



# **Community Land Rights Defenders in Uganda** Helping Communities to Secure their Land Rights and Manage their Land More Sustainably

**A Study Report By**

Witness Radio

&

Eastern and Southern Africa Small-scale Farmers' Forum (ESAFF)

**With support from**

International Land Coalition (ILC) through the National Land Coalition  
Uganda (NLC-UG)

**2022**



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## List of Acronyms

ACHPR	African Charter on Human and Peoples' Rights
CLRDs	Community Land Rights Defenders
CNOOC	China National Offshore Oil Corporation
COPASCO	Coalition of Pastoralist Civil Society Organizations
COVID-19	Corona Virus Disease diagnosed in 2019
CSO	Civil Society Organizations
ESAFF	Eastern and Southern Africa Small-scale Farmers' Forum
FAO	Food and Agricultural Organization
FRA	Food Rights Alliance
GoU	Government of Uganda
HRDs	Human Rights Defenders
ICCPR	International Convention on Civil and Political Rights
IDPs	Internally Displaced Persons
ILC	International Land Coalition
JLOS	Justice, Law and Order Sector
KCCA	Kampala Capital City Authority
MLHUD	Ministry of Lands, Housing and Urban Development
NAPBHR	National Action Plan on Business and Human Rights
NCHRD-U	National Coalition of Human Rights Defenders in Uganda
NDP III	National Development Plan III
NGOs	Non-Governmental Organizations
NLC-UG	National Land Coalition Uganda
PAPs	Projects Affected Persons
PWDs	Persons with disabilities
RDCs	Residential District Commissioners
TI	Transparency International
UCOBAC	Uganda Community Based Association for Women and Children Welfare
UIA	Uganda Investment Authority
ULA	Uganda Land Alliance
UN	United Nations
UNDHR	United Nations Declaration of Human Rights
UPF	Uganda Police Force
WR	Witness Radio

## **Acknowledgments**

This report was informed by the findings of the study on Community Land Rights Defenders (CLRDS) in Uganda conducted by Witness Radio (WR) and Eastern and Southern Africa Small-scale Farmers' Forum (ESAFF). The study was motivated by a desire to highlight the prominence and emerging issues (violence and criminalization) of community land rights defenders, understanding the best practices, existing human rights, and protection gaps in our legal, policy, and Institutional Frameworks at global, regional, and national levels as well as finding practical and policy recommendations to reduce their vulnerability.

This endeavor required the support of many people across the country, including Civil Society Organizations (CSO) representatives, Development Partners, media fraternity, CLRDS themselves, officials from the Uganda Police Force (UPF), officials from the Ministry of Lands, Housing, and Urban Development, as well as the local governments, who provided positive insights that greatly aided the study.

WR and ESAFF are deeply grateful to the International Land Coalition (ILC) through the National Land Coalition Uganda (NLC-UG) for providing the funds to support the study. Invaluable appreciation is extended to the study team members, namely; Mr. Kiwanuka Christopher, Mr. Bagaga Ronald, M/s. Joan Bulyerali, Mr. Ssebagala Geoffery Wokulira and Mr. Katende Tony, for the technical and moral support they extended towards the study consultations and report writing.

We are particular indebted to our NLC-UG partners; LANDex, Saferworld, YouthPlus Policy Network, UCOBAC, TI Uganda, Landnet, ULA, COPASCO and FRA for their partnership in the struggle to protect and promote land rights of women and men who depend on indigenous and community lands to survive.

## Executive Summary

This study arose out of the realization by members of the National Land Coalition Uganda (NLC-UG) – Witness Radio (WR), Land and Equity Movement Uganda (LEMU), Eastern and Southern Africa Small-scale Farmers’ Forum (ESAFF), LANDex, Saferworld, YouthPlus Policy Network, Oxfam in Uganda, Uganda Community Based Association for Women and Children Welfare (UCOBAC), Transparency International (TI) Uganda, Landnet, Uganda Land Alliance (ULA), Coalition of Pastoralist Civil Society Organizations (COPASCO) and Food Rights Alliance (FRA) - and other concerned civil society actors that despite their peaceful activism against unlawful and forceful transfer of land rights, Community Land Rights Defenders (CLRDS) in Uganda face exclusive challenges which often undermine their work.

