

Submission to the United Nations Human Rights Council

Universal Periodic Review Session: Uganda

March 2011

In resolution 8/7¹ of 18 June 2008 extending the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), the UN Human Rights Council welcomed the SRSG's proposed policy framework for business and human rights based on three overarching principles: the State duty to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises, the corporate responsibility to respect all human rights, and the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms.

As a means of encouraging constructive dialogue on private sector-related issues in the Human Rights Council Universal Periodic Review (UPR) process, this submission by the Institute for Human Rights and Business (IHRB) addresses aspects of the government of Uganda's record of protecting against human rights abuses committed by or involving business. The submission offers recommendations for consideration by the government of Uganda and members of the Human Rights Council. IHRB welcomes feedback on this submission.

Summary of submission:

Part I addresses the context of Uganda and relevant regulatory provisions on aspects of business and human rights.

Part II describes notable practices relating to business and human rights in Uganda.

Part III makes recommendations in particular areas of concern for follow-up action.

¹ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf

Part I: The context of Uganda and relevant regulatory provisions on the aspects of business and human rights

The government of Uganda is a party to the following UN and regional human rights instruments: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights (as well as the First Optional Protocol on the ICCPR with reservations on Article 5); the Convention on the Elimination of all forms of Discrimination against Women; the International Convention on the Elimination of Racial Discrimination; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention Against Torture; the Convention on the Rights of Persons with Disabilities; the Convention on the Rights of the Child, as well as both of its optional protocols (the optional protocol on involvement of children in Armed Conflict and the optional Protocol on the sale of children, child prostitution and pornography); the African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child; and the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa. Uganda has also ratified all eight core conventions of the ILO.

1994/95 saw the election of a Constituent Assembly and the amendment and rewriting of the 1967 Constitution, resulting in the 1995 Constitution of the Republic of Uganda. The constitution covers a range of fundamental human rights, civil and political, and economic, social and cultural. The government has been urged to adopt national legislation that brings the country in line with its obligations under international treaties, and to report to treaty monitoring bodies, particularly the Committee on Economic, Social and Cultural Rights, in a timely fashion.²

² Uganda Human Rights Commission, *12th Annual Report*, 2009, p. 165.

Part II: Notable practices in business and human rights in Uganda

The Right of Association

Uganda's Constitution and its Trade Unions Act grant the right to workers to form and join trade unions, but civil society organizations report that this right is "not respected by employers in practice".³ Employers are forbidden by law to obstruct the right of association, but impediments to freedom of association persist, and there is evidence of employers and companies blocking organizing or failing to recognize unions.⁴ As of 2009, the ILO, international and national unions continued to express concern about the lack of protection of trade union rights, and about the government's prioritizing the attraction of foreign investment at the expense of these rights.⁵

The Right to Organize and Bargain Collectively

Collective bargaining is guaranteed by law, but civil society organizations and the ILO have criticized the government for not protecting this right.⁶ Although several flower companies have signed recognition agreements with the Uganda Horticultural and Allied Workers Union in recent years, paving the way for workers to form unions and negotiate for better salaries, working conditions in that industry remain poor, with low pay and health and safety problems⁷. A number of collective agreements were signed in other private sector industries between 2006 and 2008, but public service unions, such as medical staff and teachers, are not allowed to undertake collective bargaining.⁸

Prohibition of Forced or Compulsory Labor

There are reports of forced or compulsory labor, especially in prisons, despite its being prohibited by law. Prison labor is not expressly prohibited, but non-governmental organizations (NGOs) and the Uganda Human Rights Commission (UHRC) have reported that forced labor "was a problem in local prisons nationwide", with prisoners being overworked and very poorly paid, if compensated at all.⁹

Prohibition of Child Labor and Minimum Age for Employment

Children under the age of 12 are prohibited from being employed in any business or workplace, though children under 14 can be employed in "light work" that does not interfere with their education. Children are not to be

³ Uganda Human Rights Commission, *12th Annual Report*, 2009, p. 118.

