

**BACKGROUND PAPER FOR UGANDA'S NATIONAL ACTION PLAN ON
BUSINESS AND HUMAN RIGHTS**

AUGUST, 2019

TABLE OF CONTENTS

<u>List of Abbreviations</u>	iii
<u>Executive Summary</u>	v
<u>CHAPTER ONE: INTRODUCTION</u>	1
<u>CHAPTER TWO: A REVIEW OF THE EXISTING REGULATORY FRAMEWORK</u>	3
<u>2.1 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS</u>	3
<u>2.1.1 The International Covenant on Economic, Social and Cultural Rights (ICESCR)</u>	4
<u>2.1.2 The African Charter on Human and Peoples’ Rights</u>	5
<u>2.2 INTERNATIONAL SOFT LAW</u>	6
<u>2.2.1 General Comment No. 24 of 2017</u>	6
<u>2.2.2 The Maastricht Principles on Extraterritorial Obligations of States in area of Economic, Social and Cultural Rights, 2011.</u>	9
<u>2.2.3 OECD Guidelines for Multinational Corporations</u>	11
<u>2.3 UGANDA’S DOMESTIC LAWS</u>	12
<u>2.3.1 The 1995 Constitution of Uganda</u>	13
<u>2.3.2 Laws on Natural Resources and Extractives</u>	15
<u>2.3.3 Land and Environment</u>	22
<u>2.3.4 Labour</u>	26
<u>2.3.5 Taxation and Fiscal Policies</u>	28
<u>2.3.6 Access to Remedies</u>	31
<u>CHAPTER THREE: UGANDA’S NATIONAL ACTION PLAN (NECESSITY, PROCESS AND CONTENT)</u>	38
<u>3.1 The Need for a National Action Plan for Uganda, on Business and Human Rights</u>	38
<u>3.2 Lessons from Existing NAPs and NAP Projects.</u>	41
<u>3.3 Principles and Processes that Should Underpin Uganda’s National Action Plan on Business and Human Rights</u>	43
<u>3.4 What should be the Content of the Proposed Ugandan National Action Plan on Business and Human Rights?</u>	45

<u>3.4.1</u>	<u>Declaring an Unequivocal Commitment to Upholding Human Rights</u>	
		45
<u>3.4.2</u>	<u>Establishing Coordination Committees</u>	46
<u>3.4.3</u>	<u>Reviewing the Existing Regulatory Framework</u>	47
<u>3.4.4</u>	<u>Paying Special Attention to Vulnerable Groups and Specific Sectors</u>	
		47
<u>3.4.5</u>	<u>Offering Incentives and Creating Disincentives to Business</u>	48
<u>3.4.6</u>	<u>Strengthening Redress Mechanisms and Removing Barriers to Access to Remedies</u>	48
<u>3.4.7</u>	<u>Regular Monitoring and Periodic Update of the Framework</u>	50
	<u>CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS</u>	51
	<u>ANNEXURES</u>	54
<u>A.</u>	<u>Uganda’s Ratification of Core International Human Rights Instruments</u>	
		54
	<u>Bibliography</u>	56

List of Abbreviations

BHR	Business and Human Rights
CSO	Civil Society Organisation
DIHR	Danish Institute for Human Rights
DTT	Double Taxation Treaty
ECCJ	European Coalition for Corporate Justice
EOC	Equal Opportunities Commission
ESC	Economic and Social Council
FPIC	Free, Prior and Informed Consent
GNAPs	Guidance on National Action Plans on Business and Human Rights
HRC	Human Rights Council
HREA	Human Rights Enforcement Act, 2019
ICAR	International Corporate Accountability Roundtable
ICESCR	International Covenant on Economic, Social and Cultural Rights
NAP	National Action Plan
OECD	Organization for Economic Cooperation and Development
PFMA	Public Finance Management Act, 2015
PIL	Public Interest Litigation
PPP	Public Private Partnership
SIAA	Social Impact Assessment and Accountability Bill, 2019

UN	United Nations
UNICEF	United Nations Children’s Emergency Fund
UNPGs	United Nations Guiding Principles on Business and Human Rights.
UNWG	United Nations Working Group on Business and Human Rights

Executive Summary

This paper discusses Uganda’s need for a National Action Plan on Business and Human Rights in the context of implementing the United Nations’ Guiding Principles on Business and Human Rights. It also discusses what the contents of this Action Plan should be, the principles and processes that should underpin it, and the lessons that may be learnt from other states’ existing Action Plans.

Having and acting on a National Action Plan on Business and Human Rights is the first concrete step toward fulfilling the state’s duty to protect individuals and communities from business-related human rights abuses and the duty to provide effective access to remedies for victims. It also plays an important role in getting businesses to fulfill their responsibility to respect human rights.

A review of Uganda’s existing legal and policy framework on matters connected to business and human rights, within chapter two, reveals that the existing framework is fairly comprehensive although it is faulted for paying no attention to the principle of Free, Prior and Informed Consent by indigenous communities and the need for access to interlocutory remedies such as injunctions.

On the need for an Action Plan, this paper finds that the private sector’s increasingly prominent role in the development of Uganda warrants the adoption of laws, policies and action plans needed to effectively operationalize the Guiding Principles on Business and Human Rights and that this will be consistent with Uganda’s second National Development Plan and the promotion of Public Private Partnerships.

Drawing lessons from jurisdictions such as the United Kingdom, Netherlands, Denmark, Finland, Lithuania and Sweden, this paper advises that to create an effective National Action Plan for Uganda, multiple government agencies should be involved in the drafting process, steps should be taken to facilitate the consultation of the disempowered sections of society, baseline assessments should be conducted, and that in general, the Action Plan should contain information about concrete steps to be taken to achieve the Plan’s goals. It is advised that Uganda should utilize, in the making of its Plan, the National Action Plan Toolkit developed by the Danish Institute for Human Rights (DIHR),

the International Corporate Accountability Roundtable (ICAR) and the United Nations Children’s Emergency Fund (UNICEF).

To ensure its effectiveness, it is advised that the Action Plan should; be founded on the Guiding Principles, respond to specific challenges of the national context, be developed and implemented through an inclusive and transparent process, and be regularly reviewed and updated.

This paper also advises that there should be transparency and inclusiveness in the drafting process so that the views of all stakeholders are taken into account, and that although it will be important to reach out to a range of business actors at all stages of the process, care should be taken to avoid creating the perception of a ‘corporate capture of the state.’ Consultations should also be conducted in diverse parts of the country and in local languages, with the people being given adequate time to digest the information and provide feedback.

To ensure its viability, the Action Plan should offer a vision of how the balance between human rights and development will be struck. Furthermore, the government should create guidelines for companies regarding the execution and scope of their human-rights-impact due diligence such that there is an acceptable, coherent and uniform standard to be applied.

In order to have proper coordination among the different bodies and agencies involved in the process, this paper advises that coordination committees should be created to facilitate the exchange of diverse views, and the amicable resolution of disagreements in order to easily build broad consensus.

Government should also undertake a comprehensive review of the existing legal framework in order to improve its responsiveness, and to pre-empt as well as address human rights abuses by business enterprises.

Uganda’s Action Plan should also pay special attention to the unique circumstances and experiences of vulnerable or marginalized sections of society such as women, children, Persons living with HIV, ethnic minorities, people with disabilities.

In the interest of efficiency, there is a need develop sector-specific guidelines under the broad framework, since companies operating in different sectors face different sets of human rights challenges, and it may not be feasible for one

national framework to respond to all the specific needs of a diverse range of industries.

In order to influence companies to act in compliance with human rights standards, Government should make use of both incentives such as tax benefits and disincentives such as civil, criminal and administrative sanctions.

Respect for human rights should also be incorporated as a prerequisite for the award of public tenders and public procurement.

The need for effective mechanisms—judicial and non-judicial, state based and non-state-based—for the provision of remedies to victims of abuses is further emphasized. The recently passed Human Rights Enforcement Act, 2019 presents tremendous opportunities for increased access to justice for victims. Government should therefore ensure its effective implementation. Furthermore, Government should support the development of non-state, non-judicial remedial mechanisms which should be in addition to but not instead of judicial remedies.

Government should also consider ways to overcome the difficulties posed by corporate law principles of limited liability and separate personality, to the effective implementation of the UN Guiding Principles on Business and Human Rights. It is also advised that recognizing a direct duty of care or imposing a due-diligence requirement on parent companies may be necessary to enable victims to hold a parent company accountable in appropriate cases.

Lastly, it is emphasized that the effectiveness of the proposed Action Plan will require periodical reviews and updates in line with factual developments and observations about its weaknesses and strengths, successes and failures. The Action Plan should therefore identify concrete measures by which declared goals will be implemented, and also specify processes established to monitor the efficacy of implementation.

Putting these and other recommendations into practice will ensure the creation of an optimal and effective Action Plan which will see the effective implementation of the UN Guiding Principles on Business and Human Rights, greater corporate responsibility and accountability, and an enhanced way of living for the people affected by business activities.

CHAPTER ONE: INTRODUCTION

Endorsed by the United Nations' Human Rights Council in June, 2011,¹ the United Nations' Guiding Principles on Business and Human Rights (UNGPs), are built on three pillars; states' duty to protect human rights, corporate responsibility to respect human rights, and access to effective remedies.

The first pillar clarifies the legal duty of States to protect individuals from adverse business-related human rights impacts and outlines a set of operational principles with which states should implement this duty, while the second pillar identifies the responsibility of business enterprises to respect human rights and delineates a due diligence process with which companies should give effect to this responsibility. The third pillar stresses and specifies the need to ensure better access to remedies for victims as a joint responsibility of states and business enterprises.

In June 2011, the UN Human Rights Council established the United Nations Working Group on Business and Human Rights (UNWG) and tasked it with, *inter alia*, facilitating the global dissemination and implementation of the UNGPs. The authoritative framework provided by the UNGPs clarifies and details both duties of States and responsibilities of business enterprises in addressing adverse business-related human rights impacts.

Based on this mandate, the UNWG has strongly encouraged all states to develop, enact and update national action plans (NAPs) as part of the state responsibility to disseminate and implement the Guiding Principles on Business and Human Rights. It has also developed a Guidance on National Action Plans on Business and Human Rights (GNAPs) which provides

¹ Human Rights Council, 'New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council' (16 Jun. 2011), <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID%2F11164&LangID%2FE> (accessed 23 August, 2011).

recommendations on the development, implementation and update of NAPs.² In June 2014, the HRC passed a resolution calling upon states to develop NAPs while in 2017, the UN Economic and Social Council (ESC) issued General Comment No. 24 on state obligations under the ICESCR in the context of business activities and in it urged states to follow the GNAP³ and to specifically address the role of business entities in the progressive realization of covenant rights.⁴ As of November 2017, 19 states had adopted a NAP, while several others were in the process of doing so or had committed to do so.⁵

Against this background, this paper discusses Uganda's need for a National Action Plan on Business and Human Rights, what the contents of such a policy should be and which principles should be followed in order to make the process legitimate, transparent and inclusive.

