

HUMAN  
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WATCH

# “How Can We Survive Here?”

The Impact of Mining on Human Rights in Karamoja, Uganda



# **“How Can We Survive Here?”**

**The Impact of Mining on Human Rights  
in Karamoja, Uganda**

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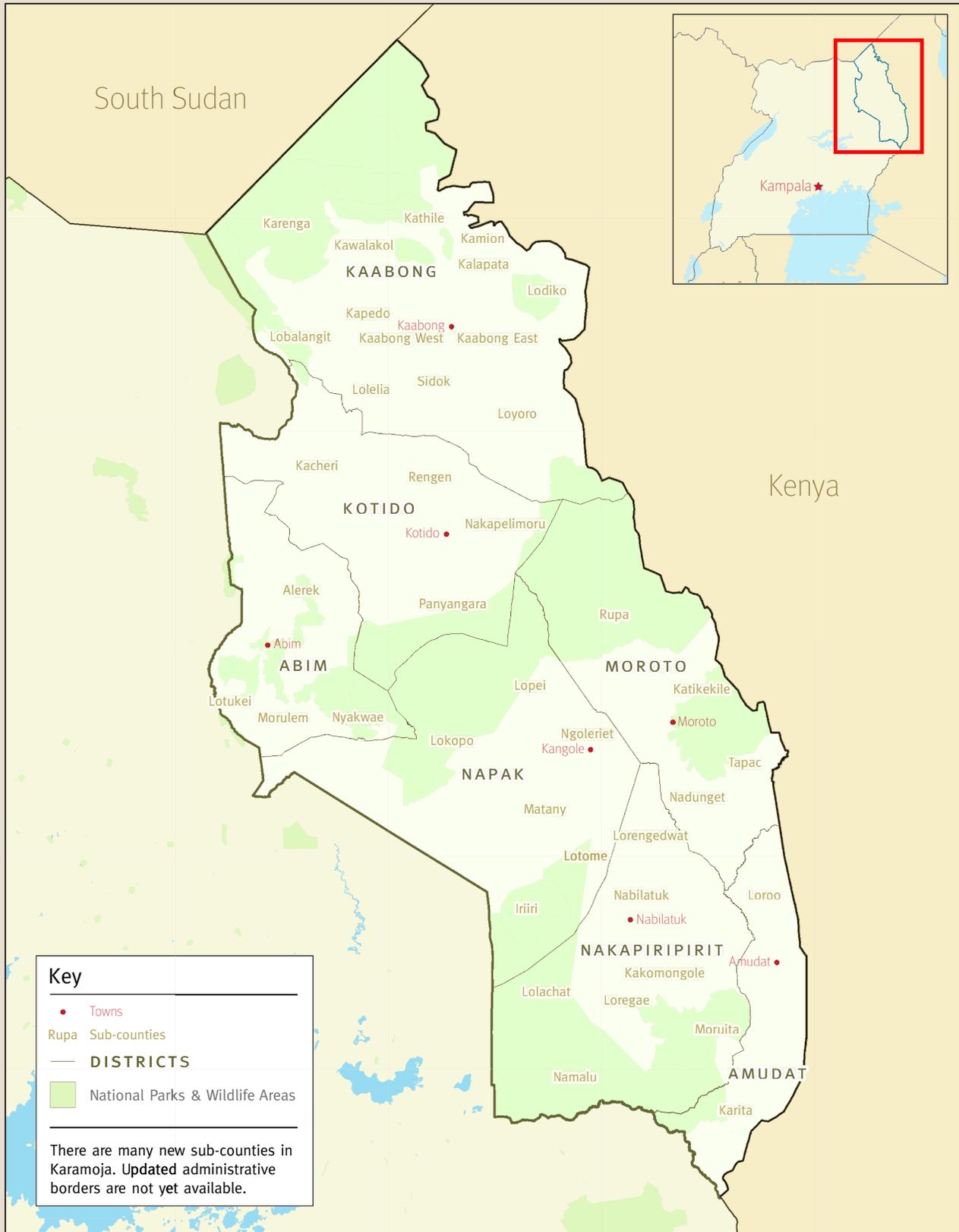
# “How Can We Survive Here?”

## The Impact of Mining on Human Rights in Karamoja, Uganda

<b>Summary and Recommendations.....</b>	<b>1</b>
<b>Methodology.....</b>	<b>25</b>
<b>I. Poverty and Survival in Karamoja.....</b>	<b>28</b>
Livelihoods, Marginalization, and Discrimination .....	28
Poverty, Food Insecurity, and Artisanal Mining .....	31
Disarmament and Abuses.....	34
<b>II. Land and Resource Rights .....</b>	<b>36</b>
Indigenous Peoples Defined .....	36
Rights to Land, Development, and Environment .....	39
Free, Prior, and Informed Consent .....	41
Uganda’s Mining Act.....	46
<b>III. Three Mining Companies’ Practices in Karamoja .....</b>	<b>50</b>
East African Mining: Kaabong District.....	50
Jan Mangal: Moroto District.....	56
DAO Uganda: Moroto District .....	61
<b>IV. Rights Abuses and Risks .....</b>	<b>65</b>
Land Usage and Surface Rights.....	65
Inadequate Community Consultation and the Absence of Consent .....	69
Superficial Consultation after Exploration Started.....	73
Benefits and False Promises .....	75
Security, Confusion, and the Role of the Army .....	78
Gaps in Government Oversight.....	83
Limited Oversight by the DGSM and NEMA.....	83
Lack of Oversight by District Officials.....	87
<b>V. Lack of Transparency and its Consequences .....</b>	<b>89</b>
Corruption Allegations and Land Compensation Concerns Nationwide .....	89
“Facilitation” and Corruption in Karamoja Mining.....	91

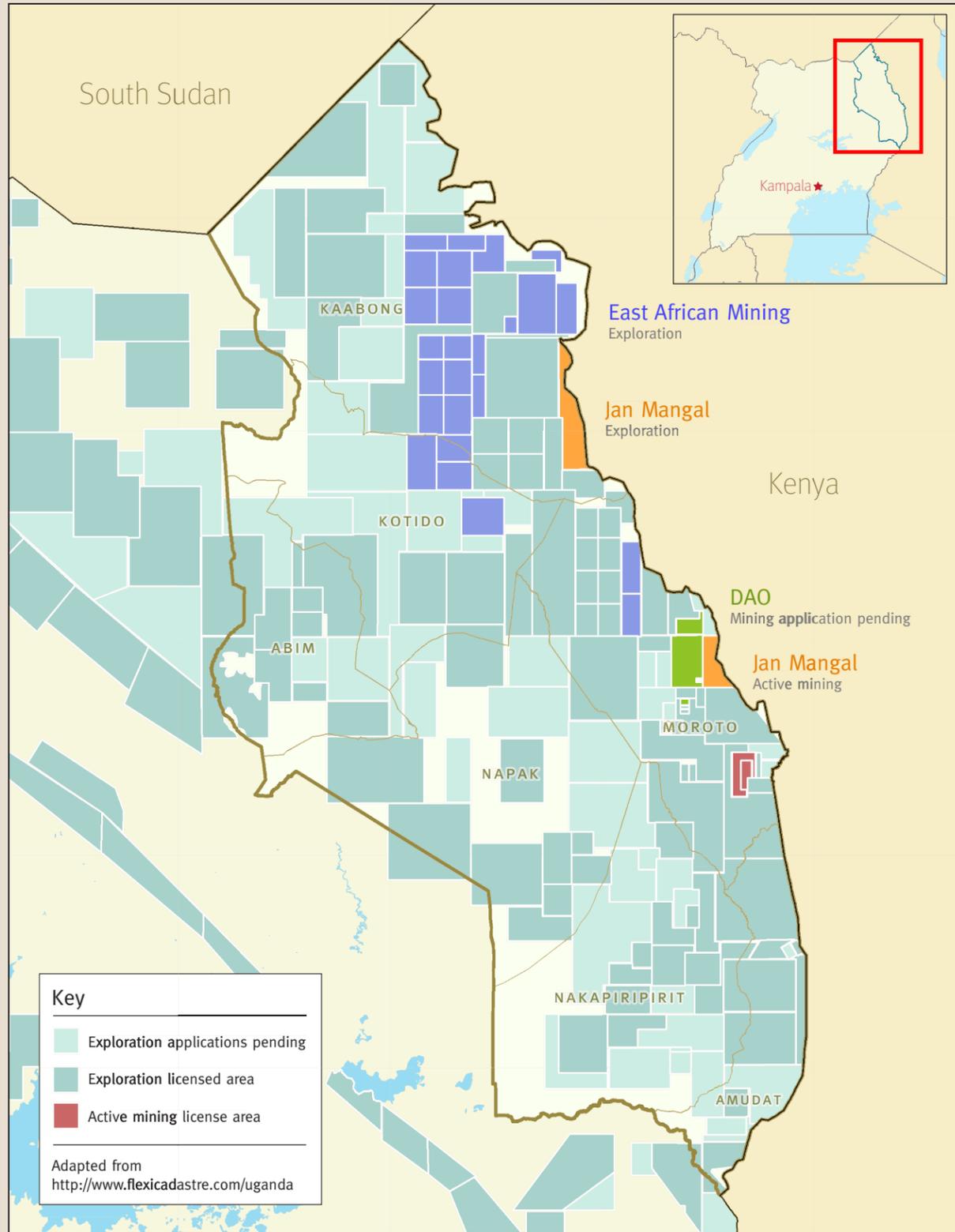
The Need for Transparency.....	94
Threats to Civil Society over Environment, Land, and Oil Work.....	97
<b>VI. Mining and Human Rights .....</b>	<b>100</b>
Government’s Duty to Regulate to Protect Human Rights .....	100
Companies’ Responsibilities to Respect Human Rights .....	101
<b>VII. The Role of International Partners .....</b>	<b>103</b>
Missed Opportunity: Sustainable Management of Mineral Resources Project .....	103
A Current Opportunity: Land Registration Project.....	106
The World Bank’s Indigenous Peoples’ Policy Falls Short of International Human Rights Standards .....	108
<b>Recommendations.....</b>	<b>110</b>
<b>Acknowledgments.....</b>	<b>116</b>
<b>Annex I: Human Rights Watch Letter to East African Gold.....</b>	<b>117</b>
<b>Annex II: Human Rights Watch Letter to Jan Mangal (U) Ltd.....</b>	<b>120</b>
<b>Annex III: Human Rights Watch Letter DAO Uganda Ltd.....</b>	<b>123</b>
<b>Annex IV: Human Rights Watch Communication with the UPDF .....</b>	<b>126</b>
<b>Annex V: Human Rights Watch Communication with the DGSM.....</b>	<b>130</b>

# MAP 1: DISTRICTS AND SUB-COUNTIES IN KARAMOJA



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**MAP 2: MINING LICENSING IN KARAMOJA**



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**SUMMARY AND KEY RECOMMENDATIONS**



*“There is nothing bad about companies coming, but what we hate is the way they come in, don’t show us respect, and don’t show us the impact and the benefits of their work for my people.”*

—DODOTH ELDER FROM SIDOK, KAABONG TOWN, JULY 3, 2013

*“We want to see our natural resources exploited but our people should not be. Pastoralism lives here, we are pastoralists. The land looks vacant but it is not.”*

—MINING COMMUNITY ORGANIZER, MOROTO, JULY 7, 2013

**“How Can We Survive Here?”**

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A gold mine near Nakibat and Nakiloro, Rupa, Moroto.  
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Artisanal gold miners in Sokodu, Kaabong. Artisanal mining is a key source of income for many communities in Karamoja during the dry season. A mining company recently acquired a license to carry out exploration on this land, raising many serious concerns for the rights of the community.

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Basic survival is very difficult for the 1.2 million people who live in Karamoja, a remote region in northeastern Uganda bordering Kenya marked by chronic poverty and the poorest human development indicators in the country. Traditional dependence on semi-nomadic cattle-raising has been increasingly jeopardized. Extreme climate variability, amongst other factors, has made the region's pastoralist and agro-pastoralist people highly vulnerable to food insecurity. Other factors include gazettement of land, under both colonial and recent governments, for wildlife conservation and hunting that prompted restrictions on their mobility, and more recently the Ugandan army's brutal campaign of forced disarmament to rid the region of guns and reduce raids between neighboring groups caused death and loss of livestock.



Uganda's government has promoted private investment in mining in Karamoja as a way of developing the region since violent incidents of cattle rustling between communities have decreased in recent years. Karamoja has long been thought to possess considerable mineral deposits and sits on the frontier of a potential mining boom. Private sector investment could transform the region, providing jobs and improving residents' security, access to water, roads, and other infra-

structure. But the extent to which Karamoja's communities will benefit, if at all, remains an open question and the potential for harm is great. As companies have begun to explore and mine the area, communities are voicing serious fears of land grabs, environmental damage, and a lack of information as to how and when they will see improved access to basic services or other positive impacts.

Communities in Karamoja have traditionally survived through a combination of pastoral and agro-pastoral livelihoods, balancing cattle-raising with opportunistic crop cultivation. Communities are usually led by male elders who gather in open-air shrines to make decisions of importance to the community and share information. Land is held communally, with multiple overlapping uses, including

grazing, habitation, and migration. Over the last two generations, both men and women have turned to the grueling work of artisanal gold mining for cash in part because of increased weather variability and the loss of livestock due to cattle raiding and the government's disarmament program. This increases community concerns for how large scale mining



Community members gather at Rupa Sub County Council Headquarters to hear about Jan Mangal's plans to mine. The community raised questions about why they were not consulted before the company's arrival.

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will affect their survival and makes the lack of consultation and information with affected communities all the more dire.

Based on more than 137 interviews over three weeks of research in Moroto, Kotido, and Kaabong, three of Karamoja's seven districts, and two months in Kampala, as well as meetings and correspondence with government officials and companies working in Karamoja, this report examines the human rights impacts of the nascent mining industry in Karamoja. Companies seeking to work in the region have a responsibility to respect human rights, including the land and resource rights of its indigenous peoples. The government has

an obligation to respect, protect, and fulfill these rights. This report focuses in particular on the right of indigenous peoples to freely give (or withhold) their consent to projects on their lands, including during mineral exploration.

While Uganda's mining law requires a surface rights agreement to be negotiated with land owners prior to active mining and payments of royalties to lawful landowners once revenues flow, the law does not require any communication or consent from the local population during exploration work. And despite Uganda's land laws recognizing customary land ownership, the Land Board has not yet granted any such certificates anywhere in the country. There is considerable governmental resistance to communal or collective land ownership involving large numbers of owners, as is the tradition in Karamoja. The residents' lack of legal proof of land ownership puts communities in significant jeopardy of rights abuses as mining activities increase. Fears of land grabs, loss of access to mineral deposits, water contamination and

erosion, forced evictions, and failure to pay royalties to traditional land owners have already prompted communities to question the companies and their own government's role in the companies' operations.

Several extractives companies have come to Karamoja in the past two years seeking natural resources, particularly gold and marble. None of the communities interviewed by Human Rights Watch indicated that they were outright opposed to exploration or mining activities on their lands, but community members repeatedly stressed that there has been inadequate information and participation in decision making and confusion as to how the communities would benefit, if at all. They described not understanding private investors' intentions and long term objectives, and being unaware of the communities' rights or companies' obligations under national laws and international standards. Local governments were similarly uninformed.

A dilapidated school, Lopedo, Kaabong.

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The companies have consistently failed to secure free, prior, and informed consent from the local communities before they started operations on communal lands. The central and local governments have failed to insist on this established international standard. Companies have promised communities benefits, including schools, hospitals, boreholes, jobs, scholarships, and money in exchange for their compliance. But often exploration work has continued and communities have yet to see the promised benefits that were supposed to help mitigate current and future loss of land use, livelihood, and other impacts.



A borehole drilled by East African Mining in Kaabong East. Communities cannot freely access the water as it is pumped directly into the company compound.

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This report, in examining three companies currently working in Karamoja and at different stages of the mining process, found that companies have explored for minerals and actively mined on lands owned and occupied by Karamoja's indigenous peoples. But the Ugandan government, in partnership with the private sector, has excluded customary land owners from making decisions about the development of their own lands and has proceeded without their consent. Legal reforms, to the land and mining act among others, are needed to ensure that the peoples' right to development is protected as mining escalates.

East African Mining Ltd., the Ugandan subsidiary of East African Gold—a company incorporated in Jersey in the Channel Islands, a British dependency with a negligible company tax rate—obtained exploration licenses from the government of Uganda over more than 2,000 square kilometers of land in Kaabong and Kotido districts in 2012. The company hired a Ugandan team, including a local manager originally from Kaabong. Residents have alleged that, without consultative meetings with the community, they often found exploration teams on their land, taking soil samples from their gardens and even within their homes without any explanation and in some cases, locals indicate, destroying crops in the process. The concession area includes Lopedo, an area prized by local artisanal gold miners who have expressed fears that the company would eventually seek to remove them from the land or destroy their own ability to mine, a key source of livelihood during the dry season. After sub-county officials protested and complained over several



months, the company hired a local community liaison manager to try to negotiate with the residents and seek their cooperation. Questions arose about poor local labor practices, friction between the company and both the sub-county and district leadership, and ad hoc, unfulfilled promises have prompted frustration from local residents who told Human Rights Watch that they felt both excluded and exploited by the company's work. Confusion has persisted since the company suspended exploration operations in early 2013 to secure an infusion of capital.

Jan Mangal Uganda Ltd., a Ugandan subsidiary of an Indian jewelry company, arrived in Rupa sub-county, Moroto district, complete with excavators and other mining equipment in mid-2012 to mine gold. While some high-level government officials and political elites had encouraged this venture, according to local government officials, Jan Mangal senior management, and community members, Jan Mangal arrived without having had any contact with the local government or local community

Jan Mangal pumps water to their compound from one of the few sources of water available to people in Moroto.

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members or even acquiring an exploration license from the central government. When residents protested the company's presence, a long and puzzling series of negotiations began between the company and the central government, other political elites, and elements of the local government. Several affected community leaders said that they were excluded from discussions.

Eventually, the company secured an exploration license for an area near the communities of Nakiloro and Nakibat in Rupa, Moroto district, along the Kenyan border. With support from the speaker of the local town council, the company transported several individually selected elders to Kampala to



(above) Boys in Kaabong taking livestock for grazing. Communities in Karamoja are highly reliant on livestock for survival.

(left) According to several local government officials and community members, Jan Mangal workers dug this pit in an area not within their exploration license, when they first began exploring for gold. The pit remained uncovered at the time Human Rights Watch visited in July 2013, a year after it had been dug.

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discuss Jan Mangal's project. According to a report about the trip, the elders met with high-ranking central government officials, together with Jan Mangal representatives and the Moroto district speaker, to indicate their support for the granting of a mining lease, required for excavating and processing minerals.

There is great confusion within the community about why these particular elders were selected, what was discussed, and what was agreed during the Kampala trip. Several community members shared the belief that a surface rights agreement was signed in Kampala, but the vaguely worded agreement is dated as having been signed several months in advance of the Kampala trip. Despite the ongoing misunderstandings and inter-communal animosity, that surface rights agreement formed the basis for the company's application for a mining lease, but community members remain unaware of its content or the signatories of the agreement. Several community members accuse the elders of selling their land. The company has erected a compound for its workers, installed a large gravel sifter on the hill side and commenced mining, pumped water out of a nearby perennial stream, and fenced off the land, blocking community grazing areas.



DAO's marble mine in Rata village, Rupa, Moroto.

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DAO Uganda Ltd. is the subsidiary of a Saudi and Kuwaiti construction firm. It acquired an exploration license over a few kilometers of land in Rata village, on the border of Rupa and Katikekile sub-counties in Moroto district in 2013. DAO plans to quarry dimension stones which are massive and luxurious marble blocks, ship them to Mombasa, Kenya, and then export them to European and Middle Eastern markets. DAO faced hurdles since, according to community members, it did not get the consent of the local population before beginning exploration. It has now held several meetings to determine which families had households on the land it occupies and paid some compensation to them. This compensation has formed the basis for a surface rights agreement and an application for a mining lease. But tensions over land, employment, and water within the community persist.

In each company concession area, residents consistently complained of lack of consultation and access to information from both the companies and local government officials, particularly regarding employment, land, and possible impacts on the environment. This puts communities' access to essential resources, such as water, at long-term risk. In the short term, it already has put communities at a serious disadvantage during ad hoc meetings between community members and company representatives that took place after exploration work had begun, often in the presence of central government officials. Some community leaders expressed frustration that they were pressured to submit to company plans, only to beg for benefits, without any way to hold the companies or the government accountable.



Women mining for gold in Rupa, Moroto.

© Maria Burnett/Human Rights Watch

While the army specifically denies having any role in the mining sector in Karamoja, there is clear evidence that soldiers provide security for the companies and their workers, and at least in some instances, benefit financially from those arrangements. Given the brutality of the recent forced disarmament in Karamoja, the presence of the military alongside the companies has prompted both apprehension

and questions from local residents about intimidation if they try to criticize mining operations or query companies' decision-making and suspicion of corruption.

Uganda's mineral industry has grown by an average rate of five percent per year for the past 10 years.<sup>1</sup> There are ample reasons to be concerned about the government's willingness and ability to protect human rights of indigenous groups in Karamoja as more companies arrive to mine. First, the government's Department of Geological Survey and Mines (DGSM) has massively accelerated licensing of companies to carry out exploration and mining operations—a more than 700 percent increase between 2003 and 2011<sup>2</sup> country-wide — while its ability to support and educate affected communities, and inspect and monitor the work of companies lags far

behind. Local governments also lack the financial resources and technical manpower to effectively monitor mining operations.

Second, successive governments have viewed Karamoja as “backward” and “primitive,” and residents have faced generations of state-sponsored discrimination and externally driven development projects. That discrimination, coupled with the varying levels of insecurity and a general sense that Karamoja is a difficult region in which to operate in terms of both security and infrastructure, has often meant it is the last area to benefit from government policies and donor-funded projects. When the World Bank, the African Development Bank, and the Nordic Development Fund financed a US\$48.3 million sustainable mining management project from 2003 to 2011, Karamoja was specifically excluded because of security concerns. This was not remedied when providing additional financing in 2009, even though security had improved and the Ugandan government was increasingly handing out exploration licenses to mining companies and speculators across Karamoja.

Third, the government's opaque approach to the development of the oil sector on Uganda's western border bodes ill if it is replicated in Karamoja's mining sector. There, the controversial resettlement of residents to make way for an oil refinery, on-going allegations of corruption, and the persistent government attacks on civil society critiquing development projects—characterizing them as “economic saboteurs”—raise serious doubts about whether the government and companies will respect human rights as mineral exploration and exploitation progresses in Karamoja.

States have a duty, and companies have a responsibility, to consult and cooperate with indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. This right, which is derived from indigenous peoples' right to own, use, develop, and control their traditionally occupied lands and resources, has been affirmed by the United Nations Declaration on the Rights of Indigenous Peoples and the African Commission on Human and Peoples' Rights (ACHPR). But with government and companies providing little information about planned exploration or mining activities and their rights to them, and with scant formal education, the people of Karamoja have barely had a chance to express their views on the mining exploration work. The absence of land tenure registration or security renders communities increasingly vulnerable to abuse.

International donors have played a prominent role in supporting Uganda's development of the mining sector, but so far projects have excluded indigenous rights and therefore failed to set a positive precedent that would have supported the rights of the people of Karamoja. For example, the World Bank-led multi-donor sustainable mining project did not come

close to addressing indigenous peoples' rights, including the key requirement that all mining projects, including exploration, may only take place with the free, prior, and informed consent of the indigenous land owners.

The Ugandan government should uphold international standards by reforming its laws to ensure that the free, prior, and informed consent of affected communities is required before exploration operations begin and throughout the life of a project. It should also ensure that companies prepare human rights impact assessments carefully and meaningfully to analyze the consequences of their work. It should address the allegations of corruption and bribery and the unclear role of the Ugandan army in providing security for private companies in the region. Current and future investors should live up to their human rights responsibilities by consulting and negotiating with indigenous peoples in order to obtain free and informed consent prior to commencing any project affecting their lands or resources, identify and mitigate risk of future violations of human rights, such as of the right to water and a healthy environment, and investigate and remedy any violations.

Human Rights Watch urges Uganda's donors, including the World Bank, to address the complex development challenges created by the increased mining operations in the impoverished Karamoja region by pressing the government to create a robust regulatory regime which ensures respect for the rights of the region's indigenous peoples and improve its monitoring and enforcement capacity. Should mining in Karamoja boom without significant changes in this regard, mining is likely to become yet another obstacle for development in the region, as well as a potential driver of conflict, and prompt increased dependence on outsiders for residents' survival.

# KEY RECOMMENDATIONS

## TO THE GOVERNMENT OF UGANDA

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- Recognize the communities in Karamoja as indigenous peoples and recognize their rights over land traditionally occupied and used.
- Urgently implement a land tenure registration system that increases security of ownership, particularly for communal land owners.
- Implement robust procedures to consult with the peoples of Karamoja, working transparently through their own representative institutions and local governments in order to obtain their free and informed consent prior to approving or commencing any project affecting their lands, including granting exploration licenses and mining leases.
- Expand Uganda's existing legal requirement to conduct environmental impact assessments to bring it in line with international best practices for comprehensive and transparent social and environmental assessments that explicitly address human rights considerations and are independently verifiable.

## TO UGANDA'S PARLIAMENT

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- Amend the constitution to recognize indigenous peoples' rights in line with international human rights law and the African Charter on Human and Peoples' Rights, as applied by the Working Group on Indigenous Populations/Communities.
- Amend the Land Act to make eligible broad social representation in the composition of Communal Land Associations legally permissible in order to address a major hurdle for registering certificates of customary ownership. Maintain the current requirement for representation of women, and also require account to be taken of the interests of youth, the elderly, persons with disabilities, and all vulnerable groups in the community.
- Amend the Mining Act to include a requirement for clear evidence of free and informed consent from affected communities prior to the granting of exploration licenses, and again prior to the granting of mining leases.
- Amend the Mining Act to include a requirement for a human rights impact assessment, detailing the potential impacts exploration and active mining may have on affected communities and their rights, what steps companies will take to continually inform and communicate with affected communities, and how adverse rights impacts will be mitigated or avoided.

## TO COMPANIES WORKING OR CONSIDERING WORKING IN KARAMOJA

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- Implement vigorous procedures to consult with the indigenous peoples of Karamoja through their own representative institutions and local governments in order to obtain their free and informed consent prior to commencing any project affecting their lands, including exploration or mining.
- Fully uphold internationally recognized human rights responsibilities, including the responsibility to respect human rights and avoid causing or contributing to any abuses.
- Undertake human rights impact assessments to identify potential human rights impacts and avoid or mitigate adverse impacts, in active consultation with the affected community, human rights organizations, and other civil society organizations, and make them publicly available in a timely and accessible manner.

## TO UGANDA'S INTERNATIONAL DONORS, INCLUDING THE WORLD BANK

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- Undertake human rights due diligence for proposed development projects to avoid contributing to or exacerbating human rights violations. Only approve projects after assessing human rights risks, including risks concerning land and labor rights; identifying measures to avoid or mitigate risks of adverse impacts; and implementing mechanisms that enable continual analysis of developing human rights risks and adequate supervision.
- Require respect of the right of indigenous peoples to freely give (or withhold) their consent to projects on their lands and urge the Ugandan government publicly and privately to protect this right through its laws, policies, and practices.
- Publicly and privately urge the Ugandan government to amend the Mining Act and the Land Act, as stated above.

# AN ACTION PLAN FOR FREE, PRIOR, AND INFORMED CONSENT IN KARAMOJA

The government, businesses, donors, and nongovernmental organizations (NGOs) all have a key role to play in working to respect and protect the rights of the peoples of Karamoja as the mining sector builds. This action plan outlines how each of these sectors can advance realization of international standards that require consultation with traditional land owners to seek their free, prior, and informed consent prior to commencing projects on their lands.

States have a duty under international law to consult and cooperate with indigenous peoples through their own representative institutions in order to obtain their free and informed consent. This is supposed to occur before the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other natural resources.<sup>3</sup> This duty is derived from indigenous peoples' land and resource rights. States must also provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.<sup>4</sup>

While the obligation to carry out these consultations and prevent works without community consent lies primarily with the Ugandan government, businesses also have the responsibility to respect these and related rights. As the UN Special Rapporteur on the rights of indigenous peoples has emphasized, "Companies should conduct due diligence to ensure that their actions will not violate or be complicit in violating indigenous peoples' rights, identifying and assessing any actual or potential adverse human rights impacts of a resource extraction project."<sup>5</sup> In so doing, companies and the government will be taking much-needed steps to avert communal conflict, respect human rights, and provide meaningful and sustainable development for marginalized communities.

**Support communities in Karamoja to craft their own development plans:** Indigenous communities should be supported and given the opportunity to proactively chart their community's own course for development. This becomes increasingly challenging when negotiations are happening with companies on a case-by-case basis. NGOs and donors should provide the relevant legal and technical support to communities in discussing their development needs and avenues for achieving them, with the potential of crafting a sustainable development plan for the community. Decisions made through this process can then provide the basis on which community representatives can commence negotiations with mining and other companies interested in doing business on their land.

**Inform communities of projects prior to commencing any operations, including exploration, on their lands:** The government should consult the peoples of Karamoja and obtain their consent to any proposed projects on their land. Uganda's Department of Geological Survey and Mines (DGSM) should only grant exploration licenses after it is satisfied that traditional land owners have been fully informed of the exploration proposal, understand the potential environmental, social, and human rights impacts, understand what benefits they will receive and when, and have agreed to the proposal having had the opportunity to reject it. Similarly, companies should consult with communities prior to commencing exploration, making sure that the affected communities are part of every step of the extractive process.

**Consult and cooperate with peoples of Karamoja through councils of elders, women caucuses, and youth caucuses:** States and companies should consult indigenous peoples through their own representative institutions. For the peoples of Karamoja one primary institution is the council of elders. In addition, informal caucuses of women and youth exist. While the views of these caucuses should be filtered into the community's decisions through the council of elders, inclusive consultations directly with the caucuses is also essential.

**Ensure that all processes are inclusive of women, persons with disabilities, youth, and any other marginalized members of the community:** There is a real risk that women and other marginalized groups may not be included in a community's decision-making process. All actors, including the government, companies, NGOs, and donors, should take affirmative steps to ensure that such groups are fully informed and able to participate freely in decision-making processes.

**Together with the councils of elders, caucuses of women, and caucuses of youth, hold public community meetings in all affected communities to disburse information:** Public meetings are an important element of the peoples of Karamoja's decision-making processes. As an elder explained:

*In the village, we reach our decisions communally. We have meetings to discuss [problems in the community, for instance] if hunger strikes or there is a disease, and we decide what to do. We meet ... and send messages so everyone can come.<sup>6</sup>*

**Ensure that the community is given the opportunity to approve (or reject) the proposed project prior to the commencement of any operations, including exploration:**

It is essential that the community be empowered to make the decision of whether or not they want the project to begin, having considered all relevant information.<sup>7</sup> That said, none of the communities interviewed by Human Rights Watch indicated that they were outright opposed to exploration or mining activities on their lands. Rather, the emphasis was on the need for adequate information and participation in decision making. As one elder explained:

*People would not refuse as long as we agree what we really want and they agree what they [the company] want from us.... We could only give a portion [of our land], not the whole area. We would need to keep part of the land for our cultivation, part of the land for our animals to graze.... It would be essential that the land could and would be rehabilitated.<sup>8</sup>*

Should the community consent to exploration, it must again be given the opportunity to approve (or reject) a proposal to actively mine.

**Ensure that the community is given all of the information it needs in order to reach its decision, including independent information and advice:**

Both the government and companies should provide information about what activities they plan to undertake; the potential impacts on the environment and community members' human rights, particularly their livelihood, their security, and any cultural or spiritual impacts; and the degree to which adverse impacts can, and will be, avoided or mitigated. Companies should inform communities about companies' security arrangements, employment opportunities, labor conditions, grievance mechanisms, and how and when the community may expect to benefit. Further, a community's "consent" cannot be "informed" if the sole source of information is the company that wants to exploit resources on their land. The Uganda Human Rights Commission (UHRC), NGOs, and donors have an important role to play in ensuring that communities are informed of their rights, relevant laws, and have access to independent legal advice.

**Undertake and disseminate human rights impact assessments (HRIAs):** An HRIA is the key tool for governments, companies, and donors to analyze the likely impacts of proposed activities on human rights, including the rights of indigenous peoples. The Ugandan government should model the system currently used for environmental impact assessments where there is a roster of independent experts from which companies must select. The government should require companies to finance an independent human rights expert, for example from a list maintained by the Uganda Human Rights Commission, to undertake HRIAs both prior to exploration and prior to active mining. Such an assessment should be developed in active consultation with the affected community, human rights organizations, and other civil society organizations, and be made publicly available in a timely and accessible manner. It should be undertaken in conjunction with an environmental impact assessment. The UHRC has an important role to play in ensuring that the requisite standards of human rights impact assessments are met.

**Ensure that the community is given the opportunity to participate in setting the terms and conditions that address the economic, social, and environmental impacts:**

Once the community is properly informed, it has the right to be actively involved in setting the various terms and conditions which they require to grant their consent.

**Ensure that the community reaches its decision free from force, manipulation, coercion, or pressure:**

Both the government and companies have the potential to exert significant pressure on the peoples of Karamoja to acquiesce to mining ventures quickly. The central government's persistent allegations that opposition to development projects is "economic sabotage" undermine the freedom of communities to reach a decision regarding whether or not to consent to a project on their land. In this environment, it is all the more crucial that companies and local government entities take additional measures to enable communities to reach their decision freely and to respect that decision, and that donors and the international community more broadly pressure the Ugandan government to cease such rhetoric and harassment of affected communities and civil society.

**Continue to consult and provide information throughout all phases of operations, from exploration, to extraction, to post-extraction:**

The duty to consult and cooperate with the peoples of Karamoja in order to obtain free, prior, and informed consent exists throughout the project cycle, requiring companies and the government to keep the community adequately informed throughout.

**The government should ensure that the community's decision is respected:** The DGSM, the local government, and the UHRC should monitor the implementation of any terms and conditions agreed to by the company and the community, to ensure that the community's decision is respected.

**Companies should create accessible, independent grievance mechanisms in line with international standards:**

Companies should put in place effective mechanisms that allow community members to complain directly to senior management to ensure that senior management is made aware of problems along the management chain, particularly when those problems may relate to their senior staff.

<sup>1</sup> Ministry of Energy and Mineral Development, “Annual Report 2011,” <http://www.energyandminerals.go.ug/uploads/reports/MINISTRY%20OF%20ENERGY%20AND%20MINERAL%20DEVELOPMENT.pdf> (accessed December 31, 2013), p. 112.

<sup>1</sup> In 2010, Uganda’s mining sector brought in over \$14 million. Comparative data for 2012 and 2013 is not available but it is clear that the total number of licenses has increased since 2011. “Uganda,” *Mining Journal*, December 2012, [http://www.mining-journal.com/\\_data/assets/supplement\\_file\\_attachment/0017/360503/Uganda2012\\_scr.pdf](http://www.mining-journal.com/_data/assets/supplement_file_attachment/0017/360503/Uganda2012_scr.pdf) (accessed November 26, 2013), p. 10. Geospatial mapping carried out between 2006 and 2008 indicate that Uganda possesses limestone, pozzollana, gold, vermiculite, cobalt, wolfram, iron ore, columbite-tantalite, and gypsum, pp. 5, 9, and 12.

