

POLICY BRIEF

What does due diligence mean in a shrinking – and militarized – civic space? An analysis of corporate obligations in Uganda's Oil and Gas sector

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EXECUTIVE SUMMARY

For over a decade, the sharp increase of foreign investment in the Ugandan extractive sector has given rise to numerous human rights and environmental abuses. Civil society's outcry at these violations has in turn exposed its members to recurrent retaliatory measures by State authorities.

A series of attacks against civil society members in connection with oil and gas projects were indeed recorded over the last few years. These systematic attacks are symptomatic of a more general shrinking of civic space in Uganda, in the context of increasing securitization, and sometimes militarization of extractive sites. They stem from the authorities' deliberate efforts to exclude civil society from natural resources governance.

Pursuant to international standards, corporate actors bear a duty of due diligence, requiring them to identify, prevent, and mitigate adverse human rights impacts flowing from their operations, as well as to enable remediation for any of these adverse impacts.

Against this backdrop, this policy brief argues that corporate entities operating in the country bear an enhanced duty of due diligence, compelling them to take heed of the particular context of shrinking civic space when assessing the impact of their activities.



INTRODUCTION

The increase of foreign investment in the Ugandan extractive sector has, over the last decade, given rise to [various human rights and environmental abuses](#), i.e. inadequate compensation for compulsorily acquired land, land grabbing, forced displacement, deforestation and other forms of environmental degradation.

The Albertine Graben, rich in oil and gas, has been particularly affected, especially in the context of the [Tilenga, KingFisher and EACOP](#) projects, comprising oil exploration, a crude oil processing plant, underground pipelines and infrastructures in Hoima, Kikuube, Buliisa and Nwoya districts. These projects, operated by among other International Oil Companies (IOC) including Total Energies and CNOOC are criticized for causing adverse impact on PAPs' property rights and livelihood, as well as for their lack of PAPs' effective participation.¹

Such trends apply to any investment project deemed strategic by Ugandan authorities. As investment in the country grows, a set of systematic patterns is consolidating. In the Albertine region (Western Uganda), similar modes of suppressing public participation connect investment projects in various sectors, especially agribusiness projects in the [Kiryandongo](#) district and around [Bugoma Forest](#), also in Western Uganda.

Intimidation of Human Rights Defenders (HRDs) involved in natural resource governance,² combined with increased securitization of extractive sites, has a direct

effect on PAPs and civil society's capacity to voice dissenting opinions.

This policy brief aims to shed light on the patterns of attacks and harassment against civil society and how, coupled with securitization of the investment sites, they impact on the work of civil society, and consequently PAPs' rights. Such a context should reflect in enhanced duties of due diligence for companies operating in the oil and gas sector in Uganda, especially multinationals. Under International Law, all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships.³

A CONTINUOUSLY SHRINKING SPACE FOR CIVIL SOCIETY

A number of HRDs working with civil society organisations and the community have faced **arbitrary and illegal arrests**, in relation to their work around natural resource governance. In May 2021, AFIEGO⁴ staff member was arrested in Buliisa District, together with an Italian journalist, as they were about to meet with local community members to discuss the impacts of Total Energies oil project. AFIEGO is one of the CSO engaged in litigation against Total before a French court.⁵ The arrested staff, spent the night in police custody and was released 48 hours later with a holding charge of unlawful assembly.⁶ This is just one

¹ FIDH, [New Oil, Same Business? At a Crossroads to Avert Catastrophe in Uganda](#) (2020); Oxfam, [Empty Promises Down the Line? A Human Rights Impact Assessment of the East Africa Crude Pipeline](#) (2020); Amis de la Terre, Survive, [Un cauchemar nommé TOTAL : une multiplication des violations des droits humains en Ouganda et en Tanzanie](#) (2020), pp.7-20.

² See i.a. Defend Defenders, ["Only The Brave Talk About Oil", Human Rights Defenders and the Resource Extraction Industries in Uganda and Tanzania](#) (2012); The Albertine Watchdog, [Environmental human rights defenders in the Albertine Region under attack : the Tilenga oil development project raise these threats](#) (2020).

