

BUSINESS AND HUMAN RIGHTS IN UGANDA

*A Resource Handbook on the Policy and Legal Framework on Business
and Human Rights in Uganda*

September 2018



Cover Pic: Child Labour in Luuka District. Children working on sugar plantation.



UGANDA CONSORTIUM ON CORPORATE ACCOUNTABILITY

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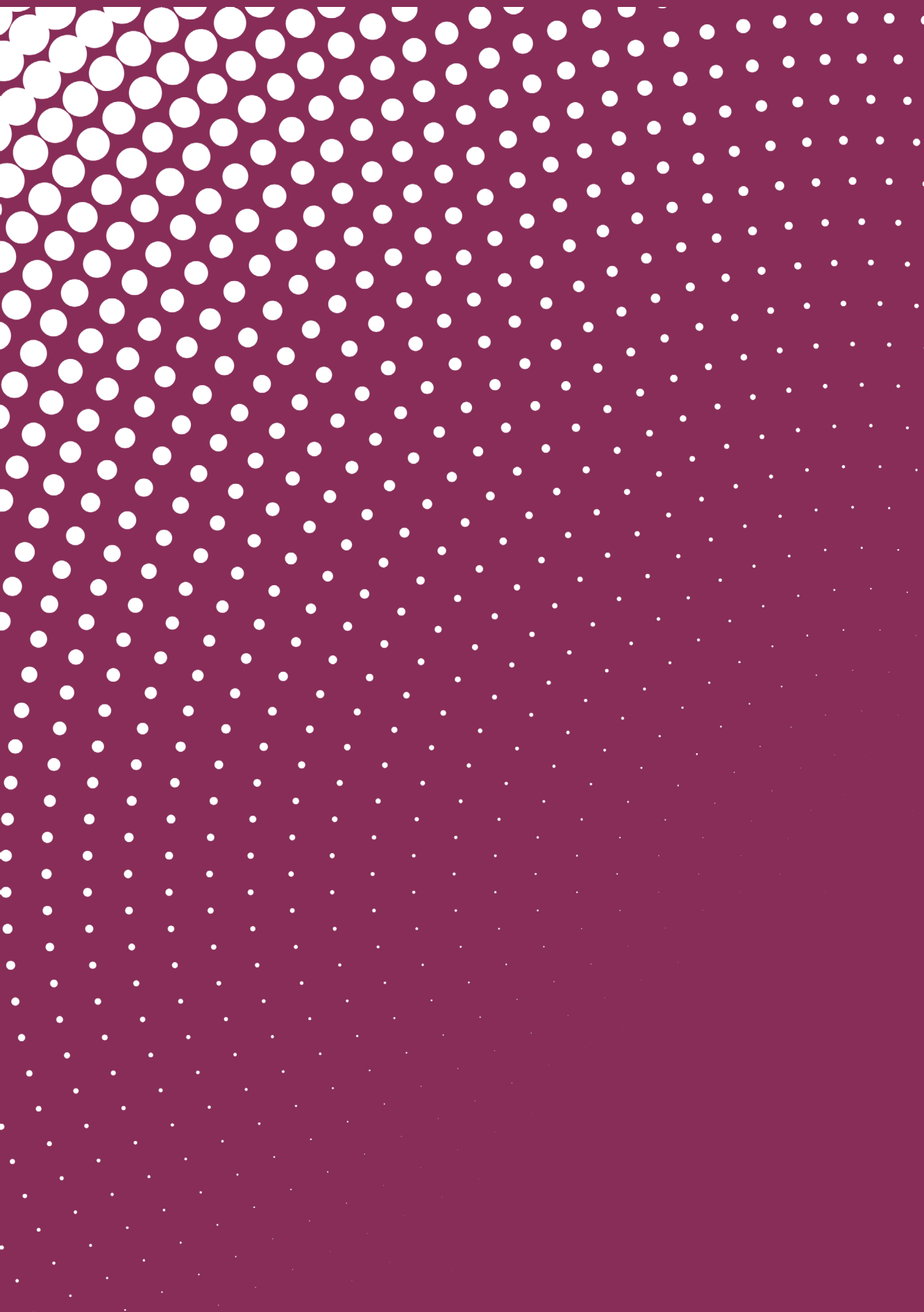
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Thank You

Uganda Consortium on Corporate Accountability (UCCA)

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I.

INTRODUCTION

INTRODUCTION

Historically, the notion of protect, respect and promote human rights was the sole responsibility of States and Business Enterprises were rarely concerned or accountable for the protection and respect of human rights. The debate concerning the responsibilities of businesses in relation to human rights became prominent in the 1990s, as oil, gas, and mining companies expanded into increasingly difficult areas, and as the practice of offshore production in clothing and footwear drew attention to poor working conditions in global supply chains.¹

Over the years, the discussion around business and human rights has gained momentum—largely due to the increasing power and influence corporate entities have acquired in the control and provision of basic services and their engagements in sectors that impact and affect human rights, both in a positive and negative manner.

Internationally, the attempt to impose obligations on business entities as far as respect of human rights was concerned was first evidenced in the 2003 “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (hereinafter referred to as The Draft Norms) by the Sub-commission of the then UN Commission on Human Rights.² These Draft Norms essentially sought to impose binding obligations on both companies and states “to promote, ensure respect of, and protect human rights,” but created distinctions so that states would have ‘primary’ duties and companies would have ‘secondary’ duties.”³

However, these Draft Norms failed to gather intergovernmental support. Particularly business entities criticised them as requiring private legal entities to become agents for enforcement of international law and yet this was the task of states not companies.⁴

1 The UN “Protect, Respect and Remedy” Framework for Business and Human Rights, The Business and Human Rights Resource Centre, available online at <https://www.business-humanrights.org/sites/default/files/reports-and-materials/-protect-respect-remedy-framework.pdf>

2 United Nations Sub-Commission Norms on Business and Human Rights, Explanatory notes, Business and Human Rights Resource Centre, available online at <https://www.business-humanrights.org/en/united-nations-sub-commission-norms-on-business-human-rights-explanatory-materials>

3 The UN Protect, Respect and Remedy, *Op.Cit.*, note 1

4 Excerpts from submissions to UN consultation on Business and Human Rights, 16 November, 2004, Business and Human Rights Resource Centre, available online at <https://www.business-humanrights.org/en/un-intl-orgs/un-intergovernmental-orgs/>

Following the heated contest around the Draft Norms, in July 2005, a UN Special Representative on Business and Human Rights Prof. John Ruggie was appointed to inter alia; identify and clarify standards of corporate responsibility and accountability regarding human rights, elaborate on state roles in regulating and adjudicating corporate activities; clarify concepts such as “complicity” and “sphere of influence,” develop methodologies for human rights impact assessments and consider state and corporate best practices.⁵

In 2008, Prof. Ruggie proposed a three pillar framework of protect, respect and remedy which required; the state to protect against human rights abuses by third parties, including business actors; all Business Enterprises to respect human rights and access by victims to effective remedies— both judicial and non-judicial.⁶ This framework was welcomed by the UN Human Rights Council⁷ and this marked the first time the Council or its predecessor, the Commission, ever took a policy position on business and human

rights.⁸ In order to operationalize the framework, the Council extended the Special Representative’s mandate to develop the UN Guiding Principles on Business and Human Rights (hereinafter referred to as the UNGPs).

The UNGPs were drafted following an extensive and inclusive process that involved Human Rights Council delegations, business enterprises and associations, civil society groups and all member states of the United Nation.⁹ The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011 and a UN Working Group on Business and Human Rights was formed to operationalize their implementation.

This Handbook sets out to unpack the evolving nature of international human rights standards on business and human rights and domestic legal and policy framework in relation to business activities and human rights. It draws on the national policy and legal frameworks, provisions and other regional

un/submissions-to-un-2004-consultation-business-human-rights

5 UN Commission on Human Rights Resolution 2005/69 available online at <http://www.refworld.org/docid/45377c80c.html>

6 Supra, note 1, page 1.

7 Human Rights Council Resolution 8/7 available online at http://ap.ohchr.org/documents/e/hrc/resolutions/A_HRC_RES_8_7.pdf

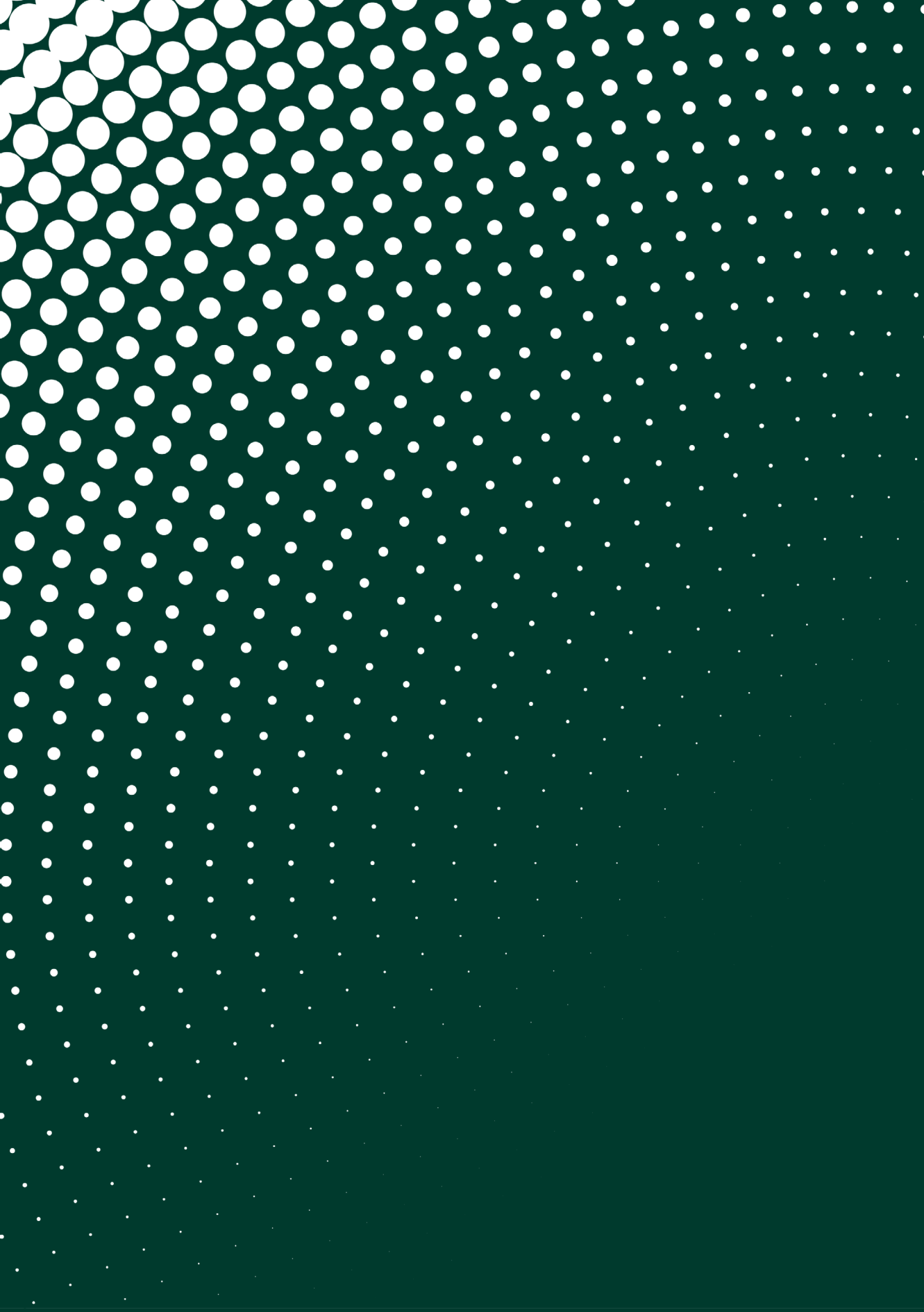
8 Introduction by the Special Representative, July 2009, Business and Human Rights Resource Centre, available online at <https://www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>

9 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, page 5, 21 March 2011, available online at https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

and international human rights instruments Uganda is a party to.

The Handbook is divided into three thematic parts; Labour, Land and Resettlement and Environment. These thematic parts are based on the international legal framework, domestic legal and policy framework as well the United Nations Guiding Principles on Business and Human Rights (UNGPs) and General Comment No.24 on State Obligations under the International Covenant on Economic Social and Cultural Rights in the Context of Business Activities.

All the aforementioned legal and policy framework will be discussed in the themes of this handbook, however some aspects of the legal framework such as the 1995 Uganda Constitution, UNGPs and General Comment No.24 require special attention and this is dealt with under the General Overview of the Legal Framework.





II.

GENERAL OVERVIEW OF THE LEGAL FRAMEWORK ON BUSINESS AND HUMAN RIGHTS

a. The 1995 Uganda Constitution

The 1995 Constitution is the Supreme law of Uganda¹⁰ and it among others contains the Bill of Rights in Chapter Four. Most of the rights provided for under Chapter Four are in line with the International Bill of Rights. The nature of rights within Chapter Four of the Uganda Constitution include civil, political, economic and social rights. This Handbook focuses on the Economic Social and Cultural Rights obligations to contextualise the discussion around business and human rights and corporate accountability in Uganda.

Article 20 of the Constitution validates some of the principles under the UNGPs as it confers a responsibility for all non-state actors including businesses enterprises to respect human rights. This Article creates a direct responsibility for other persons to respect human rights. The Constitution also ensures protective measures for the right to property under Article 26,¹¹ the right to culture under Article 37, Article 30 on right to education, Article 40 on economic rights, and Article 39 on the right to a clean and healthy environment among others.

While specific rights such as the right to health, food, water, housing and social security are not expressly provided for in the Ugandan Bill of Rights (Chapter Four of the Constitution), they are set out in the National Objectives and Directive Principles of State Policy (NODPSPs). Similarly, Article 45 of Constitution is to the effect that although economic, social and cultural rights are not expressly recognised in the bill of rights, they could be read into the Constitution.¹² Nevertheless there is need for the Constitution to fully recognise all economic, social and cultural rights under the Bill of Rights in order to fully comply with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Furthermore, the 1995 Constitution provides for cross-cutting rights—important in protecting human rights in the context of business activities.

¹⁰ Article 2 of the Constitution.

¹¹ Article 26 expressly reaffirms the right to own property and prevents expropriation except in certain circumstances. In the case of expropriation, the owner has the right to “prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property.” It also provides for “a right to access to a court of law by any person who has an interest or right over the property.”

¹² C Mbazira, ‘Hybrid Protection of Economic, Social and Cultural Rights in Uganda’ (2016) in DM Chirwa & L Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (Cambridge: Cambridge University Press).

These include Article 21 on non-discrimination and equality of all people before the law, Article 41 on access to information and Article 38 on civic participation.

b. The United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) commonly referred to as the ‘Protect, Respect and Remedy Framework’ are the foundation of business and human rights global standards. The UNGPs are grounded on the recognition of three key principles;

1. The State’s existing obligation to protect human rights which extends the role of the State to respect, protect and fulfill human rights and fundamental freedoms
2. The Corporate responsibility to respect human rights which speaks to the role of business enterprises to comply with all applicable laws and to respect human rights, and
3. Access to remedy that speaks to the need for rights and obligations to be matched to appropriate and effective remedies when breached.¹³

More elaborately, the state has a duty to protect human rights and to protect all people against any abuses by third parties including business enterprises. The state is also required to set out clearly that businesses must respect human rights.