<sup>3</sup> United Nations Declaration on the Rights of Indigenous Peoples, adopted October 2, 2007, A/RES/61/295, art. 32(2).

<sup>4</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 32(3).

<sup>5</sup> UN Special Rapporteur on the rights of indigenous peoples, James Anaya, “Extractive Industries and Indigenous Peoples,” A/HRC/24/41, July 1, 2013, <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>, p. 21. See also UN Special Rapporteur on the rights of indigenous peoples, James Anaya, “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development,” A/HRC/12/34, July 15, 2009, <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf>.

<sup>6</sup> Human Rights Watch interview with L.R., Dodoto elder, Kaabong town, July 4, 2013.

<sup>7</sup> It is sometimes contended that compulsory acquisition of property or eminent domain takes precedence over free, prior, and informed consent rights. To the contrary, laws regarding compulsory acquisition must, like all other laws, respect human rights including indigenous peoples’ free, prior, and informed consent rights. Fergus MacKay, “Indigenous Peoples’ Right to Free, Prior and Informed Consent and the World Bank’s Extractive Industries Review,” *Sustainable Development Law & Policy*, vol. 4, no. 2, 2004, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1380&context=sdlp> (accessed December 31, 2013) p. 53. See also, UN Special Rapporteur on the rights of indigenous peoples, James Anaya, “Extractive Industries and Indigenous Peoples,” A/HRC/24/41, July 1, 2013, <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>; UN Special Rapporteur on the rights of indigenous peoples, James Anaya, “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development,” A/HRC/12/34, July 15, 2009, <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf>.

<sup>8</sup> Human Rights Watch interview with L.R., Dodoto elder, Kaabong town, July 4, 2013. In addition to emphasizing the importance of land for cultivation and grazing, several other community members further explained that they would not consent to exploration or mining at spiritual sites or gravesites.

## Methodology

This report is based on research carried out by Human Rights Watch staff from May to November 2013 in Uganda. Human Rights Watch researchers conducted interviews in Lodiko, Loyoro, East Kaabong, and Kathile sub-counties and Kaabong town in Kaabong district; Rupa and Katikekile sub-counties and Moroto town in Moroto district; Kotido district; and Kampala and Entebbe.

Human Rights Watch interviewed 61 community members (41 men and 20 women and girls) who lived in the exploration and mining license areas of the three companies featured in this report. The companies are East African Mining Ltd., the Ugandan subsidiary of Jersey-registered East African Gold, Jan Mangal Uganda Ltd., a Ugandan subsidiary of an Indian jewelry company, and DAO Uganda Ltd., the Ugandan subsidiary of a Saudi and Kuwaiti construction firm.

Human Rights Watch also interviewed 21 members of the local governments of Moroto and Kaabong districts. Interviews with government officials and company representatives were conducted in English. The vast majority of interviews in the communities were conducted in Ngakarimojong, the language of the peoples of Karamoja, also sometimes spelled N’Karamojong, with translation into English. Some were conducted in Kiswahili.

Human Rights Watch researchers discussed with all interviewees the purpose of the interview, its voluntary nature, the ways the information would be used, and that no compensation would be provided for participating. Interviews typically lasted between 30 minutes and over one hour. Where necessary, names have been withheld or replaced by randomized initials in order to protect identities. In some cases, useful identifying information was included, such as referring to an individual’s role as a district government official. Footnotes include as much information as possible regarding the interview location, such as listing the parish, sub-county, and district where applicable.

Human Rights Watch also conducted in-person interviews in Uganda with Minister of State for Mineral Development Hon. Peter Lokeris, who is a parliamentarian representing a constituency in Karamoja, and four other parliamentarians from Karamoja, the acting

commissioner of the Department of Geological Surveys and Mines (DGSM), a commissioner of the Land Board, as well as over 30 representatives of national and international nongovernmental organizations, United Nations agencies, the World Bank, donor governments, soldiers of the Uganda Peoples' Defence Forces, gold traders, lawyers, journalists, and other persons with knowledge of Karamoja and mining in Uganda.

Additional information for this report was gathered from August to November 2013 via phone and in-person interviews in Kampala, letters, email, and desk research.

Human Rights Watch met with employees of the three companies and then sent letters to each of the company's senior management. In one instance, Human Rights Watch had a phone interview with the company's chief executive officer after he expressed a willingness to discuss our research. All correspondence is available in the annexes to this report, though no company responded to the letters in writing.

This report also draws on synthesis and analysis of licensing data collected from Uganda's online mining cadaster throughout 2013. Map demarcations of licensing areas are current as of December 2013. Background research included analysis of Uganda's legal framework, review of existing literature, and press monitoring.

Throughout the report, we use the term "peoples of Karamoja" to refer to the multiple unique ethnic groups living in the region as opposed to "Karamojong." Experts have reduced their usage of "Karamojong" to refer to all people living in Karamoja because of increased recognition that the region is inhabited by numerous different groups with a diversity of culture and customs. The term is also often confused with "Karimojong," which refers specifically to the Matheniko, Bokora, and Pian people. All groups in Karamoja face discrimination and political marginalization to varying degrees.

A note on administrative structure: Uganda is currently divided into 120 districts, though 16 more are set to be phased in by July 2015. Starting at the village level (known as Local Councilor 1 or LC1), the local council system progresses up from the parish (LC2) to the sub-county (LC3), county (LC4), and district (LC5), though there are vacancies in some areas of the countries for some positions, particularly LC4s. Councilors are elected. The councils at the county and district level (LC4 and LC5) are local government and have financial, legislative, and administrative powers. The lower level councilors have

administrative powers only. The numbers of officials on each council depends on the population of the area.<sup>1</sup> The LC5 is the highest ranking elected district official in each district. Districts have a chief administrative officer (CAO) and a deputy chief administrative officer (deputy CAO) who are unelected civil servants in charge of financial management. They are most often not native to the areas in which they serve and are frequently transferred around the country. Most districts also have a natural resources officer, though some have vacancies. Each district also has a resident district commissioner and a deputy, both appointed directly by the president, who are officially charged with “security matters.”

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<sup>1</sup> For more information on administrative structures in Uganda see the World Bank, “Module A: Decentralization Practices and Policies, Case Study Uganda,” June 2003, <http://info.worldbank.org/etools/docs/library/117196/sloga/docs/sloga/MODA-ENCasestudyUganda.pdf>.

## I. Poverty and Survival in Karamoja

The remote Karamoja region of northeastern Uganda, stretching across 10,550 sparsely populated square miles, accounts for nearly 10 percent of the country.<sup>2</sup> It is home to an estimated 1.2 million people spread across seven districts—Abim, Amudat, Kaabong, Kotido, Moroto, Nakapiripirit, and Napak.

While the ethnic groups who live in Karamoja are sometimes referred to collectively as Karamojong,<sup>3</sup> the majority constitute three distinct large groups: the Dodoth to the north in Kaabong district; the Jie in the center in Kotido district; and the Karimojong (comprised of the Matheniko, Bokora, and Pian) to the south in Moroto and Nakapiripirit districts.<sup>4</sup> Other smaller groups include the Pokot, Ik, Tepeth, and Labwor.<sup>5</sup>

### Livelihoods, Marginalization, and Discrimination

The peoples of Karamoja traditionally survive largely through a combination of pastoralism, agro-pastoralism, livestock-herding, and opportunistic agriculture to maximize the unfavorable environmental conditions and low annual rainfall.<sup>6</sup> They occupy semi-permanent *manyattas*, the center of agricultural livelihoods, while cattle are traditionally kept in mobile or semi-mobile *kraals*. Failed or poor crops have occurred approximately one out of every three years, making livestock products an essential source of sustenance.<sup>7</sup> Migration is a key element of this livelihood, allowing for the

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<sup>2</sup> Fairventures Worldwide, “Feasibility Study—Dryland commodities and livelihoods in Karamoja,” January 2013, <http://fairventures.org/wp-content/uploads/2013/01/UGANDA-Dryland-commodities-and-livelihoods-in-Karamoja-feasibility-study.pdf> (accessed August 16, 2013).

<sup>3</sup> Ben Knighton, *The Vitality of Karamojong Religion* (Aldershot: Ashgate Publishing Ltd., 2005), p. 24.

<sup>4</sup> Sandra Gray et al., “Cattle Raiding, Cultural Survival, and Adaptability of East African Pastoralists,” *Current Anthropology*, vol. 44, supplement (December 2003), p. S4.

<sup>5</sup> Robert Walker, “Anti-pastoralism and the growth of poverty and insecurity in Karamoja: Disarmament and development dilemmas; Report for DFID East Africa (Uganda),” March 2002, unpublished document on file with Human Rights Watch, p. 7.

<sup>6</sup> M.K. Magunda, “Study on Disaster Risk Management and Environment for the Karamoja Subregion,” August 2010, [http://www.fao.org/fileadmin/user\\_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf](http://www.fao.org/fileadmin/user_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf) (accessed August 16, 2013).

<sup>7</sup> Sandra Gray, Paul Leslie, and Helen Aliga Akol, “Uncertain disaster: environmental instability, colonial policy, and resilience of East African pastoralist systems,” in William R. Leonard and Michael H. Crawford, eds., *Human Biology of Pastoral Populations* (Cambridge: Cambridge University Press, 2002), pp. 108-109.

movement of herds between pasture areas in response to environmental pressures. Movements by some groups reach into Kenya and neighboring regions of Uganda.<sup>8</sup>

Traditional livelihoods in Karamoja have been radically altered for most residents due to a variety of external factors. Access to grazing land outside of and between sections of Karamoja has been restricted over time by government policy beginning in the colonial period, including the imposition of a fixed border between Uganda and Kenya,<sup>9</sup> and continuing in the post-independence era.<sup>10</sup> Conflict between groups within Karamoja beginning in the late 1970s has also curtailed internal grazing areas.<sup>11</sup> While livelihood strategies vary across Karamoja and groups engage in livestock keeping, agriculture, and other economic activities to differing degrees often reflecting underlying ecological and historical differences,<sup>12</sup> the peoples of Karamoja regard themselves as cattle keepers. Livestock herding is essential to both cultural identity and livelihood.<sup>13</sup>

While sharing much in common with neighboring groups in Kenya and South Sudan,<sup>14</sup> the pastoralism of Karamoja and its cyclical migrations of people and livestock is largely unique within Uganda. Policies of colonial administrations and post-independence regimes alike have tended to marginalize pastoralism: government initiatives have been directed historically almost wholly toward increasing the sustainability of settled agriculture and the assertion of central control.<sup>15</sup> Some argue these initiatives, including animal confiscations and restrictions on mobility,<sup>16</sup> contributed to the present

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<sup>8</sup> Ben Knighton, *The Vitality of Karamojong Religion*, pp. 29-30; Neville Dyson-Hudson, *Karimojong Politics* (Oxford: Clarendon Press, 1966), pp. 59-61; Charles Egunyu Ocan, "Pastoral Crisis in North-eastern Uganda: The Changing Significance of Cattle Raids," Centre for Basic Research, Working Paper No. 21, June 1992, pp. 8, 13-14.

<sup>9</sup> Gray, Leslie, and Akol, "Uncertain disaster," pp. 115-16.

<sup>10</sup> Ocan, "Pastoral Crisis in North-eastern Uganda," pp. 11-12, 16-17.

<sup>11</sup> Sandra J. Gray, "A Memory of Loss: Ecological Politics, Local History, and the Evolution of Karimojong Violence," *Human Organization*, vol. 59 (2000), pp. 411-412.

<sup>12</sup> *Ibid.*, pp. 411-412.

<sup>13</sup> *Ibid.*, pp. 412.

<sup>14</sup> The Karamojong of Uganda belong to the broader "Karamojong" or "Karimojong" cluster of ethnic groups, which includes at least the Iteso in the neighboring Teso region of Uganda, the Turkana in northeastern Kenya, and the Toposa and Jiye in southeast South Sudan, and the Dongiro (Nyangatom) in southeast South Sudan and southwest Ethiopia. Compare definitions in Knighton, *Karamojong Religion*, p. 23 n.18, with Gray et al., "Cattle Raiding, Cultural Survival, and Adaptability of East African Pastoralists," p. 54.

<sup>15</sup> Gray, Leslie, and Akol, "Uncertain disaster," pp. 117-118; Walker, "Anti-pastoralism," pp. 11-17.

<sup>16</sup> Gray, "A Memory of Loss," pp. 408-410; Walker, "Anti-pastoralism," p. 16.

impoverishment of Karamoja by increasing competition over scarce, degraded resources, which in turn amplified the consequences of devastating droughts.<sup>17</sup>

Society in Karamoja is organized through territorial groupings and kinship clusters with reliance on traditional elders for leadership and decision-making and each ethnic group, such as the Dodoth in Kaabong or the Matheniko of Moroto, has its own leadership. *Kraals* have elected leaders, but most governing and decision-making among the people of Karamoja are determined by a complex system of elders who hold political authority, though how this arrangement differs among the groups.<sup>18</sup>

Successive Ugandan governments have viewed Karamoja as “backwards” compared to the rest of the country, largely because of the reliance on agro-pastoralism. The Idi Amin regime subdued the region by force, and subsequent former Prime Minister Apolo Milton Obote—famously quoted as having said “We shall not wait for Karamoja to develop”—created the Karamoja Development Agency to try to tackle development in the region. Government pressure to modernize and transform Karamoja continues in current political discourse.<sup>19</sup> In March 2009, when President Yoweri Museveni appointed his wife, Janet Museveni, as minister of state for Karamoja, he spoke of the need to “develop one of the backward areas” of Uganda.<sup>20</sup> Mrs. Museveni herself has spoken of needing to transform “the primitive and poor quality” lives in Karamoja.<sup>21</sup>

The belittling of pastoralism is a recurrent theme in official government statements about the region. The Office of the Prime Minister, currently leading development efforts, has said Karamoja was “a complete write-off, insecure, gun-infested, hunger-prone, derelict and very

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<sup>17</sup> Gray, “A Memory of Loss,” pp. 409-410; see also Walker, “Anti-pastoralism,” pp. 15-17.

<sup>18</sup> See Karol Czuba, “Governing the Karimojong Tradition Modernity and Power in Contemporary Karamoja,” November 2011, [http://www.academia.edu/1438900/Governing\\_the\\_Karimojong\\_Tradition\\_Modernity\\_and\\_Power\\_in\\_Contemporary\\_Karamoja](http://www.academia.edu/1438900/Governing_the_Karimojong_Tradition_Modernity_and_Power_in_Contemporary_Karamoja) (accessed December 31, 2013), p. 8. Czuba argues that “Karimojong power structures were substantially weakened during the period of great disequilibrium between the late 1970s and 2000s, recent years have seen their gradual reconstruction.”

<sup>19</sup> “Waiting for Karamoja to develop: Of Uganda’s uneven development,” *Daily Monitor*, June 20, 2012, <http://www.monitor.co.ug/SpecialReports/ugandaat50/Waiting+for+Karamoja+to+develop/-/1370466/1430994/-/3h1cco2/-/index.html> (accessed August 26, 2013); and Frederick Womakuyu, “Has the Govt forgotten about Karamoja?” *New Vision*, June 11, 2008, <http://www.newvision.co.ug/PA/9/579/632978> (accessed January 23, 2014).

<sup>20</sup> “Museveni Explains Janet’s Posting,” *New Vision*, March 9, 2009, <http://allafrica.com/stories/200903100006.html> (accessed August 26, 2013).

<sup>21</sup> Mrs. Janet K. Museveni, “Karamoja Will Be Transformed Because It Is Part of Uganda,” undated, [http://janetmuseveni.com/karamoja/karamoja\\_transform.php](http://janetmuseveni.com/karamoja/karamoja_transform.php) (accessed August 26, 2013).

backward region.”<sup>22</sup> In a letter to the European Union delegation to Uganda in November 2010, Mrs. Museveni highlighted that “the nomadic way of life is ‘outmoded’,” and her office has pushed for development partners to support the government’s program to “stop nomadism and settle permanently because that is the Government’s focus for now.”<sup>23</sup>

The discriminatory language has had a negative impact on some efforts to mitigate local conflict. An April 2013 assessment on conflict management in Karamoja by Mercy Corps—an international development organization that provides support to people after conflict, crisis, and natural disaster world-wide—reported that, due to the treatment by government officials and other security personnel of the people of Karamoja. Elders withdrew from government-led initiatives because “the lack of respect displayed by government actors had ... undermined their authority.”<sup>24</sup>

Despite government efforts to centrally control the peoples of Karamoja and “transform” their traditional lifestyle, infrastructure and services in the region, including schools, health centers, potable drinking water, roads, and many other facilities, are scarce.<sup>25</sup> Large swathes of Karamoja are not yet on the national power grid.<sup>26</sup>

## Poverty, Food Insecurity, and Artisanal Mining

“Famine has killed many people in this place. Drought has dried the crops. Even wild animals are suffering.”

—“Achilla”, community member, Nakiloro, Rupa, Moroto, July 8, 2013.

Karamoja has the lowest human development indicators in Uganda, and approximately 82 percent of the population lives on less than \$1 a day, whereas the national rate is 31

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<sup>22</sup> “Interventions bolstering Karamoja devt,” *East African Business Week*, August 20-26, 2012, [http://janetmuseveni.com/jmk\\_cms/images/issue/interventions.pdf](http://janetmuseveni.com/jmk_cms/images/issue/interventions.pdf) (accessed August 27, 2013).

<sup>23</sup> John Vidal, “Uganda: nomads face an attack on their way of life,” *The Observer*, November 26, 2011, <http://www.theguardian.com/environment/2011/nov/27/uganda-nomad-farmers-climate-change> (accessed August 26, 2013).

<sup>24</sup> “The Conflict Management System in Karamoja: An assessment of strengths and weaknesses,” Mercy Corps, April 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/Mercy%20Corps%20Karamoja%20Conflict%20Mngmt%20System%20Report%20April%202013.pdf> (accessed August 26, 2013).

<sup>25</sup> Fairventures Worldwide, “Feasibility Study,” <http://fairventures.org/wp-content/uploads/2013/01/UGANDA-Dryland-commodities-and-livelihoods-in-Karamoja-feasibility-study.pdf>.

<sup>26</sup> “Uganda: Making the most of security and livelihood gains in Karamoja,” *IRINnews*, October 25, 2011, <http://www.irinnews.org/report/94059/uganda-making-the-most-of-security-and-livelihood-gains-in-karamoja> (accessed August 16, 2013).

percent.<sup>27</sup> UNDP's Human Poverty Index (HPI) uses indicators of deprivation to determine poverty, relying on life expectancy, adult literacy, and minimum standard of living.<sup>28</sup> In early 2013, the national poverty index in Uganda was 27.69 percent, but for all districts in Karamoja, it ranged from 56 to 65.3 percent.<sup>29</sup> In children, chronic malnutrition, which results in stunted growth, was at a high of 45 percent in the region compared to 33 percent nation-wide.<sup>30</sup> Almost 45 percent of children in Karamoja eat only one meal per day.<sup>31</sup>

The region's rough terrain and unpredictable rainfall have, in the past, resulted in severe climate variability, and in turn contributed to the region's extreme poverty.<sup>32</sup> In 2006 there was serious drought; a combination of a prolonged dry spell and flooding in 2007; another drought in 2008; and 970,000 people were in need of food aid in 2009.<sup>33</sup> Though rainfall improved in 2010 and 2011, excessive rains have led to flooding and crop damage in areas like Kotido, Moroto, and Napak, impacting food security.<sup>34</sup> The UN World Food Programme (WFP) has provided food aid to Karamoja for over 40 years, and though it has significantly scaled back its operations since 2009, WFP continues to support 150,000 people in the region.<sup>35</sup> Furthermore, growing environmental problems are having a greater impact on the precarious position of poor households. Climate change, deforestation, soil erosion, and desertification are all impacting harvest and production capacity of agro-pastoralists.<sup>36</sup>

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<sup>27</sup> Fairventures Worldwide, "Feasibility Study," <http://fairventures.org/wp-content/uploads/2013/01/UGANDA-Dryland-commodities-and-livelihoods-in-Karamoja-feasibility-study.pdf>.

<sup>28</sup> UNDP, "The Human Poverty Index," Indices and Data, 2011, <http://hdr.undp.org/en/statistics/indices/hpi/> (accessed August 16, 2013).

<sup>29</sup> "Acute Food Insecurity Situation Overview – Karamoja subregion," IPC Technical Working Group, February 16, 2013, [http://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/Food%20security%20Karamoja%20Uganda.pdf](http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/Food%20security%20Karamoja%20Uganda.pdf) (accessed August 16, 2013).

<sup>30</sup> Ibid.

<sup>31</sup> Fairventures Worldwide, "Feasibility Study," <http://fairventures.org/wp-content/uploads/2013/01/UGANDA-Dryland-commodities-and-livelihoods-in-Karamoja-feasibility-study.pdf>.

<sup>32</sup> M.K. Magunda, "Study on Disaster Risk Management," [http://www.fao.org/fileadmin/user\\_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf](http://www.fao.org/fileadmin/user_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf).

<sup>33</sup> "Uganda: Weaning Karamoja off food aid," *IRINnews*, August 9, 2012, <http://www.irinnews.org/report/96065/uganda-weaning-karamoja-off-food-aid> (accessed August 16, 2013).

<sup>34</sup> "Uganda Food Security Outlook Update," Famine Early Warning Systems Network (FEWS NET), June 2013, [http://v4.fews.net/docs/Publications/UG\\_FSOU\\_2013\\_06\\_en.pdf](http://v4.fews.net/docs/Publications/UG_FSOU_2013_06_en.pdf) (accessed August 16, 2013).

<sup>35</sup> "Uganda: Weaning Karamoja off food aid," *IRINnews*, <http://www.irinnews.org/report/96065/uganda-weaning-karamoja-off-food-aid>. "Increasingly, WFP and other organizations in the region are moving away from food donations to cash-and-voucher-based food assistance programmes, in line with the government's World Bank-funded Northern Uganda Social Action Fund (NUSAF) 2, which aims to improve the region's infrastructure and create employment in the construction, health and agriculture sectors among others."

<sup>36</sup> M.K. Magunda, "Study on Disaster Risk Management," [http://www.fao.org/fileadmin/user\\_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf](http://www.fao.org/fileadmin/user_upload/drought/docs/Karamoja%20Disaster%20Risk%20Reduction.pdf).

Communities in Karamoja often face bouts of food insecurity and malnutrition, coupled with very limited access to health services. There are only five hospitals that serve all seven districts in Karamoja,<sup>37</sup> and a 2011 survey revealed that just 27.3 percent of the population in Kaabong district has access to health services.<sup>38</sup> A June 2013 food security analysis, led by the Ministry of Agriculture, Animal Industry and Fisheries, revealed that up to 975,000 people in Karamoja face serious levels of food insecurity, while 234,000 more cannot meet their minimum food needs, and some districts recently experienced acute malnutrition rates.<sup>39</sup> In June 2013 Kaabong district reported the deaths of 41 people from starvation, according to a compilation of May and June reports by an Office of the Prime Minister-led team.<sup>40</sup> A July report stated the number was closer to 50 deaths across Kaabong, Napak, and Moroto districts.<sup>41</sup>

Entrenched poverty and environmental variability has, over the last generation, increasingly pushed people into artisanal and small-scale mining for the region's minerals, particularly gold and marble, for survival.<sup>42</sup> It is not clear how many people rely on or sporadically turn to mining for cash in the dry season, but one local civil society group estimates that there are over 18,000 men, women, and children active in the sector in Karamoja.<sup>43</sup> Some operate in family groups, particularly in gold mining, where often men and older boys gather soil from deep, open pits while women and children sift and wash sediment and/or ferry water long distances, though these roles are flexible. Marble and limestone work involves breaking rock faces into small pieces both as an additive to cement and as bricks. These products are all

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<sup>37</sup> Medecins Sans Frontieres, "Violence and Barriers to Health Care Study in Kaabong District," 2011. HIV rates have risen to 5.8 percent in the community compared to 3.5 percent five years ago, and most health centers in Karamoja do not have health workers trained in HIV care and treatment, or the necessary antiretroviral (ARV) drugs. "Uganda: Inadequate healthcare and rising HIV prevalence in Karamoja," *IRINnews*, April 30, 2012, <http://www.irinnews.org/report/95383/uganda-inadequate-healthcare-and-rising-hiv-prevalence-in-karamoja> (accessed August 26, 2013).

<sup>38</sup> *Ibid.*

<sup>39</sup> "Food insecurity threatens 1/2 million in Uganda's northeast," *IRINnews*, July 10, 2013, <http://www.irinnews.org/report/98393/food-insecurity-threatens-1-2-million-in-uganda-s-northeast> (accessed August 16, 2013). Nakapiripirit district is experiencing global rates of 14.9 percent, just shy of the international standard of a critical emergency of 15 percent. Global Acute Malnutrition rates are a measurement of the nutritional status of a population.

<sup>40</sup> Gerald Tenywa, Gloria Nakajubi, and Henry Sekanjako, "Severe food shortage hits Karamoja," *New Vision*, June 18, 2013, <http://www.newvision.co.ug/news/644072-severe-food-shortage-hits-karamoja.html> (accessed August 26, 2013).

<sup>41</sup> Edward Ssekika, "Biting hunger in Karamoja," *The Observer*, July 23, 2013, [http://www.observer.ug/index.php?option=com\\_content&view=article&id=26587:biting-hunger-in-karamoja&catid=57:feature](http://www.observer.ug/index.php?option=com_content&view=article&id=26587:biting-hunger-in-karamoja&catid=57:feature) (accessed August 26, 2013).

<sup>42</sup> Artisanal and small scale mining is mining relying on low technology and cost, and often part of the informal sector.

<sup>43</sup> Ecological Christian Organisation, "The Mining and Minerals sector in Karamoja region: Development Opportunities and Constraints," 2011, <http://thisisafrica.files.wordpress.com/2011/12/mining-sector-report-karamoja-region.pdf>, p. 9.

sold for cash, mostly to outside middle men. Despite the back-breaking physical labor, income varies tremendously and is a gamble. Miners in Kaabong and Moroto told Human Rights Watch that occasionally they had been fortunate and been able to earn 100,000 Ugandan shillings (\$40) for a day's work mining gold. Many said they routinely make less than 2,000 Ugandan shillings (\$0.75) however,<sup>44</sup> and complained bitterly of being cheated by middle men who purchased their gold for less than the miners felt it was worth.<sup>45</sup>

Local activists have noted that small scale and artisanal mining activities “are predominantly informally organized or disorganized, un-mechanized and often characterized by hazardous working conditions, lack of planning and issues related to child labour, poor health conditions and gender inequalities.”<sup>46</sup> Often these miners confront serious impediments if they try to formalize their work, for example, by securing a location license, due to high costs, bureaucracy, and lack of access to information. In some instances observed by Human Rights Watch, it would appear that the presence of artisanal miners is a bellwether for companies seeking to carry out mineral exploration work, raising very urgent questions about the rights of the local miners when the companies begin operations on land the locals depend on for survival.<sup>47</sup>

## Disarmament and Abuses

Competition over scarce resources has contributed to high levels of insecurity in Karamoja. Conflicts between groups, including across international borders, take the form of cattle

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<sup>44</sup> Human Rights Watch interviews with Y.W., Sokodu, Lodiko, Kaabong, July 5, 2013; N.M., Lois, July 6, 2013; and R.B., Sokodu, Lodiko, Kaabong, July 4, 2013.

<sup>45</sup> Ibid.

<sup>46</sup> “The Mining and Minerals sector in Karamoja region: Development Opportunities and Constraints,” p. 9. Despite these obvious perils, currently it does not appear that artisanal gold miners in Karamoja rely on mercury or other chemicals, as has been seen in other parts of Uganda. Human Rights Watch interview with community organizer, Moroto, July 7, 2013 and Human Rights Watch interview with artisanal mining researcher, Kampala, July 12, 2013. For more on dangerous practices by artisanal gold miners that have exposed children to mercury or lead poisoning in Mali, and Nigeria while government agencies did little to address the problem, see Human Rights Watch, *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*, February 2011, <http://www.hrw.org/node/95776>; *Mali—A Poisonous Mix: Child Labor, Mercury and Artisanal Gold Mining in Mali*, December 2011, <http://www.hrw.org/reports/2011/12/06/poisonous-mix>; and “Nigeria: Child Lead Poisoning Crisis,” Human Rights Watch news release, February 7, 2012, <http://www.hrw.org/news/2012/02/07/nigeria-child-lead-poisoning-crisis>.

<sup>47</sup> Human Rights Watch field visits in Kaabong and Moroto, July 2013.

raids.<sup>48</sup> Armed criminality and cattle raiding expose the population to high levels of violence, and has restricted the movement of humanitarian workers at various times.<sup>49</sup>

The government has mounted several disarmament campaigns, some voluntary, some forced, in Karamoja since 2001 to collect an estimated 40,000 unlawfully-held weapons.<sup>50</sup> At the same time, however, government programs to improve security, including programs of disarmament, face a fundamental dilemma: guns are used to defend from raiders as well as to rob and steal. The dynamics behind weapon possession include, for some, the desperate need to secure and defend cattle and access to essential limited resources.

Since May 2006 the national army, the Uganda Peoples' Defence Forces (UPDF), tasked with some law enforcement responsibilities in Karamoja absent a fully adequate police force, renewed a forced disarmament program to curb the proliferation of small arms. In a 2007 report, Human Rights Watch documented alleged human rights violations by UPDF soldiers in "cordon and search" disarmament operations.<sup>51</sup> Violations included unlawful killings, torture and ill-treatment, arbitrary detention, and theft and destruction of property. Allegations of UPDF abuses continued through 2009 to 2011, though at a reduced rate.<sup>52</sup>

The disarmament process was slated to end in 2011, but the army continues to police Karamoja. The UN has called for a handover of law enforcement activities to local police.<sup>53</sup>

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<sup>48</sup> Gray, "A Memory of Loss," pp. 404-405.

<sup>49</sup> World Food Programme, "WFP driver killed in ambush in Uganda's Karamoja region," May 29, 2007. <http://reliefweb.int/report/uganda/wfp-driver-killed-ambush-ugandas-karamoja-region>.

<sup>50</sup> Oscar O. Kanyangareng, "Post-disarmament Karamoja needs a clear development plan," *Daily Monitor*, July 24, 2013, <http://www.monitor.co.ug/OpEd/Commentary/Post-disarmament-Karamoja-needs-a-clear-development-plan/-/689364/1924928/-/njzha6z/-/index.html> (accessed August 27, 2013).

<sup>51</sup> Human Rights Watch, "*Get the Gun!*" *Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region*, September 2007, vol. 19, no. 13(a), <http://www.hrw.org/reports/2007/09/10/get-gun>.

<sup>52</sup> See Elizabeth Stites and Darlington Akabwai, "Changing Roles, Shifting Risks: Livelihood Impacts of Disarmament in Karamoja, Uganda," Feinstein International Center, July 2009, [http://wikis.uit.tufts.edu/confluence/download/attachments/27231067/Stites-Livelihoods\\_Disarmament\\_in\\_Karamoja.pdf](http://wikis.uit.tufts.edu/confluence/download/attachments/27231067/Stites-Livelihoods_Disarmament_in_Karamoja.pdf) (accessed August 27, 2013); "Rising violence tests UPDF strategy in Karamoja," *The Independent*, May 24, 2010, <http://www.independent.co.ug/features/features/2951-rising-violence-tests-updf-strategy-in-karamoja-> (accessed August 27, 2013) and Max Delany, "Tales of Torture from Karamoja," The Pulitzer Center, April 14, 2011, <http://pulitzercenter.org/articles/uganda-karamoja-weapons-raids-disarmament-torture> (accessed August 27, 2013).

<sup>53</sup> Pascal Kwesiga, "Deploy Police Not Army in Karamoja – UN," *New Vision*, August 9, 2013, <http://allafrica.com/stories/201308090847.html> (accessed August 27, 2013).

## II. Land and Resource Rights

### Indigenous Peoples Defined

The indigenous groups in Karamoja are among Uganda's most marginalized communities.<sup>54</sup> There is no internationally agreed definition of "indigenous people," but the United Nations' Permanent Forum on Indigenous Issues has relied on a description based on a multi-part analysis that includes self-identification as indigenous peoples; a historical continuity with pre-colonial and/or pre-settler societies; a strong link to the territories and surrounding natural resources; distinct social, economic, or political systems; a distinct language, culture, and beliefs; and the maintenance and reproduction of their ancestral environments and systems as distinctive peoples and communities.<sup>55</sup>

The African Commission's Working Group on Indigenous Populations/Communities has affirmed this approach, stating that the "focus should be on ... self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples; on an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these people have different cultures, ways of life or modes of production than the national hegemonic and dominant model."<sup>56</sup>

This working group, in a report from its 2006 visit to Karamoja, refers to the people of Karamoja as indigenous people and called on the government of Uganda to recognize the "pastoralists" as indigenous people "in the sense the term is understood in international

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<sup>54</sup> World directory of Minorities and Indigenous Peoples, "Karamojong and Related Groups," 2005, <http://www.minorityrights.org/5032/uganda/karamojong-and-related-groups.html> (accessed November 22, 2013). According to the ACHPR, Uganda's three indigenous groups are the Karamojong, the Batwa, and the Bemet. ILO and ACHPR, "Uganda: constitutional, legislative and administrative provisions concerning indigenous peoples," 2009, [http://www1.chr.up.ac.za/chr\\_old/indigenous/country\\_reports/Country\\_reports\\_Uganda.pdf](http://www1.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Uganda.pdf) (accessed November 22, 2013).

<sup>55</sup> UN Permanent Forum on Indigenous Issues, "Factsheet: Who are Indigenous Peoples," undated, [http://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) (accessed November 22, 2013).

<sup>56</sup> Report of the African Commission's Working Group on Indigenous Populations/Communities, Adopted by the African Commission on Human and Peoples' Rights at its 34<sup>th</sup> Ordinary Session (Nov. 6-20, 2003). See also ACHPR, "276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya," May 2009, paras. 147-162.

law.”<sup>57</sup> However, the Ugandan government has not yet done so. The Ugandan constitution recognizes 56 “indigenous communities” that roughly correspond to the various ethnic groups who have historically resided within the country’s borders. These include many of the communities living in Karamoja today.<sup>58</sup> But the term “indigenous” corresponds to citizenship based on ethnicity, rather than to any international norm.

Domestic law does not expressly outline protections for the rights of indigenous peoples as defined by international law, nor are there any criteria in place for identification of internationally considered indigenous peoples.<sup>59</sup> However, the Ugandan constitution does include protections for marginalized groups and minorities that are directly relevant to international norms and would apply to indigenous peoples in Karamoja. The constitution’s National Objectives and Directive Principles of State Policy affirm that the government recognizes ethnic, religious, ideological, and cultural diversity among the different peoples of Uganda,<sup>60</sup> and will ensure the fair representation of marginalized groups in constitutional and other bodies.<sup>61</sup> The constitution also guarantees non-discrimination and requires the state to take affirmative action in favor of marginalized groups, whether on the basis of “gender, age, disability or other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.”<sup>62</sup> Without expressly defining marginalized groups or minorities as “indigenous peoples,” the definitions outlined in the constitution effectively embrace the unique groups living in Karamoja and provide them protections, if such provisions are enforced.

Uganda was not present at the voting for the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007. The ACHPR has expressly articulated its support for the declaration, noting that it is “in line with the

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<sup>57</sup> ACHPR and IWGIA, “Report on the African Commission’s Working Group on Indigenous Populations/Communities, Research and Information Visit to the Republic of Uganda, 14-17, 24-29 July 2006,” 2009, [http://www.achpr.org/files/sessions/43rd/mission-reports/uganda/misrep\\_specmec\\_indig\\_uganda\\_2006\\_eng.pdf](http://www.achpr.org/files/sessions/43rd/mission-reports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf) (accessed January 12, 2014).