The study was undertaken to:

- gain more insight and up-to-date information on the situation of CLRDS in the country and how such a situation impacts on their rights and work.
- inform policy formulation, review and implementation as well as appropriate strategic plan of interventions and programs which can effectively address the emerging concerns of CLRDS in Uganda.
- generate legal and policy recommendations that guarantee the protection of CLRDS in Uganda.

The study was conducted majorly through desk review of relevant literature and major debates in the study of land matters and defenders of land rights in Uganda. However, for purposes of complementarity, triangulation, and validation of the findings of the desk reviews, consultative processes were undertaken with the staff of WR and ESAFF, purposely selected CLRDS, individual Projects Affected Persons (PAPs), policy makers and implementers at local and national government levels under the supervision of two study team leaders from WR and ESAFF. These processes involved virtual meetings, consultations and interviews including conversations and telephone interviews.

The study reveals the prominence and the best practices of community land rights defenders, including;

- i) CLRDS secure land rights on unprotected and undocumented lands:** CLRDS who are part of the project Affected People (PAPs) depending on communal lands as their main source of livelihood, support the communities to defend and secure land rights on unprotected and undocumented lands.
- ii) CLRDS undertake local, national, regional and international action:** Most CLRDS work at the local or/and national level, supporting respect for human rights within their own communities. However, some CLRDS act at the international level and engage financiers of multinational companies that are involved in land grabbing. For example, CLRDS

working with Witness Radio in addressing the unlawful evictions during the construction of a 2.58 KM long, Lubigi drainage channel by KCCA, which threatened livelihoods of over 300 people in Kawaala zone II village, petitioned the World Bank Human Rights Council and justice was served through mediation processes.

- iii) Supporting victims of human rights violations:** As public institutions such as the police, the Uganda People's Defense Forces, the District Resident Commissions, the District local government land governance institutions like the district Land Board, and Area Land Committees mandated to protect Indigenous communities and their properties have been faulted for protecting commercial entities and their workers, CLRDs organize communities to oppose illegal land evictions, and malicious prosecution, among others.
- iv) Ensuring local food security:** Women's land rights are particularly important given their crucial role in ensuring local food security and managing community resources. The FAO estimates that if we close the gender gap in agriculture, production could increase by 20-30%. Their involvement and empowerment as CLRDs play a significant role in this end.
- v) Collecting and disseminating information on violations:** CLRDs investigate, gather information regarding and report on human rights violations during land conflicts and crises. They use lobbying strategies to bring their reports to the attention of the faithful public officials such as Residential District Commissioners (RDCs), Police Land Desk and of key political and judicial officials with a view to ensuring that their investigative work is given consideration in efforts to address the violations.
- vi) Action to secure accountability and to end impunity:** Many CLRDs work to secure accountability for respect for human rights legal standards in transfer of interests and rights on land. The judicial processes, especially court orders that are obtained by the victims and community land rights defenders, are being blatantly ignored by the perpetrators. Owing to this, CLRDs' works on accountability can lead them to bear witness, either in a public forum (for example, a newspaper, policy advocacy platforms by CSOs) or before a court or tribunal, to human rights violations that have already occurred. In this way, CLRDs contribute to securing justice on behalf of victims in specific cases of human rights violation and to breaking patterns of impunity, thereby preventing future violations.

Besides the foregoing, the study revealed the challenges (violence and criminalization) which community land rights defenders face in doing their work, including the following;

- i) Land and environmental defenders in Uganda face ongoing threats and intimidation for their activism against forced evictions and environmental harms. CLRDs and their lawyers have been arbitrarily arrested and risk criminal charges to silence their activism.
- ii) CLRDs find themselves helpless with limited resources and often lacking capacity to sustain efforts geared at asserting their rights. This situation prevails despite the fact that the forces they are fighting are usually well-funded and have plenty of human and technical resources at their disposal and at times supported by the government.
- iii) Limited media attention to the plight of CLRDs yet critical in protecting and promoting land rights. Today, it is pertinent to note that media has a lot of limitations, including (a) lack of presence on the ground in especially rural areas, and (b) intimidation or corruption of some journalists by government, business people, and whoever seeks to suppress CLRDs.

