup> Petroleum Exploration and Production Department, (2012) *Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka sub-county Hoima District*, Strategic Friends International Ltd

<sup>83</sup>Op cit, paragraph 4 (Compensation and Resettlement Strategy)

<sup>84</sup> 2012

<sup>85</sup> Discussion with Winfred Ngabiirwe, Executive Director of Global Rights Alert on 12 February 2014.

MEMD indicated that land for resettlement has been identified, and that the government is developing a physical plan for the land. The Ministry also indicate that people will receive the same amount of land that they were required to give up, and that the government will construct a three-bedroom house, a water-harvesting system, and a latrine for each family. The government further indicated that boreholes will be drilled in the resettlement area and that a primary school will be constructed in the neighbourhood.<sup>86</sup> The delays in resettling the affected people have not deterred the GoU from opening the bidding process for the construction of proposed oil refinery.

### **3.3. Right to Education**

Access to education for children in the study areas has been made increasingly difficult as a result of the extractive industries and related development activities in these areas. Basic education as a human right is reaffirmed in the Constitution of the Republic of Uganda, and the obligation to ensure every child in Uganda gets basic education is assigned to the State and children's parents.<sup>87</sup> The Constitution further provides that children should not be engaged in labour or employment activities that interfere with their education.<sup>88</sup>

In Buseruka sub-county, respondents in Bukoona, Nyakasenini, Kitegwa and Kabakeete noted that the schools in the areas had been closed because the teachers had moved away after compensation and the majority of the children who attended these schools had relocated once their parents received compensation. The few remaining families with children of school-going age had to seek alternative education institutions for their children far from their residences, forcing children to commute approximately 5 – 15 Km daily.

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<sup>86</sup> Discussion with the Senior Communications Officer of the Petroleum Exploration and Production Department, Ministry of Energy and Mineral Development, 10 April 2014.

<sup>87</sup> Article 34 (2) provides that “a child is entitled to basic education which shall be the responsibility of the State and parents of the child”; the 1995 Constitution of the Republic of Uganda (as amended).

<sup>88</sup> Article 34(4) *inter alia* provides that children shall not be employed in or required to perform work that is likely to interfere with their education.

Although the communities expressed interest in providing children education, household poverty and the failure of the GoU to post teachers in the schools with the remaining pupils has made it difficult for parents to fulfil their responsibilities to their children. In Nyamasoga, respondents noted that although the school was still operational, children were unable to go to school due to household hunger which has forced parents, especially single mothers, to withdraw their children from school.

In Karamoja, school-age children were denied the opportunity for basic education because they were forced to engage in mining activities to contribute to their family income, most of which went towards providing food. The problems people in Karamoja face in realising their most basic human rights predate mining company activities, and point to the GoU's continued failure to address the pre-existing poverty situation in the sub-region as a whole.

Poverty is not inevitable; it is a cause and consequence of human rights violations and abuses that include but are not limited to exclusion, marginalisation and discrimination. The GoU efforts in the Karamoja sub-region have not sought to address the root causes of poverty through empowerment, legal or otherwise, of the Karamojong, which has in turn left them vulnerable to exploitation by more powerful actors.

### **3.4. Employment Rights**

The impact of extractive industries on employment rights is especially an issue in Moroto, where communities were directly engaged in mining activities as artisanal miners under a mining company's mineral licence.

The Constitution of Uganda provides for right of all people to work in satisfactory, safe and healthy conditions.<sup>89</sup> The Mining Act obligates the

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<sup>89</sup> Article 40 of the Constitution of the Republic of Uganda

Commissioner, Inspector of Mines, or an authorised officer to ensure the health and safety of persons employed by a holder of a mineral right.<sup>90</sup>

Several artisanal miners work in the Kisiro limestone quarry under the mining lease held by Tororo Cement Uganda Ltd. Tororo Cement removes the stones, and the artisanal miners break them with a hammer. It takes about 2-3 weeks for the miners to break a tonne (roughly a truckload) of stones that is then sold to Tororo Cement at 130,000 Uganda shillings- approximately US\$52.<sup>91</sup> Although Tororo Cement officials found on-site indicated that the miners are not company employees, the mineral right belongs to Tororo Cement and the miners are obliged to sell only to Tororo Cement. This indicates an informal employment relationship between the miners and the company.

Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable working conditions which ensure inter alia safe and healthy working conditions. This places an obligation on the GoU through the District Labour Office to guarantee that employers ensure safe and healthy working conditions for the miners in Moroto. However, the miners indicated that injuries and deaths are common due to their vulnerability to occupational hazards. The miners do not wear the necessary protective gear such as gloves and helmets, leading to many accidents, usually from flying stones.

*We get hurt every day, look at our wounds, just look... Tororo Cement used to give us iron sheets to protect us from the sun but they stopped, for no reason. Now we have to work under the scorching sun day in and out. That old man, has fainted several times out of sheer exhaustion and lack of water. If only Tororo Cement could bring water on the site, give us medicine for our wounds and food, our life would be so much better.<sup>92</sup>*

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<sup>90</sup> Section 14 (2) of the Mining Act

<sup>91</sup> Discussion with artisanal miners in Kisiro village on 06 March 2014

<sup>92</sup> A female miner at Kisiro Mines, in Moroto.

Tororo Cement officials indicated that in the past, they used to provide gloves, helmets and iron sheets but they stopped because the miners sold the gear. The miners refuted this claim. The work itself is extremely laborious and hazardous, with occupational risks including chronic exposure to dust and heat (typically with lack of water on most sites) and fatal accidents, such as flying rock fragments.

#### *3.4.1. Employment of Children in Mining Industry*

Employment of children in Uganda is governed by the Employment Act which sets the parameters within which a child can be employed. These include: A child under twelve years of age cannot be employed in any business, workplace or other labour undertaking; children under the age of fourteen can only be employed provided such employment does not affect his or her education, and that the light work must be carried out under the direct supervision of an adult; and a child cannot be employed in any employment or work injurious to his or her health, dangerous or hazardous or otherwise unsuitable.<sup>93</sup>

In Karamoja, it is typical for local people to mine as a family unit, which means that children, even those as young as ten, engage in labour. In Rupa gold mines, ASF observed that male miners dig tunnels and pass the earth to women who wash and filter it, while children collect water from miles away that is used for this washing. In both Rupa and Kisiro, children were found working on the sites. While the younger children collected water and cooked food, those over thirteen years engaged in actual mining, precluding all these children from going to school.

Although parents took their children to the mines to contribute to the family income, the Employment Act places the responsibility on the employer to take

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<sup>93</sup> See Section 32 of the Employment Act of 2006.

necessary measures to ensure that no children are employed in conditions that violate the Employment Act.<sup>94</sup>

Despite this legal responsibility, Tororo Cement officials based at the site said that they were aware that children work in the mines and take part in rock-breaking, but that they had no reason to preclude children from these activities.<sup>95</sup>

### **3.5. Right to a Clean and Healthy Environment**

The Constitution provides for the right to a clean and healthy environment.<sup>96</sup> The Mining Act, reflecting the spirit and aspirations of the National Environment Act, obliges a mining licensee to carry out an environment impact assessment of proposed operations and to take all necessary steps to ensure the prevention and minimisation of environmental pollution, including through environmental management and restoration plans.<sup>97</sup> ASF's research revealed that although companies have undertaken Environment Impact Assessments (EIA), these EIA reports were not shared with or explained to communities, which has left the affected communities without benchmarks to hold the companies to account.<sup>98</sup>

In addition, companies with mining licences are also responsible for the effects of artisanal mining, ensuring that their actions are also addressed in the implementation of their environmental restoration plan. In the gold mines visited around Rupa sub-county, male artisanal miners were using rudimentary tools to dig holes reaching up to 10 meters. This activity has led to numerous small shafts and pits spread across relatively small areas that miners leave uncovered after they abandon the pits. These pits create safety hazards for humans and livestock in the area.

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<sup>94</sup> *Ibid*, section 32(4).

<sup>95</sup> Discussion with Tororo Cement Officials at Kisiro Village on 6/3/2014.

<sup>96</sup> Article 39 of the 1995 Constitution of the Republic of Uganda

<sup>97</sup> Section 108 of the Mining Act; see also Part IX of the National Environment Act.

