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**BUSINESS AND HUMAN RIGHTS: UGANDA'S CASE IN THE PRIVATE SECTOR LED  
ECONOMY**

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## **Abstract**

Uganda has pursued a series of pro-market structural reforms and a private sector-led economy which to some extent has boosted economic growth. However, the involvement of the private sector in the country's development has not been accompanied by concerted efforts to effectively respect, protect, and fulfill human right responsibilities as required by national and international human rights standards.

This paper examines Uganda's case for business and human rights in the private sector led economy. The discussions in this paper are based on document review and the presentations on "Business and human rights landscape in Uganda" one of the sessions at Human Rights Convention 2018 at Sheraton Hotel-Uganda. From the discussion, there has been a wide range of cases that reflect the violation of human rights in the private sector, chiefly by large companies especially those in the mineral exploration and processing plants and factories. The government has not been effective in ensuring the respect of human rights in the private sector largely because of inadequate institutional capacity and lack of proper coordination among these institutions.

There is need to establish a consolidated policy that brings together different actors both in the public and private sector to ensure the protection of human rights by business corporations.

**Keywords:** *business, human rights, private sector*

## **Introduction**

From the late 1980s, Uganda has pursued a series of pro-market structural reforms such as economic liberalization, privatization and Public-Private Partnerships and these to some extent have boosted economic growth. The country has embraced a free market economy where the forces of demand and supply direct the allocation of resources, resulting into a private sector-led economy. This has been based on the assumption that the private sector speeds up economic growth rates. However, it should be noted that the involvement of the private sector in the country's development has not been accompanied by concerted efforts to effectively respect, protect, and fulfill human right responsibilities as required by national and international human rights standards<sup>2</sup>. Whereas the country is in a bid to develop through the liberalized and free market economy, the human rights should not be at stake. Both the government and those in the private sector must respect the human rights. In the year 2011, the UN Human rights Council came up with the Guiding Principles on

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<sup>2</sup> Initiative for Social and Economic Rights: Economic & Social Rights Advocacy, ESRA Brief | July 2017

Business and Human rights which postulate the protection, respect and remedy framework by which means businesses can forestall, mitigate or take corrective action for their operation's adverse effects on human rights and for the governments to ensure that the business is conducted conscientiously<sup>3</sup>.

### **Uganda's fate on business and human rights**

As much as we need a private sector-led economy for the country's development, Uganda's private sector has overlooked the human rights in the business world. Article 20(2) of the 1995 Constitution of the Republic of Uganda explicitly distinguishes that private actors have human rights responsibilities. The laws to standardize the human rights impact on corporate activities have weaknesses in their design, implementation, and enforcement<sup>4</sup>. The study by Uganda Consortium on Corporate Accountability in Karamoja mineral area in 2016, revealed that the limestone mining companies use workers who array from children to the elderly; they work in unfavorable conditions that deny them their human rights, for example, working long hours in the scorching sun, deprived of any protective gear, using rudimentary instruments. Local miners lamented that they are paid a chickenfeed for the stones they break. For a truckload of 22–23 tonnes, they get UGX 150 000 (USD 45); for 28–29 tonnes UGX 170 000 (USD 52); and for 30–31 tonnes UGX 220 000 (USD 67). The way that companies put together the stones is also challenging, stimulating disputes among community members about disbursement of payments<sup>5</sup>. The industrial sector, together with oil and gas sector have presented evidence for the violation of human rights, a case in point is where people have been evicted and displaced from their land in an unlawful manner in order to start up industries and other businesses. In Uganda, there is no specific legislation enforcing the obligation to obtain free, prior and informed consent by the citizens on matters relating to the exploitation of their natural resources<sup>6</sup>.

More so the cases of sexual harassment, unfair dismissal from work and other of the same sort have been rampant in the private companies and businesses. According to the 2013 Uganda Human Rights Defenders Association (HURIDA) report on sexual violence, over 90 percent of women are harassed at workplace and schools<sup>7</sup>. All these continually undermine the human rights in the business arena.

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<sup>3</sup> Guidance on National Action Plans on Business and human Rights by the UN Working Group on business and Human Rights version 1.0| Dec 2014

<sup>4</sup> Initiative for Social and Economic Rights, et al: Business and Human Rights. Uganda UPR Fact Sheet, 2016

<sup>5</sup> UCCA: Labour Exploitation in Karamoja, 2016

<sup>6</sup> Initiative for Social and Economic Rights, et al: Business and Human Rights. Uganda UPR Fact Sheet, 2016

<sup>7</sup> Daily Monitor, May 8 2015

Since World War II and the establishment of the United Nations, the established human rights framework under international law has focused on the responsibility of states to protect the rights of their citizens. This was first articulated in a comprehensive way in 1948 when the UN General Assembly adopted the Universal Declaration of Human Rights, establishing the universality of human rights, asserting it, and that these rights belong to everyone by virtue of their humanity<sup>8</sup>. It also established that all nations bear a joint responsibility to defend rights when individual states commit gross violations.