<sup>58</sup> The Constitution of the Republic of Uganda, 1995, chapter 3, art. 10. For the complete list, see the Third Schedule of Constitution of the Republic of Uganda.

<sup>59</sup> ILO and ACHPR, “Uganda: constitutional, legislative and administrative provisions concerning indigenous peoples,” *The Indigenous World*, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/ugandaindigworldogeng.pdf> (accessed December 31, 2013), p. 483.

<sup>60</sup> The Constitution of the Republic of Uganda, 1995, National Objectives and Directive Principles of State Policy, objective III(ii).

<sup>61</sup> *Ibid.*, objective VI.

<sup>62</sup> *Ibid.*, chapter 4, art. 32(1).

position and work of the African Commission on indigenous peoples' rights as expressed in the various reports, resolutions and legal opinion on the subject matter.”<sup>63</sup>

**The African Commission's Working Group on Indigenous Populations / Communities has debunked several misconceptions regarding indigenous peoples in Africa:**

**Misconception 1: To protect the rights of indigenous peoples gives special rights to some ethnic groups over and above the rights of all other groups.**

Certain groups face discrimination because of their particular culture, mode of production, and marginalized position within the state. The protection of their rights is a legitimate call to alleviate this particular form of discrimination. It is not about special rights.

**Misconception 2: Indigenous is not applicable in Africa as “all Africans are indigenous.”**

There is no question that Africans are indigenous to Africa in the sense that they were there before the European colonialists arrived and that they were subject to subordination during colonialism. When some particular marginalized groups use the term “indigenous” to describe themselves, they use the modern analytical form (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from. They do not use the term in order to deny other Africans their legitimate claim to belong to Africa and identify as such.

**Misconception 3: Talking about indigenous rights will lead to tribalism and ethnic conflicts.**

Giving recognition to all groups, respecting their differences and allowing them all to flourish does not lead to conflict, it prevents conflict. What creates conflict is when certain dominant groups force a contrived “unity” that only reflects perspectives and interests of powerful groups within a given state, and which seeks to prevent weaker marginal groups from voicing their unique concerns and

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<sup>63</sup> ACHPR, “Resolution on the United Nations Declaration on the Rights of Indigenous Peoples,” Brazzaville, November 28, 2007.

perspectives. Conflicts do not arise because people demand their rights but because their rights are violated. Protecting the human rights of particularly discriminated groups should not be seen as tribalism and disruption of national unity. On the contrary, it should be welcomed as an interesting and much needed opportunity in the African human rights arena to discuss ways of developing African multicultural democracies based on the respect and contribution of all ethnic groups.

Source: Paraphrased from Report of the African Commission's Working Group on Indigenous Populations/Communities, Adopted by the ACHPR at its 34th Ordinary Session, November 6-20, 2003.

## Rights to Land, Development, and Environment

Indigenous peoples have the rights to “own, use, develop, and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired,” and to determine their own development priorities and strategies.<sup>64</sup> In order to realize these rights, states are required to give legal recognition and protection to these lands, territories, and resources, with due respect to the customs, traditions, and land tenure systems of the indigenous peoples concerned.<sup>65</sup>

Under the right to development, the Ugandan government is obligated to ensure that the peoples in Karamoja are not left out of the development process or benefits. According to the African Commission on Human and Peoples' Rights, the right to development is both constitutive and instrumental, and a violation of either the procedural or substantive element constitutes a violation of the right to development.<sup>66</sup> The procedural element requires active, free, and meaningful participation in development choices, free of

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<sup>64</sup> “All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind,” UNDRIP, art. 26, 32(1); African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 22.

<sup>65</sup> *Ibid.*, art. 26.

<sup>66</sup> ACHPR, “276/03 Center for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,” May 2009, para. 227.

coercion, pressure, or intimidation.<sup>67</sup> The substantive element should include benefit sharing, improve the capabilities and choices of people, and is violated if the development in question decreases the well-being of the community.<sup>68</sup> The combination of these elements should result in empowerment.<sup>69</sup>

Uganda's 1998 Land Act and the National Environment Act of 1995 recognize customary interests in land,<sup>70</sup> though the government can acquire land in order to control environmentally sensitive areas, thereby usurping customary land rights of indigenous groups.<sup>71</sup> The National Environment Act does highlight that environmental management should include maximum participation by the people, effectively requiring the consultation of indigenous peoples prior to the gazetting of their land.<sup>72</sup> Uganda's land law recognizes customary tenure, as is the case in Karamoja, as one of four forms of land ownership.<sup>73</sup> To legally acquire land this way, one must seek a certificate of customary ownership, first by forming a communal land association<sup>74</sup> and then submitting an application at the parish.<sup>75</sup>

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<sup>67</sup> United Nations Declaration on Development, art. 2(3); ACHPR, "276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya," May 2009, paras. 278, 279, and 283; Arjun Sengupta, "The Right to Development as a Human Right," Francois-Xavier Bagnoud Centre Working Paper No. 8, (2000), p. 8, available at [http://www.hsph.harvard.edu/xfbcenter/working\\_papers.htm](http://www.hsph.harvard.edu/xfbcenter/working_papers.htm) 2000; Antoanella-Lulia Motoc and the Tebtebba Foundation, Preliminary working paper on the principle of free, prior, and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that they would serve as a framework for the drafting of a legal commentary by the Working Group on this concept. U.N. Doc. E/CN.4/Sub.2/AC.4/2004/4 (2004), para. 14(a).

<sup>68</sup> ACHPR, "276/03 Center for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya," May 2009, paras. 283 and 294. "Benefit sharing is vital both in relation to the right to development and by extension the right to own property: Endorois," para. 294.

<sup>69</sup> ACHPR, "276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya," May 2009, para. 283.

<sup>70</sup> The Land Act, The Uganda Gazette, No. 41, 1998, <http://www.opm.go.ug/assets/media/resources/225/LAND%20ACT.pdf> (accessed December 31, 2013), chapter 227, art. 23; and National Environment Act, The Uganda Gazette, No. 4, 1995, [http://www.ssauganda.org/uploads/National%20Environment%20Act\(1995\).pdf](http://www.ssauganda.org/uploads/National%20Environment%20Act(1995).pdf).

<sup>71</sup> Allen Asiiimwe, Victor Agaba, and Zahara Nampweo, "Ethnicity and Human Rights in Uganda: A Desk Study of Human Rights issues faced by Ethnic Minorities and Indigenous Groups," April 2012, [http://www.globalrights.org/site/DocServer/Ethnicity\\_and\\_Human\\_Rights\\_in\\_Uganda\\_\\_\\_A\\_Desk\\_Study\\_of\\_.pdf?docID=13763](http://www.globalrights.org/site/DocServer/Ethnicity_and_Human_Rights_in_Uganda___A_Desk_Study_of_.pdf?docID=13763) (accessed November 22, 2013).

<sup>72</sup> ILO and ACHPR, "Uganda: constitutional, legislative and administrative provisions concerning indigenous peoples," 2009, [http://www1.chr.up.ac.za/chr\\_old/indigenous/country\\_reports/Country\\_reports\\_Uganda.pdf](http://www1.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Uganda.pdf) (accessed November 22, 2013).

<sup>73</sup> The others are leasehold, freehold, and Mailo. For more on Land laws in Uganda, see John T. Mugambwa, *Principles of Land Law in Uganda*, (Fountain Publishers: 2000).

<sup>74</sup> The Land Act, 1998, art. 15.

<sup>75</sup> The Land Act, 2001, art. 4. These certificates have not yet been handed out, in practice.

Uganda's 2013 National Land Policy contains very progressive language regarding the rights for minorities, and more specifically for customary land owners. The policy identifies ethnic minorities as "ancestral and traditional owners," and goes as far as to say that even though ethnic minorities are the "users and custodians of the various natural habitats," that they are "not acknowledged even though their survival is dependent upon access to natural resources."<sup>76</sup> The policy acknowledges that the establishment of national parks and development of regions, including through mining and logging, "often takes place at the expense of the rights of such ethnic minorities."<sup>77</sup> It calls on the government to protect the rights to ancestral lands of ethnic minority groups and give them prompt, adequate, and fair compensation for displacement by government action.<sup>78</sup>

Uganda's constitution and the African Charter on Human and Peoples' Rights (Banjul Charter) guarantee every person the right to a clean and healthy environment.<sup>79</sup> The government is mandated to enact laws that protect and preserve the environment from degradation and to hold in trust for the people of Uganda natural assets.<sup>80</sup> This is realized somewhat through the National Environment Act which stipulates the nature of projects for which an environmental impact assessment (EIAs) may be required and how impact studies are to be undertaken.<sup>81</sup> Under the 1997 Local Government Act, local governments are responsible for the protection of the environment at the district level.<sup>82</sup>

## Free, Prior, and Informed Consent

States have a duty under international law to consult and cooperate with indigenous peoples through their own representative institutions in order to obtain their free and informed consent. This is supposed to occur before the approval of any project affecting their lands or territories and other resources, particularly in connection with the

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<sup>76</sup> Ministry of Lands, Housing and Urban Development, "Uganda National Land Policy," Final Draft, February 2013, art. 56.

<sup>77</sup> Ministry of Lands, Housing and Urban Development, "Uganda National Land Policy," Final Draft, February 2013.

<sup>78</sup> *Ibid.*, art. 57.

<sup>79</sup> Article 24 of the Banjul Charter states that "all peoples shall have the right to a general satisfactory environment favourable to their development."

<sup>80</sup> The Constitution of the Republic of Uganda, 1995, chapter 27.

<sup>81</sup> The National Environment Act, chapter 153. The law defined an environmental impact assessment as "a systematic examination conducted to determine whether or not a project will have any adverse impact on the environment." Chapter 1, section R.

<sup>82</sup> The Local Government Act, 1997.

development, utilization, or exploitation of mineral, water, or other natural resources.<sup>83</sup> This duty is derived from indigenous peoples' land and resource rights, discussed above. States must also provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.<sup>84</sup>

While these rights are most clearly enunciated in the United Nations Declaration on the Rights of Indigenous Peoples and in the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, they stem from existing international law.<sup>85</sup> Furthermore, African regional institutions have significantly advanced the right to free, prior, and informed consent and do not limit its application to indigenous peoples, as discussed below.

It is sometimes contended that compulsory acquisition of property or eminent domain takes precedence over free, prior, and informed consent rights. To the contrary, laws regarding compulsory acquisition must, like all other laws, respect human rights including indigenous peoples' free, prior, and informed consent rights.<sup>86</sup>

The aforementioned indigenous rights are integral elements of the right to take part in cultural life, which is interdependent of the right of all peoples to self-determination and

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<sup>83</sup> UNDRIP, art. 32(2).

<sup>84</sup> UNDRIP, art. 32(3).

<sup>85</sup> Uganda was absent in the voting on the UNDRIP, which was adopted with 143 member states voting in favor, and has ratified ILO Convention No. 169. Record of Voting on the UNDRIP, United Nations Bibliographic Information System, <http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=ares61295> (accessed September 20, 2013).

<sup>86</sup> UNDRIP, article 46(2), identifies the parameters of permissible limitations of the rights therein recognized with the following minimum standard: "The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society." See also UN Special Rapporteur on the rights of indigenous peoples, James Anaya, "Extractive Industries,"

<http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>, p. 11: "The Special Rapporteur observes that in a number of cases States have asserted the power to expropriate indigenous property interests in land or surface resources in order to have or permit access to the subsurface resources to which the State claims ownership. Such an expropriation being a limitation of indigenous property rights, even if just compensation is provided, a threshold question in such cases is whether the limitation is pursuant to a valid public purpose. The Special Rapporteur cautions that such a valid public purpose is not found in mere commercial interests or revenue-raising objectives, and certainly not when benefits from the extractive activities are primarily for private gain." For further discussion, see Fergus MacKay, "Indigenous Peoples' Right to Free, Prior and Informed Consent," <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1380&context=sdlp>.

the right to an adequate standard of living, protected in both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Banjul Charter.<sup>87</sup> The UN Committee charged with interpreting the ICESCR has described how indigenous peoples' land rights and right to free and prior informed consent stem from the right to take part in cultural life:

The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.<sup>88</sup> Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.<sup>89</sup> States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.... States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.<sup>90</sup>

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<sup>87</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, arts 1, 11, and 15. Banjul Charter, arts. 17(2), 21, 22, and 24. See also CESCR General Comment 21. Within the ICCPR, the right of all peoples to self-determination, which encompasses the right to freely determine their political status and freely pursue their economic, social, and cultural development, and the right of ethnic minorities to enjoy their own culture provide a broad basis for the right to free, prior, and informed consent: International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), 21. U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 1(1), 27. As early as 1992, the Human Rights Committee has emphasized that the enjoyment of the protected cultural rights "may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them," UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (The rights of minorities), April 8, 1992, para. 7.

<sup>88</sup> UNDRIP, art. 26(a).

<sup>89</sup> Convention No. 169, arts. 13-16. See the UNDRIP, arts. 20 and 33.

<sup>90</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21: Article 15(1) (Right of Everyone to take part in cultural life), December 21, 2009, paras. 36 and 37.

The UN Committee charged with interpreting the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has similarly held that states are required to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”<sup>91</sup> States must ensure “that indigenous communities have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>92</sup>

In May 2012, the ACHPR issued a resolution calling on states to “confirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance.”<sup>93</sup> It also calls on states to ensure:

[R]espect for human rights in all matters of natural resources exploration, extraction, ... development ... and in particular ... ensure independent social and human rights impact assessments that guarantee free prior informed consent; effective remedies; fair compensation; women, indigenous and customary people’s rights; environmental impact assessments; impact on community existence including livelihoods, local governance structures and culture, and ensuring public participation; protection of the individuals in the informal sector; and economic, cultural and social rights.<sup>94</sup>

The commission has also emphasized the importance of consultation and consent in various cases brought before it. As early as 2001 the commission emphasized the importance of “providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by

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<sup>91</sup> UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIII (Indigenous Peoples), August 18, 1997, para. 5.

<sup>92</sup> CERD, Indigenous Peoples, August 18, 1997, para. 4(d).

<sup>93</sup> ACHPR, “224: Resolution on a Human Rights-Based Approach to Natural Resources Governance,” May 2012, <http://www.achpr.org/sessions/51st/resolutions/224/> (accessed December 31, 2013).

<sup>94</sup> *Ibid.*

oil operations.”<sup>95</sup> But the commission went significantly further in a 2009 case in which it found that the Kenyan government had forcibly removed the Endorois people from their ancestral lands, violating several rights. After noting that the Endorois are an indigenous people, the commission said that in relation to “any development or investment projects that would have a major impact within the Endorois territory, the state has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.”<sup>96</sup>

The Economic Community of West African States (ECOWAS) has issued a directive on Harmonization of Guiding Principles and Policies in the Mining Sector, which does not apply to Uganda but is a useful guide to an emerging standard of free, prior, and informed consent in an African sub-region.<sup>97</sup> In addition to emphasizing the obligations of states to respect, and ensure respect of, human rights throughout mining activities, the declaration outlines obligations for mining companies. In particular, it states that:

Companies shall obtain free, prior, and informed consent of local communities before exploration begins and prior to each subsequent phase of mining and post-mining operations.

Companies shall maintain consultations and negotiations on important decisions affecting local communities throughout the mining cycle.<sup>98</sup>

Uganda has not legislated to protect free, prior, and informed consent rights.

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<sup>95</sup> ACHPR, “155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)/Nigeria,” October 2001, [http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30\\_155\\_96\\_eng.pdf](http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30_155_96_eng.pdf) (accessed December 31, 2013).

<sup>96</sup> ACHPR, “276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,” May 2009, [http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf) (accessed December 31, 2013), paras. 162 and 291. See also African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v The Republic of Kenya*, Order of Provisional Measures, Application No. 006/2012, March 15, 2013, [http://www.african-court.org/en/images/documents/Orders-Files/ORDER\\_of\\_Provisional\\_Measures\\_African\\_Union\\_v\\_Kenya.pdf](http://www.african-court.org/en/images/documents/Orders-Files/ORDER_of_Provisional_Measures_African_Union_v_Kenya.pdf).

<sup>97</sup> ECOWAS, “Directive C/DIR. 3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector,” Abuja, May 26-27, 2009, [http://www.comm.ecowas.int/sec/en/directives/ECOWAS\\_Mining\\_Directives.pdf](http://www.comm.ecowas.int/sec/en/directives/ECOWAS_Mining_Directives.pdf) (accessed December 31, 2013). The directive calls for member states to adopt compliance measures by July 2014 and to date four countries have signed the directive and two have gazette it.

<sup>98</sup> *Ibid.*, art. 16(3, 4).

## Uganda's Mining Act

Mining activities in Uganda are controlled under the 2003 Mining Act and the 2004 Mining Regulations. The Mining Act does not currently require any form of consent or consultation with local communities prior to the application or acquisition of an exploration license.<sup>99</sup> While it does require a mining lease applicant to negotiate a surface rights agreement prior to the granting of a mining lease, it does not require this for an exploration license application. Ultimately, the law falls well short of protecting free, prior, and informed consent rights.<sup>100</sup>

The mining law specifies that regardless of land ownership, all minerals are the property of the government.<sup>101</sup> While any Ugandan entity can retain the right to search for and extract minerals, all prospecting, exploration, and mining can only be carried out under an appropriate license. In order to participate in mineral exploration, one must acquire a prospecting license. The license is not confined to a specific area and gives the holder a right to look for minerals and to demarcate it by planting “beacons” to indicate to others the area is exclusively booked. A prospecting license is not renewable and is valid for one year. A location license is available to locally resident artisanal miners.

When more than one entity applies for mineral rights over the same land Ugandan law requires that the first person who has marked out the land in question be accorded priority. When priority cannot be given, the commissioner of the Department of Geological Survey and Mines (DGSM) has discretion to decide who will receive priority.<sup>102</sup>

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<sup>99</sup> On the contrary, Uganda's now repealed 1949 Mining Act provided that, “Any person intending to prospect or mine on private land shall when practicable give notice of his or her intention to the owner and the occupier of the land before commencing operations on it, and shall, if required by the owner or occupier, give security by depositing with the Government such sum or a banker's guarantee in lieu of that sum as the district commissioner may direct, for the payment of compensation for the disturbance of surface rights and for any damage done to the land, or trees or crops on the land or to livestock by prospecting or mining operations on the land, if required by the owner or occupier, shall desist from prospecting or mining on the land until that security has been given,” section 14.

<sup>100</sup> When a company is ready to apply for a mining lease, then an environmental impact assessment is legally required. Those often occur with some basic discussions with the affected community but their consent is not specifically required. The Mining Regulations, The Uganda Gazette, No. 57, 2004, [http://www.uganda-mining.go.ug/magnoliaPublic/en/LegislativeFR/mainColumnParagraphs/o/content\\_files/fileo/Mining\\_Regulations\\_A.pdf](http://www.uganda-mining.go.ug/magnoliaPublic/en/LegislativeFR/mainColumnParagraphs/o/content_files/fileo/Mining_Regulations_A.pdf) (accessed September 5, 2013), arts. 38-42.

<sup>101</sup> The Mining Act, The Uganda Gazette, No. 9, 2003, [http://www.uganda-mining.go.ug/magnoliaPublic/en/LegislativeFR/mainColumnParagraphs/o/content\\_files/file/MINING\\_ACT\\_2003.pdf](http://www.uganda-mining.go.ug/magnoliaPublic/en/LegislativeFR/mainColumnParagraphs/o/content_files/file/MINING_ACT_2003.pdf) (accessed September 5, 2013), art. 3.

<sup>102</sup> The Mining Regulations, 2004, arts. 6-7.

Companies featured in this report all eventually applied for and received exploration licenses from the DGSM or purchased the exploration licenses of others who had done the same.<sup>103</sup> An application for an exploration license requires basic information about the legal entity and the minerals to be explored, a map of the area, as well as payment of a fee. There is no requirement for proof of consultation with anyone from the community, however exploration entities are required to propose how they will employ and train Ugandan citizens.<sup>104</sup> An exploration license is usually valid for three years.

Entities intending to extract minerals for sale must apply for a mining lease. The application to the commissioner must include:

- a statement giving details of all known mineral deposits in the area, as well as possible and probable ore reserves and mining conditions;
- a technological report on mining and processing techniques to be used by the applicant;
- a statement describing the program of proposed developments and mining operations. This needs to include: the estimated capacity of production and scale of operations, the estimated overall recovery of the ore and mineral products, and the nature of the mineral products;
- a report on the goods and services which can be obtained in Uganda required for the mining operations, and proposals on the procurement of those goods and services;
- a statement on the employment and training of Ugandan citizens; and
- a business plan that forecasts capital investment, operating costs and revenues, type and source of financing, and a financial plan and capital structure.<sup>105</sup>

It is not until a company prepares to apply for a mining lease that Uganda's law requires proof of communication with the land owners or occupiers. Applicants must state how many owners or lawful occupiers there are for the area he or she intends to mine, include written proof that he or she has reached an agreement with those owners or occupiers,<sup>106</sup>

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<sup>103</sup> See below, Jan Mangal: Moroto District. Jan Mangal applied for an exploration license after commencing exploration.

<sup>104</sup> The Mining Act, 2003, art. 26.

<sup>105</sup> The Mining Regulations, 2004, art. 41.

<sup>106</sup> The Mining Act, 2003, art. 42 (3).

and include written proof that he or she has an agreement, negotiated with broad community support, which clearly quantifies compensation for disruption of the land.<sup>107</sup>

The Mining Act requires the holder of mineral rights to exercise such rights “reasonably” and in such a manner as not to adversely affect the interests of any owner or occupier of the land. However, this has not been interpreted by the courts and it is unclear what may be precisely involved in complying with this provision. The act states that the land owner or lawful occupier is entitled to demand either compensation for disturbance or a share of royalties.<sup>108</sup> The act also stipulates circumstances under which compensation may be paid to owners or persons lawfully occupying land that is the subject of a mineral right, for example for any crops, trees, buildings, etc., that may be damaged in operations. However, the law specifically states that compensation will only be paid “on demand” of the land owner and must be requested within one year of the damage.<sup>109</sup> Given the very limited knowledge of land owners as to their rights under the mining law, it is likely that rightful compensation payments are neglected.

Every holder of a mining lease is to carry out an environmental impact assessment of the proposed operations in accordance with the provisions of the National Environment Act and to take all necessary steps to ensure the prevention and minimization of pollution of the environment. It also requires environmental management and restoration plans.<sup>110</sup>

The Mining Act also stipulates how royalties must be allocated to the various stakeholders—80 percent to the central government, 10 percent to the district government, 7 percent to the sub-county, and 3 percent to the “owners or lawful occupiers of land subject to mineral rights.”<sup>111</sup> Payments to the community can be quite difficult when there is no bank account or legal entity recognized to receive the money.<sup>112</sup> Some people

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<sup>107</sup> The Mining Regulations, 2004, arts. 38-42.

<sup>108</sup> The Mining Act, 2003, art. 83.

<sup>109</sup> *Ibid.*, art. 82.

<sup>110</sup> The National Environment Act, Part IX.

<sup>111</sup> Mining Law, Second Schedule.

<sup>112</sup> Currently, among communities in Karamoja, it appears that only residents in Katikekile sub-county in Moroto district have formed a legally recognizable landowner entity to receive royalties. Known as the Katikekile Action for Development Land in Moroto, the group received 4.7 million Uganda shillings (\$1,880) in royalties from January to June 2013. See Ministry of Energy and Mineral Development, Public Notice, January to June 2013. On file with Human Rights Watch. Based on the active

suggested that payment could be made to the sub-county administration for the benefit of the entire community.<sup>113</sup>

Ugandan laws do not require any social or human rights impact assessments (HRIAs), though this is an important aspect of ensuring protection and should be remedied. Such assessments should be required before any exploration work is scheduled to begin and involve meaningful and sustained engagement with the communities. Most likely, HRIAs could be accomplished by amending the Mining Act and then drafting accompanying regulations. For example, the Uganda Human Rights Commission could lead a consultative process to draft guidelines and regulations for such assessments, maintain a list of qualified independent experts from which companies could select, and then be in charge of evaluating HRIAs as and when they are submitted, as the National Environmental Management Authority (NEMA) does now for environmental impact assessments.

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mining in the area, these royalties were most likely paid by Tororo Cement, but the public notice does not state the companies paying royalties', only the money amounts.

<sup>113</sup> Human Rights Watch interviews with Ronald Busiinge, Earthsavers, Kampala, June 6, 2013; D.F., sub-county official, Kaabong, July 3, 2013; and V.W., district official, Moroto, July 9, 2013.

### III. Three Mining Companies' Practices in Karamoja

#### East African Mining: Kaabong District

East African Mining Ltd. (EAM), a local subsidiary of East African Gold, incorporated in Jersey, holds exploration licenses covering several hundred square miles of Kaabong district.<sup>114</sup> Since June 2012, the junior mining company has been using various prospecting methods to sample soil for gold in the parishes of Lois, Lopedo, Loyoro, Naikoret, and Sokodu, which span four sub-counties in Kaabong.<sup>115</sup>

Research undertaken by Human Rights Watch indicates that EAM did not receive, or even seek, the permission or consent of the indigenous land owners prior to undertaking exploration on their land.<sup>116</sup> Human Rights Watch interviewed 38 community members in the Kaabong parishes where EAM had been exploring. All of those interviewed said that they were not consulted by EAM about their planned activities prior to seeing them in their community, extracting soil samples. EAM Chief Executive Officer Dr. Tom Sawyer acknowledged that the company's consultations had initially been limited, and even non-existent prior to commencing exploration; however, the company worked to improve them over time.<sup>117</sup> Several people said that they were scared by the sight of unknown men

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<sup>114</sup> East African Gold PLC. is a private company incorporated in 2011 primarily to explore and develop gold prospects in Karamoja. See East African Gold website, <http://eastafriangold.com/> (accessed October 13, 2013); EAM, "Project Brief for Proposed Drilling & Trenching Operations in Lopedo, Loyoro, Sokodu, Lois & Naukoret Gold Prospects in Kaabong District," October 2012, on file with Human Rights Watch, p. vi. It also holds exploration licenses over other areas of Karamoja. See also East African Gold PLC., "Statement of Particulars of Incorporation," Jersey Financial Services Commission, November 8, 2012; East African Gold PLC., "Certificate of Incorporation," November 9, 2012. Jersey, in the Channel Islands, is a "crown dependency" and is therefore accountable to the queen, but self-governing. It has a corporate tax rate of zero, except for financial companies. For more on Jersey and its tax laws, see Leah McGrath Goodman, "Inside the World's Top Offshore Tax Shelter," *Newsweek.com*, January 16, 2014, <http://mag.newsweek.com/2014/01/17/jersey-taxes.html>.

<sup>115</sup> Human Rights Watch interviews with EAM employee 1, July 5, 2013, and EAM employee 2, July 6, 2013. While interviewees are designated "EAM employees," at the time of Human Rights Watch's research in Kaabong, EAM's exploration activities were on hold and as such, the employees interviewed were not currently working for the company. Human Rights Watch telephone interview with Dr. Tom Sawyer, CEO, EAM, October 3, 2013: EAM used portable drill rigs and would drill 100 meters apart, five by five meters, and dug trenches that were 30 meters long, maximum. Sometimes Naikoret is also spelled Naukoret and Sokodu is spelled Thokodu.

<sup>116</sup> Human Rights Watch interviewed the CEO of EAM, Dr. Tom Sawyer after writing to him asking a series of questions related to our research. In the course of the interview, Human Rights Watch presented Dr. Sawyer with findings related to the inadequacy of consultations and benefits, and began to raise issues relating to labor recruitment and conditions. At the conclusion of this interview, it was agreed that we would schedule a further interview to discuss labor complaints in more detail. Since October 3, 2013, Dr. Sawyer has not responded to several requests made in writing to schedule that conversation.

<sup>117</sup> Human Rights Watch telephone interview with Dr. Tom Sawyer, CEO, EAM, October 3, 2013.

accompanied by soldiers. Human Rights Watch found that there was mass confusion in these communities regarding what EAM was doing, the likely impact on their communities, and the potential benefits of agreeing to allow EAM to proceed with exploration.

One woman in Lois described her first experience with EAM:

I was surprised to hear some noise one day.... Then we saw some soldiers. They stopped and we saw some men had a machine. They took some soil, using the machine, and put it in polythene bags. I almost took off running with fear.<sup>118</sup>

EAM had two or three soldiers accompany field teams, in addition to having soldiers guard their camp.<sup>119</sup>

In the early months of EAM's activities employees took soil samples from peoples' houses, in addition to their gardens and grazing lands.<sup>120</sup> Sawyer told Human Rights Watch that when he heard of this, he advised his staff to no longer do so.<sup>121</sup>

Community members, local government officials, and former employees described EAM's exploration process damaging gardens.<sup>122</sup> When gardens were damaged by excavators or due to trenching, land owners received some compensation.<sup>123</sup> However, when sampling uprooted just a few crops, there was no compensation.<sup>124</sup>

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<sup>118</sup> Human Rights Watch interview with N.M., Lois, Kathile, Kaabong, July 6, 2013.

<sup>119</sup> EAM, "Project Brief," on file with Human Rights Watch, p. 38; Human Rights Watch interview with D.F., sub-county official, Kaabong, July 3, 2013; and with EAM employee 1, Kaabong town, July 5, 2013.

<sup>120</sup> Human Rights Watch interviews with Y.W., Sokodu, Lodiko, Kaabong, July 5, 2013; T.R., Lodiko, Kaabong, July 5, 2013; and T.S. and T.A., Naikoret, Lodiko, Kaabong, July 5, 2013. "There was sampling inside people's homes in Kaabong East and in Lodiko. The GPS would locate the points, and [the workers] would have to take the soil where the GPS," Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013. Another employee confirmed that they would enter people's houses, but would make sure that they covered the hole before leaving: Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>121</sup> Human Rights Watch telephone interview with Dr. Tom Sawyer, October 3, 2013.

<sup>122</sup> "They entered my garden through the middle and took a soil sample from there.... I asked them not to spoil my crops—a mix of maize and sorghum—but two or three were uprooted," Human Rights Watch interview with M.S., Lois, Kathile, Kaabong, July 6, 2013. Human Rights Watch interview with T.S. and T.A., Naikoret, Lodiko, Kaabong, July 5, 2013.

<sup>123</sup> Human Rights Watch interview with D.F., sub-county official, Kaabong town, July 3, 2013.

<sup>124</sup> Human Rights Watch interview with M.B., Lois, Kathile, Kaabong, July 6, 2013. One former EAM employee explained that the system for compensation was complicated and involved the local government, so all that they could do was tell the

Another Lois community member described his experience:

Eight men in yellow uniforms just entered my garden and started excavating. They said nothing. They just started digging and taking my soil. I just looked at them. I was afraid, so, I couldn't get near them. They stepped on some of our crops and damaged them. I asked them, "Why are you destroying our crops". They said, "It will be good for your survival. We are looking for something. It will benefit you...." We were afraid and feared to stop them. They moved around like a rooster, like this was their land.<sup>125</sup>

An employee of EAM said, to the contrary, "We could traverse their garden. They are our people. No one asked us for compensation, but we tried our best [not to damage their gardens]."<sup>126</sup> The local EAM manager said that he would provide compensation, but did not trust what people would do with it:

I would go to the district office ... to work out compensation. I prefer to give [people] food so I would convince them to let me bring them food. If I give them money they just spend it on drink. They're shit. They don't even feed their children.<sup>127</sup>

According to both EAM employees and community members, on several occasions community members chased the company employees off their land.<sup>128</sup> Despite this, when Human Rights Watch asked the field manager about the community's response to EAM's activities, he said "The community welcomed it so much. It helped areas."<sup>129</sup> When asked about the complaints that the company had received, he said, "The first times we received

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families that they would be compensated: Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013. Several community members echoed that they had been told they would be compensated however they were not. Human Rights Watch interviews with Y.W., Sokodu, Lodiko, Kaabong, July 5, 2013, and T.R., July 5, 2013. According to one parish councilor in Lodwar, four gardens were dug in his area, but the people were not compensated: Human Rights Watch interview with L.T., Lodwar, Kaabong East, Kaabong, July 4, 2013.

<sup>125</sup> Human Rights Watch interview with N.M., Lois, Kathile, Kaabong, July 6, 2013.

<sup>126</sup> Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>127</sup> Human Rights Watch interview with EAM employee 3, Kaabong town, July 6, 2013.

<sup>128</sup> Human Rights Watch interviews with J.K., Lopedo, Lodiko, Kaabong, July 5, 2013; Y.W., Sokodu, Lodiko, Kaabong, July 5, 2013; N.M., Lois, Kathile, Kaabong, July 6, 2013; and EAM employee 2, Kaabong town, July 6, 2013.

<sup>129</sup> Human Rights Watch interview with EAM employee 3, Kaabong town, July 6, 2013.

complaints, it was through politicians. Politicians are big shits. I took a lot of time to convince them... There were too many [meetings with community members].”<sup>130</sup>

Four months into their exploration activities, EAM began to improve their communications with community members and recruit workers from the areas being prospected, including by designating a local employee to be the community liaison officer and increasingly hosting community meetings.<sup>131</sup> This appears largely due to the number of complaints that EAM was receiving from district and sub-county local government officials, as well as from community members, increased recognition of the security implications of not doing so, and, within the company, increased reporting of community opposition by Kaabong-based staff to the company’s senior management.<sup>132</sup>

Several months after beginning exploration in these areas, EAM held community meetings in Lopedo, Kathile sub-county, Sokodu, and Lodwar to explain what they were doing in those areas. According to community members interviewed in Lois, the company did not hold a meeting there.<sup>133</sup> In November 2012, EAM finally held a multi-stakeholder meeting in Kaabong town, together with sub-county and district councilors and officials.<sup>134</sup> Despite these efforts, community members indicated lingering confusion as to EAM’s activities and how the community would benefit, and did not feel that they had an opportunity to negotiate, let alone grant or withhold their consent.<sup>135</sup> An artisanal miner in Lopedo said, “We didn’t really accept, he [the company representative hosting the meeting] decided for us.”<sup>136</sup> EAM’s community liaison officer, claimed that he had been “able to convince the people” in the multi-stakeholder meeting, but one of the community members in attendance said that he could not even understand what the people were talking about at

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<sup>130</sup> Human Rights Watch interview with EAM employee 3, Kaabong town, July 6, 2013.

<sup>131</sup> EAM, “Project Brief,” on file with Human Rights Watch; Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>132</sup> Human Rights Watch interviews with EAM employee 2, Kaabong town, July 6, 2013; Dr. Tom Sawyer, October 3, 2013; and EAM employee 1, Kaabong town, July 5, 2013, “The only thing that would concern [senior management] was security issues.” See also EAM, “Project Brief,” on file with Human Rights Watch.

<sup>133</sup> Human Rights Watch interviews with M.M., Lois, Kathile, Kaabong, July 6, 2013, and T.N., Lois, Kathile, Kaabong, July 6, 2013.

<sup>134</sup> Human Rights Watch interviews with K.J., district official, Kaabong, July 5, 2013, T.R., July 5, 2013, with District Land Officer, Kaabong town, July 3, 2013, and EAM employee 2, Kaabong town, July 6, 2013, “All the big people were there.”

<sup>135</sup> Human Rights Watch interviews with K.J., district official, Kaabong, July 5, 2013, and P.C., district officer, Kaabong, July 5, 2013.