<sup>98</sup> This was a consistent finding throughout the areas of survey.

The Mining Act places an obligation on the Commissioner for the DGSM<sup>99</sup> and the Executive Director of National Environment Management Authority (NEMA)<sup>100</sup> to ensure that the right to a clean and healthy environment is upheld. It also makes these officials responsible for receiving complaints, investigating them, and making reports. However NEMA and DGSM do not have a field presence in Karamoja region, nor have the two offices reached out to the affected people to get information about the environmental compliance of the companies working in the area.<sup>101</sup> It is also DGSM and NEMA's responsibility to ensure environmentally friendly mining methods, and DGSM is obligated to support artisanal miners' including through sensitisation on safe mining methods.<sup>102</sup>

However, one of the key gaps in legislation is the notable absence of a legal mandate for DGSM to engage in artisanal mining extension services, geological survey functions, and other activities beyond those related to regulation, monitoring and enforcement of mining activities.<sup>103</sup> This indicates that the State is not allocating maximum available resources to enable its agencies to do their jobs and protect basic human rights.

## **4. Addressing Grievances**

ASF found that communities' in Hoima and Moroto districts used both formal and informal redress mechanisms for addressing grievances arising from extractive industry activities in their communities.

### **4.1. Situation in Moroto**

#### *4.1.1. Formal Mechanisms*

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<sup>99</sup> Section 14 (1) (b) of the Mining Act.

<sup>100</sup> Section 108 (2) of the Mining Act.

<sup>101</sup> Interview with Simon Peter Nyakiro, Chairman of the Karamoja Mining Association, conducted on 6 April 2014.

<sup>102</sup> Mining and Mineral Sector in Karamoja (n 136 above) 60

<sup>103</sup> Although discussed in the Mineral Policy (2000) these objectives and mandates were not included in the actual Mineral Act of 2003.

In Moroto the community preferred not to use the formal mechanisms, highlighting their distrust of the courts. During an interview with a female artisanal miner in Rupa sub-county, the level of community distrust of formal mechanisms was summarised in her response to the issue of courts as dispute resolution mechanisms. She noted that:

*How can we go to court when the government works together with the companies? Don't you see the UPDF [Uganda People's Defence Force] protecting the companies? How can the court then protect us?*

Community distrust and lack of use of the courts was grounded in several factors, including lack of awareness about court procedures and processes, which were not explained to the community. In addition, the community had no access to law firms (there are none in the vicinity) and with only one legal aid service provider,<sup>104</sup> and the community was unaware about how to find a lawyer who could take on their case. Even if they wanted to and could find a lawyer, the legal fees would make such an option financially inaccessible. The Chief Magistrate in Moroto stressed that with all of these challenges, the Karamojong need assistance from non-governmental legal aid service providers and government legal aid service providers to access the courts and other administrative bodies for remedies.

#### *4.1.2. Informal Mechanisms*

Communities in Moroto district, like many other communities in Uganda, use traditional/cultural leaders to resolve disputes and access remedies. The Justice Law and Order Sector Secretariat (JLOS), notes that the preference of traditional justice mechanisms over the formal justice mechanisms is due largely to their accessibility and affordability.<sup>105</sup> The community also noted that the traditional justice mechanisms were conducted in the local language, using procedures and processes familiar to people, removing the ambiguity

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<sup>104</sup> The only legal aid clinic in Moroto is run by FIDA Uganda, a national NGO whose legal aid work is limited to its mandate i.e. addressing gender inequality using the law.

<sup>105</sup> JLOS, Draft Transitional Justice Policy (2013), page 17.

that surrounded the formal justice mechanisms, and providing the users with more confidence in a favourable justice outcome provided by the tradition mechanisms.

Despite general confidence and willingness to use traditional justice mechanisms to resolve legal disputes and access remedies, traditional leaders noted that they had not received any complaints involving community members and a mining company, and have not had an opportunity to mediate or arbitrate business-related issues. Traditional justice mechanisms have not been granted formal recognition under the law as a complementary arm of justice, leaving them with no procedural and administrative mechanisms. These traditional justice mechanisms therefore require all parties to recognise their legitimacy, which seems unlikely when dealing with entities from outside the community, such as business. The lack of formal recognition also aggravates the power imbalances between the communities and the business, leaving cultural leaders with no authority to summon representatives of mining industries, neither do they have the power to penalise mining industries for failure to comply with a decision made by cultural leaders at a traditional justice mechanism. Finally, there are no mechanisms to ensure that the justice meted out conforms to human rights standards, ensuring non-discrimination and full protection of everyone's human rights.