⁴ Lilian Keene-Mugerwa, "Labour Rights in Uganda", paper presented at the National Consultation Conference: Legal Empowerment of the Poor", International Law Institute-Uganda, African Centre for Legal Excellence, 24-5 November 2006, pp. 15-6. In addition, the Uganda Human Rights Commission reports that trade unions have told the Commission that several companies in the hotel, textile, construction and transport sectors "continue to be hostile to trade unions" and to refuse to recognize or negotiate with them (12th Annual Report, 2009, p. 118)

⁵ ITUC, CSI, IGB, *2010 Annual Survey of Violations of Trade Union Rights*.

⁶ ITUC, CSI, IGB, *2010 Annual Survey of Violations of Trade Union Rights*. See also Stephen Ouma Bwire, "Uganda Fails Implement [sic] Collective Bargaining Law", 25 November 2009, available at <http://zope298.itsilo.org/ils/communicating-labour-rights/previous-course-editions/final-post-course-stories/uganda-fails-implement-collective-bargaining-law>

⁷ See, for example, Katherine Haywood, "Uganda: Not Such a Rosy Picture", *The Monitor*, 3 March 2010.

⁸ ITUC, CSI, IGB, *2009 Annual Survey of Violations of Trade Union Rights*.

⁹ Department of State, *2009 Human Rights Report: Uganda*, 11 March 2010.

employed in hazardous work.¹⁰ Despite these laws and government efforts to eradicate child labor, it remains widespread, particularly in the informal sector. Several sources estimate that over 2.7 million children in Uganda are involved in economic activity, and one source notes that children perform hazardous work in the agricultural, fishing and informal sectors, among others.¹¹

Acceptable Conditions of Work

The absence of an appropriate minimum wage continues to be a concern. The current minimum wage was set in 1984; the lack of a new minimum wage impedes the attainment of a decent standard of living for workers. As of late 2009, the government was reportedly making efforts to address the issue by setting up an advisory board.¹² Given concerns about the potential exploitation of local workers by international corporations seeking low-wage labor (see below), it should be a government priority to set a minimum wage that ensures workers can earn a decent living. Health and safety conditions in some workplaces are also an ongoing challenge to the protection of human rights. The lack of sufficient resources for the employment and training of labor officers impedes the proper enforcement of labor laws through inspections, thus exacerbating rights abuses in the workplace.¹³ The UHRC and other civil society sources also report disparities in remuneration for equal work and discrimination against women in certain industries.¹⁴ Respect for rights to rest, leisure and reasonable limitations of working hours and the entitlement to maternity leave also remain challenges in the private sector.

Concession Contracts

In the recent past, significant efforts have been made to create a more conducive environment for foreign investors. Indeed in 2006-8, Uganda outranked most other East African countries in attracting Foreign Direct Investment (FDI)¹⁵. The country's pro-business Strategy has attracted investments in telecommunications, real estate, textile, banking, insurance, petroleum sector, energy, mining and agro-export sectors.

Although this investment is critical to economic growth, which, if well directed can lead to further realization of human rights, certain business practices and forms of investment have been associated with human rights abuses. One example is the controversy over the Tri-Star Apparel Textile Company, which was established as part of the Africa Growth and Opportunity Act (AGOA) to export garments to the United States. Poor working conditions at the factory led to a strike in 2003, in which over 250 workers were fired. Despite improvements at the facility, international labor unions claimed poor working conditions persisted¹⁶, and in 2009 over 3,000 so-

¹⁰ The Employment Act 2006 (Act. No. 6) of Uganda, Uganda Gazette-Acts Supplement No. 5, 2006-06-08, Vol. XCVIX, No. 36, pp. 1-74 (see Part IV, item 32, on employment of children).

¹¹ Eddy J. Walakira and Jimrex Byamugisha, "Child Labour in the Fishing Sector in Uganda: A Rapid Assessment", ILO and Federation of Uganda Employers, January 2008, p. ix.

¹² Uganda Human Rights Commission, *12th Annual Report*, 2009, p. 116.

¹³ Uganda Human Rights Commission, *12th Annual Survey*, 2009, p. 117..