Furthermore, businesses have a responsibility to respect human rights by avoiding infringing on human rights of persons in their operations and addressing adverse human rights impacts in which they are involved. The responsibility accrues to all businesses regardless of size, sector, operational context, ownership and structure.¹⁴ The responsibility of businesses to respect human rights is twofold; on the one hand, businesses must refrain from causing or contributing to adverse human rights impacts through their own

¹³ UN Human Rights Office of the High Commissioner, The UN Guiding Principles on Business and Human Rights, (2011) accessed at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹⁴ *Id.* at pg. 15

activities while mitigating adverse human rights impacts that are directly linked to their operations.¹⁵ Businesses may fulfill their responsibility to respect human rights through policy commitments to respect human rights, carrying out human rights due diligence processes and having in their structures remediation processes.¹⁶

The last key principle enjoins both States and Business Enterprises to remedy human rights violations and abuses through provision of access to effective remedial mechanisms to victims of corporate abuses. These remedies may be judicial or non-judicial. It is of critical importance that corporate entities respect human rights in all their direct operations—including operations of their subsidiaries and value and supply chains.

The UNGPs are not legally binding but are voluntary principles setting clear benchmarks and standards for states and business enterprises to protect, respect and remedy human rights situation in all their operations. The closest to a binding instrument on business and human rights is General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities that outlines duties of states in so far as business activities are concerned.

c. General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities

General Comment No. 24 lays out the duties of states under the ICESCR in the context of business activities. Primarily, it is noted that due to state failure to ensure compliance with internationally recognized human rights set standards within their jurisdiction, corporate activities have negatively affected economic, social and cultural rights (ESCRs).¹⁷ In introducing General Comment No. 24, the Committee on Economic Social and Cultural Rights

¹⁵ *Id.* at page. 14

¹⁶ The UN Guiding Principles on Business and Human Rights, An Introduction, page 3, available online at https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_Principles_BusinessHR.pdf

¹⁷ General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, Paragraph 1

(CESCR) noted that “businesses play an important role in the realization of economic, social and cultural rights, inter alia by contributing to the creation of employment opportunities and — through private investment — to development.”¹⁸ However, the Committee further noted that, it had been “regularly presented with situations in which, as a result of ***States’ failure to ensure compliance, under their jurisdiction, with internationally recognized human rights norms and standards, corporate activities have negatively affected economic, social and cultural rights.***”¹⁹ Hence, General Comment No 24 clarifies the duties of States parties to the ICESCR in such situations, with a view to preventing and addressing the adverse impacts of business activities on human rights.²⁰

The CESCR reinforces its previous considerations about the growing impact of business activities on the enjoyment of a number of Covenant rights including the right to health, housing, food, water, social security, right to just and favourable conditions of work among others.²¹

The Committee had also previously reiterated the Covenant rights and state obligations regarding these rights in General Comments No. 14 on Right to Health,²² No.4 on Adequate Housing,²³ No. 12 on Adequate Food,²⁴ No. 15 on Right to Water,²⁵ No, 19 on Social Security²⁶ and No. 18 on Right to Work²⁷ among others. It is majorly these rights and other economic social and cultural rights that this handbook interrogates, analysing how various business activities have impacted on these rights in Uganda. The Committee further takes cognizant of special interest groups such as Persons with

18 *Id.*,

19 *Id.*,

20 UN Committee on Economic, Social and Cultural Rights General Discussions on State Obligations in the context of Business activities, 21 February 2017 available online at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?News=21210&LangID=E>

21 *Id.* paragraph 2

22 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html>.

23 *Id.*, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a1.html>.

24 *Id.*, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, available at: <http://www.refworld.org/docid/4538838c11.html>.

25 *Id.*, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html>.

26 *Id.*, *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, available at: <http://www.refworld.org/docid/47b17b5b39c.html>.

27 *Id.*, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, available at: <http://www.refworld.org/docid/4415453b4.htm>.

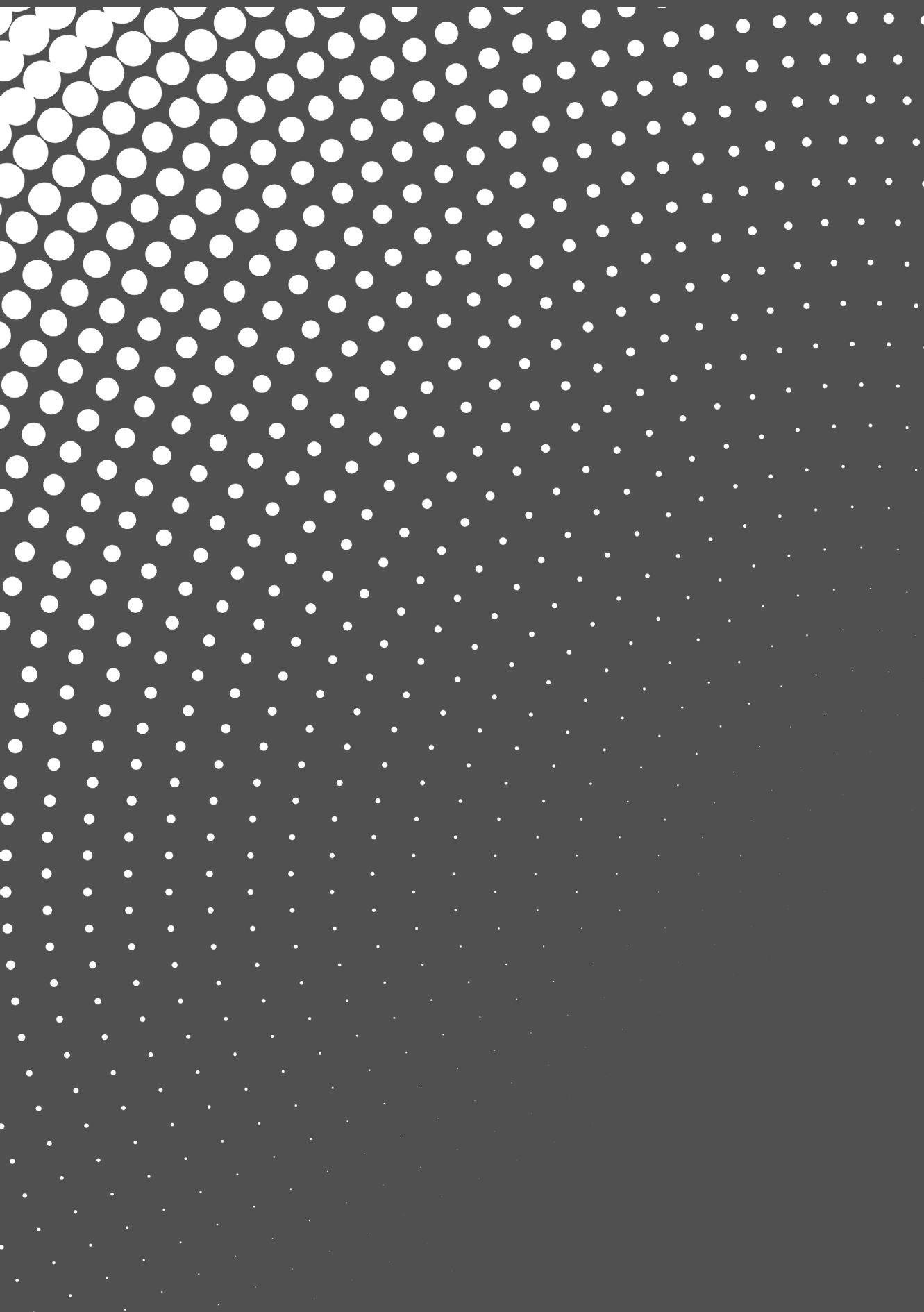
Disabilities, Women, Children, Indigenous People and workers in the informal sector among others who are most at risk to have their rights violated in the course of business activities²⁸ and it puts emphasis on the responsibility of businesses to respect their human rights whether the rights exist and are protected domestically or not.²⁹

The CESCR enjoins states to respect, protect and fulfil human rights and that the obligation to respect is violated when states prioritize interests of business entities over covenant rights without adequate justification. It further notes that the obligation to fulfill requires states to use available resources to facilitate and promote enjoyment of rights but also to direct efforts of business entities towards fulfillment of covenant rights. It further emphasizes the need for the availability of effective remedies, both judicial and non-judicial with a preference to judicial remedies.³⁰ Therefore, implicit in General Comment No. 24 is the Protect, Respect, Remedy framework that underlies business and human rights protective measures. Uganda is a signatory to the ICESCR which it ratified in 1987.

28 *UN Committee on Economic Social and Cultural Rights, Op.cit., Note 23, aragraph 8*

29 *Id.* paragraph 5

30 *Id.*, paragraph 38





III.

LABOUR RIGHTS

LABOUR RIGHTS

Over the years, Uganda has experienced an increased foreign and local direct investment especially within the manufacturing and production sector, infrastructural development and natural resource exploitation among others. Critical issues and debate surrounding labour rights—especially the protective measures of workers in the informal sector have been awash within the media framework and reawakened the debate around minimum wage, protection and regulating the migrant workers sector and addressing the economic exploitation of workers in the informal sector—especially in the field of manufacturing and processing. Recently, there have been increased debates demanding the passing of a minimum wage law, and regulation of labour migration.

The main regulatory framework around Labour rights in Uganda include; the 1995 Uganda Constitution, the Employment Act 2006, the Workers Compensation Act 2000, the Labour Unions Act, the Labour Disputes (Arbitration and Settlement) Act 2006, the Occupational Health and Safety Act 2006, the National Social Security Fund Act and the Employment Regulations 2011. These laws largely set standards and regulate worker's rights in the course of employment, notably the right to work and correlating terms and conditions, healthy and safety, compensation in case of injury and social security among others.

Standard setting and regulating labour is one of paramount importance especially in this era of increased local and foreign direct investment and focus on private sector led economy. ***Labour is the single most important component as per the sustainability of any business structure and how this is managed is key to both sustainability of any business establishment and individual growth and retention of the labour force.*** Labour and any resultant standards are a key area of discussion around business and human rights. This is largely due to the fact that issues to do with labour standards and human rights are critical avenues for a country's population to achieve social economic transformation and attaining economic development.

“

In fact, more than 90 % of the Sustainable Development Goals (SDGs) targets are linked to international human rights and labour standards.³¹

It is without a doubt that the interest in operations of business enterprises today and the resultant human rights standards around labour have been a critical issue for states and communities in which they operate. A business enterprise’s “single greatest opportunity to contribute to human development lies in advancing respect for human rights of workers and communities largely affected by their activities and touched by their value and supply chains.”³²

It is from this brief background that this Handbook looks at the current labour law framework both at the international and domestic level—assessing the level of the Country’s compliance to international human rights standards as far as they speak to labour rights.

The section takes cognizance of the influx of foreign companies in Uganda and the challenges it brings around standards, regulations and enforcement of rights in case of violations and abuse. It is important to appreciate that access to remedy is one the most challenging pillars within the UNGPs framework and hence the need to underscore the importance of regional and international mechanisms especially in cases where corporate abuses are committed by Multinational Corporations (MNCs). The section explores key thematic labour related areas against domestic legislative frameworks and Uganda’s implementation of international human rights obligations.

31 Human Rights and the SDGs, The Danish Institute for Human Rights, available online at <https://www.humanrights.dk/our-work/sustainable-development/human-rights-sdgs>

32 Business, Human Rights and the Sustainable Development Goals, Forging a coherent Vision and Strategy, November 2016, Business and Sustainable Development Commission.

a. Discrimination at the Work Place

i. International and Regional Legal Framework

Equality and Non-discrimination are core principles in international human rights law. Equality of all persons before the law is to the effect that everyone irrespective of gender, sex, race, ethnicity and status among others shall be treated equally before the law and within all other legal engagements. These are key embodiments within all important human rights instruments including the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR) and is at the heart of other core human rights treaties.³³

Uganda is a party to a number of international instruments which espouse the non-discrimination principle including the International Covenant on Economic Social and Cultural Rights (ICESCR),³⁴ the International Covenant on Civil and Political Rights (ICCPR),³⁵ the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW),³⁶ and the African Charter on Human and People's Rights (ACHPR)³⁷ among others.

All these instruments oblige States to ensure that everyone, without discrimination enjoys the Covenant rights set forth. The grounds of discrimination in these international instruments are listed to include but not limited to race, age, origin, political status, colour or any other status that have the impact of nullifying or impairing equality of opportunity or treatment. These equality and freedom from discrimination principles are pertinent issues in so far as the right to work and other related labour rights are concerned in Uganda.

In General Comment No. 18, the Committee on Economic Social and Cultural Rights, on the Rights to Work, enjoins the State to put in place a comprehensive system of protective measures to combat gender discrimination in the workplace, and ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.³⁸

³³ Human Rights Committee General Comment No. 18, 10, November 1989.

³⁴ Article 2 of the ICESCR.

³⁵ Article 2 of the ICCPR.

³⁶ Article 1 of CEDAW.

³⁷ Article 2 of ACHPR.

³⁸ General Comment No. 18, Para 13.

Similarly, with regard to the right to work in particular, the ILO Convention No. 111 on Discrimination (Employment and Occupation) requires that there is equality of opportunity or treatment in employment or occupation without discrimination on the basis of race, colour, sex, religion, political opinion, social origin or other status. The inclusion of the phrase ‘other status’ underscores the fact that the grounds are not exhaustive and grounds such as sexual orientation and health status may be found to be grounds for discrimination.

The import of the principle of non-discrimination with regard to the right to work is that the state has a mandate to protect the right to work as guaranteed under the various Conventions. These obligations are underscored under the United Nations Guiding Principles on Business and Human Rights (UNGPs). General Comment No.18 further notes that the right to work is central for the realizing of other human rights and freedoms and is an inseparable part of human dignity and must therefore be enjoyed equally amongst all persons.³⁹

The International Labour Organization Declaration on Fundamental Principles and Rights at Work further underscores this freedom from discrimination.⁴⁰ The Declaration commits member states to respect and promote four categories of rights – regardless of the level of economic development. These categories are;

Freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

There is a strong link between non-discrimination and social stability especially in times of economic adversity. Adherence to the fourth category of non-discrimination under the ILO Declaration protects especially the vulnerable like the low skilled, older and migrant workers, as well as workers—including university graduates – who are looking for their first job.⁴¹

Within the regional framework, Article 2 of the African Charter on Human and People’s Right guarantees to every individual the enjoyment of the rights

39 *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, *Op.Cit.*, Note 27, Para 1

40 ILO Declaration on Fundamental Principles and Rights at work principles 2

41 Equality at Work: The Continuing Challenge, Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at work, available online at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_166583.pdf

and freedoms without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. The African Commission has explained the significance of Article 2 in that it “lays down a principle that is essential to the spirit of the Convention, one of whose goals is the elimination of all forms of discrimination and to ensure equality among all human beings.”⁴² This non-discrimination clause informs the spirit of the regional framework with regard to the right of equality at work. The Protocol to the African Charter on Human and People’s Rights on the Right of Women in Africa espouses what equality at work entails. Article 13 of the Protocol guarantees women equal opportunities in work and career advancement and this includes; equal access to employment, equal remuneration and choice of occupation.

ii. Domestic Legal Framework

Domestically, Article 21 of the Uganda Constitution prohibits discrimination of persons that impairs or nullifies their enjoyment of the rights enshrined in the Constitution on an equal basis with others such as the right to work. The responsibility to respect human rights and in this case the freedom from discrimination is extended and incumbent on businesses enterprises pursuant to Article 20(2) of the Constitution which enjoins all persons including non-state actors to respect human rights of all persons.