## **4.2. Situation in Hoima**

### *4.2.1. Formal Mechanisms*

When asked whether they considered formal mechanisms as means of seeking redress or channelling their grievances, 35% of respondents in Buseruka sub-county stated that they had considered formal mechanisms as a means of getting redress, while 45% stated that they did not consider the courts as possible redress mechanisms because they did not have any knowledge on the courts or how they functioned. Half of the respondents noted that they did not use the courts because they could not afford the legal fees and other charges necessary to have a case filed.

During discussions with community members, respondents highlighted their distrust of formal justice mechanisms to meet their needs, citing corruption as the main reason. Some of the respondents assumed corruption was the cause for delays in court proceedings, especially when the lawyer requested adjournments. This points to other problem relating to lack of understanding on court procedures and processes.

Another factor presented as a barrier to accessing courts was the distances that communities were required to travel. A person whose matter is before the Magistrate's Court is required to travel approximately 80km from Kabaale Parish to access the nearest Magistrate's Court in Hoima town council; while a person with a matter before the High Court is expected to travel over 150km from Kabaale Parish to Masindi town council where the High Court is situated.

Interestingly, none of the respondents indicated that they had thought about using the quasi-judicial mechanisms, such as the Local Council to seek redress. This suggests lack of awareness about the possibilities for using such mechanisms to solve problems.

The formal mechanisms established by Ugandan law include courts of judicature (including the Magistrate's courts, High Court, Court of Appeal and the Supreme Court), the Uganda Human Rights Commission, and quasi-judicial mechanisms including local council courts. A visit to the High Court and Magistrate's Court confirmed that no community members affected by the acquisition of the land for the oil refinery had filed a suit before any of these courts.

There have been some cases that have been filed by communities in Uganda related to oil exploration activities. Records of the High Court and Magistrate's Court indicate that there are three civil suits for wrongful and forceful eviction, fraudulent acquisition of land in exploration areas aimed at depriving

the plaintiffs of their rights stipulated under the Mining Act as lawful occupants and owners of the said land, and compensation claims for trespass and destruction of property by Tullow Uganda Operations Ltd. during its oil exploration activities. There was also one criminal case in which the accused persons are charged with attempted murder and assault occasioning bodily harm, which happened when the accused persons attempted to evict the victims from their community's burial grounds, in the belief that these burial grounds were located in a potentially oil rich area, and the presence of the victims would prevent the accused persons from benefiting from compensation paid by companies as they undertook oil exploration.