² <https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf> last accessed 19 August, 2019.

³ Para. 9.

⁴ Para. 58.

⁵ Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Round Table (ICAR) (2017), *National Action Plans on Business and Human Rights Toolkit 2017 Edition*. <<https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>> last accessed on 19 August, 2019.

CHAPTER TWO: A REVIEW OF THE EXISITING REGULATORY FRAMEWORK

Uganda has ratified a number of international human rights instruments (details are contained within Annexure A of this report) that impose explicit or implicit obligations on the government to ensure that business enterprises operating within her territory or jurisdiction do not violate human rights. It has also enacted various pieces of legislation that have direct and indirect bearing on business and human rights. These are reviewed under the umbrella of ‘domestic laws’. Further still, there are several documents or instruments constituting soft law which, although non-binding, offer guidance on how the issue of business and human rights may be approached. In this Chapter, a review of these instruments and legislation is undertaken.

In the course of this review, it is important to remember that states have tripartite duties under international human rights law—the duties to respect, protect and fulfill human rights. The duty to ‘protect’ human rights against the conduct of non-state actors is especially relevant in relation to corporate human rights abuses.

Section 2.1 will review the international instruments to which Uganda is a party, while section 2.2 will examine soft law drawn from the international sphere. This soft law, as earlier mentioned, is an important source of guidance and best practices. Finally, section 2.3 will review the Uganda’s domestic statutes which have a bearing on business and human rights.

2.1 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The major International Human rights Instruments with a bearing on business and human rights and to which Uganda is a party are the International Covenant on Economic, Social and Cultural Rights and the African Charter on

Human and People’s Rights. States and business entities alike must be alive to the rights enshrined within these instruments and refrain from violating them.

2.1.1 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Uganda is one of the many states that have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶ This treaty focuses on giving realization to the enjoyment of economic, social and cultural rights and therefore obligates states parties to ensure the enjoyment of these rights by their citizens.

Economic, social and cultural rights form part of the core principles in ‘Business and Human Rights’ and they include:

1. The freedom from discrimination on all grounds in the enjoyment of economic, social and cultural rights and the right to equality between all sexes;⁷
2. The right to self-determination;⁸
3. The right to work,⁹ which includes:
 - a) The right to enjoy just and favorable conditions of work such as fair wages and equal remuneration for work of equal value without discrimination;
 - b) The right to a decent living;
 - c) The right to safe and healthy working conditions;¹⁰ and

⁶ This is a multilateral treaty that was adopted by the United Nations General Assembly on 16th December 1966 through General Resolution 2200 (XXI) and came to force on 3rd January, 1976. Uganda ratified it on 21st January, 1987,

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-

⁷ Article 2 and Article 3

⁸ Article 1

⁹ Article 6

¹⁰ Article 7

d) The right to form trade unions and join trade unions of anyone's choice.¹¹

4. The right to social security including social insurance;¹²

5. The right to an adequate standard of living including the right to a safe and healthy environment;¹³ and

6. The right to the highest attainable physical and mental health¹⁴.

According to Article 2(1) of this Covenant, States undertake to take steps, to the maximum of their available resources, 'with a view to achieving progressively the full realization' of the rights recognised within the Covenant.

2.1.2 The African Charter on Human and Peoples' Rights

At the regional level, the African Charter on Human and People's Rights (also known as the Banjul charter) is one of the International Human Rights treaties that Uganda has ratified.¹⁵ This charter came into force on 21st October 1986 and was intended to promote the different human rights and freedoms that accrue to the African peoples who are bound together, in part, by their shared history. The African Charter encompasses both civil and political rights, and economic, social and cultural rights. The economic, social and cultural rights in the Charter form part of the fundamental principles of Business and Human Rights. These include:

1. The right to freedom of non-discrimination in the enjoyment of all rights in the Charter, which include the economic, social and cultural rights;¹⁶
2. The right to work under equitable and satisfactory conditions and receive equal pay for work;¹⁷

¹¹ Article 8

¹² Article 9

¹³ Article 11

¹⁴ Article 12

¹⁵ Uganda ratified it on 10th May, 1986. <http://www.achpr.org/states/uganda/ratifications/>

¹⁶ Article 1

¹⁷ Article 15

3. The right to have the unquestionable and inalienable right to self-determination which includes the right to pursue one's economic and social development according to the policy they have freely chosen;¹⁸
4. The peoples' right to freely dispose of their wealth and natural resources which shall be exercised in the exclusive interest of the people;¹⁹
5. The peoples' right to their economic, social and cultural development with regard to their freedom and identity;²⁰ and
6. The peoples' right to a general satisfactory environment favorable for their development.²¹

2.2 INTERNATIONAL SOFT LAW

International Soft Law is highly relevant to the present discussion because it contains best practices that may be adopted in relation to business and human rights. The various relevant examples of soft law in this area are discussed below.

2.2.1 General Comment No. 24 of 2017

In its General Comment No. 24 of 2017, the UN Committee on Economic, Social and Cultural Rights elaborates states' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Some of the obligations laid down in the Comment include:

- States parties should guarantee the enjoyment of Covenant rights to all without discrimination²² and should incorporate a gender perspective

¹⁸ Article 20

¹⁹ Article 21

²⁰ Article 22

²¹ Article 24

²² Para 7

into all measures to regulate business activities that may adversely affect economic, social and cultural rights.²³

- States parties should respect, protect and fulfill the covenant rights. These obligations apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States parties may exercise control.²⁴
- States parties and businesses should also respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.²⁵
- States parties must effectively prevent infringements of economic, social and cultural rights in the context of business activities by adopting legislative, administrative, educational and other appropriate measures.²⁶
- States parties should consider imposing criminal or administrative sanctions and penalties on business corporations that violate covenant rights through their activities.²⁷
- State parties should also require business corporations and individuals to carry out due diligence in respect of human rights in order to identify, prevent and mitigate the risks of violations of Covenant rights, and to

²³ Para 9

²⁴ Para 10

²⁵ Para 12

²⁶ Para 14

²⁷ Para 15

account for the negative impacts caused by their decisions or to which their decisions contribute.²⁸

- States parties should ensure that, where appropriate, the impacts of business activities on indigenous peoples are specifically incorporated into human rights impact assessments²⁹.
- State parties should put up specialized mechanisms against corruption, and guarantee the independence of and sufficient resources for those mechanisms.³⁰
- States parties are also required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.³¹
- States should put in place effective monitoring, investigation and accountability mechanisms to ensure accountability and access to remedies, preferably judicial remedies, for those whose Covenant rights have been violated in the context of business activities.³²
- States parties must provide appropriate means of redress to aggrieved individuals or groups and ensure corporate accountability by ensuring access to independent and impartial judicial bodies.³³
- State parties should thoroughly investigate violations and take appropriate actions against alleged offenders.³⁴

²⁸ Para 16

²⁹ Para 17

³⁰ Para 20

³¹ Para 26

³² Para 38

³³ Para 39

³⁴ Para 40

The recommendations under General Comment No. 24 are essential in addressing and preventing the numerous human rights abuses that result from business activities.

2.2.2 The Maastricht Principles on Extraterritorial Obligations of States in area of Economic, Social and Cultural Rights, 2011.

On 28th September 2011, experts in International Law and human rights met at a conference convened at Maastricht University, Netherlands and the International Commission of Jurists. They then adopted the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. These principles were to protect persons both within and outside the member states in the context of business and human rights and some of these principles include:

- All human beings everywhere are born free and equal in dignity and are entitled without discrimination to human rights and freedoms and all states must at all times observe the principles of non-discrimination and equality.³⁵
- All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extra-territorially to the maximum level of their ability.³⁶
- Everyone has the right to informed participation in decisions which affect their human rights.³⁷

³⁵ Principle 1 and 2

³⁶ Principle 3

³⁷ Principle 7

- States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially.³⁸
- States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. Furthermore, the results of the assessment must be made public.³⁹
- All States must take action separately and jointly through international cooperation, to respect and protect the economic, social and cultural rights of persons within their territories and extraterritorially through legal and other means.⁴⁰
- All States must take necessary measures to regulate and ensure that the activities of non-State actors are carried out without violating the rights of the different individuals.⁴¹
- In fulfilling economic, social and cultural rights extraterritorially, States must prioritize realization of rights of the disadvantaged, marginalized and vulnerable groups. They should also observe international human rights standards, including the right to self-determination and the right to participate in decision-making.⁴²
- States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority—including, where necessary, recourse to a judicial authority—for violations of economic, social and cultural rights. To avoid irreparable harm, interim measures

³⁸ Principle 13

³⁹ Principle 14

⁴⁰ Principle 19, 23 and 28

⁴¹ Principle 24

⁴² Principle 32

must be available and States must respect the indication of interim measures by a competent judicial or quasi-judicial body.⁴³

- In addition to the requisite judicial remedies, States should make available non-judicial remedies such as access to an ombudsman, national human rights institutions and complaints mechanisms. States should therefore ensure additional accountability measures are in place at the domestic level, including access to a parliamentary body tasked with monitoring governmental policies, as well as at the international level⁴⁴.
- States must cooperate with international and regional human rights mechanisms, for example by complying with periodic reporting requirements, inquiry procedures of treaty bodies and mechanisms of the UN Human Rights Council, and peer review mechanisms.⁴⁵

2.2.3 OECD Guidelines for Multinational Corporations

The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Corporations are an annex to the OECD Declaration on International Investment and Multinational Enterprises. They are recommendations providing principles and standards for responsible business conduct for multinational corporations operating in or from countries adhering to the Declaration. The guidelines cover a number of business issues and were revised in 2011 with the help of Professor John Ruggie⁴⁶ to incorporate the United Nations Guiding Principles on Business and Human Rights into their framework. The countries adhering to the guidelines make a

⁴³ Principle 37

⁴⁴ Principle 40

⁴⁵ Principle 41

⁴⁶ UN Secretary-General's Special Representative for Business and Human Rights, Berthold Beitz Professor in Human Rights and International Affairs at Harvard's Kennedy School of Government and an Affiliated Professor in International Legal Studies at Harvard Law School.

commitment to implement them in accordance with the decision of the OECD council on the OECD Guidelines for multinational enterprises.