Further, the study examined the legal and policy gaps in protection of community land rights defenders (CLRDS) and revealed the following;

- On the 50th anniversary of the UNDHR (United Nations Declaration of Human Rights) in 1998, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration articulates existing universally recognized rights in a way that explain their relevance and application to HRDs including CLRDS. The failure to recognize and domesticate community land rights not only undermines the human rights of local people. It also threatens humanity's ability to achieve food security and fight climate change (environmental rights).
- On 14 November 1992, Uganda acceded to the Optional Protocol to the ICCPR, 1966 providing that: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the ['Human Rights Committee'] to receive and consider communications from individuals...who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant".. By virtue of this, Uganda as a State party is subject to the jurisdiction of the Human Rights Committee which considers individual communications. In practice, however HRDs in Uganda admitted limited knowledge about international protection mechanisms. The gap therefore is the lack of awareness of these mechanisms among CLRDS and failure to form and utilize effective partnerships nationally and internationally to take advantage of these mechanisms.
- Despite the favorable legal and policy framework for the operating environment of CLRDS, against which access to justice can be ascertained at

the national level, many CLRDS expressed their inability to go to court because of the expenses involved and delayed court proceedings.

The study recommends the following practical and policy recommendations to reduce the vulnerability of CLRDS in Uganda:

- Government should resolve outstanding land claims and formally secure the land rights of endangered communities and their fragile ecosystems.
- Government should address land inequality, including with regard to gender and ethnic minorities in line with the constitution as well as international legal instruments and conventions.
- Government and Non-state land actors should ensure that all large-scale land-based investments and other businesses comply with the concept of free, prior, and informed consent of affected communities and international frameworks for responsible investments and land governance like the VGGTs and CFS-RAI guidelines at all phases of the project cycle or operations.
- There is a need for the government in partnership with non-state land actors to establish a register of land-grabbing cases and a database of individuals and companies behind land-grabbing to develop and document all forms of human rights abuses committed against community land and environmental defenders by a cartel of economically powerful and politically connected individuals during the scheme of grabbing poor Ugandans' land.
- Prevent, investigate, punish, and redress corruption, human rights abuses, and environmental damage through effective policies, legislation, regulations, and reparations, including holding companies and investors to account for their obligations when operating projects or sourcing land-based goods, both at home and abroad.
- Make foreign aid and investment in projects conditional on whether specific measures for the security of land and environmental defenders are in place.
- Immediately consider and pass the Human Rights Defenders protection bill 2019 which provides for the recognition, legitimacy, and protection of Human Rights Defenders.
- CLRDS should be trained on the national and international protection mechanisms available to them when their rights are violated.
- CLRDS should be trained on their rights and responsibilities, including those elucidated in the Declaration on HRDs.
- CLRDS should be assisted to set up a fund for the defence of their rights violations
- CLRDS should establish a system of engagement with the authorities with a view to sorting out misunderstandings when they arise.
- CLRDS should form a strong network particularly to pursue collective action on security threats



## **1.0. Introduction/Background to the Study**

### **1.1. Introduction**

The Government of Uganda attaches great importance to the private sector development as an engine for the socio-economic transformation of the Country. This commitment is reflected in the theme of the National Development Plan III (NDP III) which is “Sustainable Industrialization for inclusive growth, employment and wealth creation”. Acknowledging that business can have a profound impact on human rights, the Human Rights Council, the main UN intergovernmental body responsible for the promotion and protection of human rights, endorsed the Guiding Principles on Business and Human Rights in 2011. These Principles have also been endorsed by many companies, business organizations, civil society organizations (CSOs), trade unions, national and regional institutions, and other stakeholder groups. This has solidified the status of these principles as a key global normative framework for business and human rights.