#### *4.2.2. RAP Mechanisms*

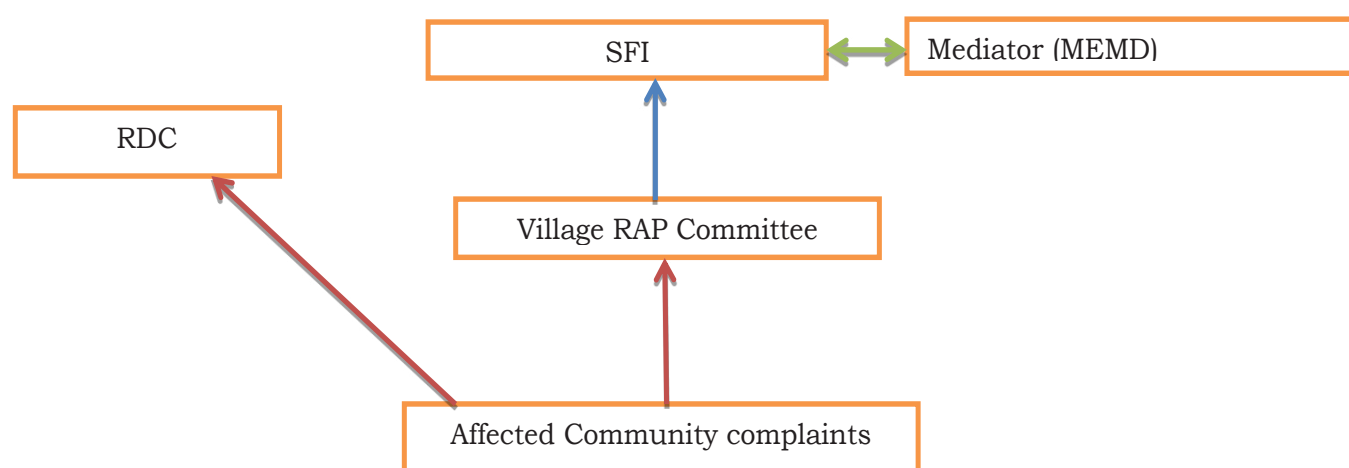
Affected communities' lack of use of the formal justice mechanisms could also be partly explained by the dispute resolution mechanisms created by the RAP. Discussions with district government officials in Hoima District revealed that affected communities had been sensitised about the RAP mechanisms, and had been advised that if they had any grievances related to RAP implementation, they could seek redress from these mechanisms. Within this framework, the community was expected to complain to the village RAP committee, who forwarded their complaints to Strategic Friends International.

Similarly, according to the affected communities in Kabaale Parish in Buseruka, sensitisation was carried out by SFI, the Resident District Commissioner (RDC) and the Ministry of Energy and Mineral Development (MEMD). The communities confirmed that during the sensitisation meetings they were told to use the RAP structures, which implied to them that courts did not have the mandate to handle matters related to RAP implementation.

The other mechanisms proposed by the RAP are mediation forums constituted by representatives from the village council, Parish Land Committees, Ministry of Justice, a representative from the Petroleum Exploration and Production Department (PEPD), Area District Councillor, a civil society representative, an

area woman councillor,<sup>106</sup> among others. In the event that an amicable decision is not reached, a complaint may seek legal redress in courts of law.<sup>107</sup> At the time of the research for this report, the proposed mechanism had not yet been established.

### *Compliant Mechanisms created by RAP structure as understood by the community*



#### *a. Village RAP Committee*

Members of the Village RAP committee were elected by the community and composed of two community representatives and the Local Council I. According to the community, they were informed that this RAP committee would be their first point of contact if they are dissatisfied with the valuation process. However, the Village RAP committee only registers complaints from people who signed forms accepting the valuation outcomes and amount claimed as compensation.

Residents on land earmarked for the oil refinery construction indicated that they were to be paid compensation that ranged from 3.5 to 7 million Ugandan

<sup>106</sup> According to the Local Government Act (as amended) Laws of Uganda Chapter 243 (2000), the administrative units are known as councils. The representatives of these administrative units are referred to as councillors. Women councillors who represent their administrative units to the sub-county and the district are elected under a quota system established in accordance with Article 32(1) of the Constitution on affirmative action.

<sup>107</sup> Resettlement Act Plan, paragraph 5.10 42 – 43.

shillings (US\$1,400 – 2,800) per acre of land, depending on the location. They indicated that this amount is too little to afford them land of the same size elsewhere in the neighbouring communities.<sup>108</sup> The residents also questioned why compensation rates are not uniform across the area marked for the refinery; while the people on actual site of the refinery were to be compensated at least 7 million Ugandan shillings (US\$ 2,800) per acre, however, according to the residents some land was valued at 7 million while others was valued at 3.5 to 6 million Ugandan shillings. These differing compensation rates, while all residents will be displaced, are a source of stress and discontent among residents.<sup>109</sup> The lack of transparency in the valuation process, the sole determinant of what a person is paid in compensation, led to over 300 community members to refuse to sign the compensation claim form.<sup>110</sup>

A person cannot be dissatisfied with the valuation process and at the same time sign the compensation claim form, which means that the limited scope of action of the village RAP committee is rendered ineffective for people to seek redress. In the words of one of the people who rejected the valuation outcome, and refused to sign the compensation claim form:

*The RAP committee did not help us at all; they just signed forms and received allowances. I thought they would have helped us voice our issues and give us feedback but they did nothing.*

#### 4.2.3. Strategic Friends International & MEMD

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<sup>108</sup> Uganda Human Rights Commission, December 2013. *Oil in Uganda – Emerging Human Rights Issues – Special Focus on Selected Districts in the Albertine Graben*, 16; UHRC indicates that residents preferred to acquire alternative land within the area because of their ancestral attachment and also due to anticipated benefits when the refinery work is underway; see also Global Rights Alert (2013), *Sleepless Nights: The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda Resettlement Action Plan*, page 21 – 22.