Several governments are either reluctant or incapable to offer adequate protection and non-state actors especially business corporations need to be pressed to protect human rights. Some companies ignore their responsibilities and obligations in regard to human rights. A case in point there was some pressure put on Apple when labor practices became an issue at Foxconn, its main sub-contractor in China. This was after China Labor Watch, a labor rights group raised that the company was violating the workers' rights, for example, put more demands on the employees to produce quality and even working on holidays<sup>9</sup>.

The ethical business atmosphere for human rights denotes that there is a clear standard for human rights performance in a given industry and that companies can be evaluated against this standard. The presence of a clear and enforced standard reduces the competitive advantage that any company can reap its competitors by violating human rights. Companies need internal processes for improving human rights performance and should engage with outside stakeholders to test their own norms and findings on human rights.

### **Which issues matter?**

At the Human Rights Convention 2018 at Sheraton Hotel-Uganda, in one of the sessions were the presentations on “Economic and social rights: Business and human rights landscape in Uganda”. There were many issues arising from the presentations and the reactions, this paper highlights such issues below.

In the new emerging strong business sector, the issues of human rights need not be underestimated. Business and human rights of recent have become an area of concern by many stakeholders including

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<sup>8</sup> UN, Universal Declaration of Human Rights 1948

<sup>9</sup> The Guardian, International edition, 2012

the government, civil society, and the community. It should be noted that the private sector in Uganda is growing at a very fast rate, yet the government institutions and the different sectors have not been ready to cross-examine the performance of the private sector in regard to human rights. For example, essentially because the government entities remain the biggest human rights violators, the work of the civil society has been focusing on holding the government accountable, but in this modern economic system where there are cases of the human rights violation by those in the private sector, the civil society has got a role to play. However, the government remains with the sole responsibility for the protection of its citizens.

Article 40(1) of the 1995 Constitution of the Republic of Uganda necessitates Parliament to legislate laws to provide for the right of persons to work under satisfactory, safe and healthy conditions, the right to ensure equal work for equal pay, and the right to rest and reasonable working hours<sup>10</sup>. However, this has not been followed when it comes to human rights and business, there has been a wide range of cases that reflect the violation of human rights in the private sector, chiefly by large companies especially those in the mineral exploration and processing plants and factories. The corporate businesses and companies have taken the advantage of inadequate business legal frameworks in this country to exploit the citizens.

The institutional capacity in this country has not been in a position to monitor and track the activities of the private sector, a case in point are the industrial Courts, they have not been in a position to ensure that the rights of workers are respected by the employees.

The private sector has also found a community that is not ready, the people in local communities are not aware of their human rights, for instance, informed and prior consent from the community before any establishment of a factory or carrying out a project such as mineral mining or any other project that can affect the environment in which they live. It is provided for in Section 19 of the National Environmental Act, Cap 153 that Environmental Impact Assessments should be carried out for any projects which may cause damage to the environment in which it is to be established<sup>11</sup>, and for that matter, consultations with the community stakeholders have to be made. Also, Section 55, 56 of the Public health Act of Uganda provides that local authorities have a duty to prevent or remedy

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<sup>10</sup> The Constitution of the Republic of Uganda, 1995.

<sup>11</sup> The National Environmental Act, Cap 153, 1995

nuisances or danger to health arising from unsuitable dwellings for example from any construction or use of a factory<sup>12</sup>. Because the communities have not been aware of this, they have not been able to hold those in private sector accountable. Notably even the civil society has not been ready, it had primarily concentrated on holding the government accountable on behalf of the citizens, and as a result, no one has been in a position to check the work of the private sector in regard to human rights. In 2013, suspected gang rapists of Pakistan origin attached to YUASA, a car bond importing mostly Japanese were alleged to have raped a woman. The case was reported to police, though it was perceived that the delivery of justice was sabotaged with claims that the matter involved investors and it was also alleged that some police officers had received bribes from the suspects. This prompted the women and human rights activists to demand for the justice of young woman.<sup>13</sup>

The citizens are entitled to live in a clean and healthy environment, it is their right as enshrined in the Constitution<sup>14</sup>, but what they have experienced as a result of the private sector-led economy is contrary. There have been negative externalities which could have been avoided which present themselves in terms of direct and indirect environmental costs. There has been environmental damage in mineral mining areas and the live example, in this case, is Karamoja. The factories which have not been well gazetted for specific areas have also contributed in damaging the environment through poor waste disposal resulting into air, land and water pollution. Such have denied the citizens their right to clean and decent environment. The institutions in charge of regulating these companies and factories have been ill-prepared hence putting the rights of the citizens at stake.