The Principles clarify the duties and responsibilities of States and companies to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. States are also obligated under international human rights law to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. Even if States do not fulfill their obligations, all business enterprises are expected to respect human rights, meaning they should avoid infringing on the human rights of others, and should address adverse human rights impacts with which they are involved. If abuses occur, victims must have access to effective remedies through judicial and non-judicial grievance mechanisms.

Anchored in the UN Guiding Principles on Business and Human Rights dubbed - the “Protect, Respect and Remedy” Framework, in August 2021 the Government of Uganda (GoU) developed the National Action Plan on Business and Human Rights (NAPBHR) as a measure to strengthen the State duty to protect human rights, enhance the corporate responsibility to respect human rights, and ensure access to remedy for victims of human rights violations and abuses resulting from non-compliance by business entities in the Country. The NAPBHR prioritizes eight areas of focus which include; Land and Natural Resources; Environment; Labor rights; Revenue transparency, tax exemptions, and corruption; Social service delivery by private actors; Consumer protection; Access to remedy; and Women, vulnerable and marginalized groups.

Among the NAPBHR strategies advanced include Resource mobilization to promote efficiency in monitoring and addressing business and human rights-related abuses and violations; Capacity building for state and non-state actors on business and to strengthen institutional capacity, operations, and coordination efforts of state and non-state actors for the protection and promotion of human rights in businesses; To promote human rights compliance and accountability by business actors; To promote social inclusion and rights of the vulnerable and marginalized individuals and groups in business operations; To promote meaningful and effective

participation and respect for consent by relevant stakeholders in business operations; To enhance access to remedy to victims of business-related human rights abuses and violations in business operations and; Empower communities especially vulnerable persons to claim their rights.

As the country awaits the implementation of the above NAPBHR strategies, there are severe violations of human rights perpetrated by the confrontational implementation of an industrial policy requiring land tracts for large-scale agricultural projects, carbon off-set tree plantations, oil refineries, and mines, leading to unjust loss of family farms, lives, and land for poor indigenous communities in Uganda. Blatant human rights abuses arise from methods deployed to forcefully grab land including rape, defilement, kidnapping, torture, arbitrary arrests and detention, demolition of schools, hospitals, and worship centers, and covering spring wells with soil.

Community Land Rights Defenders (CLRDS) are often the only force standing between ordinary people and the unbridled power of the state. They are vital to land-related conflict prevention and management processes and institutions, ending impunity and the promotion of human rights and protection against abuses. In this report, CLRDS refer to individuals and groups who act individually or with others in a peaceful manner within a given community to protect their lands, their water supply sources, their sources of livelihoods and basic services, and a healthy living environment.

Although CLRDS have gained prominence, Witness Radio and ESAFF experience reveals that CLRDS often face judicial harassment in the form of criminalization for offensive gatherings, criminal trespass, strategic lawsuits against public participation (SLAPPs) filed by the resource-rich to discourage communities from peaceful demonstrations against unlawful evictions, arbitrary detention, and defamation. Other challenges include threats to personal security, burglary of property and documents, suspension from their employment, denial of freedom of movement, and in some cases they are killed or kidnapped.

Against this background, this report presents the findings of a study on CLRDS in Uganda, which was carried out by WR and ESAFF with funds from ILC through the NLC-UG. The Report highlights the growing evidence of how vital the role played by CLRDS is in securing land rights and helping communities to manage their land more sustainably. It provides best practices for CLRDS towards fast-tracking progress in the implementation of NAPBHR strategies.

## **1.2. Study Rationale**

This study arose out of the realization by members of the NLC-UG (WR, ESAFF, LANDex, Saferworld, YouthPlus Policy Network, UCOBAC, TI Uganda, Landnet, ULA, COPASCO and FRA) and other concerned civil society actors that despite their peaceful activism against unlawful and forceful transfer of land rights, CLRDS in Uganda face exclusive challenges which often undermine their work. A study by WR in 2021 (<https://www.witnessradio.org>) revealed that at least 120 CLRDS were arbitrarily arrested during the COVID-19 lockdown. Land grabbers, including

government agencies, the resource-rich and speculators, capitalized on COVID-19 measures to exploit land, making the work of CLRDRs especially important, yet they were not classed as essential workers during COVID-19 restrictions, and were instead punished for their work.

