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LASPNET  
LEGAL AID SERVICE PROVIDERS' NETWORK

**HUMAN RIGHTS  
DEFENDERS  
AND CORPORATE  
ACCOUNTABILITY  
IN UGANDA**

**October 2017**

**OUR RIGHTS**

# Human Rights Defenders and Corporate Accountability in Uganda

“When the rights of human rights defenders are violated, all our rights are put in jeopardy – and all of us are made less safe.” – *Kofi Annan, Former Secretary-General of the United Nations.*

“There is no doubt that Uganda cannot solve its development challenges without the private sector. At the same time, Uganda cannot achieve its development goals by neglecting its own people. At the moment, the government’s pro-investment agenda is being pursued without much emphasis on ethical business and promoting respect for human rights by both the government and corporations. In particular, the laws regulating the extractive industry are not adequate to ensure that mining is done without violating environmental standards and human rights” - *Uganda Consortium on Corporate Accountability, 2016.*

Legal Aid Service Providers Network (LASPNET)

18<sup>th</sup> October, 2017



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## ABBREVIATIONS AND ACRONYMS

AAU	ActionAid Uganda
ACCA	African Coalition for Corporate Accountability
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
APRM	African Peer Review Mechanism
ASF	Avocats Sans Frontiers
ATIA	Access to Information Act
AU	African Union
CAO	Chief Administrative Officer
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCG	Center for Constitutional Governance
CEHURD	Center for Health, Human Rights and Development
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRED	Civic Response on Environment and Development
CRS	Corporate Responsibility Standards
CSCO	Civil Society Coalition on Oil and Gas
DGF	Democratic Governance Facility
DPI	Defenders Protection Initiative
EAC	East African Community
EHAHRDP	East and Horn of Africa Human Rights Defenders Project
EITI	Extractive Industries Transparency Initiative
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
JLOS	Justice Law and Order Sector
KII	Key Informant Interview
GoU	Government of Uganda
HRBA	Human Rights-based Approach
HRCU	Human Rights Centre Uganda
HRDs	Human Rights Defenders
HRNJ	Human Rights Network for Journalists
HRW	Human Rights Watch
HURINET	Human Rights Network-Uganda
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>IFC</b>	International Finance Corporation
<b>ILO</b>	International Labour Organisation
<b>ISER</b>	Initiative for Social and Economic Rights
<b>LASPNET</b>	Legal Aid Service Providers Network
<b>LASPs</b>	Legal aid service providers
<b>LBT</b>	Legal Brains Trust
<b>LCs</b>	Local Councils/Councilors
<b>LCU</b>	Lango Cooperative Union
<b>MEMD</b>	Ministry of Energy and Mineral Development
<b>MFPED</b>	Ministry of Finance, Planning and Economic Development
<b>MGLSD</b>	Ministry of Gender, Labour and Social Development
<b>MIA</b>	Ministry of Internal Affairs
<b>MNCs</b>	Multinational corporations
<b>MoLHUD</b>	Ministry of Lands, Housing and Urban Development
<b>NCHRDU</b>	National Coalition for Human Rights Defenders Uganda
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NGOs</b>	Non-governmental organisations
<b>NHRIs</b>	National Human Rights Institutions
<b>NKG</b>	Neumann Kaffe Gruppe
<b>OAU</b>	Organisation of African Unity
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OSHA</b>	Occupational Safety and Health Act
<b>PILAC</b>	Public Interest Law Clinic
<b>POMA</b>	Public Order Management Act
<b>PSAs</b>	Production Sharing Agreements
<b>RECs</b>	Regional Economic Communities
<b>RDC</b>	Resident District Commissioner
<b>SEATINI</b>	Southern and Eastern Africa Trade, Information and Negotiations Institute
<b>SDGs</b>	Sustainable Development Goals
<b>TNCs</b>	Transnational corporations
<b>UCCA</b>	Uganda Consortium on Corporate Accountability
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UGNNOF</b>	Uganda National NGO Forum
<b>UHRC</b>	Uganda Human Rights Commission
<b>UIA</b>	Uganda Investment Authority
<b>ULS</b>	Uganda Law Society
<b>UPDF</b>	Uganda Peoples' Defence Forces
<b>UPF</b>	Uganda Police Force

<b>UPS</b>	Uganda Prisons Service
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNGA</b>	United Nations General Assembly
<b>UNGPB</b>	United Nations Guiding Principles on Business and Human Rights
<b>WHRDs</b>	Women Human Rights Defenders

## PREFACE

The overall purpose of this report is to acknowledge and firmly establish that those engaged in the promotion and protection of rights in the corporate and business sectors are *bona fide* human rights defenders and should be protected as such. The report gives full recognition to the legitimate and necessary role they play, contributes to ensuring that they operate in a conducive environment and without threat of attack by both State and non-state actors. The report also raises concern about the disturbing impunity with which some human rights violations are committed against all human rights defenders, and recommends that they be protected in accordance with national and international human rights law.

The discovery of oil and gas in Uganda in the 1990s, as well as the current large scale investment in the energy sector, have raised concerns about the operating environment for human rights defenders working on issues of corporate accountability by corporations and other business entities in the face of weak government regulatory frameworks and mechanisms. The activities of these business entities have in many cases led to a wide range of human rights violations and abuses in various parts of the country. Sadly, in some cases, Government of Uganda has been involved in these corporate abuses and has perpetrated violations in the name of protecting what is often portrayed as indispensable foreign direct investment. However, at the core of these transnational entities and business enterprises is a desire for super profits, which have in many cases been pursued at the cost of respect for economic, social and cultural rights, international 'best practice' standards and the livelihoods of many Ugandans.

Corporate capture, the undue influence that multinational corporations and other business entities exert over national governments, manipulating them to act according to their priorities at the expense of the public interest, is a growing and troubling trend in Uganda. This report therefore examines the operating environment that human rights defenders face as they work to defend the rights of marginalised individuals and vulnerable communities against both the state, multinational corporations and other business entities in the emerging extractives sector and related sectors in Uganda. We hope the readers of this report will not only be empowered with valuable knowledge, but will also be encouraged to defend human rights (there is still a lot everyone can contribute) and thereby become effective human rights defenders themselves.

## **ACKNOWLEDGEMENTS**

Legal Aid Service Providers Network (LASPNET) wishes to appreciate all human rights defenders tirelessly working across the country to defend the rights of marginalised individuals and vulnerable communities. LASPNET is grateful to Action Aid Uganda (AAU), without whose financial support the study would not have been possible. In particular, We acknowledge the Fair, Green and Global (FGG) project being implemented in Uganda under the auspices of Action Aid International, whose main goals are to achieve fundamental shifts in policy and practices that are based on new, more socially just and environmentally sustainable approaches.

The Network also acknowledges the invaluable contribution of all the individuals and organisations that participated in the research and study leading to the publication of this report. This includes, the Consultant, Gerald Tushabe and his team of assistant researchers, human rights defenders across all the regions of the country who patiently answered the questionnaires or responded to telephone interviews; LASPNET Secretariat staff who provided the necessary logistical support and advice whenever it was requested as well as other local or international stakeholders, who directly or indirectly contributed to the research and publication of this report. We are hopeful that it will be an important resource that will assist all to understand the current situation of human rights defenders working on corporate accountability in Uganda.

## EXECUTIVE SUMMARY

In Uganda, human rights defenders who work on issues of corporate accountability face increasing general and specific risks. They are threatened, arrested, stigmatised, criminalised and attacked, not only by State authorities but also by powerful non-State actors including local businesses and multinational corporations. In the context of rapid economic activity and business expansion brought about especially by the extraction of oil and gas in the Albertine Graben region, land eviction conflicts in Amuru, Mubende and other areas, informed discussion and understanding of the work of human rights defenders to promote corporate respect for human rights and accountability for corporate-related violations is becoming ever more important.

This report examines the issue of corporate accountability and the risks and challenges human rights defenders encounter as they exercise their legitimate mandate in working to hold both the Government of Uganda and business entities accountable for corporate abuses and violations of human rights. The report generally focuses on the operating environment in the extractives sector, the thorny issue of land acquisition or grabbing and evictions of vulnerable communities associated with the current oil and gas extraction in the Albertine Graben region, mining in Karamoja as well as on the exploitation of workers in the floriculture industry.

The report reveals several findings, including corporate capture - the growing trend of undue influence exerted by multinational corporations on the government - thus leading to human rights violations; revealed also is the continued existence of an overly restrictive legislative, policy and institutional environment that impedes the full exercise of the rights of human rights defenders to effectively fulfil their legitimate work of holding both the government, local business entities and multinational corporations accountable for corporate-related abuses and violations. Despite the above challenges, human rights defenders and the broader civil society are positive that there exists a wide scope of positive engagement and collaboration between all stakeholders on the issue of corporate accountability. To this end, LASPNET makes important recommendations for key stakeholders, including the following:

## **To the Government of Uganda**

Create a truly conducive policy, legal, administrative and institutional framework that promotes and protects human rights defenders. Design a policy and enact the Human Rights Defenders Protection Bill into law specifically protecting the rights of human rights defenders. The policy and law should incorporate all critical aspects dealing with all human rights in general and corporate accountability in particular. This is best accomplished by domesticating the provisions of the UN Declaration on Human Rights Defenders, the UN Guiding Principles on Business and Human Rights, the UN Global Compact, the UN Sustainable Development Goals (SDGs), the UN Convention Against Corruption (UNCAC), the Extractive Industries Transparency Initiative (EITI), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Voluntary Principles on Security and Human Rights, the African Union Convention on Preventing and Combating Corruption, and related instruments.

## **To the Uganda Human Rights Commission:**

Support the domestication of the UN Declaration on HRDs and the development of specific frameworks for the promotion and the protection of HRDs at regional and national offices. Having already established an HRDs Desk at the UHRC Head Office in Kampala, now strengthen this Desk by creating focal points for HRDs within the entire UHRC structure in the regional offices with a mandate to monitor the countrywide situation of HRDs in order to prevent or denounce violation of their rights at all levels by State organs, multinational corporations and other business enterprises. Expedite design and adoption of a National Action Plan on business and human rights as part of the States' responsibility to disseminate and implement the UN Guiding Principles on Business and Human Rights.

## **To the Human Rights Defenders**

Enhance capacities of human rights defenders and the media by increased training in relevant international and regional standards and mechanisms on business and human rights, security management systems and effective advocacy on corporate accountability.

Strengthen the relevant coalitions, networks and local protection mechanisms for the protection of human rights defenders across the country especially those that focus in part or wholly on corporate accountability issues.

Conduct more research to understand all aspects of corporate accountability in Uganda, including the issue of State capture and disseminate the results for

more effective advocacy campaigns in order to ensure real transparency and accountability in the extractives sector of the country.

### **To Multinational Corporations and Business Enterprises**

Ensure full disclosure and transparency of multinational corporations and local business enterprises to report fully on their social and environmental impacts, on significant risks and of breaches of relevant standards and such reports must be independently verified;

Adopt corporate codes of conduct that expressly acknowledge the constitutional rights that multinational corporations are bound by in Uganda. These codes must make provision for the consideration of complaints from vulnerable communities or individuals adversely affected by the corporations' activities.

Refrain from exploiting local communities, damaging the environment, evicting communities inhumanely, unlawfully or unfairly, disrupting the social fabric of communities and other forms of human rights violations by respecting their right to free, prior and informed consent.



## **CHAPTER ONE**

### **INTRODUCTION TO THE STUDY**

#### **1.0 Introduction**

The Legal Aid Service Providers Network (LASPNET) is pleased to present this report of a nationwide study on human rights defenders working on issues of corporate accountability in Uganda conducted in April, May and June 2017. The study will assist human rights defenders with knowledge and new insights, particularly those defending individuals and communities against human rights violations by corporations and other business enterprises. The report reveals the existence of an overly restrictive legislative and institutional framework for civil society in general and human rights defenders, as well as various threats and challenges in the operating environment. The report advances several recommendations to the Government of Uganda and other relevant stakeholders to address the risks, threats and challenges that human rights defenders face in the exercise of their legitimate mandate to hold both the state and non-state actors accountable for various rights abuses and violations. We hope the readers of this report will not only be empowered with valuable knowledge, but will also be encouraged to defend human rights (there is still a lot everyone can contribute) and thereby become human rights defenders themselves.

#### **1.1 About Legal Aid Service Providers Network (LASPNET)**

The Legal Aid Service Providers Network (LASPNET) is a national member based non-governmental organization established in 2004 to provide strategic linkages and a collaborative platform for legal aid service providers ('LASPs') in Uganda. The Network maintains a common front to interface on issues of access to justice and rule of law. It targets three critical aspects of coordination; bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences while minimizing duplication; capacitating them through collaborative research and analysis; as well as documenting, providing feedback and amplifying their voice on key issues regarding access to justice /legal aid at regional, national or international level. LASPNET utilises coordination, research, advocacy and lobbying, capacity development and other strategic mechanisms to promote access to justice and influence the legal aid agenda in Uganda.

**Vision:** A free and just society.

**Mission:** To provide a platform for effective networking and collaboration to enhance legal aid service delivery and access to justice for the most vulnerable and marginalized people.

**Goal:** To improve networking, collaboration and coordination among legal aid service providers in Uganda.

**Mandate:** To strengthen coordination and networking of LASPs, harmonization and standardization of legal aid service provision, lobbying and advocacy to facilitate a favourable legal and policy environment.

## 1.2 About the Fair, Green and Global Project (FGG II)

The Fair, Green and Global Alliance is one of 25 alliances engaged in strategic partnership for Dialogue and Dissent with the Dutch Ministry of Foreign Affairs. The main activities of the project include; lobbying and advocacy, capacity development, policy analysis, research and publications, as well as campaigning. The FGG alliance seeks to enhance the capacities of Civil Society Organizations in developing countries and in emerging economies in representing the interests of local communities and contribute to social justice and environmentally sustainable development.

FGG II is a project funded by the Dutch Ministry of Foreign Affairs through Action Aid Netherlands for the period 2016-2020. The project focuses on three themes which include:

- Corporate conduct
- Trade and investment
- Financial policies

Action Aid Uganda is jointly implementing the project with LASPNET, Southern and Eastern Africa Trade, Information and Negotiations Institute (SEATINI) and Solidarity Uganda.

**Purpose of the project:** To build community resilience to engage and hold the state and corporations accountable for their actions in ensuring that citizens enjoy their rights to a life of dignity.

**Project Goal:** To ensure that improved corporate conduct advances social justice, decent work and environmental sustainability.

### **Specific Objectives:**

- To promote responsible corporate and state investment practices with respect, promotion and fulfilment of rights of communities (men, women and youths) to land.
- To enhance equity, fairness, and transparency in tax generation.

### **Project Specific results/outcomes:**

- Cross cutting corporate regulation and accountability.
- Enabling environment for civil society and human rights defenders.
- Access to effective remedy for victims of business-related rights and environmental abuse.

## **1.3 Research Design and Methodology of the Report**

The methodology utilized to formulate this report involved two approaches: a desk review of relevant secondary documents as well as limited field data collection by use of key informant interviews (KII) with purposively sampled human rights defenders in the corporate sector in Uganda. This implies that our data type and data sources are a copious mixture of both secondary and primary data that enabled the research team to answer the key purpose and objectives of the study, i.e., the nature of the current operating environment for human rights defenders in the corporate sector and the protection gaps therein, particularly with regard to the issues of the extractives industry, the horticulture industry and land grabbing. A structured questionnaire was designed to collect primary data. This primary data was collected from respondents identified through purposive sampling<sup>1</sup> and snowballing<sup>2</sup> research techniques in Kampala City, western, eastern northern regions of Uganda. The selection criteria was informed by the actual locations of key stakeholders in the identified areas, their knowledge about, or work as human rights defenders. In situations where we are unable to reach respondents in the identified study areas, the research team used telephone communication to access and talk with them. Overall, at a conceptual level, the report applies the human rights-based approach (HRBA) in the examination and analysis of all issues pertaining to corporate accountability and human rights defenders.

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<sup>1</sup> Purposive sampling is sometimes referred to as selective, judgmental or subjective sampling. A purposive sample is a non-probability sample that is selected based on characteristics of a population and the objectives of the study.

<sup>2</sup> Snowballing sampling is sometimes referred to as chain sampling, referral sampling or chain-referral sampling. It is a sampling technique where study existing subjects identify and recruit other respondents/subjects from among their acquaintances.

## **1.4 Rationale and Purpose of the Research Report**

The purpose of the study is to enable LASPNET identify the critical gaps that hinder successful operations of human rights defenders in promoting and protecting their own rights and those of the communities they serve. Additionally, the study is to make recommendations on how to address the gaps, risks and challenges. The findings shall inform all relevant stakeholders for further action who may include legal aid service providers, civil society organizations, community based organizations, coalitions, trade unionists, networks, and individuals involved in HRD protection, development partners, and vulnerable communities.

The underlying and overall guiding purpose of this research study is to empower human rights defenders to build community resilience to engage and hold the State, business firms and corporations accountable for their actions in order to ensure citizens enjoy their rights to a life of dignity. Particularly, LASPNET's interventions will focus on promoting responsible corporate and State investment practices for respect, promotion and fulfilment of rights of vulnerable communities (men, youth, and women) to land and other natural resources.<sup>3</sup> The project will among other objectives, promote research and advocacy for a harmonized legal and policy framework which ensures that civil society has access to democratic decision making processes related to corporate conduct.

## **1.5 Objectives and Overall Goal of the Report**

### **1.5.1 Overall Goal**

The overall goal of this report is to establish the nature of the current operating environment for human rights defenders in the corporate sector at national and community levels with a view to identify and recommend practical strategies for its improvement so as to enhance the protection of HRDs for effective delivery of their mandate.

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<sup>3</sup> The right to free, prior and informed consent (FPIC) is explicitly recognised in the UN Declaration on the Rights of Indigenous Peoples (articles 19 & 32), adopted by the UN General Assembly in 2007. The right provides that indigenous communities have priority over their lands and all natural resources therein, and their free consent must be sought prior to undertaking any development that might have an adverse impact on their livelihoods. On 18 August 2008 Uganda also acceded to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, a treaty that is relevant to the FPIC right.

### **1.5.2 Specific Objectives**

The specific objectives of the report are:

1. To establish gaps and needs for legal and other related forms of protection for HRDs in the corporate sector in Uganda.
2. To identify and examine the nature of the operating environment for HRDs in the corporate sector, land at community levels and how it impacts on their effectiveness (or lack thereof).
3. To advance conclusions, recommendations and the way forward on the protection and operating environment of the HRDs in the corporate sector in Uganda.

### **1.6 Research Questions in the Report**

The study is based on and guided by the following research questions from inception to completion:

- What is the current state of affairs of corporate conduct in Uganda with regard to both the corporate and the state's investment practices in the respect, promotion and fulfilment of rights of communities to land?
- What are the obligations of states and companies to respect and protect human rights and the environment?
- What are the relevant policy processes, including current legislation, policies and (supposed) policy intentions among relevant actors with regard to corporate conduct and efforts made to obligate companies to respect and protect human rights and the environment, and what is the status of these policy processes?
- Within these policy processes, what is the state-of-affairs on policy coherence with regard to corporate accountability?
- Additionally; if the policy processes are in place, are there any revisions/improvements that have been made to them since their inception and adoption?
- How can the current implementation of these policies be described? Has government taken any steps to mitigate social, gender and environmental impacts of corporate activities and those in the value chains of corporations?
- How can the space for intervening for civil society organisations (CSOs) in these policy processes be described?
- What is the state of affairs on the enabling environment for human rights defenders in the corporate accountability sector?
- What lobbying and advocacy capacity needs exist within the community based organisations (CBOs) engaged in this project?

- What are the proposed suggestions and recommendations to improve corporate conduct of private and public decision makers?

In the five chapters and various sections of this report, the above questions are answered with evidence provided by human rights defenders themselves and other stakeholders through face to face interviews, as well as through extensive review of available literature.

## **1.7 Scope of the Report**

The study endeavoured to examine the most recent operating environment of HRDs in the corporate sector in Uganda covering especially the period from January 2013 to June 2017.

- a. In particular, the study focused on the following:
  - i. The HRDs involved in land conflicts and displacement of people resulting from oil and gas exploration in the Albertine region (Hoima & Masindi, areas, etc.);
  - ii. The HRDs involved in the mining sector in northern, central and Karamoja regions, etc.;
  - iii. The HRDs handling the flower farm case run by Royal Van Zanten where workers were exposed to chemical poisoning;
  - iv. The land acquisition or eviction cases in Apac areas by Lango Cooperative Union & Microfinance Support Centre
- b. Other issues, trends and themes relevant to legal protection gaps, challenges, needs and operating environment for HRDs in the corporate sector in Uganda.

## **1.8 Sample size, Selection and Target Population**

Using the purposive and snowballing sampling techniques, the research team conducted key informant interviews with a total of fifty (50) respondents. The selection criteria for the respondents was based on the study rationale and geographical distribution of human rights defenders under their own umbrella coalitions, notably the National Coalition for Human Rights Defenders Uganda (NCHRDU) and Civil Society Coalition on Oil and Gas (CSCO) and their affiliates. With respect to these two major coalitions and their affiliates, the study sought to interview (i) regional HRD focal points from four regions including northern, eastern, western, central regions and (ii) thematic cluster representatives representing HRDs in the oil and gas /extractive industry, the floriculture industry, as well as the environment and land sectors.