<sup>136</sup> Human Rights Watch interview with A.M., Lopedo, Lodiko, Kaabong, July 5, 2013.

the meeting.<sup>137</sup> Further, even in communities where meetings were held, several community members said that they were not aware of any such meetings.<sup>138</sup>

Community members shared a great raft of promises that they had understood EAM to have made, including building boreholes, providing scholarships for students, building a health care center, improving the roads, and employing an agreed number of people from each community. While company employees said that they made it clear that they could only realize these promises “if the gold is good,” this was not understood by many members of the affected communities.<sup>139</sup> One EAM employee said that it was clear that there were no benefits for people during exploration and, at the multi-stakeholder meeting, the resident district commissioner had responded by telling the people to pray for the company’s work so the people could see the benefits.<sup>140</sup>

EAM’s local labor practices were also problematic. This is especially troubling as employment is often touted as the key community benefit to mining operations. According to a former EAM employee, the company began recruiting its 58 contractors on June 8, 2012.<sup>141</sup> This included 40 survey team members, 8 scouting team members, 8 technical and administrative staff, and 2 housekeepers, in addition to its 6 management staff.<sup>142</sup> It then trained them before beginning field work on June 25, 2012.<sup>143</sup>

Community members alleged and EAM senior management has acknowledged that the company’s recruitment processes were initially opaque and most employees were recruited from Kaabong town. Some community members further stated that EAM largely recruited friends, relatives, and neighbors of the local management team.<sup>144</sup> According to Sawyer, when

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<sup>137</sup> Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013, and with E.K., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>138</sup> Human Rights Watch interview with B.M., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>139</sup> Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> East African Gold website, <http://eastafricangold.com/> (accessed October 13, 2013); and EAM, “Project Brief,” on file with Human Rights Watch, p. 1.

<sup>143</sup> Human Rights Watch interview with EAM employee 2, July 6, 2013.

<sup>144</sup> Human Rights Watch interviews with D.F., sub-county official, Kaabong town, July 3, 2013; K.J., district official, Kaabong, July 5, 2013; EAM employee 2, Kaabong town, July 6, 2013; and Dr. Tom Sawyer, October 3, 2013. This was in stark contrast to EAM’s project brief, which recognized the importance of employment opportunities for the community. It provided that the participation of local community members in the workforce would be maximized, that recruitment would be through “a

senior management became aware of this problem they sought to diversify employment and recruit from the affected communities eventually, though with limited success.<sup>145</sup>

All of these employees were employed casually without contracts and several reported not receiving wages that they were owed.<sup>146</sup> Some employees interviewed did not sign for or receive any record of their payments.<sup>147</sup> One employee explained that, “[the field manager] handed out money and there were no records of payments.”<sup>148</sup> District, sub-county, and parish officials all reported receiving complaints about the employment conditions of their community members.<sup>149</sup> The field manager told Human Rights Watch that he provided health insurance for all employees, but no employees interviewed, including mid-level managers, were aware of any such insurance.<sup>150</sup>

Two employees described being underpaid and believed that the money was being kept by their supervisor.<sup>151</sup> Serious questions also arise as to the treatment of employees in some instances. Community members told how they witnessed employees being fired, stripped of their uniform, and thereby forced to walk home naked.<sup>152</sup> One former employee, who described witnessing this twice, said, “[the field manager] would call the employees into a parade, pick out the one he wants, and order him to remove the company uniform....

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transparent local labor force sourcing procedure in consultation with local leaders,” and that unskilled labor would be recruited exclusively from directly affected communities provided that they were able to identify people with the necessary qualification, competence and desired experience. EAM, “Project Brief,” on file with Human Rights Watch.

<sup>145</sup> Human Rights Watch telephone interview with Dr. Tom Sawyer, October 3, 2013.

<sup>146</sup> Human Rights Watch interviews with EAM employee 1, Kaabong town, July 5, 2013; and with B.N., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>147</sup> Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013. Another employee said, “He got the money from his pocket, I did not sign anywhere,” Human Rights Watch interview with B.N., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch interviews with T.R., Lodiko, Kaabong, July 5, 2013, D.F., sub-county official, Lodiko, July 3, 2013, K.J., district official, Kaabong town, July 5, 2013, K.K., district official, Kaabong town, July 5, 2013, P.D., district official, Kaabong town, July 5, 2013.

<sup>150</sup> Human Rights Watch interview with EAM employee 3, Kaabong town, July 6, 2013.

<sup>151</sup> Human Rights Watch interviews with T.R., sub-county official, Lodiko, Kaabong, July 5, 2013; K.J., district official, Kaabong, July 5, 2013; and EAM employee 1, Kaabong, July 5, 2013. One employee said that when he asked his manager why he had received only a portion of the pay one week, his manager told him to be patient. When this happened again the following week, the manager told him that the money was not available. He was not paid at all the third week, so he resigned: Human Rights Watch interview with B.N., Lopedo, Lodiko, Kaabong, July 5, 2013. Another employee said that he was paid only half of the promised 80,000 shillings, two weeks running. Human Rights Watch interview with M.T., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>152</sup> Human Rights Watch interviews with K.J. district official, Kaabong, July 5, 2013; B.N., Lopedo, Lodiko, Kaabong, July 5, 2013; and M.T., Lopedo, Lodiko, Kaabong, July 5, 2013. Dr. Sawyer did not follow up with Human Rights Watch to discuss the labor issues, as agreed on October 3, 2013.

People did not have other clothes so when he ordered you to remove the uniform, you were naked.”<sup>153</sup> While EAM stated in its project brief that a grievance handling and management procedure will be put in place to handle all complaints regarding the operations, Human Rights Watch found no evidence that such a mechanism was created or used.

Human Rights Watch researchers had conversations with several EAM employees or former employees in Kaabong town and in Kampala in July 2013. In response to a follow-up letter sent to EAM in September 2013 (see Annex I), Human Rights Watch researchers interviewed Sawyer over the telephone in October. At the conclusion of this interview, it was agreed that we would schedule a further conversation to discuss labor concerns, however since then Sawyer has not responded to email correspondences from Human Rights Watch researchers.

## **Jan Mangal: Moroto District**

Jan Mangal Uganda Ltd. was incorporated in Uganda on May 5, 2011, by an Indian businessman who owns jewelry showrooms in Gujarat, India.<sup>154</sup> Sources told Human Rights Watch that Jan Mangal’s directors became involved in mining operations in Uganda after contact with current State Minister for Housing, Hon. Sam Engola, and Karamoja businessman Cornelius Lorika Kodet.<sup>155</sup>

Jan Mangal employees arrived in Moroto together with machinery such as excavators and began excavation work without any license or paperwork on land in Moroto where another company, Mega, already possessed an exploration license.<sup>156</sup> The first the community knew of this license was upon Jan Mangal’s arrival.<sup>157</sup> Immediately, community members

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<sup>153</sup> Human Rights Watch interview with B.N., Lopedo, Lodiko, Kaabong, July 5, 2013. Another employee described the manager calling him out during a parade, ordering him to strip naked, and firing him. He said, “He cheated me and embarrassed me. When you asked him something he would mistreat you for asking. He was difficult to predict.” Human Rights Watch interview with M.T., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>154</sup> Documents of Incorporation of Jan Mangal (U) Ltd., on file with Human Rights Watch, and Human Rights Watch interview with CEO of Jan Mangal, Rupa, Moroto, July 8, 2013.

<sup>155</sup> Human Rights Watch interviews with journalist, Moroto town, July 7, 2013, and community organizer, Moroto town, July 7, 2013. For the incorporation documents for Jan Mangal see, In the Matters of the Companies Act and the Matter of MS. Jan Mangal (U) Ltd., March 12, 2012 and In the Matters of the Companies Act and the Matter of MS. Jan Mangal (U) Ltd., April 10, 2012, on file with Human Rights Watch. At one point in March-April 2012, Engola was briefly a shareholder.

<sup>156</sup> Human Rights Watch interviews with journalist, Moroto town, July 7, 2013, and two district officials, July 8 and 9, 2013.

<sup>157</sup> Human Rights Watch interview with journalist, Moroto town, July 7, 2013.

opposed operations and threatened to damage machines. One news report indicated that community residents “almost lynch[ed] two of their workers who had accompanied the machines to the site.”<sup>158</sup> Eventually, the machines were moved to the district and the government and Jan Mangal’s directors began discussing where the company could mine.

Throughout Human Rights Watch’s research both community residents and local government officials voiced serious concerns for how Jan Mangal entered the district, how the company came to believe it had appropriate permissions and licenses for the land on which it ultimately set up operations, and how the company had operated in the district since its arrival.

Central government officials, including at least three parliamentarians representing Karamoja and Engola, came to Moroto to broker a solution in July 2012 and held a meeting with district councilors.<sup>159</sup> One Rupa sub-county councilor told Human Rights Watch, “Our people would have refused [to allow Jan Mangal to mine], but when they came with such big leaders, our people could not reject.”<sup>160</sup>

On July 20 the company purchased exploration rights from the DGSM to a small plot of land on the Kenyan border in Rupa sub-county, Moroto district, near the communities of Nakiloro and Nakibat.<sup>161</sup> According to the Rupa sub-county councilor, Rupa residents asked municipal officials why there had, again, been no meeting with them to discuss the company’s plans but at that point the arrangement had been decided.<sup>162</sup> Some felt that discussions around the project prompted tensions between communities and to some extent, between ethnic groups. In Rupa most residents are Matheniko while in Katikekile residents are largely Tepeth. “The people of Katikekile are asking why Jan Mangal is looking only to Rupa. I know that the elders and [Land Board] told the people that now, we better accept what the government says in order to develop our land.”<sup>163</sup>

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<sup>158</sup> Stephen Ariong, “Investors get nod to mine gold.” *The Daily Monitor*, <http://www.monitor.co.ug/News/National/Investors-get-nod-to-mine-gold/-/688334/1445008/-/ukskmoz/-/index.html>.

<sup>159</sup> Human Rights Watch interview with community organizer, Moroto town, July 7, 2013.

<sup>160</sup> Human Rights Watch interview with B.O., Rupa, Moroto, July 8, 2013.

<sup>161</sup> See Spatial Dimension, “Uganda Mining Cadastre Map,” 2013, <http://www.flexicadastre.com/uganda/>, exploration license 1001, and Human Rights Watch interview with B.F., Rupa, Moroto, July 8, 2013. Sometimes, Nakibat is also referred to as Nakibati.

<sup>162</sup> Human Rights Watch interview with B.O., Rupa, Moroto, July 8, 2013.

<sup>163</sup> *Ibid.*

Local government officials and some residents told Human Rights Watch that it was a good solution because the area was thought to be insecure with a high risk of raids from the neighboring Kenyan Turkana tribes and the presence of the company, along with the soldiers who would be deployed to protect them, would bring some security to the area.<sup>164</sup> As one community organizer told Human Rights Watch, “people thought, ‘there’s a place where enemies pass, so we can put them there.’”<sup>165</sup>

The company did not systematically engage in soil sampling to determine gold deposits as part of exploration. It quickly placed industrial grade gravel crushers and sifters on the hillside. When Human Rights Watch first visited the site on June 17, 2013—before Jan Mangal had a mining lease—the land was already fenced off, guarded by UPDF soldiers, and the equipment was installed.<sup>166</sup>

Several people in Moroto noted that Jan Mangal’s operations became increasingly reliant on the town speaker to deal with the local community and smooth business relationships with government authorities. He was crucial to securing the surface rights agreement that eventually permitted Jan Mangal to apply for and receive the mining lease, but the way in which the negotiations proceeded caused massive controversy and has left residual and ongoing tension in the community.<sup>167</sup>

The town speaker selected elders to come to Kampala to meet with the company and central government representatives on February 14 to 18, 2013. Some people in the communities felt these elders were not appropriate and not representative of the affected communities, rather, they were aligned with the town speaker.<sup>168</sup> According to a community member who was invited to the Kampala meeting, “Achilla” (not his name) and his fellow elders were chosen because they were owners of the land on which Jan Mangal planned to mine.<sup>169</sup> He said that he was informed that representatives of Jan Mangal had

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<sup>164</sup> Human Rights Watch interview with N.O., Nakiloro, Rupa, Moroto, July 8, 2013; M.O., Nakiloro, Rupa, Moroto, July 8, 2013; U.B., Rupa, Rupa, Moroto, July 8, 2013; and “Achilla,” Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>165</sup> Human Rights Watch interview with community organizer, Moroto town, July 7, 2013.

<sup>166</sup> Human Rights Watch site visit, June 2013.

<sup>167</sup> Human Rights Watch interview with B.F., Rupa, Moroto, July 8, 2013.

<sup>168</sup> Human Rights Watch interviews with P.A., Masupo, Rupa, Moroto, July 8, 2013, and “Achilla,” Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>169</sup> Human Rights Watch interview with “Achilla,” Nakiloro, Rupa, Moroto, July 8, 2013.

talked to district officials, who had told them to mobilize 10 elders from the community.<sup>170</sup> The chairman of Ngigolito-Monia Communal Land Association also attended.<sup>171</sup> Jan Mangal said they needed a contract before they started work.<sup>172</sup> According to two elders who attended, they were each compensated 200,000 to 300,000 Ugandan shillings (\$80 to \$120).<sup>173</sup> According to one community member, when the Kampala delegation returned they gathered the community and said they had accepted the company's presence in their area. They said, "When investors come we must accept them with one heart and never ridicule them."<sup>174</sup> But upon return from Kampala, there was no official *akriket*—a traditional meeting led by elders to disseminate information important to the community.<sup>175</sup>

There is immense confusion within the community over what certain community representatives have apparently agreed with Jan Mangal and when. While the general belief within the community is that the delegation of elders agreed to the surface rights agreement in Kampala, that agreement is actually dated September 12, 2012. According to community member Achilla, Jan Mangal had initially sought permission to mine on the land for 40 years. He believes that while some in the community have agreed to allow Jan Mangal to mine on the land, they have not agreed the number of years as they had told Jan Mangal 40 years was too long.<sup>176</sup> The agreement, apparently signed by eight elders, states that the term of the lease is 21 years with effect from the granting of the mining lease.<sup>177</sup> That is the term of a mining lease under Uganda's mining laws.<sup>178</sup>

When discussing the benefits that Jan Mangal has agreed to provide for the community, Achilla spoke of employing community members on the mine and providing community members with soil for them to extract gold. However, he said that Jan Mangal has not yet employed any members of his community, though some have been employed as cleaners,

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<sup>170</sup> Human Rights Watch interview with "Achilla," Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>171</sup> Human Rights Watch interview with B.F., Rupa, Moroto, July 8, 2013.

<sup>172</sup> Human Rights Watch interview with "Achilla," Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>173</sup> *Ibid.*, and P.A., Rupa, Moroto, July 8, 2013.

<sup>174</sup> Human Rights Watch interview with N.O., Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>175</sup> Human Rights Watch interview with "Achilla," Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>176</sup> *Ibid.*

<sup>177</sup> Surface Rights Agreement between Apaatod, Lodonga Lokwangoria, Engoriat, Apakorilem, Longora John Ekamaripus, Thiokan Loitakongu, Ocwee Engoriangor, Loput Etodongole, Elders of Rupa sub-county and Katikekile sub-county in Moroto District and Jan Mangal (U) Ltd., Surface Rights Agreement, September 12, 2012, on file with Human Rights Watch.

<sup>178</sup> The Mining Act, 2003.

and he was unsure whether the company was providing soil to the community so they could sift for gold.<sup>179</sup> A district councilor said that if anyone is benefiting from Jan Mangal's mining it is the sub-county and municipal officials; "but for the locals inside the sub-county where the mining is happening, they have not seen any benefits."<sup>180</sup>

The surface rights agreement is brief, totaling one-and-a-half pages, and vague, promising that Jan Mangal will pay an "agreeable fee to the community leaders as part of social corporate responsibility."<sup>181</sup> The agreement states that "The elders and management of Jan Mangal will later sit to agree on activities that the investor will do for them as part of social responsibility." The town speaker, who was by all accounts instrumental in the negotiation of this document, explained this by saying that he "thought [the agreement] should focus on the livelihood of the people. I stood strong on that."<sup>182</sup> In exchange Jan Mangal is explicitly entitled to the quiet enjoyment of the land without any interference from any person and, after the expiration of the lease period, will level the land with soil dug from the quarry site. This agreement is woefully inadequate to protect the rights of the traditional land owners.

In addition to the surface rights agreement, according to the town speaker, Jan Mangal has also signed a memorandum of understanding with elders for the land on which Jan Mangal has built a camp. Human Rights Watch has not obtained a copy of this agreement. According to the speaker, the agreement was signed by ten elders each from Rupa and Katikekile, and provides 200 million Ugandan shillings (\$80,000) for a commercial structure, 30 million Ugandan shillings (\$12,000) per year for doctors, and 40 million shillings (\$16,000) per year for a peace dialogue.<sup>183</sup>

Human Rights Watch researchers had conversations with Jan Mangal's leadership during a site visit in Moroto in July 2013. There was no response to a follow-up letter sent to the Kampala office in September (see Annex II).

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<sup>179</sup> Human Rights Watch interview with "Achilla," Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>180</sup> Human Rights Watch interview with B.O., Rupa, Moroto, July 8, 2013.

<sup>181</sup> Jan Mangal (U) Ltd., Surface Rights Agreement, September 12, 2012, on file with Human Rights Watch.

<sup>182</sup> Human Rights Watch interview with Cesar Lotume, town speaker, Moroto town, July 9, 2013.

<sup>183</sup> Ibid.

## DAO Uganda: Moroto District

DAO Uganda Ltd. is a Ugandan limited liability company incorporated on August 1, 2012, by two business men, Mohammed Aoun and Qasim Askari, based in Kuwait.<sup>184</sup> Aoun is the chairman of the Kuwaiti construction company DAO Group.<sup>185</sup> DAO's Ugandan holdings include a cement plant in Budaka, southeast Uganda which was opened in November 2012.<sup>186</sup> In Karamoja, DAO acquired two exploration licenses in February and June 2013, both in Rata village, which sits on an area of disputed border between Rupa and Katikekile sub-counties, Moroto District.<sup>187</sup> The company's objectives in Moroto are to mine marble dimension stones—large slabs with specific grain patterns—from a mountain side.<sup>188</sup> Ultimately, DAO plans to construct a factory to process and polish the stones on site before transporting to Mombasa, Kenya, for international sales.<sup>189</sup>

Marble mining in the area is not new. Local community members had broken the mountain side into small marble bricks and sold them to a Ugandan business man known as Hajji Siraj for years. Siraj had an exploration concession on the land but no real capacity to mine at a large scale. He sold his licenses to DAO in 2012 for reportedly over \$300,000 which prompted many changes to the area.<sup>190</sup> Dimension stone work is highly skilled so the company brought in Egyptian miners who held the specialized knowledge required. The company consulted with the local population on several occasions because they needed to establish a compound for its workers where they could live and cook.

The country manager, Arnold Ananura, told Human Rights Watch:

Identifying the surface rights owners is very complicated. We started with 500 families and we had about five meetings. I didn't know who owns the

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<sup>184</sup> Certificate of Incorporation of DAO Africa Limited. On File with Human Rights Watch.

<sup>185</sup> DAO Group, 2011, <http://www.daogroup.net>.

<sup>186</sup> "Kuwaiti based company opens cement factory in Uganda," *Africa Review*, November 28, 2012, <http://www.africanreview.com/construction-a-mining/cement/kuwait-based-company-opens-cement-factory-in-uganda>.

<sup>187</sup> See Spatial Dimension, "Uganda Mining Cadastre Map," 2013, <http://www.flexicadastre.com/uganda/>, exploration license areas, EL 1165 and EL 1090.

<sup>188</sup> Dimension stones are large slabs, most often separated from the bedrock by very precise and delicate techniques, such as a diamond wire saw or diamond belt saws. ASTM International, "ASTM C503/C503M-10, Standard Specification for Marble Dimension Stone," 2014, <http://www.astm.org/Standards/C503.htm> (accessed January 21, 2014).

<sup>189</sup> Human Rights Watch interview with Arnold Ananura, DAO, Kampala, July 12, 2013.

<sup>190</sup> Human Rights Watch interview with H.E., district official, Kampala, July 18, 2013.

land. And I was concerned about not engaging with the wrong community. I don't want to deal with the wrong guys. I need to manage my risk. So I told them, I can help you mobilize people to build consensus.<sup>191</sup>

According to members of the local community, DAO held at least three meetings in 2013 with community members to explain their plans and try to determine who and how to compensate the correct people for the use of the land.<sup>192</sup> Controversy continues and clearly some interviewed by Human Rights Watch felt they had been excluded,<sup>193</sup> but some said the company had done a decent job of sorting out compensation in a transparent way, particularly compared to nearby Jan Mangal.<sup>194</sup>

On May 31, 2013, DAO concluded a memorandum of understanding with a group that became known as the “Rata community surface rights owners.” As per the agreement, the company agreed to compensate the community members for the land, as well as tools and stones that had been buried when the company’s trucks entered the property. Furthermore, the company agreed to establish a marble factory in Rata, construct a health center to be “operationalized” by the district government, recognize and encourage artisan miners and help their access to market, train and employ local people, provide scholarships for needy, qualified secondary school students, upgrade and maintain the road, and provide water either via a borehole or a well. In exchange, the community agreed to accept the compensation and surrender their surface rights to the land in good faith, to form a community based association to receive royalties, to ensure proper use of the borehole, to provide land for the health center, and to identify students for scholarships.<sup>195</sup>

At the end of the three-month process of meetings and consultations, according to available records, 36 individuals received 2,320,000 Ugandan shillings (\$928) each; two received 600,000 Ugandan shillings (\$240) each; and nine received 500,000 Ugandan shillings (\$200) each. The compensation for the Rata area marble mining concession,

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<sup>191</sup> Human Rights Watch interview with Arnold Ananura, DAO, Kampala, July 12, 2013.

<sup>192</sup> Human Rights Watch interview with U.B., Rupa, Moroto, July 8, 2013, and O.O., Rata, Moroto, July 8, 2013.

<sup>193</sup> Human Rights Watch interview with O.O., Rata, Moroto, July 8, 2013.

<sup>194</sup> Human Rights Watch interview with U.B. and others, Rupa, Moroto, July 8, 2013.

<sup>195</sup> Memorandum of Understanding with DAO, signed by Mohammed Aoun, and the community, known as “the Rata community surface rights owners,” May 31, 2013, Moroto, Uganda, on file with Human Rights Watch.

according to the agreement, totaled 89,220,000 Ugandan shillings, a little over \$35,000. DAO's representative said he paid out 140 million Ugandan shillings (\$56,000) total.<sup>196</sup>

There has been some debate about how to set compensation rates, especially given the multiple and overlapping land usage in Karamoja. DAO's company representative said that he used the official government valuation for outright purchase of the land, even though he is not buying the land. According to him, that official figure is 560,000 Ugandan shillings (\$224) per acre so that is what he used to calculate compensation.<sup>197</sup> Local activists complained that those official values are from 1996 and that given the money to be earned by DAO, valuations should be higher.<sup>198</sup> However, current laws do not include usage of the value of minerals in determining the land value.

This issue of value is particularly challenging in light of the dramatic impact that DAO's marble mining has and will have on the land and the environment. While DAO's environmental impact assessment suggests that there be "progressive restoration" of the mine area, the mountain side is literally being slowly disassembled.<sup>199</sup> It is not clear what topography or quality of land the community will receive when the mining activities are complete in the future or if they will be able to return to their previous usages. Uganda's mining law states that "the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land upon which the damage occurred has been reduced by reason of the damage,"<sup>200</sup> but that would appear to be unknowable at the present time. If DAO will be willing to further compensate residents at the end of active mining, once an assessment of the impact to the land could be determined, remains unclear.

DAO's representative in Uganda told Human Rights Watch that the company is committed to benefits accruing for the local residents but that it will take time before the operation can turn a profit and provide jobs and other resources. DAO does intend to build a factory

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<sup>196</sup> Human Rights Watch interview with Arnold Ananura, DAO, Kampala, July 12, 2013. It is not clear what accounts for the discrepancy between the document and his quoted figure, but it is possible more people were added later for compensation.

<sup>197</sup> Ibid.

<sup>198</sup> Human Rights Watch interview with NGO employee, Kotido, July 7, 2013.

<sup>199</sup> Human Rights Watch field visits.

<sup>200</sup> The Mining Act, 2003, act. 82(1)(ii).

on the land but when that will occur is contingent on several factors and who DAO will be able to employ from the local community is not clear. The representative pointed out that currently he has very few positions for unskilled workers and that the dimension stone work is highly skilled. He commented that the challenge in Karamoja is what he termed a “dependency syndrome.” “I cannot employ them. I cannot tell them to go away,” he said. “We need to manage them and to sustain their economic livelihood.”<sup>201</sup>

DAO’s lengthy environmental impact assessment (EIA) misses some key aspects of the impact of the mining activities on the affected community. The EIA states that “background noise levels are low due to remoteness of the areas. The only source of noise is from rustling leaves due to wind and noise from trucks ferrying marbles from the small scale miners.”<sup>202</sup> But obviously, the mining itself is a major source of noise and air pollution for those living nearby. Human Rights Watch observed that the drilling machines cutting through the stone churn out tremendous noise and dust particles that covered all the vegetation in the surrounding area. The noise and dust has not gone unnoticed by the local community. One local chairman noted, “Workers wear masks, the community doesn’t.”<sup>203</sup>

But the EIA concludes “there are no environmental and social obstacles ... if the proposed mitigation measures inter alia are implemented.”<sup>204</sup> The benefits listed include the importance of raw materials for the construction industry, employment and roads with a minimal impact to fauna and flora.<sup>205</sup> While benefits to the community are discussed in vague terms throughout the document, there is no conclusion as to how the affected residents will be fundamentally better off at the end of the mine’s life.

Human Rights Watch met with DAO’s Kampala-based country manager twice in person, but there was no response to a follow up letter in September to the chief executive officer despite phone calls asking for such a response (see Annex III).

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<sup>201</sup> Human Rights Watch interview with Arnold Ananura, DAO, Kampala, July 12, 2013.

<sup>202</sup> DAO’s EIA, on file with Human Rights Watch.

<sup>203</sup> Human Rights Watch interview with B.R., sub-county official, Rupa, Moroto, July 9, 2013.

<sup>204</sup> DAO’s EIA, on file with Human Rights Watch.

<sup>205</sup> Ibid.

## IV. Rights Abuses and Risks

### Land Usage and Surface Rights

“This is a very bad situation for us, bad for my people.... No one consults us, and no one has told us what will happen next. Someone comes and occupies your land or takes your soil; it is something we haven’t really experienced before. People will die. People will die for this land and this gold. We cannot survive without them.”

—Dodoth elder of Sokodu, Kaabong, July 4, 2013

“Knowing who is entitled within the community is not hard for them—they know. But in terms of documentation, it is difficult. We have a problem.”

—Sarah Kulata Basangwa, the Uganda Land Commission, July 11, 2013

The potential for the people of Karamoja to benefit from increasing mining on land they have used for generations largely depends on their ability to prove ownership rights over the land where minerals are being explored and eventually extracted. Land among the peoples of Karamoja is generally held communally,<sup>206</sup> though a great deal of land in the region is held by the Uganda Wildlife Authority (UWA) and the National Forest Authority (NFA), which has historically been a source of significant tension and curtailed mobility.<sup>207</sup>

Ugandan law upholds the rights of customary land owners, in principle. In practice, asserting those rights and securing evidence of that ownership has been nearly impossible

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<sup>206</sup> “Customary tenure in Karamoja, indeed as in other parts of the country is governed under a legal dualism whereby the statutory legal system is superimposed on the customary system of land tenure, thus a co-existence of multiple sets of rules and laws. The two legal systems, institutions and enforcement mechanisms to control how people access, control and transfer land, are without clear hierarchy and points of assimilation.” See Margaret A. Rugadya, Herbert Kamusiime, and Eddie Nsamba-Gayiiya, “Tenure in Mystery, Status of Land under Wildlife, Forestry and Mining Concessions in Karamoja Region, Uganda,” August 2010, <http://www.celep.info/wp-content/uploads/downloads/2011/03/Final-Report-Status-of-Karamoja-Land.pdf> (accessed December 3, 2013), p. 35.

<sup>207</sup> Uganda’s 2013 Land Policy notes that, “[i]n Karamoja, the colonial government set aside extensive tracts of land for hunting and conservation. In 1962, 94.6 percent of the land in Karamoja was under reserved status. This status was reviewed by the Uganda Wildlife authority in 1998 and was reduced to 53.8 percent of the total land area.” See Ministry of Lands, Housing and Urban Development, Uganda National Land Policy, February 2013, p. 2. “Conservation activities of NFA and UWA are perceived in the communities as a source of tenure insecurity.” Rugadya, Kamusiime, and Nsamba-Gayiiya, “Tenure in Mystery,” <http://www.celep.info/wp-content/uploads/downloads/2011/03/Final-Report-Status-of-Karamoja-Land.pdf>, p. 39.

for communities, putting them in jeopardy when private investment and development projects are pursued on their lands. It also creates tension between companies and the community and within the community as companies arrive seeking to mine, negotiate surface rights agreements, and eventually pay royalties to affected land owners. Proof of ownership is important for communities to be able to protect themselves from outsiders claiming their land. Uganda's Land Policy recognizes this problem in resource-rich areas, stating, "[c]ases of grabbing of land from indigenous communities are common, as customary owners are insecure because they do not possess formalized rights over land to benefit from sharing of royalties as provided under the constitution."<sup>208</sup>

Customary land holders have a right to a certificate of customary ownership under the 1995 constitution.<sup>209</sup> The 1998 Land Act lays out the procedure for how such certificates should be issued but the process is heavily contingent on the existence and functionality of the Area Land Committee and the ability of the applicant to follow complex procedures and pay required fees.<sup>210</sup> Area land committees are weak, lack funding, personnel, and technical knowledge to adequately perform their role.<sup>211</sup> One 2010 study called the system "near comatose."<sup>212</sup> Some have also criticized the design of the certificate itself as not being attuned to traditional community structures such as clans and sub-clans and for failing to ensure that women's rights are also protected.<sup>213</sup>

In the absence of effective government regulation and oversight, Ugandan nongovernmental organizations, such as Uganda Land Alliance (ULA)<sup>214</sup> and Land and Equity Movement Uganda (LEMU),<sup>215</sup> are working to educate the communities throughout

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<sup>208</sup> Ministry of Lands, Housing and Urban Development, Uganda National Land Policy, February 2013, p. 3.

<sup>209</sup> The Constitution of the Republic of Uganda, 1995, art. 237(4)(a).

<sup>210</sup> The Land Act, 1998, sections 5 and 9.

<sup>211</sup> Human Rights Watch interview with district officer, Kaabong town, July 5, 2013; and Uganda Land Alliance, Kotido town, July 7, 2013.

<sup>212</sup> Rugadya, Kamusiime, and Nsamba-Gayiyi, "Tenure in Mystery," <http://www.celep.info/wp-content/uploads/downloads/2011/03/Final-Report-Status-of-Karamoja-Land.pdf>, p. 44

<sup>213</sup> See Northern Uganda Land Platform, "Certificates of Customary Ownership (CCOs) in Northern and Eastern Uganda: A Challenge Worth Thinking Through," Issue Paper, July 2013.

<sup>214</sup> ULA has an office in Kotido district and works with communities throughout some districts of Karamoja.

<sup>215</sup> LEMU focuses its work in Northern Uganda. The organization has noted that while certificates of customary title are important to protecting land rights based, "successful implementation on the ground faces far too many obstacles under the current regime. Numerous problems hinder proper land administration in Uganda, including: parallel clan justice and Local Council court systems, greedy individuals within families who seek to obtain the land of vulnerable communities, backlogged and bribable courts, poor enforcement for land-related judgments, and the sheer cost of hearing land cases caused by both the need to visit the land in question and frequent court adjournments." See Northern Uganda Land Platform, "Certificates of Customary Ownership (CCOs) in Northern and Eastern Uganda."

Uganda about the Land Act and lobby the Ministry of Lands to create an effective registration process to protect communal land rights. In Karamoja, ULA educates communities about the Mining Act as well and helps communities to form communal land associations which can apply for certificates of customary ownership. Despite receiving applications for several communities in Karamoja, the Land Board, an autonomous government body established by the constitution,<sup>216</sup> has not issued such certificates.<sup>217</sup> As the head of Uganda Land Alliance told Human Rights Watch, “Everybody in government feigns ignorance about the people’s problems with holding land. They don’t address the problem of land ownership for communal land. The ministry is sitting on applications involving communal land title.”<sup>218</sup>

One central concern voiced by Ugandan civil society is that there is a real risk that the practical approach to customary ownership will end up looking in practice as freehold or leasehold ownership, and communities will end up losing their system of shared ownership.<sup>219</sup> A commissioner of the Land Board told Human Rights Watch that she had concerns that having large numbers of land owners on one certificate is an impediment to land governance and development. She said:

Five hundred people as owners of one piece of land? Especially if there is economic activity and it is different from their way of life? Big land ownership doesn’t encourage development.... We advocate to register land according to what is on the ground. We are moving a lot from that communal way of landholding to the individual ways.<sup>220</sup>

Her sentiments reflect the concerns of one indigenous rights expert who told Human Rights Watch:

Whilst legislation in Uganda is currently in place to register customary tenure, it is clear that it is designed for individuals who seek to register their

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<sup>216</sup> The Constitution of the Republic of Uganda, 1995, art. 238(1).

<sup>217</sup> According to the Land Board, as of July 2013, they had 68 pending applications for certificates of customary certificate of land ownership, but were waiting to conduct a verification process before issuing any titles. At the time of writing, there were rumors that some certificates of customary ownership had been issued in Kasese district, but that could not be confirmed.

<sup>218</sup> Human Rights Watch interview with Esther Obaikol, Uganda Land Alliance, Kampala, June 12, 2013.

<sup>219</sup> Ibid., and Northern Uganda Land Platform, “Certificates of Customary Ownership (CCOs) in Northern and Eastern Uganda.”

<sup>220</sup> Human Rights Watch interview Sarah Kulata Basangwa, Land Commissioner, Land Commission, Kampala, July 11, 2013.

customary claims and that the government has no intention of allowing communal claims to gain legitimacy through this system. Given that no communal land claims have been issued with customary certificates despite their applications being submitted, it seems clear that the government is at best indifferent and at worst resistant to communal land claims. It is therefore virtually impossible for Karamojong communities to use the existing land registration system in Uganda to defend their lands and livelihoods.<sup>221</sup>

Community members told Human Rights Watch that they feared that their land had already been acquired or “grabbed” by investors or middlemen without their knowledge.<sup>222</sup> They did not have evidence of these concerns but the presence of the foreign companies operating on the land without having consulted them further entrenched this fear. The companies’ lack of understanding of how peoples in Karamoja use land was often raised as another cause for concern. As one community organizer said, “Pastoralism lives here, we are pastoralists. The land looks vacant but it is not.”<sup>223</sup>

These issues have come to national attention. In February 2012, parliamentarians representing Karamoja questioned the central government about the role of private investors in land deals in the region.

“Why is our land being given out to dubious investors?” Karamoja parliamentarian Dr. John Baptist Loki was quoted as saying in the media. “The elders cannot read or write; so how can one say they sign the contracts? They are just given small *posho* [local corn meal] and *ajon* [a local brew] and told to thumb-print here and there. It is inhuman to exploit someone’s ignorance and lack of exposure for selfish reasons.”<sup>224</sup>

Allegations of illegal land grabs in the nearby district of Nakapiripirit, also in Karamoja, reveal the flaws in land regulation and the power investors, especially those believed to be

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<sup>221</sup> Human Rights Watch email communication with Dr. Christopher Kidd, social anthropologist and consultant to the African Commission’s Working Group on Indigenous Populations and Communities in Africa, December 20, 2013.