There is a growing realization that CLRDRs' rights have been violated in the course of defending land rights and in many instances gone unnoticed. These have included kidnap, torture, arbitrary arrests and detention. The subordinate pieces of national legislation which impose extensive restrictions or create offences that narrow CLRDRs' space to fully execute their functions, the continued application by public officials (police) of sections of the law that court has pronounced itself on as being null and void, the constant fear of CLRDRs to be prosecuted and yet they lack technical and financial capacity to defend themselves, continue to impede the space and capacity of CLRDRs to effectively do their work.

Therefore, the study was undertaken to gain more insight and up-to-date information on the situation of CLRDRs in the country and how such a situation impacts on their rights and work. The findings were intended to inform policy formulation, review and implementation as well as appropriate strategic plan of interventions and programs which can effectively address the emerging concerns of CLRDRs in Uganda. Hence, the study examined the plight of CLRDRs, and identified and analyzed the legal, policy and institutional framework that impact on the rights as well as the working environment of CLRDRs in Uganda. From this analysis, recommendations were made for action by different stakeholders.

### **1.3. Methodology**

The study was predominantly a desk review which involved examination of the existing legal and policy frameworks of human rights defenders and land rights as well as an analysis of existing literature in form of reports and studies on the plight of human rights defenders and land rights activists in Uganda by different actors across the country, including Civil Society Organizations (CSO) representatives, Development Partners, media fraternity, CLRDRs themselves, official communications from the Uganda Police Force (UPF), from the Ministry of Lands, Housing, and Urban Development, as well as the local governments, which provided positive insights that greatly aided the study.

For purposes of complementarity, triangulation, and validation of the findings of the desk reviews, individual interviews were undertaken through virtual interviews and conversations with 50 participants that included staff of WR and ESAFF, purposely selected CLRDRs, individual Projects Affected Persons (PAPs), policy makers and implementers at local and national government levels.

### **1.4. Study Limitations**

The study was based on consultative engagements with a few purposely selected key informants whose views may not be truly representative of all views of CLRDRs across the country. However, this does not in any significant way affect the validity of the study findings, but it suggests a more comprehensive study.

## **2.0. Legal, Policy, and Institutional Frameworks**

### **2.1. International Legal Framework**

2.1.1. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

On the 50th anniversary of the UNDHR (United Nations Declaration of Human Rights) in 1998, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration articulates existing universally recognized rights in a way that explain their relevance and application to HRDs including CLRDs.

Article 1 of the Declaration states that: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international levels.” The right to promote and protect human rights is therefore given to everyone and to those who act in association with others. This is further specifically captured in the fourth paragraph of the Preamble to the Declaration which defines HRDs as “individuals, groups and associations... contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.

Going by that broad definition, CLRDs are persons, groups and organizations working to promote the respect for and protection of land rights and associated human rights.

According to Article 2 of the Declaration, the “prime responsibility and duty” of each State is “to protect, promote and implement all human rights” and ensure that conditions in the political, social, economic fields and other fields as well as legal guarantees exist to ensure that everyone under its jurisdiction are able to enjoy all those rights and freedoms in practice. It follows that all rights are equally important.

CLRDS therefore seek to promote and protect land rights of Indigenous Peoples and local communities is in preserving cultural diversity (social and cultural rights) and in combating poverty and hunger (economic rights). The failure to recognize community land rights not only undermines the human rights of local people. It also threatens humanity’s ability to achieve food security and fight climate change (environmental rights). CLRDS concern themselves with diverse human rights issues but normally within each defender’s area of specialization. Salient examples include: summary executions, arbitrary arrest and detention, torture, forced evictions, discrimination, environmental degradation, right to life, adequate food, adequate housing, education, water and sanitation among others. Oftentimes, CLRDS address the rights of categories of persons, for instance, the rights of women, children, indigenous persons, refugees, persons with disabilities (PWDs), internally displaced persons (IDPs), and many other marginalized persons.

The Declaration is the primary universal instrument advocating for the protection and support of CLRDS. It is not legally binding but it represents a very strong commitment to the implementation of the rights of CLRDS especially because it contains human rights already enshrined in the UDHR.