## 1.9 Study Sites and Locations in the Report

Key informant interviews with the human rights defenders and as well other relevant stakeholders were conducted in the following sites and locations:

- Western Region – specifically targeting HRDs in the extractives sector, i.e. the Albertine oil and gas extraction areas of Masindi, Hoima, etc.;
- Eastern Region – specifically targeting the HRDs and human rights consequences of mining of minerals like gold, marble etc. in the Karamoja sub-region, etc.;
- Northern Region – specifically targeting HRDs working to protect communities facing alleged land grabbing, evictions and land wrangles in Amuru, etc.;
- Central Region – specifically targeting HRDs involved in protecting the rights of workers in the flower/ floriculture industry, especially focusing on the case of workers that were poisoned during work at Royal Van Zanten farm in particular as well as the floriculture industry in general.

## 1.10 Limitations of the Study

There was limited time available to conduct key informant interviews during the field data collection phase. Due to time constraints therefore, some potential respondents that would have benefitted the study with more insights and experiences were not able to be reached, including in West Nile, South West as well as Karamoja in the north-east region of the country. However, the study was able to reach a significant number of valuable respondents in Kampala city and the surrounding areas, where many of the civil society organisations are in fact located. The knowledge, experiences and insights on the subject of corporate accountability of these respondents proved vital in generating the necessary findings contained in the report and this was complimented and validated by extensive literature review interspersed throughout the report.

## **CHAPTER TWO**

### **AN OVERVIEW OF HUMAN RIGHTS DEFENDERS AND THEIR WORK ON CORPORATE ACCOUNTABILITY IN UGANDA**

#### **2.0 Introduction**

This chapter presents and explains the main principles and issues underpinning the concept and rationale of the protection of human rights defenders working on issues of corporate accountability. The human rights of many individuals and communities in Uganda have been adversely impacted by the activities of corporations, both multi-national and domestic business entities. It is therefore important to understand the nature, risks and challenges of the environment faced by human rights defenders working to hold both the state and non-state actors accountable in the context of business activities in Uganda. The chapter includes definition of human rights defenders, the sources of their legal mandate and the various contexts under which they work at local, national, regional and international levels.

Universally, under both international and domestic law, states are the principal duty-bearers. They bear the primary obligation to respect, protect and fulfil all human rights of people under their jurisdiction. Uganda joined the United Nations on 25 October 1962, just over two weeks after attaining formal political independence on 9 October 1962.<sup>4</sup> The country has since ratified a multiplicity of international, regional and sub-regional instruments providing for the promotion and protection of all categories of human rights standards. Several of these rights are specific to human rights defenders, the focus of this report.<sup>5</sup>

#### **2.1 Who is a Human Rights Defender?**

A human rights defender is any person who acts “individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms”<sup>6</sup> at the local, national, regional and international levels. Human rights defenders (HRDs) recognize the universality of human rights for all without distinction of any kind, and they defend human

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<sup>4</sup> See, “Member States” at <http://www.un.org/en/member-states/index.html#gotoU> (accessed 20 May 2017).

<sup>5</sup> See Chapter 3 of this report where most of these instruments are discussed in some details.

<sup>6</sup> See, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms [hereinafter the U.N Declaration on Human Rights Defenders], UN Doc. A/Res/ 53/144 (adopted without a vote by the UN General Assembly on 9 December, 1998).



rights by peaceful means. Human rights defenders who work on issues related to corporate accountability face both general and specific risks. In Uganda and elsewhere in the world, they are criminalised and attacked, intimidated or stigmatized not only by state actors but often also by powerful non-state actors including private multinational corporations, security firms, individuals and local business entities themselves.<sup>7</sup>

In defining human rights defenders, special mention is here made of women human rights defenders (WHRDs), who face specific risks and challenges based on gender, patriarchy, heteronormativity, gender-based violence and related stereotypes or violations in the course of doing their legitimate activities to eradicate discrimination, inequality and other types of human rights abuses in their societies.<sup>8</sup> Many instruments to protect women human rights defenders have been adopted at international and regional levels. They include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), among others.<sup>9</sup>

In 1998 the United Nations General Assembly (UNGA) adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms [hereinafter U.N Declaration on Human Rights Defenders].<sup>10</sup> The Declaration defines a human rights defender to be any person or group of persons who works to promote and protect any human right (or rights) in a peaceful way.<sup>11</sup> Therefore, the minimum standards required of any human rights defender is his or her acceptance of the universality of human rights and adherence to non-violent action. Human rights defenders are therefore men and women at the frontline of the human rights agenda founded on the principles and standards of the Universal Declaration of Human Rights

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<sup>7</sup> See generally, International Service for Human Rights (ISHR, 2015), *Human Rights Defenders and Corporate Accountability Human Rights Monitor*, A Special Edition produced for the U.N Forum on Business and Human Rights, November 2015, online at [www.ishr.org](http://www.ishr.org) (accessed 26 May 2017).

<sup>8</sup> See, African Commission on Human and Peoples' Rights, ACHPR (undated), *Report of the Study on the Situation of Women Human Rights Defenders in Africa*, (available online), Banjul, The Gambia, see also *infra* note 76, at 27.

<sup>9</sup> Uganda ratified the CEDAW on 22 July 1985 and the Maputo Protocol on 22 July 2010.

<sup>10</sup> See, the U.N Declaration on Human Rights Defenders, see *supra* note 6, at 8.

<sup>11</sup> See, the U.N Declaration on Human Rights Defenders, fourth preambular paragraph, see *supra* note 6, at 8.

(UDHR, 1948).<sup>12</sup> Briefly, human rights defenders defend the right to defend human rights.<sup>13</sup>

## 2.2 Corporate Accountability: A Vital Human Rights Concept and Approach

This report focuses on human rights defenders who work on issues of corporate accountability in Uganda. Understanding the work of human rights defenders to promote corporate respect for human rights and accountability for corporate-related violations is becoming ever more important. But what really is corporate accountability?

This concept is based on the belief that corporations have multiple responsibilities beyond just generating profit for their shareholders, usually termed corporate social responsibility. Such responsibilities include the negative duty to refrain from harm caused to the environment, individuals or communities and sometimes also positive duties to protect society in general, for example, by protecting human rights of workers and vulnerable communities affected by business activities.<sup>14</sup> But corporate social responsibility is not and cannot be equated to corporate accountability.

Corporate accountability goes beyond mere *social responsibility* or what some refer to as mere tokenism or voluntarism to more concrete or enforceable strategies of influencing corporate behaviour.<sup>15</sup> In this context, The United Nations Research Institute for Social Development (UNRISD) conceives of corporate accountability as including “proposals to establish institutional mechanisms that hold corporations to account rather than simply urging companies to improve standards or to report voluntarily.

Corporate accountability initiatives promote complaints procedures, independent monitoring, compliance with national and international law and other agreed standards, mandatory reporting and redress for malpractice”.<sup>16</sup>

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<sup>12</sup> The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948 is now rightly considered the foundation of the global human rights system and constitutes a significant part of international customary law.

<sup>13</sup> See, generally, Office of the High Commissioner for Human Rights (OHCHR, 2004), ‘Human Rights Defenders: Protecting the Right to Defend Human Rights’, Factsheet No. 29, United Nations, Geneva, available online at [www.ohchr.org/Documents/Publications/Factsheet29en.pdf](http://www.ohchr.org/Documents/Publications/Factsheet29en.pdf) (accessed 23 May, 2017).

<sup>14</sup> See, Friends of the Earth (2005), *Briefing: Corporate Accountability*, 26 -28 Underwood Street, London, N1, 7JQ.

<sup>15</sup> See, UCCA (2016), *The State of Corporate Accountability in Uganda Report*, especially Chapter Two on “Corporate Accountability in International Human Rights Law”; also see *infra* note 18, at 11.

<sup>16</sup> See, UNRISD, *Corporate Social Responsibility and Business Regulation*, UNRISD Research and Policy Brief 1, available online at [www.unrisd.org](http://www.unrisd.org) (accessed 12 July 2017). See also, OHCHR

Therefore, corporate accountability is concerned with responsiveness, meaningful stakeholder processes, including access to grievance and compliance mechanisms, transparency and social justice. Ultimately, the purpose of corporate accountability is to fill the implementation gap, to establish a business-society interaction and synergy in order to overcome poverty and create social justice and equitable development.<sup>17</sup> In many ways, corporate accountability is a potent strategy against the phenomenon of state capture - the undue influence exerted by multinational corporations on government institutions and its officials thus leading to human rights violations and environmental degradations.

In the last two decades Uganda has witnessed an unprecedented increase in foreign direct investment (FDI) and actual economic activity by both multinational corporations and local business enterprises in its economy.<sup>18</sup> It is therefore opportune that civil society activists examine the issue of corporate accountability in order to combat impunity for human rights violations<sup>19</sup>, and to become more responsive to the challenges of economic globalization and to the inevitable weakening of the regulatory capacity of States.<sup>20</sup>

The UN Declaration on Human Rights Defenders and other instruments outlined above therefore articulate the ways in which existing human rights law should be applied to protect the rights and legitimate work of human rights defenders in the corporate and business environments and the obligations of States as the principal duty-bearers in this respect. These standards do not create new or special rights for human rights defenders, but rather acknowledge the vital role defenders play, and the unique risks they face, which require specific legislative and policy responses by Uganda (and other

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Accountability Remedy Project: Companion document to A/HRC/32/19 and A/HRC/32/19/Add.1, 5 July 2016.

<sup>17</sup> See, generally, OXFAM (2014), *Oxfam Novib Strategy Paper on Corporate Accountability*, November 2014. See also, OHCHR (2016), "Improving accountability and access to remedy for victims of business-related human rights abuse", A/HRC/32/19, Thirty-second session, United Nations, 10 May 2016.

<sup>18</sup> See generally, Uganda Consortium on Corporate Accountability (UCCA, 2016), *The State of Corporate Accountability in Uganda: A Baseline Study Report for the Uganda Consortium on Corporate Accountability*, Kampala, Uganda.

<sup>19</sup> See, for instance, Henry Lubulwa, "Kalangala Farmers Petition Bidco", in *Daily Monitor*, Wednesday 17<sup>th</sup> February, 2016 at <http://www.monitor.co.ug/News/National/Kalangala-farmers-petition-UNDP-over-Bidco/688334-3079652-10dlfmwz/index.html> (accessed 20 May, 2017) or Stephen Wandera, "80 Workers Poisoned at Flower Farm", in *Daily Monitor*, Tuesday 26<sup>th</sup> October 2016, at <http://www.monitor.co.ug/News/National/80-workers--poisoned--flower-farm/688334-3429004-15fhnkz/index.html> (accessed 20 May 2017).

<sup>20</sup> See generally, FIDH (May, 2016), *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*, available online at <https://www.fidh.org/en/> (accessed 21 May 2017).

countries) to ensure that these individuals or their organisations are able to work in an environment where their rights are protected.<sup>21</sup>

## 2.3 The Rights of Human Rights Defenders

The rights and protections accorded to human rights defenders are contained in articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration on Human Rights Defenders.<sup>22</sup> While this list is not exhaustive, these rights include the following, among others:

**Table 1: The Rights of Human Rights Defenders**

<b>The Rights of Human Rights Defenders</b>
<ul style="list-style-type: none"> <li>• The right to conduct human rights work individually and in association with others;</li> <li>• The right to make complaints about official policies and acts relating to human rights and to have such complaints reviewed;</li> <li>• The right to be protected (including the right to life)</li> <li>• The right to freedom of assembly</li> <li>• The right to freedom of association</li> <li>• The right to freedom of opinion and expression</li> <li>• The right to protest</li> <li>• The right to solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).</li> <li>• The right to unhindered access to and communication with non-governmental and intergovernmental organizations;</li> <li>• The right to attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;</li> <li>• The right to an effective remedy</li> <li>• The right to develop and discuss new human rights ideas</li> <li>• The right to access and communicate with international bodies</li> </ul>

<sup>21</sup> See, UN Special Rapporteur on the Situation of Human Rights Defenders, 'Commentary on the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, available <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytotheDeclarationondefenders>, July, 2011, (accessed 23 May, 2017).

<sup>22</sup> See, U.N Declaration on Human Rights Defenders, *supra* note 6, at 8.

*Source: UN Declaration on Human Rights Defenders, 1998.*

Although defending human rights should be one of the most universally cherished and honoured vocations, it is instead one of the most reviled and dangerous occupations to do, including in Uganda. In many parts of the world, some defenders have been harassed or intimidated; some arrested and imprisoned without trial; some forced into hiding or exile; and some have paid the ultimate price: loss of life. To this end, the UN Special Rapporteur on Human Rights Defenders (UNSR) has emphasized nine main elements that States must provide for defenders in order for them to operate in a safe and enabling environment. These elements include the following:<sup>23</sup>

## **2.4 Human Rights Defenders in the Corporate Sector are Necessary in Uganda**

The active involvement of individuals, peoples, groups, organizations and institutions in the corporate sector is essential to ensure continuing progress towards the fulfilment of international human rights in Uganda. Civil society in general and human rights defenders in particular assist States to ensure full respect for human rights, fundamental freedoms, democracy and the rule of law. Accordingly, human rights defenders perform important and legitimate functions in democratic societies.<sup>24</sup> State authorities should respect that dissenting views may be expressed peacefully in democratic societies and should publicly acknowledge the important and legitimate role of human rights defenders.<sup>25</sup>

In comparative terms, the knowledge, experience and effectiveness of Ugandan human rights defenders working on issues of corporate accountability is still in its formative stages. The pioneer project on economic, social and cultural rights was implemented by Human Rights Network-Uganda (HURINET), a prominent national NGO, only in 2007<sup>26</sup>. The Uganda Consortium on Corporate Accountability (UCCA) that brings together some key efforts among civil society actors on corporate accountability, was only born in 2015.<sup>27</sup>

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<sup>23</sup> See, UN Special Rapporteur on the Situation of Human Rights Defenders, Report of the Special Rapporteur on the Situation of Human Rights Defenders, U.N. Doc. A/HRC/25/55 [Margaret Sekaggya, 23 Dec., 2013], available online at <http://www.ohchr.org/EN/HRBodies> (accessed 28 April, 2017).

<sup>24</sup> See, generally, OHCHR, *Factsheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (accessed 12 July 2017).

<sup>25</sup> See, UN Declaration on Human Rights Defenders, see *supra* note 6, at 8.

<sup>26</sup> The pioneer officer in charge of the implementation of HURINET's original project on economic, social and cultural rights (ESCR) was Gerald Tushabe, from June 2007 – Oct. 2009.

<sup>27</sup> The UCCA is a coalition of key civil society organisations consisting of the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic (PILAC) at Makerere University Law

It is no surprise, therefore, that when African human rights defenders formed the first continental body on corporate accountability in Ghana in 2013, Ugandan human rights defenders or their organisations were conspicuously absent from the founding membership.<sup>28</sup>

## 2.5 Everyone can (and should) be a Human Rights Defender

From the preceding section, it is clear that there is no limitation on who can or cannot be a human rights defender. Defenders can be “individuals, groups and associations....contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.<sup>29</sup> Therefore, the categorization of human rights defenders is very broad: they “can be any person or group of persons working to promote human rights, ranging from intergovernmental organisations based in the world’s largest cities to individuals working within their local communities”.<sup>30</sup>

In Uganda, human rights defenders include a wide array of individuals and organisations working individually and collectively to defend all categories of human rights, as this report clearly indicates. This report focuses on human rights defenders working on issues of corporate accountability, monitoring and holding accountable both the state and non-state actors accountable in the field of business and human rights. The UN Declaration on Human Rights Defenders (1998) recognises especially the legitimate work of individuals, groups and associations who work to protect economic, social and cultural rights in general and to eliminate human rights violations “resulting from “the refusal to recognize the right of (...) every people to exercise full sovereignty over its wealth and natural resources”.<sup>31</sup> In this wide field of activity, specific definitions include land rights defenders and environmental rights defenders.<sup>32</sup>

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School, the Legal Brains Trust (LBT) and the Center for Health, Human Rights and Development (CEHURD).

<sup>28</sup> Amongst the East African countries, only Ugandan civil society organisations were not represented at the founding meeting of the African Coalition for Corporate Accountability (ACCA) and launch of their Declaration on 27 November 2013 in Accra, Ghana, see *infra* note 79, at 27.

<sup>29</sup> UN Declaration on Human Rights Defenders, preambular para. 4, see *supra* note 6, at 8.

<sup>30</sup> See, Office of the High Commissioner for Human Rights (OHCHR, 2004), ‘Human Rights Defenders: Protecting the Right to Defend Human Rights’, *Factsheet No. 29*, United Nations, Geneva, p. 6.

<sup>31</sup> UN Declaration on Human Rights Defenders, preambular para. 4, see *supra* note 6, at 8.

<sup>32</sup> The Observatory for the Protection of Human Rights Defenders (2014) defines *land rights defenders* as “those individuals, groups or organs of society who seek to promote and protect land-related human rights, in particular through peacefully confronting adverse impacts of investment projects” (p. 8) while the UN Special Rapporteur on Human Rights Defenders (2016) defines *environmental rights defenders* as “individuals or groups who, in their personal or professional capacity and in a peaceful manner, strive to promote and protect human rights relating to the environment, including water, air, land, flora and fauna” (p. 4).

Despite the daily challenges human rights defenders encounter in their work, their determination and resilience is undaunted. This report is an appeal to all Ugandans to join the noble cause of defending their own rights and the rights of their fellow Ugandans.

## **2.6 Human Rights Defenders in the Business Environments Need Protection**

Human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. According to the Uganda Human Rights Commission, HRDs continue to face risks such as arbitrary arrests, harassments, intimidation, threats, killings, detention, torture, defamation, suspension from their employment, denial of freedom of movement and difficulty in obtaining legal recognition for their association and failure of the State to prosecute those who have violated their rights.

Similarly, the Public Order Management Act (2013) and the Non-Governmental Organizations Act (NGO Act) 2016<sup>33</sup>, among others, limit legitimate activities of HRDs. In particular, some provisions in the NGO Act and subsequent regulations are vaguely worded and prone to be used to clamp down on legitimate activities by NGOs, individuals and civil society in general.<sup>34</sup> In addition, the NGO Act restricts civil society organisations from engaging in activities deemed to be “prejudicial to the security, interests or dignity of the people of Uganda” but does not give specific definitions of these terms. These laws continue to undermine the work of HRDs and the enforcement of these laws by the police has led to cases of abuse, torture and ill-treatment, malicious prosecution, emotional and psychological distress on HRDs.<sup>35</sup> Therefore, the HRDs need specific and enhanced protection at local, national, regional and international levels.

## **2.7 The Nature of State Obligations to Defend Human Rights in Corporate Environment**

The primary responsibility for the protection of human rights defenders rests with States. Uganda has ratified the major human rights treaty relevant to

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<sup>33</sup> The NGO Act came into force on 14 March 2016.

<sup>34</sup> See, for instance, Amnesty International: *Urgent Action – University Lecturer Must be Released* (UA: 89/17 Index AFR 59/6060/2017 Uganda), 19 April 2017, in regard to the arrest, detention and prosecution of Dr. Stella Nyanzi on charges of insulting the president on her social media platforms under the Computer Misuse Act of 2011.

<sup>35</sup> See, “Working Environment of Human Rights Defenders in Uganda in 2014” in *The 17<sup>th</sup> Annual Report to the Parliament*, Uganda Human Rights Commission (2015), Kampala, p. 121 -129. See also, Amnesty International: *Annual Report (2016/2017), Uganda*, at [www.amnesty.org](http://www.amnesty.org) (accessed 20 June 2017).

corporate responsibility, notably the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>36</sup> Rights often invoked in the context of business and corporate accountability include: the right to an adequate standard of living (ICESCR Art. 11); the right to just and favourable conditions of work (ICESCR Art. 7); the right to join trade unions and the right to strike (ICESCR Art. 8); and the right to health (ICESCR Art. 12). In June 2017 the UN Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment 24 that further expounds the obligations of states and non-state actors to respect, protect and fulfil human rights in the context of business activities.<sup>37</sup>

Therefore, the government has both positive and negative obligations with regard to the protection of the rights of human rights defenders working on issues of corporate accountability. In line with Uganda's duties under international law according to which the country must respect, protect and fulfil human rights – The Government of Uganda has an obligation to:

- a. refrain from any acts that violate the rights of human rights defenders because of their human rights work;
- b. protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so; and
- c. take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend human rights.<sup>38</sup>

## **2.8 Accountability of Non-state Actors to Protect Human Rights**

While states have a duty to protect human rights defenders from abuses by non-state actors, the latter can play an important role towards the realization of the rights of human rights defenders. Non-state actors, particularly multinational corporations and business enterprises, should respect and recognize the rights of human rights defenders and be guided by international human rights norms in carrying out their activities.<sup>39</sup> States should hold the

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<sup>36</sup> Uganda ratified the ICESCR on 21 January 1987, but has yet to accept the Optional Protocol, see also *infra* note 58, at 22.

<sup>37</sup> E/C.12/GC/24/ (General Comment No. 24), on "State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities", released on 23 June 2017, see *infra* note 39, at 16.

<sup>38</sup> See, generally, the UN Declaration on Human Rights Defenders, *supra* note 6, at 8.

<sup>39</sup> E/C.12/GC/24/ (General Comment No. 24), on "State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities", released on 23 June 2017, see also *infra* note 55.



business entities accountable and should do so in accordance with both domestic and international legal procedures and standards.<sup>40</sup>

Principle 17 of the UN Guiding Principles on Business and Human Rights deals with the issue of human rights due diligence. It provides that corporations and other business entities should constantly conduct due diligence measures in all their activities in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. There are significant violations on record committed by multinational corporations in the extractive sector on individuals or entire communities in the Albertine Graben, Karamoja and other regions of the country.<sup>41</sup> Strict adherence to due diligence requirements by government and all stakeholders in the context of business activities would go a long way in ensuring effective corporate accountability in Uganda. Unfortunately, Uganda has not yet incorporated due diligence as provided under Principle 17 into domestic law. It is vital that Uganda develops specific legal requirements for human rights due diligence in the context of business activities.