<sup>109</sup> F. Tumusiime, 2013. *A Report Verifying Complaints of Persons Affected by the Proposed Construction of Oil Refinery in Kabaale, Hoima* (Draft), page 10.

<sup>110</sup> At the time of the research there was a representative suit filed before the High Court of Uganda seeking the re-valuation, speedy compensation and resettlement and an injunction preventing Government from going forward with any developments on the oil refinery. For further information see *Wandera John Bosco, AFIEGO & 10 others v. The Attorney General* H.C.C.S No.99/2014

The village RAP committee forwarded community complaints to SFI, the RAP implementing agency. SFI does not handle issues of land revaluation for compensation. Instead, SFI convened community meetings together with the MEMD representative to meet complainants. The community noted that during these meetings, their grievances were not dealt with, nor did they get answers from SFI or the MEMD representative, who instead promised them that their issues would be resolved. On other occasions, they were told to accept what was offered and stop impeding development.

#### *4.2.4. Resident District Commissioner*

In all the areas ASF visited, the communities stated that they had approached the Resident District Commissioner (RDC) for assistance with their problems.

According to the Article 205 of the Constitution, the RDC has two main tasks: coordinating the administration of government services in the district, and advising the District Chairperson on matters of a national nature that may affect the district or its plans and programmes, particularly in relations between the district and the government. This mandate does not include judicial or arbitration functions. Nevertheless, despite this clear assignment of roles, the RDC is approached by individuals and communities because s/he is commonly viewed as the president's representative in a district.

The perception of the RDC as the president's representative gives the community the misguided belief that, like the president, s/he has the powers to grant favours, including the expeditious resolution of problems. Numerous groups and individuals have made appeals to the President of Uganda for redress, compensation and return of property. For instance, since 1993, the Buganda Kingdom has sought the return of its *Ebyaffe* property, which the President agreed to the return in August 2013.<sup>111</sup> Similarly, land mine survivors in 2008 appealed to the President to build them houses and educate their children.<sup>112</sup> Attempts of this nature to seek redress are not fair or

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<sup>111</sup> New Vision Online, 10 August 2013, <http://www.newvision.co.ug/news/645929-ebya-ffe-who-are-the-real-winners-losers.html>

<sup>112</sup> New Vision Online, 8 April 2008 [www.newvision.co.ug/PA/8/16/621081](http://www.newvision.co.ug/PA/8/16/621081)

sustainable, not does it contribute to a situation in which access to justice can contribute to a society ruled by law.

The communities pointed out that the RDC has not been helpful, and has on often dismissed their concerns. On one specific occasion, when people with complaints about the measurement and valuation of their land mobilised in large numbers to meet SFI and MEMD representatives, the RDC came with police and security personnel armed with tear gas and water cannons. They noted that although the tear gas and water cannons were not used, the presence of these items and the police and security personnel frightened them into not demanding answers from SFI.

The RAP mechanisms have created a perception that access to justice for RAP implementation-related issues can only be achieved through the executive arm of government, in which MEMD and RDC are located. This contravenes the doctrine of separation of powers and checks and balances enshrined in the Constitution of the Republic of Uganda which provides under Article 126 that judicial power shall be exercised by courts established under the Constitution.

These findings portray a strong inclination of the people to utilise justice mechanisms they understand, are comfortable with and can afford, despite the fact that their choices are not based on its appropriateness to address the legal concerns and human rights issues they face. This is a legal vacuum that needs to be addressed to ensure access to justice and redress.