The provisions of the Declaration that seek to protect rights of CLRDS include:

- State responsibility to ensure that HRDs are protected in the course of their work against violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any arbitrary action<sup>1</sup>;
- The right to access justice (for example through a court) or have a complaint publicly heard before an authority where a HRD's human rights have been violated<sup>2</sup>.

The above provisions are crucial among CLRDS because they frequently face challenges that lead to their rights being violated, particularly as a result of opposition to their views, positions, and the work they do. For example, CLRDS face such challenges perpetrated by armed forces that connive with investors to grab lands of indigenous people and communities.

The Articles of the Declaration that seek to enhance the work of CLRDS provide for the rights to:

- Access information on how rights are given effect in domestic legislative, judicial and administrative systems<sup>3</sup>;
- Participate in Government, which includes inter alia, the right to draw attention to any aspect of a Governmental body's work that may affect the promotion, protection and realization of human rights<sup>4</sup>;
- Share opinions on the observance of human rights and draw public attention to those matters<sup>5</sup>.

#### 2.1.2. The International Convention on Civil and political Rights (ICCPR) of 1966.

The ICCPR provides useful standards for the protection of the rights of CLRDS ranging from freedom of association, speech, expression, and information to several others including freedom from torture, right to liberty, and others.

Article 1 of the first Optional Protocol to the ICCPR, 1966 provides that: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the ['Human Rights Committee'] to receive and consider communications from individuals...who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant". The Government of Uganda (GoU) acceded to the Protocol on 14 November 1992. By virtue of this, Uganda as a State party is subject to the jurisdiction of the Human Rights Committee which considers individual communications. In practice, however HRDs in Uganda

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<sup>1</sup> Art 12.2

<sup>2</sup> Art 9.2

<sup>3</sup> Art 6.2

<sup>4</sup> Art. 8.

<sup>5</sup> Art. 6.c.

admitted limited knowledge about international protection mechanisms. Indeed a statistical survey by the UN revealed that the Human Rights Committee had not received any individual complaints from Uganda by 30 October 2009<sup>6</sup>. The challenge therefore is the lack of awareness of these mechanisms among CLRDS. Related to this are other challenges which include lack of resources, internal weakness, and failure to form and utilize effective partnerships nationally and internationally to take advantage of these mechanisms.

## **2.2. Regional Legal Framework**

### **2.2.1. The African Charter on Human and Peoples' Rights (ACHPR) and its Protocol (Maputo Protocol) on women's' rights.**

Like the ICCPR, the ACHPR provides useful standards for the protection of the rights of CLRDS ranging from freedom of association, speech, expression, and information to several others including freedom from torture, right to liberty, and others. For example, Guided by the ICCPR and the ACHPR, the Supreme Court in a judgment read by Justice Joseph Mulenga in 2002 considered whether Section 50 of the Penal Code Act (Chapter 120 Laws of Uganda) on publication of false news constituted an acceptable limitation on the constitutional right to freedom of expression<sup>7</sup>. Guided by the provisions of the ICCPR, the ACPHR and an African Union Declaration of the Principles on Freedom of Expression in Africa, the court stated that, "It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information". The court ultimately ruled that section 50 of the Penal code went beyond permissible restrictions for the limitation of the right to freedom of expression contained in the Constitution. All seven judges of the Supreme Court agreed that section 50 of the Penal Code was inconsistent with the Constitution and was therefore declared void.

While the above case illustrates the value of international and regional instruments in guiding the judiciary, precedents such as this are part of the legal framework that protect CLRDS in Uganda. It also illustrates that CLRDS in Uganda can access justice at the national level. However, many CLRDS expressed their inability to go to court because of the expenses involved and delayed court proceedings.

## **2.3. National Legal Framework**

### **2.3.1. The Constitution of Uganda, 1995 (as amended 2005)**

The National Constitution is the basic law that gives rise to other laws which should not contradict the principles, letter and spirit of the Constitution. Uganda's

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<sup>6</sup> Statistical survey of individual complaints dealt with by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, United Nations, 30/10/2009 available at <http://www2.ohchr.org/english/bodies/hrc/docs/SURVEYCCPR97.xls> as accessed on 1/10/2009.