## 2.9 A Safe and Conducive Environment to Empower Human Rights Work

Effective protection of the dignity, physical and psychological integrity, liberty and security of human rights defenders is a pre-requisite for the realisation of the right to defend human rights. Furthermore, a safe and enabling environment requires the realisation of a variety of other fundamental human rights that are necessary to carry out human rights work, including the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, freedom of movement, the right to private life and the right to unhindered access to and communication with international bodies, including international and regional human rights mechanisms.<sup>42</sup>

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<sup>40</sup> See, OHCHR (2012), *Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, Geneva, United Nations; also, OSCE/ODIHR (2014), *Guidelines on the Protection of Human Rights Defenders*, OSCE/ODIHR, Warsaw, Poland.

<sup>41</sup> See especially, Uganda Consortium on Corporate Accountability (UCCA, 2016), "Chapter 5: The Impact of Corporations on Ugandan Communities", in *The State of Corporate Accountability in Uganda: A Baseline Study Report for the Uganda Consortium on Corporate Accountability*, Kampala, Uganda, p. 67-87. Also, Human Rights Watch (2014), "How can we Survive Here?": *The Impact of Mining on Human Rights in Karamoja, Uganda*, USA; see also CRED et al (2015), "Up Against Giants": *Oil-influenced land injustices in the Albertine Graben in Uganda*, Kampala, Uganda.

<sup>42</sup> See generally, Chapter 4 of Uganda's 1995 Constitution. The only 'third generation' right explicitly recognised in the constitution is Article 39, the right to a clean and healthy environment, see *infra* note 148, at 41.

**Table 2: Elements of a Safe and Enabling Environment for HRDs****Elements of a Safe and Enabling Operating Environment for HRDs**

- Conducive legal, institutional and administrative framework;
- Fight against impunity and for access to justice for violations against defenders;
- Strong, independent, and effective national human rights institutions;
- Effective protection policies and mechanisms, including public support for the work of defenders;
- Special attention for risks and challenges faced by women defenders and those working on women's rights and gender issues;
- Non-state actors' respect for and support of the work of defenders;
- Safe and open access to the UN and international human rights bodies;
- Strong, dynamic and diverse communities of human rights defenders.

*Source: UN Special Rapporteur on Human Rights Defenders, 2013.*

## **2.10 An Enabling Legal, Policy, Administrative and Institutional Framework**

Domestic legal, administrative and institutional mechanisms should contribute to creating and consolidating a safe and enabling environment, in which human rights defenders are protected, supported and empowered to carry out their legitimate activities. Domestic laws, regulations, policies and practices must be compatible with United Nations, African Union and East African Community commitments and human rights standards. They must be sufficiently precise to ensure legal certainty and prevent them from being arbitrarily applied. The institutional framework must guarantee the fundamental principle of fairness and due legal process.

As this and other reports indicate, the frenzied pace of oil-influenced development particularly in the Albertine Graben region has had an adverse impact on the rule of law, contributing to a state of lawlessness and impunity perpetrated by powerful officials in government and local businesses and multi-national corporations (CRED, 2015; UCCA, 2016; HRW, 2014). This situation reflects the growing and troubling reality of corporate capture in Uganda. Corporate capture is where the economic elite working in conjunction with the ruling or political elite in a country undermine or pervert the realisation of

socio-economic and environmental rights by exerting undue influence over domestic and international decision-makers and institutions.<sup>43</sup>

Some of the most visible manifestations of corporate capture in Uganda include land grabbing and the resultant manipulation of communities over the rampant land eviction incidents in many parts of the country, the extensive use of security forces (especially the army) to protect investors or evict communities, as well as the undue judicial, legislative and policy interference by the executive organs of the State. The adverse consequences of the Government of Uganda putting the interests of multinational corporations before the interests of its own people are enormous. In many ways, these results are validated by incidents highlighted below and other findings of this report.<sup>44</sup> Human rights defenders working on corporate accountability need to take keen interest in monitoring the issue of corporate capture and design effective strategies to address it.

In the central region, over 80 workers at the Royal Van Zanten flower farm in Wakiso were poisoned due to negligence of the flower farm and required extensive medical treatment, in addition to extensive violation of their labour rights.<sup>45</sup> On 18 August 2001, over 4,000 people were forcefully evicted by the Uganda People's Defence Forces (UPDF) from their land in the villages of Kitemba, Luwunga, Kijunga and Kiryamakobe in Mubende and their land of approximately 2,524 hectares was leased by the Government of Uganda to Kaweri Coffee Factory Ltd, a subsidiary of the Neumann Kaffee Gruppe (NKG), based in Hamburg, Germany. Despite the 2013 High Court ruling<sup>46</sup> in favour of the affected communities, as well the United Nations Committee on Economic, Social and Cultural Rights recommendations<sup>47</sup> urging the government to respect the rights of the evictees and ensure compensation or

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<sup>43</sup> See, generally, "Corporate Capture Project" available online at <https://www.escr-net.org/corporateaccountability/corporatecapture> (accessed on 10 September 2017). See also "The Nexus Between Workers' Rights, Bilateral Investment Treaties and Human Rights Defenders", at p. 19.

<sup>44</sup> See Chapter Four of this report for a discussion of various manifestations of corporate capture in the findings.

<sup>45</sup> See, UCCA (2 November 2016), "Press Release on Labour Rights in Uganda"; SEATINI (1 November 2016), "Urgent Need to Review the Investment Code and the Uganda – Netherlands Bilateral Investment Treaty" and LASPNET (9 November, 2016), "LASPNET Press Statement: Protection of Workers and Human Rights Defenders from Intimidation!!" Kampala, Uganda.

<sup>46</sup> *Baleke Kayira Peter & Others v Attorney General and Others*, Civil Suit No. 179 of 2002 (Kaweri case). On 21 July, 2015 the Court of Appeal in Kampala set aside the judgment of 28. March, 2013 by Justice Choudry Singh in its entirety and ordered a retrial at the High Court.

<sup>47</sup> E/C.12/UGA/CO/1 Committee on Economic, Social and Cultural Rights: Concluding Observations on the Initial Report of Uganda. (para. 12 –land rights; para. 13 –indigenous peoples; para. 14 –extraction activities; para. 30 –forced evictions) adopted by the Committee at its fifty-fifth session (1 -19 June 2015).

restitution of property destroyed, over 396 families are still waiting for redress, while shouldering over 15 years of a grueling legal process.<sup>48</sup>

On 4 August 2017, over 50,000 artisanal miners in the gold mining sites in Kitumbi and Bukuya sub counties were evicted by the army (UPDF) and Police after a protracted struggle to have their rights respected and livelihoods protected.<sup>49</sup> In August 2016, over 130 families totaling almost 1,000 people in Chawente sub-county, Apac District and the outlying villages of Imeng, Ajar, Te-opok and Okwir were forcefully evicted from their customary land measuring approximately 1,165,419 hectares by the Micro Finance Support Center Limited in cahoots with the Lango Cooperative Union (LCU) Limited.<sup>50</sup> In Apaa areas in Amuru District, land wrangles involving fierce clashes continue to simmer between the local Acholi and Madi communities in the neighbouring Adjumani District.<sup>51</sup>

### Table 3: The Nexus between Workers' Rights, Bilateral Investment Treaties and Human Rights Defenders

#### Eighty four (84) Workers Poisoned at Royal Van Zanten Flower Farm in Wakiso District, Oct. 2016

The poisoning of 84 Ugandan workers most of them women, at a flower farm owned and managed by a foreign company in Wakiso District exemplifies the nexus between government's cavalier attitude to its legal obligations under international human rights law, dismal labour rights and standards, lopsided bilateral investment treaties and the risks human rights defenders face in confronting the *status quo*. The Royal Van Zanten Ltd. is an international company based in the Netherlands dealing in the production and export of cut flowers, with production sites in Uganda. 84 workers at the Royal Van Zanten flower farm in Wakiso district were on 21 October 2016 poisoned as a result of exposure to a poisonous chemical (Metam sodium). Exposure to this

<sup>48</sup> See, Wake Up and Fight for Your Rights Madudu Group, available online at <http://www.fian.org/en/what-we-do/case-work/uganda-mubende/> (accessed 10 August 2017).

<sup>49</sup> See, "Mubende gold miners given a two hours ultimatum to vacate the mines", available online at <http://www.oilinuganda.org/news-links/mubende-gold-miners-given-a-two-hours-ultimatum-to-vacate-the-mines.html> (accessed 10 August 2017).

<sup>50</sup> Civil Suit No. 076 of 2011, *Lango Cooperative Union Limited v. Among Agnes and 130 Others* and Civil Suit No. 010 of 2014, *Microfinance Support Centre v. LCU & Ors*.

<sup>51</sup> See, "Action Aid Calls for Action on Land Conflicts in Uganda", a press conference briefing held at Action Aid Uganda offices in Kampala on Friday 16 June, 2017, see *infra* note 176, at 56.

pesticide causes allergic dermatitis and respiratory allergy, and in the long term cancer and mental illness. In addition to the low pay, the workers either do not have protective gear or wearing it is not strictly enforced.

Under the Uganda Investment Code Act 2000 which is under review and specifically with regard to investments from the Netherlands under the Uganda – Netherlands Bilateral Investment Treaty (BIT), signed on 30 May 2000 and came into effect 1st January 2003, it is pertinent to note that both the Investment Code Act and the Uganda –Netherlands BIT do not effectively address issues of workers' rights. However, under international human rights treaties ratified by both Uganda and the Netherlands, it is imperative that investors and business enterprises are obliged to observe minimum human rights, environmental and labour standards.

Various civil society organisations openly expressed concern or actively intervened to assist the poisoned workers. They included the Uganda Horticultural Industrial Services Provider and Allied Workers Union (UHISPAWU), the Uganda Association of Women Lawyers (FIDA), Akina Mama wa Africa, Solidarity Uganda, Legal Aid Service Providers Network (LASPNET), Action Aid Uganda and Uganda Consortium on Corporate Accountability (UCCA). They protested against the mistreatment and exploitation of the farm workers, most of whom are women. However, these positive efforts were met with intimidation and public attacks. The Minister of Trade, Industry and Cooperatives, Hon. Amelia Kyambadde described what had happened at the farm as an isolated incident. She subsequently made personal attacks on individual human rights defenders, calling their intervention a negative campaign by self-seeking individuals designed to put pressure on the flower farms to get out of business.

On 8th November 2016, the Minister and representative of Royal van Zanten company took a decision to go to Kadic Hospital in Ntinda with an intention of removing the patients from there to Mulago Hospital. But FIDA and the UHISPAWU moved fast to the hospital venue to avert this decision. Their presence apparently attracted discomfort from the NOTU Secretary General Peter Werikhe, who verbally abused and physically threatened the CEO of FIDA-Uganda. All this compounds the general and specific violations in the context of business activities and lack of respect for human rights defenders coupled with outright impunity by persons in key positions of government.

See Footnote # 45, p. 19.

## 2.11 Conclusion: Standards and Principles for the Protection of Human Rights Defenders in the Context of Business Activities.

In the above cases and numerous incidents across the country, human rights defenders working to ensure corporate accountability of both the State and non-state actors have faced various risks and challenges in the course of fulfilling their rightful role. It is upon this background therefore, that this study was conducted to understand the various dimensions of the situation that HRDs face while working in the context of business activities. *Inter alia*, any limitations placed on the legitimate work and activities of human rights defenders must have a formal basis in law as well as be necessary in a democratic society. To this end, the principles of legality, necessity and proportionality of any limitations on fundamental rights in connection with human rights work must always be respected by Uganda's State institutions and other non-state actors. In addition to the UN Declaration on Human Rights Defenders,<sup>52</sup> the UN Guiding Principles on Business and Human Rights, the UN Global Compact on Corporate Responsibility Standards (CRS), UN Sustainable Development Goals (SDGs), the European Guidelines on Human Rights Defenders (2004)<sup>53</sup>, the African Union *Agenda 2063*<sup>54</sup>, the UN Basic Principles and Guidelines on Development-based Evictions and Displacement<sup>55</sup> as well as the African Commission Resolutions on Human Rights Defenders,<sup>56</sup> among several others, should be domesticated in order to fully respect, promote and fulfil the rights of human rights defenders working on issues corporate accountability and business in the country.

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<sup>52</sup> See, U.N Declaration on Human Rights Defenders, see *supra* note 6, at 8.

<sup>53</sup> See, European Union, *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, 14 June, 2004, available at: <http://www.refworld.org/docid/4705f6762.html> (accessed 11 May 2017).

<sup>54</sup> The African Union *Agenda 2063* is a plan conceived during the 50<sup>th</sup> anniversary of the AU in 2013 in Ethiopia and focuses on economic development, unity, peace and prosperity in Africa for the next 50 years.

<sup>55</sup> UN Special Rapporteur on Adequate Housing (Annex I of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, (A/HRC/4/18).

<sup>56</sup> See, African Commission on Human and Peoples' Rights, 'Resolution on the Protection of Human Rights Defenders in Africa', adopted at the 35<sup>th</sup> Ordinary Session held from 21 May – 4<sup>th</sup> June, 2004 in Banjul, The Gambia.

## **CHAPTER THREE**

# **THE LEGAL, POLICY AND INSTUTIONAL FRAMEWORK FOR HUMAN RIGHTS DEFENDERS WORKING ON CORPORATE ACCOUNTABILITY IN UGANDA**

### **3.0 Introduction**

This chapter presents an overview of the main legal, policy and institutional mechanisms or framework for the promotion and protection of human rights defenders working in the context of business and human rights at the international, regional, sub-regional and national levels. Beyond the acquisition of knowledge about the legal, policy and institutional mechanisms available for the promotion and protection of human rights defenders, it is important that these mechanisms are effectively utilised by HRDs in Uganda. There is robust and continuously evolving legal framework for the promotion and protection of human rights defenders at all these levels.<sup>57</sup>

This protection framework is applicable to Uganda and is enshrined in both binding and non-binding instruments that have been adopted by the United Nations at the global level, by the African Union and the European Union at the regional level, by the East African Community at the sub-regional level, and finally by Ugandans at the national level. States, Uganda inclusive, are obliged to ratify and domesticate these instruments and standards in order to create a favourable working environment for human rights defenders for them to effectively fulfill their mandate. Uganda has ratified a multiplicity of these instruments that provide and guarantee the rights of HRDs.<sup>58</sup> The important question, however, is to what extent these standards are known by HRDs, the individuals and communities being adversely impacted or the government authorities meant to enforce them.<sup>59</sup>

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<sup>57</sup> See for instance, E/C.12/GC/24/ (General Comment No. 24), on “State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities”, released on 23 June 2017.

<sup>58</sup> Uganda has a fairly commendable record of joining international human rights instruments. Except for the Convention against Enforced Disappearance – to which Uganda has to date only signed (in 2007) but is yet to ratify, and several protocols, notably, the Optional Protocol to the ICESCR; the Second Optional Protocol to the ICCPR; and the Optional Protocol to the CEDAW, Uganda has ratified all the core human rights instruments under both the UN (mainstream) and ILO (labour) treaty systems, see *supra* note 36, at 15.

<sup>59</sup> See Chapter Four of this report for a discussion of this aspect as it relates especially to human rights defenders.

### 3.1 International Framework on Human Rights Defenders in the Context of Business Activities

Uganda has ratified all the major legally binding human rights instruments providing for the rights of everyone, including rights of human rights defenders working on issues of corporate accountability and business. These include the United Nations Convention Against Corruption (UNCAC),<sup>60</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>61</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>62</sup>, International Labour Organisation Conventions,<sup>63</sup> among others. The United Nations system provides extensive protection mechanisms for human rights defenders working on issues of corporate accountability.<sup>64</sup> Uganda has committed to respect, promote and protect the human rights of its citizens in the extractive sector (oil, gas and other minerals/natural resources) by not only ratifying the above international legally binding instruments, but also agreeing to implement relevant “soft law” policy guidelines.<sup>65</sup>

The UN Guiding Principles on Business and Human Rights<sup>66</sup>, provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. States have a duty to respect, protect and fulfil the human rights of their citizens through appropriate legislative, administrative, budgetary and judicial measures. States are obliged to protect all their citizens, including HRDs, against human rights abuses by third parties, including local and international business corporations engaged in the oil, gas, mining, agriculture and related activities. To this end, Uganda is required to establish appropriate policies, laws, regulations and effective judicial and non-judicial remedies to

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<sup>60</sup> The United Nations Convention Against Corruption (UNCAC) was adopted by the United Nations General Assembly on 31 October 2003, by Resolution 58/4, and entered into force on 14 December 2005, in accordance with article 68(1) of the treaty. Uganda signed the UNCAC on 9 December 2003 and ratified it on 9 September 2004, see *infra* note 78, at 27.

<sup>61</sup> Uganda ratified the ICCPR on 21 June 1995 and the First Optional Protocol (on individual complaints procedure) on 14 November 1995. Uganda is, however, yet to ratify the ICCPR Second Optional Protocol (on the abolition of the death penalty).

<sup>62</sup> Uganda ratified the ICESCR on 21 January 1987 but has not yet accepted the individual complaint procedure under the Optional Protocol (CESCR –OP).

<sup>63</sup> Uganda joined the ILO treaty system in 1963 and has to date ratified 30 ILO Conventions, see also *infra* note 147, at 41.

<sup>64</sup> See, General Comment No. 24, see *supra* note 57, at 22.

<sup>65</sup> See generally, Uganda Consortium on Corporate Accountability (UCCA, 2016), *The State of Corporate Accountability in Uganda: A Baseline Study Report for the Uganda Consortium on Corporate Accountability*, Kampala, Uganda, p. 9 -19; see also, UHRC (2013), *The 16<sup>th</sup> Annual Report*, p. 204 -219.

<sup>66</sup> The UN Guiding Principles on Business were endorsed by the Human Rights Council on 16 June 2011.



make the rights enshrined in the national, regional and international instruments a reality in the daily lives of all its citizens, foremost among them the HRDs.<sup>67</sup>

The UN Guiding Principles are now the authoritative universal reference point on business and human rights. The principles are based on the three pillars of the United Nations “Protect, Respect and Remedy Framework” that recognise the distinct but complimentary roles of States and business in respecting and protecting human rights in their activities, including the exercise of due diligence.<sup>68</sup> The three pillars of the UN Guiding Principles are:

- the **State duty to protect** against human rights abuses by third parties, including business enterprises, through effective policies, legislation, regulations and adjudication;
- the **corporate responsibility to respect** human rights, that is, companies and business enterprises should avoid violating the rights of others and avoid negative impacts of their activities;
- the need for greater **access to effective remedy** for victims of corporate-related abuses through both judicial and non-judicial means.<sup>69</sup>

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<sup>67</sup> See, UHRC (2013), *The 16<sup>th</sup> Annual Report to the Parliament*, Chapter 9: “Human Rights Implications of Oil Exploration Activities in the Albertine Region”, Kampala, Uganda, p. 204 – 219.

<sup>68</sup> See, OHCHR (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect and Remedy” Framework*, United Nations, New York & Geneva, p. 19.

<sup>69</sup> See generally, OHCHR (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, United Nations, New York & Geneva; see also John Ruggie, “Protect, Respect and Remedy: A Framework for Business and Human Rights”, Report of the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, United Nations, Spring, 2008.

**Table 4: The 3-Pillar Framework of Business and Human Rights**

State Duty to Protect	<ul style="list-style-type: none"> <li>• Policies</li> <li>• Regulation</li> <li>• Adjudication</li> </ul>
Corporate Responsibility to Protect	<ul style="list-style-type: none"> <li>• Act with due diligence to avoid infringement</li> <li>• Address adverse impacts on human rights</li> </ul>
Access to Remedy	<ul style="list-style-type: none"> <li>• Effective access for victims</li> <li>• Judicial and non-judicial</li> </ul>

Source: OHCHR (2013), *Introduction to Guiding Principles on Business and Human Rights*, p. 11

Other relevant policy framework on corporate accountability include the Declaration on the Right to Development (1986), the Rio Declaration on Environment and Development (1992), the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability (2012), the UN Global Compact (1999), the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Tripartite Declaration, 1977), the Voluntary Principles on Security and Human Rights (2000). The main objective of the Voluntary Principles is to provide guidance for businesses in the extractive industry (mainly oil, gas and mining) on maintaining security and respect for human rights throughout their operations. The principles were created as a direct response to abuses perpetrated by private guard companies and security services in countries such as Nigeria, Ghana and Democratic Republic of Congo, among others.<sup>70</sup>

On its part, the UN Global Compact makes explicit reference to human rights, and calls upon businesses to support and respect internationally proclaimed human rights within their spheres of influence and to make sure that they are not complicit in human rights abuses. It then identifies four labour principles, three environmental standards and one principle relating to corruption, bribery and extortion that it asks businesses to promote and commit to implementing. The UN Global Compact has no enforcement mechanisms. Instead, it is

<sup>70</sup> See, FIDH (International Federation for Human Rights, May 2016), *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*, 3<sup>rd</sup> Edition, FIDH (available online at [www.fidh.org](http://www.fidh.org)), p. 554.

promoted primarily through policy dialogues between business, labour and NGOs, by encouraging companies to report on their activities; facilitating local networks; and supporting partnerships between companies, the UN agencies and civil society organisations.<sup>71</sup>

The ten principles of the UN Global Compact emphasize the fact that corporate sustainability starts with a company's value system and a principled approach to doing business. This means operating in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. By incorporating the Global Compact principles into strategies, policies and procedures, and establishing a culture of integrity, companies are not only upholding their basic responsibilities to the environment, people, communities and planet, but also setting the stage for long-term success and sustainability.<sup>72</sup>

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<sup>71</sup> See, UCCA (September, 2016), p. 17.