The Guidelines provide for business standards in a variety of areas affecting the protection of human rights, including:

- **Disclosure** - Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.
- **General policies** - Entrepreneurs should take into account established policies and laws made by governments in countries which protect labour and human rights.
- **Human Rights** - States have the overall duty to protect human rights and enterprises should operate within the international and domestic legal framework of laws, regulations and policies established by states.
- **Environment** - Enterprises should take into account the need to protect the environment and generally conduct their activities in a manner that contributes to the wider goal of sustainable development.

Although Uganda is not an adherent to these guidelines, they still provide essential guidance and a benchmarking opportunity that Uganda can follow regarding business and human rights.

2.3 UGANDA'S DOMESTIC LAWS

Uganda's domestic laws comprise its Constitution of 1995, statutes (Acts) passed by Parliament, and subsidiary legislation such as regulations and rules, made under authority of Acts of Parliament. The domestic laws or aspects thereof that are related to business and human rights are discussed below.

2.3.1 The 1995 Constitution of Uganda

The 1995 Constitution of Uganda is the supreme law of Uganda and all agencies, organs and enterprises within Uganda are therefore bound by its provisions.⁴⁷ Article 20 of the constitution emphasizes that fundamental rights and freedoms are inherent and not granted by the state, and provides that the rights and freedoms enshrined within the bill of rights (Chapter Four) must be respected by all organs and agencies of Government and all persons.

The 1995 Constitution doesn't explicitly mention 'business and human rights' although it has several provisions that are meant to protect people's human rights in the context of business activities. It also provides a framework under which this protection may be assessed and implemented.

Objective XIV of the National Objectives and Directive Principals of State Policy addresses social and economic matters. It directs the government to pursue social and economic objectives which fulfill the fundamental rights of all Ugandans to social justice and economic development and to ensure that all development efforts are directed towards ensuring the maximum social and cultural wellbeing of the people. These National Objectives, read together with Article 8A of the Constitution and in line with recent judicial decisions,⁴⁸ are justiciable and therefore legally enforceable.

Furthermore, the 1995 Constitution provides protections against forced labour under Article 25, and enshrines the right to property under Article 26. The right to property articulated by Article 26 guarantees the right of every individual to own property either individually or in association with others. Individuals can only be compulsorily deprived of their property where such

⁴⁷ Article 2(2)

⁴⁸ For example *Male Mabirizi and Others v the Attorney General*, Consolidated Constitutional Petitions 49 of 2017 and 3, 5, 10 and 13 of 2018, Constitutional Court of Uganda.

deprivation is in the public interest, and after prompt payment of fair and adequate compensation to the affected property owner.⁴⁹

Article 38 stipulates that every citizen has the right to participate in the affairs of government individually or through their representatives in accordance with the law. Citizens also have the right to participate in peaceful activities to influence the policies of government. This article therefore gives citizens civic rights to participate in making of making of policies that affect them, including policies related to businesses and human rights.

Economic rights are contained within Article 40 of the 1995 Constitution. It obligates Parliament to enact laws to provide for the right of persons to work under satisfactory and healthy conditions, to ensure equal payment for equal work without discrimination and to ensure that every worker is accorded rest and reasonable working hours with periods of holidays with pay. It also protects the right of workers to form or join trade unions for collective bargaining and representation and to withdraw their labour in accordance with laws such as the Employment Act, 2006 and the Labour Unions Act, 2006.

Under Article 41 of the 1995 Constitution, citizens also have the right to access information in possession of the state or any other agency or organ of the state except where that information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person. This enables citizens to access information relating to government activities and projects, to enable them make free and informed choices and hold the government accountable in the execution of its duties. Article 41 is further operationalized by the Access to Information Act, 2005 and the Access to Information Regulations of 2011.

The government is also mandated, under Article 244, to make laws regulating the exploitation of mineral resources and restoration of derelict lands. Article

⁴⁹ Article 26(2)

244 also provides that mineral exploitation shall be done while taking into account the interests of individual land owners, local government and governments.

2.3.2 Laws on Natural Resources and Extractives

Uganda is endowed with natural resources such oil within the Albertine Graben, gold, tin and tungsten, limestone, copper, cobalt, water and fish, fertile soil, forest resources, wildlife, and various others.

These natural resources, particularly those within the oil and gas sector, have attracted and continue to attract foreign, multinational and local private enterprises looking to make profits from their exploitation. Their operation raises pertinent questions about business (their activities) and human rights; questions that range from compulsory acquisition of property to facilitate exploitation, labour rights of the employees of those enterprises, and environmental protection.

Because of the pivotal place of natural resources in the debate on business and human rights in the Ugandan context, the laws governing natural resource exploitation are pertinent to this report and are discussed below.

First however, it is important to note that pursuant to Article 244(1) of the 1995 Constitution, ‘the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.’ Article 237 (2b) also states that the Government ‘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 touristic purposes for the common good of all citizens.’

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

This Act came into force particularly to regulate the initial stages in the exploitation of oil resources in Uganda, and to protect the persons working with the petroleum companies involved in exploitation and the communities living within and close to the areas with oil deposits.

The Act tasks these companies or explorers to carry out an impact assessment of their activities on trade, industry and environment, the possible risks of pollution, and the economic and social effects that may result from petroleum activities, before opening areas up for petroleum activities.⁵⁰ It also tasks explorers to take necessary measures for the protection of the environment⁵¹ and to take all reasonable steps necessary to secure the proper safety, health, environment and welfare of personal engaged in petroleum activities.⁵²

In terms of providing access to remedies, the Act gives an opportunity to the public and to affected members and communities to lodge complaints against the granting of a license to a company to explore for oil.⁵³ It also goes ahead to create liability and penalties for pollution caused, with or without a license, and liability for any damage thereby caused.⁵⁴

Furthermore, the Act protects affected persons and communities by expressly stating that a licensee shall not exercise any right under a license without the written consent of the land owner and shall pay compensation in case of any damage to the land.⁵⁵

⁵⁰ Sections 3, 47(3), 47(5), 71(2) and 76

⁵¹ Sections 3, 71, 115, 129, 141 and 88

⁵² Section 88 (2)

⁵³ Section 54

⁵⁴ Sections 129 and 175

⁵⁵ Sections 135(b), 136 and 139.

Despite these protections, the Act falls short in several respects. Firstly, the Act does not incorporate the principle of Free, Prior and Informed Consent (FPIC) of the affected communities. The principle of Free, Prior and Informed Consent protects indigenous peoples' rights to self-determination and participation in decision making. Central to FPIC are the duty to consult and genuine inclusion of indigenous people in the decision making process. Beyond compulsory acquisition of property within the ambit of the law, such indigenous people as are to be directly affected by oil exploration and exploitation must be consulted and their consent obtained.

Additionally, the Act does not contain provisions regarding interlocutory remedies such as injunctions and yet these are vital in halting irreparable harm which will not be adequately atoned for with damages awarded at the conclusion of a lawsuit.

Lastly, the Act neither provides for the prior payment of fair and adequate compensation before these activities take place nor before the land is taken over by the exploration companies, nor does it provide for proper resettlement process for people in the project affected communities. This prior payment of fair and adequate compensation is a constitutional dictate under Article 26 of the 1995 Constitution. Regarding proper resettlement; it is insufficient to only offer monetary compensation to the affected communities, based on the market value only of their land since this money will often not be sufficient to support resettlement. It is therefore imperative that a resettlement process be undertaken in addition to the payment of compensation.

Note on the National Oil and Gas Policy for Uganda, 2008

The National Oil and Gas Policy for Uganda of 2008 is the key document guiding the development of the Uganda's oil and gas sector. The Policy was developed to comprehensively address issues of exploration, development, production, utilization and commercialization of the country's petroleum

resources following the confirmation of the availability of commercially viable petroleum resources in 2006.

This policy has also taken great steps in seeing that the rights of persons in project-affected communities are protected, respected and fulfilled. It has done this by providing for the use of the resources to create lasting benefits to society; providing for protection of the environment and water and the conservation of biodiversity; promoting transparency and accountability; extending the spirit of cooperation to communities in the oil-and-gas-producing regions and any pipeline corridors; calling for the taking into account of the interests of local communities in areas where oil and gas production is to be undertaken; promoting employment of Ugandans in the oil and gas sector; ensuring that oil companies implement necessary guidelines regarding safety and health of work and pushing for agreements to be undertaken with land owners to cover such aspects as compensation for their land surface interests amongst others.

As much as this policy tries to fully encompass the rights of persons in the project affected communities, there are still some gaps in relation to the protection of the rights of persons in the project-affected communities. Like the Petroleum Act above, the policy also does not emphasize the importance and need for Free, Prior and Informed Consent and does not provide for interlocutory remedial orders such as injunctions. The Policy also does not lay down proper redress mechanisms for those that have been wronged during the process of oil exploration.

Lastly the Policy fails to provide for the special protection of indigenous and marginalized communities who are most likely to be affected by the oil exploration activities and makes no mention of the State's position on punitive penalties for oil companies that breach the human rights of persons in project affected communities.

It is important for the Policy to contain and address these issues because the Policy is an important guiding tool for state agencies and departments and any gaps within it will translate into gaps in practice.

c) The Mining Act, 2003

This Act regulates the mining activities and mineral development in Uganda and was enacted in 2003. It provides for the carrying out of an Environmental Impact Assessment, the protection of the environment and has tasked mining entities to find ways of eliminating or minimizing any adverse effects on the environment.⁵⁶

Furthermore, it has provisions for inquiry into wrongful acts committed by persons involved in mining activities and has put in place penalties such as suspensions.⁵⁷

Regarding the employees within this sector, the Act provides for inspections by medical or public officers to monitor their health and welfare and these companies have been tasked to remedy any practices detrimental to health or welfare of employees.⁵⁸ The Act also tasks the mining companies to report any accidents that happen in the course of business and provides that the Commissioner for Geological Survey and Mines Department shall inquire into the accident.⁵⁹ The Act goes ahead to state that rights conferred by a mineral right are to be exercised reasonably, in a way that does not adversely affect the interests of any owner or occupier,⁶⁰ and that fair compensation must be made for any disturbance or damage done to the owner or occupier of the land in addition to the submission of any such disputes to arbitration.⁶¹

⁵⁶ See part XI of the Mining Act, 2003.

⁵⁷ Sections 61, 62 and 65 of the Mining Act, 2003.

⁵⁸ Section 66.

⁵⁹ Section 68

⁶⁰ Section 79

⁶¹ Section 82

Finally, the Act greatly advocates for gender balance by providing that women may be employed in any underground work in any mine or in any mining work, notwithstanding the provisions of any other law.