Perhaps the most elaborate definition of what may amount to discrimination is found in Section 1 of the Equal Opportunities Commission Act 2007 where discrimination may include;

[Any] act, omission, policy, law, rule, practise, distinction, condition, situation, exclusion, or preference which has directly or indirectly the effect of nullifying or impairing equal opportunities or marginalising a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social economic standing, political opinion or disability.⁴³

⁴² Association Mauritanienne des Droits de l’Homme/ Mauritania N0. 210/98, paragraph 131.

⁴³ Equal Opportunities Act, Section 1

Uganda has taken a number of positive steps to advance equality principles—including Constitutional affirmative action to address historical discrimination that affected a large number of minority groups. Article 32 of the 1995 Constitution provides for affirmative action in favour of marginalized groups 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. It is the same Article 32 that saw the establishment of the Equal Opportunities Commission.⁴⁴ This has also seen general progressive steps being taken to address historical imbalances including, additional points for girls and persons with disabilities to access university education and special interest representation in parliament among others.

Over the years, most state agencies and business entities have designed recruitment policies that promote equality and in some instances encouraging historically marginalized groups to apply. There have been adverts that encourage “women and persons with disabilities to apply.” This is driven towards addressing historical discriminatory practices that affected most minority groups and jobs often filled by men.

However, more recently, there have cropped up some cases where private business establishments advertise for positions in a discriminatory manner targeting white persons or persons of Indian origin.⁴⁵ In February 2018, a hotel advertised for jobs and the eligibility criteria highlighted “preferably white person and Indian person,” which were discriminatory.

44 *Id.*, Section 2

45 “Hotel on Racist Job Advert: We want Someone with International Exposure,” Daily Monitor, February 14, 2018, accessed at <http://www.monitor.co.ug/News/National/Hotel-racist-job-advert-international-exposure/688334-4304082-format-xhtml-c7uk8yz/index.html>.



Serene Suites & Hotel - Mutundwe

EMPLOYMENT OPPORTUNITIES

Serene Suites & Hotel located in **Mutundwe, Rubaga Division Kampala**, is seeking to recruit eligible persons to work as;

1. Hotel Manager Preferably White Person
2. Restaurant Manager Preferably Indian Person
3. Waiters and Waitresses
4. Kitchen Chef (both Local & International dishes)
5. Concierge
6. Receptionists
7. Pool Attendant
8. Gym Instructor
9. House Keepers
10. Outside Cleaners
11. Marketeers
12. Social Media Manager

The advert raised issue with many people including the EOC which inquired into the matter, halting the process of recruitment. The EOC noted that Article 21 of the Constitution prohibits discrimination on the basis of race, color and ethnic origin and that Section 6 of the Employment Act prohibits any form of discrimination in the workplace.



EOC Equal Opportunities Commission
Equal Opportunities Commissioner

12th February, 2018

The Manager/ Proprietor
Serene Suites & Hotel - Mutundwe
P.O. Box 31654
Kampala

Dear Sir/ Madam,

DISCRIMINATION IN RECRUITMENT/ EMPLOYMENT

We have read your advert in the New Vision newspaper of Monday February 12th, 2018 on Page 47 titled "Employment Opportunities".

In that advert, you indicate that Serene Suites & Hotel is seeking to recruit eligible persons to fill various positions. Among others you are seeking to recruit a Hotel Manager who should be "Preferably a White Person" and a Restaurant Manager who should be "Preferably an Indian Person".

Please note that Article 21 of the Constitution of the Republic of Uganda prohibits discrimination among others, on the basis of race, colour or ethnic origin. Discrimination on these grounds is also prohibited by several provisions of the Equal Opportunities Commission Act, 2007; Section 6 of the Employment Act, 2006 specifically forbids discrimination in employment.

The Commission therefore found your advert discriminatory, and an affront to the concept of equal opportunities. In line with Section 14(2) (a) of the EOC Act, 2007, we have commenced investigations in this matter.

You are hereby ordered to make a written explanation as to why your hotel seeks to recruit for the above mentioned positions taking into account the prospective applicants' race and/or origin. The written explanation must reach the Commission offices by close of business on **Thursday 15th February, 2018**.

In the meantime, the Commission under Section 15(4) (b) directs you to halt the recruitment process for the cited positions. This directive shall remain in force until another is issued to the contrary.

Thank you,


MUJUNI MPITSHI PAC LAWRENCE
SECRETARY TO THE COMMISSION

Business entities in all their operations must respect human rights standards and the state and its agencies are mandated to protect, fulfill and ensure that where non-state actors are abusing human rights, they are held accountable. As noted, the Constitution and Employment Act both reinforce non-discrimination in employment and the State has an obligation to promote equality of all persons and in such instances eliminate any form of discrimination at the work places.

This duty is underscored by the Employment Policy of Uganda 2011 which highlights that in its implementation, the state and all stakeholders will follow guiding principles among which include; the promotion of gender equality in employment, compliance with labour standards that promote rights of workers and affirmative action for vulnerable groups to guard against discrimination in the market economy.⁴⁶

b. Discrimination on the Basis of Health Status

Whereas discrimination on the ground of health status is not expressly provided for in the 1995 Uganda Constitution, it is provided for in Section 6 of the Employment Act 2006 which makes it the responsibility of all parties—including, business actors, to promote equality of opportunity with a view of eliminating discrimination in employment on various grounds including HIV status and disability. Furthermore, Section 32 of the HIV & AIDS Prevention and Control Act 2004 makes it unlawful to deny or terminate a person's employment on ground of their actual, perceived or suspected HIV status.

Uganda is also a signatory to the UN Convention on Economic, Social and Cultural rights (ICESCR) which under Article 12, obligates a state party to promote, fulfill and protect the right to the highest attainable standard of health. The right to health must be understood as a right to the enjoyment of facilities, goods and services and conditions necessary for the realization of the highest attainable standard of health.⁴⁷ The right to health is therefore closely related to and dependent upon the realization of other human rights,

⁴⁶ The National Employment Policy for Uganda, 2011, pages 24-25.

⁴⁷ CESCR General Comment No.14 (2000): The Right to the Highest Attainable Standard of Health.

as contained in the International Bill of Rights, including the rights to work, non-discrimination and equality.⁴⁸

Persons suffering different diseases are often denied work, and prevented from enjoying their freedoms or having access to a livelihood.⁴⁹ This contravenes Article 2(2) of the ICESCR which forbids discrimination on grounds of “other status.”

General Comment No. 20 lists health status as a prohibited ground of discrimination, which falls within the category of “other status” under the Convention.⁵⁰ Discrimination based on health status undermines the ability of an individual to enjoy their Covenant rights.

The State is obligated to ensure that people suffering from mental illness, diseases such as leprosy, and women who have suffered obstetric fistula are entitled to the full realisation of their human rights including the right to work.

One form of discrimination at work on basis of health status that overtime is being reported, is on the basis of HIV/Aids Status. HIV status is often used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.⁵¹ This discrimination has over the years been reported within the infrastructure development sector especially with Chinese Construction Companies.⁵² In one case,

Allen (not real name) worked as a cleaner for a Chinese state-owned construction giant, China Communications Construction Company (CCCC) which was awarded 3 multi-million dollar road contracts by the Ugandan government. She was discovered to be HIV- positive after being allegedly forcibly tested with 9 other workers. She was as a result dismissed from work.⁵³

48 *Id.*, paragraph 3.

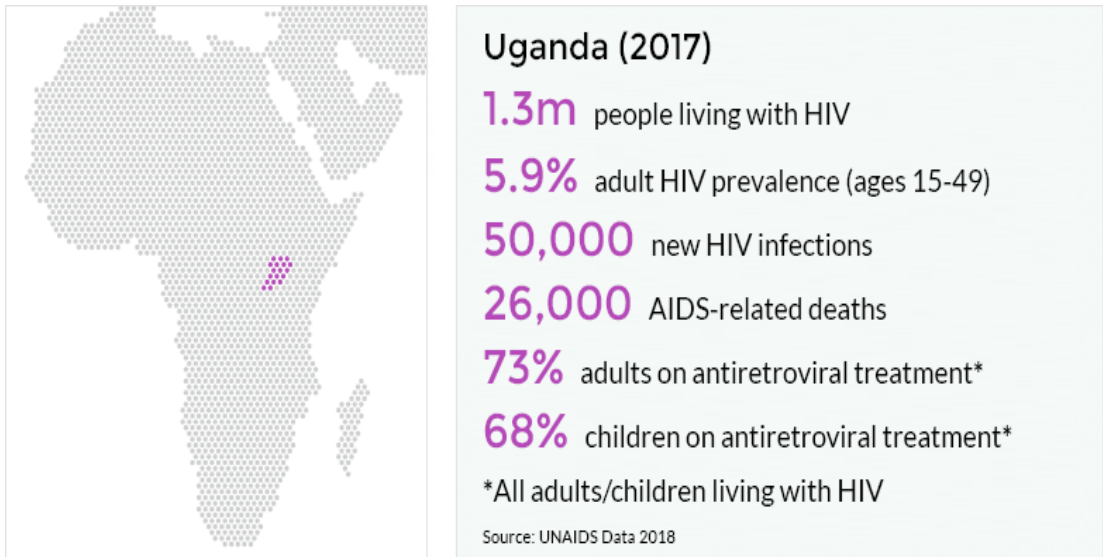
49 Elimination of discrimination against persons affected by leprosy and their family members, Magdalena Sepulveda, Geneva, 15 January 2009.

50 General Comment No 20, E/C.12/GC/20, 10 June 2009, Paragraph 33.

51 Office of the UN High Commissioner for Human Rights and Joint United Nations Programme on HIV/ AIDS (2006), *International Guidelines on HIV/ AIDS and Human Rights, 2006 Consolidated Version*. Geneva: UNAIDS and OHCHR. Available online: http://data.unaids.org/Publications/IRC-pub07/JC1252-Intern-Guidelines_en.pdf.

52 Amy Felon, Ugandans Take Chinese Firm to Court in Latest HIV Workplace Battle, July 26, 2017, accessed at <https://www.reuters.com/article/us-uganda-aids/ugandans-take-chinese-firm-to-court-in-latest-hiv-workplace-battle-idUSKBN1AB128>.

53 Amy Fallon, “Fired after Forced HIV Tests”, Available at <https://www.newsdeeply.com/womenandgirls/>



Source: UNAIDS Data 2018

The National Equal Opportunities Policy 2006 highlights the worrying issue of discrimination in work places on the basis of HIV status. The Policy lists Persons Living with HIV (PLWHIV) among the categories of vulnerable people whose rights to equal opportunity are often at risk of being abused by private actors.⁵⁴

The Ministry of Gender Labour and Social Development (MoGLSD) in its 2007 Policy on HIV/AIDS and the World of Work, took cognizance of the public health rationale for respecting the human rights, privacy and self-determination of persons living with HIV/AIDS, in line with Uganda's Constitution.⁵⁵ The Policy with the aim of promoting and protecting human rights underlies among other principles, respect for non-discrimination as a core principle. It notes that;

- i. Non-discriminatory and equality policies where workers are assessed on merit and ability to perform. They should not be subject to personal discrimination or abuse on the basis of real or perceived HIV status;

[articles/2017/08/14/fired-after-forced-hiv-tests.](http://www.coc.go.ug/sites/equalopportunities/files/publications/the-national-equal-opportunities-policy-2006.pdf)

54 The National Equal Opportunities Policy, Page 12, The Ministry of Gender, Labour and Social Development, July 2006, available online at <http://www.coc.go.ug/sites/equalopportunities/files/publications/the-national-equal-opportunities-policy-2006.pdf>

55 Ministry of Gender, Labour and Social Development, NATIONAL POLICY ON HIV/AIDS AND THE WORLD OF WORK, (2007), accessed at <http://www.mglsd.go.ug/policies/AIDS.pdf>.

- ii. No termination of employment on grounds of a positive HIV status and the persons infected should be able to work for as long as they are able to perform their duties in available, appropriate work;
- iii. Protection against stigma and discrimination for workers with HIV/AIDS in the world of work as well as inclusion of aspects of this protection in the education and information activities. Deployment and/or transfer should take into account the need to avoid further exposure and spread of HIV as well as access to optimal care and support services and;
- iv. Grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.⁵⁶

The Policy further notes that there should be “no compulsory HIV testing requirement for recruitment, promotion or career development [and any] HIV testing within the world of work should be conducted in accordance to the national policy guidelines for voluntary counselling and testing.”⁵⁷ This is also provided for in the ILO Code of Practice on HIV/AIDS and the World of Work which notes that;

HIV testing should not be required at the time of recruitment or as a condition of continued employment [and] any routine medical testing, such as testing for fitness carried out prior to the commencement of employment or on a regular basis for workers, should not include mandatory HIV testing.⁵⁸

In its 2017 Annual Report, the Equal Opportunities Commission, noted that realization of the NDP II Goal calls for observance of equal opportunities for all and that the elimination of all forms of discrimination and inequalities is critical to addressing Uganda’s development concerns especially for the vulnerable groups and or persons including PLWHIV.

Similarly, the 2011 National HIV and AIDS Policy makes provision for review of HIV/AIDS policies at work places and specifically names the

⁵⁶ *Id.*,

⁵⁷ *Id.*,

⁵⁸ ILO, An ILO Code of Practice on HIV/AIDS and the World of Work, accessed at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/spublication/wcms_113783.pdf.

private sector as part of the implementers of this policy.

According to the ILO, on the issue of HIV and the world of work,

The workplace is ideally placed to contribute to effective national responses through a combination of education for prevention, the practical provision of care, support and treatment either directly through workplace occupational health services, or through referral to services available in the community. World of work structures offer a number of possibilities for the integration of HIV interventions in existing structures and ongoing programmes, thus enhancing relevance, effectiveness and sustainability. These include: occupational safety and health structures; the labour inspectorate; industrial tribunals; employment creation and skills development programmes, especially for young people; social protection interventions; tripartite committees and organizations of employers and workers.⁵⁹

As noted, the private sector can play a critical role in the realization of human rights. With a shift in economic power and pursuant to the UNGPs, business enterprises have a responsibility to respect human rights. Beyond this they can also play a critical role in promoting and protecting these fundamental rights. The workplace may be the best support system and form of structure to offer effective mechanisms of addressing the epidemic. Maintaining PLWHIV in the workplace maybe the best recourse to educative, sensitization and effective management of the disease rather than dismissing them to a life of unemployment and the resultant effects of challenges in accessing affordable care.