³ See, The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 16/07/2018

16/07/2018

⁴ AFIEGO is one of the 54 NGOs that have since been affected by the NGO Bureau suspension of some NGO's in August 2021. Ref. Statement on halting of operations of fifty four. (54) ngos due to non-compliance with the ngo act. 2016. Friday 20th August, 2021 accessible at https://www.ngobureau.go.ug/sites/default/files/news_notices/2021/08/STATEMENT%20ON%20HALTING%20OF%20OPERATIONS%20DUE%20TO%20NON-COMPLIANCE.pdf

⁵ Business and Human Rights Resource Centre, [Total lawsuit \(re failure to respect French duty of vigilance law in operations in Uganda\)](#).

⁶ Amis de la Terre, [Uganda: Arrest of an Italian journalist and a human rights defender mobilized against Total's oil projects](#) (2021).

among many other recurrent incidents in the oil and gas sector.⁷ In the Kiryandongo case, the police arrested seven lawyers supporting PAPs forcibly evicted in an agribusiness context, in June 2020. The authorities pretexted the Covid-19 pandemic context to charge them with “negligent act likely to spread infection of disease.”⁸

From a broader perspective, arrests of journalists, lawyers and activists share a number of features:

- Violation of procedural rights: arrested persons are often detained over 48 hours, in breach of Article 23(4) (b) of the Constitution of Uganda. They are often restricted in their access to a lawyer and not informed about the reason for arrest;
- Lack of reasonable cause for arrest:⁹ police officers often confirm during custody that the arrest is meant to stop the targeted activists’ activities. The failure to present them with a lawful cause for arrests often leads to the custody ending up with a police bond, featuring vague charges with weak legal ground. This further translates in the very low rate of actual prosecution after the arrest.

As such, activists’ arrests are not conducted as per due process of criminal law enforcement, but rather serve a purpose of intimidating the civil society from advocating towards good governance of natural resources.

Strategic Lawsuits Against Public Participation (SLAPP) may also be used as a strategy to force PAPs to accept compensation. In 2020, the Attorney General filed an application before the High Court of Masindi against PAPs who were contesting the offered compensation for

their compulsory acquired land in the context of [RAP1](#). The AG sought to have the contested sum deposited with the Court, and vacant possession of the land in contention be granted. The Court made a ruling in favour of the AG, discharging him from all liabilities arising from any claim or action for compensation and vacant possession of the land.¹⁰ CSOs have since filed a constitutional Petition challenging this ruling¹¹, which is pending. The outcome of this first judgment is still very concerning, as it contradicts Article 26 of the [Constitution](#), which sets the principle of a “prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property”. The Ugandan government has tried several times to overrun this principle.¹²

Smear campaigns and threats are also used as a tactic to deter civil society from implementing activities geared towards natural resources governance. The Government of Uganda has tried to coin the notion of “economic sabotage” as a way to render illegal acts of oversight on economic governance.¹³ It more generally resorts to “anti-development” rhetoric to disqualify civic participation and oversight in economic governance, from local to the highest level of authority in the country.

This not only reveals a structural misconception for the contribution of civic participation to economic governance, but it also serves to guide the action of Law enforcement authorities, who tend to confuse oral instructions with actual Law. Even though deprived of any legal ground, perceived acts of economic sabotage are acted upon swiftly by the Police and other security personnel. For instance, individuals allegedly associated with Total Energies have spread rumours around the Albertine

⁷ For example, in Sept. 2020, two journalists were arrested on their way to a radio show, for allegedly planning to mobilize citizens to demonstrate to protect Bugoma Forest from new investment projects.

⁸ The National Coalition of Human Rights Defenders in Uganda, [Uganda: human rights in peril as Covid-19 escalates in the face of the 2021 elections](#) (2020).

