



Submission to the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

May 2023

1. This submission is drafted by the Uganda Consortium on Corporate Accountability. The consortium works to promote corporate accountability and respect for human rights by businesses. This submission responds to question 3 under the state duty to protect human rights. This submission highlights the mechanisms that should exist at the State level to assess and ensure that extractive sector operations do not adversely impact human rights. The submission further explains whether the measures are effectively enforced and whether they provide the necessary coverage in light of energy transition plans, programs, and activities.

Background on the Extractive Sector Operations

2. The Extractive sector continues to play a critical role in the transition to a low-carbon economy. As the demand for green energy technologies—including solar panels, wind turbines, electric vehicles, and energy storage—continues to increase, so too does the demand for the minerals required to develop and deploy them. However, where governance for the extractive sector operations is weak, the extraction of these minerals could be linked to violence, conflict, and human rights abuses. As such, this creates a veritable need for the state to put in place mechanisms to assess and ensure the sector operations do not adversely impact human rights.
3. Uganda is endowed with an abundance of natural resources and its extractives sector continues to rapidly transform from small-scale and artisanal mining to a large-scale industry. Indeed, the government is now giving greater prominence to the extractive sector in line with the Uganda Vision 2040 and National Development Plan (NDP III) that prioritized investments in extractives.
4. Accordingly, the primary duty to ensure effective, sustainable, and human rights-compliant investment in the extractive sector lies with the state. As such, this submission contributes to the mechanisms that should exist at the state level to ensure extractive sector operations do not adversely impact human rights.

Challenges Faced in Extractive Sector Operations in Uganda

5. Various challenges are linked to Extractive sector operations in Uganda. These include but are not limited to;
 - i) Pollution: The majority of extractive sector operations are carried out with a huge cost to the environment. For instance, the generation of hazardous quantities of dust, deforestation, et cetera.
 - ii) Lack of information and resultant absence of meaningful participation by communities. This access to information challenge relates to the lack of information on the existence of minerals, extractive industry contracts, and revenues generated, among other issues.
 - iii) Non-adherence to principles of Free, Prior, and Informed Consent (FPIC) for persons affected by extractive industry operations.
 - iv) Gaps in existing laws concerning energy transition plans, programs, and activities.

State Duty to Protect Human Rights

6. States have a duty to protect citizens against all human rights abuses and violations within their territory and/or jurisdiction by all actors including business enterprises. Within the extractive sector, this duty entails the responsibility of governments to ensure that the rights of individuals and communities affected by extractive sector operations are respected, upheld, and protected. This duty is rooted in international human rights standards, including the United Nations Guiding Principles on Business and Human Rights (UNGPs) which outline the respective responsibilities of states and businesses in relation to human rights.

This duty encompasses several aspects which include;

- i) Legislation and Regulation covering environmental protection, labor rights, land rights, and community participation and remedy.
- ii) Due diligence mechanisms concerning the identification of potential risks and impacts of projects, engaging with affected communities and ensuring that appropriate safeguards exist to prevent and mitigate harm.
- iii) Monitoring and oversight of all extractive sector operations in order to enforce compliance with human rights standards and all applicable laws by actors in the extractive sector.
- iv) Provision of effective grievance mechanisms to provide affected individuals and communities with access to remedy.

Overall, this duty when understood within the context of the extractive sector enjoins the State to undertake a comprehensive approach in order to ensure sustainable development, social justice, and the well-being of all individuals and communities affected by extractive sector operations.

Mechanisms that Should Exist at State Level to Assess and Ensure that Extractive Sector Operations Do Not Adversely Impact Human Rights

7. There are several mechanisms and processes that should exist at the state level to assess and ensure extractive sector operations do not negatively impact human rights. These include;
 - I. **Strong regulatory framework:** States should have a strong regulatory framework that includes a robust environmental and social standard for all extractive sector operations. This framework should provide clear and enforceable requirements for all companies and actors in the extractive sector to respect human rights and avoid/mitigate negative impacts that may arise from their activities. A strong regulatory framework directly contributes to responsible business conduct in the extractive sector and anchors all the other measures.
 - II. **Transparency and accountability:** States should also put in place strong transparency and accountability measures. These measures may include but not be limited to; public disclosure of contracts, revenues, and compliance with overall access to information requirements as well as putting in place an effective and accessible grievance mechanism for affected persons, groups, and communities while taking into consideration their varied diversities and situation.
 - III. **Ex-ante Human rights Impact and Risk assessment:** States should ensure that thorough and independent human rights, environmental, and social impact assessment is conducted prior to any approval of extractive sector operations, continuously during extractive sector operations, and with meaningful consultation with extractive project affected persons. The human rights impact and risk assessment should consider all potential impacts on a range of human rights, including the right to life, health, livelihood, and a healthy environment, including potential adverse climate impacts.
 - IV. **Effective and continuous monitoring and evaluation:** States should have a mechanism for effective and continuous monitoring and evaluation of extractive sector operations to ensure that human rights are not violated or abused. This may include; regular site visits, independent audits, and ongoing engagement with affected communities. Human rights abuses in the extractive sector are often worsened by inadequate State capacity and mechanisms in place to monitor violations and ensure the protection of affected persons.
 - V. **Ensure policy coherence:** States should ensure policy coherence concerning extractive sector operations on all levels. This will ensure certainty and uniform application of all mechanisms as well as easy adherence by all actors in the

- extractive sector. Greater policy coherence fosters better management of extractive resources and as such contributes to resource efficiency, sustainability, revenue management, and governance.
- VI. Ensure community participation: States must ensure that communities meaningfully participate in all extractive sector operations and that they are always engaged in all processes and activities, including decision-making. The exclusion of communities affected by extractive sector operations exacerbates disputes over the impacts of the activities.
 8. These measures when implemented and enforced present a profound foundation for undertaking energy transition plans, programs, and activities while ensuring that extractive sector operations do not adversely impact human rights.

Conclusion

By way of conclusion, a comprehensive approach that combines all these mechanisms and processes at the State level can help ensure that extractive sector operations do not adversely impact human rights.