<sup>72</sup> The UN Global Compact principles are derived from the existing human rights framework, particularly the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the United Nations Convention Against Corruption.

**Table 5: The UN Global Compact Principles**

Human Rights	<p><b>Principle 1:</b> Businesses should support and respect the protection of internationally proclaimed human rights;</p> <p><b>Principle 2:</b> make sure they are not complicit in human rights abuses.</p>
Labour	<p><b>Principle 3:</b> Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;</p> <p><b>Principle 4:</b> the elimination of all forms of forced and compulsory labour;</p> <p><b>Principle 5:</b> the effective abolition of child labour;</p> <p><b>Principle 6:</b> the elimination of discrimination in respect of employment and occupation.</p>
Environment	<p><b>Principle 7:</b> Businesses should support a precautionary approach to environmental challenges;</p> <p><b>Principle 8:</b> undertake initiatives to promote greater environmental responsibility;</p> <p><b>Principle 9:</b> encourage the development and diffusion of environmentally friendly technologies</p>
Anti-corruption	<p><b>Principle 10:</b> Businesses should work against corruption in all its forms, including extortion and bribery.</p>

Source: *UN Global Compact Principles*.

### 3.2 Regional Framework on Human Rights Defenders in the Context of Business Activities

In 2002, the African Union (AU) succeeded the Organisation of African Unity (OAU) as the overarching political arrangement under whose auspices the

African regional human rights system operates.<sup>73</sup> The foundational legal instrument of the African human rights system, to which Uganda is a party, is the African Charter on Human and Peoples' Rights (ACHPR, 1986) that Uganda ratified on 10 May 1986.<sup>74</sup> Article 24 of the ACHPR explicitly provides for the right to a clean environment favourable for sustainable development. Uganda has also ratified the 1968 African Convention on the Conservation of Nature and Natural Resources, but has not yet ratified the 2003 revised and updated version of the treaty.

In 2011 the African Commission adopted a resolution on the protection of HRDs,<sup>75</sup> and followed it up in 2016 with yet another resolution that focuses on the protection of women human rights defenders.<sup>76</sup> Significantly for human rights defenders working on issues of corporate accountability, the African Union in 2003 adopted the African Union Convention on Preventing and Combating Corruption.<sup>77</sup> This anti-corruption instrument provides an important regional legal machinery that seeks to eradicate rampant corruption in Africa's public and private sectors. It represents a consensus on what African countries must do in the areas of prevention, criminalisation, international cooperation and asset recovery. Its provisions criminalise domestic and foreign bribery, diversion of property by public officials, influence peddling, illicit enrichment, money laundering and concealment of property. The instrument, in many ways, mirrors and reflects similar issues in the UN Convention Against Corruption (UNCAC).<sup>78</sup>

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<sup>73</sup> The African Union is established by the Constitutive Act of the African Union treaty, signed and adopted on 11 July 2000 in Lome, Togo and came into force on 26 May 2001. The Constitutive Act of the African Union replaced the 1963 OAU Charter that was previously signed on 25 May 1963 in Addis Ababa, Ethiopia.

<sup>74</sup> The African Charter on Human and Peoples' Rights (ACHPR), also known as the Banjul Charter, was adopted in 1981 in Nairobi, Kenya, by the 18<sup>th</sup> Assembly of the Heads of State and Government of the OAU and entered into force in 1986.

<sup>75</sup> See, African Commission on Human and Peoples' Rights Resolution ACHPR/Res 196 on 'Human Rights Defenders in Africa' adopted at the 50<sup>th</sup> Ordinary Session held on 24 October to 5 November, 2011, that "Encourages States to adopt specific legislation on the protection of human rights defenders" (para. 12).

<sup>76</sup> See, African Commission on Human and Peoples' Rights, Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders, ACHPR/Res 336, adopted at the 19<sup>th</sup> Extra-Ordinary Session, in Banjul, The Gambia, held on 16<sup>th</sup> -25 February 2016, that calls upon States to "Ensure that efforts designed to prevent and address violations and discrimination against women human rights defenders are developed and monitored in consultation with human rights defenders and other relevant stakeholders" (para. 15).

<sup>77</sup> The African Union Convention on Preventing and Combating Corruption was adopted on 1 July 2003 and entered into force on 5 August 2004. Uganda signed the treaty on 18 December 2003, ratified it on 30 August 2004 and deposited the instrument of ratification on 29 October 2004.

<sup>78</sup> The UNCAC was adopted by the UN General Assembly in October 2003, see also *supra* note 60, at 23.

However, while the African human rights system has made significant positive steps to recognise and enshrine legislation for the promotion and protection of HRDs in Africa, there is not much that has been achieved in concrete terms with regard to corporate accountability, business and human rights. It was not until 2013, that several civil society activists on corporate accountability in Africa even formed a continental body enhance their efforts.<sup>79</sup> Notwithstanding the challenges, the African Commission has registered a few achievements to its credit that include the following:

- The Working Group on Extractive Industries, Environment and Human Rights Violations: created in 2009 with a mandate to research, document and communicate the impact of the extractive industries on human rights;<sup>80</sup>
- The Working Group on Economic, Social and Cultural Rights: established in 2004 with a mandate to develop Draft Principles and Guidelines on Economic, Social and Cultural Rights, finalised in 2011.<sup>81</sup>
- Action Plan for Implementing the Africa Mining Vision: Under the auspices of the African Union, the African Development Bank and the United Nations Economic Commission for Africa, an Action Plan for Implementing the Africa Mining Vision (Action Plan) was adopted in December 2011. The aim of the Africa Mining Vision is to improve human rights in Africa's mineral sector at national, regional and sub-regional levels through specific activities and monitoring. The parties involved in the Africa Mining Vision include the African Union Member States, Regional Economic Communities (RECs), non-governmental organisations, civil society organisations, the UN Economic Commission for Africa (UNECA), the World Bank and the UN Conference on Trade and Development (UNCTAD).
- New Economic Partnership for Africa's Development (NEPAD): The NEPAD, whose implementation organ is the African Peer Review Mechanism) is a program of the African Union, adopted in 2001 in Zambia. The objective of NEPAD is to enhance Africa's growth,

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<sup>79</sup> See, Declaration of the African Coalition for Corporate Accountability (ACCA), launched in Accra, Ghana on 27 November 2013. Interestingly, no Ugandan HRDs or organisations were represented at the founding of the ACCA, while activists from neighbouring Kenya, Rwanda, Tanzania and D.R Congo were all represented, see *supra* note 28.

<sup>80</sup> See, African Commission on Human and Peoples' Rights, 'Working Group on Extractive Industries, Environment and Human Rights Violations', at <http://www.achpr.org/mechanisms/extractive-industries/> (accessed 26 May, 2017).

<sup>81</sup> See, African Commission on Human and Peoples' Rights, 'Working Group on Economic, Social and Cultural Rights', <http://www.achpr.org/mechanisms/es/cr/> (accessed on 27 May 2017).

development and participation in the global economy. In 2012, the 14th African Union Assembly established the NEPAD Planning and Coordinating Agency as a technical body of the African Union. NEPAD manages a number of programs and projects in six theme areas, these are:

- Agriculture and food security;
- Climate change and natural resource management;
- Regional integration and infrastructure;
- Human development;
- Economic and corporate governance;
- Cross-cutting issues (gender and capacity development).

Additionally, since 2016 the African Union has been developing a policy designed to hold companies to account by setting down guidelines on how they should conduct business on the continent. The aim of the above policy is to implement a set of global guiding principles drawn up by the United Nations.<sup>82</sup> The policy, late as it is already, will provide a roadmap for states, regional economic communities and regional institutions to regulate the impact of business activities on people and the environment. The policy also seeks to advance guidance for firms conducting activities in Africa.

However, “soft law” implementation of this policy by African states remains in question. Notwithstanding this, the policy expects to deal with major human rights issues on the continent, including investment, land grabs and environmental pollution.<sup>83</sup> The draft policy was validated by participants comprising of the African Union (AU), member states, regional economic communities (RECs), national human rights commissions, businesses, the media and civil society at a conference in Addis Ababa, Ethiopia on 21-22 March 2017.<sup>84</sup>

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<sup>82</sup> See, *Guiding Principles on Business and Human Rights: Implementing the United Nations: ‘Protect, Respect and Remedy Framework’* (A/HRC/17/31), endorsed by the UN Human Rights Council in Resolution 17/4 on 16 June 2011.

<sup>83</sup> See, “Why the AU must press ahead with a business and human rights policy”, News24 on 11 May 2017 (online) at <http://www.news24.com/Africa/News/why-the-au-must-press-ahead-with-a-business-and-human-rights-policy-20170511> (accessed on 26 May 2017).

<sup>84</sup> See, Ololade Bamidele, “AU Set on Making African Businesses More Responsive to Human Rights”, *Premium Times* (Nigeria), 24 March 2017, at <https://business-humanrights.org/en/african-union-draft-policy-framework-on-business-human-rights> (accessed on 26 May 2017).

### **3.3 Sub-regional Framework on HRDs in the Context of Business Activities**

The East African Community constitutes one of the most important emerging sub-regional political and economic communities in Africa. In 1999, the signing of the Treaty for the Establishment of the East African Community (EAC) gave a new lease of life to the defunct East African Economic Community that had collapsed in 1977<sup>85</sup>. Rights protecting HRDs include Article 6 of the Treaty for the Establishment of the EAC, which is committed to promoting and protecting human and peoples' rights in accordance with the ACHPR (1986). Additionally, articles 6 and 7 of the Treaty for the Establishment of the EAC commit the sub-regional entity to adhere to the principles of democracy and the rule of law, as well as to the maintenance of universally accepted standards of human rights.

Furthermore, other legislation specific to the environment and corporate sector include the International Conference on the Great Lakes Region (ICGLR) Protocol on the Illegal Exploitation of Natural Resources and the East African Protocol on Environment and Natural Resources Management (2006).<sup>86</sup> There is need to strengthen the current weak policy, legal and institutional framework on corporate accountability in order to effectively protect human rights defenders and rights-holders they seek to defend, particularly workers and vulnerable local communities across the East African sub-region.

### **3.4 National Framework on Human Rights Defenders in the Context of Business Activities**

#### **3.4.1 Legal Framework for the Protection of HRDs Working in the Corporate Sector**

Uganda has a number of laws that provide for human rights and broadly protect HRDs. These laws govern different sectors and guide the work of HRDs who work in these sectors. On the other hand, some of the laws provide limits or have potential limits embedded in them when it comes to the work of HRDs. These limits have a potential of undermining the notion of corporate accountability and can be said to be a hindrance to the work of HRDs generally.

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<sup>85</sup> The Treaty for the Establishment of the East African Community was signed on 30 November 1999 in Arusha, Tanzania and entered into force on 7 July 2000.

<sup>86</sup> The International Conference on the Great Lakes Region (ICGLR) is a sub-regional organisation established in 2003 by the U.N in collaboration with the A.U to address conflict and governance challenges. The ICGLR brings together twelve (12) member states that include: Angola, Burundi, Central African Republic (CAR), Democratic Republic of Congo (DRC), Kenya, Republic of the Congo, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zambia.



### 3.4.2 The 1995 Uganda Constitution

The 1995 Constitution of the Republic of Uganda not only creates obligations for the State but also creates obligations for all persons including multinational corporations and other business enterprises in Uganda to respect, promote and uphold human rights. In addition, Uganda has legal standards on investment, the environment, health and labour, among others with various human rights implications for the State as the main duty-bearer. The Bill of Rights in Chapter Four of the 1995 Constitution provides for a wide range of rights protection (mostly civil rights) in line with international human rights standards.

However, Chapter Four also includes socio-economic rights like right to property,<sup>87</sup> the right to culture,<sup>88</sup> right to education,<sup>89</sup> economic rights,<sup>90</sup> and the right to a clean and healthy environment.<sup>91</sup> The 1995 Constitution also provides for cross-cutting rights like equality and non-discrimination,<sup>92</sup> access to information,<sup>93</sup> and rights to participation<sup>94</sup> which are particularly important in protecting human rights in the context of business activities.

Uganda has ratified almost all the international and regional human rights treaties as well as submitted itself to other international and regional mechanisms such as the Human Rights Council's Universal Periodic Review (UPR), the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). In spite of this, there are signs of persistent and serious human rights abuses connected either directly or indirectly to business activities. Notably, the State has either been unresponsive or in some cases, even complicit as indicated by ubiquitous cases of land grabbing in such places as Buganda, the Albertine region, northern Uganda and Karamoja in the north-east.<sup>95</sup> The frenzy of land grabbing in the country remains a constant source of human rights violations not only of human rights defenders, but of vulnerable individuals and communities throughout the country. In December 2016, this troubling situation led to the appointment of a Commission of Inquiry into the land issue, currently conducting its work as we write this report.<sup>96</sup>

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<sup>87</sup> Article 26

<sup>88</sup> Article 37

<sup>89</sup> Article 30

<sup>90</sup> Article 40

<sup>91</sup> Article 39

<sup>92</sup> Article 21

<sup>93</sup> Article 41

<sup>94</sup> Article 38

<sup>95</sup> See, "Government officials, security personnel involved in land grabbing, says Nantaba", in the *Saturday Monitor*, 27 May 2017, p. 8 -9.

<sup>96</sup> The commission of inquiry on land appointed in December 2016 is yet another effort in a long history over the unresolved land question in Uganda. See for instance, "Statement on Land Grabbing in Uganda" by President Y.K Museveni, dated Rwakitura 22 February 2013, that gives

As provided under National Objectives and Directive Principles of State Policy (NODPSP) in the 1995 Constitution, the State is mandated to guarantee and respect institutions that are charged with the responsibility for protecting human rights, as well as required to guarantee and respect the independence of NGOs which protect and promote human rights<sup>97</sup>. The above guidelines are directly related to the work of HRDs in Uganda generally. Article 8A of the Constitution of Uganda is to the effect that the National Objectives and Directive Principles of State Policy have a force of law and parliament should make laws on enforcement of these directives. However no law has been made to enforce the objectives and the State can be said to have been reluctant in making laws that enforce these obligations.

A broad interpretation of the provisions of the 1995 Uganda Constitution indicates that it gives a duty to HRDs to act and provides for their protection while at the same time giving a duty to state and non-state actors to respect human rights. For example under Article 20 the duty to protect, uphold and promote human rights in Uganda is imposed on all state agencies and all persons.<sup>98</sup> This means both the state agencies and individuals irrespective of what they do have a duty to respect, promote and uphold human rights. This provision can be extended to HRDs and businesses who have the same duties.

Similarly, Article 50 of the Constitution provides for enforcement of human rights in Uganda. Enforcement under Article 50 can be either by victims of rights violated or by persons who see the right is violated or about to be violated<sup>99</sup>. HRDs in Uganda have been instrumental in petitioning court for enforcement of rights under this provision. The enforcement can be for protection of HRDs or for enforcement of rights generally. A number of cases have been brought up under this provision with wide range of issues relating to human rights. This article has been particularly used by NGOs to enforce rights or seek declarations for violations especially for marginalized groups. However, while article 50 mandates parliament to make a law for its enforcement, no law has to date been enacted to enforce it.

The lack of a law to enforce Article 50 has to a limited extent made it difficult to enforce rights. For example the issue of what is a competent court when it comes to enforcement of human rights has been a major issue of discussion in

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a fairly comprehensive overview of the land grabbing quagmire in the country. Also, see, Ministry of Lands, Housing & Urban Development., *The Uganda National Land Policy, 2013*, Kampala, Uganda, see *infra* note 139, at 40.

<sup>97</sup> See, National Objectives and Directive Principles of State Policy V, 1995 Constitution of Uganda (as amended).

<sup>98</sup> Article 20(2) Constitution of Uganda, 1995 (as amended).

<sup>99</sup> James Rwanyarare vs AG (Constitutional Petition No. 11 of 1997).

courts<sup>100</sup>. Majority of the petitions have been taken to the High Court using the court's unlimited original jurisdiction. Whereas the court has been able to determine these matters, it remains a challenge for HRDs or individuals who may not have access to lawyers and legal aid to file petitions in the High Court. At the time of conducting this study, a private member's Bill has been tabled in parliament to provide for enforcement of article 50<sup>101</sup>. However this Bill has been criticized for not focusing on other aspects of protection of HRDs.

### **3.5 Other Laws with Effect on HRDs in the Context of Business and Corporate Accountability**

There are a number of laws that have an effect on the work of HRDs and issues of corporate accountability generally. The global trend to fight terrorism has seen many governments around the world passing laws to limit the enjoyment of some freedoms and this has affected the nature of HRD work. Whereas the fight against terrorism is important, some countries such as Uganda, Ethiopia and Kenya have passed laws with far more restrictions than are necessary to fight terrorism. Specific to Uganda have been the broad nature of these laws and how they limit work of HRDs. On the other hand, the issue of moral policing in Uganda has seen the country pass laws limiting a number of freedoms under the pretext of promoting and protecting public morals.

A number of HRDs working in extractives in Uganda are registered as NGOs or charitable organizations. Over the last years there have been documented threats to NGOs working in extractives mainly those working in oil and gas and mining. The new NGO Act, 2016, brings with it more regulations that may limit the work of HRDs in the sector. The law provides a number of unnecessary administrative controls such as registration, permits and monitoring by districts that may make the work of HRDs not only tedious but also difficult. Key among the provisions is the requirement for NGOs to sign memorandum of understanding with every local government where they operate<sup>102</sup>. Whereas this requirement on the face of it may not pose any danger, the practical enforcement may result into censorship of NGOs. It will be difficult for NGOs focusing accountability to operate in a district and to have their MOUs reviewed where they have revealed lack of accountability on the part of the district leaders or where they lead to halt of activities that violate human rights but may be sources of income to the local governments or to individuals in the administration of local governments.

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<sup>100</sup> See, *Ismail Serugo vs. Kampala City Council and Attorney-General* (Supreme Court Constitutional Appeal No. 2 of 1998).

<sup>101</sup> See, The Human Rights (Enforcement) Bill, 2015.

<sup>102</sup> S. 44 of the NGO Act, 2016.

The Anti-Terrorism Act, 2002 is another piece of legislation with potential negative effects to the work of HRDs. The Act and its amendments have broad provisions in as far as the definition of what amounts to terrorism is concerned. Under S. 7 an act to influence government or change government policy that results into death may be considered terrorism. The broad definition creates a challenge from HRDs working on specific area. The actual test of how such broad definitions can be used to affect HRDs working in extractives or business related sectors was during the 2007 demonstrations over the attempted give away of part of Mabira forest.<sup>103</sup> People died in the processes of what were initially peaceful demonstrations that turned violent. There were threats to charge those involved with terrorism, though this did not succeed; however, it proves the potential to affect HRDs using such broad definition of terrorism.

The Anti-Terrorism Act has provisions that allow government to tap into conversations of entities suspected of engaging in work that may allegedly affect the security of the country<sup>104</sup>. The major danger with this part of the Act is the fact that no court order is required to conduct such surveillance and therefore it allows a high potential for abuse. Similar provisions have been added to the Regulation of Interception of Communications Act, 2010<sup>105</sup> which allows interception of communications generally.

A similar law passed to fight terrorism financing but with broad provisions and potential to affect HRDs is the Anti-Money Laundering Act, 2013. The Act is meant to fight terror and those who finance it as well as promote transparency. Terror financing can easily target individual HRDs and NGOs which can be used as conduits to clean illicit funds or to enable funding for terror and terror related activities. The Anti-Money Laundering Act aims at controlling such acts and making it illegal to receive illicit funding. However, the broad provisions of the law may hinder the work of HRDs especially NGOs whose major source of funding is from outside Uganda and some NGOs may not have detailed knowledge of their funders.

The media and media practitioners are undoubtedly some of the important HRDs when it comes to holding the state or private actors accountable. A number of violations by businesses are exposed through the media. Uganda has a vibrant media though with a number of limits and controls. Generally speaking the media in Uganda is governed under the Press and Journalist Act.<sup>106</sup>

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<sup>103</sup> See, "Death in Uganda forest protest", BBC News, Thursday 12 April, 2007 at <http://news.bbc.co.uk/2/hi/africa/6548107.stm> (accessed 20 June 2107).

<sup>104</sup> See Part VII of the Anti-Terrorism Act, 2002.

<sup>105</sup> Act 18 of 2010.

<sup>106</sup> Cap 105 Laws of Uganda.

The Act provides for administrative systems for the media industry in Uganda and for professional standards of journalists.

The Act emphasizes the right to publish as part of the freedom of expression. Under the Act no person or authority shall, on grounds of the content of a publication, take any action not authorized under the law to prevent the printing, publication or circulation of a newspaper to the public<sup>107</sup>. Under S. 38 a journalist cannot be compelled to disclose a source of his or her information except with the consent of that person or with an order of court. This provision is important in ensuring journalists as HRDs can practice their profession and hold different actors to account without fear of someone going after their sources.

The foregoing are important provisions to ensure freedom of media in Uganda and especially for the promotion of transparency and accountability. However, there has been a proposal to amend the press and journalist Act to provide for more restrictions on the management of the media generally. The Press and Journalist (Amendment) Bill, 2010<sup>108</sup> comes with provisions that hinder the work of HRDs especially those working in the context of business and human rights. The Bill has a narrow definition of a newspaper and requires a newspaper to be registered if it is to publish. The definition of a newspaper can cover a wide range of publications including newsletters, pamphlets and a number of publications made by HRDs including online posts<sup>109</sup>.

Other possible limitations in the proposed Bill include the requirement for editors not to publish something if it is considered to be against public morals, and content that amounts to economic sabotage<sup>110</sup>. The Bill does not define what amounts to economic sabotage, however this provision might mean a publication that shows failure to follow human rights principles by a business might amount to an “economic sabotage” and therefore a crime.