## **5. CONCLUSIONS AND RECOMMENDATIONS**

### **5.1. Conclusions**

The human rights issues outlined in the two case studies are indicative of the enormous task that remains in the areas of human rights protection for communities affected by mining and petroleum sector activities in Uganda, especially given that exploration and production activities in both sectors is expected to increase in the coming years. Inaction poses the risk of undermining human rights of the people living in these regions, the environmental integrity of these areas, national peace and security, and the invaluable cultural assets in the affected regions.

Access to information and transparency measures are essential for reducing the risk of human rights violations and abuses, and preventing social conflict. In addition, risks for people, their lives and livelihoods and their environment can only be minimised if all stakeholders –various government institutions and departments, private companies, civil society groups and the affected populations – communicate and work together on an equal basis. The study has shown that this is not currently the case, and that the legal and administrative structures do not provide rights-holders with the necessary support to defend their rights and interests when interacting with more powerful actors.

Recommendations are based on core human rights principles, and are meant to empower communities through genuine engagement in all activities and through targeted interventions. These recommendations are given with the aim of encouraging increased coordination, communication and collaboration among stakeholders at all levels in order to ensure that affected people have the possibility to access justice to protect and defend their human rights.

## **5.2. Recommendations**

### **5.2.1. Transparency and access to information**

Many issues emerging from extractive industry operations appear to be based on lack of information and transparency. Ensuring full and mandatory disclosure of documents of public interest concerning the mineral and petroleum sector will equip people with knowledge that can improve legal compliance, and give public credibility to the decisions and actions of the regulating authorities.

There is also a need to simplify the relevant legislation and have it available in local languages and user-friendly formats for affected communities. Information must not only be available, but also accessible and adapted to the needs of the rights-holders.

### **5.2.2. Widespread sensitisation**

The government and the various stakeholders must carry out widespread sensitisation of the communities on all legislation, policies and documents related to the mineral and petroleum sector, so that the information is understood and can be utilised. Only through effective sensitisation can there be free, prior and informed consent.

### **5.2.3. Formalise information flows and communication channels**

The government must formalise and strengthen communication and reporting channels among extractive companies, communities affected by their activities, the local governments, Department of Geological Survey of Mines (DGSM), Petroleum Exploration and Production Department (PEPD), the Ministry of Lands, Housing and Urban Development, and the other government institutions, to ensure better protection of the people affected by activities of the companies. This includes allocating the necessary resources to enable these government agencies to better function.

#### **5.2.4. Access to justice**

The government must ensure access to justice within the framework established in the UN Guidelines and Principles on Access to Legal Aid in Criminal Justice Systems,<sup>113</sup> by providing legal aid services to the affected population. The government must also build the capacity of administrative and judicial bodies to handle matters relating to the human rights violations and abuses in the extractive industry, and to ensure that the mechanisms have adequate resources, mandate and ability to handle complaints in a timely and efficient manner. Local communities need to be empowered so that they know and understand their human rights, and know how to seek redress for any rights violations or abuses that occur.

#### **5.2.5. Review and Amendment of Laws**

The government should amend both the Mining Act and the Petroleum (Exploration and Development) Act to include a requirement for a human rights impact assessment to consider the actual and potential human rights risks and impacts of extractive activities, and how the impacts and risks can be mitigated or avoided.

The human rights impact assessment could potentially highlight gaps in the approach of a mineral right holder to assess and address human rights issues. It would also provide opportunities for developing a systematic management process that incorporates human rights risks and impacts, and a grievance mechanism within the reach of the local populations where mining activities take place.

The government should also amend the Land Act to recognise the principle that everyone has a right to decide what happens to their land, and to provide a basis for free, prior and informed consent (FPIC), allowing communities the right to give or withhold consent to proposed projects that may affect customary land tenure interests.

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<sup>113</sup> Guidelines and Principles on Access to Legal Aid in Criminal Justice Systems, A/67/458 available at <http://www.unodc.org/documents> (accessed on the 24/7/2014 at 3:38pm)

#### **5.2.6. Customary land registration process**

The government must simplify and expedite the process of registering customary land to correspond with the rapid pace of large-scale land acquisitions for extractive industry activities. In particular, mechanisms for the purpose of redressing the imbalances created by history, tradition and custom related to women's ownership rights of customary land should be put in place.