However, just like the Petroleum Act discussed above, the Mining Act does not stress the need for Free, Prior and Informed Consent of the affected Community before undertaking the process of mining, and does not comprehensively provide for interlocutory remedies.

d) The Mining Regulations, 2004

These regulations were put in place to regulate mining activities in Uganda. They advocate for the protection of the environment during mining activities and provide that before anyone commences mining work, they must prepare a project brief containing the likely effects of the materials to be used, the products and byproducts to be generated, the duration of the environmental effects and their prevention and mitigation.⁶²

The regulations also advocate for an Environmental Impact Assessment to be carried out if the environmental impacts are likely to be significant and the mitigation measures are not readily prescribed.⁶³ In terms of protecting people's rights, the Regulations also advocate for payment of compensation required by law to a land owner or a lawful occupier of the land to be used for mining activities.⁶⁴

Note on the Draft Mining and Mineral Policy for Uganda, 2016

The policy was put in place in order to establish, manage and promote the country's mineral potential as well as enhancing and strengthening

⁶² Regulation 64

⁶³ Regulation 65

⁶⁴ Regulation 40

institutional capacity for effective governance of the minerals sector.⁶⁵ In upholding the State’s obligations to respect, protect and fulfill the rights of affected persons and to provide access to remedies, this policy has done a considerable job. Firstly, it is one of the few policies or regulations that highlight the need to seek Free, Prior and Informed Consent from the community members concerning prospecting, exploration, development and exploitation of mineral resources.⁶⁶

The policy has also advocated for the protection of human rights across the mineral value chain,⁶⁷ the protection of the rights of women and children in mining communities,⁶⁸ the protection and safety of the environment together with the carrying out of Strategic Environmental Assessment and Environmental Social Impact Assessments.⁶⁹ The Draft Policy has also pushed for the recognition of the rights of existing land owners, for a compensation and resettlement plan, and for restriction of land use with consultation of relevant stakeholders. The Policy further emphasizes the need to avoid, minimize and mitigate health, safety and environmental impacts in exploration and mining activities.

However with such comprehensive protection of human rights of the persons in project-affected communities, one fundamental obligation was almost wholly excluded—the provision for access to remedies, penalties and mechanisms of redress in case of any occurrence of damage. Furthermore, there is no provision for injunctive remedies in case irreparable damage is to occur and there is no provision for special protection of marginalized and indigenous

⁶⁵ Government Approves Mining and Minerals Bill Principles found at

<https://www.softpower.ug/govt-approves-mining-and-minerals-bill-principles/>

⁶⁶ Strategy (i), Objective 1, Section 5.1.1, p. 22 of the Draft Mining and Mineral Policy of Uganda, 2016.

⁶⁷ Objective 14, p. 28.

⁶⁸ Objective 13, p. 28.

⁶⁹ Objective 11, p. 27.

communities despite the fact that they are the most affected during any project work.

2.3.3 Land and Environment

For the vast majority of Ugandans, land is a source of livelihood. It is also central to the fulfillment and enjoyment of economic rights.

Land is often linked to the identities of peoples and is therefore tied to social and cultural rights. Emerging global issues such as food security, climate change and rapid urbanization have also refocused attention on how land is being used, controlled and managed by states and private actors.

Large-scale development and other business projects such as oil and gas installations, ports and dams often lead to displacement of people in order to make development land available. This displacement raises human rights concerns and considerations of the migration patterns (often rural-urban) that ensue. A considerable portion of this displacement is carried out in a manner that violates the human rights of the affected communities, thus further aggravating their already precarious situation.⁷⁰ Land in Uganda is mainly governed by the Constitution, the Land Act of 1998 as amended in 2004 and 2010, and the Registration of Titles Act, Cap. 230.

a) The Land Act, 1998

The Land Act was enacted to provide for the tenure, ownership and management of land. It outlines the forms of land tenure in Uganda, these being the customary, leasehold, mailo and freehold tenures.⁷¹ The Act protects the rights of spouses and family members as family land cannot be sold, exchanged, transferred, pledged, mortgaged or leased without the prior consent

⁷⁰ Land and Human Rights, <https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx> (Accessed 26/6/19)

⁷¹ Section 2 of the Act

of the spouse.⁷² This protects family members from being thrown off their land as the land cannot be dealt away without their consent.

The Act also provides for compulsory acquisition of land, which must be done in accordance with Articles 26 and 237(2) of the Constitution. These Articles provide that compulsory land acquisition must be done in the public interest and must only be done after the prompt payment of fair and adequate compensation.

The Land Act is commendable for protecting the rights of vulnerable persons and creating a fairly efficient, temporary balance between conflicting interests, such as those of registered owners and those of lawful and bona fide occupants. However, many administrative aspects of the Act, such as Land Tribunals and recorders who are needed to facilitate the acquisition of certificates of occupancy, are not operational. This therefore means that the Act is operating at half capacity and the growing deadlock between conflicting interests is bound to explode if not addressed. The Act's approach to managing conflicting interests is temporary and running out of time; reform is urgently needed if these conflicts are to be resolved and their urgent resolution is vital to the enjoyment of economic, social and cultural rights.

The provisions of the Land Act can also be strengthened to provide the need for mandatory Social Impact Assessments and Free Prior and Informed Consent (FPIC) of the communities before compulsory land acquisition is carried out. Most of the land in Uganda is communally owned,⁷³ and it is therefore important for communities to be involved in decisions involving their land and understand why it is being given out and the effects.

⁷² Section 39 of the Act

⁷³ Customary land tenure is provided for by Article 237(3a) of the 1995 Constitution and Section 2(a) of the Land Act, 1998. The rights of women, children and persons with disabilities in relation to customary land are emphasized and protected by Section 27 of the Land Act

b) The Environmental Impact Assessment Regulation, S.1.No.13/1998

This is a creature of Section 107 of the National Environment Management Act (NEMA), Cap. 153. It lays down the regulations for the fulfillment of Environmental Impact Assessment. Environment Impact Assessments are a statutory procedure performed in order to define the potential environmental impacts of a project and to promote the communication to and involvement of citizens even in the early stages of a project.⁷⁴ It applies to all projects and to any major repairs or routine maintenance of existing projects, amongst others.⁷⁵

In terms of respecting and protecting the rights of project-affected persons and providing access to remedies to them and their communities, the regulations state that no developer shall implement a project for which an Environmental Impact Assessment is required unless he concludes such an assessment in accordance with the regulations,⁷⁶ and that the developer shall take all necessary measures to seek the views of the people in the communities which may be affected by the project during the process of conducting the study.⁷⁷ The developer must also state the methods, products and by-products of the projects and how the latter will be eliminated or mitigated.⁷⁸ Additionally, the Executive Director must make communication to the affected communities and general public to submit their comments regarding to the Environmental Impact Statement.⁷⁹

However, the Regulations have some gaps regarding the protection offered to the project-affected communities and persons. For example, the Regulations do not lay down clearly the remedial process available to persons who have

⁷⁴ Found at www.posiva.fi/en/final-disposal/nuclear-waste-management/permissions-and-procedures/environmental-impact-assessment-procedure#:XRHnKGIYCLc.

⁷⁵ Regulation 3(1).

⁷⁶ Regulations 3(2) and Section 13.

⁷⁷ Regulation 12.

⁷⁸ Regulations 5, 9, 13, and 33.

⁷⁹ Regulations 19-22.

suffered damages in the project affected communities and neither do they provide injunctive remedies to those that would suffer irrecoverable damage.

c) The Social Impact Assessment and Accountability Bill, 2019

The Social Impact Assessment and Accountability Bill, 2019 (the SIAA) provides for Social Impact Assessments as a regulatory tool in planning and implementation of planned interventions. These assessments of planned interventions must be carried out by both the government and private entities.⁸⁰

The SIAA Bill defines Social Impact Assessment as the process of analyzing, monitoring and managing the intended and unintended social impacts, both positive and negative, of planned interventions and any social change processes invoked by those planned interventions.⁸¹

The Bill tries to adequately encompass issues of Free, Prior and Informed Consent and other aspects of Business and Human Rights. For example, it provides for effective participation of people in the planned interventions in order to protect their livelihoods and guarantee their social wellbeing.⁸² It also lays down the types of Social Impact Assessments to be carried out, and which involve interacting with the affected communities. It states that carrying out the Social Impact Assessment is a must,⁸³ and discusses the need for consent from affected communities.⁸⁴ It states that communities affected by a planned intervention shall, in addition to a peer review process of a report, assess a social impact report and signify their acceptance of the final report.⁸⁵ This therefore shows that the community has actually been granted the power to consent to the project. There are also penalties laid down for proponents that

⁸⁰ Preamble of the Social Impact Assessment and Accountability Bill, 2019

⁸¹ Clause 2

⁸² Clause 5

⁸³ Clause 6

⁸⁴ Clause 15

⁸⁵ Ibid

fail to carry out the Social Impact Assessments and contravening any provision within the Bill.⁸⁶

Needless to say, the SIAA Bill is not legally binding until it is passed by Parliament and receives Presidential assent.

Although the Bill, if passed, will grant significant protection to project-affected communities and persons, there are still some gaps within it. It does not clearly address who indigenous persons are and neither does it lay down a specific clause for their special protection considering the fact that they are the most affected—socially, economically and culturally—during these project developments.

In terms of access to remedies, the Bill does not adequately lay down remedies that are available to project-affected persons. For example, it does not make a provision for injunctive relief for the project-affected persons or communities and does not indicate what a person who has suffered damage should do to obtain redress.

2.3.4 Labour

a) The Employment Act, 2006

The Employment Act sets the minimum standards for decent and satisfactory working conditions and regulates both private and public contracts of employment with the exception of service in the armed forces.⁸⁷ It stipulates a number of protections that are due to workers such as protections from forced labour,⁸⁸ discrimination,⁸⁹ and sexual harassment.⁹⁰ This protection also finds mention within the Employment (Sexual Harassment) Regulations, 2012.

⁸⁶ Clause 7 and 23

⁸⁷ Section 5(2)

⁸⁸ Section 5

⁸⁹ Section 6

⁹⁰ Section 7

Employers with more than twenty-five employees are mandated to have a sexual harassment policy and establish a sexual harassment committee to provide redress to victims of sexual harassment. Regulation 17 also protects employees from retaliation and discrimination. The regulations impose a penalty of a fine not exceeding six currency points for contravention, but more needs to be done by the government to cement implementation so that the Regulations find practical application.