The need to balance business, morals and security human rights remains a challenge in Uganda. The last fifteen (15) years have witnessed an increase in enactment of laws aimed at ensuring better security and control of public morals which has unfortunately enabled various excesses in the laws with a potential to negatively affect the legitimate work of HRDs. This trend if not checked may hinder enjoyment basic human rights and undermine both

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<sup>107</sup> S. 2(2) Press and Journalist Act, Cap. 105, Laws of Uganda.

<sup>108</sup> The Bill was tabled in parliament in 2010 and subsequent parliaments have maintained it, but is yet to be debated and passed.

<sup>109</sup> See, *DPP v. Nyakahuma* where online publications were considered an actual publication and hence subject to the laws governing the press and media.

<sup>110</sup> Clause 36A of Press and Journalist (Amendment) Bill, 2010.

constitutional and international obligations that Uganda is expected to meet as far as human rights are concerned.

On the aspect of natural resources, particularly oil and gas, Uganda is yet to develop a comprehensive legal framework to deal with all the dimensions of this rapidly developing extractives sector. In 2004, the Mining Regulations (SI 2004 No. 71) were adopted by government. In 2008 a National Oil and Gas Policy, was adopted and the Petroleum (Exploration, Development and Production Act) Act 2013 was enacted, while the mining sector law and policy were undergoing review at the time of writing this report.<sup>111</sup> While the mining policy and law (under review) provide substantive rights and protections, there are still various gaps. These include: the wide and excessive discretionary powers given to the minister to grant or revoke licenses and develop policy and regulations is prone to abuse, while transparency and accountability regarding the issuance of Production Sharing Agreements (PSAs) have been criticised at many levels.<sup>112</sup> Additionally, section 135 of the Petroleum Act provides for the right to free, prior and informed consent, but it does not provide guidance on principles to be followed to ensure free prior and informed consent nor define the entitlements of the land owner. Consequently, there has been rampant compulsory acquisition of land without compensation and forced and illegal evictions in many parts of Uganda, especially in the focus areas of this report.<sup>113</sup>

The Investment Code Act 2000 aims to promote investment in the country by providing more favourable conditions for investment, establishment of the Uganda Investment Authority (UIA) and related matters.<sup>114</sup> It prohibits foreign investors from conducting business in the country without a license, or engaging in in crop production, animal production or leasing land to engage in these forms of production.<sup>115</sup> Despite its strengths, the Investment Code Act has a number of weaknesses that multinational corporations and other businesses can exploit and which may undermine the state responsibility to respect and protect human rights. The Uganda Investment Authority (UIA), the main government agency vested with promotion of investment in the country, lacks the power to sanction investors apart from its power to revoke a licence

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<sup>111</sup> The Mining Act, 2003 and Mineral Policy of Uganda, 2001.

<sup>112</sup> See, Colombia Center on Sustainable Investment (2017?), "Comment on Uganda's Mining Act and Regulations", (a review undertaken at the request of Global Witness), available at <http://ccsi.columbia.edu/files/2014/05/CCSI-review-of-Uganda-mining-legislation-Jan-28.pdf> (accessed 10 August 2017).

<sup>113</sup> See, Chapter 1, Section 1.9 on study sites and locations, at 6.

<sup>114</sup> Preamble, Investment Code Act.

<sup>115</sup> Section 10(2) Investment Code Act.

(subject to the approval of the Minister),<sup>116</sup> while the dual roles of promoting investment and supervising investment present a potential conflict of interest.

With specific reference to HRDs, the Investment Code Act does not require human rights impact assessments. There is no express requirement in the law to consider the human rights impact and corporate social responsibility record of the investor, which is a major shortcoming. Additionally, the Uganda Investment Authority does not have express powers to address complaints that citizens may have against investors related to the environment, adverse employment practices, and human rights in general.

Uganda passed the Access to Information Act (ATIA) in 2005, releasing an implementation plan and Access to Information Regulations in 2011. The regulations establish procedures for citizens to request government-held information and for the government to respond to citizen requests. Despite Uganda's ATIA law and regulations, obtaining government-held information is still very restricted. The Access to Information Act was passed without repealing the Official Secrets Act (OSA) of 1964. In many ways, the OSA directly counters the openness and transparency the Access to Information Act 2005 is intended to achieve.

Moreover, the ATIA has no business trying to “achieve a reasonable balance between public access, individual privacy and state confidentiality”, as it purports. This is not its role. The ATI's proper role is only limited to operationalisation of Article 41 of the 1995 Constitution but not to set its own new limits, boundaries and standards.

Other challenges of the ATIA include: non-compliance by government ministers under Article 43 because no ministry has submitted a report to parliament since 2005; wide exemptions to accessible information under Article 41; an opaque bureaucracy under Section 3(d) of the Act; and a cumbersome complaints mechanism under sections 16 (2) (c) and 16 (3) (c), and section 38 where an appeal may be filed either through courts of law or through an internal appeal to a public body.<sup>117</sup>

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<sup>116</sup> Section 20 Investment Code Act.

<sup>117</sup> See, generally, CIPESA (2017), “Position Paper: The State of Access to Information in Uganda”, by Collaboration on International ICT Policy for East and Southern Africa (CIPESA), presented to the ICT Committee of Parliament of the Republic of Uganda, on 7 April 2017.

## 3.6 Institutional Framework for the Protection of HRDs in the Context of Business Environment

### 3.6.1 The Parliament of Uganda

The legislature is one of the central constitutional pillars in any democratic polity. Uganda's Parliament is created by the 1995 Constitution<sup>118</sup>. While Parliament has established a Standing Committee on Human Rights whose main function is to monitor human rights observance in the country and the compliance of new bills to human rights and standards, it has significantly neglected the issue corporate accountability and business as well as of the HRDs working on those issues.<sup>119</sup> This is attested by absence of any explicit mention of the issue of corporate accountability and human rights violations and abuses being committed by multinational corporations and local businesses in the Human Rights Checklist launched by the Speaker of Parliament in 2013.<sup>120</sup>

### 3.6.2 The Uganda Human Rights Commission (UHRC)

The Uganda Human Rights Commission is a child of the 1995 Constitution and commenced its work in 1997. It is established under Article 51(1) of the Constitution and the Uganda Human Rights Commission Act of 1997. While the International Coordinating Committee of National Human Rights Institutions (NHRIs) has accredited the Uganda Human Rights Commission with an "A status" institution in conformity with the Paris Principles,<sup>121</sup> it is pertinent to note that the Commission's overall record is at best mixed.

The mandate of UHRC is generally to conduct investigations, create awareness and civic education and carry out measures that promote, human rights and to hear and determine matters involving human rights violations<sup>122</sup>. The commission has powers to summon, make orders for compensation, damages, release of arrested persons among others<sup>123</sup>. The UHRC is an independent

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<sup>118</sup> Article 77, Constitution of Uganda, 1995 (as amended).

<sup>119</sup> The Human Rights Committee of Parliament was created in July 2012 with a mandate to oversee and monitor government's observance, promotion and protection of human rights. The mandate of the Committee on Human Rights is defined by Rule 174 of the Rules of Procedure of Parliament of Uganda, and all members of parliament on the Committee are expected to adhere to these rules.

<sup>120</sup> See, "Checklist for Compliance with Human Rights in Policy, Bills, Budgets, Government Programs and all Business Handled by Parliament", by the Standing Committee on Human Rights (*undated*), launched by the Speaker of Parliament, Hon. R. Kadaga, in August 2013.

<sup>121</sup> See, Principles Relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly Resolution 48/134 of 20 December 1993. The main purpose of the Paris Principles is to guide the effective work of National Human Rights Institutions (NHRIs).

<sup>122</sup> Article 52 of Constitution of Uganda, 1995

<sup>123</sup> Article 53 of the Constitution of Uganda, 1995



body and in conducting its duties it cannot be directed or ordered by any person or authority in Uganda<sup>124</sup>. Though the mandate of UHRC is not specific to HRDs, it works on a wide range of issues that have a bearing on HRDs.

The UHRC has established a Human Rights Defenders' Desk with the responsibility to oversee the design and implementation of programs to protect defenders, investigate and track violations against them, and review and advise on proposed bills that may affect defenders. However, while this HRDs Desk exists at the Head office in Kampala, there exists no similar desks in regional offices countrywide, a glaring gap. According to the Commission, the 'key obstacle to the effective protection of human rights defenders' in Uganda is 'the lack of a law to specifically protect human rights defenders which limits the ability of the desk and other human rights defenders to effectively address some of the situations that relate to violations of their rights.'<sup>125</sup> One of the significant challenges facing the Uganda Human Rights Commission, however, remains government failure to effectively and expeditiously implement all its recommendations. Additionally, the government does not adequately fund<sup>126</sup> all the Commission's activities and implement all orders and awards of its Tribunal.<sup>127</sup>

According to the Democratic Governance Facility (DGF, 2016), human rights stakeholders in the country reached some 48,000 people with human rights information and knowledge. This was accomplished through various platforms including *barazas* (community gatherings), sensitisation meetings, and trainings. Specifically, the Uganda Human Rights Commission reached a total of 36,570 Ugandans through *barazas*. Through these initiatives, there was an increase in the number of reported cases of human rights violations brought to relevant authorities for redress.<sup>128</sup>

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<sup>124</sup> Article 54 of the Constitution of Uganda, 1995

<sup>125</sup> See, <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Uganda.pdf> at (accessed 29 April, 2017). See also, UHRC (2014), *The 17<sup>th</sup> Annual Report to Parliament*, p. 121 -128.

<sup>126</sup> See, E/C.12/UGA/CO/1, Concluding Observations on the Initial Report of Uganda (para. 9), Committee on Economic, Social and Cultural Rights, at its 36<sup>th</sup> to 38<sup>th</sup> meetings (E/C.12/2015/SR.36-38), held on 10 and 11 June 2015, Geneva, Switzerland.

<sup>127</sup> See, UHRC (2017), *The 19<sup>th</sup> Annual Report to Parliament* (released on 25 May 2017), Chapter 8 "Government Compliance with UHRC Annual Report Recommendations" where the government has partially complied with 63%, not complied with 36% and fully complied with only 1% of the Commission's recommendations in the last 20 years (i.e. since 1997 to date), p. 175 - 204.

<sup>128</sup> See, the Democratic Governance Facility (DGF) Annual Report 2015- 2016, "Pursuing a Shared Vision of a Peaceful, Prosperous and Democratic Uganda", DGF, Kampala, Uganda, p. 8.

### 3.6.3 Equal Opportunities Commission (EOC)

The Equal Opportunities Commission is a statutory body established by an Act of Parliament to operationalise Article 32(3) and Article 32 (4) of the Constitution of Uganda. The Commission is mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them, and to provide for other related matters.

The UHRC and Equal Opportunities Commission (EOC) together with partners like the Democratic Governance Facility (DGF) have engaged in several activities that have provided platforms for transitional justice, mediation and reconciliation in several conflict-prone districts in the country.<sup>129</sup> However, the EOC, like the UHRC, is inadequately funded, faces staffing constraints and lacks regional offices which severely impedes its effectiveness to deliver fully on its mandate.

### 3.6.4 Ministry of Gender, Labour and Social Development (MGLSD)

The official mandate of the ministry (MGLSD) is to empower Ugandan citizens, individually and collectively, to maximise their potential through harnessing their potential through skills development, labour productivity and cultural growth for sustainable and gender responsive development.<sup>130</sup> This is the ministry responsible for realizing rights under the ICESCR and is the focal point ministry for labour-related matters. In the context of human rights defenders, business activities and corporate accountability the ministry has an important role to play. The Ministry is already implementing a cash transfer scheme called the Social Assistance Grant for Empowerment (SAGE) and the National Social Protection Policy has been adopted.<sup>131</sup> The ministry is also exploring the plan to design a national action plan (NAP) on business and human rights. According to the 2017 Cabinet Memorandum from the ministry (MGLSD), there are proposals to draft a bill to address social impact assessments and to promote accountability in all investment and developmental projects in the country. In the context of human rights defenders, these are positive initiatives if implemented.

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<sup>129</sup> See, DGF, Annual Report 2015 -2016, Kampala, Uganda, *supra* note 128 at 38.

<sup>130</sup> Uganda Constitution (1995), Chapters 4 and 16.

<sup>131</sup> Uganda Vision 2040 and the successive National Development Plans articulate the importance of social protection.

### 3.6.5 The Industrial Court and other Courts

The Industrial Court derives its mandate and is established by the Labour Disputes (Arbitration and Settlement) Act 2006<sup>132</sup> and it has the power to arbitrate labour disputes referred to it and “adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law.”<sup>133</sup> The overarching goal of the Court is to ensure compliance with the International Labour Organisation (ILO) Conventions ratified by Uganda that aim to improve workers’ rights and labour standards in the country.<sup>134</sup> In the context of HRDs working on issues of corporate accountability, the major weakness in this legislative mechanism are that access to the court is only effected through labour officers (under the Ministry of Gender, Labour and Social Development) who are few, poorly resourced and therefore not present in every district. Moreover, the Court has a five-year case backlog and inadequate staff and resources.<sup>135</sup> This limits access to effective remedy for labour disputes. While other mainstream courts in Uganda can address human rights violations committed in the context of businesses activities, access to both judicial and quasi-judicial remedies is still limited by poverty, corruption, lack of legal aid and case backlogs.<sup>136</sup>

### 3.6.6 Other Institutions in the Context of Business and Corporate Accountability

The Ministry of Energy and Mineral Development (MEMD) is mandated “to establish, promote the development, strategically manage and safeguard the rational and sustainable exploitation and utilisation of energy and mineral resources for social and economic development”.<sup>137</sup> However, civil society organisations and other stakeholders have registered concerns over the adverse impact oil and gas extraction on the environment and wildlife, transparency and accountability of oil revenues, corruption and access to information, etcetera.<sup>138</sup> The specific mandate of the Ministry of Lands, Housing and Urban Development (MoLHUD) of our concern for this study is “sustainable and effective use and management of land and orderly

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<sup>132</sup> Article 7 of the Labour Disputes (Arbitration and Settlement) Act, 2006

<sup>133</sup> Article 8 of the Labour Disputes (Arbitration and Settlement) Act, 2006.

<sup>134</sup> Uganda joined the ILO in 1963 and has to date ratified 31 ILO Conventions.

<sup>135</sup> See, Initiative for Social and Economic Rights (ISER), 2016 Uganda UPR Factsheet: Business and Human Rights, [http://www.iser-uganda.org/images/downloads/Business\\_and\\_Human\\_Rights.pdf](http://www.iser-uganda.org/images/downloads/Business_and_Human_Rights.pdf) (accessed 20 July 2017)

<sup>136</sup> See, Foundation for Human Rights Initiative (FHRI, 2017), *Justice Delayed is Justice Denied: The Plight of Pre-trial Detainees in Uganda*, Kampala, Uganda.

<sup>137</sup> See, Ministry of Energy and Mineral Development, “Mandate and Mission”, online at <http://www.energyandminerals.go.ug/index.php?id=3> (accessed 27 June, 2017).

<sup>138</sup> See generally, Gabriella Wass & Chris Musiime (2013), *Business, Human Rights and Uganda's Oil, Action Aid & IPIS*, Antwerp, Belgium; and Avocats sans Frontiers (ASF, 2014), *Human Rights Implications of Extractive Industries in Uganda: A Study of the Mineral Sector in Karamoja and the Oil Refinery in Bunyoro*, Kampala, Uganda.

development of urban and rural areas". Land remains a problematic issue in Uganda. Four land tenure systems are recognised by the 1995 Constitution and the 1998 Land Act: customary, freehold, mailo and leasehold. Customary tenure is the most common, accounting for about eighty percent (80%) of total land in the country (GoU, 2015a). Moreover, customary land is largely untitled and is often not demarcated or surveyed (MoLHUD, 2013). This makes actual ownership harder to prove, which consequently exposes many communities to land grabbing and forced evictions, as this report and others indicate, leading to regular concerns at the highest political levels.<sup>139</sup>

### 3.6.7 The Legal Framework on Land Amidst Rampant Evictions

On the face of it, Uganda's legal framework on land is fairly comprehensive, especially with the adoption of the National Land Policy in 2013. It is anchored on Article 237 (1) of the 1995 Constitution that provides that land in Uganda belongs to the citizens and shall vest in them in accordance with the land tenure systems provided for in the Constitution. Additionally, Article 26 provides for protection from deprivation of property. It further provides that this right or interest in the property may only be expropriated when it "is necessary for public use or in the interest of defence, public safety, public order, public morality or public health,"<sup>140</sup> and any expropriation must be made under a law which makes provision for "prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property"<sup>141</sup>, and also ensure a right to access to a court of law by any person who has an interest or right over the property.<sup>142</sup>

Specific laws on land include the Land Act 1998 (and subsequent amendments) which provides for four conflicting land tenure systems: customary, mailo, freehold and leasehold. The Land Acquisition Act Cap 266, 1965 governs the compulsory acquisition of land for public purposes in addition to the Constitution of Uganda. While many sections of this law are problematic with respect to other rights, it is pertinent to note that the Supreme Court has already declared some provisions unconstitutional,<sup>143</sup> even as the government

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<sup>139</sup> The 'Commission of Inquiry into the Effectiveness of the Law and Process of Land Acquisition, Land Administration, Land Management and Land Registration in Uganda' appointed by President Y.K Museveni on 8 Dec. 2016, is the latest in a series of numerous efforts to resolve an intractable land question in Uganda's history, see *supra* note 95 and note 96 at 30.

<sup>140</sup> Article 26 (2) (a) of 1995 Uganda Constitution. In July 2017, the government proposed amendments that would give it express powers to appropriate or to enable compulsory acquisition of land for public works before compensation.

<sup>141</sup> Article 26 (2) (b) (i)

<sup>142</sup> Article 26 (2) (b) (ii)

<sup>143</sup> In *Uganda National Roads Authority vs. Irumba Asumani and Peter Mageloh Supreme Court Constitutional Appeal No. 2 of 2014*, it was held that Section 7 (2) of the Land Acquisition Act contravenes the standard set by the 1995 Constitution on prior compensation, and to that extent, it is unconstitutional.

proceeds to amend the land law to get additional powers for compulsory acquisition of private land prior to compensation.<sup>144</sup> The Registration of Titles Act (RTA) Cap 230 governs the issue of acquisition and leasing of registered land but the ongoing Commission of inquiry continues to reveal serious abuses.<sup>145</sup>

Overall, the current legal regime on land has become a source of controversy and is not effective in protecting peoples' land rights including protecting them from compulsory acquisition for purposes of investment, illegal evictions by powerful individuals or land grabs by other business entities. Consequently, the country will inevitably continue to witness compulsory acquisitions and forced evictions of communities, land grabbing and inadequate compensations until the land question is comprehensively resolved.<sup>146</sup>

### 3.6.8 Labour Rights Framework in the Context of Business Activities

Uganda has over the last fifty years ratified most of the important legal instruments on labour rights and occupational safety, though domestication and enforcement of these standards remains a major existential challenge.<sup>147</sup> Article 39 of the 1995 Uganda Constitution recognises the right to a clean and healthy environment in the enforceable part of the document, unlike other socio-economic rights mentioned in the preambular, non-enforceable section.<sup>148</sup> Article 39 is critical to occupational safety in the workplace and other workers' rights. Article 34 provides for the rights of children and specifically clause four (4) ensures their protection from social and economic exploitation. Article 40 empowers Parliament to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions,<sup>149</sup> fair and equal remuneration for work of equal value<sup>150</sup> and the right to form and join a trade union of their choice.<sup>151</sup> Article 25 prohibits slavery, servitude and forced labour. This is in line with Uganda's national and international commitments under the ILO Conventions and other treaties, particularly the UN Convention on the Rights of the Child (CRC) as well as the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>152</sup> Additional laws regulating the labour sector include

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<sup>144</sup> Land Act 1998, see also *supra* note 139, at 40.

<sup>145</sup> See, "Land probe: Senior registrar arrested, faces investigation", by Ephraim Kasozi & Jalira Namyalo, in *Daily Monitor*, Saturday 24 June 2017 (online).

<sup>146</sup> In December 2016 President Museveni appointed a Commission of Inquiry to address the land problem, see *supra* note 139 at 40.

<sup>147</sup> Uganda joined the ILO treaty system in 1963 and has so far ratified 31 labour Conventions, *supra* note 134, at 39.

<sup>148</sup> Other ESC rights in the 1995 Constitution are provided as non-enforceable National Objectives and Directive Principles of State Policy (NODPSP), see *supra* note 42, at 17.

<sup>149</sup> Article 40 (1) (a) of the Constitution.

<sup>150</sup> Article 40 (1) (b) of the Constitution.

<sup>151</sup> Article 40 (3) (a) of the Constitution.

<sup>152</sup> Uganda ratified the ACRWC on 17 August 1994.

The Employment Act, 2006; The Workers Compensation Act, 2000; The Occupational Safety and Health Act, 2006, The Labour Unions Act, 2006 and the Labour Disputes (Arbitration and Settlement) Act, 2006 as well as the Minimum Wages (Advisory Boards and Councils) Act, Cap 221.