⁹ ASF, [Uganda – Arrest](#).

¹⁰ *Attorney General v. Happy Ignatious et al* (Judgment) App. 25 of 2020 (30 April 2021).

¹¹ Omara Daniel, *Advocates for Natural Resources & Development, Resource Rights Africa Vs Attorney*

General & Uganda National Roads Authority; Constitutional Petition No.16 of 2021

¹² See ANARDE and ASF, [Constitutional Amendment Bill to the Article 26 of the Uganda Constitution: insights and challenges from field practice of land conflicts](#) (2017).

¹³ See i.a. HRD Coalition, [Silencing Defenders: Human Rights Promotion and Protection in the Context of Uganda’s Extractive Industries](#) (2020) p.37; Human Rights Watch, [Uganda: Museveni’s 10,000 days in power](#) (2013).

Graben that the implication of one witness in the above-mentioned French case had caused delays in the payment of compensations, which fed animosity against him within his own community.¹⁴

Beyond emblematic cases of arrests, some CSOs have also reported unjustified disruption of their community sensitisation program by security personnel.¹⁵ Conversely, cases of alleged crimes committed against NGOs and CSOs rarely trigger meaningful action by law enforcement authorities. Several CSOs have reported breaking-ins of their office premises, and other cases of security threats without any proper follow-up by the police.¹⁶

Undue administrative burden, through the misuse of and/or exploitation of loopholes in domestic legislation causes considerable restrictions on the rights to freedom of assembly and association. In theory, the [Public Order Management Act, 2013](#)¹⁷ imposes an obligation for organizers of public meetings to notify the police in advance. In practice, police officers have repeatedly used this provision to require organizers to seek prior permission. This *de facto* authorization procedure puts an extra regulatory burden on civil society.¹⁸ Even though the Constitutional Court in March 2020 declared S. 8 of the POMA unconstitutional, which was the most contentious provision of the Act giving the police excessive powers; the AG appealed the decision.¹⁹ However With the outbreak of Covid-19 pandemic, managing public order

continues to be an avenue for limiting freedom of assembly while enforcing Standard Operating Procedures (SOPs) that limit gatherings of many people.²⁰

Moreover, section 44 of the 2016 [NGO Act](#) conditions NGOs' operations to the signing of an MoU with the district, a procedure which needs to be repeated in each district of intervention. Such a provision not only comes with a high institutional costs²¹, it also makes NGOs vulnerable to politically motivated refusals and further hampers them from accessing communities.²² In the same spirit, the Ugandan Communications Commission [directed](#) in September 2020 that anyone managing a blog, online radio, television, newspaper or podcasts shall obtain authorization before broadcasting.²³

The **securitization and militarization of the oil-bearing region** has raised numerous concerns. Police and several private security firms play a significant and growing presence in the region. Reports from local communities and activists confirm the presence of UPDF barracks around the major oil and gas project sites in Buliisa District. More strikingly, the Special Forces Command, "a specialized component of the Uganda People's Defence Forces (UPDF), tasked with carrying out special missions in support of national military objectives"²⁴ has reportedly been deployed in the area.²⁵

The government fronts the need to protect "a fundamental natural resource" due to its strategic importance. Yet, the presence of

¹⁴ Amis de la Terre et Survie, [Un cauchermard nommé Total](#) (n 1) p.23. The Group rejected the accusation and replied in [Réponses en Assemblée générale aux questions écrites posées dans le cadre prévu par la réglementation](#) (2021) p. 70.

¹⁵ HRD Coalition, [Silencing Defenders](#) (n 13) p. 35.

¹⁶ Ibid. p. 37.

¹⁷ The most contested provision of the Public Order Management Act 2013, section 8 that gave excessive powers to the police was declared unconstitutional in 2020, Constitutional Petition No. 56 of 2013

¹⁸ The Albertine Watchdog, (n 2).