The Employment Act, 2006 establishes the offices of the Labour officer and commissioner.⁹¹ It also grants the labour officer power to hear complaints and to inspect premises of work within their jurisdiction to ensure that the prevailing working conditions conform to the standards.⁹² This ensures that the rights of employees are respected and also provides a remedy for employees who are aggrieved or believe that their rights have been violated by their employers.

b) The Occupational Health and Safety Act, 2006

This Act sets standards for safety and proper working conditions in work places, with a focus on industries, processing plants and other such establishments. It is intended to regulate the aspects of safety in potentially hazardous workplaces, and establishes various offices and institutions tasked with ensuring that safety standards are adhered to such as inspectors, the Occupational Safety and Health Board, Advisory Panels and Safety Committees. This is intended to ensure safety in buildings; safety in storage and transportation of potentially hazardous products; fire prevention, and maintenance of plant equipment.⁹³ The ministry of Gender, Labour and Social Development is mandated to carry out regular inspections of workplaces as well to ensure compliance with the Act.

⁹¹ Section 9

⁹² Section 13

⁹³ Parts III, IV, V, VIII, XI and XII of the Act.

c) The Workers Compensation Act, Cap 225

The Workers Compensation Act provides for and regulates situations where accidents occur at the workplace. It covers accidents and injuries sustained in the course of employment.

The object of the Act is to facilitate compensation to all workers for injuries suffered and diseases (listed in the Schedule) incurred in the course of employment. Workers who are aggrieved and claim compensation can seek redress under this Act from a Magistrate's Court.

According to Section 2(1), the Act applies to all employment within Uganda.

2.3.5 Taxation and Fiscal Policies

Fiscal policy plays a central role in reducing socio-economic inequalities and in realizing human rights. Taxation is a crucial instrument for the realization of human rights. It is necessary for raising sufficient resources to facilitate the realization of rights. Furthermore, tax policy plays a fundamental role in redressing inequalities and in shaping how accountable governments are to their people.

a) Tax Procedure Code Act, 2014

The Tax Procedure Code Act is aimed at harmonizing and consolidating all tax procedures in Uganda. The objectives of the Act are: to adopt uniform procedures for the registration, assessment and collection of all domestic taxes; to promote efficiency in domestic tax administration by harmonizing, consolidating and regulating tax procedures in a single law; and streamline and simplify the administration and collection of taxes.⁹⁴

⁹⁴ Corporate Tax Evasion and Avoidance in Uganda, SEATINI, April 2017.

b) Income Tax Act, 1997

The Income Tax Act commenced operation in 1997 with the aim of consolidating and amending the law relating to income tax. The main objective of this Act is the levying of tax on a residence basis, ensuring simplicity and promoting a flat tax rate scale. The government has often amended the Income Tax Act as one of the strategies of widening and deepening the tax base. The amendments also aim at closing the loopholes that often facilitate tax avoidance and evasion.

However, there still exist loopholes within the taxation laws of Uganda with regard to Double Taxation Treaties (DTTs) and treaty shopping, which have often allowed Multinational Corporations to evade taxes and reduce on the revenue available to the country that enable it to provide for its citizens.

A Double Taxation Treaty is an international agreement entered into by countries to mitigate double taxation—the levying of tax by more than one jurisdiction on the same income. Double Taxation Treaties, as a report by SEATINI and Action Aid shows, are an instrument for illicit financial flows and tax losses for Uganda which in turn translates into less revenue for the financing of public services and therefore negatively affects the implementation of economic, social and cultural rights.⁹⁵

⁹⁵ SEATINI and Action Aid, *Double Taxation Treaties in Uganda: Impact and Policy Implications*, July 2014. <<http://seatiniuganda.org/publications/research/72-double-taxation-treaties-in-uganda-1/file.html>>

Also see: Ismail Musa Ladu, “How Uganda is Surrendering Trillions in Tax Agreements to Multinational Firms” *Daily Monitor*, 13 August, 2019. <<https://www.monitor.co.ug/Business/Prosper/Uganda-trillions-tax-agreements-multinational-firms-/688616-5232786-77d0njz/index.html>>

c) Public Finance Management Act (PFMA) 2015.

The PFMA was enacted in 2015 to provide for financial management in Uganda by establishing principles for a sound fiscal policy and macroeconomic management, and a process for the preparation, approval and management of a predictable, credible and transparent annual budget. It was also enacted to provide mechanisms for the operation of a contingency fund, cash assets and liability management. The Act in addition also provides the legal and regulatory framework for the collection, allocation and management of petroleum revenue.⁹⁶

As already noted, fiscal policies have a significant impact on the people of a country and the fulfillment of their human rights. The PFMA doesn't recognize the impact of fiscal policy on human rights and doesn't include their observation among its objectives. This omission makes it difficult to ensure that human rights are considered during the fiscal planning process to provide much needed protection to people. Similarly, human rights impacts are not considered under the objectives for budgeting in Section 13. These gaps need to be addressed in order to ensure the creation of a fiscal system that considers, protects and respects human rights.

d) Investment Code Act 2019

The Investment Code Act 2019 repealed the Investment Code Act, Cap. 92, and was enacted to continue the functions of Uganda Investment Authority—an entity meant to act as a one stop center for the coordination, facilitation, monitoring and evaluation of investors and investments. Investors engage in projects that employ several Ugandans and although the Act stipulates that investors must respect the laws of Uganda, there is need for the act to provide stricter requirements for investors to respect the rights of their employees.

⁹⁶ Section 4, Public Finance Management Act

There have been several reported incidences of investors exploiting workers and exposing them to harsh working conditions such as the case of the *Royal Van Zenten flower plantations*.⁹⁷ The Act provides for the officials of the Investment Authority to inspect the investments of investors, but should also provide for inspections from labour officers and other local government authorities to ensure greater compliance with human rights standards and prevent corporate abuses.

The Act is also silent about the involvement of the general public in the application procedure by investors, and it is unclear whether investors' permits and conditions are open to public inspection.

Because the Government has to promote foreign investments and at the same times ensure that the foreign investors respect the human rights of their workers and the people in general, there is an existing conflict of roles and therefore priorities.

2.3.6 Access to Remedies

Access to remedies is a core component of the UNGPs. Access to remedies is the ability of the people to seek and obtain a remedy through formal or informal institutions of justice to redress a grievance, in compliance with human rights standards. Victims of human rights abuses must have access to effective judicial and non-judicial state-based grievance mechanisms and non-state mechanisms that should complement state-based mechanisms. Non-judicial mechanisms should meet the key effectiveness criteria of being legitimate, accessible, predictable, equitable, transparent, rights-compatible

⁹⁷ The Capacity of the State to Regulate Corporations; Analysis of Uganda's Labour Policies, Legal and Institutional Framework Within the Context of Business Activities, Uganda Consortium on Corporate Accountability (UCCA) Page 31

and based on engagement and dialogue. The affected rights holders should be able to claim a bouquet of remedies without fear of victimization.⁹⁸

State-based judicial mechanisms include courts of law where victims can make their complaints and seek redress. In Uganda, if a person feels his or her rights have been violated then they can proceed to file a complaint to a competent court under Article 50 of the 1995 Constitution and more specifically, under the Human Rights Enforcement Act, 2019, in order to seek redress. The Human Rights Enforcement Act, 2019 is discussed in 2.3.6 (a) below.

The Industrial court has also been established under the Labour Disputes (Arbitration and Settlement) Act 2006.⁹⁹ It has the power to adjudicate and determine matters relating to labour and employment in Uganda. When it was established in 2014, all labour matters before the high court were transferred to it. The Industrial court, however, is situated only in Kampala and this makes it difficult for claimants from other parts of the country to effectively access remedy.

Section 93(1) of the Employment Act, 2006 provides that expect where the contrary is expressly provided for, the only remedy available to a person who claims an infringement of any of the rights granted under the Act is by way of a complaint to a labour officer. However, labour officers often lack the capacity to adjudicate over some of the matters raised before them and there is therefore need to transform the industrial court into a court of first instance in labour related matters.

The largest number of courts in Uganda is the Magistrate's courts, but the position with regard to seeking redress from the Magistrate's Courts especially with regard to labour matters still remains unclear. In the case of *Worldwide*

⁹⁸ Pillar III, Access to Remedy, <https://www.shiftproject.org/resources/remedy/>

⁹⁹ Section 7 of the Act

Concern v Kugonza,¹⁰⁰ Court was of the view that the Employment Act had taken away the jurisdiction of the Magistrate's courts over labour matters and hence the first recourse was to the Labour officer. In the case of *Ozuiu Brothers Enterprises v Ayikoru Milka*,¹⁰¹ Court appears to have taken the view that a complaint to a labour officer under the Employment Act, 2006 is similar to an administrative remedy and the availability of an administrative remedy cannot fetter the right of a citizen to access a judicial remedy. Additionally, a labour officer is neither a court nor a tribunal. From the foregoing, it is apparent that there still lies a lot of confusion regarding the forums for properly accessing remedy, which may affect the ability of the victim to properly access remedy.

National Human Rights Institutions also have an essential role to play in complementing and supplementing judicial mechanisms. The Uganda Human Rights Commission (UHRC) has the power to investigate any complaint made by a person or a group of persons against the violation of any human right.¹⁰² It also has the power to order attendance of any person before it for questioning and to also grant redress to persons whose human rights have been infringed. Any matters investigated by the commission must not be pending before a court or judicial tribunal.¹⁰³ Therefore, persons whose rights have been violated can seek a remedy before the Commission. Issues have, however, been raised as to willingness of the government to pay people whose rights have been violated, since the government has outstanding compensation arrears of five billion shillings arising from decisions of the commission. The delay to receive compensation might discourage people from using the commission as an avenue for seeking redress.¹⁰⁴

¹⁰⁰ HCCS No. 124 of 2008

¹⁰¹ HCC Revision Case No.2 of 2016

¹⁰² Section 52 of the Constitution

¹⁰³ Article 53(4)(a)

¹⁰⁴ Government tasked to clear compensation to torture victims,
<https://ugandaradionetwork.com/story/govt-tasked-to-clear-compensation-to-torture-victims->

The Equal Opportunities Commission (EOC) is mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them, and to provide for other related matters. The EOC was established under the Equal Opportunities Commission Act, 2007 and has the power to investigate or inquire into—on its own initiative or on the basis of a complaint made by any person or group of persons—any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities.¹⁰⁵ Persons who have been aggrieved through discriminatory practices can lodge their complaints before the EOC in order to obtain redress.