All in all, discrimination against workers on the basis of their health status by business enterprises directly violates the equality principle and everyone's right to work at domestic and international level. Unless companies can prove that any health effects undermine the effectiveness and performance of an individual in the area of work, and or maybe a threat to other employees, termination of employment on mere disease without due regard to effect and performance at work is a violation of their right to work and discriminatory

⁵⁹ ILO, HIV and AIDs: Guidelines for the Mining Sector, (2013), accessed at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/instructionalmaterial/wcms_235624.pdf.

in employment on grounds of health status. Businesses therefore have a responsibility to respect the right to freedom from discrimination against workers on the ground of their health status.

c. Discrimination on the Basis of Disability

Broadly the Ugandan Constitution puts in place protective measures for Persons with Disability (PWDs). Article 21(2) provides that a person shall not be discriminated against on the ground of disability. Similarly, the Employment Act 2006 bestows a duty on all persons and parties to promote equality of employment and eliminate discrimination on the basis of disability. The Act further lists the various forms of discrimination that PWDs face at the workplace to include unequal pay and screening them out of the hiring process among others.⁶⁰

Specifically, Uganda is a signatory to and domesticated the UN Convention on the Rights of Persons with Disabilities (CRPD).⁶¹ The CRPD on an international scale requires provision of equal opportunities and equal remuneration, safe and healthy working conditions as well as protection from harassment which includes access to remedial mechanisms for violations and abuse of rights of PWDs.⁶²

In 2006, Uganda enacted the Persons with Disabilities Act which among its objects is to eliminate all forms of discrimination of persons with Disabilities on ground of their disabilities. The Act further prohibits discrimination in employment.⁶³ It provides that, “A person shall not discriminate against a qualified person on ground of that person’s disability in regard to any job application procedures, hiring, promotion, employee compensation, job training, and other terms, conditions, and privileges of employment.”⁶⁴

Beyond direct discrimination, Section 16 of the Act obligates the employer to ensure that there are no structures at the workplace that make it disadvantageous for PWD employees over other employees to access any work spaces. The

⁶⁰ The Employment Act 2006, Section 6.

⁶¹ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>.

⁶² *Id.*, Article 27.

⁶³ Section 15

⁶⁴ Section 12 (1).

provision specifies that “it shall be the duty of the employer to ensure that the physical features of the premises occupied by an employee do not place an employee with a disability at a disadvantage.”⁶⁵

The issue of physical structure of the work place is key in realization of the right to work. It has been observed that some employers use the ability to access the work premises as a reason to deny employment to persons with disability. In a recent study published in the Daily Monitor, it was noted by a PWD respondent that sometimes the employer just tells you, “I don’t think you can manage because the job requires a lot of movement,” while others just tell you off.⁶⁶ In the same study, another PWD Juliet Nalule echoed her frustrations of failing to get a job despite her qualifications. She remarked that “I have a diploma in catering however many people cannot believe I can stand for long or cook. I sought employment for over two years in different hotels and restaurants but failed.”⁶⁷

The issue of physical accessibility is not only a challenge in private business enterprises. In a 2017 EOC Physical Accessibility Report of selected public building in Kampala, the EOC recommended the importance of

“

all institutions at the forefront of service delivery both in the public and private sector realize the importance of having provisions to allow for accessibility of all persons including Persons with disabilities to enhance their participation and benefit from service delivery.”⁶⁸

In the past, the PWD Act 2006 had provided for tax reduction for “Private employers who employ ten or more persons with disabilities either as regular employees, apprentice or learner on full time basis shall be entitled to tax deduction of fifteen percent of all pay able tax upon proof to the Uganda Revenue Authority.”⁶⁹ In 2008, the same provision was inserted in

65 Section 16.

66 Desire Mbabaali, “*Question of Unfair Job Opportunities for Persons With Disabilities*,” The Daily Monitor, March 06, 2018 available at www.monitor.co.ug/news/education/question-of-unfair-job-opportunities-for-persons-with-disabilities/../.

67 *Id.*,

68 Equal Opportunities Commission, “Physical Accessibility Report,” April 2017, accessed at http://www.eoc.go.ug/sites/equalopportunities/files/publications/final_physical_accessibility_report_april_2017.pdf.

69 Section 17.

the Income Tax (Amendment) (No. 2) ACT, 2008.⁷⁰ This clause was further amended by the income tax Amendment of 2009 providing that a company which employs persons with disabilities up to 10% of its total work force will be entitled to a tax waiver up to 2 %. However, the clause was over the years removed from the tax laws as it was being abused by employers who started employing PWDs largely to benefit from the tax deduction—yet the PWDs benefits were not commensurate with the tax deductions saved by the company and government was losing significant income and revenue in taxes which was viewed as a missed opportunity to deliver services to PWDs.

Overall, the issue of physical accessibility critically disadvantages PWDs both in search of employment opportunities and participation and access to goods and services. Some of the conditions in these places are discriminatory, inhuman and degrading. Sometimes, PWDs are subjected to conditions where other people have to carry them into buildings or up the stairs as most of these buildings have no ramps. It is the lack of such ease access to building or work spaces that employers opt to consider only able bodied applicants who may not require any adjustments or inconveniences in the work spaces which overall is discriminatory and an abuse and violation of rights of PWDs.

d. The Right to Work

i. Domestic, Regional and International Legal Framework

Uganda has ratified a number of regional and international instruments that provide for the right to work. Of specific importance to this right, the country has ratified both International Covenant on Economic, Social and Cultural Rights (ICESCR) and the the African Charter on Human and Peoples Rights (ACHPR).⁷¹ Article 6 of the ICESCR and Article 15 of the ACHPR provide for the right to work. Article 6(1) of the ICESCR defines the right to work to include the right of everyone to have an opportunity to gain his living by work chosen and accepted freely. Both the ICESCR and the ACHPR recognise that everybody has the right to work and gain his living by work which he freely chooses or accepts. Specifically, Article 15 of the ACHPR

⁷⁰ THE INCOME TAX (AMENDMENT) (No. 2) ACT, 2008, S. 5, Amendment of section 22 (Expenses of deriving income) of principal Act.

⁷¹ Ratified on 10th May 1986.

provides for the right of workers to work under equitable and satisfactory conditions and the right to receive equal pay for equal work.

Uganda is also a signatory to a number of ILO conventions that enhance the right to work and other essential components. One of which is the ILO Declaration on Fundamental Principles and Rights at Work. The Declaration was adopted in 1998 and enjoins Members States whether or not they have ratified the relevant Conventions, to respect and promote all principles that advance the rights to work. The Declaration sets out for major categories that must be advanced by member states. These are;

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

Domestically, Article 40 (1) of the Uganda Constitution requires Parliament to enact laws that provide for the right of persons to work under satisfactory, safe and healthy conditions⁷² and secondly to ensure equal payment for equal work without discrimination.⁷³ However, more critical, Article 40(2) guarantees the right of persons to practise their profession and to carry on lawful trade, occupation or business. Individuals have the right to choose their places of work at will. Furthermore, the Constitution lists slavery and servitude as one of the non-derogable right which in essence makes freedom from slavery and forced servitude an absolute right.⁷⁴

The Employment Act requires that people take employment of their choosing without coercion or force.⁷⁵ It outlaws forced or compulsory labour and makes it an offence to subject a person to forced labour.⁷⁶ As such business entities have a duty to respect this right and not subject any of their employees to forced or compulsory labour. The Employment Act provides for a labour officer who is mandated to do labour inspection, secure the enforcement of

72 Article 40 (1) (a)

73 Article 40 (1) (b)

74 The 1995 Uganda Constitution, Article 44

75 The Employment Act, 2006, Section 5.

76 *Id.*,

legal provisions relating to conditions of work and protection of workers' rights.⁷⁷ Similarly, the Workers' Compensation Act also provides remedies for workers in case of injury sustained during the course of employment.⁷⁸

Whereas these policy and legal provisions provide some protective measures for workers, the practice especially in enforcement has been largely problematic. Majority of workers in the business sector—especially manufacturing, processing, mining and infrastructure development are informal and the current labour rights framework doesn't offer them much protection. In the UCCA 2016 Report *"The State of Corporate Accountability in Uganda,"* it was noted that majority of workers in the informal sector face huddles to access remedies in case of abuse of their rights largely due to the lack of contracts in their work and the high levels of unemployment in the country coupled with high poverty levels, make any job held worth in the hand however exploitative it is.⁷⁹

Hence, despite the fact that the current legal and policy framework puts some measures towards the promotion of workers' rights, it is still weak both in design and implementation. Business enterprises especially those in the natural resource governance, infrastructure development and manufacturing sectors continue to carry out discriminatory practises in their hiring policies.⁸⁰ This is coupled with their practise of restricting District Labour Officers from accessing their premises to conduct inspections as mandated by law.⁸¹ Similarly, many business entities in Uganda are fronted and protected by powerful political leaders and this undermines standard setting and regulatory agencies from monitoring their activities and enforcing labour rights. A case in point was highlighted by an employee at the Isimba Dam Project who recounted an incident where his colleague was kicked in the stomach by [the] Chinese boss who was supervising because the colleague allegedly delayed by seconds to give him an iron bar. When they reported to the Ministry of Energy, it was alleged that the Ministry shields the Chinese instead of addressing their grievances.⁸²

77 *Id.*, Section 10.

78 *Id.*, Section 3.

79 Uganda Consortium on Corporate Accountability, "The State of Corporate Accountability in Uganda" (2016)

80 Uganda Human Rights Commission "Oil in Uganda, Emerging Human Issues," - December 2013.

81 *Id.*

82 Fred Muzaale, Isimba "Dam Workers Strike Over Poor Pay, Harassment,". July 18, 2015, Available at www.monitor.co.ug/news/national/isimba-dam-workers-strike-over-poor-pay-harassment/./.

Some of these issues are further exacerbated by constant statements and threats from the President castigating Parliament for what he terms as disturbing investors.⁸³ He has also constantly referred to business and human rights advocates as “anti-development” and “economic saboteurs.” This has overtime enhanced a corporate capture drive where huge investments are protected even where there are clear corporate abuses of human rights.⁸⁴

Overall, businesses have a responsibility to respect the rights of their employees at all times even when the State is failing to meet their duty and obligations to protect human rights. This responsibility according to the UNGPs applies to all businesses regardless of the size, sector, ownership, structure and operational context of the business. The business entities must also provide for a remedy framework within their internal structures to address violations of workers’ rights. It is through this way that Article 20(2) of the Constitution will be given life.

e. The Right to Just and Favorable Conditions of Work

i. International legal framework

The right to just and favourable conditions of work is at the heart of the labour rights framework and is provided for in numerous international human rights instruments including the ICESCR⁸⁵ and other international covenants.⁸⁶ It is of critical importance as it lies at the heart of contractual obligations and ability to ones satisfactorily performance of the terms and conditions of contractual agreements. General Comment N0. 23 reemphasized that,

83 “Museveni warns MPs: Leave Chinese alone,” available at observer.ug/news-headlines/47327-museveni-warns-mps-leave-chinese-alone.

84 World Bank Suspension of Road Project, State of Union Address.

85 Article 7

86 UDHR, articles 23 and 24; ICERD, article 5; CEDAW, article 11; CRC, article 32; ICRMW, article 25; CRPD, article 27. African Charter on Human and Peoples’ Rights, article 15. The wording of the provisions in the various treaties differs. The African Charter includes the narrower requirement of ‘equal pay for equal work.’

[This right] is an important component of other labour rights enshrined in the Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work.⁸⁷

In particular, the right to just and favourable conditions of work is anchored around the provision for remuneration of all workers with fair wages, ensuring safe and healthy working conditions—including protective working gear in case of hazardous working areas, equal opportunities of promotion, rest, leisure, reasonable limitation of working hours and periodic holidays with pay among others.⁸⁸ The normative content of this right is well enunciated in General Comment No. 23, which notes that, The right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The reference to “everyone” highlights the fact that the right applies to all workers in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers. The reference to “everyone” reinforces the general prohibition on discrimination in article 2(2) and the equality provision in article 3 of the Covenant, and is supplemented by the various references to equality and freedom from distinctions of any kind in sub-articles 7(a)(i) and (c).⁸⁹

ii. Domestic Legal Framework

The right to just and favourable conditions of work is protected under various legislations including the Workers Compensation Act, 2000; the Employment Act 2006; The Labour Disputes (Arbitration and Settlement) Act 2006 and the Occupational Safety and Health Act, 2006. These regulate employment

87 UN Economic and Social Council. “General comment No. 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights),” E/C.12/GC/23, (2016) accessed at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfoUYY19kME5pOqRbao%2BukB1Kzn1MMnQL24FFvtIdk%2F%2FR%2FF0GthE%2BTiGSATb%2BUa3WMS0%2F%2BfVfQFg02%2BY%2FTVuqU>.

88 UN Committee on Economic Social and Cultural Rights “General Comment No. 23 on the Right to a Just and Favorable Conditions of Work available at <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work>.

89 UN General Comment No. 23.

conditions including wages, working hours, leave and termination of employment among others.

In the recent past, one case in Uganda that highlighted the right to just and favourable conditions of work was that of the poisoning the female workers at the Royal Van Zanten flower farms. The case arose in 2016 out of numerous incidents at the RVZ flower farms in Mukono and Wakiso where flower farms were fumigated allegedly with metam sodium chemical, and workers directed to enter and pick flowers.⁹⁰ Attempts to protect the women and hold the flower farm accountable were met with high hand resistance from the Ministry of Trade. In fact at one stage the Minister of Trade Hon. Amelia Kyambadde noted that ***the issue of RVZ was not just a human rights issue but a trade matter and that she will continue to handle the matter*** jointly with the Ministry of Labour “to ensure that Uganda does not lose the market for her flowers abroad.”⁹¹ This was not the first time poor working conditions in flower firms were being highlighted.

In 2012, the National Association of Professional Environmentalists (NAPE) published a report on the ‘Impact of the Flower Industry on Environment and People’s Livelihoods in Uganda’ which revealed that large flower farms in Uganda were chemical-intensive with many people working without protective gear.⁹² It further noted that the ecological impact of the chemicals was visible on fruit yields and there was contamination of water sources, among others.

Cases of poor working conditions are common—especially within the informal working sector. In 2015 Casual workers with Kampala Capital City Authority resolved to meet the Executive Director, in a bid to present their concerns over poor working conditions.⁹³ The workers, who included sweepers, garbage collectors and toilet cleaners, complained of working under

90 Business and Human Rights Resource Centre, ‘Uganda: Workers at Royal Van Zanten’s farm develop health complications after allegedly inhaling toxic fumigant; company comments’, <https://www.business-humanrights.org/en/uganda-workers-in-royal-van-zantens-farm-develop-health-complications-after-allegedly-inhaling-toxic-fumigant-includes-companys-comments>.