¹⁹ The Daily Monitor; Government Appeals

Constitutional Court ruling on POMA:

<https://www.monitor.co.ug/uganda/news/national/government-appeals-constitutional-court-ruling-on-poma-1885510>

²⁰ <https://www.health.go.ug/covid/document/covid-19-guidelines-for-safe-mass-gatherings/>

²¹ It should be noted that over the last five years, at least two new districts were created out of pre-existing ones in the Albertine Graben, which forced CSOs to multiply MoUs.

²² The Human Rights Centre Uganda, [The situation of human rights defenders in Uganda: Progress amidst a challenging environment?](#) (2019); The National Coalition of Human Rights Defenders Uganda, [An assessment of the state's implementation of the Universal Periodic Review recommendations pertaining to HRDs in Uganda](#), 2017-2019, p.11

²³ Ibid. (HRCU Uganda).

²⁴ Presentation of the Special forces on the [website](#) of the Ugandan Ministry of Defence and Veteran Affairs (last consulted on 27 July 2021).

²⁵ Africa Intelligence, [Alarmed by Mozambique's crisis, Museveni offers Total extra security for Tilenga](#) (2021).

armed forces and private security companies in the area has nurtured a high level of fear within affected communities, who generally remain silent or very cautious when speaking out about either the experienced violence and harassment or the suffered project impacts.

Incidents of excessive force to ensure communities' compliance with private companies' projects have been registered, where UPDF would have allegedly assaulted communities living in the Tilenga and EACOP areas.²⁶

When aggregated, these seemingly isolated incidents display a proper policy of silencing of any dissenting voices in relation to natural resources governance. Their systematic, arbitrary and targeted nature constitutes a clear infringement on several human rights and fundamental freedoms enshrined in the Constitution, as well as international and regional human rights treaties ratified by Uganda, namely the right to liberty and security, the freedom of expression and information, freedom of association and assembly, and the right to protection from unlawful attacks on honours and reputation.²⁷

These breaches add up on the primary abuses – e.g. violation of land rights, right to a healthy environment – which very denunciation is repressed, and collides, in turn, with PAPs' rights to effective participation and access to information. It further highly compromises the ability of CSOs to perform their mandate, whereas they are supposed to play a key role in enabling stakeholders, including PAPs, public authorities and companies to understand each other's concerns.

ENHANCED DUE DILIGENCE OBLIGATIONS FOR COMPANIES OPERATING IN UGANDA

Under their **due diligence duty** companies shall: (i) seek to identify, prevent, and mitigate adverse human rights impacts that are directly or indirectly linked to their operations, products or services, and; (ii) enable the remediation of any adverse human rights impacts they cause or to which they contribute.²⁸ Moreover, the French Corporate Duty of Vigilance Law places the onus on large companies in France to identify and prevent risks to human rights and the environment that could occur as a result of their business activities.²⁹

These due diligence obligations predominantly materialize in the development of **human rights impact assessments**. In Uganda, the [National Environment Act](#) and [Environmental Impact Assessment Regulations](#) oblige any person who proposes to undertake a new project to carry out a human rights, environmental and social impact assessment, during which the views of the people in the potentially affected communities must be sought.³⁰ Such meaningful participation involves interactive processes of engagement with all relevant stakeholders (communities, human rights defenders, CSOs, trade unions) throughout the project cycle.

When carrying their due diligence obligations in Uganda, corporate actors should **factor in** the above-described **systematic issues**. While this is not the companies' responsibility to put an end to systemic patterns of attacks against civil society, they remain responsible to prevent and address adverse impacts committed in furtherance of their own operation.³¹ Unlawful arrests,

²⁶ E.g. the forceful eviction of Rwamutonga villagers in 2014, Amis de la Terre et Survie, [Manquements graves à la loi sur le devoir de vigilance : le cas Total en Ouganda](#) (2019) p. 24 ; The Observer, [Police evicts 200 families in Hoima](#) (2014).