<sup>222</sup> Human Rights Watch interviews with district land officer, Kaabong town, July 3, 2013; D.F., sub-county official, Kaabong town, July 3, 2013; and P.A., Rupa, Moroto, July 8, 2013.

<sup>223</sup> Human Rights Watch interview with community organizer, Moroto town, July 7, 2013.

<sup>224</sup> Polly Kamukama, “Karamoja leaders decry land grabbing,” *The Observer*, February 17, 2012, [http://www.observer.ug/index.php?option=com\\_content&task=view&id=17205&Itemid=114%20](http://www.observer.ug/index.php?option=com_content&task=view&id=17205&Itemid=114%20) (accessed December 31, 2013).

close to ruling elites, can wield.<sup>225</sup> In May 2012, parliamentarians claimed that over 8,000 hectares of land in Nakapiripirit had been sold to two companies “without the consent of the customary land rights owners.”<sup>226</sup> The case is currently pending before the courts.

The minister of state for Mineral Development, Hon. Peter Lokeris, who is from Karamoja himself, reiterated to Human Rights Watch that the problem of “elite capture” in land deals in Uganda was a serious problem, and that there is sometimes collusion to take land and take advantage of “the ignorance of the masses.”<sup>227</sup>

Without some legal reform and significantly greater efforts from the government to ensure communities in Karamoja can legally assert their land ownership rights in the very near future, communities may well end up unable to assert their rights during negotiations for surface rights agreements or claim benefits and/or royalties once active mining has begun. The exploration and mining licensing regime is already functioning at a much faster pace than the system to appropriately ensure communal land rights in Karamoja, leaving communities vulnerable to exploitation and land rights violations.

## Inadequate Community Consultation and the Absence of Consent

“If companies come, as a visitor comes to your home, they should first consult you. They should consult us, make us an offer, before they start work.... Instead, they go to the government only, they don’t come to us.... You can tell whether a government is good by whether they consult with us [in making decisions that affect us].”

—Dodoth elder, Kaabong, July 4, 2013.<sup>228</sup>

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<sup>225</sup> There have also been allegations of illegal land grabs in Kalangala district for a palm oil plantation and for a coffee plantation in Mubende district. For details, see Edgar Batte and Martin Ssebuyira, “Kalangala oil palm project tainted by land grabbing,” *Daily Monitor*, October 19, 2013, <http://www.monitor.co.ug/SpecialReports/Kalangala-oil-palm-project-tainted-by-land-grabbing/-/688342/2038496/-/76wooez/-/index.html>; and “Uganda, Land grabs in Mubende,” FIAN, <http://www.fian.org/what-we-do/case-work/uganda-mubende/>. See also, Haggai Matsiko, “The Great Land Grab,” *The Independent*, January 3, 2012, <http://www.independent.co.ug/cover-story/5058--the-great-land-grab>.

<sup>226</sup> Mercy Nalugo, “Directors of companies cited in Karamoja land grabbing named,” *Daily Monitor*, May 24, 2012, <http://mobile.monitor.co.ug/News/Directors+of+companies+cited+in+Karamoja+land+grabbing+named/-/691252/1412232/-/format/xhtml/-/140wrqhl/-/1347727912000> (accessed December 31, 2013).

<sup>227</sup> Human Rights Watch interview with Hon. Peter Lokeris, Minister of State for Mineral Development, Kampala, July 12, 2013.

<sup>228</sup> Human Rights Watch interview with L.R., Dodoth elder, Kaabong town, July 4, 2013.

The Ugandan government did not make any attempt to consult with the indigenous peoples in Karamoja prior to granting exploration licenses to companies over the peoples' lands, either through the DGSM, the district governments, or sub-county governments. Instead they made deals with companies and effectively let them initiate work without ever consulting with the people whose land had been allocated for these projects.

According to community members and local government officials, and acknowledged by representatives of each of the companies in their discussions with Human Rights Watch, none of the mining companies featured in this report sought the consent of the traditional land owners or consulted with the communities prior to commencing exploration, nor does Ugandan law require this.

Government procedures require a district official to sign off before licensing a company, but traditional indigenous decision makers are excluded. As a district government official explained, "The elders were not factored into the discussion.... Their interests should be taken care of by sub-county leadership."<sup>229</sup> Some community members said that when they asked questions of the East African Mining (EAM) employees they were told, "We have done what we needed to do; our documents have come from Kampala to here."<sup>230</sup> Similarly, a Kaabong local official said, "In obtaining license, communities are not involved, only the district.... [Exploration] isn't a big thing as [it does not involve] title."<sup>231</sup>

Community members were very aware of what land belonged to their community, what they expected of those who wanted to operate on their land, and what they expected of the government. A woman in Lois, Kaabong, told Human Rights Watch how she wished that before a company came to her area, it would first write a letter to the locals and hold meetings. "Then, they should promise what they will provide us and we will agree."<sup>232</sup> A female artisanal miner in Lopedo, Kaabong said:

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<sup>229</sup> Human Rights Watch interview with K.K., district official, Kaabong, July 5, 2013.

<sup>230</sup> Human Rights Watch group interview, Lodwar, East Kaabong, Kaabong, July 4, 2013. Similarly, another man said, "When those people came, we talked to them. When we raised our voices, they said that they have letters authorizing them to carry samples." Human Rights Watch interview with M.S., Lois, Kathile, Kaabong, July 6, 2013.

<sup>231</sup> Human Rights Watch interview with P.D., district official, Kaabong town, July 5, 2013.

<sup>232</sup> Human Rights Watch interview with M.S., Lois, Kathile, Kaabong, July 6, 2013.

It would be good if the company consulted the council of elders, then the women, then the youth.... They could always get in touch with us women, sit with us, introduce themselves and tell us why they are here, tell us their aims and we would tell them what we wanted and expected from them.<sup>233</sup>

Community members consistently emphasized that their dependence on and relationship with the land for livelihoods renders consultation all the more important.<sup>234</sup> A growing number of communities in some locations of Karamoja are increasingly reliant on artisanal mining in the dry season for their livelihood, intensifying community members' concerns about the impact of exploration or mining activities.

In both Kaabong and Moroto, community members Human Rights Watch interviewed explained that no one from the company or the government had ever spoken to them in detail about what activities were actually proposed on their land and the likely impacts on the community and their environment, particularly water, before starting exploration. The lack of information and consultation has led to mass confusion about the impact of the proposed mining activities on the environment and peoples' livelihoods. Moreover, there has been no discussion of what steps would be taken to mitigate any potential impacts.

In Moroto there is some evidence that the failure to consult might also lead to future tension as people see the companies' activities as infringing on their religious beliefs and cultural practices. In Moroto one elder suggested that Jan Mangal's failure to cover the pit in which it had first begun mining had sent the ancestral spirits away, causing the drought and consequential hunger.<sup>235</sup>

Access to potable water is a continuous source of concern in this drought-prone region and the fear that the mining projects will contaminate or further deplete scarce water supplies is a significant worry for residents there.<sup>236</sup> Given local residents' reliance and balanced

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<sup>233</sup> Human Rights Watch interview with B.M., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>234</sup> Human Rights Watch interview with T.N., Lois, Kathile, Kaabong, July 6, 2013; B.M., Lopedo, Kaabong, July 5, 2013; and U.R., Nakibat, Rupa, Moroto, July 10, 2013.

<sup>235</sup> Human Rights Watch interview with R.S., elder, Rupa, Moroto, July 8, 2013.

<sup>236</sup> Human Rights Watch interview with O. L., Naikoret, Lodiko, Kaabong, July 5, 2013. "I don't understand whether this is the reason why the rain hasn't come, because they took soil from my garden," Human Rights Watch interview with T.N., Lois, Kathile, Kaabong, July 6, 2013.

understanding of their usage of natural resources, their expertise and consultation in decision-making regarding resources is especially crucial to prevent long-term environmental damage. Experts have noted, for example, that in Karamoja, “[t]he siting of new water points which fails to take account of such customary practices can undermine existing grazing patterns and result in permanent grazing throughout the year.”<sup>237</sup>

According to local sources, in Moroto only two streams consistently flow year round. In Rata village, community members said that the way DAO employees initially used water fueled fears of contamination. One woman said that DAO employees were washing off their machines in the same water that the community used for drinking and cooking.<sup>238</sup> Other residents said that company employees had been bathing and defecating too close to the same stream.<sup>239</sup> While Human Rights Watch has not been able to substantiate these concerns, concerns such as these illustrate the importance for companies and the government to inform communities about the potential impacts of mining activities on their community, the environment, and their health and understand local usage of limited natural resources, while avoiding or mitigating negative impacts.

Around Nakiloro and Nakibat, Jan Mangal is currently pumping water to their gold mining compound from one of the streams that runs year-round.<sup>240</sup> According to the company’s environment impact statement, the gold mining operation will “not need any type of chemicals during the entire process as only water will be used for beneficiation.”<sup>241</sup> Company employees restated the lack of use of chemicals to Human Rights Watch.<sup>242</sup> However, the company’s environmental impact statement also states that the risk of contaminating surface and ground water during operation is “medium to high,” and lists some future mitigation measures.<sup>243</sup> The statement does not fully examine the potential impact of pumping significant amounts of water on more general water availability for the surrounding community in the long-term. Industrial gold mining which is not highly

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<sup>237</sup> Walker, “Anti-pastoralism,” p. 17.

<sup>238</sup> Human Rights Watch interview with M.U., Rata, Rupa, Moroto, July 9, 2013.

<sup>239</sup> Human Rights Watch interviews with U.T., Rata, Rupa, Moroto, July 9, 2013, and M.N., Rata, Rupa Moroto, July 10, 2013.

<sup>240</sup> Human Rights Watch site visit to Jan Mangal, Nakiloro/Nakibat, Moroto, July 9, 2013.

<sup>241</sup> Jan Mangal (U) Ltd., “Environmental Impact Statement for the Nakibat Gold Mine, Rupa sub-county, Moroto,” October 2012, on file with Human Rights Watch, p. 31.

<sup>242</sup> Human Rights Watch site visit to Jan Mangal, Nakiloro/Nakibat, Moroto, July 9, 2013.

<sup>243</sup> Jan Mangal (U) Ltd., “Environmental Impact Statement for the Nakibat Gold Mine, Rupa sub-county, Moroto,” October 2012, on file with Human Rights Watch.

dependent on chemicals is notorious for its substantial consumption of water as gravel and silt are sifted and then washed away with copious amounts of water until only the gold remains.<sup>244</sup> There is also the real potential for water availability and contamination problems to be exacerbated as more mining companies expect to tap into the same water sources when they arrive to explore and mine in Karamoja in larger numbers.

### *Superficial Consultation after Exploration Started*

Each of the three companies had some cursory consultations with communities to various degrees after they had commenced exploration and had already started to prospect on community members' land.

East African Mining's consultations initially appear to have been organized on an ad hoc basis. One Lois man said that he only found out that the unidentified people that had been on his land were looking for gold one day when the employees mentioned it in passing after they came to him looking for local beer.<sup>245</sup> A former EAM employee acknowledged that the company did not proactively consult or inform community members about the companies' activities. "The meetings with the community happened," he said. "But only when problems would arise."<sup>246</sup>

Some community members said when they told EAM employees not to enter a certain portion of their land, they would abide by that request. Others told of contrary experiences.<sup>247</sup>

In Sokodu, Lodwar, and Lopedo, all in Kaabong district, community members said that people from a company came to their villages with military escorts and extracted soil

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<sup>244</sup> See, James Hendrix, "Gold Mining and the Use, Quality and Availability of Water," pp. 1-2. <http://www.arber.com.tr/imps2012.org/proceedingsebook/Abstract/absfilAbstractSubmissionFullContent438.pdf> (accessed January 12, 2014). "Water plays an essential role in the mining of metals and minerals that serve as key industrial inputs. Consequently, many conflicts between local communities and mining companies revolve around water. The majority of large-scale mines today use open-pit methods, where water plays a vital role in cooling and lubricating, cutting and drilling equipment, transporting and processing ore, managing waste tailings, and suppressing dust. Ore mining and processing can contaminate surface and groundwater."

<sup>245</sup> Human Rights Watch interview with M.M., Lois, Kathile, Kaabong, July 6, 2013.

<sup>246</sup> Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013.

<sup>247</sup> "I told them not to cross our gardens but they still did," Human Rights Watch interview with O.L., Naikoret, Lodiko, Kaabong, July 5, 2013.

samples. The company only held meetings in their communities months later.<sup>248</sup> In Sokodu, community members said that they asked the EAM employees for a meeting when they first saw people extracting soil samples, but they were told, “We aren’t doing anything, just testing and sampling.”<sup>249</sup> In Lois, none of the residents interviewed were aware of any meeting ever having been held in their community.<sup>250</sup>

Several residents also described being shouted at when they asked questions of the EAM employees. One man in Lois described his experience:

I decided to go closer one day ... to find out what exactly they were doing. A fat man accompanying them shouted at us, “Go away, go away, this is not your work.” The man was really rude. We stayed away and they continued.<sup>251</sup>

Community members in Kaabong and Moroto said that the exploration and mining activities were creating tension in their communities because of the lack of consultations. When meetings occurred after operations had begun, various government officials, mostly from the central government or the district, pressured community members to acquiesce quickly so that the projects could move forward. “The government tells us, ‘don’t discourage the investor,’ but how can we survive here?” said one elder. “This has caused conflict among our leaders. Some say don’t discourage. Others say, chase them away.”<sup>252</sup>

Each of the companies had a different response to these concerns. EAM CEO Tom Sawyer told Human Rights Watch that, although he recognized the free, prior, and informed consent rights of indigenous peoples, he had initially been naïve as to the challenges in

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<sup>248</sup> Human Rights Watch interviews with M.C., Lodwar, Kaabong East, Kaabong, July 4, 2013; M.L., Lopedo, Lodiko, Kaabong, July 5, 2013; B. N., July 5, 2013; H. S. Lopedo, Lodiko, Kaabong, July 5, 2013; T.R., July 5, 2013; O.L., Naikoret, Lodiko, Kaabong, July 5, 2013; and Gombolola Internal Security Officer, Katikokile, Kaabong, July 6, 2013.

<sup>249</sup> Human Rights Watch interview with N.N., elder of Sokodu, Kaabong Town, July 4, 2013.

<sup>250</sup> Human Rights Watch interviews with B. E., Lois, Kathile, Kaabong, July 6, 2013; M.M., Lois, Kathile, Kaabong, July 6, 2013; M.Y., Lois, Kathile, Kaabong, July 6, 2013; N.M., Lois, Kathile, Kaabong, July 6, 2013; M.S., Lois, Kathile, Kaabong, July 6, 2013; and T.N. Lois, Kathile, Kaabong, July 6, 2013.

<sup>251</sup> Human Rights Watch interview with M.Y., Lois, Kathile, Kaabong, July 6, 2013.

<sup>252</sup> Human Rights Watch interview with N.N., Sokodu, Lodiko, Kaabong, July 4, 2013. Another community member similarly said that elders have quarreled about the EAM project. Human Rights Watch interview with B.B., Lopedo, Lodiko, Kaabong, July 5, 2013.

attracting community support and it took some time for him to realize that his staff had not been reporting problems to him, and encouraged them to do so.<sup>253</sup> Jan Mangal and DAO only consulted with community members when they had to negotiate surface rights agreements with the community prior to applying for mining leases. Jan Mangal's leadership continued to delay consultation beyond the negotiation of a surface rights agreement, including in the agreement a broad commitment to never-defined "corporate social responsibility" rather than outlining what benefits the community had agreed they would receive in exchange for granting Jan Mangal surface rights.<sup>254</sup> And while DAO had consulted with and compensated the community, it had not informed the community of the potential impacts on their livelihoods and environment or sought their consent prior to beginning active, invasive exploration on their lands.

## Benefits and False Promises

In international law, indigenous peoples have the right to receive just and fair compensation for both the use of their land and traditionally owned resources.<sup>255</sup> Ugandan legislation falls well short of this standard. A lawyer from Karamoja explained, "Our people benefit as beggars not because it is their right."<sup>256</sup> The Mining Act provides that land owners can either benefit when minerals are extracted from their lands by virtue of a surface rights agreement negotiated with a company or by receiving three percent of royalties paid by the company to the government. As Hon. Sam Lokeris from Kaabong, said:

The law is weak, the law ignores people. People get coerced into accepting the companies without consultation. There is no way for the local people to complain, during exploration or after.<sup>257</sup>

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<sup>253</sup> Human Rights Watch telephone interview with Dr. Tom Sawyer, October 3, 2013.

<sup>254</sup> "The land lords here by agree with the tenant as follows: a. That the tenants pay agreeable fee to the community leaders (Elders) has part of social cooperate responsibility and under this agreement the tenant shall quietly enjoy the said without interference of the land Lord or any other person. b. The land is released for purpose of mining and shall never to sold to a third party. c. The elders and management of JAN MANGAL will later sit to agree on activities that the investor will do for them as part of social responsibility," Jan Mangal (U) Ltd., Surface Rights Agreement, September 12, 2012, on file with Human Rights Watch, errors in original. Human Rights Watch site visit to Jan Mangal, Nakiloro/Nakibat, Moroto, July 9, 2013; and Human Rights Watch interview with Cesar Lotume, town speaker, Moroto town, July 9, 2013.

<sup>255</sup> UNDRIP, art. 28. See also art. 10.

<sup>256</sup> Human Rights Watch interview with lawyer, Kampala, July 18, 2013.

<sup>257</sup> Human Rights Watch interview with Hon. Sam Lokeris, Kampala, July 2, 2013.

Even when the companies undertook consultations with communities, well after their operations were underway, they were cursory and sometimes filled with promises which did not materialize and that further alienated communities.<sup>258</sup> Company representatives from EAM, DAO, and Jan Mangal did not discuss when promised benefits would actually be delivered. Further, it is unclear what the community could do about a company's failure to deliver any promised benefits since there are no enforceable contractual obligations that the company and community signed and no clear grievance mechanism.

One EAM employee explained the informal consultations and vague promises that he made on behalf of the company. "I would give them hints of the benefits of the project if we succeed," he said. "[I would say,] this is a mature business. You should expect some school, health center, boreholes."<sup>259</sup>

Company representatives told Human Rights Watch that they had made it clear that the vast majority of potential benefits for communities would only be realized if the exploration was successful and after mining actually commenced. But this was not clear to most community members that Human Rights Watch interviewed. They understood that they would not receive royalties until mining commenced, but were promised that the companies would immediately drill boreholes, construct a health clinic, and create new jobs in all of the parishes where exploration was underway.

At several meetings with community members and the government in late 2012, a representative of EAM promised that the company would build a health center in Kaabong, and pay the salaries of a nursing assistant for one year while the company was prospecting for gold. After that year it was agreed that the government would have to pay the health care workers.<sup>260</sup> The community identified land for the health center, then the field manager visited the land, confirmed it was suitable, and said work would start.<sup>261</sup> But it did

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<sup>258</sup> Human Rights Watch interview with D.F., sub-county official, Kaabong town, July 3, 2013. "When they promise and then it is not fulfilled, then we lose trust in them. It only creates more rumors of land grabs here. The lack of information for us is a problem."

<sup>259</sup> Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>260</sup> Human Rights Watch interviews with D.F., sub-county official, Kaabong, July 3, 2013; group interview, Lodwar, Kaabong East, Kaabong, July 4, 2013; EAM employee 2, Kaabong town, July 6, 2013; and T.R., Lodiko, Kaabong, July 5, 2013.

<sup>261</sup> Human Rights Watch interviews with EAM employee 1, Kaabong town, July 5, 2013, and EAM employee 2, Kaabong town, July 6, 2013.

not. At the time of writing, construction of the health care center had not commenced. One EAM employee told Human Rights Watch, “[Community members] are still pestering me about it.”<sup>262</sup>

One sub-county official said that he has followed up with EAM representatives, and that they kept telling him that they were “talking to donors,” so he should check back with them later.<sup>263</sup> However, the CEO, Tom Sawyer, told Human Rights Watch that the company had never committed to building a health center.<sup>264</sup> While community members and fellow employees were clearly under the impression that the company’s field manager had promised to fund the health center on behalf of EAM, the field manager told Human Rights Watch that “he and his friends” were funding the center and that they would commence construction soon.<sup>265</sup>

EAM representatives had also promised to drill several boreholes and had informed some communities where the boreholes would be drilled.<sup>266</sup> While EAM did drill one borehole where its camp is located, the water was piped directly into the camp and did not have a tap for communities to access it.<sup>267</sup> A company employee explained that EAM workers would give community members water when they were at the camp, but acknowledged that they had not actually provided water to the community and had not installed a tap for them.<sup>268</sup>

The benefits enjoyed by communities differ depending on the company. For those affected by EAM, the only benefit at this stage has been short-term employment for very few, though as discussed above, serious questions regarding labor practices have arisen. With DAO, certain families have received limited compensation in exchange for vacating the land. For Jan Mangal, some community members noted that their operations have

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<sup>262</sup> Human Rights Watch interview with EAM employee 2, Kaabong town, July 6, 2013.

<sup>263</sup> Human Rights Watch interview with D.F., sub-county official, Kaabong town, July 3, 2013.

<sup>264</sup> Human Rights Watch telephone interview with Dr. Tom Sawyer, October 3, 2013.

<sup>265</sup> Human Rights Watch interview with EAM employee 3, July 6, 2013.

<sup>266</sup> Human Rights Watch interviews with K.J., district official, Kaabong, July 5, 2013; D.F., sub-county official, Kaabong, July 3, 2013; group interview, Lodwar, Kaabong East, Kaabong, July 4, 2013; L.T., Kaabong, July 4, 2013; B.N., July 5, 2013; T.R., July 5, 2013; N.A., Lopedo, Lodiko, Kaabong, July 5, 2013; and B.M., Lopedo, Lodiko, Kaabong, July 5, 2013, “They promised to drill a borehole nearby and told us where it would be. But they didn’t. With our current bore, it is hard to get water. Three people have to pump.”

<sup>267</sup> Human Rights Watch site visit to Sokodu, Lodiko, Kaabong, July 4, 2013; and Human Rights Watch interviews with D.F., sub-county official, Kaabong, July 3, 2013, and L.T., Kaabong, July 4, 2013.

<sup>268</sup> Human Rights Watch interview with EAM employee 2, Kaabong Town, July 6, 2013.

protected the community against raids, that the increased UPDF presence helps to secure people and property, and that the company allows community members to use their borehole to collect water for artisanal mining.<sup>269</sup>

In addition to employment opportunities, if they are generated, the primary potential economic benefit for communities would be through royalties—three percent, as allocated by law to land owners. Few in government or in the community have a sense of how this portion of the royalties will be distributed to the community, and there is a lot of misinformation. Some suggested that the three percent would go to the sub-county, which would utilize it for the benefit of communities. Others suggested that the royalties could be paid in the form of a structure, such as a school, rather than in the form of money.

## Security, Confusion, and the Role of the Army

“For my work, I need the UPDF to be a friend.... Leaders are not there in the mining areas and the UPDF are. They have guns, so we need to stay friends.”

—Gold trader working in Moroto district, October 22, 2013

The precise role and presence of the Uganda Peoples’ Defence Forces (UPDF) in the mining sector in Karamoja has prompted significant confusion and fear, which is a likely impediment to constructive consultations with affected communities. The UPDF maintains active military outposts, known as “detaches,” throughout Karamoja but the precise number of soldiers is not publicly available.<sup>270</sup> The presence of the UPDF at mining operations raises a number of concerns about potential human rights violations, intimidation, and conflicts of interest. The history of abuses by the UPDF during the recent disarmament campaign underscores the concerns.<sup>271</sup> While the scale of abuses has decreased in recent years, there are ongoing allegations that the UPDF steals cattle, unlawfully detains people, and creates other problems. “The region still is traumatized by

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<sup>269</sup> Human Rights Watch interview with N.O., Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>270</sup> UPDF letter to Human Rights Watch, September 27, 2013. General Wamala said that disclosing the number of soldiers deployed in Karamoja would jeopardize security.

<sup>271</sup> See Human Rights Watch, “*Get the Gun!*” <http://www.hrw.org/reports/2007/09/10/get-gun>. Forced disarmament programs have a long history in Karamoja. Such operations occurred in 1945, 1953, 1954, 1960, 1964, 1984, 1987, 2001 and 2006-2007. See Bevan J, *Crisis in Karamoja: Armed Violence and the Failure of Disarmament in Uganda’s Most Deprived Region*, (Geneva: Small Arms Survey, 2008).

disarmament,” said one community member. “So when [community members] see people with soldiers, they shy away.”<sup>272</sup>

Some community members and local government representatives told Human Rights Watch that companies’ employees work under the protection of UPDF soldiers who guard them while they work and in some cases, harass and chase away local miners at the request of the companies.<sup>273</sup> At the same time, artisanal miners still face serious risks when working in remote areas and killings by neighboring raiders have continued though on a diminished scale. For example on July 2, 2013, five local artisanal miners were killed and a young girl was injured allegedly by neighboring Jie warriors in Kaabong, near Lopedo mine, in an area known as Kalukodokori while on their way to mine gold.<sup>274</sup> “Even so far as we’re here, the government is not on our side. As long as we have been out on this riverbed searching for gold, there has been no security. That’s why there are so many deaths,” said one female artisanal miner.<sup>275</sup>

The UPDF’s Chief of Defence Forces General Katumba Wamala told Human Rights Watch that “the UPDF has nothing to do with mining in Karamoja.”<sup>276</sup> This was clearly contradicted by scores of interviews with local residents, local government officials, company representatives, as well as Human Rights Watch site visits to the mining areas in Kaabong and Moroto districts.<sup>277</sup> Human Rights Watch observed UPDF soldiers in uniform guarding access to Jan Mangal’s mine in Nakibat/Nakiloro. Several soldiers manned the barricade at the entrance of the mine. Human Rights Watch was not permitted to access the site, on two occasions, until consultations with the army captain who was in charge of the location.<sup>278</sup> In Rata at the DAO marble concession both UPDF soldiers and armed private security

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<sup>272</sup> Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013.

<sup>273</sup> Human Rights Watch interviews with B.O., Rupa, Moroto, July 8, 2013; D.F., sub-county official, Kaabong, July 3, 2013; V.W., district official, Moroto town, July 9, 2013; and L.T., Kaabong East, Kaabong, July 4, 2013.

<sup>274</sup> Human Rights Watch visit to Lopedo and interviews with civil society, July 3, 2013. Human Rights Watch saw photos of the bodies. All the victims had gold mining tools and equipment with them at the time of their deaths. The dead included Menket from Lopatuk, Loduk from Lopedo, Emeri from Lokeri, Lolemi from Lokimi, and Lokuk from Lakoemi, all from Kaabong district. No one had been arrested for the killings at the time of writing. Jie are the dominant group from Kotido district. Dodoth and Jie have traditionally engaged in raids on each other’s communities.

<sup>275</sup> Human Rights Watch interview with B.M., Lopedo, Lodiko, Kaabong, July 5, 2013.

<sup>276</sup> See letter from the UPDF, Annex IV.

<sup>277</sup> Human Rights Watch site visits, June and July 2013, and Human Rights Watch interviews with M.G., Lodwar, Kaabong East, Kaabong, July 4, 2013; V.W., district official, Moroto town, July 9, 2013; and D.F., sub-county official, Kaabong, July 3, 2013.

<sup>278</sup> Human Rights Watch site visits, June and July 2013.

guards were present, though the private security manned the access points. UPDF soldiers were also present at the camp for East African Mining and accompanied the miners as they worked.<sup>279</sup>

There was confusion about to whom the soldiers report and take orders from during their deployments alongside mining operations, but informal financial transactions appear to occur. Current and former mining employees explained that the companies provided money to soldiers to carry out various tasks for the mining companies, such as guarding the camp, protecting the drillers, and sometimes protecting exploration teams going out to the field.<sup>280</sup> In one case that was a nominal fee of roughly 10,000 Ugandan shillings per day (\$4), but some stated that larger payments went directly to the army brigade commander—\$500, allegedly for food and fuel—who then arranged extra security as needed for the companies.<sup>281</sup> These payments appear to go untracked but were confirmed by one company representative.<sup>282</sup> As one company representative noted, “Karamoja being Karamoja, the army guys there facilitate a lot. We facilitate their services by paying the commander.”<sup>283</sup>

Many residents reported that soldiers accompanied the companies’ workers, essentially providing a personal security escort. For example, one community member told Human Rights Watch, “I saw people from East African Mining in our village escorted by soldiers measuring our land. They said they were looking for gold. They stopped us from mining in Lemonya and Sokodu using soldiers and left only those who were helping them to drill and those farming. They fenced off some areas and stationed soldiers on the land. The soldiers were always telling us to go away.”<sup>284</sup> Residents in Nakiloro and Nakibat voiced similar concerns with the presence of the UPDF barring access to the land and intimidating community members around Jan Mangal’s operations.<sup>285</sup>

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<sup>279</sup> The camp was largely unoccupied at the time of the Human Rights Watch visit because East African Mining had suspended operations to secure more capital.

<sup>280</sup> Human Rights Watch interview with EAM employee 1, Kaabong town, July 5, 2013, and with EAM employee 2, Kaabong town, July 6, 2013.

<sup>281</sup> Human Rights Watch interview with company representative, date and location withheld.

<sup>282</sup> *Ibid.*

<sup>283</sup> Human Rights Watch interview with company representative, date and location withheld.

<sup>284</sup> Human Rights Watch interview, M.C., Lodwar, Kaabong East, Kaabong, July 4, 2013.

<sup>285</sup> Human Rights Watch interviews with B.K., Nakiloro, Rupa, Moroto, July 8, 2013; M.O., Nakiloro, Rupa, Moroto, July 8, 2013; U.R., Nakibat, Rupa, Moroto, July 10, 2013; and gold trader working in Moroto district, October 22, 2013.

Residents often pointed to government soldiers barring access to the land as evidence that the government had stolen the land and/or was violating the rights of the community to access the land. It prompted speculation within the communities that the people would not benefit from any exploration or mining work. The soldiers' presence with international mining companies also prompted more general questions about security within the area. After the five local artisanal miners were killed in Kaabong in July, one local district official told Human Rights Watch, "If the government cannot provide food, then provide security for our miners. Gold has been helping them to survive."<sup>286</sup> Another local government official said that, "I've not understood how they've got the UPDF to be present, but generally it seems the role of government is to provide security for investors now, not the local miners."<sup>287</sup>

In meetings with Human Rights Watch, several people, including one parliamentarian representing a district in Karamoja, alleged that some UPDF soldiers are involved directly in the gold trade in Karamoja.<sup>288</sup> One interviewee, also a parliamentarian from Karamoja, stated that in some instances local middlemen had refused to sell to soldiers, seeking a higher price from other buyers, but have faced reprisals as a result.<sup>289</sup> An inquiry into the role of the UPDF in the gold sector in Karamoja would be an important contribution to transparency, accountability, and the broader fight against corruption within the military.

Given the history of human rights abuses perpetrated by the army and the lack of active government regulation in Karamoja,<sup>290</sup> the role of the army in the Karamoja mining sector requires greater attention and scrutiny. In other countries, civil society groups have strongly challenged the assumption that it was appropriate for companies to directly underwrite security provided by a military, including when providing per diems and payments for logistics.<sup>291</sup> For example, groups have pointed out that such arrangements give the military an economic stake in internal security tasks for which the police should be primarily responsible. Financial arrangements with companies may also provide a

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<sup>286</sup> Human Rights Watch interview with D.F., sub-county official, Kaabong, July 3, 2013.

<sup>287</sup> Human Rights Watch interview with K.P., district official, Kaabong town, July 5, 2013.

<sup>288</sup> Human Rights Watch interview with parliamentarian from Karamoja, Kampala, June 2013.

<sup>289</sup> Human Rights Watch interview with former parliamentarian from Karamoja, Kampala, June, 2013.

<sup>290</sup> Human Rights Watch, "Get the Gun!" <http://www.hrw.org/reports/2007/09/10/get-gun>. See also, section on Disarmament and Abuse.

<sup>291</sup> See Human Rights Watch, *Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities*, June 2006, vol. 18, no. 5(C), <http://www.hrw.org/sites/default/files/reports/indonesia0606.pdf>, pp. 55-56.

platform for military corruption and serve to undermine civilian authorities' control. In some instances, paid security arrangements could create incentives for the military in the area to cause security disturbances so that they can reap the financial benefits when they are called in to assist. By default, the military ends up in a position to create and sustain demand for its services. Concern over the potential for human rights abuse, as noted above, provides another reason for opposition to the military's role in providing security to companies.

The Ugandan government and companies seeking to work in Karamoja should abide by the Voluntary Principles on Security and Human Rights.<sup>292</sup> This framework brings together a range of multinational extractive companies, governments, and civil society organizations around a set of principles on the relationship between extractive companies and the public or private security forces they rely on for protection. They focus on how governments and companies should seek to prevent human rights abuses by those security forces as well as on how both parties should respond when abuses do occur.<sup>293</sup>

The principles provide a key international benchmark for how companies should deal with the human rights risks posed by their security arrangements, whether or not they and the governments hosting their operations are members of the initiative. They identify in some detail how companies and governments should seek to prevent human rights abuses by security providers as well as how both parties should respond when abuses are credibly alleged to have occurred. In many respects, steps outlined in the Voluntary Principles correspond to what would constitute adequate corporate human rights due diligence in relation to security issues.

The provisions of Voluntary Principles are organized under three categories: risk assessment, relations with public security forces, and relations with private security providers. They provide that, to prevent violations, companies should conduct comprehensive risk assessments prior to operation and consult regularly with host governments and local communities about the impact of their security arrangements on those communities. Companies, the principles also note, should promote observance of applicable international law enforcement principles such as the UN Principles on the Use

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<sup>292</sup> The Voluntary Principles on Security and Human Rights, 2013, <http://voluntaryprinciples.org/> (accessed October 4, 2013).

<sup>293</sup> Ibid.

of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. They also call for the security providers (whether public or private) to act lawfully and in line with the same international guidelines. Other provisions identify the need, inter alia, for monitoring by the company; investigations of alleged misconduct and imposition of disciplinary measures; procedures to record and report any credible allegations of human rights abuses by either private or public security forces; action to urge investigations into alleged abuses where appropriate; and efforts to promote transparency about security arrangements.

For example, one security issue addressed by the Voluntary Principles that is of direct relevance to Karamoja concerns the question of financial and other support provided to public security forces:

In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security.... Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.<sup>294</sup>

## Gaps in Government Oversight

### *Limited Oversight by the DGSM and NEMA*

Under the Ministry of Energy and Minerals Development, the Department of Geological Survey and Mines (DGSM) is responsible for the administration, management, and support of the minerals sector. The official mission is to “ensure the rational and sustainable development and utilization of mineral resources for socio-economic enhancement.”<sup>295</sup>

Beyond technical work on geological mapping and geo-data, the DGSM is also the lead government entity in monitoring and inspecting mining work throughout the country.<sup>296</sup> The

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<sup>294</sup> The Voluntary Principles on Security and Human Rights, <http://voluntaryprinciples.org/>.

<sup>295</sup> Official communication from the DGSM to Human Rights Watch, undated, on file with Human Rights Watch.