91 *Id.*,

92 NAPE, Impact of the Flower Industry on Environment and People’s Livelihoods in Uganda. June 2012

93 Farahani Mukisa, “City workers to meet Musisi over Poor Working Conditions,” The Monitor, April 9, 2015, accessed at <http://www.monitor.co.ug/News/National/City-workers-to-meet-Musisi-over-poor-working-conditions/-/688334/2679580/-/kpr827z/-/%2523>.

‘poor conditions’ that were ‘exposing their lives to risk’.⁹⁴ The employees said they lacked safety gear, transport allowance for late night duty and received meagre pay.⁹⁵ It is common practice for casual labourers to work under hard conditions and as in most cases, they lack contracts, their negotiating power for improved conditions are foiled.

Overall, cases of dire working conditions of workers—especially those in the informal sector are largely due to the gaps within the regulatory framework especially mandatory monitoring and inspections of workplaces by labour officers and other government standard setting and regulatory agencies. The policies and laws are weak on enforcement and offer limited protective measure to the workers. Even in situations where there have been injury due to failure to provide protective gear, access to remedy is a challenge which affects avenues for enhancing corporate accountability. Hence, reports continue to present a very hopeless situation for most workers who find themselves in horrific working conditions but with no enforceable legal option of demanding for better conditions—largely due to high poverty levels in the country coupled with high levels of unemployment and underemployment meaning that even a terrible job with poor working conditions is often managed rather than being unemployed.

f. Minimum Wage

A Minimum wage that resonates well with the standard of living is crucial in the realisation of the right to favorable conditions of work. A private members bill, the Minimum Wage Bill 2015 is currently before parliament. The bill seeks to curb exploitation of workers and employees by setting a mechanism that employers and employees to be represented in the process leading to establishment of minimum wages; establish a minimum wage and conditions of employment for workers.⁹⁶ This once passed is critical in curbing economic exploitation and for the realisation and enjoyment of other

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Uganda Human Rights Commission, Position on The Minimum Wages Bill 2015 <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/UHRC-UgandaHumanRightsCommission-eng.pdf>.

economic, social and cultural rights.⁹⁷ The Uganda Consortium on Corporate Accountability (UCCA) and the Initiative for Social and Economic Rights (ISER) made a joint statement on the proposed Bill. The proposed bill is long overdue as for 33 years, Uganda's minimum wage has stagnated at the 1984 adjustment of UGX 6,000.⁹⁸ Worse still, the 1999 devaluation of the shilling left the minimum wage at UGX. 60, which sum is not commensurate with the general standard and cost of living in the country—factoring in inflation levels and the high cost of basic goods and services.⁹⁹ According to the 2014, Ministry of Finance, Planning and Economic Development Poverty Status Report, the national poverty line is equivalent to USD 30 per month.

The Minimum Wage Advisory Boards and Wages Council Act of 1957 was enacted to provide for the establishment of Minimum Wages Advisory Boards and Wages Councils, and for the regulation of the remuneration and conditions of employment of employees. For over 3 decades now, the Advisory Boards and Wages Council have been rendered redundant. In 2017, a 2015 Government Appointed Committee (Minimum Wages Advisory Board) submitted a report to Cabinet for consideration where it recommended UGX 136,000 (One hundred thirty six thousand shillings) per month as the lowest pay for all workers regardless of whether they are professional, skilled or unskilled.¹⁰⁰ The Board further recommended that creation of “an affordable National Minimum Wage for Uganda”, which the board deems “is likely to solve some but not all the economic challenges” the country is facing.¹⁰¹

The Minimum Wages Bill 2015 is critical and once passed will go a long way in addressing some of the policy gaps and exploitative nature more evidenced within sectors in the informal employment structure that are largely scattered, unregulated and experiencing deplorable working conditions for little pay nearing to modern day slavery. The existing policy and legal framework on minimum wage is weak, outdated and offers near to nothing to address the high levels of employee exploitation by employers and no protective labour

97 *id*,

98 Development Research and Training (DRT) (2013), “*The Minimum Wage in Uganda: An Urgent Call*” DRT Policy Brief No. 4, October 2013 accessed at http://www.fes-uganda.org/media/documents/Final_Policy_Brief_Minimum_Wage_An_urgent_call.pdf

99 *Id.*, Sanyu, R. (2013), “*Social Protection in Uganda: What is the Role of a Minimum Wage?*” Development Research and Training (DRT), October 2013

100 The Daily Monitor, “Government Sets Shs 130,000 as Minimum Wage,” (June 2017) accessed at <https://www.monitor.co.ug/News/National/Government-sets-Shs130000-minimum-wage/688334-3952236-dt-v5xs/index.html>.

101 *Id.*,

framework especially as it relates to remunerations for large scores of illiterate and semi-illiterate Ugandans with low capability to bargain for better wages.

Therefore, the 2015 Bill if passed sets the course to enact a comprehensive protective labour market standard setting and regulatory framework to address the rampant workers exploitation. The enactment of the Bill will act as a social protection tool for the poor Ugandan workers who are being exploited in the private sector.

g. Social Security

Internationally, the right to social security is recognized under a number of international statutes including the ILO Conventions¹⁰² and the ICESCR.¹⁰³ ILO standards on social security are well expounded in ILO Conventions No. 102,¹⁰⁴ 202,¹⁰⁵ 118¹⁰⁶ and 157.¹⁰⁷ These provide for different types of social security coverage under different economic systems and stages of development.¹⁰⁸ The ILO Social Security Conventions are cognizant of the different resource gaps and thus “offer a wide range of options and flexibility clauses which allow the goal of universal coverage to be reached gradually.”¹⁰⁹ Uganda has not ratified any of the the listed conventions. The right to social security is further provided for under Article 9 of the ICESCR which is to the effect that “States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”¹¹⁰

Domestically, the 1995 Constitution under the National Objectives and Principles of State Policy, read together with Article 8A and Article 254

102 The Social protection floors recommendation 2012 (202) gives guidance on introducing or maintaining social security floors and on implementing social protection floors as part of strategies to extend higher levels of social security to as many people as possible in accordance with the guidelines set out in ILO standards relating to social security

103 Articles 9 and 10

104 Social Security (Minimum Standards) Convention, 1952 (No. 102)

105 Social Protection Floors Recommendation, 2012 (No. 202)

106 Equality of Treatment (Social Security) Convention, 1962 (No. 118)

107 Maintenance of Social Security Rights Convention, 1982 (No. 157)

108 International Labour Organisation, “International Labour Standards on Social Security,” accessed at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang-en/index.htm>.

109 *Id.*,

110 Article 9, ICESCR.

recognizes the right to social security.¹¹¹ Social security is not fully defined in the Constitution however, the 2015 National Social Security Policy defines social protection to refer to public and private interventions to address risks and vulnerabilities that expose individuals to income insecurity and social deprivation, leading to undignified lives.¹¹²

The current legal framework also provides for the National Social Security Fund Act (NSSF Act),¹¹³ mandated to provide social security services to all Ugandan employees. The NSSF Act covers all employers with five or more employees between the ages of 16 and 55, excluding those under the government Pensions Act. In practice, there have been problems associated with the NSSF which included ‘the lump-sum payment structure, the minimum age of access being higher than that of life expectancy, and the absence of regulations providing mechanisms for enforcement. Similarly, there is presumption that many small business entities intentionally keep the number of employees below the required 5 so that they don’t fall within the monthly NSSF remittances as required by law.

The Pensions Act also is mandated to provide for the grant and regulating of pensions, gratuities and other allowances in respect of the public service officers under the Government of Uganda.¹¹⁴ The Act is only in relation to public servants.

It is important to note that both the NSSF and Public Service Pensions Scheme serve only about 5% of Uganda’s working population.¹¹⁵ However, there are other private non-statutory social security schemes managed by employers and public institutions either on their own or through insurance companies. The most common ones include the Makerere University Retirement Benefits Scheme (MURBS), Bank of Uganda Retirement Benefits Scheme and Parliamentary Pension Scheme. Different sub-sectors within the informal sector have also established diverse forms of savings schemes which support members in times of financial crisis. However, these are few and do not reach many individuals who require social protection. Important

111 The 1995 Constitution of Uganda, Objectives VII, XIV, XVIII, XX, XXI, XXIII read together with Article 8A and 254.

112 Uganda, The national Social Security Policy (2015), accessed at <http://socialprotection.go.ug/wp-content/uploads/2016/07/National-Social-Protection-Policy-uganda.pdf>.

113 Sections 2, 11, 6, 19, 18, 36, 24

114 Sections 9, 23, 22, 26.

115 JOHN-JEAN BARYA, “Interrogating The Right to Social Security And Social Protection In Uganda, HURIPEC Working Paper No. 23 JANUARY, 2009

to note is that the Workers Compensation Act also obligates employers to insure against any injury suffered in the course of employment.¹¹⁶

These notwithstanding, there are some employees who utilise private actors in the field of social security which include private insurance companies that run a number of private social pension schemes such as health insurance, education service and retirement schemes. Similarly, these are also few and far between and largely also fall within the formal sector.

As noted above, there are positive attempts within the domestic policy and legal framework to protect the right to social security, however, the challenge is that these steps largely cover employees within the formal sector which comprises of about 15% of the entire working population. This means that about 85 percent of workers in the informal sector fall outside the protective cover of social security measures provided to employees as they largely work without formal contracts which are a key guarantees for social security. Similarly, the low income levels of many workers especially in the informal sector cannot enable them to meet their basic needs and limits their ability to save or contribute for future social security.¹¹⁷

Under the Pensions Act, the courts are not permitted to inquire into disputes arising out of the act.¹¹⁸ The disputes however are to be resolved by pension's authority as provided for by Sections 22 and 23 of the act. This authority may refer cases to the appeals board for determination upon request of the applicant or a party aggrieved by a decision of the pensions authority. This provides the remedy framework under which abuses of the right can be addressed.

However, under the NSSF Act, Section 26 provides for the making of regulations for the appointment of an officer or tribunal for the purpose of determination of questions arising out of the regulations. The section provides for referral of questions to the high court and also provides for a second appeal to the high court on questions of law.¹¹⁹ This provides the first remedy for aggrieved parties who can find recourse and be awarded court orders in their favour where their rights have been jeopardized. However, as

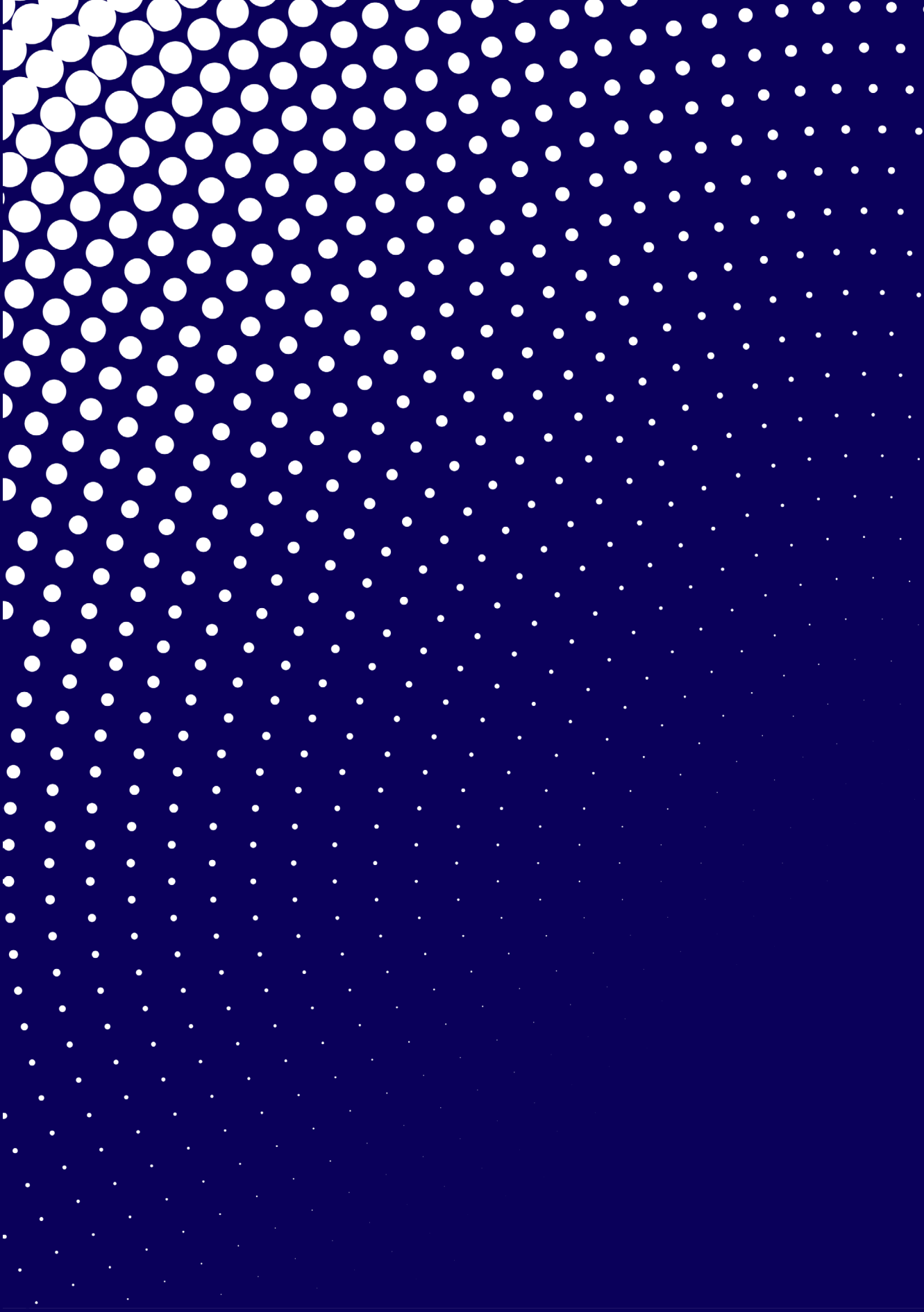
116 Uganda, The Workers Compensation Act 2000, S. 18.

117 National Social Protection Policy available at <http://socialprotection.go.ug/national-social-protection-policy/>. (last accessed on 20/05/2018)

118 Uganda, The Pensions Act, Section 9(2). No proceedings shall be brought in any court on the ground that any provision of this Act has not been complied with.

119 Uganda, The NSSF Act, Section. 26.

per the UNGPs, governments should develop non judicial remedies as well to help those who might not have access to the court system for resolution of disputes.





IV.

PROPERTY RIGHTS

a. Land and Resettlement

Land is at the centre of constitutional and legal discourse in Uganda, drawing legitimacy from the historical as well as contemporary demands of the people. In Uganda as in many traditional African societies,

“*Land is not a mere commodity, but an essential element for the realization of many human rights.*”¹²⁰

Land is an essential for livelihood and the main productive asset and means of wealth accumulation for most Ugandans.¹²¹ It is a key component within the property rights framework and is a crosscutting issue, that has broader effects towards the realisation of other human rights within the international human rights legal framework.¹²²

In Uganda, increase in both foreign and local direct investment has seen increased demand for land by both the government and individuals—well connected to government and involved in some form of land exploitation mechanisms. Many business enterprises and development projects require massive chunks of land which has left so many vulnerable communities at the mercy of the state and private business entities. As a result we continue to witness massive violations of land rights despite the protective measures guaranteed by the various laws.