In the context of human rights defenders working on corporate accountability, it is pertinent to note that the Employment Act and Workers' Compensation Act only protect persons in formal employment sector, excluding those in the informal sector. Yet the majority of Ugandans are employed in the informal sector, estimated at 7 out of 10 of workers in 2015.<sup>153</sup> Furthermore, the implementation of the Occupational Safety and Health Act (OSHA) that is critical in the promotion of the safety and health for workers and minimising occupational risks and implementation remains a challenge. While there is an increasing focus on exploration and manufacturing sectors as key drivers of economic development of the country, the regulatory framework—especially the inspection, monitoring and enforcement mechanisms like OSHA continue to lag behind.<sup>154</sup> With regard to the Minimum Wages Act, it is unconscionable that the minimum wage has not been adjusted since 1984 and still stands at UGX 6,000 (USD 2) per month, while the national poverty line was equivalent to USD 30 per month in 2014.<sup>155</sup> The current minimum wage is contrary to the ILO best practice guidance on the minimum wage, even though Uganda is yet to ratify the ILO Minimum Wage Fixing Convention (1970).<sup>156</sup> Uganda urgently requires a new minimum wage law that is commensurate with current living standards in order to curb exploitation of workers and protect their rights.<sup>157</sup>

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<sup>153</sup> Danish Trade Union Council for International Development Cooperation, *Uganda: Labour Market Profile*, 2015.

<sup>154</sup> See, "Nexus between Labour Rights, Bilateral Investment Treaties and Human Rights Defenders" in Table 3, Chapter 2 of this report, where over 80 workers were negligently poisoned at a flower farm, at p. 19.

<sup>155</sup> Ministry of Finance Planning and Economic Development (MFPED), *Poverty Status Report 2014*, Kampala.

<sup>156</sup> Article 13 of the ILO Minimum Wage Fixing Convention of 1970 requires countries when setting up a minimum wage to take into account "the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups" and other "economic factors", like levels of productivity.

<sup>157</sup> Uganda has received several recommendations to adjust the minimum wage, including at the 2016 UPR Session (Report of the Working Group on the Universal Periodic Review, "Uganda", Human Rights Council, Thirty-fourth Session, 27 February -24 March 2017 (A/HRC/34/10).

### 3.6.9 The State of Rights in the Extractive Sector: Mining, Oil and Gas in Focus

There are many violations of human rights by both local and transnational corporations in Uganda.<sup>158</sup> The major challenge of corporate social responsibility in Uganda is that it is devoid of the notion of corporate 'accountability'; at its core, corporate social responsibility is in most cases essentially tokenism, designed to placate the communities against excessive hostility in which large local business enterprises and transnational corporations operate. The evidence for this state of affairs can be seen in the following:

- Uganda has not developed adequate and effective enforceable normative framework and standards to deal with corporations that violate rights in Uganda
- The negative (& positive) impact on local communities of corporations
- The response of CSOs (or HRDs) to the violations by corporations –specifically the consequences on their own rights as HRDs (as enunciated in the Declaration on HRDs, 1998).

#### 3.6.10 Summary of Rights Violations by Corporations and Other Business Entities in Uganda

- Exploitation of local miners and employees;
- Failure to provide protective gear to local miners;
- Failure to provide medical care to local miners injured on the mining sites;
- Abuses of land rights and laws;
- Environmental pollution;
- Corruption: remains a serious challenge in Uganda, with inadequate political will to eradicate corruption in economic and political spheres;<sup>159</sup>
- Failure to provide employment to local people;
- Discrimination of local employees;
- Causing social discord and erosion of moral values;

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<sup>158</sup> See, Uganda Consortium on Corporate Social Accountability, (UCCA, 2016), *The State of Corporate Accountability in Uganda: A Baseline Study Report for the Uganda Consortium on Corporate Accountability*, September 2016, Kampala, Uganda; see also, Human Rights Watch (2014), "How can we Survive Here?": *The Impact of Mining on Human Rights in Karamoja, Uganda*, available online at [www.hrw.org](http://www.hrw.org) (accessible 20 July 2017).

<sup>159</sup> In 2016, Uganda ranked a dismal 151<sup>st</sup> out of 176 countries with a paltry score of 25 in the Transparency International's (TI) Corruption Perception Index: see online at [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016) (accessed 12 July 2017)

- Failure to consult with them or to involve them in decisions concerning the acquisition of land, investment permits and mining licenses;
- Failure to involve communities in the conduct of environmental impact assessments.<sup>160</sup>

While corporate abuses and violations cut across all rights, it is particularly economic, social and cultural rights that are comparatively most adversely affected. These violations persist in spite of government's clear legal obligations to respect, protect and fulfil ESCRs as provided under the ICESCR, ratified by Uganda in 1987.<sup>161</sup>

### **3.6.11 Weak and Unfocused Approach by HRDs and Civil Society**

Civil society organisations have viewed the idea of corporate accountability largely indirectly through the prism of environmental protection, land rights, community livelihoods, conflict resolution, governance, participation and access to information. Despite the existence of some notable efforts, the issue of corporate accountability has not yet been taken up as the central concern of civil society organisations, especially as it relates to the protection of economic, social and cultural rights and linking corporate violations to poverty and underdevelopment. When most civil society organisations were asked about their main areas of concern in their work, whether they focused on corporate accountability, what issues of corporate accountability they had come across, what strategies they have used to address those issues, the challenges they had experienced, and how corporate accountability could be enhanced in Uganda, they did not seem particularly focused on these issues.<sup>162</sup> This lackluster approach is evidenced through lack of knowledge by majority of HRDs or CSOs about most important internationally recognised standards adopted to hold both states and non-state actors accountable.<sup>163</sup>

More specifically, the research revealed that majority of civil society organisations have not yet internalised nor are they applying the Human Rights-based Approach (HRBA) in their activities. So they are not effectively or consistently holding the Uganda government or the multi-national corporations to internationally recognised legal obligations to respect, protect and fulfil human rights.

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<sup>160</sup> See, Uganda Consortium on Corporate Accountability (2016), Chapter 5, "The Impact of Corporations on Communities in Uganda", see *supra* note 158, at 42.

<sup>161</sup> Uganda is, however, yet to ratify the ICESCR Optional Protocol, see *supra* note 62, at 23.

<sup>162</sup> See, UCCA (2016), especially Chapter Four on "Civil Society", p. 88 -94, see *supra* note 158, at 42.

<sup>163</sup> See, Chapter 4 on the findings of this report regarding knowledge and use of international standards by HRDs.



### 3.6.12 Weak Legal Framework and Ineffective Enforcement of Existing Laws

The 1995 Ugandan Constitution expressly provides that human rights apply to non-state actors.<sup>164</sup> This means that corporations have human rights obligations and can, as a result, be held accountable for them. However, in reality, many of the multinational corporations and local business enterprises do not clearly recognise that they have obligations in relation to the rights the Constitution recognises.<sup>165</sup> That said, a lot more needs to be done to understand what the Constitution means for corporations and how citizens can use constitutional rights to demand accountability from them. It is also clear that the constitutional ideals and principles have not been fully integrated into the legislative frameworks regulating business in general and the extractive industry in particular.<sup>166</sup>

### 3.6.13 Conclusion on Protection Mechanisms for Human Rights Defenders in Uganda

Overall, Uganda possesses a fairly robust legal, policy and institutional framework for the promotion and protection of all categories of human rights defenders and their work. The real question, however, is to what extent this framework is actually working to ensure the rights and freedoms enshrined in the legal order are being enjoyed by them and also by ordinary Ugandans in their daily lives. As is obvious from the above analysis, there is a wide gap between *de jure* positions and *de facto* practice.<sup>167</sup> In Uganda, the legal promise is not yet adequately matched by the lived reality. Therefore, there is legitimate argument for better implementation of specific human rights laws in order to better protect not only the rights of HRDs working on issues of corporate accountability, but all Ugandans.

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<sup>164</sup> Article 20 (2) of the Constitution.

<sup>165</sup> See, for instance, Twerwaneho Listeners' Club (TLC) & Bread for All (BFA), May 2017, *Child Labour in the Supply Chain of LAFARGEHOLCIM in Uganda: Unresolved Issues*, Plot 38 Tooro Road, Fort Portal, Uganda.

<sup>166</sup> See, "Improving accountability and access to remedy for victims of business-related human rights abuses: Report of the United Nations High Commissioner for Human Rights, A/HRC/32/19, Thirty-second session, 10 May 2016.

<sup>167</sup> It is important to note that whereas the legal recognition and protection of human rights is a necessary condition, it is by no means a sufficient factor contributing to their realisation in practice. Political will and commitment by the Ugandan state, its organs and all citizens are equally vital.

## **CHAPTER FOUR**

### **THE SITUATIONAL ANALYSIS OF HUMAN RIGHTS DEFENDERS IN THE CORPORATE ACCOUNTABILITY ENVIRONMENT IN UGANDA**

#### **4.0 Introduction**

Field data was collected from human rights defenders across all regions of the country by use of an open-ended questionnaire and key informant interviews. Therefore this chapter presents and analyses their current operating environment, focusing especially on the main risks and challenges they encounter as they work to fulfill their mandate. In particular, the proceeding discussion focuses on the nature of rights HRDs defend, the risks and challenges they encounter in their work, their protection needs (or lack thereof), as well as the main actors that have the most impact on the environment in which they operate. The chapter also examines the awareness and knowledge by the HRDs working on issues of corporate accountability of the major international and regional standards for holding both the state and non-state actors accountable in this sector.

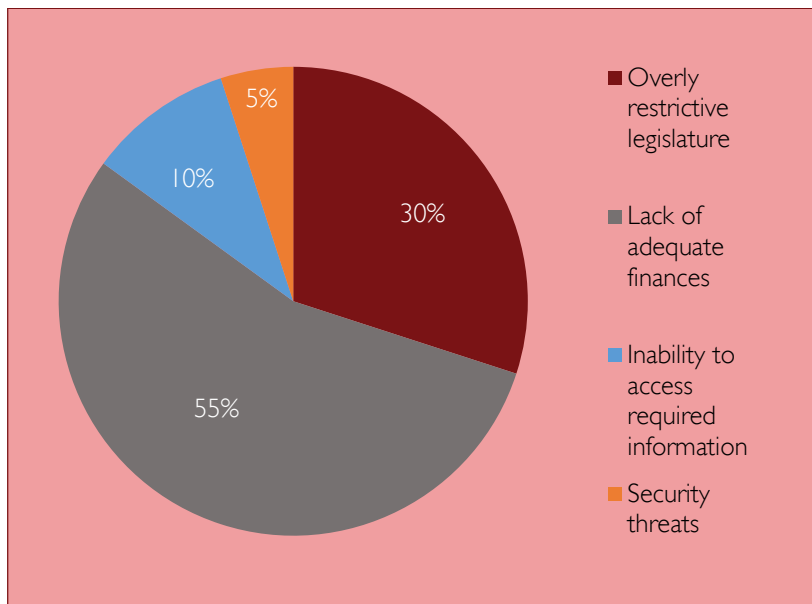
#### **4.1 General Risks and Challenges faced by HRDs in the Corporate Sector**

Majority of respondents (55%) identified the lack of adequate finances as the major challenge impacting the effectiveness of their work. This was followed by 30% who said an overly restrictive legislative regime was a major challenge and 5% who said security threats were a major challenge. Specifically, the restrictive legal regime entails the shrinking civic space occasioned by the draconian NGO law 2016 and several other laws that limit various activities of the HRDs, in addition to imposing unnecessary delays in the legal recognition of new organisations seeking to join the existing HRDs working on issues of corporate accountability in particular and other related mandates.

Inability to access required information in the hands of the State: HRDs complained that they do not always readily obtain information they seek from government sources, and 10% of the respondents identified this as adversely impacting their work. It is pertinent to note that in spite of the existence of a law that, on the face of it, enables all Ugandans to have unfettered access to information in the hands of the State (Access to Information Act, 2005), government authorities at national and local levels are generally still very

resistant to open access.<sup>168</sup> The challenge of secrecy and lack of transparency by government has plagued the oil and gas sector from its nascent days. Human rights defenders and civil society in general are consistently confronting lack of access to information through many strategies, including advocacy, research and litigation.<sup>169</sup>

**Figure 1: Major risks and challenges faced by HRDs**



*Major risks and challenges faced by HRDs*

#### **4.2 State Institutions Mainly Threatening HRDs in their Work**

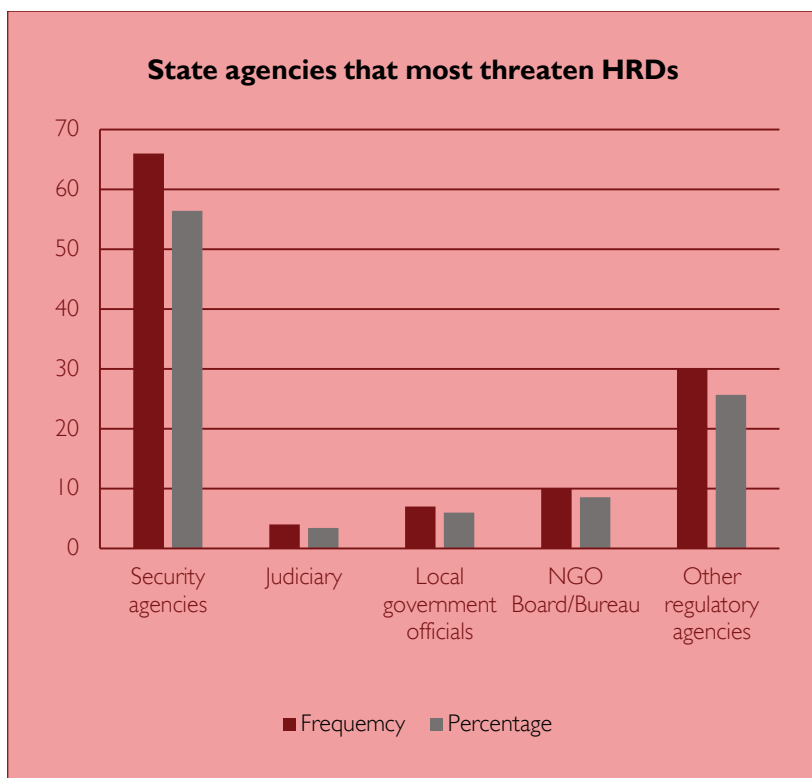
The major state institutions that threaten HRDs working on corporate accountability were mainly Resident District Commissioners (RDCs), Uganda Police, Chief Administrative Officers (CAOs), Local Councilors and other officials from the Ministry of Internal Affairs and local government. Furthermore, security agencies mainly the Gombolola (sub-county) Intelligence Officers

<sup>168</sup> See, for instance, "Uganda: Government Secrecy on Oil Sector Breeding Mistrust: Survey", 23 November 2015, where ACODE found that lack of information by stakeholders was hampering their activities, online at <https://www.linkedin.com/pulse/uganda-government-secrecy-oil-sector-breeding-mohamed-izran> (accessed 12 July 2017).

<sup>169</sup> See, for example: Civil Society Coalition on Oil in Uganda (2010), *Contracts Curse: Uganda's Oil Agreements Place Profits Before People*, Kampala; see also Global Witness (2014), *A Good Deal Better? Uganda's Secret Oil Contracts Explained*, available online at <https://www.globalwitness.org/en/campaigns/uganda/> (accessed 12 July 2017).

(GISOs) and District Intelligence Officers (DISOs) were considered a major source of threats to HRDs. The security agencies accounted for 66.4% of the threats to HRDs. They were followed by other regulatory agencies (25.6%) that included the Uganda Wildlife Authority (UWA), the National Environmental Management Authority (NEMA), and Ministry of Energy and Mineral Development. Some 8% of the respondents mentioned the NGO Bureau as a source of threats. The results are summarized in the figure below.

**Figure 2: State Institutions mostly threatening or violating HRD rights**



The RDC of Hoima was mentioned most as one of those who threatened HRDs working in extractives. He or persons from his office have forced NGOs to stop conducting community meetings, move workshops to other districts, threaten persons especially those working with refinery affected persons and people evicted from Rwamutonga with arrests and other forms of threats. Similarly, there were mention of similar acts by the RDCs of Masindi, Buliisa, Nwoya and Kabarole districts. Most of the threats come under the claim that

as chairpersons of security in the districts, they have a role to play in ensuring NGOs do not cause insecurity in their districts.

There was no evidence to suggest that actually the work done by the NGOs threatened security in the different areas. In any case, many of the NGOs said to be causing security threats in these areas were able to conduct the same activities in other districts where the RDCs did not threaten them with closure. For example a number of NGOs that had scheduled workshops in Hoima were able to move them to Kampala and Masindi when the RDC of Hoima refused them permission to conduct the said workshops. We were unable to get any evidence of reports or acts that would suggest insecurity or breach of peace likely to be committed by the NGOs.

Police has been at the core of threats and violations of rights of HRDs. These normally work on the orders of the RDCs and at times orders of private individuals. For example all threats to arrest and the actual arrests of HRDs were carried out by police officers on the orders of RDCs or after private individuals made complaints to police. In most of these cases there was no proper investigation made by police, sometimes arrest are made either because the RDC said or because someone made a claim. There are normally no efforts to establish the facts before arrests or threats to arrest.

The report documented threats of arrests by Regional Police Commanders (RPCs) and Divisional Police Commanders (DPCs) in Kabarole, Bushenyi, Hoima, Masindi and Nwoya. In Bushenyi it is alleged that the DPC was involved in illegal gold mining and threatened HRDs who challenged this illegality with arrest. The same DPC was ordered by local politicians and relatives to businessman Bassajabalaba to arrest HRDs who were working on land issues. In Fort Portal, 3 HRDs were arrested and charged with illegal fishing and poisoning fish when they had gone to collect information that they were to use in a high court case against Fersult Engineering Ltd. Another group of HRDs including NGO workers and journalists were threatened with arrests when they tried to get information concerning a demonstration by artisan miners in Harugongo. Five (5) HRDs were arrested when they demonstrated against human rights violations by UWA rangers in Hakibale, Kabarole district.

Whereas the Directorate of Public Prosecution (DPP) has not been directly involved in the cases of threats and arrests, the fact that their officers have sanctioned several trumped up charges brings one to question the use of criminal justice system. DPP's office sanctions a number of arrests when there is no enough evidence to warrant prosecution. It is no wonder that no conviction has ever been got in any of such cases. A respondent formerly working with an NGO in Masindi who faced similar situations in 2015 observed that:

*“The SA (State Attorney) is part of the group that generally aims at threatening HRDs. Am sure in my case he was 100% sure there is no way the case would succeed, but what he wanted was to inconvenience me and ensure we do not conduct any advocacy in the oil and gas sector. He sanctioned the charge and kept saying investigations are on every time we went to court until one day after about a year the magistrate dismissed the case. This was a matter of persecution and nothing about justice”.*

The Chief Administrative Officers (CAOs) and LC V Chairpersons are the other officers said to be threatening HRDs in different districts. The threats come in form of threatening HRDs to leave the districts, refusal to sign MOUs, petitions to NGO Bureau and to the president. In Kabarole the LC V, petitioned the president claiming HRDs involved in a case of child labor in mining and fishing activities were undermining government development efforts. In Bushenyi a NGO working on mining issues was told the district leadership will not be signing an MOU with them. Similar cases were reported in Hoima district.

Other security officials that were documented to be threatening HRDs include District Security Officers (DISOs) and Gombolola Security Officers (GISOs) mainly in Buliisa, Masindi, Hoima, Bushenyi, Mubende and Kabarole. These also threaten with arrests, are said to make false security reports to RDCs and to police officers who are said to act based on these reports without investigating them.

### 4.3 Types of Major Violations and Their Manifestations

The research documented a number of threats and their manifestations, these ranged from office break-ins, arbitrary arrest and detention, trumped up charges as indicated in the table below.

**Table 6: Type of violations/threats and their manifestations**

Type of violation/threat and their manifestations	Frequency	Percentage
Arbitrary arrests and detention,	10	10.1
Illegal searches of homes or offices,	1	1.0
Physical violence (beatings, etc.)	4	4.0

Type of violation/threat and their manifestations	Frequency	Percentage
Anonymous death threats (direct, anonymous calls, etc.)	8	8.1
Inaction (refusal to act) by the government authorities	2	2.0
Forced disappearances	1	1.0
Trumped up charges	13	13.1
Torture	3	3.0
Surveillance (by state security agents, individuals, etc.)	11	11.1
Restrictions on freedom of movement, expression and assembly	18	18.2
Break-in HRDs' premises (Theft)	17	17.2
Break in in HRD vehicles and other theft	3	3.0
Blockage of internet access	3	3.0
Threats /intimidation from other activists themselves	3	3.0
Hostile local communities	2	2.0
<b>Total</b>	<b>99</b>	<b>100</b>

*Types of violations/threats*

Arrest and detention as a means of threatening HRDs and violating their rights is common in the flower industry and in the oil, gas and mining sectors. A number of HRDs are arrested and charged on false charges. This was common in Fort Portal, Bushenyi and Hoima. In Fort Portal three (3) HRDs (Kyaligonza Fred, Magezi Jackson and Prosper Businge) were arrested and charged with illegal fishing and poisoning of fish under the Fish Act. This followed an incident where the three together with others filed a suit against Ferdult Engineering Ltd for illegal stoppage of communities from accessing crater lakes resources. The three were taken before Fort Portal Magistrates court and the case was put on hold until the High Court decided a matter involving community representatives and Ferdult Engineering Ltd.

A number of other HRDs also were threatened with arrest, including those working with evicted persons in Rwamutonga, in Hoima district. Others

threatened with arrest were defenders working with populations displaced by the construction of the refinery. A worker with a CSO based in Hoima collaborated this situation, saying:

*“The RDC threatened to arrest me and my colleague because we were following up on the cases in Rwamutonga. He claimed that this was a court issue and court had ordered the eviction of these persons. He said we were working against a court order. This is not true and we were mobilizing resources such as food and shelter for those evicted”.*

A number of districts have threatened not to sign Memorandum of Understanding (MOU) with NGOs mainly because of the work they are doing. Signing of MOUs is a requirement set by the NGO Act, 2016, where an NGO must sign an MOU for it to operate in the district. We observed that whereas this is required by law, a number of local leaders and RDCs have used it to block NGOs especially those that are critical of their work. In Masindi and Bulisa two NGOs were threatened with a refusal to renew their MOU because of their advocacy work. In Buliisa the Chairperson LC V, Mr. Lokumo<sup>170</sup> told one of the NGOs focusing on land rights that they will not sign an MOU with them because the NGO was “making people unruly”. He however did not go ahead to enforce his threat. In Masindi the same issue arose while in Kabarole, the district refused to sign an MOU with an organization that is engaged in land rights issues.