²⁷ See i.a. ICCPR art. 9, 19, 17, 21-2; ACHPR art. 6, 9-11; Constitution of Uganda art. 23, 27, 29. See also [Declaration on Human Rights Defenders](#) ; [Protocol for sustainable development of Lake Victoria Basin \(2003\)](#).

²⁸ See i.a. [UNGPs](#), Principles 17 to 21; [Second Revised Draft of the Binding Treaty](#) (August 2020), art. 6(2) and (3).

²⁹ French Corporate Duty of Vigilance Act, 2017

³⁰ [The National Environment Act](#), 2019 (section 5.2) and [The National Environment \(Environment Impact Assessment\) Regulations](#) (section 12); [Protocol for sustainable development of Lake Victoria Basin \(2003\)](#).

³¹ [UNGPs](#), Commentary under art. 16 and 23. See also The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights

smear campaigns and other coercive measures precisely increase their projects' risks of adverse human rights impacts and constitute **barriers to effective engagement**.³² The [Voluntary Principles on Security and Human Rights](#) set a number of standards applicable i.e. to cooperation between corporate actors and public security. Companies should, for instance, use their leverage to avoid the deployment of alleged perpetrators of serious human rights violations around their operations, a key aspect of the deployment of an elite group such as the UPDF Special Forces Command.

Furthermore, companies must **ensure that participating in ESIA's does not, in turn, put PAPs or civil society members at risk** with regard to safety and privacy. In the Tilenga case, it was for instance alleged that Total's community liaison officers were prone to make hostile and stigmatizing remarks about community members standing against the project, calling them speculators trying to obtain money through compensation mechanisms.³³

The same goes true about the right to remedy,³⁴ on which the shrinking civic space has a direct impact. Challenging either compensation or an investment project may indeed be interpreted as a means to dissent from government development-related decisions. Access to justice in Uganda is still hampered by prohibitive costs, distance and heavy case backlog. Impunity prevails, the judiciary often being pointed out for its lack of diligence in investigating cases and particular leniency towards suspected perpetrators, especially members of the security and armed forces.³⁵

Against this backdrop, companies should, as part of their due diligence obligations, seek to establish the actual degree of access to remedies that PAPs have. This needs to be heeded as a fundamental constraint onto the

PAPs' ability to claim their rights through State based-judicial avenues. Further, companies must exercise diligence in their **duty to provide remedies** when causing or contributing to an adverse impact.³⁶ Often corporate grievance mechanisms operated by companies fall short of the acceptable standards, such as impartiality and independence. At systemic level, these mechanisms are promoted as the primary entry for dispute resolution and grievance reporting, which tend to undermine concurrent remedies that PAPs are more familiar with. This contributes in turn to further enhancing their vulnerability in contexts of pre-existing power and information asymmetry.

RECOMMENDATIONS

In order to build and uphold a conducive environment for both civil society and companies to carry out their activities in Uganda, ASF and its CSO partners call:

The Government of Uganda (Ministry of Internal Affairs, Ministry of Energy and Mineral Development, Ministry of Defence, Directorate of Public Prosecutions):

- To publicly **recognize and support civil society's work** in protecting human rights in the context of investment projects, through communication and information campaigns in line with the National Oil and Gas Policy 2008.
- To allow **civil society members to freely raise their voice** when human rights abuses arising from the implementation of projects, without fear of being subjected to intimidation campaigns and abusive arrests.
- To ensure **meaningful participation of PAPs** in due diligence processes, without manipulation, coercion or intimidation.
- To **suppress any barriers for PAPs to access remedies**;

defenders (Report of the UN Working Group on the issue of human rights and transnational corporations and other businesses) [A/HRC/47/39/Add.2](#) (2021).

³² [Second Revised Draft of the Binding Treaty](#), art. 6(3)(c).

³³ [FIDH's report](#), op.cit, p.39.

³⁴ [UNGPs](#), Principle 22; [Second Revised Draft of the Binding Treaty](#), art. 7; [Human Rights Enforcement Act \(2019\)](#), Art. III.