Compulsory land acquisition processes in Uganda have been ridden with massive displacements arising out of forced and illegal evictions and land grabbing by speculators. Regrettably, the State and its machinery have often been cited at the centre of these evictions.¹²³ In some cases where policy and legal frameworks have been followed, Project Affected Persons (PAPs) continue to grapple with low land valuation and compensation issues—and resettlement challenges. A case in point is in Kalangala District where 6,500 hectares of land for the oil palm estate on Bugala island were provided by the

120 UN OHCHR, “Land and Human Rights,” accessed at <https://www.ohchr.org/en/issues/landandhr/pages/landandhumanrightsindex.aspx>.

121 Behrman et al, 2013, evaluation of grassroots community based legal aid activities in Uganda

122 Anil Kalhan and Elizabeth Wickeri, “Land Rights Issues in International Human Rights Law” https://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf.

123 Almost all massive evictions e.g. in Rwamutonga, artisanal miners in the Mubende gold mines and the Kaweeri Coffee case among others have been at the instigation or the protection of the State.

Government to private entities. While most of this land has been provided to BIDCO, this has been at the expense of members of the community who did not hold formal land (tenants) rights to the land they occupied – often Mailo land, and at the expense of forests and the lakeshore buffer zone.¹²⁴ More cases can be derived from the Albertine region where the government has been acquiring land for oil activities and so far very many have been left landless, while others have received low compensation for their lands.

As noted above, the situation has not been different where the government has opted for resettlement. Victims of land acquisition that have been resettled by the government were equally resettled in houses that are inadequate since distribution of houses have been based on household heads regardless of the number of people in the family. An example can be drawn from the people of Buseruka who were displaced because of construction of refinery in Hoima district and resettled in houses that some of the resettled families shunned them for being culturally inappropriate and inadequate for the traditional setting of an entire family.¹²⁵ Many interest holders have been made vulnerable people by virtue of these acquisitions by both the government and business due to lack of ownership of formal titles.



Some pictures of the 46 3 bedroomed Resettlement Residential Houses at Kyakaboga, Buseruka Sub-County, Hoima District.

124 (Kalangala District NGO Forum, 2009)

125 Modal villages houses constructed are not appropriate for village setting. (Pics attached)

These numerous incidences where business entities have acquired land through means contrary to the constitutional framework and safe guards have become rampant — reinforcing the States failure to protect affected communities against human rights abuses and violations by non-state actors including private business enterprises and private actors responsibilities to respect human rights as provided for in the 1995 Constitution and well entrenched and reinforced by the UNGPs. The UNGPs also expound that where these violations cannot be avoided then the State should ensure access to a remedy for the affected communities.¹²⁶ The UNGPs further require businesses to take due diligence to avoid causing or contributing to adverse human rights impacts through their direct or indirect activities, and address such impacts when they occur.¹²⁷ In addition, businesses are expected to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.¹²⁸

Apart from the Land Acquisition Act and the 1995 Constitution, it is important to note that Uganda as a country currently does not have any policy to regulate land acquisition, resettlement and rehabilitation. The Ministry of Lands, Housing and Urban Development, cognizant of the challenges this has created, is working around remedying this through the proposed Land Acquisition, Resettlement and Rehabilitation Policy—a framework proposed to ensure for timely, adequate and efficient action to address, minimize and mitigate adverse impacts, specifically those resulting from involuntary resettlement and to balance private rights and development needs.¹²⁹ The latest draft is before Cabinet for consideration and approval.

All in all, investment is critical to development and if well managed can spur realisation and enjoyment of many social and economic rights. However, it has been noted that irregular management of natural resource exploitations and the need for land for investment and other corporate businesses has often led to deprivation of land, become a threat to food insecurity, triggered increase in land conflict and poverty in most resource rich communities.¹³⁰ The government should look for alternative mechanisms to balance investment

126 UNGPs, Pillar 3 Access to remedy, Principles 25-31.

127 Principle 13(a) of the UN Guiding Principles on Business and Human Rights

128 *Id.* principle 13(b).

129 The UCCA has participated and commented on Draft worked on by the MoLHUD is currently at Cabinet level for consideration.

130 Rampant cases in the Sugar cane growing region.

demands and land rights so that they improve livelihood of the vulnerable communities instead of leaving them worse than they were. Land acquisition for investment should be done in a transparent manner, with due process and due diligence through out the process of the corporate activities.

i. Uganda's Land Policy and Legal Framework

Uganda has various laws that offer some protective cover to the enjoyment and realization of land rights, interests, and acquisitions in Uganda. These include the 1995 Constitution of Uganda, the Land Act, the Land Acquisitions Act, the Registration of Titles Act, and the National Land Policy among others. There are also other protective provisions for land rights and interests including surface rights that can be found in other legislations that deal with natural resource governance and exploitation.¹³¹ It should be noted that since the advent of colonialism, Uganda had never had a comprehensive land policy until the enactment of the National Land Policy 2013. What was in existence were various laws and policies on land and natural resources. The post independence attempts to settle land questions through the enactment of the Constitution and Land Act to deal with the land tenure issues, land management and administration all had their limitations.

Article 244 gives government the power, through Parliament to make laws and policies from time to time to regulate the use of land. As a result there emerged the enactment of the National Land Policy 2013 which harmonizes diversity on historical land injustices, land management and land use and contemporary land issues and further protects the rights of citizens to own land. Articles 244 and 237 read together give a broad view of the land rights in Uganda's Constitution.

Article 237 of the 1995 Constitution provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the Constitution, that is; freehold tenure system, leasehold system, mailo tenure and the customary tenure system. Article 26 further protects the right to own property as an individual or in association with others. However, this provision is not without limitation as

131 See UCCA, State of Corporate Accountability in Uganda (2016), See Also, UCCA, Handbook on Land Ownership, Rights, Interests and Acquisition in Uganda, (2018)

it also enables Central or Local Government to acquire land compulsorily in public interest provided that the acquisition is necessary for public use, in interest of defence, public safety, public order, public morality or public health and is subject to prompt payment of prior and adequate compensation before the compulsory acquisition of the property¹³²

The Land Act 1998 on the other hand provides a legal framework for governing land tenure, land administration and settlement of land disputes. Section 27 safeguards the right of women, minor, and disabled in decisions that relate to customary land. Section 39 provides for consent of spouse and children before any land transaction relating to land where the family derive sustenance. However, the consent to transaction on land has been routinely ignored and are in any event not applicable to widows and divorcee.¹³³ The situation has been worsened by the ongoing land acquisition by the government for oil related infrastructural developments

The Land Acquisition Act Cap. 226, governs the compulsory acquisition of land for public purposes. Sections 2 of the Act contains empowers any person authorised by the responsible minister to enter on land for the purpose of ascertaining its suitability for a public purpose.

The 1995 Constitution and the Land Act are progressive to a reasonable extent, as far as offering protective cover to land owners.

ii. Regional and International Framework

Internationally, Article 17 of the Universal Declaration of Human Rights is to the effect that everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his property. The same provision can be traced under Article 14 of the African Charter on Human and Peoples Rights which is to the effect that the right to property shall be guaranteed and may only be encroached upon in the interest of public need or in general interest of the community and in accordance with the provisions of appropriate laws. This right is directly linked with the right to own land as the lack of land has a direct bearing on the standards of living of communities as it is the primary means of production. For many

¹³² Article 237 (2)(a) of the 1995 Constitution.

¹³³ Rugadya MA(2012) Women's rights to productive assets, land; lessons learned from Uganda. Ford foundation Uganda.

people, land is a source of livelihood, and is central to the realisation of other economic and social rights and it is linked to peoples' identities and so is tied to social and cultural rights.¹³⁴

Specifically, the ILO Convention 169 on the Rights of Indigenous and Tribal Peoples¹³⁵ establishes the right of indigenous peoples in independent countries to “exercise control, to the extent possible, over their own economic, social and cultural development,” in a number of areas.¹³⁶ Article 14 categorically states that

“*governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.*”¹³⁷

According to the Food and Agriculture Agency of the United Nations (FAO),

“*rural landlessness is often the best predictor of poverty and hunger.*”¹³⁸

While not the only pathway out of poverty, “ample evidence suggests that access to land is effective in helping rural households generate higher incomes” landlessness in Uganda has been as a result of increased population, and increasing demands for investments and refugee resettlement hence displacement, natural disasters, and land grabs among others.¹³⁹

Overall, the experiences in compulsory acquisition processes in Uganda have so far not been smooth and have often been marred with cases of land grabbing, forced evictions, prior and timely compensation issues and contestation of valuation processes among others. Free Prior and Informed Consent principles (FPIC) have not been abided by in these processes and

134 UN OHCHR, *Op.Cit.*, Note 115.

135 International Labour Organization, Convention 169, Indigenous and Tribal Peoples Convention, opened for signature Jun. 27, 1989, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>. [Hereinafter ILO Convention 169]

136 *Id.*, Art 1

137 *Id.*, art 14.

138 Centre on Housing Rights and Evictions (COHRE), Housing and Property Restitution for Refugees and Displaced Persons, 3-5 (2007), available at <http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/PinheiroPrinciplesHandbook2007.pdf>.

139 *Id.*,

the various consultation mechanisms employed have often been rendered meaningless and ineffective. There is need for the State to ensure continuous engagement with communities at the heart of compulsory acquisition processes and ensure that any compensation and resettlement processes are cognizant of broader issues of social structural beyond mere valuation of land.

The oil rich Albert Graben area of Hoima and Buliisa has experienced some of these cases. As noted earlier, the decision to construct an oil refinery in Kabaale parish, Hoima district was set to displace about 7118 people in 13 villages.¹⁴⁰ This project attracted a lot of complaints relating to compensation and resettlement of persons affected by the oil refinery. In Buliisa district, the government plan of constructing the oil Central Processing Facility will have over 811 people will be affected.¹⁴¹ The government is offering 3.5million as a compensation rate for an acre of land. However, some PAPs in the community have rejected the valuation arguing that their social welfare has not been put into consideration.¹⁴² The community also allege that the prices of land in their areas and in Buliisa district as a whole is high and that the government offer cannot afford them a descent land for their survival. Similarly, it has been reported that in cases of compensation for relocations due to oil exploration, women have been more affected since most of the agreements were signed between the males and the investing companies so women basically had no say in the decision making processes and indeed the men registered and received compensation money for crops damaged in oil exploration despite women having primarily engaged in agriculture or cultivation of the crops.¹⁴³

140 Earth Finds, “Six Years Later, Oil Refinery Affected People Awaits For Relocation,” (March 2017) accessed at <http://earthfinds.co.ug/index.php/oil-and-gas/item/845-six-years-later-oil-refinery-affected-people-awaits-for-relocation>. See Also Business Focus, “Evicted Families in Tears over Oil Refinery Construction” accessed at <http://businessfocus.co.ug/tears-as-govt-ignores-families-evicted-over-oil-refinery-construction/>.

141 “Buliisa Residents Turn Dow ‘Meagre’ Government Compensation” Daily Monitor, (September 2017), accessed at <http://www.monitor.co.ug/News/National/Buliisa-residents-turn-down--meagre--government-compensation/688334-4114994-7bhd80z/index.html>.

142 UCCA and PAPs discussion with Minister of Lands.

143 UHRC in 2013.

b. The Right to Adequate Housing

The right to adequate housing enjoins a number of freedoms which include protection against forced evictions and the arbitrary destruction and demolition of one's home, the right to be free from arbitrary interference with one's home, privacy and family and also the right to choose one's residence, to determine where to live and to freedom of movement.¹⁴⁴ The right to housing is perhaps the most integrating and integrated of all social and economic rights.¹⁴⁵ It is related to the right to health, privacy, property and the family among others.¹⁴⁶

The right to adequate housing contains entitlements which include inter-alia; security of tenure, housing, land and property restitution, equal and non-discriminatory access to adequate housing and participation in house-related decision making at the national and community levels.¹⁴⁷ The occupants of a house must have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats. The occupants must have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage and refuse disposal, also the costs of such housing must not threaten or compromise the occupants' enjoyment of other human rights. It also must guarantee public safety and provide adequate structural hazards. It must also be able to the specific needs of the disadvantaged and marginalized groups and it should be cut off from employment opportunities, health care services, schools, childcare centres and other social facilities. Lastly and importantly is the fact that housing is adequate if it respects and takes into account the expression of cultural identity.

Realisation of this right to housing is largely affected by the increase in demand for land for investment and development projects which are key drivers to massive evictions to pave way for infrastructural development and other development projects. Uganda has experienced some forced evictions

144 *Id.*

145 Henry Onoria, "Guaranteeing the Right to adequate Housing in Uganda: The Case of Women and Persons with Disabilities," Human Rights and Peace Centre, (2007) accessed at http://huripec.mak.ac.ug/pdfs/working_paper_6.pdf.

146 *Id.*

147 General Comment No.4 and No.7.

often done in the night and involving demolition of houses.¹⁴⁸

i. Legal and Policy Framework

Domestically, there is no specific provision in the national framework that provides for the right to adequate housing. However, the Constitution in Objective XIV of the National Objectives and Directive Principles of State Policy provides for general social and economic objectives among which is decent shelter. The Objective provides that;

The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that— (a) all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.¹⁴⁹

As noted above, whereas the 1995 Constitution makes no direct provision for a right to adequate housing, it observes the right to ownership of property including housing facilities,¹⁵⁰ but also creates an exception in circumstances where land is to be compulsorily acquired for public interest. It clearly states that there must be prior, fair and adequate compensation. In situation where a person's land has been compulsory taken when it had structure for accommodation on it, this automatically deprives a person of his rights to adequate housing unless adequate compensation is given to the victim in regard to the land and house lost.

According to Uganda's Vision 2040 in line with the Global Vision 2030 towards achieving the UN Sustainable Development Goals (SDGs), the government commits to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.¹⁵¹ The Uganda government

148 In 2014, 40,000 residents living close to Port Bell Railway Line to Kampala and Kyengera railway line to Namanve. The Rwamutonga evictions to pave way for the construction of a Waste Management Plant and the Buvuma Island evictions.

149 The 1995 Uganda Constitution, Objective XIV.

150 *Id.*, Article 26.

151 National Planning Authority, "Uganda Vision 2040" accessed at <http://npa.ug/wp-content/themes/npatheme/documents/vision2040.pdf>.

has also developed a number of policies to address the housing gaps in the country including the National Housing Policy 2016 which aims to ensure a well integrated sustainable human settlements, where all persons have adequate shelter with secure tenure.¹⁵² Secondly, the National Urban Policy seeks to address the gaps in urban management that have witnessed slum development policies which trigger evictions.