Another issue which cannot be snubbed in this important discussion is the working conditions of the employees in the private sector. The private companies have presented themselves as capitalists who care less about the welfare of their workers. This has manifested itself in terms of pitiable pay for the workers taking the advantage of the confusion about minimum wage policy, there have been cases of harassment at work which include but not limited to sexual harassment, unfair dismissal from work, child labor in factories and mining companies.

There has been an uncoordinated move among the different stakeholders to ensure the respect of human rights by the corporate business. The lack of effective coordination between the government

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<sup>12</sup> The Public Health Act of Uganda, 2000

<sup>13</sup> Daily Monitor, 22 October 2013

<sup>14</sup> The Constitution of the Republic of Uganda, 1995.

departments such as health, employment services, community development, gender, environment among others in regard to tracking the operations of the private sector has greatly incapacitated the government in monitoring human rights issues in the private sector.

What is the way to go? This the question every Ugandan should ponder about. There is need to move as a team. When we consider the Sustainable development Goals which we intend to realize by 2030, achieving the SDGs requires the partnership of governments, the private sector, civil society and citizens alike to make sure we leave a better planet for future generations<sup>15</sup>. We need to consider inclusive growth and development. We cannot attain this when the corporate businesses are exploiting the citizens and carrying out all other sorts of human rights abuses.

The examples of violations of economic, social and cultural rights according to UN Human Rights include; Forcibly evicting people from their homes (the right to adequate housing); Contaminating water, for example, with waste from State-owned facilities (the right to health); Failure to ensure a minimum wage sufficient for a decent living (rights at work); Failure to prevent starvation in all areas and communities in the country (freedom from hunger); Denying access to information and services related to sexual and reproductive health (the right to health); Systematically segregating children with disabilities from mainstream schools (the right to education); Failure to prevent employers from discriminating in recruitment (based on sex, disability, race, political opinion, social origin, HIV status, etc.) (The right to work); Failure to prohibit public and private entities from destroying or contaminating food and its source, such as arable land and water (the right to food); Failure to provide for a reasonable limitation of working hours in the public and private sector (rights at work); Banning the use of minority or indigenous languages (the right to participate in cultural life); Denying social assistance to people because of their status (e.g., people without a fixed domicile, asylum-seekers) (the right to social security); Failure to ensure maternity leave for working mothers (protection of and assistance to the family); Arbitrary and illegal disconnection of water for personal and domestic use (the right to water)<sup>16</sup>. As mentioned earlier that Uganda is a private sector-led economy, most of these violations are evident in the private sector.

As a country we need to move as a team, moving as a team implies we work together and develop together. The government has to come on board, as well as the civil society, the business community

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<sup>15</sup> UNDP, Uganda. Sustainable Development Goals. [www.undp.org/content/uganda/en/home/sustainable-development-goals.html](http://www.undp.org/content/uganda/en/home/sustainable-development-goals.html)

<sup>16</sup> UN Human Rights: <http://www.ohchr.org/EN/Issues/ESCR/Pages/WhatareexamplesofviolationsofESCR.aspx>

and the local communities. For instance, when it comes to giving licenses to companies or corporations we need to ensure that we have considered the environmental impact assessments have been carried out and the certificates of approval need to be obtained. The environmental impact assessment is not an end in its self, we need to also consider other things, for example, the social impact accountability. Social impact accountability is a tool which can be used to measure whether the social needs of the local community are met by those in the private sector, for example, it examines whether a given company or corporation is taking part providing social services and this brings in the element of corporate social responsibility.

The country needs a comprehensive policy guiding the private sector which will bring in the local communities at the center of consultation, participation and decision making. When a company or a corporation is to operate in a given community, that community should be thoroughly engaged in the entire process. When the local community is not engaged, both the local community and the entire government are at a loss. For example who measures how much mineral say gold or marble is extracted by the private corporations in Karamoja region on daily basis? In this case who has the information? Is it the local community or the ministry responsible? And another question we need to consider is: who gains and who loses? Talking about minerals, Uganda is embarking on a vast project of oil and gas in the Albertine Region. In this project, there are those from the private sector. Whereas we embrace this project, the issues of human rights should not be flouted at any level.

## **CONCLUSION**

Irrefutably, the matters of human rights concern each and every one notwithstanding the gender, race, color, shape, or orientation. It is therefore vital that both the government and private sector consider the matters of human rights diligently. Whereas the private actors play a significant role in the development process, their actions should be checked to establish whether they respect the human rights. This implies establishing a consolidated policy that brings together different actors both in the public and private sector to ensure the protection of human rights by business corporations.