<sup>296</sup> The bulk of their work, especially in terms of meeting with the local community in Karamoja, currently appears to be about explaining the geological mapping work they intend to do in the near future. “Sensitization of communities in

National Environmental Management Authority (NEMA) and the district local governments also have a key role to play in ensuring all aspects of the mining and environmental laws and regulations are respected.<sup>297</sup> For example, the DGSM reviews all mining project briefs in consultation with NEMA. NEMA coordinates environmental impact assessment processes, and works alongside other stakeholders such as the district natural resource officers.

District officials, particularly the chief administrative officer, are required to sign off on documents at various stages of the process to secure exploration and mining rights, but generally much of the process is handled far from the district. The districts themselves have a very limited ability to monitor mining activities and are largely unaware of national or international standards required for mining activities. Multiple district officials told Human Rights Watch that they lacked information regarding the plans of specific companies or how their work would benefit the communities in a timely fashion so they could consult communities prior to exploration work commencing.<sup>298</sup>

The DGSM faces many challenges to its ability to carry out its monitoring work, exacerbating the confusion and rights' violations regarding lack of consultation and consent within communities. Local stakeholders have asked for the DSGM to improve its ability to coordinate local and central government actors, DGSM, and NEMA work. In the recent financial year, the government allocated 7.365 billion Ugandan shillings (\$2.93 million) to mineral sector development, 49 percent of which is for Karamoja. Much of this money is destined for geological mapping of the region and to establish a DGSM office in Moroto in the near future.<sup>299</sup>

DGSM officials admit that they have very limited manpower and that the vast majority of staff is based in Entebbe, very far from the mining sites of Karamoja. There is currently no DGSM office anywhere in Karamoja. The closest office is in Tororo district, over 300

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Karamoja on the geo-physical aerial survey project," minutes from May 2012, unpublished document on file with Human Rights Watch and DGSM, "Proceedings of sensitization and consultative workshop on airborne geophysical surveys and geological mapping of Karamoja project held at the Mt. Moroto hotel on 30<sup>th</sup> July 2012." unpublished document on file with Human Rights Watch.

<sup>297</sup> The National Environment Act.

<sup>298</sup> Human Rights Watch interview with K.J., district official, Kaabong, July 5, 2013; with the P.D., district official, Kaabong town, July 9, 2013; V.W., district official, Moroto town, July 9, 2013; and H.E., district official, Kampala, July 18, 2013.

<sup>299</sup> Official communication from the DGSM to Human Rights Watch, undated, on file with Human Rights Watch.

kilometers from Moroto and 500 kilometers to Kaabong. Trips to Karamoja, on roads that are impassible during the rainy season, are expensive and rarely undertaken. None of the mining inspectors speak Ngakarimojong, the language of the region, making DGSM officials reliant on local leaders or community members for ad hoc translation.

“Our department is very thin on the ground,” said one mine inspector. “The few staff that go around lack any facilities to do a good job and there are a lot of conflict when we go out to the communities.”<sup>300</sup>

Inspectors currently carry out visits to exploration and mining sites as needed (when there are complaints) or ideally on a quarterly basis, but that is not always possible due to financial limitations. The company can also pay for a site visit, underwriting the costs of the inspector’s travel and expenses. While this can help smooth the relationship between the company and the DGSM, the communities are often neglected in that process. “The company can pay me to go there but the communities cannot,” said one mining inspector. “That is not healthy for them. If I say you are wrong, I fear [the company] could leave me out there. I should go there with independence but I often have to wait for a problem and then beg for money.”<sup>301</sup> And of course the DGSM’s independence and objectivity is greatly undermined when they are dependent on companies to undertake this function.

The DGSM also has very limited resources for monitoring and inspecting work and in some cases has argued that district natural resource officers should be facilitated to do this work in their respective districts.<sup>302</sup> According to the acting commissioner of the DGSM, the government has increased the budgetary allocation for licensing and inspections of mines dramatically, from 22 million to 150 million Ugandan shillings (\$8,800 to \$60,000) in the next fiscal year.<sup>303</sup> Officials are hopeful that this new money will allay some problems and allow for more in depth work, but some DGSM employees voiced skepticism. “The budget is only on paper. It is not what we really get,” one employee said.<sup>304</sup>

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<sup>300</sup> Human Rights Watch interview with mines inspector, Kampala, July 20, 2013.

<sup>301</sup> Human Rights Watch interview with mines inspector, Kampala, July 20, 2013.

<sup>302</sup> DGSM, “Proceedings of sensitization and consultative workshop on airborne geophysical surveys and geological mapping of Karamoja project held at the Mt. Moroto hotel on 30<sup>th</sup> July 2012.” unpublished document on file with Human Rights Watch.

<sup>303</sup> Human Rights Watch interview with Acting Commissioner Edwards Katto, Kampala, October 22, 2013.

<sup>304</sup> Human Rights Watch interview with DGSM official, July 22, 2013.

Enforcement also remains a problem. During exploration work, the monitoring is often limited to ensuring that a company stays within its concession area, or that active mining is not occurring in an exploration area and perhaps to try to determine under-declaring of minerals.<sup>305</sup> When inspectors observe other problems, they can file inspection reports but ultimately lack much power to investigate thoroughly.<sup>306</sup> For example, when one DGSM mining inspector visited the site of Jan Mangal, he was initially blocked from entering and then told by one of the employees that the company had not found gold. Shortly after, the company applied for an active mining license. “They wouldn’t show us the results,” said the inspector. “It is odd for people who are producing nothing to be applying for a mining lease.”<sup>307</sup>

Similarly, the director of monitoring and compliance at NEMA, Arnold Waiswa, says that his office is unable to undertake thorough reviews of every environmental impact assessment (EIAs) that companies submit. Nor can the office ensure that mitigation and implementation measures are truly feasible in every case.<sup>308</sup> He also questioned the quality of the EIAs regarding social factors and hoped that those aspects would improve over time as the “huge imbalances in knowledge” were addressed, but also admitted that his office had not done much work in Karamoja. “It would be useful if the companies [in Karamoja] would do an annual audit of their compliance,” Waiswa said. “We need to plan inspections and our capacity is a real problem.”<sup>309</sup>

Given the increased focus on the oil sector, he expected an increase in budgetary allocations in the near future that may help alleviate the chronic lack of resources that hamper oversight. “Now that the [extractives] sector is opening up and we need to get more people to do the monitoring work, we really just need more people,” Waiswa told Human Rights Watch. “The local authorities also need to come in and put the companies under some control.”<sup>310</sup>

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<sup>305</sup> Human Rights Watch interview with mines inspector, Kampala, July 20, 2013; and DGSM Field Inspection Report, “The field inspections to Moroto,” May 5, 2013.

<sup>306</sup> Human Rights Watch requested all DGSM inspection reports for Karamoja mining projects in a written communication to DGSM in September 2013. Ultimately, Human Rights Watch only received one report, for a visit to Moroto district on May 2013. It is not clear if this is the only inspection trip that was carried out in 2013, or if it’s the only report filed, or the only report available.

<sup>307</sup> Human Rights Watch interview with mines inspector, Kampala, July 20, 2013.

<sup>308</sup> Human Rights Watch interview with Arnold Waiswa, NEMA, Kampala, July 25, 2013.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

### *Lack of Oversight by District Officials*

District officials should be responsible for playing a central role to ensure the communities are consulted and receive what they are legally entitled to, particularly regarding protection of land rights, compensation, and employment.<sup>311</sup> But across Karamoja, district and sub-county government officials indicated to Human Rights Watch that they are not able to enforce standards or monitor mining companies. “We did not do any monitoring of what this company was doing. We took for granted that everything was going on well, which was not the case. I put this failure on the district.... I think as a district we need to do more in this area. East African Mining company took advantage of our ignorance and exploited the people. This is why no tangible benefits are visible.”<sup>312</sup>

This failure is partly because of lack of resources and infrastructure. No district official in Karamoja interviewed by Human Rights Watch had ever seen the online mining cadaster which shows all the pending and granted exploration licenses and active mining leases throughout Uganda. While the mining cadaster is an important step forward for transparency in the sector, district and sub-county leadership are unlikely to benefit from it for the foreseeable future. One district natural resources officer described the challenge. He has no computer, no power, and no internet in his office in Kaabong. He depends on local nongovernmental organizations for internet access and has had a challenge trying to get any maps sent from Kampala or Entebbe.<sup>313</sup> Without this information, he cannot determine what companies are legally entitled to work in his area or what type of activities they are legally permitted to carry out.

Communities regularly seek information from the district government throughout Uganda. In Karamoja, the district headquarters is far away and sometimes inaccessible, but the sub-county offices are not. They can gather information and ideally relay it to residents living in remote areas, but they have not done this, especially in regards to the mining sector. That lack of information about mining and exploration activities at the district or sub-county has fueled fears of land grabbing as well as a lack of understanding of the rights of affected communities.

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<sup>311</sup> Human Rights Watch interview with K.P., district official, Kaabong town, July 5, 2013.

<sup>312</sup> Human Rights Watch interview with K.K., district official, Kaabong, July 6, 2013.

<sup>313</sup> Human Rights Watch interview with district natural resources officer, Kaabong, date withheld.

Knowledge of Uganda’s mining and land laws within district leadership has improved somewhat as international donors and nongovernmental organizations have sponsored trainings. But there is still a great deal of work to be done to improve knowledge of international standards and improve communication and access to information regarding specific exploration concessions, benefits to those specifically affected communities, and how any specific project will affect the communities’ livelihoods. Support for more involvement from the district officials with careful planning to ensure communication with the residents would likely reduce potential conflict as well as abate fears of land grabbing. “My major recommendation is that the district has to be really involved,” said one district official. “Not just appending a signature.”<sup>314</sup>

But information is difficult to acquire. Some government officials described how companies could use their relationship with central government officials to stifle the work of the local government officials, ignore their requests for information, or ignore local structures. For example, one district officer told Human Rights Watch that if he demanded companies comply with his requests for information and assessments, the companies “brought in the central government to sit on the local government.”<sup>315</sup>

Local politics and tensions with the capital also cripple effective monitoring work. For example, in Moroto, the district officials were not even aware that Jan Mangal was entering the district with excavators until the community complained. Given the density of exploratory mining work in Moroto, the district had formed a natural resources taskforce via a district council resolution, but that committee was never consulted by the company throughout the process.<sup>316</sup> When people in Lopedo, Kaabong, complained about what East African Mining were doing on their land, the district officials told them, “We cannot help you because it was Museveni who gave them the go ahead to come here.”<sup>317</sup>

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<sup>314</sup> Human Rights Watch interview with K.P., district official, Kaabong town, July 5, 2013.

<sup>315</sup> Human Rights Watch interview with district natural resources officer, Kaabong, date withheld.

<sup>316</sup> Human Rights Watch interview with community organizer, Moroto town, Moroto, July 7, 2013.

<sup>317</sup> Human Rights Watch interview with O.M., Lopedo, Lodiko, Kaabong, July 5, 2013.

## V. Lack of Transparency and its Consequences

The United Nations Conference on Trade and Development (UNCTAD) revealed in its 2013 World Trade Investment Report that Uganda received the most foreign direct investment in 2012 in East Africa.<sup>318</sup> This is largely attributed to oil discovery in Uganda's western Albertine Rift as investment has soared by 92 percent, from \$894 million in 2011 to \$1.7 billion in 2012.<sup>319</sup> Clearly, Uganda's more dispersed mineral wealth sits in the shadows of the new found oil. But the increased attention to the petroleum sector illustrates grave unaddressed problems regarding endemic corruption, unlawful land evictions, government opacity about development, and investment plans that will affect local communities and increased threats to civil society groups working on these issues. These troubling factors raise serious concerns for how the rights of marginalized groups, such as those in Karamoja, will fare as the government's focus on mining in Karamoja increases.

### Corruption Allegations and Land Compensation Concerns Nationwide

Despite increased foreign investment Uganda still has key impediments to further investment and better governance. The development of the nascent petroleum sector has renewed concerns about the pervasive levels of corruption and political patronage.<sup>320</sup> International Crisis Group noted that, "The anticipated expansion of revenue is likely to allow Museveni to extend and consolidate his patronage system and so ensure his control of government."<sup>321</sup> Current U.S. Ambassador to Uganda Scott DeLisi noted publicly that corruption remains a huge problem for American companies, citing an International Monetary Fund (IMF) study reporting that one in five businesses list corruption as the main

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<sup>318</sup> "World Investment Report 2013," United Nations Conference on Trade and Development (UNCTAD), 2013, [http://unctad.org/en/PublicationsLibrary/wir2013\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf) (accessed November 26, 2013).

<sup>319</sup> "Uganda favourite destination for foreign investors: UN Report," *Daily Monitor*, July 9, 2013, <http://www.monitor.co.ug/News/National/Uganda-favourite-destination-for-foreign-investors--UN-Report/-/688334/1909634/-/fwoumyz/-/index.html> (accessed November 26, 2013).

<sup>320</sup> The Heritage Foundation, "2013 Index of Economic Freedom: Uganda," 2013, <http://www.heritage.org/index/country/uganda> (accessed November 26, 2013).

<sup>321</sup> International Crisis Group, "Uganda: No Resolution to Growing Tensions," Africa Report No. 187, April 5, 2012, [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/uganda/187-uganda-no-resolution-to-growing-tensions.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/uganda/187-uganda-no-resolution-to-growing-tensions.pdf) (accessed July 21, 2012), p. 19.

problem they face doing business in Uganda.<sup>322</sup> At the same time, according to one international audit firm, “[w]hile many enterprises in Uganda espouse some of the [corporate social responsibility] principles under the [Organisation for Economic Co-operation and Development] Guidelines for Multinational Enterprises, key areas such as combating bribery and corruption are routinely ignored.”<sup>323</sup>

Government response to corruption allegations has been generally weak, though there have been many promises over two decades to eradicate corruption. Despite multiple scandals regarding theft and diversion of large amounts of public funds recently, no high ranking member of the government—no political appointee or cabinet minister—has served jail time for corruption charges. A lack of political will, as well as threats and harassment of investigations and prosecutors, has largely crippled Uganda’s anti-corruption institutions from addressing high-level corruption and political patronage.<sup>324</sup> Transparency International has stressed that the government and oil companies should make transparency in the oil sector a priority.<sup>325</sup>

Government rhetoric and management of land compensation does not bode well for how the government manages land rights concerns in the course of development projects. In a

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<sup>322</sup> Haggai Matsiko, “Corruption in Uganda business,” *The Independent*, April 19, 2013, <http://www.independent.co.ug/news/news-analysis/7687-corruption-in-uganda-business> (accessed November 26, 2013). According to The Global Competitiveness Report 2012–2013, 18.4 percent of executives listed corruption as the most problematic factors for doing business in Uganda. See World Economic Forum, “The Global Competitiveness Report 2012–2013, Uganda chapter,” [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf), p. 352.

<sup>323</sup> KPMG, “Uganda Country Profile,” 2012, <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/Uganda.pdf> (accessed December 30, 2013), p. 12.

<sup>324</sup> See Human Rights Watch, “*Letting the Big Fish Swim*”: Failures to Prosecute High-Level Corruption in Uganda, October 22, 2013, <http://www.hrw.org/reports/2013/10/21/letting-big-fish-swim-o>.

<sup>325</sup> “Transparency makes business sense,” Oil in Uganda, August 25, 2013, <http://www.oiluganda.org/features/opinion/transparency-makes-business-sense.html> (accessed November 26, 2013). Already in 2009, well before oil production began, several senior government officials were accused of taking bribes from oil companies. Uganda’s parliament voted an emergency session in October 2011 to freeze all oil contracts and investigate the prime minister, the minister of foreign affairs, and the internal affairs minister, all of whom were accused of accepting funds from Tullow Oil that was scheduled to complete a \$2.9 billion deal. Allegations of corruption continue to haunt the oil sector. See US Department of State, “Uganda: Tullow Sees Corruption in Oil Sale,” cited in WikiLeaks cable ID: 09KAMPALA1401, December 17, 2009, <http://wikileaks.org/cable/2009/12/09KAMPALA1401.html> (accessed November 26, 2013); Josh Kron, “Uganda’s Oil Could Be Gift That Becomes a Curse,” *The New York Times*, November 25, 2011, [http://www.nytimes.com/2011/11/26/world/africa/uganda-welcomes-oil-but-fears-graft-it-attracts.html?\\_r=0](http://www.nytimes.com/2011/11/26/world/africa/uganda-welcomes-oil-but-fears-graft-it-attracts.html?_r=0) (accessed November 26, 2013); and US Department of State, “Uganda’s All You Can Eat Corruption Buffet,” cited in WikiLeaks cable ID: 10KAMPALA5, January 5, 2010, <http://wikileaks.org/cable/2010/01/10KAMPALA5.html> (accessed December 31, 2013).

Kampala mining conference in October 2013, President Museveni was quoted in the media on the issue of land evictions for resource extraction and production saying:

These are simply peasants who should not give you [a] headache. If they are frustrating you then I will deal with them directly.... In the event where the peasant land owners refuse to vacate the land, investors should look [to] unoccupied nearby areas; drill into the surface, and thereby continue drilling horizontally which will force them out.<sup>326</sup>

Potentially, residents in Karamoja may eventually encounter similar problems to those in Hoima district in the east, where since mid-2012 the government has sought to resettle up to 7,000 people residing on a 29 square kilometer area demarcated for an oil refinery.<sup>327</sup> The process has been “marred with a lot of skepticism, and uncertainty leading to social unrest among affected communities.”<sup>328</sup> Critics of the resettlement process argue that residents are not receiving appropriate compensation, that women have faced discrimination, that there are fake claimants, and that security operatives have intimidated and coerced residents.<sup>329</sup>

## “Facilitation” and Corruption in Karamoja Mining

“When we see the conflict between politicians, you see the corruption. They all have their own interest and none of it is for the community.”

— Sub-county official, Moroto, July 9, 2013

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<sup>326</sup> Fredric Musisi, “Museveni okays evictions of residents in mineral areas,” *Daily Monitor*, October 13, 2013. <http://www.monitor.co.ug/News/National/Museveni-okays- eviction-of-residents-in-mineral-areas/-/688334/2018208/-/1327ftnz/-/index.html> (accessed December 31, 2013).

<sup>327</sup> Strategic Friends International, “Resettlement Action Plan for the proposed acquisition of land for the oil refinery in Kabaale parish, Buseruka sub-county, Hoima district,” October 2012, on file with Human Rights Watch; and Ministry of Energy and Mineral Development, “Government embarks on a Resettlement Action Plan for the oil refinery area in Hoima district,” Petroleum Exploration and Production Department, 2013, <http://www.petroleum.go.ug/page.php?k=curnews&id=31> (accessed December 31, 2013).

<sup>328</sup> Democratic Governance Facility, “Legislators and rural women in Hoima hold dialogue to discuss issues on oil,” August 17, 2013, <http://www.dgf.ug/index.php/2013-03-26-12-55-42/news/158-legislators-and-rural-women-in-hoima-hold-dialogue-to-discuss-issues-on-oil> (accessed December 31, 2013).

<sup>329</sup> Ibid., and Edward Sekikka, “Oil refinery: compensation rates get complicated” *The Observer*, August 13, 2013. [http://www.observer.ug/index.php?option=com\\_content&view=article&id=26945%3Aoil-refinery-compensation-rates-get-complicated&catid=38%3Abusiness&Itemid=68](http://www.observer.ug/index.php?option=com_content&view=article&id=26945%3Aoil-refinery-compensation-rates-get-complicated&catid=38%3Abusiness&Itemid=68) (accessed December 31, 2013). “Christopher Opiyo, the secretary of the Refinery Affected Residents Association, says residents are given ‘peanuts’. He also claims that locals are being coerced to acknowledge receipts yet they have not received any money, leaving them in fear of losing out altogether.”

While the predominate national focus remains in the oil sector, many interviewees raised concerns for how financial pay-outs and corruption, sometimes deemed “facilitation,” negatively affect consensus building and access to information regarding exploration and mining in Karamoja, seriously undermining communities consultation processes. Given the weak civil society structures in Karamoja, and the multiple mining operators in remote locations, unlawful activities such as corruption and unlawful evictions are more likely to occur undetected. Greater scrutiny of these concerns is crucial to ensuring human rights are protected as exploration and mining work evolves.

There was a general perception among district government officials in Karamoja interviewed by Human Rights Watch that there were pay-outs from some companies to central government officials, particularly ministers and parliamentarians perceived to be close to the president’s office, though they lacked specific evidence. More often, it was a sense that administrative steps had been skipped or processes had proceeded at record pace without necessary time for effective consultation and monitoring to take occur. As one district leader told Human Rights Watch, “The issue of corruption is obvious between the center and the investor. The community is being exploited.”<sup>330</sup>

Some interviewees pointed to the politicization of projects and the role of “godfathers,” someone in the government or very close to political elites who, in exchange for pay-offs, facilitates the companies’ work by ensuring paperwork is processed in a timely manner to the detriment of his local residents.<sup>331</sup> “Some politicians are supporting one company or another,” one said. “We are duty bound to give the investor help. The issue of money changing hands has been rife. We cannot prove it but we ask.... It is a tempting way to do business here. The more investors the better, but we want the rights not to be trampled.”<sup>332</sup>

“Every politician has a side,” said a government employee in the mining sector. “They become the godfather of one company or another. It is not helped by the companies, paying bribes and encouraging the local politicians to take sides.”<sup>333</sup>

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<sup>330</sup> Human Rights Watch interview with V.W., district official, Moroto town, July 9, 2013.

<sup>331</sup> Human Rights Watch interviews with B.R., Rupa, Moroto, July 9, 2013, and P.N., Kampala, July 20, 2013.

<sup>332</sup> Human Rights Watch interview with U.F, district official, Moroto, July 9, 2013.

<sup>333</sup> Human Rights Watch interview with P.N., Kampala, July 20, 2013.

Some pointed to the ease and speed with which some companies, investors or speculators secure exploration or mining licenses. In mid-2012, the Ministry of Energy and Mineral Development stopped issuing licenses temporarily “following revelations that a number were handed out irregularly” according to media reports, and because the process was “open to corruption and nepotism.”<sup>334</sup> One knowledgeable source, who has worked for both the government and mining companies, told Human Rights Watch that he was aware of some level of corruption in the license acquisition process when he worked for the government.<sup>335</sup>

When asked about corruption concerns within the DGSM, officials there told Human Rights Watch that, “in a few cases, officers have been interdicted for irregularities in license issuance or suspended for loss of drilling pipes” but that otherwise, cases are referred to police for investigations.<sup>336</sup> The DGSM provided no examples.

The fact that companies sometimes facilitate the work of technical staff charged with monitoring and compliance with national regulations has also prompted questions about how free those officials are to do their jobs. A government official said, “The facilitation by the company can affect [the officials’] judgment. It undermines professional judgment.”<sup>337</sup> Another government employee in the mining sector said, “there is a lot of patronage here. The technical people are not free to do their work because of fear. For technical guys, they need to protect their jobs.”<sup>338</sup>

A separate, if related, issue is that payments to facilitate consent for mining projects were also often raised as a serious impediment to meaningful community consultation involving all key stakeholders. For example, the “Kampala trip” where Jan Mangal transported several elders from Karamoja to Kampala clearly caused fault lines within the community, both over the verbal agreements made, or assumed to have been made, during the trip and because of suspicions that the elders had benefited without sharing with the broader

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<sup>334</sup> Halima Abdallah, “Uganda suspends new mining licenses issuance,” *The East African*, November 5, 2012, <http://www.africareview.com/Business---Finance/Uganda-suspends-mining-licences-issuance/-/979184/1612090/-/vko8i7/-/index.html> (accessed December 30, 2013).

<sup>335</sup> Human Rights Watch interview, name withheld, Kampala, July 11, 2013.

<sup>336</sup> Official communication from the DGSM to Human Rights Watch, undated, on file with Human Rights Watch.

<sup>337</sup> Human Rights Watch interview, name withheld, Kampala, July 22, 2013.

<sup>338</sup> Human Rights Watch interview P.N., Kampala, July 22, 2013.

community. The elders had their expenses covered in Kampala—a city most of them had never been to—and each received a cash pay-out of between 200,000 and 300,000 Ugandan shillings (\$80 to \$120).<sup>339</sup> One resident of Nakiloro said that since the elders went to Kampala, “there is a silent conflict now, grumbling under the ground among us about what is happening.”<sup>340</sup>

Company representatives also complained that expectations of pay-outs in the mining sector in Karamoja inflate the costs of doing business and impede the company’s ability to predict their costs regarding consultations with communities. In particular, costs associated with provided “facilitation” to central government leaders are an area of frustration.

For example, one company sought to hold several meetings with key stakeholders in Moroto, including parliamentarians and community residents. He told Human Rights Watch, “I gave the parliamentarians transport fuel and money for hotels ... and then two of the four did not show up. I gave each of them about ... 400,000 Ugandan shillings (\$180) total for transport and then I gave them 250,000 Ugandan shillings (\$100) per night for three nights in a hotel in Moroto, and then 50,000 Ugandan shillings (\$20) per night for three nights for a driver. And 50,000 Ugandan shillings per night for three nights for a police escort. I have to give all of them this money for a meeting. They threaten me when I don’t give that that money.”<sup>341</sup>

## The Need for Transparency

Some question if Uganda is likely to become a victim of the “resource curse,” the phenomenon by which, despite plentiful non-renewable natural resources, a country has poorer development indicators than some neighboring countries without natural resources.<sup>342</sup> Uganda has many characteristics that have plagued “cursed” countries:

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<sup>339</sup> Human Rights Watch interviews with “Achilla,” Nakiloro, Rupa, Moroto, July 8, 2013; V.W., district official, Moroto town, July 9, 2013; and P.A., Masupo, Rupa, Moroto, July 8, 2013.

<sup>340</sup> Human Rights Watch interview with B.K., Nakiloro, Rupa, Moroto, July 8, 2013.

<sup>341</sup> Human Rights Watch interview, name withheld, Kampala, date withheld.

<sup>342</sup> Peter G. Veit, Carole Excell, and Alisa Zomer, “Avoiding the Resources Curse: Spotlight on Oil in Uganda,” World Resources Institute, January 2011, [http://pdf.wri.org/working\\_papers/avoiding\\_the\\_resource\\_curse.pdf](http://pdf.wri.org/working_papers/avoiding_the_resource_curse.pdf) (accessed August 14, 2013); and “Preventing the Resources Curse in Uganda,” Columbia School of International and Public Affairs, Spring 2012, <http://new.sipa.columbia.edu/academics/capstone-workshops/preventing-the-resource-curse-in-uganda> (accessed August 14, 2013).

entrenched poverty, corruption, threats to civil society, and a questionable respect for the rule of law.<sup>343</sup>

One aspect of the resource curse is that governments that receive wealth earned from the extractive industries frequently mismanage or squander the funds. The realization that such mismanagement is made all the more possible when the amount and use of natural resource revenues are hidden from the public has spurred a focus on transparency as a tool to help combat corruption and improve governance. Important areas for transparency in resource rich countries include revenues, contracts, spending, and public access to information.

With regard to revenues, local and international activists have been pushing for Uganda to join the Extractive Industries Transparency Initiative (EITI), one approach to address the potential for mismanagement of natural resource revenue.<sup>344</sup> EITI is a multi-stakeholder initiative comprising governments, companies, and civil society that aims to strengthen governance in resource-rich countries by increasing transparency over government proceeds from the oil, gas, and mining sectors.<sup>345</sup>

Ugandan government officials, including President Museveni, have stated a willingness to join EITI,<sup>346</sup> and in October 2011 Uganda's parliament passed a resolution affirming the need to join. More than two years have passed, but Uganda is not yet a candidate. Moreover, there is no concrete timeline for when Uganda will begin to take steps to join, a point often criticized by local and international activists.<sup>347</sup> This represents a missed

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<sup>343</sup> See Human Rights Watch, *Curtailing Criticism: Intimidation and Obstruction of Civil Society in Uganda*, August 21, 2012, <http://www.hrw.org/reports/2012/08/21/curtailing-criticism>; and "Letting the Big Fish Swim," <http://www.hrw.org/reports/2013/10/21/letting-big-fish-swim-o>.

<sup>344</sup> ACODE, "The Extractive Industries Transparency Initiative: A Necessity for Uganda," Infosheet no. 12, 2011, [http://www.acode-u.org/documents/oildocs/infosheet\\_12.pdf](http://www.acode-u.org/documents/oildocs/infosheet_12.pdf) (accessed December 31, 2013); and Global Witness, "The benefits of joining the Global Transparency Standard for extractive industry revenues," August 2013, <http://eiti.org/document/benefits-uganda-joining-global-transparency-standard-ei-revenues> (accessed December 31, 2013).

<sup>345</sup> See EITI, <http://eiti.org>.

<sup>346</sup> "Museveni, Donors discuss electoral reform," *New Vision*, May 7, 2013, <http://www.newvision.co.ug/news/642406-museveni-donors-discuss-electoral-reform.html> (accessed December 31, 2013); and Oil in Uganda, "Uganda to join EITI soon says Energy Minister," May 24, 2013, <http://www.oilinuganda.org/features/international/uganda-to-join-eiti-soon-says-energy-minister.html>.

<sup>347</sup> Oil in Uganda, "Government remains vague on EITI," August 30 2013, <http://www.oilinuganda.org/features/civil-society/government-remains-vague-on-eiti.html> (accessed December 31, 2013); Global Witness, "Indicators of Extractives Governance in Uganda," December 2013, on file with Human Rights Watch. "There is a risk that the government may be using the EITI as a shield and delaying tactic to keep development partners and civil society from pushing for actual progress on transparency in its oil and mining sectors."

opportunity, particularly as the EITI rules require participating countries to publish contracts and company ownership information, not only revenue information, under changes approved in May 2013.<sup>348</sup>

Uganda has also not sought to join the international Open Government Partnership, an initiative that aims to secure concrete commitments from governments to enhance openness about government activities, encourage citizen participation, and draw on technology as means to combat corruption and strengthen governance.<sup>349</sup> Donors to Uganda, as well as other multinational bodies, have called on the government to increase transparency and adopt other good governance and rule of law measures.

Transparency principles also should be applied to spending disclosures through open budgeting processes. Translating resource revenues into better outcomes for citizens requires transparency and accountability over government finances, including budgets and spending. The Open Budget Partnership considered Uganda to have relatively good practices in this area but clearly could do better given controversies over recent years.<sup>350</sup> It should work to fully comply with internationally recognized standards of fiscal transparency and accountability. One key standard is contained in the IMF's Code of Good Practices on Fiscal Transparency, which is supplemented by the IMF Guide on Resource Revenue Transparency and other initiatives.<sup>351</sup>

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<sup>348</sup> Additional provisions encourage further disclosures without requiring them. See EITI, "The EITI Standard," at <http://eiti.org/document/standard> (accessed November 12, 2013).

<sup>349</sup> Bernard Sabiti, "Why Uganda has not joined the Open Government Partnership," Open Government Blog, March 11, 2013, <http://blog.opengovpartnership.org/2013/03/why-uganda-has-not-joined-the-open-government-partnership/> (accessed December 28, 2013).

<sup>350</sup> The Open Budget Partnership (OBP) has rated Uganda as having "significant" (but not "extensive") budget transparency. See International Budget Partnership, "Open Budget Survey 2012," <http://internationalbudget.org/wp-content/uploads/OBI2012-Report-English.pdf> (accessed December 28, 2013), p. 7. See also International Budget Partnership, "Country Data Sheet: Uganda," Open Budget Survey Data Explorer, 2010-2011, <http://survey.internationalbudget.org/#profile/UG> (accessed December 28, 2013).

<sup>351</sup> See International Monetary Fund (IMF), "Code of Good Practices on Fiscal Transparency," 2007, [www.imf.org/external/np/pp/2007/eng/051507c.pdf](http://www.imf.org/external/np/pp/2007/eng/051507c.pdf) (accessed August 3, 2012); and IMF, "Guide on Resource Revenue Transparency," 2007, [www.imf.org/external/np/pp/2007/eng/051507g.pdf](http://www.imf.org/external/np/pp/2007/eng/051507g.pdf) (accessed August 3, 2012). In 2012 the IMF began work to revise the fiscal transparency code and to prepare two board papers, one on "Natural Resources Wealth Management" and a second on "Taxation of Natural Resource Rents." See IMF, "Consultation on IMF's Revised Draft of the Fiscal Transparency Code," July 10, 2013, <http://www.imf.org/external/np/exr/consult/2013/fiscstransp/index.htm> (accessed November 12, 2013); and "Consultation on IMF Natural Resources Work," August 5, 2013, [www.imf.org/external/np/exr/consult/2012/NR/](http://www.imf.org/external/np/exr/consult/2012/NR/) (accessed November 12, 2013). See also, for example, the principles underlying the Natural Resource Charter and the Global Initiative on Fiscal Transparency, The Natural Resource Charter, The Twelve Precepts, <http://www.naturalresourcecharter.org/precepts> (accessed August 3, 2012); and The Global Initiative for

## Threats to Civil Society over Environment, Land, and Oil Work

Transparency alone does not improve governance. Real improvements require that the public be able to hold governments accountable for the decisions they make. For that reason, transparency can only truly help improve governance in an environment in which people can freely and openly access and assess government data, organize to contribute to public debate, press for policies that serve the public interest, scrutinize government decisions, and hold leaders responsible for their decisions made. In short, transparency can only be transformative in an environment where human rights are respected because it is the interface between them that makes accountability possible.

In Karamoja, as elsewhere, civil society has an important role to play in documenting problems that occur in the wake of foreign investment and pushing for appropriate compensation that is fair and lawful. The government's increased focus on seeking foreign investment throughout Uganda has been marked by increased hostility to civil society working on research, advocacy, and citizen education on environmental, land, and corruption issues.<sup>352</sup>

Conflict over land tenure remains a serious source of community turmoil throughout the country, particularly in areas where there is oil or where government and private companies intend to carry out large-scale development projects or mining work. NGOs have in several instances rallied in support of affected communities, criticizing the manner in which land evictions have been carried out and the inadequacy of financial compensation packages. NGOs seeking to educate the public about the value of their land, community processes, and compensation rights face a variety of problems from government officials, including threats of deregistration, accusations of sabotaging government programs, and arrest.

“If your research raises a flag about people in power in this country, and how they are getting money out of this country, you are at serious risk,” said one NGO staff member. “If you preach human rights in this sector, you are anti-development, an economic saboteur.”<sup>353</sup>

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Fiscal Transparency, “High-Level Principles on Fiscal Transparency, Participation, and Accountability: Expanded Version,” May 11, 2013, <http://fiscaltransparency.net/wp-content/uploads/2013/07/GIFT-Expanded-High-Level-Principles-20130511.pdf> (accessed November 12, 2013).

<sup>352</sup> Human Rights Watch, *Curtailling Criticism*, <http://www.hrw.org/reports/2012/08/21/curtailling-criticism>.

<sup>353</sup> Human Rights Watch interview with B.L., Kampala, July 10, 2012.