<sup>7</sup> Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General, Constitutional Appeal 2/2002 dated 11 February 2004.

Constitution is considered satisfactorily progressive according to B.J Odoki<sup>8</sup>. It has provisions which are very supportive of the rights of CLRDS. It provides for a range of rights to be enjoyed by everyone including CLRDS<sup>9</sup>.

### **3.0. Emerging Issues**

#### **3.1. CLRDS secure land rights on unprotected and undocumented lands**

In Uganda, over 90% of rural lands are not documented and most of these lands in the different regions of the country, except in Buganda, are held, used, or managed collectively as communal land. Yet, the local communities that have protected these lands for generations are riddled with corruption leading these lands vulnerable to land grabs by governments and corporations. CLRDS who are part of the project Affected People (PAPs) depending on communal lands as their main source of livelihood, support the communities to defend and secure land rights on unprotected and undocumented lands.

#### **3.2. CLRDS undertake local, national, regional and international action**

Most CLRDS work at the local or/and national level, supporting respect for human rights within their own communities. In such situations, their main counterparts are local government authorities charged with ensuring respect for human rights. However, some CLRDS act at the international level and engage financiers of multinational companies that are involved in land grabbing. For example, CLRDS working with Witness Radio in addressing the unlawful evictions during the construction of a 2.58 KM long, Lubigi drainage channel by KCCA, which threatened livelihoods of over 300 people in Kawaala zone II village, monitored the land rights situation and submitted information to World Bank Human Rights council and justice was served through mediation processes. With CLRDS who make contact with international mechanisms and engaging financiers of multinational companies involved in land grabs supports their efforts in improving land rights in their communities.

#### **3.3. Supporting victims of human rights violations**

Public institutions such as the police, the Uganda People's Defense Forces, the District Resident Commissions, the District local government land governance institutions like the district Land Board, and Area Land Committees mandated to protect Indigenous communities and their properties have been faulted for protecting commercial entities and their workers of who have committed gross human rights abuses. In Mubende for example such abuses have ranged from gang rape to torture, participation in illegal arrests and detentions, overseeing the use of un-gazetted detention centers to imprison community leaders organizing

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<sup>8</sup> B. J. Odoki, *The Search for a National Consensus The Making of the 1995 Uganda Constitution*, Fountain Publishers, 2005, Kampala, Uganda at p.289

<sup>9</sup> Chapter 4 of the 1995 Constitution

communities to oppose illegal land evictions, and malicious prosecution, among others.

Women's land rights are particularly important given their crucial role in ensuring local food security and managing community resources. The FAO estimates that if we close the gender gap in agriculture, production could increase by 20-30%. Their involvement and empowerment as CLRDS play a significant role in this end.

A very large proportion of the activities of CLRDS can be characterized as acting in support of victims of human rights violations. Investigating and reporting on violations helps end ongoing violations, prevent their recurrence and assist victims in taking their cases to courts. Some CLRDS provide professional legal advice and represent victims in the judicial process. Others provide victims with counselling and rehabilitation support.

There are increased cases of land in the judiciary, some of which are filed wrongly, and end up dismissed, while others could have been solved through ADR or mediation. CLRDS play such a wonderful role in this regard.



*Facilitating a community dialogue in the photo above is M/S. Nabuduwa Lucia, a CLRDS in Kawaala zone II, where the KCCA is implementing a World Bank funded project, the construction of the lubigi drainage channel.*

### **3.4. Collecting and disseminating information on violations**

CLRDS investigate, gather information regarding and report on human rights violations during land conflicts and crises. They use lobbying strategies to bring their reports to the attention of the faithful public officials such as Residential District Commissioners (RDCs), Police Land Desk and of key political and judicial officials with a view to ensuring that their investigative work is given consideration in efforts to address the violations are addressed. For local/community-based CLRDS, such work is supported by CSOs like WR and ESAFF, which periodically publish reports on their findings.