A number of respondents interviewed in Bushenyi, Kabarole, Masindi, Hoima and Bulisa observed that many times they are asked who gave them the mandate to question the work of local leaders and sometimes local leaders have attempted to use this to block their activities. Related to the above has been the frequent accusations leveled against different CSOs for allegedly promoting foreign interests against government and their lack of patriotism. Such public repudiation of HRDs is often aimed at making civil society workers look untrustworthy in order to get shunned by the vulnerable communities whose rights are violated. This was noted to be a widespread practice among different government leaders both at local and central government level.

The provisions of the NGO Act of 2016 are likely to bring similar challenges with a number of districts threatening CSOs from working in their area especially where the CSOs are critical of the work of government or of local leaders. Threats to close NGOs, blacklist them or even arrest their officers have been another common practice. Most of these threats have come from

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<sup>170</sup> Mr Lukumo lost the last elections and at present (June, 2017) there is a new District Chairperson in Bulisa district.



ministers, RDCs and other local leaders. The threats seem to be concentrated in the Albertine region and to a limited extent to organizations working in the mining sector. A number of NGOs reported to have been threatened with closure by the RDCs of Hoima, Masindi and Kabarole. In Nwoya, a former local leader claiming to be an NRM mobilizer ordered police to arrest staff of an NGO that was carrying out research on land evictions and conflicts in the area around Murchison Falls National Park. Though the arrests did not happen the staff of the NGO were not allowed to continue with their research. A similar incident is noted by Centre for Constitutional Governance (CCG) whose staff were blocked by the same NRM mobilizer in Nwoya, in 2016.

Blocking or stopping gatherings such as workshops and violation the freedom to assemble was common in the oil and gas industry. A number of meetings involving the communities were blocked by RDCs on the pretext that they were illegal. This was common in Hoima and Buliisa where respondents documented four meetings which were to be held by different NGOs in Hoima that were blocked by the RDCs in the 2015-16 period. Some of the meetings had government officials among the facilitators. The RDCs accused the NGOs of inciting the public and being a threat to security. Whereas this trend was documented in around this period of time, it had been common trend in the early 2010s mainly in Buliisa where RDCs would order for the arrest of persons who attended meetings organized by NGOs. Some meetings were able to go on after engaging RDCs and sharing with them the purpose of the meetings. Other CSOs moved their meetings to neighboring districts and to Kampala where it was easy to hold them without local RDCs interfering with their work. A leader of an NGO that was affected by the blockage by the RDC in Hoima says:

*“The RDC Hoima stopped our work, he said we are there to antagonize the community and government, we tried engaging with him but he could not listen. We made a decision to hold all our meetings in Masindi and Kampala. The meetings went on without any incident, I think the just did not want us to work in his area”.*

HRDs continue to face verbal and non-verbal intimidation and threats. These threats come from state and non-state actors such as business entities. A number of HRDs working in the flower industry were threatened with arrest and dismissal from work by their employers and the minister. These were accused of making the cases public, on the other hand interviews conducted with HRDs in the oil, gas and mining sectors revealed that many such threats came from RDCs who threaten to arrest them or close the organizations. Many RDCs accuse HRDs of interfering with government work or being a threat to the security of the area.

### 4.4 Threats and Violations Committed Against HRDs by Non State Actors

Non-state actors are mainly business entities, private individuals and NGOs that may threaten HRDs in the corporate accountability sector for one reason or the others. A number of these actors act alone without state guidance. However the research found that some of the actors acted with the state agencies to threaten HRDs. Most of the threats from these actors manifested in form of trumped up charges where these actors are the complainants, civil and criminal charges against HRDs, anonymous calls threatening HRDs or their immediate families, mobilizing mobs against the HRDs, among others. The nature of threats are summarized in the graph below.

Figure 3: Nature of threats from non-state actors



Nature of threats from non-state actors

Though we did not find wide spread community incitement to attack HRDs by private companies, a number of cases are worth mentioning. This occurred where corporations blame the failure in their work to meet particular human rights standards on HRDs. It was also noted that in some cases HRDs did not interpret the actions of local businesses as threats and therefore were not reported as such. The threats mainly came from the oil and gas sector, the mining sector and the flower industry. In the flower industry in particular, the following risks and challenges facing HRDs were established:

- Non-existent or inadequate supervision of working conditions at flower farms by Labour Inspection Officers from the Directorate of Labour in the Ministry of Gender, Labour and Social Development (MGLSD);
- Weak trade unions unable to negotiate fair and equitable working contracts or bargains with flower farms owners;
- Poor and illiterate and untrained workers unable to diligently protect themselves by wearing standard equipment even when basic protective gear exists;
- Lack of effective access to information in the hands of the management of flower farms and government officials;<sup>171</sup>
- Absence of a minimum wage in Uganda since 1984 when it was last set at UGX 6,000 (USD 2) per month, where it still stands to date.<sup>172</sup>

Furthermore, inciting the community against HRDs happens where a local business directly or indirectly does an act that is likely to make the community shun a particular HRD or their work. In some cases such incitement involves RDCs and Police officers who claim they are protecting investors. For example in Rwamutonga, Hoima District, Harugongo and Saaka in Kabarole district HRDs were threatened by RDCs who claimed the HRDs were frustrating investors and the community should stay away from their work. In Hoima district the RDC is said to have warned NGOs and local CBOs from working on the case involving eviction of people from Rwamutonga. NGOs were accused of frustrating investors. Some NGOs were summoned by the Minister of Internal Affairs who threatened them with closure if they continued with the work. One of the respondents who preferred to remain anonymous narrated how they were summoned to the NGO Board after the RDC had written

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<sup>171</sup> See, "The Nexus between Labour Rights, Bilateral Investment Treaties and Human Rights Defenders", in Chapter 2 of this report. See also generally, Anna Myslnka, Gabriella Wass & Flavia Amoding (2015), *Thorns Among the Roses: A Cross-country Analysis of Human Rights Issues in Flower Farms in East Africa*, Antwerp, Belgium; see also, National Association of Professional Environmentalists (NAPE), 2012, *The Impacts of the Flower Industry on Environment and People's Livelihoods in Uganda*, Kampala, Uganda.

<sup>172</sup> See, Ministry of Finance, Planning & Economic Development (MFPED, 2014), *Poverty Status Report, 2014*, Kampala.

reports complaining about their work. This incident happened to three organizations in Hoima, mainly those working on land evictions<sup>173</sup>. In Kabarole district, the LC V Chairperson allegedly wrote a letter to the president complaining against Twerwaneho Listeners' Club. In the claim the Chairperson complained that the organization was anti-development and was using its activities to derail government work. This was after the organization had filed a case against Ferdult Engineering Services Ltd for unlawfully stopping communities from fishing in Tooro crater lakes<sup>174</sup>.

In Harugongo, Kabarole District, private companies supplying pozzolana to Hima Cement blamed HRDs for their troubles. In one of the incidences our team documented, mineral transporters told artisan miners that they will not purchase pozzolana from them unless Twerwaneho Listeners' Club drops the report it had documented involving use of children in mining. Respondent in Fort Portal says:

*"The locals went on strike and demonstrated against us, they accused us of killing their livelihoods because the company had refused to buy their minerals. The company (Hima Cement Ltd) held meetings with the community and informed them that we were the reason why they could not buy pozzolana from them. This created some "bad blood" between the community and us".*

Another organization in Kabarole was a subject of hostile "investigation" after it released a report on incidents of defilement committed by road construction workers on the Kamwenge-Fort Portal road. In Bushenyi a businessman threatened to beat up staff of an NGO working on transparency that was advocating for community rights in the mining sector.

The RDCs and local leaders in Fort Portal, Masindi and Buliisa used radio stations to "warn" the public against HRDs. They claimed that the different organizations were misleading the community and the communities should shun these organizations. For example the LC V Chairperson of Kabarole, was noted to have said NGOs in the area were misleading people to against the company that was carrying out fishing activities. In Masindi the RDC Buliisa is

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<sup>173</sup> The organizations were working on evictions and compensation of persons from where the refinery construction is underway; another was working on the issue of eviction of persons from Rwamutonga, while another organization worked on land acquisition/or grabbing along Hoima, Kaiso-Tonya road.

<sup>174</sup> See, *Twerwaneho Listeners Club, Trader Sulaiman, Busigne Prosper, Bwomera Richard, Manyindo David, Kyaligonza Fred, Bikorwomuhangi Kenneth and others Vs. Ferdult Engineering Services Ltd*, High Court Civil Suit No. 62/2016. The High Court ruled that the company had illegally acquired a memorandum of understanding (MOU) and that barred members of the community from accessing fish and water resources in the crater lakes.

said to have warned communities against NGOs working in the oil and gas sector in the district that they were promoting foreign interests and should be avoided by the community. These are clear incidents of intimidation, harassment and stigmatization of HRDs doing their legitimate work.<sup>175</sup>

#### **4.4 Evictions of Peasants and Artisanal Miners in Mubende, Amuru and Apac**

Many human rights defenders working with marginalised communities continue to express concern about rampant land grabbing and associated human rights violations. A respondent working with ActionAid Uganda (AAU) decried the complicity of the state and corporations in the evictions of artisanal miners in Mubende in early August 2017:

*“The use of force by the army, police and local officials and vigilante groups is intolerable and inhuman. They did not even give the people enough time to save their properties but destroyed everything”.*

A similar situation of brutal eviction of communities occurred in Amuru District. The AAU Executive Director demanded government to revisit plans to gazette the East Madi Game Reserve that has been a source of conflict between the local communities for many years:

*“The Government should further scrutinize the procedures and processes undertaken during this gazettelement for equity, fairness and justice to the parties”,* stated Christine Aboke, the Acting-Country Director at Action Aid Uganda.<sup>176</sup>

The disregard of international human rights standards by government, corporations and other business entities in the evictions of communities remains a major concern to human rights defenders. The AAU respondent mentioned that the government seems to be unaware that there exists international standards and guidelines on how evictions should be conducted in order to safeguard human rights.<sup>177</sup>

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<sup>175</sup> A pattern of attacks against human rights defenders protesting human rights violations during major development projects in Uganda is well attested: i.e. Human Rights Watch (2014) report on the impact of mining found “increased hostility to civil society working on environmental, land, and corruption issues”, see *supra* note 158, at 42.

<sup>176</sup> Press Conference held at Action Aid Uganda offices, Kampala, on Friday 16 June, 2017, see *supra* note 51, at 19.

<sup>177</sup> The UN Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18).

## 4.5 Protection Mechanisms that HRDs Have Utilized During their Work

In situations when HRDs faced risks, threats or actual violations of their rights, majority of them have significantly used mostly national protection mechanisms compared sub-regional, regional and global mechanisms. The major protection mechanisms for HRDs at national level that were identified include: National Coalition of Human Rights Defenders Uganda (NCHRDU), Civil Society Coalition on Oil (CISCO), Legal Aid Service Providers Network (LASPNET), East and Horn of Africa Human Rights Defenders Project (EHAHRDP), National Organisation of Trade Unions (NOTU), Uganda Horticultural Industrial Services Provider and Allied Workers Union (UHISPAWU), Human Rights Center Uganda (HRCU), Defenders Protection International (DPI), Uganda Human Rights Commission (UHRC), Human Rights Network (HURINET), the Judiciary and related tribunals.

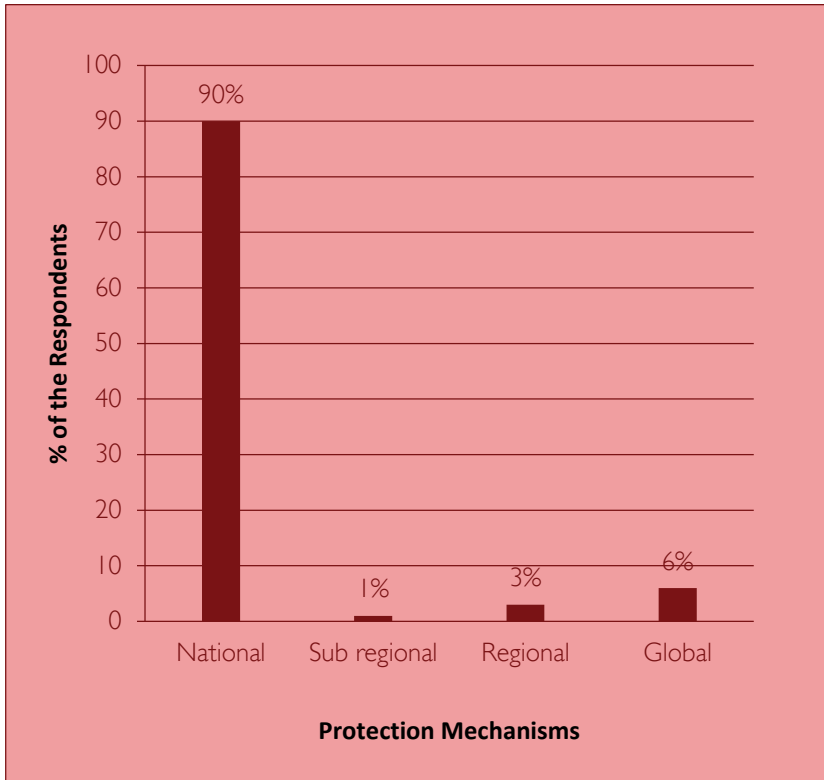
At sub-regional level, human rights defenders have as yet to extensively seek the protection or remedies provided by the Arusha-based East African Court of Justice, though it is expected this situation will change as other HRDs get more awareness about sub-regional protection mechanisms.<sup>178</sup> At the regional level, the use of the African Court on Human and Peoples' Rights (ACHPR) or the African Commission is still minimal, a situation that could be rectified by training of HRDs to enhance their knowledge about the efficacy of the African human rights system protection mechanisms. Finally, on a more positive note, the UN global protection mechanisms, particularly the Universal Periodic Review (UPR) process, are getting more visibility due to the increasing participation by Ugandan HRDs and civil society general. Training and capacity building for more effective participation by HRDs should be encouraged by all stakeholders.<sup>179</sup>

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<sup>178</sup> The most recent (and rare) use of the existing sub-regional protection mechanisms by Ugandan human rights defenders is the single case challenging the legality of the Anti-Homosexuality Act, filed in the East African Court of Justice by the Human Rights Awareness and Promotion Forum (HRAPF), see *infra* note 183, at 60.

<sup>179</sup> Uganda underwent the first UPR review at the 12<sup>th</sup> Session on 11 October, 2011 and the second one in 2016. The next review is scheduled for November 2021.

Figure 4 Protection mechanisms that HRDs have utilised



Protection mechanisms utilised by HRDs

#### 4.6 Engagement of and Collaboration with Stakeholders

One of the mechanisms documented during threats in the oil and gas sector was engagement of different stakeholders and explaining the role of the HRDs. For example, in Hoima HRDs had several meetings with the Minister of Internal Affairs (MIA), Ministry of Energy and Mineral Development (MEMD) officials as well as the RDCs. This helped create an understanding between the different actors and eased out the tension that had developed.

#### 4.7 Moving Engagement and Collaboration to Other Areas

This has been adopted by NGOs mainly working in the oil and gas and mining sectors in cases where the NGOs feel threatened especially for workshops and similar engagements. Civil society organisations have formed both formal and informal networks and coalitions in order to continue operating in an often

hostile or challenging environment.<sup>180</sup> This collaborative approach seems to have been able to resolve or at least sort out disagreements and ensure the NGOs are able to conduct their legitimate work, though it may not be sustainable in the long run.

#### **4.8 Courts of Law**

A few HRDs have taken the issues before courts of law. Notable among these is Twerwaneho Listeners' Club and West Ankole Civil Society Forum which have sought different orders from court. It is, however, noted that most of the orders sought by the HRDs are focusing on promotion of rights generally and do not necessarily challenge the underlying causes of the threats or violations of rights HRDs are facing.<sup>181</sup>

#### **4.9 Knowledge and Utilisation of International Standards to Hold Actors Accountable**

A significant percentage of human rights defenders do not have adequate knowledge of the most relevant international and regional human rights standards to monitor both the Ugandan government, multinational corporations and other business entities on issues of corporate accountability. Additionally, the research revealed that majority of civil society organisations have not yet internalised, nor are they applying the Human Rights-based Approach (HRBA) in their activities. Consequently, they are not effectively or consistently holding the Uganda government or the multi-national corporations to internationally recognised legal obligations to respect, protect and fulfil the rights of all human rights.

The standards that respondents were asked about include: UN Sustainable Development Goals (SDGs), U.N Global Compact on Corporate Responsibility Standards (CRS), UN Convention Against Corruption (UNCAC), UN Guiding Principles on Business and Human Rights (UNGPRB), UN Voluntary Principles on Security and Human Rights, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, International Finance Sustainability Framework, Extractive Industries Transparency Initiative (EITI), African Union Convention on Preventing and Combating Corruption and African Union Convention on Natural Resources. Only a low 34% of the respondents were knowledgeable about the UN Sustainable Development Goals while a mere 3% were aware about the Extractive Industries Transparency Initiative (EITI) standards.<sup>182</sup> It is not

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<sup>180</sup> The Civil Society Coalition on Oil and Gas (CSCO) is a leading example.

<sup>181</sup> See, for instance, High Court Civil Suit No. 62/2016, see *supra* note 174, at 54.

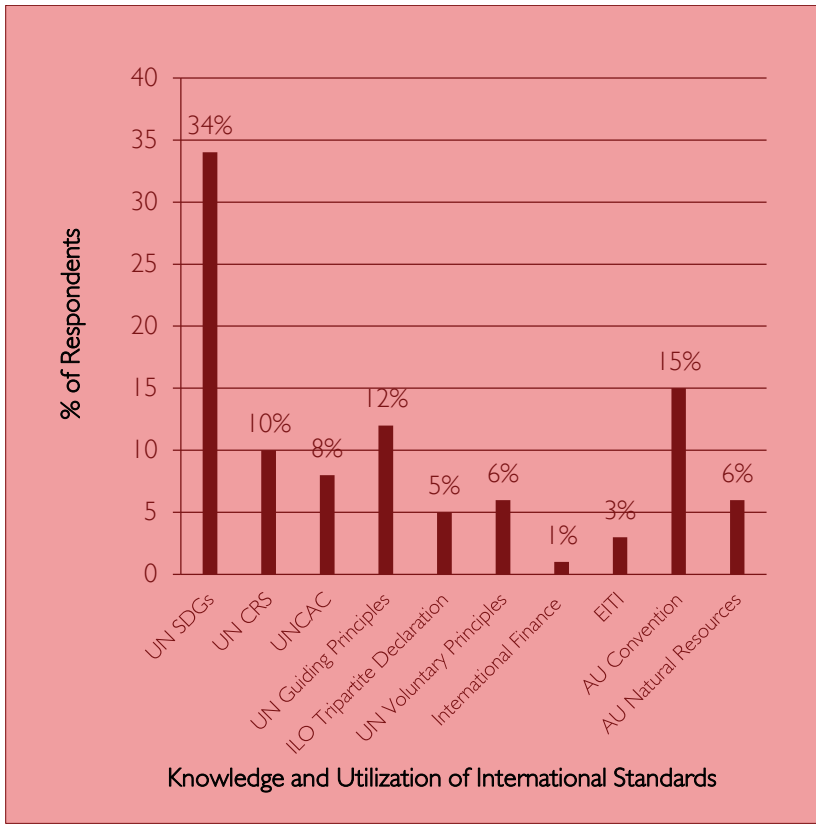
<sup>182</sup> It is encouraging, however, that Uganda Parliament is actively advocating the adoption of the EITI framework for the purposes of transparency and accountability in the country's emerging



realistically possible to monitor the Uganda government and non-state actors and hold them accountable against standards that HRDs do not seem know very well themselves. Civil society organisations must therefore do their due diligence and get familiar with all the relevant regional and international standards on corporate accountability in order to be more effective in fulfilling their mandate as watchdogs of the corporate sector.

### 4.10 Knowledge and Utilisation of International Standards by Defenders

Figure 5: Knowledge and Utilisation of International Standards



extractives sector. See, Billy Rwothungweyo, “MPs in fresh push for Uganda to join EITI”, in *New Vision*, 15 June 2017, where members of parliament under the Parliamentary Forum on Oil and Gas resolved to introduce an amendment to make Uganda an EITI candidate and eventual member.

#### **4.11 Conclusion: Operating Environment for HRDs in the Corporate Sector**

The human rights defenders working on issues of corporate accountability in Uganda face various risks, threats and challenges that impact adversely on their mandate to effectively promote and protect human rights. Whereas the existence of a robust policy, legal and institutional framework is acknowledged, enforcement is generally weak, making both the State and non-State actors complicit in many corporate related abuses and violations of human rights. It is therefore important that the government, local business enterprises, multinational corporations and all relevant stakeholders resolve and diligently work to eradicate the persistent risks, threats, challenges as well as rights violations that impede the effective work of HRDs in Uganda.

## **CHAPTER FIVE**

### **BEST PRACTICES, CONCLUSIONS, RECOMMENDATIONS AND WAY FORWARD FOR HUMAN RIGHTS DEFENDERS IN UGANDA**

#### **5.0 Introduction**

This final chapter presents and explains the best practices, relevant conclusions, applicable recommendations and way forward to key stakeholders regarding the operating environment and existing protection mechanisms for human rights defenders and civil society organisations working in the context of business activities and on issues of corporate accountability in Uganda.