³⁵ The Albertine Watchdog, (n 2). See also OHCHR, [Commentary to the Declaration on the Right and Responsibility of Individuals](#) (2011) p.90.

³⁶ [UNGPs](#), Principles 29 and 31.

- **(DPP)** To streamline the principle of a probable cause for arrests in law enforcement practices and to sanction abusive cases of arbitrary arrests by law enforcers, for e.g. on the ground of the Human Rights Enforcement Act;
- **(Attorney General)** to institute the repeal of Uganda's Public Order Management Act 2013 which is illegal and unconstitutional to bring an end persistent harassment and intimidation of HRDs, CSOs and people who are simply exercising their rights.

The Parliament of Uganda; to fast track the enactment of the Human Rights Defenders, Bill 2020

Civil Society Organizations and Actors

- To challenge provisions within national laws that infringe on the right to freedom of expression, assembly and association.
- To challenge in the courts of law illegal and arbitrary actions with which state actors treat civil society actions. In this regard, CSOs should invoke the Human Rights (Enforcement) Act 2019 and regulations thereunder to hold rights abusers accountable and provide quick access to remedies for victims of abuse.
- To monitor, document and expose the rights' violations and other shortcomings of public actions.
- To enhance advocacy with mother companies and states of the multilateral co-operations (TOTAL, CNOOC and their respective sub-contractors) for human rights abuses occasioned by or connected to them. Additionally there is need to target financing entities of the Projects to ensure compliance with international best practice standards.

Media

- In partnership with CSOs, the media should investigate and publicize the illegal actions and practices with regards

to civic space. Media houses should challenge, through courts of law, provisions within the penal code that criminalise defamation.

The Oil Companies

- Ensure meaningful engagement of all relevant stakeholders (communities, human rights defenders, CSOs, trade-unions), taking into account systemic barriers for participation and that ensuring such participation does not put the latter at risk with regard to safety and privacy.
- Factor in the systematic violations of civil liberties in the context of the global shrinking of civic space in Uganda when conducting ESIA's and other due diligence duties.
- **Total Energies** should publicize on its website and in different fora, e.g. newspapers etc. public statements on its commitment to respect, protect and promotes Human Rights and fundamental freedoms and recognize the respect for Human Rights Defenders rights as stipulated in the United Nations Declaration on Human Rights Defenders.
- Denounce all acts of impunity by security forces on HRDs and CSOs and always call upon the state and security agents to respect the rights of CSOs and HRDs and encourage them to follow due process.
- To ensure that their own grievance mechanisms do not hamper PAPs' right to access remedy. In cases of compensation i.e. Disclosures, Assessments, valuation etc, companies should in line with provisions of the UNGPs ensure that information is given to communities and CSOs in a transparent manner and allow for representations of communities by third party persons during such processes as enshrined in the UNGPs.

LIST OF ACRONYMS

ACHPR: African Charter on Human and Peoples' Rights
AFIEGO: Africa Centre for Energy Governance
AG: Attorney General
B&HR: Business & Human Rights
CNOOC: China National Offshore Oil Corporation
CPF: Central Processing Facility
CSO: Civil Society organization
DPP: Director of Public Prosecution
EACOP: East African Crude Oil Pipeline
ESIA: Environmental Social Impact Assessment
HRD: Human Rights Defenders
ICCPR: International Covenant on Political and Civil Rights
IOCs: International Oil Companies
LASP: Legal Aid Service Provider
MoU: Memorandum of Understanding
NGO: Non-Governmental Organisation
PAP: Project Affected Person
RAP: Resettlement Action Plan
SLAAP: Strategic Lawsuits against Public Participation
UDPF: Uganda Peoples' Defence Forces
UNGPs: United Nations General Principles on Business and Human Rights

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Midwestern Region Anti-Corruption Coalition - MIRAC
Midwestern Region Centre for Democracy and Human Rights - MICOD
Navigators of Development Association - NAVODA
Resource Rights Africa - RRA
Strategic Response International - SRI