In addition to the judicial mechanisms, Uganda has also put in place non-judicial mechanisms where affected persons can seek to resolve complaints or disputes arising from the adverse impacts of business activity. For example, under the Employment Act 2006, labour officers are empowered to receive and investigate complaints made by employees,¹⁰⁶ and prosecute these complaints in the industrial court.¹⁰⁷ Labour officers also play an adjudicative role by way of mediation and arbitration.¹⁰⁸ Unfortunately however, there are only 45 labour officers in the country for all 134 districts. Labour claimants in the newly created districts with no established labour officers have to keep going to

¹⁰⁵ Section 14(2) (a) of the EOC Act

¹⁰⁶ Section 13 of the Employment Act

¹⁰⁷ Section 14

¹⁰⁸ Section 93

their parent-districts to resolve their labour claims and this increases the cost of access to justice and discourages some victims from pursuing a remedy.¹⁰⁹

In sections 2.3.6 (a & b) below, the Human Rights Enforcement Act, 2019 and the Labour Disputes (Arbitration and Settlement) Act, 2006 are briefly explored.

a) The Human Rights Enforcement Act, 2019

The Human Rights Enforcement Act, 2019, which came into force on 31 May, 2019,¹¹⁰ operationalizes Article 50 of the 1995 Constitution of Uganda and therefore provides a judicial mechanism for the enforcement of human rights and freedoms in Uganda.

Under the Act, the victim of a human rights violation—including the victim’s immediate family, dependents or anyone whose rights are also violated as a consequence of the violation of the victim’s rights—¹¹¹is entitled to apply to either the High Court or a Magistrate’s Court for redress.¹¹² The Act also sanctions Public Interest Litigation (PIL) by allowing for litigation by one person on behalf of another—the actual victim.¹¹³

The Act provides that where any issue concerning a human rights violation arises in the context of any action, that issue has to be dealt with immediately. In the case of Magistrate’s Court, the issue has to be referred to the High Court for determination within ninety days and for that matter, the initial proceedings are temporarily stayed.¹¹⁴ In the case of the High Court, the

¹⁰⁹The capacity of the State to Regulate corporations

¹¹⁰ Uganda Gazette of 31 May, 2019.

<<https://ulii.org/ug/gazette/UGGaz/2019/cxii/25/20190531>>

¹¹¹ Section 2 of the Human Rights Enforcement Act, 2019.

¹¹² Section 3(1) of the Human Rights Enforcement Act, 2019.

¹¹³ Section 3(2) of the Human Rights Enforcement Act, 2019.

¹¹⁴ Section 7 of the Human Rights Enforcement Act, 2019.

presiding judge must stay the proceedings for the purpose of first determining the human rights violation issue raised.¹¹⁵

The Human Rights Enforcement Act, 2019 provides for a wide range of remedial orders that a court may make in favour of the victim of a human rights violation. These remedies include; compensation, restitution, rehabilitation, satisfaction, cessation of violation, public disclosure, restoration of dignity, public apology, criminal and administrative sanctions against the perpetrator, and guarantee of non-repetition.¹¹⁶

The Act also creates personal liability for perpetrators who are public officers, without prejudice to the government's vicarious liability.¹¹⁷ Section 10(2) of the Act goes on to say that where a competent Court orders the State to pay compensation to a victim of a human rights violation committed by a public officer, that public officer shall be ordered to pay a portion thereof as determined by the Court.

Section 13 of the Act also addresses the pivotal issue of progressive realization of rights and freedoms. Any person who has reason to believe that the state is not taking adequate steps for the progressive realization of rights and freedoms is given leeway to apply to the High Court for redress, and where the Court finds that a specific right or freedom cannot be realized due to resource constraints, it is obligated to order the Government to take measurable steps for the progressive realization of the right or freedom in question. Section 13 (3) also requires the Government to annually report to Parliament on the steps taken toward progressive realization. In this sense therefore, the Human Rights Enforcement Act goes a long way in mandating the State to 'protect' human rights and freedoms proactively, including social, economic and cultural rights.

¹¹⁵ Section 8 of the Human Rights Enforcement Act, 2019.

¹¹⁶ Section 9(2) of the Human Rights Enforcement Act, 2019.

¹¹⁷ Section 10(1) of the HREA.

The Act's strong regard and articulation of judicial remedies is also important for the third pillar of the UNGPs—access to effective remedies, and is an important addition to the body of laws governing business and human rights.

b) The Labour Disputes (Arbitration and Settlement) Act, 2006

This Act provides for and regulates dispute settlement. It establishes the Industrial court and the procedures for labour dispute resolution¹¹⁸. In the case of *Justice Asaph Ruhinda v Attorney General*¹¹⁹, the Constitutional Court held that the Industrial court has concurrent jurisdiction with the High Court with regard to labour disputes referred to it. This has provided effective remedy to people with labour disputes or whose rights have been violated, but the jurisdiction of the industrial court needs to be extended to cover matters arising from the Workers Compensation Act and the Occupational Health and Safety Act, which fall under Magistrate's courts. The jurisdiction of the court should also be extended to receive disputes without referral from a Labour officer.

¹¹⁸ Section 7 of the Act

¹¹⁹ Constitutional Petition No. 33 of 2016

CHAPTER THREE: UGANDA’S NATIONAL ACTION PLAN (NECESSITY, PROCESS AND CONTENT)

3.1 The Need for a National Action Plan for Uganda, on Business and Human Rights

A National Action Plan (a ‘NAP’) is a state’s detailed strategy for implementing a specific or general policy issue. NAPs are policy documents in which a state articulates its priorities and the actions that it will adopt to support the implementation of international, regional, or national obligations and commitments regarding a given policy area.

In the field of business and human rights, a NAP is defined as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the United Nations Guiding Principles on Business and Human Rights (UNGPs).”¹²⁰ The overall goal of the NAP is to promote implementation of the UNGPs and other relevant business and human rights frameworks by states and businesses. The need for a NAP is further augmented by the Vienna Declaration and Program of Action, adopted in June 1993, in which the World Conference on Human Rights recommended that states draw up NAPs on the promotion and protection of human rights.

Since 2011, a number of states across all regions have embarked on processes to develop NAPs on business and human rights. As of November 2017, 19 states had adopted a NAP, while several others are in the process of doing so or had committed to do so.¹²¹

¹²⁰ United Nations Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, December 2014, ii.
<https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf>

¹²¹ Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Round Table (ICAR) (2017), *National Action Plans on Business and Human Rights Toolkit 2017 Edition*. < <https://mk0globalnapshvllfq4.kinstacdn.com/wp->

With the private sector playing an increasingly prominent role in the country's development,¹²² it is crucial for Uganda to adopt the laws, policies and action plans needed to effectively operationalize the Guiding Principles on Business and Human Rights.¹²³ This would be consistent with Uganda's second National Development Plan which envisages a significant role for the private sector in financing the country's development.¹²⁴ Indeed, it strongly promotes public-private partnerships (PPP) and puts forward a series of strategies designed to create a more conducive environment for doing business.

However, increasing private sector involvement in the country's development has not been accompanied by adequate efforts to protect, respect and remedy human rights in line with the Guiding Principles on Business and Human Rights.

There are several reasons why the Ugandan government should initiate the process to put in place a National Action Plan on Business and Human Rights¹²⁵.

Some of these benefits include:

1. The stimulation of national dialogue, mobilization, and progress on implementing the UNGPs;
2. Enhancing awareness and understanding of business and human rights issues and the UNGPs;

[content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf](#)> last accessed on 19 August, 2019.

¹²² NDP II 2015/16 – 2019/20 – all sectors, MDAs and LGs are expected to adopt a Human Rights Based Approach (HRBA) in their respective policies, legislations, programs and plans

¹²³ Vision 2040 - Government shall ensure that the human rights based approach to development is integrated in policies, legislation, plans and programs.

¹²⁴ <<http://npa.go.ug/wp-content/uploads/NDPII-Final.pdf>> last accessed 20 August, 2019.

¹²⁵ For general benefits of a NAP, see DIHR and ICAR, National Action Plans on Business and Human Right: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks (June 2014), 14.

3. Mobilizing additional resources to promote the implementation of the UNGPs across society;
4. Serving as a mechanism for holding governments accountable to stakeholders;
5. Strengthening a culture of respect for human rights and of honoring international commitments;
6. Supporting state reporting requirements to regional and international human rights supervisory and other bodies;
7. Contributing to preventing and reducing business-related human rights abuses and improving remediation when abuses occur;
8. Providing opportunities for stakeholders to come together to engage in meaningful dialogue, build trust, and improve communication between stakeholders on issues of business and human rights;
9. Reducing business-related social conflicts;
10. Empowering marginalized rights-holders and protecting human right defenders in relation to business impacts on human rights;
11. Helping to align and improve synergies between state policies on business and human rights and other topics; and
12. Promoting human rights-based sustainable development.

The need for a National Action Plan for Uganda, on business and human rights is made more evident by the numerous high-profile human rights abuses being perpetrated by private businesses. These abuses include widespread sexual harassment of employees such as those working on flower farms,¹²⁶ exploitation of child labour,¹²⁷ human trafficking,¹²⁸ environmental pollution to

¹²⁶ Anne Mugisa and Agnes Nantambi, “Sexual Harassment on Ugandan Flower Farms has Persisted Despite a Campaign to Stem it Since 2005, A New Study Reveals,” *New Vision*, 23 August, 2013. <https://www.newvision.co.ug/new_vision/news/1329802/sexual-abuse-flower-farms-persists-study>

¹²⁷ Alex Gitta, “Uganda: Child Labour Continues Despite New Anti-Exploitation Laws,” *DW*, 8 February, 2018. <<https://www.dw.com/en/Uganda-child-labour-continues-despite-new-anti-exploitation-laws/a-42500637>>

the detriment of human health,¹²⁹ land grabbing¹³⁰ and massive land evictions to pave way for development projects, and many other abuses.

3.2 Lessons from Existing NAPs and NAP Projects.

While different states have certain unique social, political, legal, economic and cultural environments and conditions that are taken into account when drafting their individual NAPs, comparative analyses are still an effective way of drawing insights from the differing NAP experiences. Relying on effective comparative analyses, Uganda can be able to draft an appropriate and informed NAP.