Internationally, Uganda is a party to a number of conventions that provide for the right to adequate housing such as the Universal Declaration of Human Rights (UDHR),¹⁵³ the International Covenant on Economic Social and

Cultural Rights (ICESCR)¹⁵⁴ and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵⁵ General Comments No 4 of the Covenant on the right to adequate housing¹⁵⁶ reinforces affordability, adaptability, accessibility, security of tenure, and cultural adequacy of housing and that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.¹⁵⁷ General Comment No 7 of the CESCR further highlights that “other instances of forced eviction occur in the name of development [and that] evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects.”¹⁵⁸

These international instruments collectively impose a duty on the state to ensure adequate housing and in essence enjoins the State obligation to protect and ensure non-state actors including business enterprises respect human rights. This state obligation was well enunciated in the case of *SERAC v. NIGERIA*¹⁵⁹ where the African Commission noted that;

152 Ministry of Lands Housing and Urban Development “The National Housing Policy, (2016) accessed at <http://mlhud.go.ug/wp-content/uploads/2015/10/National-Housing-Policy-May-2016.pdf>.

153 UDHR, Article 25.

154 ICESCR, Article 11.

155 CEDAW, Art 14(2), Art 15(2).

156 CESCR, *General Comment No. 4: The Right to Adequate Housing. (Art. 11 (1) of the Covenant)*. Adopted at the Sixth Session of the Committee on Economic.

157 *Id.*,

158 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): Forced Evictions*, 20 May 1997, E/1998/22, available at: <http://www.refworld.org/docid/47a70799d.html>.

159 Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, ...the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing which the Nigerian Government has apparently violated.¹⁶⁰

The Commission further noted that;

At a very minimum, the right to shelter obliges the Nigerian Government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs.¹⁶¹

Of critical importance relating to non-state actors, the African Commission noted that;

160 *Id.*, Para 60.

161 *Id.*, Para 61.

The States' obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.¹⁶²

In Uganda's context, increase in investment and infrastructural development coupled with renewed interest and focus on natural resource exploitation has heightened the demands for land for development. This increased demand for large chunks of land has led to increased forced evictions, land grabbing and massive displacements. Some cases have been witnessed in Hoima district during the compulsory acquisition process for land for the construction of the oil refinery in Kabaale parish. The whole process affected about 7118 people in 13 villages and some families are still languishing on the land waiting to be resettled. Massive displacements have also been experienced in Mubende where artisanal miners and neighbouring communities were forcefully evicted by security agencies off gold mines to make way for a licensed mining company.

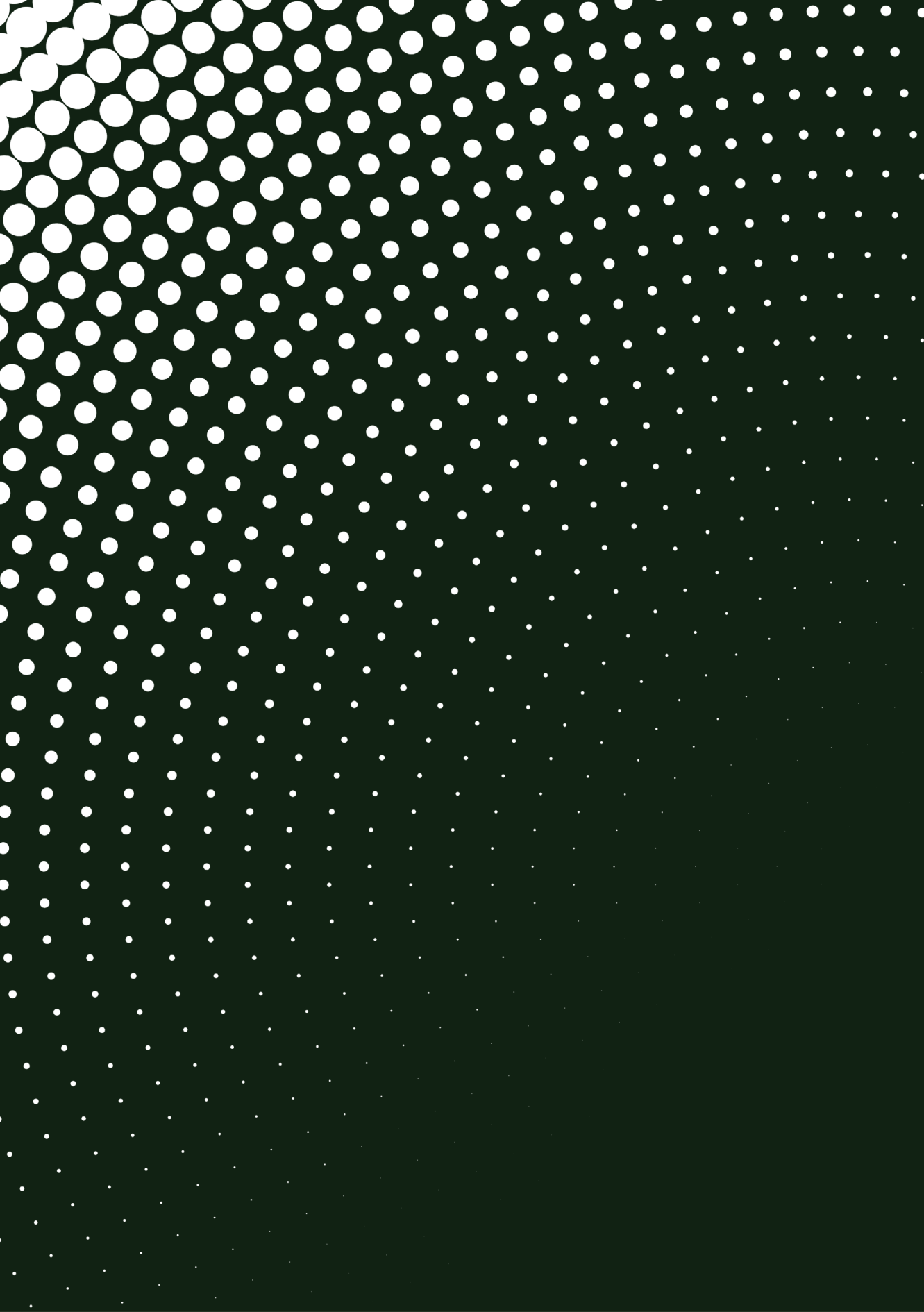


Relatives of the former LC1 chairman, Mr Swaleh Songa, who was burnt during the land clashes. PHOTO BY Patrick

*Okaba*¹⁶³

¹⁶² *Id.*, Para 61

¹⁶³ Daily Monitor, "Apaa Land Clashes, Adjumani Leaders Seek Dialogue," accessed at <http://www.monitor.co.ug/News/National/Apaa-land-clashes--Adjumani-leaders-seek-dialogue-bloodshed/688334-3966246->





V.

ENVIRONMENT

a. The Right to a Clean and Healthy Environment

The increased demand for land for investment and other development projects and natural resource exploitation has witnessed a rise in cases of environmental degradation and its broader impact on livelihood for communities living around these investments and development projects. The 1995 Uganda Constitution obligates the State to “promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations of all Ugandans.”¹⁶⁴ The state is particularly enjoined to take all possible measures ‘to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other resources’.¹⁶⁵ The Constitution further enjoins the State to promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.¹⁶⁶

Article 39 specifically guarantees every Ugandan ‘a right to a clean and healthy environment.’ The law governing protection of the environment is based on the public trust doctrine which is the legal right of the public to use certain land and waters. This principle is reflected in Article 237 (2)(b) of the Constitution which states that:

The Government or a local” Government as determined by parliament by law, shall hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, National parks, and any land to be reserved for ecological and tourist purposes for the common good of all citizens.

The National Environment Act Cap 153 is the principal legislation and comprehensive environmental framework enacted “to provide for sustainable management of the environment; to establish an authority—the National Environment Management Authority as a coordinating, monitoring and supervisory body for that purpose; and for other matters incidental to or connected with the foregoing.”¹⁶⁷ The Act with its various regulations

164 1995 Uganda Constitution, Objective XXVII.

165 *Id.*,

166 *Id.*,

167 The National Environmental Act, Cap 153.

including the Environmental Impact Assessments¹⁶⁸ seek monitor and address problems affecting environmental management in Uganda. Section 3 of the Act provides for the right to a decent environment and 3 (1) guarantees every person the right to a healthy environment. Section 3 (2) of the EIA regulations notes that “No developer shall implement a project for which environmental impact assessment is required under the Act and under these regulations unless the environmental impact assessment has been concluded in accordance with these regulations.”¹⁶⁹

Internationally, Article 7 (b) of the ICESCR guarantees the right to safe and healthy working conditions and Article 10 (3) provides for the right of children and young persons to be free from work harmful to their health. Furthermore, Article 12 on the right to health expressly enjoins States parties to take steps for “the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.” Similarly, the Convention on the Rights of the Child refers to aspects of environmental protection in respect to the child’s right to health. Article 24 provides that States Parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.¹⁷⁰

Furthermore, the African Charter on Human and Peoples rights makes clear distinction and linkages of the environment to development and contains both the right to health and the right to environment. Article 16 of the Charter guarantees to every individual the right to enjoy the best attainable state of physical and mental health while Article 24 states that all peoples shall have the right to a general satisfactory environment favorable to their development. In SERAC, the African Commission emphasized that the right to a clean and safe environment is critical to the enjoyment of other human rights.¹⁷¹

The ILO Convention No. 169 also contains numerous references to the lands, resources, and environment of indigenous peoples.¹⁷² Article 15 (1) specifically provides that “the rights of the peoples concerned to the natural

168 The Environmental Impact Assessment Regulation, S.I. No. 13/1998.

169 *Id.*,

170 (Art. 24(2)(c).

171 Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96).

172 ILO C.69, Art. 2, 6 and 7.

resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”

Overall, the increased demands for land for investment, development projects and natural resource exploitation has largely affected the environment—either directly through air and water pollution and land grabbing and forced evictions and massive displacement has often meant that displaced people devise ways of survival which leads to encroaching on the environment. Activities of business enterprises usually involve cutting down trees, reclaiming water resources and sometimes operation in lakes and excavation thereby affecting the environment.

Advocates Coalition for Development and Environment (ACODE)

V

Attorney General and NEMA

Several forests have been encroached on or plans to cut them down have been adopted at the expense of setting up sugarcane plantations to supply the sugar factories. One particular forest giveaway was challenged in the case of **Advocates Coalition for Development and Environment (ACODE) V Attorney General and NEMA**¹⁷³ In this case, the applicants sought an environmental restoration order and a declaration that issuing a private company Kakira Sugar Works Ltd a 50 year Forest permit by government in Butamira forest Reserve for the purpose of growing sugarcanes was in contravention of the Constitution specifically the right to a clean and healthy environment. The applicants argued that an Environmental Impact Assessment (E.I.A) had not been carried out, no project brief was provided by the company and neither were the local communities consulted and that the permit should be revoked. It was held by Justice Rubby Aweri Apio that the respondent’s actions were in violation of the public trust and that granting a permit to Kakira Sugar Works without an E.I.A and a project brief was unconstitutional and therefore null and void. He however declined to grant the environmental restoration order which made this judgement ineffective. This is because although the applicants were successful in this action, they were unable to enforce the judgement as it was merely declaratory. The permit

173 Misc. Cause No. 0100 of 2004

was merely revoked and the developer Kakira Sugar Works still occupying the forest, which it cut down and planted sugarcane in blatant violation of the law.¹⁷⁴

Skyfat Tannery Company

The effect of business activities on Lake Victoria has become a point of concern over the years. Skyfat Tannery Company a skin and hides factory in Jinja was in 2013 reported to be contaminating Lake Victoria with chemical called chromium that is used in processing hides and skins.¹⁷⁵ This was despite a report by NEMA in September 2012 that faulted the company for lack of a waste treatment plan. Water from that part of the lake where it disposed waste caused a burning sensation to residents who used it to bathe and they even stopped using that water for cooking purposes. The contamination had also had a negative effect on the fishing business because all the fish had run away from the bay. In addition, the company emits a bad smell into the air which had become an inconvenience to the residents causing them loss of appetite and headache.

b. The Right to Water

Closely associated to the right to a clean and healthy environment is the right to water. Inevitably, businesses in their operations may in some instances abuse the right to water and right of access to water. It is thus necessary to unpack and strengthen the international and domestic legal framework on the right to water.

The need for water is the most basic of human needs.¹⁷⁶ It sustains life and is the fulcrum for survival. It is the most essential need for one to live a dignified life and is critical for the realization of many other human rights, including the right to health, life, and an adequate standard of living among others.

¹⁷⁴ Green Watch, Environmental Law Institute; Casebook on Environmental Law, Vol. 1 2009

¹⁷⁵ The New Vision, “Jinja Hides Factory Pours Cancerous Waste in L. Victoria,” accessed at www.newvision.co.ug/new_vision/news/1316947/jinja-hides-factory-pours-cancerous-waste-victoria.

¹⁷⁶ Phiona Muhwezi Mpanga, ‘Conceptualizing, Realizing and Enforcing a Human Right to Water for Uganda: Comparative Perspectives’ May 2015 Available at wiredspace.wits.ac.za/jspui/bistream (last accessed on 28/05/2018)

Internationally, none of the documents constituting the international bill of rights make an explicit reference to the right to water.¹⁷⁷ However, this right may be read into certain provisions of the UDHR, ICCPR and ICESCR. The legal basis of the human right to water is the vital nature of water in the enjoyment and realization of other human rights. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses¹⁷⁸

Furthermore, Article 25(1) of the UDHR provides that everyone has a right to a standard of living that is adequate for health and wellbeing of that person. The affirmation of the right to a dignified existence is predicated upon the enjoyment of a right to water. The right to water is however expressly provided for under Article 14(2) of the CEDAW and Article 24(2) (c) of the Convention on the Rights of Child(CRC) which in sum require states to facilitate access to clean drinking water for women and children. The CRC's recognition of the right to water is important because the CRC is one of the few conventions that have attained almost universal ratification thus providing proof of the existence of the right to water.¹⁷⁹

Regionally, although the African Charter does not expressly provide for the right to water, Article 14(2) of the African Charter on Rights and Welfare of the Child and Article 15 of the Maputo Protocol make explicit mention to the right to water. It can thus be asserted that the right to water exists in the international legal framework and as such obligations for states flow there under.

The normative content of the the right to water is well stipulated by the Committee on Economic Social and Cultural Rights (CESCR). The CESCR noted in General Comment 15 that, while the adequacy of water required may vary according to different conditions, certain factors apply in all circumstances.¹⁸⁰ These include availability,¹⁸¹ quality,¹⁸² which also requires

177 Muhwezi, 'Conceptualizing, Realizing and Enforcing a Human Right to Water for Uganda, *Op.Cit*, Note 169.

178 CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), accessed at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en.

179 *Id.*, page 25

180 *Id.*,

181 *Id.*, Par 12, (a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.