Attacks against Uganda Land Alliance (ULA) in 2012 had a chilling effect on the willingness of other organizations to work on land and environmental issues. In September 2011 Oxfam published a report on land conflict in various countries around the world and included a case study by ULA about alleged evictions from Mubende and Kiboga districts.<sup>354</sup> The Ugandan National Forestry Authority had granted licenses to the UK-based New Forests Company (NFC), which had received investment from the World Bank Group's private sector lending branch, the International Finance Corporation (IFC), among others. The case study alleges that police and military forcibly and brutally removed several thousand people from the land, ignoring interim orders from the High Court barring the evictions pending a full hearing.<sup>355</sup>

Affected communities filed complaints with the IFC's independent recourse mechanism, the Compliance Advisor Ombudsman. In the wake of the report's publication Uganda's minister of water and environment published a statement disputing the use of the term "land grab," arguing that the residents were "encroachers" and "illegal occupants," and that evictions were lawfully carried out by the government institutions mandated to do so. She did not respond to the allegations of the human rights violations committed during the removals, but asked anyone with evidence to come forward.<sup>356</sup>

The disagreement over the report's findings intensified and the minister of internal affairs prompted an "investigation into the alleged improper conduct of two NGOs," ULA and Oxfam.<sup>357</sup> The ministry alleged that the activities of the NGOs "incited local communities into violent and hateful acts against the New Forests Company" and that this caused "economic loss to some investors ... [and] tainted the Country's international image on

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<sup>354</sup> The report argues that "the poorest people are being hardest hit as competition for land intensifies" and that "residents regularly lose out to local elites and domestic or foreign investors because they lack the power to claim their rights effectively and to defend and advance their interests." For more see Oxfam, "Land and Power: The growing scandal surround the new wave of investments in land," September 22, 2011, <http://policy-practice.oxfam.org.uk/publications/land-and-power-the-growing-scandal-surrounding-the-new-wave-of-investments-in-l-142858> (accessed August 10, 2012).

<sup>355</sup> *Ibid.*, pp. 14-17.

<sup>356</sup> Office of the President, Uganda Media Centre, "Clarification by the Government of Uganda Regarding the Case Study by Oxfam International Titled: The New Forests Company and Its Uganda Plantations of 22 September 2011 Alleging [sic] Land Grabbing [sic]," November 4, 2011, <http://www.mediacentre.go.ug/details.php?catId=1&item=1431> (accessed December 31, 2013).

<sup>357</sup> The National NGO Board, Ministry of Internal Affairs, Government of Uganda, "Report on Alleged De-Campaigning of the New Forest Company Limited by Oxfam GB and Uganda Land Alliance in Kiboga and Mubende Districts," no date, on file with Human Rights Watch, p. 5.

investor management, the respect and promotion of human rights and even brought the person of the President in to disrepute.”<sup>358</sup>

The Ministry of Internal Affairs then tasked the NGO Board to conduct a wide-ranging investigation which went well beyond the legal mandate and the technical capacity of the board itself.<sup>359</sup> Ultimately the investigation recommended that the NGOs have their permits withdrawn if they did not take “corrective action,” that the report be “withdrawn,” and that a retraction be issued. Furthermore the board said that the NGOs should “make apologies to the President of the Republic of Uganda, Government of Uganda Ministries, Agencies and Local Governments....”<sup>360</sup> ULA stood by the content of the research and flagged that the government’s approach to the disagreement is likely to affect the sector. “The price for Uganda Land Alliance’s investigations into cases of land grabbing has been set so high that once paid, it will become extremely risky for anyone attempting to question the vices of land grabbing and forceful evictions of innocent citizens,” the group noted.<sup>361</sup>

Ultimately ULA did not face deregistration. The IFC’s Compliance Advisor Ombudsman began a dispute resolution process involving the parties.<sup>362</sup> One affected community settled its claim with and the other mediation continues. But the government sent a clear and unambiguous message that it would react strongly against independent criticism of its natural resource development strategy.

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<sup>358</sup> The National NGO Board, “Report on Alleged De-Campaigning,” p. 5.

<sup>359</sup> For example, according to the report, the NGO Board investigation was mandated by government to “establish the legality” of the New Forests Company and to “identify the sources of conflict and its management.” Why or how the NGO Board would have legal authority over the status of a foreign-incorporated private sector actor, or the legal and technical knowledge to address community conflict, re-research the report’s findings, and make determinations regarding research methodologies, is not clear. The National NGO Board, “Report on Alleged De-Campaigning,” pp. 16-17.

<sup>360</sup> *Ibid.*, pp. 16-17.

<sup>361</sup> Uganda Land Alliance, “Apologize or face closure, government tells Uganda Land Alliance,” April 30, 2012, <http://ulaug.org/2012/04/kampala-%e2%80%93-apologise-or-face-closure-government-tells-uganda-land-alliance/> (accessed July 16, 2012).

<sup>362</sup> Office of the Compliance Advisor/Ombudsman, “Uganda/Agri-Vie Fund-01/Kiboga,” December 20, 2011, <http://www.cao-ombudsman.org/cases/document-links/links-180.aspx> (accessed July 16, 2012); and “Uganda/Agri-Vie Fund-02/Mubende,” December 20, 2011, <http://www.cao-ombudsman.org/cases/document-links/links-181.aspx> (accessed July 16, 2012).

## VI. Mining and Human Rights

Even the world's major mining firms generally acknowledge that mining can be a dangerous and destructive industry when not carried out responsibly, and that painstaking evaluation of possible negative impacts is imperative.<sup>363</sup> Historically, many of the worst abuses, including human rights abuses, environmental damage, or accidents could have been prevented by robust regulation, monitoring, and oversight of mining work. Irresponsible and poorly regulated mining operations have damaged affected communities' rights to health, water, and work. Mining has frequently been linked to catastrophic accidents or to violent human rights abuses as well.<sup>364</sup>

### Government's Duty to Regulate to Protect Human Rights

Governments are obligated to protect their citizens from human rights abuses, including those connected with business activity. In practical terms, a government's obligation to protect human rights in the context of business activity "requires taking appropriate steps to prevent, investigate and redress such abuse through effective policies, legislation, regulation and adjudication."<sup>365</sup> Governments are also obligated to effectively enforce that legal framework once it is in place, to prevent abuse, and to ensure accountability and

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<sup>363</sup> See Sir Robert Wilson, Rio Tinto, and International Council on Mining and Metals, "Plenary Address to World Parks Congress, Durban, South Africa," September 16, 2003, <http://www.riotinto.com/documents/Media-Speeches/worldParksCongress160903.pdf> (accessed January 5, 2012), stating "We agreed that the performance of our industry had too often been unacceptable; that some of the criticisms leveled against us were fair. In short, that we had better establish a sensible dialogue with some of our critics and resolve to improve our performance, so that we became part of the solution, not part of the problem." See also Barrick Gold, "Getting it Right: A Look at the Mine Approval Process," *Beyond Borders*, January 23, 2012, [http://barrickbeyondborders.com/2012/01/barrick-gold-mine-approval-process/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+barrickbeyondborders%2FPNbN+%28Beyond+Borders+-+Responsible+mining+at+Barrick+Gold+Corporation%29](http://barrickbeyondborders.com/2012/01/barrick-gold-mine-approval-process/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+barrickbeyondborders%2FPNbN+%28Beyond+Borders+-+Responsible+mining+at+Barrick+Gold+Corporation%29) (accessed January 27, 2012).

<sup>364</sup> For more on the dangers of mining activities and the need for regulation, see Human Rights Watch, *Out of Control: Mining, Regulatory Failure and Human Rights in India*, June 2012, <http://www.hrw.org/reports/2012/06/14/out-control>, p. 56-59. For more on public and private security forces committing human rights abuses such as beatings, rape, or killing around mines in Tanzania and Papua New Guinea see Human Rights Watch, *Gold's Costly Dividend*, <http://www.hrw.org/node/95776>; Geoffrey York, "Barrick's Tanzanian Project Tests Ethical Mining Policies," *Report on Business Magazine*, September 29, 2011, <http://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article2183592/> (accessed January 24, 2012).

<sup>365</sup> UN Commission on Human Rights, "Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Annex, I.A.1," A/HRC/17/31, March 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed August 23, 2012).

redress where abuses do occur.<sup>366</sup> Governments should also continually assess whether existing rules—and the enforcement of those rules—are actually adequate to the task of ensuring respect for human rights, and improve upon them if they are not.<sup>367</sup>

## Companies' Responsibilities to Respect Human Rights

Although governments have primary responsibility for ensuring respect for human rights, corporations also have a number of responsibilities, as increasingly recognized by international law and other norms. These norms reflect an expectation that corporations should have policies and procedures in place that ensure human rights abuses do not occur and that they undertake adequate due diligence to identify and effectively mitigate human rights problems. For example, former Special Representative of the UN Secretary-General on Business and Human Rights John Ruggie elaborated on some of the international human rights obligations pertaining to businesses in his 2008 “Protect, Respect and Remedy” framework. This framework was further supplemented by a set of “Guiding Principles on Business and Human Rights” endorsed by the United Nations Human Rights Council in 2011. The framework and principles set out: 1) the state duty to protect human rights; 2) the corporate responsibility to respect human rights; and 3) the need for a remedy for victims of business-related human rights abuses.<sup>368</sup>

The UN Guiding Principles describe many of the basic steps that companies should take to respect human rights, avoid complicity in abuses, and help ensure an adequate remedy them if they occur. It also elaborates the governmental duty to protect individuals and communities from human rights abuses, including in connection with business activity. They focus in particular on the need for human rights due diligence—the idea that firms should identify and plan against any human rights risks posed by their operations, adequately and well in advance. They also reflect an understanding that firms, especially

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<sup>366</sup> The Guiding Principles note that states should “Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps.” United Nations Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework,” New York, 2011, B.3.

<sup>367</sup> *Ibid.*, B.3. See also ACHPR, “155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)/ Nigeria,” October 2001.

<sup>368</sup> The Guiding Principles on Business and Human Rights.

in risk-prone environments like Karamoja, need to develop effective policies to prevent, detect and respond to human rights abuses—not just deal with problems if they occur.<sup>369</sup>

In the context of potentially harmful industries like mining, both government and companies should assess the potential human rights impacts of proposed new operations before allowing them to go forward.<sup>370</sup> In some cases, legal frameworks seek to achieve this by folding an assessment of possible human rights impacts into broader processes that also examine the likely environmental impacts of a proposed new mining operation or other industrial development.

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<sup>369</sup> The Guiding Principles on Business and Human Rights, pp. 13-25.

<sup>370</sup> The Guiding Principles note that companies should possess “a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.” *Ibid.*, II.A.15.b.

## VII. The Role of International Partners

Uganda's international partners should continue to work to realize the economic, social, and cultural rights of the people of Karamoja in accordance with international human rights law. When developing projects in partnership with the Ugandan government, donors should support the government to protect the right of peoples in Karamoja, particularly land rights and the right of indigenous peoples to freely give (or withhold) their consent to any projects on their lands, and work to educate communities about their rights, and environmental protection before the possibly impending mining boom.<sup>371</sup>

Coordinating effective communication and information sharing between the central and local government and building a robust civil society in Karamoja will be crucial to ensuring that the private sector mining activities do not prompt future conflict and/or rob the people of Karamoja from benefitting from much-needed development opportunities prompted by private investment. Addressing the impact of the exploration and active mining work that will come in light of the massive increase in licensing that has occurred in recent years requires urgent and specific attention.

### Missed Opportunity: Sustainable Management of Mineral Resources Project

Certain donors have missed the opportunity to enhance respect for indigenous peoples' rights in Uganda's mining sector to date, despite financing projects on sustainable mining. For instance, the World Bank, the African Development Bank, and the Nordic Development Fund financed a \$48.3 million Sustainable Management of Mineral Resources Project (SMMRP) in partnership with the Ugandan government from 2003 to 2011.<sup>372</sup> This project explicitly

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<sup>371</sup> Currently USAID and Irish Aid fund food security and conflict mitigation throughout Karamoja and both have committed to address the security and stability concerns in the region as part of large multi-year donor funds. Irish Aid supports some work on land rights and rights of indigenous people. USAID, "Uganda Country Development Cooperation Strategy, 2011-2015," December 17, 2010, <http://www.usaid.gov/sites/default/files/documents/1860/UgandaCDCS.pdf> (accessed January 8, 2014); Irish Aid, "Country Strategy paper, 2010-2014. Uganda," 2010, <http://www.irishaid.gov.ie/media/irishaid/allwebsitemedia/20newsandpublications/publicationpdfsenglish/irish-aid-uganda-csp-2010-2014.pdf> (accessed January 8, 2014).

<sup>372</sup> The project was funded by \$30 million of credits from the World Bank's International Development Association, \$7.7 million grant from the African Development Bank, \$7 million from the Nordic Development Fund, and \$3.6 million from the Ugandan government. The World Bank, "Sustainable Management of Mineral Resources Additional Financing," September 23, 2008, <http://www.worldbank.org/projects/P111097/sustainable-management-mineral-resources-additional-financing?lang=en> (accessed January 8, 2014); Joshua Tuhumwire, Ugandan Ministry of Energy and Mineral Development, "Supporting the Advancement of Artisanal and Small Scale Mining (ASM) in Uganda," 2012,

excluded Karamoja from its activities because of security concerns and did not remedy this when providing additional financing in 2009, even though the security situation had improved by that time and the DGSM was increasingly handing out exploration licenses in Karamoja.<sup>373</sup>

The World Bank's initial objectives were to assist the government in implementing its strategy to:

- (i) Accelerate sustainable development and reduce poverty by strengthening governance, transparency, and capacity in management of mineral resources, with particular emphasis on community development in mining areas and improvement of small-scale and artisanal mining.
- (ii) Promote a socially and environmentally sound development of the minerals sector based on private investments.<sup>374</sup>

Under these objectives, the World Bank could have gone some way towards working with the Ugandan government to address the absence of consent or even consultation requirements in the Ugandan Mining Act prior to the granting of exploration licenses. At a minimum, the World Bank could have encouraged the government to bring its policies into compliance with the World Bank's policy on indigenous peoples, which requires free, prior, and informed consultation with indigenous peoples, leading to broad community support, before proceeding with development projects that affect them.<sup>375</sup>

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[http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1237387264558/5930373-1237390689503/Tuhumwire\\_EIGender.pdf](http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1237387264558/5930373-1237390689503/Tuhumwire_EIGender.pdf) (accessed January 8, 2014).

<sup>373</sup> As the Sustainable Management of Mineral Resources Project drew to a close in 2011, its Implementation and Completion Status Report noted, "the Karamoja region in northeastern Uganda, which hosts occurrences of over 50 different economic minerals, has become one of the most prospected areas of the country since a disarmament initiative has brought about increased stability and security after decades of conflicts over cattle and pasture lands," [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/12/10/000386194\\_20121210054235/Rendered/PDF/NonAsciiFileNameo.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/12/10/000386194_20121210054235/Rendered/PDF/NonAsciiFileNameo.pdf). In December 2011, Uganda's Minister of Finance, Planning and Development submitted a request for \$20 million in IDA funding to support continuing airborne geophysical surveys and construction of the regional DGSM offices in Karamoja. The World Bank, "Implementation Completion and Results Report on a Credit to the Republic of Uganda for the Sustainable Management of Mineral Resources Project," November 28, 2012, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/12/10/000386194\\_20121210054235/Rendered/PDF/NonAsciiFileNameo.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/12/10/000386194_20121210054235/Rendered/PDF/NonAsciiFileNameo.pdf).

<sup>374</sup> The World Bank revised the objectives of this project during its mid-project review to involve "strengthening government's capacity to develop a sound minerals sector based on private investments and improvements in selected artisanal and small scale mining areas," because the original objectives were "vague, not easily measurable, and not very realistic." The World Bank, "Implementation Completion and Results Report," p. 5.

<sup>375</sup> World Bank, "Operational Policy 4.10," July, 2005, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (accessed January 23, 2014).

The three donors could also have worked with the Ugandan government to raise awareness among the people of Karamoja directly and via local government structures of the potential positive and negative impacts of mining on their lives and environment, as well as their rights, while taking the necessary precautions to ensure that security risks were adequately addressed.<sup>376</sup> Instead, even the Ugandan government's 2003 Sectoral Environmental and Social Assessment did not identify any of the obvious potential negative impacts of large mines, noting only positive outcomes such as job creation, infrastructure, and improved access to social services.<sup>377</sup> This assessment did note that the World Bank's Indigenous Peoples Policy could be triggered should the project lead to gold exploration in Karamoja among other locations, but did not address how the standards outlined in the policy would or could be integrated into the donor-financed sustainable mining framework.<sup>378</sup>

This project has to some degree enhanced transparency in the mining sector nation-wide, particularly through the operationalization of an online cadaster of mining licenses throughout Uganda, which now includes Karamoja. However, this has been of very limited help to affected communities in Karamoja, including local government leaders, where access to the internet, and even power and computers, remains extremely challenging.<sup>379</sup>

Other potentially transformational elements of this project which focused on the communities that were likely to be most affected by an increase in mining were canceled due to cost over runs. For example, the project was meant to support artisanal mining communities to craft community development plans, which include mineral resources management. This could have supported communities to proactively consider their development objectives, paths for achieving them, and prepare a development plan in a

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<sup>376</sup> Under this project, donors funded a Small Scale Mining Handbook: A Guidebook for Improving the Performance of Artisanal and Small Scale Mining in Uganda. While the 416-page book contains many important chapters, including on child labor and other children's rights issues, the health consequences of mercury use, land rights versus mineral rights, conflict resolution, and human rights with an emphasis on women's rights, it is of little use in raising awareness of these rights in itself. It is not widely available to the district and sub-county government representatives who are most in touch with affected communities. The book did not include any discussion of the right of free and prior informed consent.

<sup>377</sup> The Republic of Uganda, "Sectoral Environmental and Social Assessment," April 24, 2003, p. 26.

<sup>378</sup> *Ibid.*, p.52.

<sup>379</sup> DGSM, "Mining Cadastre Portal," <http://www.uganda-mining.go.ug/magnoliaPublic/en/MiningCadastrePortal.html>. However, one indicator used to measure the effectiveness of the accuracy/transparency of licensing was by the number of complaints, an unhelpful indicator because there may be many reasons for which complaints are not filed, including because potential complainants are unaware of such a complaints system or have little faith in it because of corruption concerns. The World Bank judged this indicator as 100 percent achieved because zero complaints had been received. World Bank, "Implementation Completion and Results Report," p. vi.

participatory way, enhancing their access to livelihood, particularly in the dry season.<sup>380</sup> Through this process, donors and the government could have provided communities with information on Uganda's legislative framework for land, mining, and the environment, and the rights of communities. This also could have prepared communities for negotiating with mining companies and empowered them to work with companies to ensure that the company's plans fit into the community's development plan.

The small grants program under the project was implemented as a pilot but was not scaled up as planned, again due to cost over runs.<sup>381</sup> Also, while the project was designed to finance decentralized public agencies involved in mineral resource management, instead, the government constructed administrative, laboratory, and rock museum buildings at the Entebbe headquarters of the Department of Geological Survey and Mines.<sup>382</sup>

## A Current Opportunity: Land Registration Project

In May 2013 the World Bank approved a \$100 million project which will fund systematic registration of communal and individually owned land.<sup>383</sup> This is set to include establishing communal land associations and demarcate and register communal lands and issue titles in Northern and Eastern regions of Uganda, and demarcate and register individual lands in rural and peri-urban areas.<sup>384</sup> The project leaves room to be extended to other priority areas outside of the Northern and Eastern regions, but at the time of writing according to

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<sup>380</sup> Human Rights Watch has previously criticized a World Bank project in Tanzania focusing on artisanal mining for failing to actively target child labor or measure the impact of its initiatives on this problem. The World Bank should ensure that all projects that involve artisanal and small-scale mining include initiatives that are designed to decrease child labor in mining, increase access to education for children from artisanal and small-scale mining families, and reduce the exposure of children and adults to mercury. The impact of these initiatives on child labor and mercury exposure should be explicitly measured through the results frameworks of all relevant projects. See Human Rights Watch, *Toxic Toil: Child Labor and Mercury Exposure in Tanzania's Small-Scale Gold Mines*, August 28, 2013, <http://www.hrw.org/reports/2013/08/28/toxic-toil>.

<sup>381</sup> The program was intended to be scaled up from 18 grants in 10 sub-counties in 5 districts, to at least 70 grants. But this was cut, despite it costing just a small portion of the overall project cost (\$590,000 for the pilot, only \$90,000 of which actually went on the grants, the rest were in preparation and administration costs). See, the World Bank, "Implementation Completion and Results Report," p. 11.

<sup>382</sup> The World Bank, "Implementation Completion and Results Report," p. v.

<sup>383</sup> The World Bank, "Integrated Safeguards Data Sheet, Project Appraisal on a Proposed Credit to the Republic of Uganda for a Competitiveness and Enterprise Development Project," April 12, 2013, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224bo8190ca4a/1\\_0/Rendered/PDF/IntegratedoSafoectooCEDP0000P130471.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224bo8190ca4a/1_0/Rendered/PDF/IntegratedoSafoectooCEDP0000P130471.pdf), p.2.

<sup>384</sup> The World Bank, "Integrated Safeguards Data Sheet," [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224bo8190ca4a/1\\_0/Rendered/PDF/IntegratedoSafoectooCEDP0000P130471.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224bo8190ca4a/1_0/Rendered/PDF/IntegratedoSafoectooCEDP0000P130471.pdf), pp. 13 and 14.

the World Bank this project will not include Karamoja, often considered a difficult environment to work in.<sup>385</sup>

Through this project the World Bank and the government have the potential to begin to greatly enhance security of land ownership for communities. However, recognizing the government's failures to hand out certificates of customary land ownership, its record of land evictions in violation of international law, crackdowns on land rights activists, and historical discrimination toward peoples living a traditional lifestyle as discussed in this report, there is a high risk that the project will fail to address the rights of Uganda's poorest communities. The World Bank has articulated some of these challenges in its most recent Country Assistance Strategy, observing that, "the debate about land rights is becoming fiercer ... and speculative land purchases in the oil rich regions have already begun. The recently enacted Land Bill revealed significant tensions between 'indigenous' tribal claims to land and land rights for settlers or migrants."<sup>386</sup> But despite recognition of these risks, the World Bank has not triggered the Indigenous Peoples' Policy for this project, as the project area is not expected to include "known indigenous people's areas."<sup>387</sup> The World Bank has, however, acknowledged that it intends reforms under this project to apply nationwide, reinforcing the importance of triggering and complying with the Indigenous Peoples' Policy.<sup>388</sup>

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<sup>385</sup> Human Rights Watch interview with Ahmadou Moustapha Ndiaye, Uganda country manager, the World Bank, Kampala, July 11, 2013; Human Rights Watch interview Sarah Kulata Basangwa, Kampala, July 11, 2013. However, according to project documents, it does provide for the creation of a district land office in Moroto. Government of Uganda, Ministry of Lands, Housing and Urban Development, "Resettlement Policy Framework, Competitiveness and Enterprise Development Project (CEDP) Final Report," March 12, 2013, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/22/000333037\\_20130322124204/Rendered/PDF/RP14140P1304710120201300Box374361B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/22/000333037_20130322124204/Rendered/PDF/RP14140P1304710120201300Box374361B.pdf) (accessed January 22, 2014).

<sup>386</sup> International Development Association, International Finance Corporation, and Multilateral Investment Guarantee Agency, "Country Assistance Strategy for the Republic of Uganda for the Period FY 2011-2015" April 27, 2010, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/05/04/000334955\\_20100504033727/Rendered/PDF/541870CASoP11610only101DAR201010116.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/05/04/000334955_20100504033727/Rendered/PDF/541870CASoP11610only101DAR201010116.pdf) (accessed December 22, 2013), p. 61.

<sup>387</sup> The World Bank, "Integrated Safeguards Data Sheet," [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224b08190ca4a/1\\_o/Rendered/PDF/IntegratedoSafoectooCEDPooooP130471.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/AFR/2013/02/09/090224b08190ca4a/1_o/Rendered/PDF/IntegratedoSafoectooCEDPooooP130471.pdf). The document implies, however, that the IP policy will be rejiggered if any project areas include lands in Karamoja: "assumption will be confirmed before appraisal based on the additional information about location of project activities identified during project preparation, and reviewed against information about indigenous peoples (Ik) in the Mt. Moroto area in Northern Uganda." The World Bank, "Integrated Safeguards Data Sheet (Concept Stage) – Competitiveness and Enterprise Development Project (CEDP) – P130471," February 5, 2013, <http://documents.worldbank.org/curated/en/2013/02/17275844/integrated-safeguards-data-sheet-concept-stage-competitiveness-enterprise-development-project-cedp-p130471> (accessed January 22, 2014).

<sup>388</sup> "Project reforms in support of the land registration systems, land dispute resolution, and other national reforms will have impacts nationwide on improving transparency and security of land tenure," Government of Uganda, Ministry of Lands,

The World Bank has also recognized both the risks of fraud and corruption, and the “political economy of land reform,” noting that “[s]trategic communication, cultivating trust and adopting policies geared toward engendering government commitment to protecting land rights will be critical to ensure that the land reform component is successfully implemented.”

## The World Bank’s Indigenous Peoples’ Policy Falls Short of International Human Rights Standards

As it stands, the World Bank’s Indigenous Peoples’ Policy falls short of international human rights standards. This policy, together with the bank’s other safeguard policies, is currently under review.<sup>389</sup> In the course of this review, the bank should enhance its policy to enable it to protect the rights of indigenous peoples in all of its projects. This would include, among other things, the following revisions:

- Require compliance with the United Nations Declaration on the Rights of Indigenous Peoples into the Indigenous Peoples Policy.
- Require that borrowers obtain the free and prior informed consent of indigenous peoples through their own representative institutions for any projects on, involving, or which may substantially affect indigenous peoples’ lands, territories, or natural/cultural resources, or affect their human rights, with third party verification.
- Require that borrowers respect and protect indigenous peoples’ land rights, their collective ownership of land. A 2011 review of the Indigenous Peoples Policy found that of all indicators measured, compliance with the policy requirements on recognition of land and resource rights scored lowest.<sup>390</sup>
- Expressly prohibit the physical relocation of indigenous peoples or any restrictions on indigenous peoples’ livelihood activities or access to their lands, territories, or resources without their free, prior, and informed consent.

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Housing and Urban Development, “Resettlement Policy Framework,” [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/22/000333037\\_20130322124204/Rendered/PDF/RP14140P1304710120201300Box374361B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/22/000333037_20130322124204/Rendered/PDF/RP14140P1304710120201300Box374361B.pdf).

<sup>389</sup> For further discussion, see Human Rights Watch, *Abuse-Free Development: How the World Bank Should Safeguard Against Human Rights Violations*, July 22, 2013, <http://www.hrw.org/reports/2013/07/22/abuse-free-development-o>.

<sup>390</sup> “Implementation of the World Bank’s Indigenous Peoples Policy, A Learning Review (FY 2006-2008),” Working Paper prepared for the World Bank’s Operations Policy and Country Services, August 2011, paras. 46 and 81.

- In cooperation with borrowers and civil society, screen for the possible presence of indigenous peoples living in voluntary isolation and ensure respect for their rights, including their right to remain in isolation if they so desire.<sup>391</sup>
- Ensure that the Indigenous Peoples Plans and Planning Frameworks are developed in a way that enables indigenous peoples to determine their own development priorities as collective owners of their lands and resources.
- Require human rights impact assessments in projects that have the potential to affect indigenous peoples.<sup>392</sup>

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<sup>391</sup> The Inter-American Development Bank (IDB) respects the rights of indigenous peoples living in voluntary isolation to continue to do so. IDB, “Operational Policy on Indigenous Peoples and Strategy for Indigenous Development,” 2006, p. 11.

<sup>392</sup> The World Bank has found that social impact assessments have been inadequate. “Implementation of the World Bank’s Indigenous Peoples Policy,” p. 49.

# Recommendations

## To the Government of Uganda

- Recognize the communities in Karamoja as distinct indigenous peoples with rights to their lands and recognize their land rights over land traditionally occupied and used.
- Urgently implement a land tenure registration system that increases land tenure security, particularly for communal land owners.
- Implement robust procedures to consult with the peoples of Karamoja working transparently through their own representative institutions in order to obtain their free and informed consent prior to approving or commencing any project affecting their lands, including granting exploration licenses and mining leases.
- Require a stronger focus on community impacts in environmental impact assessments that are mandated under Ugandan law. In addition, require human rights impact assessments or, until such regulations are drafted and implemented, the integration of social and environmental risks into a single assessment in line with international best practice for comprehensive and transparent social and environmental impact assessments that explicitly address human rights considerations and are independently verifiable.
- Ensure that all land evictions or displacements are implemented in accordance with international law, particularly the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and, for indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples, in particular:
  - Do not relocate indigenous peoples without their free, prior, and informed consent.
  - Give priority to strategies which minimize displacement and fully explore all possible alternatives to evictions.
  - Any eviction must respect residents' land rights and should be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; and (e) regulated so as to ensure full and fair compensation for the value of the land, taking into account possible development and rehabilitation.

- Follow good international practice in the management of natural resources. Take immediate steps to begin implementing internationally recognized standards of transparency and accountability, including the requirements and recommendations of the Extractive Industries Transparency Initiative (EITI).
- Adopt and fully implement the standards of the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative to address the risk of human rights abuses arising from security arrangements in the oil, gas and mining industries.
- Publicly announce support for the United Nations Declaration on the Rights of Indigenous Peoples and actively support adopting it into Ugandan law.
- Actively support amending the Mining Act and the Land Act, as outlined below.
- Invite the UN Special Rapporteur on the rights of indigenous peoples, and the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities to visit Uganda's indigenous communities in Karamoja, particularly those resident in areas of mining and extractive work.

## To Uganda's Parliament

- Amend the constitution to recognize indigenous peoples' rights in line with international human rights law and the African Charter on Human and Peoples' Rights, as applied by the Working Group on Indigenous Populations/Communities.
- Amend the Land Act to make eligible broad social representation in the composition of Communal Land Associations legally permissible, in order to address a major hurdle for registering certificates of customary ownership. Maintain the current requirement for representation of women, and also require account to be taken of the interests of youth, the elderly, persons with disabilities, and all vulnerable groups in the community.
- Amend the Mining Act to include a requirement for clear evidence of free and informed consent from affected communities prior to the granting of exploration licenses, and again prior to the granting of mining leases.
- Amend the Mining Act to include a requirement for a human rights impact assessment, detailing the potential impacts exploration and active mining may have on affected communities and their rights, what steps companies will take to continually inform and communicate with affected communities, and how adverse rights impacts will be mitigated or avoided.
- Incorporate the United Nations Declaration on the Rights of Indigenous Peoples into law.

- Commission a study of the role of private security companies and the Uganda Peoples' Defence Forces in working with private companies in Karamoja and in mining in Karamoja, including financial transactions between brigade commanders, soldiers, and private companies.

## **To the Uganda Human Rights Commission**

- Take a proactive role in researching the impact of violations of the right to free, prior, and informed consent in the context of natural resource extraction and include this as a section in annual reports and press work.
- Lobby parliament to amend the Mining Act to include the requirement of human rights impact assessments before exploration and active mining work begins. Push for the commission to have an increased budget to assess the quality of those assessments and monitor the implementation and adequacy of agreed measures to avoid or mitigate rights violations. Make reports of violations of these assessments public and present them to parliament at routine intervals.
- Lobby the government to publicly indicate support for the United Nations Declaration on the Rights of Indigenous Peoples and make it directly applicable in Ugandan law.
- In consultation with environmental and resource management experts, undertake an analysis of the cumulative impacts of the numerous exploration contracts in Karamoja, including consideration for irrigation schemes and road infrastructure, among others, on the livelihoods and economic, social, and cultural rights of the indigenous communities.
- In consultation with conflict experts, undertake a conflict vulnerability assessment considering the likelihood and nature of conflict from increased competition for scarce resources resulting from the numerous extractive projects in Karamoja.

## **To Companies Working or Considering Working in Karamoja**

- Implement robust procedures to consult with the indigenous peoples of Karamoja through their own representative institutions and local governments in order to obtain their free and informed consent prior to commencing any project affecting their lands, including applying for exploration licenses and again before applying for mining leases, making sure that affected communities are part of every step of the extractive process. Companies should:

- Consult with the peoples of Karamoja through their councils of elders, women caucuses, and youth caucuses.
- Ensure that all process are inclusive of women, persons with disabilities, youth, and other marginalized members of the community.
- Hold public meetings in all affected communities.
- Ensure that the community is given the opportunity to approve (or reject) the proposed project prior to the commencement of any operations, including exploration.
- Provide information throughout all phases of operations, from exploration, to extraction, to post-extraction.
- Ensure that the community is given access to independent information and advice, including independent legal advice.
- Ensure that the community reaches its decision free from force, manipulation, coercion, or pressure.
- Fully uphold internationally recognized human rights responsibilities, including the responsibility to respect human rights and avoid causing or contributing to any abuses. Undertake human rights impact assessments to identify potential human rights impacts and avoid or mitigate adverse impacts, in active consultation with the affected community, human rights organizations, and other civil society organizations, and make them publicly available in a timely and accessible manner.
- Improve public access to information and transparency by:
  - Strengthening channels of communication with local and national civil society and with affected community members.
  - Making information available to both literate and non-literate community members. Outcomes of environmental assessments, periodic environmental monitoring reports, resettlement action plans, and updates on implementation should be easily accessible and include short summaries in non-technical language. Summaries and full reports should be translated into local languages, available on the internet, posted in public buildings, including at sub-county headquarters and local schools in directly affected communities of Karamoja.
- Establish effective grievance mechanisms, in line with good international practice, so that individuals affected by mining projects can complain directly to companies in addition to the government.

- Adopt and fully implement the standards of the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative to address the risk of human rights abuses arising from security arrangements in the oil, gas and mining industry.

## **To Companies Sourcing Minerals from Karamoja**

- Establish a thorough due diligence process, including regular monitoring, to ensure that the rights of indigenous peoples are respected in supply chains. Monitors should be independent and the results of monitoring should be published. If there are reports of human rights violations companies should specifically investigate these reports. The due diligence process should also include procedures to address adverse human rights impacts.

## **To Uganda’s International Donors, including the World Bank**

- Undertake human rights due diligence for proposed development projects to avoid contributing to or exacerbating human rights violations. Only approve projects after assessing human rights risks, including risks concerning land and labor rights; identifying measures to avoid or mitigate risks of adverse impacts; and implementing mechanisms that enable continual analysis of developing human rights risks and adequate supervision.
- Revise policies more broadly to ensure that they require respect for human rights in any donor financed activities, including the right of indigenous peoples to freely give (or withhold) their consent to projects on their lands, prior to those projects commencing.
- Fund nongovernmental organizations to support indigenous groups in Karamoja to craft development plans and include concerns for the impact of mining.
- Publicly and privately urge the Ugandan government to amend the Mining Act and the Land Act as stated above.
- Provide support to the Land Board to issue certificates of customary ownership in accordance with the Land Act 1998, to protect the communal land rights of the peoples of Karamoja, including by providing support for systematic demarcation and recording of land rights in close consultation with councils of elders and communities in Karamoja more broadly.
- Publicly and privately urge the Ugandan government to cease labeling critics of development projects or people who do not wish to be relocated “economic

saboteurs” and emphasize the importance of free expression, assembly, and association as rights themselves and for sustainable development.

- Publicly and privately urge the Ugandan government to indicate support for the United Nations Declaration on the Rights of Indigenous Peoples and make it directly applicable in Ugandan law.
- Publicly and privately urge the Ugandan government to ensure that all compulsory acquisitions and resettlements are carried out in accordance with UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and, for indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples.
- Encourage Uganda to implement the requirements and recommendations of the Extractive Industries Transparency Initiative (EITI) and to apply to join the initiative. More generally, support reforms to advance fiscal transparency to bring Uganda into compliance with the IMF’s Code of Good Practices on Fiscal Transparency and support projects to build the capacity of civil society to scrutinize government budgets, revenue and expenditure, participate in budget planning and oversight processes, and to hold the government accountable for its spending decisions.
- Encourage Uganda to adopt and fully implement the standards of the Voluntary Principles on Security and Human Rights.
- Consider funding a study on the role of the private security companies and Uganda Peoples’ Defence Forces in working with private companies in Karamoja and in the gold and other mineral trade in Karamoja, including financial transactions between brigade commanders, soldiers, and private companies.
- Support initiatives to professionalize and formalize the artisanal gold mining sector, and address risks connected to it, such as child labor, mercury use, and other health and safety issues.