In drafting a National Action Plan for Uganda on Business and Human Rights, it will be desirable to look at the existing NAPs, even if most of these belong to the states from the Global North with significantly different socioeconomic conditions. As noted earlier, some States have already adopted NAPs.¹³¹

What lessons—both in terms of process and substance—can the Ugandan government learn from these existing NAPs? An assessment of six of the existing NAPs (the UK, the Netherlands, Denmark, Finland, Lithuania and Sweden) by the International Corporate Accountability Roundtable (ICAR) and European Coalition for Corporate Justice (ECCJ) is a useful resource for

¹²⁸ Alex Otto, “Ministers Involved in Exporting Labour Abroad-Kadaga,” *Uganda Radio Network*, 15 May 2019. <<https://ugandaradionetwork.com/story/ministers-involved-in-exporting-labour-abroad-kadaga>>

¹²⁹ Juliet Waiswa, “KCCA Meets Industrialists over Pollution,” *New Vision*, 4 March 2019. <https://www.newvision.co.ug/new_vision/news/1495233/kcca-meets-industrialist-pollution>

¹³⁰ Mufumba Isaac, “Brutal Lusanja eviction: Who is telling the truth?” *Daily Monitor*, Saturday October 27, 2018.

¹³¹ In the Global North, several countries have adopted Naps and they include; USA, UK, France, Italy, Switzerland among others. In Africa, South Africa and Kenya have embarked on the process of enacting the NAP on Business and Human Rights.

gathering some insights.¹³² This study, for example, highlights that multiple government agencies were involved in the drafting process, that the relevant governments did not take any steps to facilitate the disempowered sections of society in the consultation process, that no baseline assessment was conducted, and that in general, the plans either did not outline future action plans or lacked information about concrete steps to be taken to achieve these goals¹³³.

In addition to NAPs developed by other states, there are toolkits or guides produced by certain organizations that should prove useful during the NAP drafting process. Two such initiatives are worth looking at. The first is the ‘NAP Toolkit’ developed by the Danish Institute for Human Rights (DIHR), ICAR and the United Nations Children’s Emergency Fund (UNICEF).¹³⁴ Developed after regional consultations with a range of stakeholders, the NAP Toolkit has three key components; the National Baseline Assessment Template, the NAP Guide, and the Monitoring and Review of NAPs.¹³⁵

The overall goal of the NAP Toolkit is to promote the implementation of the UNGPs at national level ‘by providing a set of easy-to-use resources that allow for a systematic, comprehensive, and human rights-based analysis of how far a given State is already implementing the UNGPs and relevant business and human rights frameworks.’¹³⁶ The three-step process proposed by the NAP Toolkit should allow states to identify gaps within their existing BHR-related policies and laws vis-à-vis the Guiding Principles and in turn, facilitate the development of a remedial response to these gaps in the form of an NAP. To ensure efficacy, NAPs should have provisions and processes in place not only to

¹³² ICAR and ECCJ, Assessment of Existing National Action Plans (NAPs) on Business and Human Rights (November 2015)

¹³³ Ibid, 3-5

¹³⁴ DIHR and ICAR, NAP Toolkit, note 266.

¹³⁵ Ibid, 24

¹³⁶ Ibid, 22

monitor the implementation of declared targets but also to conduct a periodic review of NAPs.

The UNWG’s Guidance on NAPs is the other useful document for states to consider.¹³⁷ It outlines four essential criteria for an effective NAP; it must:

- i) be founded on the GPs;
- ii) respond to specific challenges within the national context;
- iii) be developed and implemented through an inclusive and transparent process; and
- iv) be regularly reviewed and updated.¹³⁸

The Guidance document also recommends a number of steps that states should take as part of five sequential phases to adopt an NAP; initiation, assessment and consultation, drafting of any initial NAP, implementation and update.¹³⁹ The four normative criteria—along with the recommended concrete practical steps—offer a sound framework for states to put in place NAPs that could make some difference to the condition of victims adversely affected by corporate activities, rather than merely being a tick-box exercise to implement the Guiding Principles.

The UNWG framework also offers states the necessary flexibility to design NAPs that are tailored to their specific circumstances but that at the same time satisfy minimum international standards

3.3 Principles and Processes that Should Underpin Uganda’s National Action Plan on Business and Human Rights

The UNWG’s Guidance on NAPs outlines four essential criteria for effective NAPs, namely that they must:

¹³⁷ UNWG, Guidance on National Action Plans, note 5.

¹³⁸ *Ibid*, 3-4.

¹³⁹ *Ibid*, 5-10.

- i) be founded on the Guiding Principles;
- ii) respond to specific challenges of the national context;
- iii) be developed and implemented through an inclusive and transparent process; and
- iv) Be regularly reviewed and updated.

The Guidance document also recommends that states keep in mind the following five sequential phases to adopt a NAP:

- i) Initiation;
- ii) Assessment and consultation;
- iii) Drafting of an initial NAP;
- iv) Implementation; and
- v) Update.

It is advisable for the Government of Uganda to follow these good practice recommendations.

Special attention should be paid to ensuring that the drafting process is fully transparent and inclusive, so that the views of all stakeholders—especially those that are adversely affected by corporate activities or who come from disadvantaged backgrounds—are taken into account. It will equally be important to reach out to a range of business actors at all stages of the process, but without creating the perception of a ‘corporate capture of the state.’ In order to ensure that the participation of various stakeholders is meaningful, consultations must be conducted in diverse parts of the country and in local languages. In addition, people should be given adequate time to digest the information and provide feedback.

3.4 What should be the Content of the Proposed Ugandan National Action Plan on Business and Human Rights?

The contents of Uganda’s National Action Plan on Business and Human Rights should be developed bottom-up through a process of inclusive and transparent consultation with all stakeholders, rather than being pre-defined. In order to start the conversation, some thematic thoughts are discussed below.¹⁴⁰

3.4.1 Declaring an Unequivocal Commitment to Upholding Human Rights

Business and Human Rights issues, in essence, raise fundamental questions about the relationship between human rights and development. Could (economic) development be pursued in a way that labour, environmental and other rights are not undermined? Any viable National Action Plan on Business and Human Rights should offer a vision of how this balance between human rights and development would be struck, or alternatively what level of normative hierarchy would be enjoyed by human rights in the process of accomplishing development.

The Ugandan government—through its National Action Plan on Business and Human Rights—should send a clear message that all the human rights of everyone matter while pursuing the development agenda. This may entail reversing the ‘development first’ mind-set and changing the perception that the human rights of certain sections of society matter less or should be postponed. The government should reiterate its commitment to upholding fundamental rights under the Constitution, implement its tripartite duties under international human rights law, and take seriously its UNGP duty to ‘protect’ human rights.

¹⁴⁰ The UNWG has provided useful guidance on the substance of NAPs. UNWG, Guidance on National Action Plans, note 5, 11-33.

The human rights expectations of businesses operating within the territory and jurisdiction of the Ugandan government (including extraterritorial business activities) should be clearly set out. This may, for example, be done by mandating companies to conduct due diligence under the second pillar of the Guiding Principles on Business and Human Rights. To facilitate this, the government should create guidelines for these companies regarding the execution and scope of their due diligence such that there is an acceptable, coherent and uniform standard.

3.4.2 Establishing Coordination Committees

The proposed National Action Plan should try to minimize, if not remove altogether, the lack of coordination: (i) among different central Government ministries; (ii) between the central government on one hand and the Local governments on the other; and (iii) between the domestic legal framework and Uganda's international obligations. One of the tools to achieve better coordination is to create coordination committees where diverse views are exchanged, disagreements are resolved in an amicable manner, and a broad consensus is built.

The National Action Plan on Business and Human Rights would involve a number of Ministries, Departments and Agencies of the Ugandan government such as the Ministries of Finance Planning and Economic Development, Gender Labour and Social Development, Justice and Constitutional Affairs, and Trade Industry and Cooperatives; Commissions such as the Uganda Human Rights Commission, and the Equal Opportunities Commission; Offices such as the Offices of the President and Prime Minister; organisations such as Civil Society Organizations; and many more entities.

The interests of these diverse stakeholders do not always converge. Therefore, it would be desirable to create a nodal committee, hosted by the Ministry of Gender Labour and Social Development comprising selected Key stakeholders.

This committee should try to achieve coordination on two levels: types (i) and (iii) described in the paragraph above.

3.4.3 Reviewing the Existing Regulatory Framework

As the analysis under Chapter two shows, Uganda already has a fairly well-developed legal regime to govern the intersection of business and human rights. Nevertheless, a vital aspect of the proposed National Action Plan on Business and Human Rights should be to undertake a review of the existing legal framework in order to improve its responsiveness, and to pre-empt as well as address human rights abuses by business enterprises. (Recommendations from chapter two)

3.4.4 Paying Special Attention to Vulnerable Groups and Specific Sectors

Uganda's National Action Plan on Business and Human Rights should also pay special attention to the unique circumstances and experiences of vulnerable or marginalized sections of society such as women, children, Persons living with HIV, ethnic minorities, people with disabilities. For example, a toolkit jointly developed by the DIHR, ICAR and UNICEF shows the need and importance of paying special and specific attention to children's rights during the NAP development process.¹⁴¹ The same could be said about the rights of women, and persons with disabilities. An issue worth considering would be to develop sector-specific guidelines under the broad framework, as companies operating in different sectors face different sets of human rights challenges, and it may not be feasible for one national framework to respond to all the specific needs of a diverse range of industries.

¹⁴¹ DIHR, ICAR and UNICEF, Children's Rights in National Action Plans (NAPs) on Business and Human Rights (2015)

3.4.5 Offering Incentives and Creating Disincentives to Business

The National Action Plan on Business and Human Rights should outline what incentives and disincentives the Ugandan government would create for businesses to encourage them to take seriously their human rights responsibilities under both the UN Guiding Principles and the domestic legal framework.

Apart from creating tax benefits, the government may also establish responsible citizenship awards, create sector-specific labeling schemes, offer investment incentives to companies that embrace human rights, and stipulate respect for human rights as a prerequisite for public tenders and public procurement.

In terms of disincentives, a range of civil, criminal and administrative sanctions should be contemplated against both the company and its executives found involved in human rights violations. The government should also create an environment in which ‘social sanctions’ can become effective. This could, for example, be done by requiring companies to disclose non-financial information. Companies may also be obliged to state information on their websites about the past sanctions imposed on them for breaching human rights.

3.4.6 Strengthening Redress Mechanisms and Removing Barriers to Access to Remedies

As it is inevitable that some business enterprises might not respond to (dis)incentives, the government should provide a range of mechanisms that could be used by victims of corporate human rights abuses to seek access to justice. The first priority should be to reform the existing judicial as well as non-judicial mechanisms in order to make them more accessible and better equipped in dealing with private sector violations of human rights.

Decentralizing the Labour Court for example would be a great reform in improving the access to remedy mechanisms for the labour disputes.

Furthermore, the government should lay out its plan to support the development of non-state, non-judicial remedial mechanisms. These mechanisms should not be in lieu of but rather in addition to state-based judicial remedies. The potential within arbitration, mediation and conciliation should be harnessed to resolve Business and Human Rights disputes with due regard being paid to the effectiveness criteria stipulated under the Guiding Principles.¹⁴² The role of CSOs may be institutionalized to address the power asymmetry between companies and victims while using non-judicial grievance mechanisms, whether involving companies only or multiple stakeholders.