#### **5.1 Best Practices**

##### ***Improved Mobilisation and Increased Opposition to Restrictive Laws***

The year 2014 saw a remarkable improvement in the use of advocacy platforms by HRDs as they challenged the Public Order Management Act 2013 (POMA), Anti Homosexuality Act 2014 (AHA) and the Anti-Pornography Act 2013 (APA), the laws that many HRDs felt restricted of freedom of expression and association as well as the violation of other rights. In 2014, HRDs filed petitions in the Constitutional Court to challenge the APA and AHA at the national level, while at the sub-regional level a petition was filed at the East African Court of Justice to challenge the merits of the AHA.<sup>183</sup> In all, civil society remained vigilant and actively worked to defend the legitimate civic space necessary for their work in protecting all categories of human rights in Uganda.

##### ***Improved Networking among CSOs and HRDs at National Level and Beyond***

Improvements were noted in the relations between state and non-state actors as well as in the networking among HRDs which were attributed to capacity building, awareness creation and dispute resolution. It was also worth noting that the culture of recognising HRDs for their contribution in promoting and protecting human rights continued to take root.<sup>184</sup> Despite the remarkable improvements in the utilisation of the legal framework by HRDs, there is still lack of a specific law that domesticates the UN Declaration on HRDs in

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<sup>183</sup> The Arusha-based East African Court of Justice dismissed the case originally filed by the Human Rights Awareness and Promotion Forum (HRAPF) on the grounds of lack of dispute, since the Anti-Homosexuality Act 2014 had been annulled by the Constitutional Court in Uganda, see *supra* note 178 at 56.

<sup>184</sup> The European Union in Uganda awards an annual prize – known as the 'EU Human Rights Defenders Award' - to the most outstanding human rights defender in the country. This a noteworthy best practice that should be emulated and replicated by local civil society.

Uganda. Some communities, state institutions and HRDs still do not understand the mandate of HRDs and in addition to their lack the capacity to take advantage of the opportunities offered by the existing CSOs networks and coalitions in the country.<sup>185</sup>

In 2013, the accreditation of a Ugandan non-governmental organisation, the Human Rights Centre Uganda, to the African Commission Observer Status, marked a significant recognition of the important work being done by Ugandan civil society.<sup>186</sup> Additionally, several civil society organisations working on corporate accountability have in the last two years initiated constructive collaboration with the premier continental advocacy body, the African Coalition for Corporate Accountability (ACCA).<sup>187</sup>

### ***National Action Plan (NAP) on Human Rights***

The commencement and adoption of the pioneer National Action Plan on human rights in 2016 was a seminal event in the country's human history. The NAP was developed through a consultative and participatory process by the National Steering Committee composed of various ministries, departments and agencies of government, and had input from a number of actors, including civil society, academia, community-based organizations, religious and cultural leaders, among others. The objectives of the NAP are to: build the capacity of the Government and citizens in the protection and promotion of human rights; to enhance equality and non-discrimination for all; to eradicate poverty and promote individual and collective wellbeing; guarantee the enjoyment of all rights and liberties; address the human rights needs of vulnerable groups and those of victims of conflict and disasters; and implement Uganda's regional and international human rights obligations.

### ***Second National Development Plan, 2015/16 -2019/20***

Furthermore, Uganda adopted the Second National Development Plan (2015/16-2019/20) as an overarching development framework for the next five years. The formulation of the Plan had been participatory and was guided by a rights-based approach to development. It was, therefore, a major policy

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<sup>185</sup> Notable networks and coalitions include the Legal Aid Service Providers Network (LASPNET); the National Coalition on Human Rights Defenders Uganda (NCHRDU); the Anti-Corruption Coalition of Uganda (ACCU); the Coalition on Economic, Social and Cultural Rights; the Uganda Consortium on Corporate Accountability in Uganda (UCCA), among several others.

<sup>186</sup> The Human Rights Centre -Uganda was among the eleven (11) other NGOs that were granted Observer Status in accordance with the 'Resolution on the Criteria for Granting and Enjoying Observer Status to Non-governmental Organisations Working in the field of Human and Peoples' Rights', ACHPR/Res. 33 (XXV) 1999.

<sup>187</sup> The ACCA was invited as participant during the 3<sup>rd</sup> Annual National Conference on Economic, Social and Cultural Rights, held at Makerere University Main Hall on the theme – "Business and Human Rights in Uganda: Accountability versus Social Responsibility for Corporate Abuses" on 14<sup>th</sup> -15<sup>th</sup> September 2016, see *supra* note 79, at 27.

tool integrating human rights and development issues. Any external development support given to Uganda must be aligned with the country's National Development Plan. While the NDP's formulation was guided by the principles of the human rights-based approach to development planning (HRBA) it is incumbent upon the implementing personnel and institutions to be knowledgeable about this human rights-based approach. More still, there is weak and inconsistent oversight and regulation of multinational corporations (MNCs) and businesses in accordance with regional and international standards ratified by Uganda. This must be rectified in order to protect human rights defenders and communities adversely impacted by the activities of corporations and other business entities.<sup>188</sup>

### ***Commission of Inquiry on Land (December, 2016)***

On 8 December 2016 the president appointed a commission of inquiry referred to as 'The Commission of Inquiry into the Effectiveness of the Law and Processes of Land Acquisition, Land Administration, Land Management and Land Registration in Uganda', in accordance with the Commission of Inquiry Act, Cap. 166. The President said his decision to constitute the commission came from the rampant land evictions and several complaints that he had been receiving relating to land, especially from marginalised individuals and vulnerable communities across the country.<sup>189</sup>

The main issues the commission will examine include: the law, processes and procedures by which land is administered and registered in Uganda, the role and effectiveness of the Uganda Land Commission (ULC) in administering public land and land fund, the management of wetlands and forest reserves, the role of traditional, cultural and religious institutions who own large tracts of land with occupants, assess the legal and policy framework on government land acquisition, the effectiveness of dispute resolution mechanisms available to persons involved in land disputes and any other matter connected with or incidental to land matters, and make recommendations.

It is the expectation of all concerned stakeholders, notably HRDs directly working on issues of corporate accountability, that all land issues and disputes, particularly land grabbing and evictions of vulnerable communities in the Albertine Graben region, and other parts of Uganda will be equitably resolved. The commission of inquiry is a positive development for human rights defenders working on issues of corporate accountability in Uganda. It is a

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<sup>188</sup> See, UPR (2017), Report of the Working Group on the Universal Periodic Review, "Uganda", Human Rights Council, Thirty-fourth Session, 27 February -24 March 2017 (A/HRC/34/10), para. 17, 27 December 2016.

<sup>189</sup> See, 'Statement on Land Grabbing in Uganda', *supra* note 93 & 94; see also, "Do not Force Land Titles on Ugandans – Museveni", *Sunday Monitor*, 11 June 2017, p. 1.

legitimate expectation of civil society that the inquiry is conducts a thorough examination of all critical issues regarding land grabbing, evictions and disenfranchisement of vulnerable communities, and will formulate bold and actionable recommendations that will address the human rights violations and access to effective remedies by vulnerable communities in all regions of the country.

### ***Enactment of the Anti-Torture Legislation, 2012***

The Prevention and Prohibition of Torture Act, adopted by Uganda in 2012, incorporates the provisions of the U.N Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) into the domestic legal system. Consultations were under way with respect to the policy and institutional issues that must be addressed before the Optional Protocol to the U.N Convention Against Torture could also be ratified by Uganda. With many incidents of torture of human rights defenders and other Ugandans reported each year, it is expected this anti-torture legislation will go a long way in eradicating the culture of impunity that leads to torture.

### ***Establishment of human rights directorates in three JLOS sector institutions***

It is a positive sign of progress that the three justice, law and order (JLOS) institutions that have consistently registered many incidents of violating the rights of human rights defenders and other Ugandans, have created directorates to address these violations. The Uganda Police Force (UPF), the Uganda People's Defense Forces (UPDF) and the Uganda Prisons Service (UPS) have each established a human rights directorate to handle human rights issues, including complaints from the public about any of their respective serving officers. These directorates in the police, army and prisons are also responsible for building in-house human rights capacity and ensuring strict adherence to the country's regional and international human rights obligations and standards.<sup>190</sup> Civil society organisations will remain vigilant to ensure that these directorates in actuality fulfill their human rights commitments.

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<sup>190</sup> See, UPR (2017), Report of the Working Group on the Universal Periodic Review, "Uganda", Human Rights Council, Thirty-fourth Session, 27 February -24 March 2017 (A/HRC/34/10), para. 12, 27 December 2016.

## 5.2 Conclusions

In general, the overall operating environment for all human rights defenders in Uganda has progressively improved for the better in the last five years.<sup>191</sup> However, to date, there has been no specific research focusing on HRDs working on issues of corporate accountability, a glaring gap this report fills, and plans to regularly update. The human rights defenders working in the context of business activities in Uganda face various general and specific risks, threats and challenges that impact adversely on their mandate to effectively promote and protect human rights. Whereas the existence of a fairly robust policy, legal and institutional framework on human rights is acknowledged, it is vital to note that enforcement is still generally weak, making both the state and business entities complicit in many corporate-related abuses and violations of human rights. Uganda is yet to systematically incorporate the respect, protect and remedy framework for business and human rights in its domestic laws in accordance with international standards, particularly the UN Guiding Principles on Business and Human Rights.

Human rights defenders need also to redouble their efforts to enhance their capacities to effectively protect their rights and those of marginalised and vulnerable communities they serve, particularly in the extractives sector (oil, gas and mining), as well as workers in the floriculture industry and the communities facing oil-induced evictions and land grabbing. Additionally, human rights defenders must institute transparency and accountability measures to stem cases of impropriety and misuse of funds within their organisations. Without internal introspection, the efforts of human rights defenders against impunity, corruption and corporate violations by government and other business entities runs the danger of remaining hollow and ineffective. One human rights defender rightly concludes: “HRDs’ protection must be reconceptualised to focus more on preventive measures to ensure their long term protection instead of short term measures that are not sustainable”.<sup>192</sup> Therefore, in consultation with civil society, the government should develop a national action plan to implement the United Nations Guiding Principles on Business and Human Rights, with special attention to issues of corporate accountability, free and informed consent of indigenous populations, environmental rights, labour rights, land rights and the rights of other vulnerable or marginalised communities.

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<sup>191</sup> See generally, Human Rights Centre Uganda (HRCU, 2017), *Human Rights Defenders in Uganda 2016: Striving for a Better Environment for Protection and Promotion of their Rights*, Vol. 6, Kampala, Uganda (released on 15 June 2017).

<sup>192</sup> Interview with the Executive Director of Chapter Four, Mr. Nicholas Opiyo on 11 August 2017.

## 5.3 SPECIFIC RECOMMENDATIONS TO KEY STAKEHOLDERS

### 5.3.1 To the Uganda Government

Enact a Human Rights Defenders Protection Bill into law specifically protecting the rights of human rights defenders. The law and concomitant policy should incorporate all vital aspects dealing with all human rights in general and corporate accountability in particular. This is best accomplished by domesticating the provisions of the UN Declaration on Human Rights Defenders, the UN Guiding Principles on Business and Human Rights, the UN Global Compact, the UN Convention Against Corruption (UNCAC), the Extractive Industries Transparency Initiative (EITI), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Voluntary Principles on Security and Human Rights, the African Union Convention on Preventing and Combating Corruption, and related instruments. Most fortuitously, a model law on human rights defenders to guide all stakeholders in this vital legislative endeavor is already available.<sup>193</sup>

Under both international and national law, the state is the main duty-bearer with legal obligations to respect, protect and fulfil all human rights, those of HRDs inclusive. Article 2 of the UN Declaration on Human Rights Defenders emphasizes the obligations of the State to protect defenders. It mentions that States may be accountable, either by "commission" or "omission" for violations against those engaged in human rights work and "should adopt legislative, administrative or other measures as may be necessary" to guarantee the rights and freedoms contained in the Declaration and related instruments.

To this end, it is recommended to the Government of Uganda to:

- Respect and domesticate the UN Declaration on Human Rights Defenders, the UN Guiding Principles on Business and Human Rights and support for the inclusion of this objective in the next National Development Plan /Strategic Development Plan for Uganda, 2020 -2025, together with the development and implementation of a comprehensive strategy aimed at reinforcing and sensitising the human rights and political actors on the importance of promoting and protecting HRDs to effectively do their legitimate work;

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<sup>193</sup> See, "Model Law for the Recognition and Protection of Human Rights Defenders" developed in consultation with over five hundred (500) defenders worldwide, and adopted by twenty-eight (28) human rights experts and jurists. The model law was launched by the International Service for Human Rights (ISHR) on 21 June 2016 in Geneva, Switzerland). Available at <http://www.ishr.ch/news/groundbreaking-model-law-recognise-and-protect-human-rights-defenders>, (accessed 28 June 2017).



- Ensure that all victims of corporate abuses and violations are able to access effective remedies, including: enforcing robust witness protection and whistle blower laws that are already enacted, as well as strengthening relevant enforcement institutions particularly the Inspectorate of Government (IGG), the Industrial Court, the Equal Opportunities Commission (EOC) as well as the Uganda Human Rights Commission (UHRC).
- Guarantee the physical and psychological integrity of HRDs and ensure that they can carry out their legitimate work without hindrance, enabling them the full exercise of their fundamental freedoms;
- Thoroughly investigate all forms of threats, intimidation, harassment and attacks against HRDs in the Albertine Graben region and other areas, and bring all perpetrators expeditiously to justice;
- Adopt the necessary legal framework for the promotion and protection of HRDs, according to international human rights instruments and standards, notably the UN Declaration on the Protection of HRDs, by particularly amending the Nongovernmental Organisations Act to ensure free association rights in compliance with international human rights law, particularly removing new criminal provisions for legitimate civil society work.
- Strengthen government oversight of extractive activities and cancel licenses, with punitive damages, in clear cases of rights abuses or environmental damages.
- Enact and enforce a realistic minimum wage Bill that provides all workers and their families in both the formal and informal sectors with an adequate standard of living.
- Stop all practice of land evictions of vulnerable local communities or grabbing of their lands in the oil exploration/extraction areas in the Albertine Graben region as well as mining areas in Karamoja, etc. without compensation or inadequate compensation or without ensuring procedural safeguards or alternative resettlements.
- Ensure the on-going commission of inquiry on land effectively examines all questions, controversies and issues regarding land, particularly the following: the law, processes and procedures by which land is administered and registered in Uganda, the role and effectiveness of the Uganda Land Commission (ULC) in administering public land and land fund, the management of wetlands and forest reserves, the role of traditional, cultural and religious institutions who own large tracts of land with occupants, assess the legal and policy framework on government land acquisition, the effectiveness of dispute resolution mechanisms available to persons involved in land disputes.

- Conduct comprehensive environmental impact assessments and respect their recommendations by all multinational corporations and other business enterprises operating in the country.
- Reinforce the mandate and capacity of national human rights institutions (especially the Uganda Human Rights Commission, the Equal Opportunity Commission and the Inspectorate of Government) in the area of corporate accountability in order for them to monitor and enforce human rights standards amongst local business enterprises and multinational corporations in the extractives and related sectors.
- Implement the UPR Recommendations on human rights defenders made to the government at the 2011 and 2016 sessions.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in order to enable individual complaint mechanism for corporate violations of rights to be pursued by individuals, communities and HRDs.

### 5.3.2 To the Uganda Human Rights Commission

In conformity with their clear constitutional mandate enunciated in Articles 51 to 58 of the 1995 Constitution (as amended) to promote and protect human rights and coupled with their independent status, and considering their key role in the protection of HRDs, it is recommended that the Uganda Human Rights Commission to take the following measures:

- Support the domestication of the UN Declaration on HRDs and the development of specific frameworks for the promotion and the protection of HRDs at regional and national offices throughout the country;
- Having already established an HRDs Desk at the UHRC Head Office in Kampala, now strengthen this HRDs Desk by creating focal points for HRDs within the entire UHRC structure in the regional offices with the mandate to ensure their protection, and to monitor the national situation of HRDs in order to prevent or denounce abuses and violations by all State organs and non-state actors at national, regional levels;
- Expedite the design and adoption of a National Action Plan on Business and Human Rights as part of the States' responsibility to disseminate and implement the UN Guiding Principles on Business and Human Rights in Uganda.
- Organise sensitization and capacity enhancement programs for local human rights defenders on the neglected issue of human rights and business, the protection mechanisms available for their work at national, sub-regional, regional and global levels, e.g. the annual UN Forum on Business and Human Rights.

- Introduce stronger monitoring mechanisms or protocols to regularly assess the human rights impact of extractive activities and ensure that licences and leases are only granted after indigenous communities have given their free, prior and informed consent and a fair revenue sharing mechanism has been agreed.

In conclusion, as Uganda embarks on an ambitious development trajectory in the wake of the recent oil and gas discoveries and extraction, and as the private sector continues to play an increasingly prominent role in the country's development, it is very important that the government expeditiously domesticates the United Nations Guiding Principles on Business and Human Rights, the UN Global Compact principles, as well as the Extractive Industries Transparency Initiative (EITI) framework as a matter of extreme priority. To this end, efforts must expeditiously commence to develop and design policies, adopt and enact laws, action plans and establish institutions to operationalise the standards contained in these human rights instruments.

### **5.3.3 To the Human Rights Defenders Working on Corporate Accountability**

Despite various risks, threats, intimidation, harassment and a restrictive legislative and institutional environment, human rights defenders working on issues of corporate accountability have accomplished various commendable achievements. However, not to rest on their laurels, it is recommended that they implement the following:

- Enhance the capacities of human rights defenders and the media through increased training in the relevant international and regional instruments and protection mechanisms on business and human rights.
- Build capacity on of HRDs through increased training on modern security management systems and effective advocacy strategies on all critical issues of concern raised in this report.
- Strengthen the relevant coalitions, networks and local protection mechanisms for the protection of human rights defenders across the country, especially those that focus in part or wholly on corporate accountability.
- Take up corporate accountability as the central concern of civil society organisations, especially as it relates to the protection of economic, social and cultural rights and linking corporate violations to poverty and underdevelopment. This means that the concept of corporate accountability will be addressed in its totality at the legal and policy levels, as well as at the level of enforcement of the applicable laws and policies in Uganda.

- Enhanced fight for freer and more operating space and environment for all CSOs
- Litigation strategy should be strengthened by taking more cases on the violation of economic and social rights to courts.
- Research into all dimensions of corporate accountability and their impact on human rights, i.e. the gender aspects of multinational corporations in the extractives sector, etc.
- Enhance advocacy, especially by creating close and strong working relations with the Parliamentary Group on Oil and Gas and also focusing on due diligence requirements and transparency of multinational corporations.
- Enhance international cooperation with UN Business and Human Rights Special Representative of the Secretary-General, and related mechanisms, including active participation in the regular UN Forum on Business and Human Rights as well as the UPR review process of Uganda.

### 5.3.4 To the Multinational Corporations and Other Business Enterprises

- ✓ **Full Disclosure and Transparency:** Both local business enterprises and multinational corporations should:
  - Report fully on their social and environmental impacts, on significant risks and on breaches of relevant standards (such reports to be independently verified);
  - Ensure effective prior consultations with affected communities, including the preparation of Environmental Impact Assessments (EIA) for significant activities and full public access to all relevant documentation; and
  - Take the negative social and environmental impacts of their activities fully into account in their corporate decisions making.
- ✓ **Rights of redress and to effective remedy:** Guarantee legal rights of redress for citizens and communities adversely affected by corporate activities, including:
  - Access for affected people anywhere in Uganda to pursue litigation where parent corporations claim a 'home', are domiciled, or listed;
  - Provision for legal challenge to company decisions by those with an interest;
  - A legal aid mechanism to provide public funds to support such challenges.

- **Rights to natural resources:** Establish individual and community rights of access to and control over the resources needed to enjoy a healthy and sustainable life, including rights over common property resources such as forests, water, fisheries, genetic resources and minerals for indigenous peoples and local communities;
- Right to prior consultation and veto over corporate projects, against coerced displacement in respect free, prior and informed consent requirements;
- Right to compensation or reparation for resources unjustly expropriated by or for multinational corporations and other business enterprises.

### **5.3.5 Way Forward: National Political, Policy and Institutional Framework**

Domestic legal, administrative and institutional mechanisms in Uganda should contribute to creating and consolidating a safe and enabling environment, in which human rights defenders are protected, supported and empowered to carry out their legitimate activities. Domestic laws, regulations, policies and practices must be compatible with United Nations, African Union and East African Community commitments and human rights standards. This is will be facilitated by the following key factors:

#### **a) Political Commitment by Government**

Uganda government, as a State Party to a multiplicity of international, regional and sub-regional instruments on HRDs in particular and human rights in general, must demonstrate high political commitment by fulfilling all legal obligations and policy commitments to respect, protect and defend human rights defenders at all levels. This commitment must also include implementing the rights in the ratified treaties.

#### **b) Responsibility of all Stakeholders**

Uganda government and all corporate and business stakeholders in the country must demonstrate leadership and responsibility by monitoring the situation of human rights defenders and filling the gaps in political, institutional, legislative and administrative measures to ensure their effective protection.

#### **c) A Safe and Conducive Environment for All**

Uganda must take political, administrative and legislative measures to ensure that the environment in which human rights defenders operate is conducive to the protection of all human rights, including women's rights defenders. These measures may include an open dialogue with leaders and groups of traditional and cultural institutions, religious institutions, educational institutions, media institutions and all sections of Ugandan society.

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