### **To the UN Special Rapporteur on the Rights of Indigenous Peoples and the African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations/Communities**

- Request an invitation from the government of Uganda to visit and assess the human rights situation of Uganda’s indigenous peoples, particularly those living in areas of mining and extractive work.

## Acknowledgments

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## **Annex I: Human Rights Watch Letter to East African Gold**

August 19, 2013

Dr. Thomas Sawyer  
Chief Executive Officer  
East African Gold  
Queensway House  
Hilgrove Street  
St. Helier  
Jersey, JE1 1ES  
United Kingdom



**HRW.org**

### **Re: Human Rights Watch research in Karamoja**

Dear Mr. Sawyer,

We are writing to open a discussion with East African Gold on human rights issues related to the extractive sector in Uganda's Karamoja region. We have included some requests for information in this letter and would be grateful for the opportunity to set up in-person and/or telephone meetings with you or your colleagues.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

In June and July 2013, Human Rights Watch carried out field research examining the human rights dimensions of current and proposed operations in Kaabong and Moroto districts. We seek to identify practical recommendations that will be of broader relevance to the government of Uganda and other mining operations likely to be initiated in the coming years. Additionally, we will examine efforts to address the broader human rights and governance implications involved with the anticipated rapid growth of the extractive sector in Karamoja.

As an initial step, we request that East African Gold provide us with any available information relating to the company's approach to human rights, environmental assessments, and broader community issues linked to your work in the Kaabong and Kotido exploration license areas. In particular, to the extent possible, we ask for the following:

- Any studies undertaken prior to the commencement of exploration to assess the likely environmental, human rights, or community impacts of East African Gold's work in Karamoja and copies of the outcome of such studies, including Environmental Impact Assessments and other relevant documents. If no studies were undertaken, or it is not possible to share the relevant documentation, we would be grateful for an explanation as to why.
- Any studies that have been undertaken since exploration commenced to assess the ongoing environmental, human rights or community impacts of that operation and copies of the outcome of such studies. Again, if no studies were undertaken, or it is not possible to share the relevant documentation, we would be grateful for an explanation as to why.
- East African Gold's policies on human rights issues, including any documents or policies on corporate social responsibility, community consultation, recruitment, labor conditions, security, corruption, and resettlement.
- Copies of agreements, such as surface rights and/or land use agreements signed between East African Gold and any community residents or leaders.
- Any other information or documents related to your company's exploration work in Karamoja that you believe would be of value for our work.

We would welcome the opportunity to speak with you or other company representatives as appropriate. We believe this is essential to developing an informed perspective on East African Gold's operations and on your company's efforts to ensure respect for the rights of impacted communities. More broadly, as one of the first entrants into what seems poised to be a resource boom, we believe that East African Gold has valuable insights into the complexities and challenges of operating in Uganda's Karamoja region which could help inform our recommendations both to the Ugandan government and to others in the mining sector.

We would appreciate a response to these requests by September 6, 2013. If for some reason that is not possible, please get in touch with us to propose another timeframe.

We look forward to being in touch your earliest convenience to arrange a mutually convenient time for an in-person meeting in London or a telephone meeting.

Thank you for your attention to this matter and we look forward to your response. Please contact Jessica Evans on [evansj@hrw.org](mailto:evansj@hrw.org) should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvind Ganesan', with a stylized flourish at the end.

Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

## **Annex II: Human Rights Watch Letter to Jan Mangal (U) Ltd.**



**HRW.org**

August 19, 2013

Mr. Nitin Kumar Soni  
Director  
Jan Mangal (U) Ltd.  
PO Box 28984  
Kampala  
Uganda

### **Re: Follow-up to Meeting with Human Rights Watch**

Dear Mr. Soni,

We appreciated the opportunity to have met with senior company representatives at your work site in Moroto district on July 9, 2013 and are now writing to continue our discussion on human rights issues related to the mining sector in Uganda's Karamoja region.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

In June and July 2013, Human Rights Watch carried out field research examining the human rights dimensions of current and proposed operations in Moroto and Kaabong districts. We seek to identify practical recommendations that will be of broader relevance to the government of Uganda and to new mining operations likely to be initiated in the coming years. Additionally, we will examine efforts to address the broader human rights and governance implications involved with the anticipated rapid growth of the extractive sector in Karamoja.

As an initial step, we request that Jan Mangal provide us with any available information relating to the company's approach to human rights, environmental assessments, and broader community issues linked to the Moroto project. In particular, to the extent possible, we ask for the following:

- Any studies undertaken prior to the commencement of exploration to assess the likely environmental, human rights, or community impacts of Jan Mangal's operations in Moroto and copies of the outcome of such studies, including Environmental Impact Assessments and other relevant documents.
- Any studies that have been undertaken since exploration and then mining operations commenced to assess the ongoing environmental, human rights, or community impacts of that operation and copies of the outcome of such studies. We recognize that you have only recently received your mining lease, so understand no such studies may have yet been undertaken since mining commenced. Please can you also advise what ongoing studies are planned?
- Copies of agreements, such as surface rights and/or land use agreements signed between Jan Mangal and any community residents or leaders.
- Jan Mangal's policies on human rights issues, including any policies on corporate social responsibility, community consultation, recruitment, labor conditions, security, corruption, and resettlement.
- Any other information or documents related to your company's exploration work in Karamoja that you believe would be of value for our work.

More specifically, we wish to follow up on these issues:

- How, in specific terms, will the local Karamojong benefit from Jan Mangal's operations in Moroto? What is the timeframe within which you foresee those benefits occurring?
- What steps have you taken to identify the human rights risks of your operations and to mitigate or avoid these risks?
- Please describe your community consultation process from the initiation of your exploration activities to the present. When and how did you begin consulting the community about your proposed activities in Moroto? Could you provide dates, attendance registers, and minutes of any community consultation meetings about your Moroto exploration and mining work?
- Under the United Nations Declaration on the Rights of Indigenous Peoples and elsewhere in international human rights law, companies have a responsibility to consult and cooperate with the Karamojong, as indigenous peoples, in order to obtain their free and informed consent prior to commencing projects. Please describe your process, if any, to obtain the free and informed consent of the local indigenous peoples prior to commencing exploration and then mining.

- What steps have you taken to maintain the safety and security of your operations within a framework that ensures respect for human rights? What are the terms of any agreement with the Uganda People's Defence Force, including the form of agreement, command structure, and payments? Please provide copies of any written agreements.
- Have you established any grievance mechanisms so that individuals can complain directly to Jan Mangal in addition to the government?

We would welcome the opportunity to speak with you or other company representatives again. We believe this is essential to developing an informed perspective on Jan Mangal's operations and on your company's efforts to ensure respect for the rights of impacted communities. More broadly, as one of the first entrants into what seems poised to be a resource boom, we believe that Jan Mangal has valuable insights into the complexities and challenges of operating in Uganda's Karamoja region which could help inform our recommendations to other mining firms.

We would appreciate a response to these requests by September 6, 2013. If for some reason that is not possible, please get in touch with us to propose another timeframe.

I hope we can be in touch at your earliest convenience to arrange a mutually convenient time for a telephone meeting with appropriate representatives of your operations in Moroto.

Thank you for your attention to this matter and we look forward to your response. Please contact Jessica Evans on [evansj@hrw.org](mailto:evansj@hrw.org) should you have any questions.

Sincerely,



Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

## **Annex III: Human Rights Watch Letter DAO Uganda Ltd.**



HRW.org

August 19, 2013

Mr. Mohammad Aoun  
Mr. Mohan Kiwanuka  
Directors  
M/S DAO Uganda Ltd.  
PO Box 35227  
Kampala, Uganda

### **Re: Follow-up to Meeting with Human Rights Watch**

Dear Mr. Aoun and Mr. Kiwanuka,

We appreciated the opportunity to visit your work site in Moroto on July 9 and 10, 2013 and our subsequent meetings with Mr. Arnold Ananura in Kampala. We are now writing to continue our discussion on human rights issues related to the mining sector in Uganda's Karamoja region.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

In June and July 2013, Human Rights Watch carried out field research examining the human rights dimensions of current and proposed operations in Moroto and Kaabong districts. We seek to identify practical recommendations that will be of broader relevance to the government of Uganda and to new mining operations likely to be initiated in the coming years. Additionally, we will examine efforts to address the broader human rights and governance implications involved with the anticipated rapid growth of the extractive sector in Karamoja.

We are grateful for the copy of the environmental impact assessment and the surface rights agreement provided to us by Mr. Ananura in July 2013. We now request that DAO provide us with any available information relating to the company's approach to human

rights, environmental assessments, and broader community issues linked to the Moroto project. In particular, to the extent possible, we ask for the following:

- Any studies undertaken prior to the commencement of exploration to assess the likely environmental, human rights, or community impacts of DAO's operations in Moroto and copies of the outcome of such studies.
- Any studies that have been undertaken since exploration and then mining commenced to assess the ongoing environmental, human rights, or community impacts of that operation and copies of the outcome of such studies. We recognize that you have only recently received your mining lease, so understand no such studies may have yet been undertaken since mining commenced. Please can you advise what ongoing studies are planned?
- Agreements such as surface rights and/or land use agreements signed between DAO and any community residents or leaders.
- DAO's policies on human rights issues, including any policies on corporate social responsibility, community consultation, recruitment, labor conditions, security, corruption, and resettlement.
- Any other information or documents related to your company's exploration work in Karamoja that you believe would be of value for our work.

More specifically, we wish to follow up on these issues:

- How, in specific terms, will the local Karamojong benefit from DAO's operations in Moroto? What is the timeframe within which you foresee those benefits occurring?
- What steps have you taken to identify the human rights risks of your operations and to mitigate or avoid these risks?
- Please describe your community consultation process from the initiation of your exploration activities to the present. When and how did you begin consulting the community about your proposed activities in Moroto? Could you provide dates, attendance registers, and minutes of any community consultation meetings about your Moroto exploration and mining work?
- Under the United Nations Declaration on the Rights of Indigenous Peoples and elsewhere in international human rights law, companies have a responsibility to consult and cooperate with the Karamojong, as indigenous peoples, in order to obtain their free and informed consent prior to commencing projects. Please describe your process, if any, to obtain the free and informed consent of the local indigenous peoples prior to commencing exploration and then mining.
- What steps have you taken to maintain the safety and security of your operations within a framework that ensures respect for human rights? What are the terms of

any agreement with the Uganda People's Defence Force, including the form of agreement, command structure, and payments? Please provide copies of any written agreements.

- Have you established any grievance mechanisms so that individuals can complain directly to DAO in addition to the government?

We would welcome the opportunity to speak with you or other company representatives again. We believe this is essential to developing an informed perspective on DAO's operations and on your company's efforts to ensure respect for the rights of impacted communities. More broadly, as one of the first entrants into what seems poised to be a resource boom, we believe that DAO has valuable insights into the complexities and challenges of operating in Uganda's Karamoja region which could help inform our recommendations to other mining firms.

We would appreciate a response to these requests by September 6, 2013. If for some reason that is not possible, please get in touch with us to propose another timeframe.

I hope we can be in touch at your earliest convenience to arrange a mutually convenient time for a telephone meeting with appropriate representatives of your operations in Moroto.

Thank you for your attention to this matter and we look forward to your response. Please contact Jessica Evans on [evansj@hrw.org](mailto:evansj@hrw.org) should you have any questions.

Sincerely,



Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

## Annex IV: Human Rights Watch Communication with the UPDF



HRW.org

September 24, 2013

General Edward Katumba Wamala  
Chief of Defense Forces  
Uganda People's Defence Forces (UPDF)  
Mbuya, Uganda

### Re: Relationship between private companies and UPDF in Karamoja

Dear General Wamala,

We hope this letter finds you well. We appreciate the opportunity to maintain dialogue with you about the Uganda People's Defence Forces (UPDF) and its observance of international human rights standards.

As you know, Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

In June and July 2013, Human Rights Watch carried out field research examining the human rights dimensions of current and proposed operations in Moroto and Kaabong districts of Karamoja. We seek to identify practical recommendations that will be of broader relevance to the government of Uganda and to new mining operations likely to be initiated in the coming years. Additionally, we will examine efforts to address the broader human rights, security and governance implications involved with the anticipated rapid growth of the extractive sector in Karamoja.

During our research, we observed UPDF soldiers based near or on active mining sites and exploration sites in some locations where private mining companies were working. We now seek the UPDF's response to some queries related to our ongoing research.

1. How many soldiers are currently deployed in the district of Kaabong? In Moroto?
2. Of those soldiers, how many are in the Special Forces Group command (SFC)?

3. How many Local Defence Units (LDUs) have been recruited and are active in Karamoja and specifically in Kaabong and Moroto? And do you expect that number to increase or decrease in the next year?
4. Are UPDF and/or SFC forces deployed to provide security to the operations of any private mining firms in Karamoja? If so, which mining companies?
5. Do mining companies in Karamoja provide remuneration of any kind to soldiers? If so, how many soldiers are receiving this and what does it involve? Do the companies pay them directly or channel money through the government? If soldiers are not receiving any remuneration, is the government being compensated for providing security to these companies?
6. If and when soldiers are tasked to provide security to a private mining company in Karamoja, how are the individual soldiers selected for this task and who negotiates their payment and/or per diems for their work? Who provides food and shelter? What are the terms of the contract?
7. If and when soldiers are tasked to provide security to a private mining company in Karamoja, who defines their work tasks and daily routines?
8. Where are the soldiers working alongside mining companies to be housed and fed?
9. Kindly provide copies of any written contracts between the UPDF, the SFC, and any private mining companies working in Karamoja.
10. Are you aware of any informal working relationships, ie undocumented, between private mining companies and Ugandan soldiers in Karamoja and if so, what information do you have about those relationships?
11. What factors are involved in the decision as to where to locate a military detach? Is the community consulted and if so, what is the process for such consultations? Who determines where a detach should be located?
12. Are UPDF detaches ever located in proximity to private mining companies extractive work at the explicit request of the mining company and if so, please provide specific cases and dates of when this has occurred.
13. What, if any, plans does the UPDF or the SFC have to reduce the number of active UPDF in Karamoja?
14. What specific instructions do UPDF or SFC in Kaabong and Moroto given as they relate with mining companies?
15. Kindly provide any information or documentation regarding the role of UPDF soldiers in the gold trade in Karamoja.
16. Kindly provide any other information or documents related to UPDF involvement in security and/or private mining companies in Karamoja that you believe would be of value for our work.

We would appreciate a response to these requests by October 8, 2013. If for some reason that is not possible, please get in touch with us to propose another timeframe. A response

to this letter or any questions can be sent to Maria Burnett, Senior Researcher in our Africa Division, at [burnetm@hrw.org](mailto:burnetm@hrw.org).

Thank you for your attention to this matter and we look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Bekele".

Daniel Bekele  
Africa Director  
Human Rights Watch

Cc:

Honorable Crispus Kiyonga, Minister of Defence  
Brigadier Peter Elwelu, Commander 3<sup>rd</sup> Military Division, UPDF  
Colonel Aloysius Kagoro, Deputy Legal Advisor, UPDF

## Response from the UPDF

# UGANDA PEOPLES' DEFENCE FORCES

**Ref: UPDF/CDF/720/G**



**Office of the Chief of Defence Forces**

**MoD - Headquarters**

**P.O Box 3798**

**Mbuya – UGANDA**

**Tel: + 256-41-4 565135/6/7/8**

**Fax: + 256-41-4 220324**

**e-mail: cdf.mod@defence.go.ug**

27<sup>th</sup> September 2013

**Mr Daniel Bekele**

Africa Director

Human Rights

## **RELATIONS BETWEEN PRIVATE COMPANIES AND UPDF IN KARAMOJA**

Reference is made to your unreferenced letters dated 24 and 25 September 2013 respectively.

The UPDF has nothing to do with mining in Karamoja. The UPDF is there for the purpose of security in order to safe guard the population.

On the issue of the number of UPDF soldiers in Karamoja, we are unable to disclose it in order not to jeopardize our security.

A handwritten signature in black ink, appearing to read 'Katumba Wamala'.

**KATUMBA WAMALA psc, fwc (MP)**

General

**CHIEF OF DEFENCE FORCES**

## **Annex V: Human Rights Watch Communication with the DGSM**



HRW.org

September 25, 2013

Mr. Edwards Katto  
Acting Commissioner of Mines  
Department of Geological Survey and Mines (DGSM)  
Plot 21 - 29, Johnstone Road  
P.O. Box 9, Entebbe / Uganda

### **Re: Human Rights Watch research in Karamoja**

Dear Mr. Acting Commissioner,

We are writing to open a discussion with your office regarding human rights issues related to the extractive sector in Uganda's Karamoja region. We have included some requests for information in this letter and would also be grateful for the opportunity to set up in-person and/or telephone meetings with you.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

In June and July 2013, Human Rights Watch carried out field research examining the human rights dimensions of current and proposed mining operations in Kaabong and Moroto districts. We met with community members, local leaders and a range of government actors working in the sector, including Honorable Peter Lokeris. We seek to identify practical recommendations that will be of broader relevance to the government of Uganda and other mining operations likely to be initiated in the country in the coming years. Additionally, we will examine efforts to address the broader human rights and governance implications involved with the anticipated rapid growth of the extractive sector in Karamoja.

We would appreciate a response to the following queries regarding the work of the DGSM in Karamoja:

1. Please describe the mandate, role and processes of the DGSM in supervising mining activities in Uganda, and particularly Karamoja. Please describe any difficulties that you face in undertaking these responsibilities.
2. What is your current total budgetary allocation and how much of that budget is allocated for Karamoja specifically?
3. Kindly outline the processes in place to monitor extractive companies operating in Uganda, to receive, investigate and act on grievances from local communities, and to prevent or address negative impacts or violations of the human rights of people living in affected communities. What difficulties do you face in carrying out these functions and illustrate with examples where possible?
4. What steps has the DGSM taken to educate people in affected communities in Uganda, and particularly Karamoja, of their rights under international law and the Mining Act during each phase of the mining process?
5. Please share any guidelines and/or any budgetary allocations specifically earmarked for fostering consultations in communities in Karamoja regarding either exploration or active mining work by private companies?
6. What services or support from DGSM are available to communities in negotiations over surface rights agreements or similar agreements? Does DGSM provide services or support to communities during the exploration phase, and if so, can you describe them?
7. Does DGSM track or otherwise gather data related to injuries in the mining sector throughout Uganda and if so, could you please share that data with us?
8. Please share with us any reports written as a result of desk research or field monitoring visits by DGSM mine monitors regarding companies working in Karamoja.
9. What steps have been taken by your office to investigate allegations of corruption within the the DGSM, to prevent corruption from occurring, and to hold to account anyone found responsible for such corruption?
10. Any other information or documents related human rights protections and mining in Uganda that you believe would be of value for our work.

We would appreciate a response to these requests by October 9, 2013. If for some reason that is not possible, please get in touch with us to propose another timeframe. A response to this letter or any question can be sent to Maria Burnett, Senior Researcher in our Africa Division, at [burnetm@hrw.org](mailto:burnetm@hrw.org).

We look forward to being in touch at your earliest convenience.

Thank you for your attention to this matter and we look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Daniel Bekele". The signature is written in a cursive style with a large initial 'D'.

Daniel Bekele  
Africa Director  
Human Rights Watch

# Response from the DGSM, received in person October 23, 2013

## 1. MANDATE, ROLE AND PROCESSES OF DGSM IN SUPERVISING MINING ACTIVITIES IN UGANDA, SPECIFICALLY KARAMOJA

Under the Ministry of Energy and Minerals Development (MEMD), the Department of Geological Survey and Mines (DGSM), founded in 1919, is technically responsible for administration, management and support to the minerals sector. The department's mission is "to promote and ensure rational and sustainable development and utilization of mineral resources for socio-economic enhancement of the people of Uganda" which is brought into effect through four DGSM Divisions (Mines, Laboratories, Geology and Geodata) and overseen by the Commissioner, DGSM.

Under the Mineral Policy (2001), the DGSM is also mandated to:

*"Regularize and improve artisanal and small scale mining through light-handed application of regulations, provision of information on production and marketing, provision of extension services through miners associations and implementation of awareness campaigns targeting artisanal and small scale miners."*

### DESCRIPTION OF DIFFICULTIES FACED IN UNDERTAKING THESE RESPONSIBILITIES.

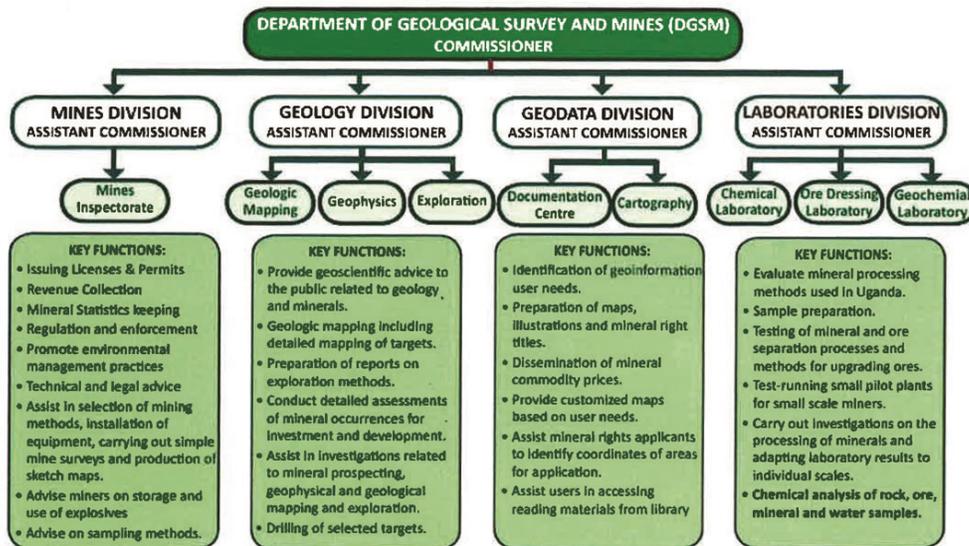


Figure On The Current Macro-Organizational Structure and Main Functions of DGSM Divisions  
(Source: DGSM/SMMRP, 2009)

- a) Limited manpower within DGSM such that the few staff available are largely based at the headquarters in Entebbe.
- b) Limited resources to effect the mandate and roles of DGSM and causing most of the work to be marginally undertaken via the central DGSM office in Entebbe.
- c) Extension services are limited by inadequate funding.
- d) Weak networks with other institutions that are working in the same field especially the civil society.
- e) Accessibility to Karamoja region is quite a challenge as the roads get impassable especially during rainy seasons.
- f) Language barriers when it comes to awareness and sensitization campaigns. This requires translators who sometimes pass on the message that they wish their people to hear and not what the DGSM officer is trying to communicate. Related to this, all the Mining legislation is only available in English yet there is a high level of illiteracy in Karamoja. In the education sector, literacy rates in the region among citizens aged 10 years and above is at 21% compared to a national average of 73% (UBOS).
- g) Negative attitude of the people in Karamoja towards “foreigners”.
- h) Gender imbalances whereby in most cases majority of the people who participate in sensitization campaigns are men. One of the reasons being that women have to seek permission from their husbands to go and attend such gatherings. Besides, the time and work burdens placed on them as mothers, wives and miners also bar them from acquiring this useful information thereby leaving that section of miners unsensitized.

## **2. CURRENT TOTAL BUDGETARY ALLOCATION AND THE PROPORTION OF WHICH IS ALLOCATED TO KARAMOJA**

The Financial Year, 2013/14 the GoU allocated UGX 7.365 Billion to the mineral sector development, out of which, UGX 3.6 Billion is allocated to Karamoja representing 49% of the total budget for the Department. The GoU is promoting geological surveys of the region that was left out due to insecurity in the region at the time.

The funds are being used for carrying out geological mapping, geochemical surveys and mineral resources assessment of Karamoja; monitoring and inspections of exploration and mining activities in Karamoja; creating awareness on health and

safety of miners as well as consultations towards review of the mineral policy and legislations. A regional center for DGSM will also be constructed in Moroto to enhance mineral resources management of Karamoja Region.

**3. PROCESSES THAT ARE IN PLACE TO MONITOR THE EXTRACTIVE COMPANIES OPERATING IN UGANDA, TO RECEIVE, INVESTIGATE AND ACT ON GRIEVANCES FROM LOCAL COMMUNITIES AND TO PREVENT OR ADDRESS NEGATIVE IMPACTS OR VIOLATIONS OF HUMAN RIGHTS OF PEOPLE LIVING IN AFFECTED COMMUNITIES.**

The DGSM Karamoja Regional Officer-in-Charge is obligated to monitor all companies within his or her region, and in due process if there happen to be any grievances he or she receives them and notifies the Chief Administrative Officer (CAO) and also notifies his or her supervisor at the headquarter, the Commissioner DGSM about the given incident. He or she goes ahead to investigate and report back his findings to the above named persons who will together with him or her come up with which course of action to take.

**DIFFICULTIES FACED IN CARRYING OUT THESE FUNCTIONS WITH ILLUSTRATIONS OF EXAMPLES WHERE POSSIBLE.**

Karamoja Regional Office does not have permanent resident staff although the presence of the Departmental staff in the region has recently improved as a result of mineral sector activities and relative peace. The region is hard to reach and as a result, emergency responses may take some time to mobilize resources and visit the area.

**4. STEPS THAT HAVE BEEN TAKEN TO EDUCATE PEOPLE IN AFFECTED COMMUNITIES IN UGANDA, PARTICULARLY KARAMOJA REGARDING THEIR RIGHTS UNDER INTERNATIONAL LAW AND THE MINING ACT DURING EACH PHASE OF THE MINING PROCESS.**

Before any work commences concerning the mining cycle (prospecting, exploration, mine development, mining, mine decommissioning, closure and reclamation of the area), sensitization of relevant stakeholders must always take place especially by

the developer (mining company). This is a legally binding requirement and during monitoring and inspections, it is highly followed up by DGSM officers.

The former Sustainable Management of Mineral Resources Project had an entire component on sensitization and training of miners, encouraging collaborations between Artisanal and Small scale Miners (ASMs) to peacefully co-exist with medium and large scale companies among other activities. Consequently, several DGSM got an opportunity to reach out to several miners and mining companies in the region. Also another funded that is specifically targeting Karamoja is on-going and one of the key components to this Project is training, education and sensitization of the stakeholders in Karamoja about the mineral sector.

Also through any opportunity to network that arises, DGSM always sends a representative with such a team to conduct education, training and sensitization of the masses in Uganda. For example during the Ecological Christian Organisation's baseline study on "The Mining and Minerals Sector in Karamoja Region: Development Opportunities and Constraints", funded by the Irish Aid, three DGSM staff were deeply involved and this led to the publication of a report concerning the study. DGSM is also currently working with the International Conference on Great Lakes Region (ICGLR) initiative and has a counterpart directly involved with all ICGLR activities on behalf of DGSM.

**GUIDELINES AND OR BUDGETARY ALLOCATIONS SPECIFICALLY EARMARKED FOR FOSTERING CONSULTATIONS IN COMMUNITIES IN KARAMOJA REGARDING EITHER EXPLORATION OR ACTIVE MINING WORK BY PRIVATE COMPANIES.**

This FY 2013/14, the Ministry of Energy and Mineral Development allocated UGX 481 Million for sensitization and consultation of all stakeholders in Karamoja on the Mineral Policy, Mining Legislations, creating awareness on environment, social, health and safety measures, exploration and mining activities.

## **6. SERVICES OR SUPPORT FROM DGSM THAT ARE AVAILABLE TO COMMUNITIES IN NEGOTIATIONS OVER SURFACE RIGHTS AGREEMENTS OR SIMILAR AGREEMENTS.**

In the process of applying for a Mining Lease, the proponent company is required to show proof of ownership of exclusive rights over the land covering the intended mining period or verify that an agreement has been reached and approval received from the lawful land owner(s). Land Owner takes 3% of the royalty accruing from the minerals. In the latter case, the land reverts back to the Land Owner after the mine life. Identification of lawful land owners could take the form of a Leasehold Title, a Certificate of Customary Ownership or, in the case of Sub County Governments, "holding documents affirming that they hold the communal lands in public trust" (the latter of which has not been invoked).

Services or support from DGSM that are available to communities in negotiations over surface rights agreements or similar agreements are limited to interpreting the Mining Act, 2003 on Access to land for mining.

**Adequate compensation and/or resettlement** of land owners or lawful occupiers. The holder of a mineral right (for exploration or mining) is required to pay the owner or lawful occupier of private land *"fair and reasonable compensation for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder's operations; and shall on demand made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for any crops, trees, buildings or works so damaged"*.

Disbursement of 3% of Royalty to Land Owner in Karamoja is hard given that most Karamojong lack legal land titles. The GoU intends to disburse the 3% owing to land owners to Sub-county Government holding documents affirming that they hold the communal lands in public trust. There is need to collaborate with the District Land Boards.

The Government encourages the communities in Karamoja to form associations with communities defined by location so that they can receive their share of royalties.

The Karamojongs depend on their lands for survival and maintenance of pastoral livelihoods, which are strongly linked to their traditions and values as a central part of their lives.

**DOES DGSM PROVIDE SERVICES OR SUPPORT TO COMMUNITIES DURING EXPLORATION PHASE, IF SO DESCRIBE THEM.**

DGSM comes in to create awareness about the activities of the exploration companies and explaining the objectives of the activities. Expected benefits to the Local Government and the communities are also highlighted during the sensitization.

**7. DOES DGSM TRACK OR OTHERWISE GATHER DATA RELATED TO INJURIES IN THE MINING SECTOR THROUGHOUT UGANDA AND IF SO, COULD YOU PLEASE SHARE THE DATA.**

Cases of injuries are some times reported in media or through phone calls. In serious incidences the DGSM then visits the sites to investigate the causes of accident depending on the availability of funds, which should not be the case now.

**8. ANY REPORTS WRITTEN AS A RESULT OF DESK RESEARCH OR FIELD MONITORING VISITS BY DGSM MINE MONITORS REGARDING COMPANIES WORKING IN KARAMOJA.**

The DSSM started quarterly field inspections in Karamoja and also in times of need. Reports of the inspections are written and can be accessed from the Department at Entebbe.

**9. STEPS THAT HAVE BEEN TAKEN BY DGSM TO INVESTIGATE ALLEGATIONS OF CORRUPTION WITHIN THE DGSM, TO PREVENT CORRUPTION FROM OCCURRING AND TO HOLD ACCOUNT ANY ONE FOUND RESPONSIBLE FOR CORRUPTION.**

At the DGSM corruption cases that are reported are referred to the Police for investigations. However, the individual(s) is/are given chance to explain his/her actions. In a few cases, officers have been interdicted for irregularities in license issuance or suspended for loss of drilling pipes.

**10. ANY OTHER INFORMATION OR DOCUMENTS RELATED TO HUMAN RIGHTS PROTECTION AND MINING IN UGANDA THAT YOU BELIEVED WOULD BE VALUABLE TO THIS RESEARCH.**

Newspapers often report about issues related to human rights and mining in Uganda.

## Human Rights Watch Follow-Up Letter to the DGSM



HRW.org

November 25, 2013

Ms. Agnes Alaba  
Acting Commissioner of Mines  
Department of Geological Survey and Mines (DGSM)  
Plot 21-29, Johnstone Road  
P.O. Box 9, Entebbe Uganda

### **Re: Human Rights Watch research in Karamoja**

Dear Ms. Acting Commissioner Alaba,

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change. I work on Uganda among other countries in Africa and have met with many people in the government of Uganda over several years.

I understand you are currently acting commissioner while Mr. Edwards Katto is on leave. As you may know from my colleagues, I held a long meeting with Acting Commissioner Katto and Mr. Gabriel Data on Octo 22, 2013 at the DGSM offices at Amber House, in Kampala.

At that meeting, I requested the following documents:

- All DGSM inspection reports from Jan Mangal, DAO, and East African Mining, Ltd. (also known as East African Miners or East African Gold)
- The Environmental Impact Assessment from Jan Mangal's license areas in Moroto;
- The quarterly reports from 2012 and 2013 detailing the payment of any royalties from any mining companies in Karamoja;
  - Any minutes from meetings involving consultations or sensitization about mining issues with local communities in Karamoja.

At that time, Acting Commissioner Katto gave me permission to seek such documents from the DGSM and specifically request Mr. Data to follow up with the relevant people so that I could receive such documents without delay. I have not yet received any of the above documents despite Mr. Data emailing specific DGSM staff with my request and cc'ing Acting Commissioner Katto on those emails. (Attached for your reference.)

We would appreciate a response to this request as soon as possible. Your staff can either send me the documents via email to maria.burnett@hrw.org or someone can send me an email that the documents are available for collection in either Entebbe or Kampala and I will send someone to collect them to send on to me as quickly as possible.

We look forward to your attention this to matter and we look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Maria E. Burnett". The signature is written in a cursive style with a long, sweeping underline.

Maria Burnett  
Senior Africa Researcher  
Human Rights Watch



## “How Can We Survive Here?”

### The Impact of Mining on Human Rights in Karamoja, Uganda

For the roughly 1.2 million residents of Karamoja, many of whom are indigenous peoples, basic survival is very difficult. This remote region of eastern Uganda—thought to possess considerable mineral wealth—is marked by a history of conflict, the poorest human development indicators in the country, and traditional pastoral and agro-pastoral livelihoods that have been increasingly jeopardized.

Uganda’s government has promoted private investment in mining as a way of developing the region, which could provide jobs and improve security, access to water, roads, and other basic infrastructure. But the extent to which Karamoja’s population will benefit, if at all, remains an open question. Land is held communally in the region and as companies have begun to explore and mine the area, communities are voicing serious fears of land grabs, environmental damage, and a lack of information as to how and when they may prevent, or gain compensation for, encroachment on their land.

“*How Can We Survive Here?*” *The Impact of Mining on Human Rights in Karamoja, Uganda* is based on more than 137 interviews conducted in Moroto, Kotido, and Kaabong districts of Karamoja, and in Kampala. The report examines the human rights impacts of Karamoja’s nascent mining industry, showcasing three companies currently working in the region to illustrate potential challenges, pitfalls, and problems associated with the failure to respect the rights of Karamoja’s indigenous peoples. It demonstrates how the Ugandan government has violated its obligation to ensure that the people of Karamoja benefit from the development processes.

Human Rights Watch calls on the government of Uganda to uphold international standards by reforming its laws to ensure that free, prior, and informed consent of communities is required before exploration operations begin and throughout the life of mining operations, and that risks of future human rights abuses associated with mining are mitigated. Companies seeking to work in Karamoja should also uphold their responsibility to respect human rights, including the land and resource rights of the indigenous peoples. Uganda’s international partners should address the complex development challenges created by the increased mining operations in the Karamoja region by pressing the government to create a robust regulatory regime to ensure that mining does not become yet another obstacle for realization of social and economic rights, including the right to development, or a potential driver of inter-communal conflict.

*(above) The leader of the Lopedo mining community in Kaabong walks by a house typical of Karamoja.*

*(front cover) Artisanal miners in Lopedo, Kaabong, look for gold in deep trenches and pits. Artisanal mining is a key source of income for many communities in Karamoja during the dry season. A mining company recently acquired a license to carry out exploration on this land, raising serious concerns for the rights of the community.*

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