182 *Id.*, (b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health.

that the water is of acceptable colour, odour and taste for each personal or domestic use,¹⁸³ accessibility,¹⁸⁴ which includes, physical accessibility, economic accessibility, non-discrimination and information accessibility.¹⁸⁵

Domestically, the right to water is not expressly provided for under the 1995 Constitution. However, by virtue of Article 45 of the Constitution, Article 8A and Objective XIV under the NODSPS the right to water is embedded within the constitution. With the State's duty to protect the right to water and the right of access to safe water and to water resources, Parliament has enacted laws to provide for and safeguard the right to water. Domestic legislation on the right to water is found in two Acts of Parliament namely; The Water Act and The National Water and Sewerage Corporation Act (hereinafter called NWSC Act). The Water Act affirms the freedom of access to water resources¹⁸⁶ but it is more focused on the broader context of the purpose of water.¹⁸⁷ The NWSC Act largely stipulates objects of the corporation whose services are provided pursuant to payment of a fee by a customer. In addition to these laws, the right to water is also contained in the Uganda National Water Policy¹⁸⁸ and the Water and Sanitation Gender Strategy (2018-2022).¹⁸⁹

All these legal and policy provisions notwithstanding, the right to access clean water—especially within rural areas—rich with natural resources has always been threatened in situations where there are natural resource exploitation. The same case has been witnessed in businesses dealing in manufacturing processing and production.¹⁹⁰ How they manage and where they dump their waste is always a point of concern especially where waste can trickle through

183 CESCR, *General Comment No. 15*.

184 CESCR, *General Comment 15*, Par 12, (c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party.

185 *Id.*, Par 12, (i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population.; (ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all.; (iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and (iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.

186 The Water Act, Section 7.

187 *Id.*,

188 MoLHUD, The Uganda National Water Policy, (1999).

189 Ministry of Water and Environment, Water and Sanitation Gender Strategy (2018 - 2022), accessed at www.mwe.go.ug/library/water-and-sanitation-gender-strategy-2018-2022.

190 See The New Vision, SCoul “defies NEMA directive” over Waste Disposal, (2014), accessed at https://www.newvision.co.ug/new_vision/news/1315865/scoul-defies-nema-directive-waste-disposal. See Also, Patrick Uma, “Residents Accuse Company of Polluting their Water Source,” (September 2018), accessed at <https://chimpanreports.com/residents-accuse-chinese-company-of-polluting-their-water-source/>.

to community water sources.¹⁹¹ In most of these operations, companies are failing to respect human rights including the right to water. The responsibility of businesses to respect the right to water requires that in their operations, they respect the freedom of access to water and also ensure that their activities do not affect the availability, accessibility and quality of the water. This includes refraining from blocking access to the water resources as well

as refraining from contaminating water resources. Uganda is in the early stages of oil production and must ensure that measures are put in place to address gaps in exploration and production that may affect community rights to water. They must ensure better management of waste so as not to pollute the environment generally but of specific importance water sources.

Over the years, there have been a vibrant civil society movement as far as environmental protection is concerned. In some instances, public interest litigation has been pursued to challenge business actions posing threats to the environment and restoration of the environment as provided for under the National Environment Act. However, enforcement of legal provisions and enforcement of judicial decisions has not been witnessed. As a result, environmental degradation which the litigants seek to prevent in the first place continues. Various cases litigated in courts have brought to light some of the major challenges and gaps in ensure the right to a safe and health environment and right to water as highlighted below;

- **Advocates Coalition for Development and Environment (ACODE) Vs. Attorney General and NEMA**¹⁹² where court noted in declaration that in alienating the reserve the second Respond failed in its constitutional duty to conserve the environment and natural resources equitably and for the benefit of both the present and future generations. However, Kakira Sugar Works Ltd continued to grow sugar cane on Butamira forest reserve since the decision of court was merely declaratory.

191 *Id.*

192 Misc. Cause No. 0100 Of 2004

- In the case of **Greenwatch And Advocates Coalition For Development & Environment V Golf Course Holdings Ltd**,¹⁹³ the court refused to grant a temporary injunction stopping the construction of a hotel and shopping mall by the respondents in land which the applicants contended to be part of a wetland because the remedy of environmental restoration order was available to the applicants in the event that the court held in their favour in the main suit.

Such decisions do not take into account the fact that the environment is a complex eco-system and restoration to its perfect original state is not only never possible but also expensive. For instance, a natural forest that has grown over a period of centuries cannot be restored by merely planting trees, nor can a swamp or lake which has been reclaimed be excavated.

- In the **SERAC & Anor V Nigeria**¹⁹⁴ for instance, Shell only agreed to make efforts to restore the environment more than 40 years after it had started mining and moreover by offering a paltry amount as compensation which was a small fraction of the profits it had made at the expense of protection of the environment. Although the environmental restoration order is well intentioned, sometimes it is too little, and too late.

- In Kabarole District in western Uganda, a local N.G.O, Twerwaneho Listeners Club¹⁹⁵ successfully challenged the Memorandum of Understanding signed between Ferdsult Engineering services Ltd and the district local government giving the company the right to restock all crater lakes in the district as well as exclusive fishing rights in those lakes for 30 years. Such an arrangement entered into by the district local government and the private company posed serious threats to the environment because the private company is driven by profits and would not care about the impact of its activities on the environment. The local fishing community had also been blocked from accessing the crater lakes hence infringing on their right to livelihood.

193 H.C. Misc. Application. No. 390 Of 2001

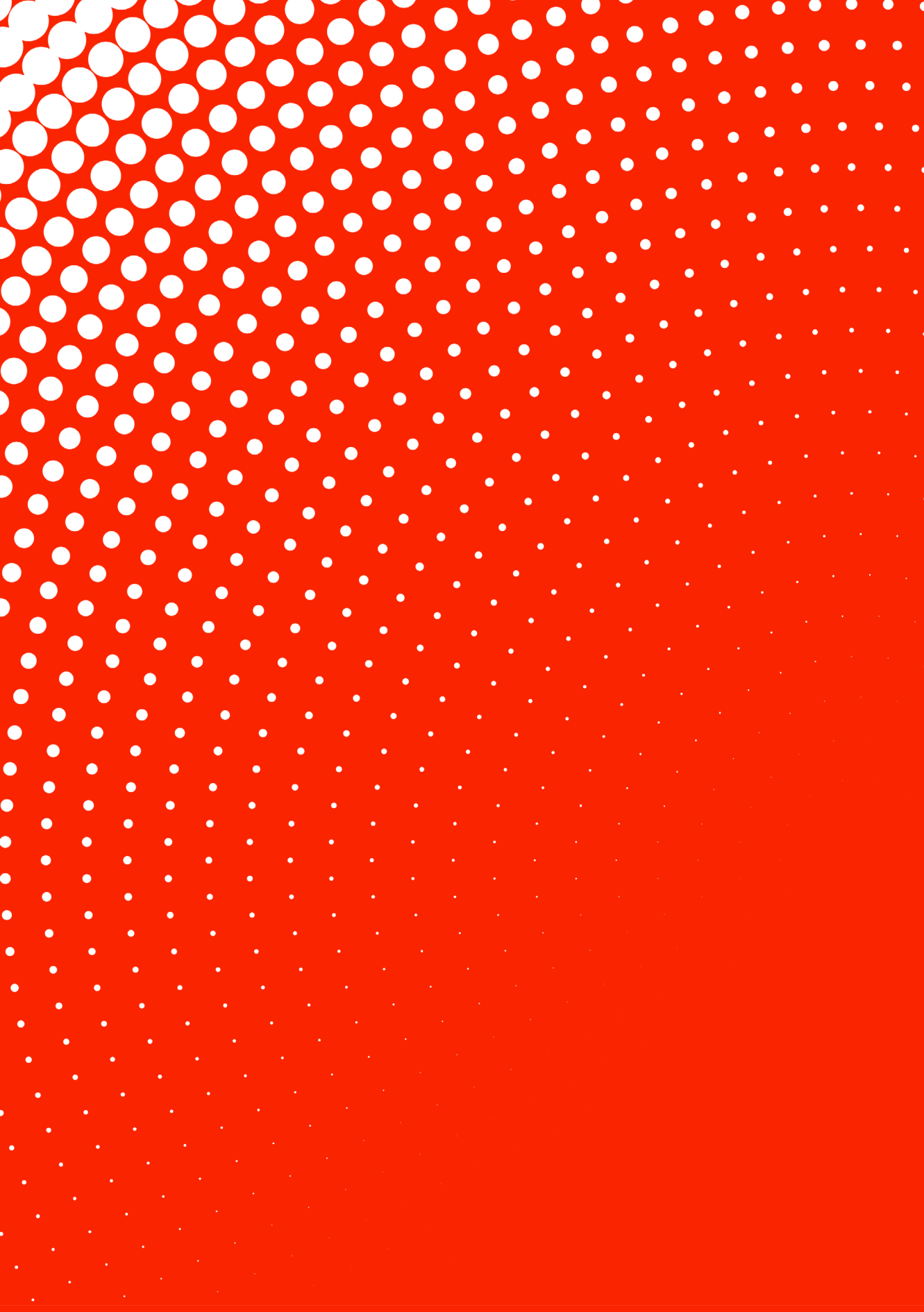
194 AHRLR 60 (ACHPR 2001)

195 Tweraneho Listeners Club v Ferdsult Engineering Company, Kabarole District Local Government and Attorney General HCT-02-MA-0062 OF 2016



Two of the Crater Lakes in Fort Portal that are subjects of the suit.

- The same remedy was challenged in **Nyakaana V NEMA, Attorney General, ACODE and Ors**¹⁹⁶ where the petitioner challenged the constitutionality of sections 67, 68 and 70 of the National Environment Act which give NEMA the authority to issue Environment Restoration Orders where there has been or is likely to be harm to the environment. He contended that the procedure of issuing an Environment Restoration Order without affording the appellant the right to be heard has the effect of making NEMA the accuser, investigator, prosecutor and judge in its own case hence a violation of the principle of fair hearing and natural justice guaranteed under Articles 28, 42 and 44 of the Constitution.



VI.

RECOMENDATIONS AND CONCLUSIONS

Recommendations and Conclusion

1. In all cases of compulsory land acquisition processes, the State—pursuant to their obligation to protect human rights and ensure that non state actors respect human rights must put measures to ensure meaningful continuous consultations and participation of affected communities with all actors involved in any business activity to comply with international human rights standards advancing respect to principles of Free Prior and Informed Consent (FPIC).
2. The State should implement policies and laws enacted to ensure protection of environment and also ensure respect by all actors and enforce judicial decisions relating to a safe and healthy environment and other environmental protection.
3. With the increase in private sector engagement in large scale business, manufacturing and production, there is need to strengthen the labour office and build their capacity around business and human rights and the broader labour rights framework, to monitor, inspect and ensure that all business entities operate in an environment where workers' rights are not abused and where there are corporate abuses, that remedial mechanisms are clear, credible and effective.
4. The corporate responsibility to respect human rights: The remedy aspect under the UNGPs on business and human rights framework of protect, respect and remedy in regards to the right to a clean and healthy environment should be used as a starting point to promote the enjoyment of this right.
5. Where there have been corporate abuses and violation of human rights, access to an effective remedy should be easily available without continuous threatening and harassing affected communities.
6. Meaningful Environment Impact Assessment should be conducted in accordance with the regulations and other legal provisions for all projects and where harm to the environment is done, restoration orders must be respected.

7. Furthermore, the Government of Uganda should join global transparency standards especially those in the oil industry. It has been recognized that joining these global transparency standards for the extractive industries affords the state an opportunity to hold transnational organisations accountable and guard against their predatory practices especially through the promotion of respect for the rights of host communities within the exploration and production areas.¹⁹⁷ Such initiatives include the Extractive Industries Transparency Initiative (EITI), the Voluntary Principles for Security and Human Rights, and the Global Oil and Gas Industry Organization for Environmental and Social Issues. Domestication of these principles and initiatives into national laws and policies is critical to the full realization of the “Protect, Respect and Remedy” framework under the UN Guiding Principles on Business and Human Rights.¹⁹⁸
8. Under the 2008 National Oil and Gas Policy, the Government of Uganda committed to joining the global Extractive Industries Transparency Initiative (EITI).¹⁹⁹ This commitment was renewed under the 2012 Oil and Gas Revenue Management Policy.²⁰⁰ Unfortunately, this commitment is not reflected in the upstream²⁰¹ and midstream laws. The government needs to fulfil its commitments to join these accountability mechanisms in order to prevent Uganda from being the next victim of the proverbial resource curse.
9. In the absence of effective environmental protection laws, environmental law litigation can be used to hold the state and business entities accountable. Civil society and communities should pursue strategic litigation founded on the principles of public participation, public trust doctrine and sustainable development as one of the ways of ensuring compliance with and enforcement of environmental laws. The benefits of such litigation are evident from the case of *SERAC v Nigeria*²⁰² where the Ogoni community challenged the oil mining activities of Shell in Ogoni land which had led to gross destruction of

197 Global Witness, *Uganda's oil laws: Global witness analysis*

<https://www.globalwitness.org/archive/ugandas-oil-laws-global-witness-analysis/>.

198 Avocats San Frontieres, “Business, Human Rights and Uganda’s Oil and Gas Industry, A Brief of Existing Gaps in the Legal and Policy Framework” June 2015. Pp5

199 The National Oil and Gas Policy for Uganda 2008, Objective 6(h) (iii) and Objective 7.2.61 (b) (xiv).

200 The Oil and Gas Revenue Management Policy 2012. Point 6.5 and Appendix 1E

201 The Petroleum (Exploration, Development and Production) Act 2013

202 AHRLR 60 (ACHPR 2001)

the environment. Businesses must therefore in their operations respect the right to a healthy environment and must use natural resources in a sustainable way. The state and its agencies must also fulfil their duty to protect this right.

CONCLUSION

The notion of business and human rights is steadily growing both within Uganda and internationally. Whereas there is no internationally binding treaty on the subject, the UNGPs and General Comment No. 24 provide guidance on the duties of states as well the responsibilities of business entities. Economic, Social and Cultural Rights have bore the brunt of human rights abuse by business entities and as such, businesses in Uganda must adhere to their responsibility, flowing from Article 20(2) of the Constitution to respect the various rights protected and also take steps to remedy violations that occur due to their operations.

It is hoped that this handbook will provide some guidance to businesses on their responsibility in so far as human rights are concerned in the context of their operations. It is further hoped that the state, in all state-business arrangements will adhere to its duty to protect, respect, promote and fulfil. Finally, the state should actively protect citizens from human rights abuses by business entities and direct corporate efforts towards fulfillment of Economic, Social and Cultural Rights.

About UCCA

The Uganda Consortium on Corporate Accountability (UCCA) is a Civil Society Consortium on corporate accountability aimed at enhancing accountability by corporations, states, international finance institutions and development partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs).

Currently, the UCCA has a founding membership of four organizations specializing in different areas of rights protection, including the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD).

Other UCCA members are Twerwanaho Listeners Club (TLC), Karamoja Development Forum (KDF), the Southern and Eastern Africa Trade Information and Negotiation Institute (SEATINI), the Centre for Economic Social and Cultural Rights in Africa (CESCRA), Buliisa Initiative for Rural Development Organisation (BIRUDO), Navigators for Development Association (NAVODA), Ecological Christian Organisation (ECO), World Voices Uganda (WVU), Rural Initiative for Community Empowerment West Nile (RICE WN), Teso Karamoja Women Initiative for Peace (TEKWIP), Action Aid International Uganda, International Accountability Project (IAP) and Lake Albert Children Women Advocacy and Development Organisation (LACWADO).

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