¹⁴ Uganda Human Rights Commission, p. 116 and Keene-Mugerwa, p. 18. See also CEDAW, Committee on the Elimination of Discrimination against Women, 47th Session, 4-22 October 2010, "Reports provided by specialized agencies of the United Nations System on the Implementation of the Convention in Areas Falling within the Scope of their Activities", CEDAW/C/2010/47/3/Add.4, pp. 12-13, which notes that although Uganda has ratified ILO Convention 100, wage disparities persist between men and women, especially in the private sector.

¹⁵ The 2009 World Investment Report by the United Nations Conference on Trade and Development (UNCTD) showed that Uganda's FDI grew from \$733million to \$787 million between 2006 and 2008 (p. 248).

¹⁶ ICFTU, *Trade Union World*, August 2005, No. 10, p. 4.

called “AGOA Girls” reportedly went to court to seek permission to sue the government and the company manager for unlawful termination.¹⁷

As oil production begins in the Albertine Rift in western Uganda, concerns have been raised about its environmental, social and economic impacts. The Production Sharing Agreements (PSAs) that the government has signed with oil companies have not been published, but an NGO (PLATFORM) obtained and analyzed copies of the PSAs. According to the group’s report in February 2010, the agreements reflect an imbalance of profits and risks in favor of companies and at the expense of the government. They PSAs also lack environmental protection provisions and do not address oil security provision and its impact on human rights¹⁸. Civil society groups have sued the government to demand publication of the PSAs, and PLATFORM states that the failure to publish these leads to a “lack of public debate and accountability” and “enables increased environmental degradation, human rights abuses, conflict, displacement of communities, corruption and mismanagement”.¹⁹

A report by International Alert in 2009 points to conflict risks in relation to oil production, including the potential for a “lack of clarity about...distribution of oil revenues” to lead to competition among local stakeholders and between stakeholders at local and national levels.²⁰

The promotion of foreign direct investment will need to be balanced with a commitment to protect the human rights of all citizens, and human rights should be integral to the government’s discussions and engagement with investors.

¹⁷ Lominda Afedraru, “Uganda: AGOA Girls Take Govt to Court”, *The Monitor*, 21 October 2009.

¹⁸ Civil Society Coalition on Oil in Uganda, “Contracts Curse: Uganda’s Oil Agreements Place Profit Before People”, February 2010, p. 4. Available at www.carbonweb.org/uganda

¹⁹ Civil Society Coalition, « Contracts Curse...”, pp. 4 and 28.

²⁰ International Alert, “Harnessing Oil for Peace and Development in Uganda”, *Investing in Peace*, issue #2, September 2009, p. 5.

Part III: Recommendations

The following recommendations are made to the government of Uganda in relation to the above concerns:

- Consider the development of a national CSR strategy and/or Business and Human Rights Policy framework which would clearly set out government expectations regarding implementation of the UN endorsed Protect, Respect, Remedy framework as well as other basic expectations of companies operating domestically, regionally and internationally including information about local partners with whom business can collaborate to foster a human rights based environment.
- Consider joining the Extractive Industries Transparency Initiative (EITI) to work toward ensuring transparency in the management of extractive revenues.
- Renegotiate existing contracts with oil companies to address concerns about the social and environmental impacts of oil extraction, including removing stabilization clauses that could impede the government's ability to pass future legislation that strengthens environmental and human rights protections.²¹
- Apply these principles to future contracts with foreign investors, and publish existing and future contracts to foster accountability and public debate.
- Work with oil companies to address potential and actual conflict (including land conflict and revenue distribution) arising in relation to oil production in the country.²² In particular, recalling the history and the ongoing conflict in northern and north-eastern Uganda, procedures for issuing investment licences should include a comprehensive human rights based due diligence assessment to ensure that investors' practices do not trigger further conflict or lead to further marginalization of the area.
- Work to set a new minimum wage that will ensure protection against the exploitation of workers, including by foreign investors.
- Ensure enforcement of labor laws, in particular through redistribution of resources to labor inspection functions.

²¹ Civil Society Coalition, « Contracts Curse... », pp. 34-5

²² International Alert, "Harnessing Oil..."