The recently passed Human Rights Enforcement Act, 2019 presents tremendous opportunities for increased access to justice for victims. Government should therefore ensure its effective implementation.

With regard to barriers to access to remedies, the Guiding Principles identify a number of substantive, procedural and practical barriers.¹⁴³ The proposed National Action Plan on Business and Human Rights should identify specific measures to be taken to reduce each of these barriers.¹⁴⁴ For example, Government should consider ways to overcome the difficulties posed by corporate law principles of limited liability and separate personality. Recognizing a direct duty of care or imposing a due-diligence requirement on parent companies may be an option to consider, so that victims could hold a parent company accountable in appropriate cases.

While the presence of class action lawsuits and the well-developed system of PIL enable easier access to courts in cases involving a large number of victims,

¹⁴² Guiding Principles, note 1, Principle 31.

¹⁴³ Ibid, Commentary on Principle 26.

¹⁴⁴ See Amnesty International, *Injustice Incorporated*, note 187

the cost of litigation and endemic delays still operate as serious obstacles. Enforcement of court orders—whether for the payment of compensation or injunctions prohibiting certain hazardous activity—is another area that will require attention, especially where foreign defendants are involved.

3.4.7 Regular Monitoring and Periodic Update of the Framework

The proposed National Action Plan will not serve its intended purpose if it is not periodically reviewed and updated in line with factual developments and observations about its weaknesses and strengths, successes and failures. The Ugandan National Action Plan on Business and Human Rights should, therefore, not only identify concrete measures by which declared goals would be implemented, but also specify processes to monitor the efficacy of implementation and suggest possible improvements.

Additionally, because Business and Human Rights issues are dynamic in nature, any National Action Plan dealing with such issues has to be revised and updated in line with changing needs. Putting in place a system of periodic (every 3-5 years) review of the adopted National Action Plan on Business and Human Rights is therefore advised.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

A review of the existing Ugandan legal framework relating to business and human rights reveals that it is incomplete, fragmented and reactive. The lack of effective mechanisms to monitor, implement and enforce the relevant laws makes the deficiencies of the system worse.

The United Nations Guiding Principles on Business and Human Rights provide the Ugandan government an opportunity to assess its laws and policies that have a bearing on business and human rights and consider taking appropriate remedial steps.

While adopting a National Action Plan on Business and Human Rights, the Ugandan Government should keep in mind a number of recommendations:

1. The existing legal and policy framework on matters connected to business and human rights should be comprehensively reviewed and amended to pay special attention to issues such as Free, Prior and Informed Consent by indigenous communities;
2. Multiple government agencies should be involved in the drafting process, steps should be taken to facilitate the consultation of the disempowered sections of society, baseline assessments should be conducted, and in general, the Action Plan should contain information about concrete steps to be taken to achieve the Plan's goals;
3. Uganda should utilize, in the making of its Plan, the National Action Plan Toolkit developed by the Danish Institute for Human Rights (DIHR), the International Corporate Accountability Roundtable (ICAR) and the United Nations Children's Emergency Fund (UNICEF);
4. The Action Plan should: be founded on the Guiding Principles, respond to specific challenges of the national context, be developed and implemented through an inclusive and transparent process, and be regularly reviewed and updated;

5. There should be transparency and inclusiveness in the drafting process so that the views of all stakeholders are taken into account, and although it will be important to reach out to a range of business actors at all stages of the process, care should be taken to avoid creating the perception of a ‘corporate capture of the state.’
6. Consultations should be conducted in diverse parts of the country and in local languages, with the people being given adequate time to digest the information and provide feedback;
7. The Action Plan should offer a vision of how the balance between human rights and development will be struck;
8. Government should create guidelines for companies regarding the execution and scope of their human-rights-impact due diligence such that there is an acceptable, coherent and uniform standard to be applied;
9. Coordination committees should be created to facilitate the exchange of diverse views, and the amicable resolution of disagreements in order to easily build broad consensus amongst the numerous entities involved in the process of creating an Action Plan and implementing it;
10. Special attention should be paid to the unique circumstances and experiences of vulnerable or marginalized sections of society such as women, children, Persons living with HIV, ethnic minorities, people with disabilities;
11. Sector-specific guidelines should be developed under the broad framework, since companies operating in different sectors face different sets of human rights challenges, and it may not be feasible for one national framework to respond to all the specific needs of a diverse range of industries;

12. Government should make use of both incentives such as tax benefits and disincentives such as civil, criminal and administrative sanctions in order to ensure compliance by business entities;
13. Respect for human rights should also be incorporated as a prerequisite for the award of public tenders and public procurement;
14. Implementation of the recently passed Human Rights Enforcement Act, 2019 should be strengthened in order to realize its potential benefits for access to remedies;
15. Government should support the development of non-state, non-judicial remedial mechanisms which should be in addition to but not instead of judicial remedies;
16. Government should consider ways to overcome the difficulties posed by the corporate law principles of limited liability and separate personality, to the effective implementation of the UN Guiding Principles on Business and Human Rights;
17. Government should recognize a direct duty of care or impose a due-diligence requirement on parent companies in addition to their subsidiaries, to enable victims to hold parent companies accountable in appropriate cases;
18. Lastly, periodical reviews and updates of the Action Plan should be conducted and the Action Plan should also identify concrete measures by which declared goals will be implemented and specify processes established to monitor the efficacy of implementation.

ANNEXURES

A. Uganda's Ratification of Core International Human Rights Instruments¹⁴⁵

Instrument Title	Signed on	Ratified on
International Covenant on Economic, Social and Cultural Rights		21 Jan 1987 (a)
International Covenant on Civil and Political Rights		21 Jun 1995 (a)
Convention on the Elimination of All Forms of Discrimination against Women		30 Jul 1985
Convention on the Rights of the Child		17 Aug 1990
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		30 Nov 2001 (a)
Convention on the Rights of Persons with		25 Sep 2008

¹⁴⁵ Data in the Table has been taken from the United Nations Human Rights Website on the UN Treaty body database.
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN

Disabilities		
International Convention on the Elimination of All Forms of Racial Discrimination		21 st Nov 1980(a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		14 Nov 1995 (a)
Convention for the Protection of All Persons from Enforced Disappearance		06 Feb 2007
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment		03 Nov 1986 (a)

Bibliography

African Charter on Human and Peoples' Rights.

Alex Gitta, "Uganda: Child Labour Continues Despite New Anti-Exploitation Laws," DW, 8 February, 2018. <<https://www.dw.com/en/Uganda-child-labour-continues-despite-new-anti-exploitation-laws/a-42500637>>

Alex Otto, "Ministers Involved in Exporting Labour Abroad-Kadaga," Uganda Radio Network, 15 May 2019.

<https://ugandaradionetwork.com/story/ministers-involved-in-exporting-labour-abroad-kadaga>

Anne Mugisa and Agnes Nantambi, 'Sexual Harassment on Ugandan Flower Farms has Persisted Despite a Campaign to Stem it Since 2005, A New Study Reveals, New Vision, 23 August, 2013.

https://www.newvision.co.ug/new_vision/news/1329802/sexual-abuse-flower-farms-persists-study

Corporate Tax Evasion and Avoidance in Uganda, SEATINI, April 2017.

Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Round Table (ICAR) (2017), National Action Plans on Business and Human Rights Toolkit 2017 Edition. <

<https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>> last accessed on 19 August, 2019.

Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Round Table (ICAR) (2017), National Action Plans on Business and Human Rights Toolkit 2017 Edition. <

<https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>> last accessed on 19 August, 2019.

Draft Mining and Mineral Policy of Uganda, 2016.

Employment Act, 2006

Environmental Impact Assessment Regulation, S.1.No.13/1998

Equal Opportunities Commission Act

Government Approves Mining and Minerals Bill Principles found at <https://www.softpower.ug/govt-approves-mining-and-minerals-bill-principles/>

Government tasked to clear compensation to torture victims, <https://ugandaradionetwork.com/story/govt-tasked-to-clear-compensation-to-torture-victims->

Human Rights Council, 'New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council' (16 Jun. 2011), <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID%2F11164&LangID%2FE> (accessed 23 August, 2011).

Human Rights Enforcement Act, 2019.

ICAR and ECCJ, Assessment of Existing National Action Plans (NAPs) on Business and Human Rights (November 2015)

Income Tax Act, 1997

International Covenant on Economic, Social and Cultural Rights.

Investment Code Act, 2019

Ismail Musa Ladu, "How Uganda is Surrendering Trillions in Tax Agreements to Multinational Firms" Daily Monitor, 13 August, 2019.

<https://www.monitor.co.ug/Business/Prosper/Uganda-trillions-tax-agreements-multinational-firms-/688616-5232786-77d0njz/index.html>

Juliet Waiswa, "KCCA Meets Industrialists over Pollution," New Vision, 4 March 2019. https://www.newvision.co.ug/new_vision/news/1495233/kcca-meets-industrialist-pollution

Labour Disputes (Arbitration and Settlement) Act, 2006

Land Act, 1998

Land and Human Rights, <https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx> (Accessed 26/6/19)

Male Mabirizi and Others v the Attorney General, Consolidated Constitutional Petitions 49 of 2017 and 3, 5, 10 and 13 of 2018, Constitutional Court of Uganda.

Mining Act, 2003

Mining Act, 2003.

Mining Regulations, 2004

Mufumba Isaac, “Brutal Lusanja eviction: Who is telling the truth?” Daily Monitor, Saturday October 27, 2018.

National Oil and Gas Policy for Uganda of 2008

Occupational Health and Safety Act, 2006

Petroleum (Exploration, Development and Production) Act, 2013

Public Finance Management Act

SEATINI and Action Aid, Double Taxation Treaties in Uganda: Impact and Policy Implications, July 2014.

<http://seatiniuganda.org/publications/research/72-double-taxation-treaties-in-uganda-1/file.html>

Social Impact Assessment and Accountability Bill, 2019

Tax Procedure Code Act, 2014

The Labour Disputes (Arbitration and Settlement) Act, 2006

Uganda Gazette of 31 May, 2019.

<https://ulii.org/ug/gazette/UGGaz/2019/cxii/25/20190531>

Uganda National Development Plan II 2015/16 – 2019/20.

Uganda Vision 2040

UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 of 2017, “States’ Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities.”

United Nations Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, December 2014, ii.

https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

UNWG, Guidance on National Action Plans.