### **3.5. Action to secure accountability and to end impunity**

Many CLRDs work to secure accountability for respect for human rights legal standards in transfer of interests and rights on land. The judicial processes, especially court orders that are obtained by the victims and community land rights defenders, are being blatantly ignored by the perpetrators. “The perpetrators are emboldened to deliberately disregard lawful procedures to acquire land while knowing at the back of their minds, that even if communities go to court, the authorities in the district will not enforce a court order.”<sup>10</sup> For example “Investors in Mubende, do not follow legal processes of evictions as stipulated in the United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement, a benchmark for evictions around the world<sup>11</sup>. To the extent that evictions were conducted without due regard to human rights, “some members of the affected communities stood up to the companies, only to face the wrath of the state.” There is a need for the government to domesticate the international frameworks for responsible land governance.

Owing to the foregoing, CLRDs’ works on accountability can lead them to bear witness, either in a public forum (for example, a newspaper, policy advocacy platforms by CSOs) or before a court or tribunal, to human rights violations that have already occurred. In this way, CLRDs contribute to securing justice on behalf of victims in specific cases of human rights violation and to breaking patterns of impunity, thereby preventing future violations. The same groups of defenders might also work to strengthen the State’s capacity to prosecute perpetrators of violations.

### **3.6. CLRDs Challenges in Uganda**

Land and environmental defenders in Uganda face ongoing threats and intimidation for their activism against forced evictions and environmental harms. Human rights defenders and their lawyers have been arbitrarily arrested and risk criminal charges. Some of these attacks are related to their opposition to operations of some multinational companies, namely Hoima Sugar Ltd, Total, Tullow Oil, China National Offshore Oil Corporation (CNOOC), Agilis Partners, Great Season Company Limited, and Kiryandongo Sugar Limited. Business & Human Rights Resource Centre invited the companies named to respond to the allegations. The NAPBHR strategies need to be advanced for the cause of CLRDs.

Community land rights defenders find themselves helpless—with limited resources if any and often time lacking capacity to sustain efforts geared at asserting their rights. This situation prevails despite the fact that the forces they are fighting are usually well-funded and have plenty of human and technical resources at their disposal and at times supported by the government.

Limited media attention to the plight of community land rights defenders yet critical in protecting and promoting CLRDs’ rights for example in the case of Zoka Forest,

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<sup>10</sup> Witness Radio. 2020: 16

<sup>11</sup> A Study on Criminalization of Land and Environmental Rights Defenders in East Africa

the media brought to the fore the issues the community land rights defenders would ordinarily have failed to give prominence on their own. Today, it is pertinent to note that media has a lot of limitations, including (a) lack of presence on the ground in especially rural areas, and (b) intimidation or corruption of some journalists by government, business people, and whoever seeks to suppress CLRDS.

Mr. Mwawula, (in the photo on the side) is a community land rights defender based in Jerusalem Kisalanda in Kitwala sub-county, Kiryandongo district.

Since 2017, when multinationals began operating in kiryandongo district, Mr Mwawula has been vocal in representing and enforcing resistance among fellow villagers against great seasons smc limited company land grab despite retaliations from the evictors.

He was reduced to cultivating on only four acres after 46 acres were grabbed by the company. He has been arrested for over 8 times and charged among others criminal trespass for seven times and threatening violence once.



#### **4.0. Policy and Practice Recommendations**

It is believed that the community land and environmental rights defenders will be able to carry out their activism safely only when the state, companies, and investors take action to tackle the root causes of conflict, safeguard defender rights, and ensure accountability when attacks occur<sup>12</sup>. The following recommendations are made:

- Government should resolve outstanding land claims and formally secure the land rights of endangered communities and their fragile ecosystems.
- Government should address land inequality, including with regard to gender and ethnic minorities in line with the constitution as well as international legal instruments and conventions.
- Government and Non-state land actors should ensure that all large-scale land-based investments and other businesses comply with the concept of free, prior, and informed consent of affected communities and international frameworks for responsible investments and land governance like the VGGTs and CFS-RAI guidelines at all phases of the project cycle or operations.
- There is a need for the government in partnership with non-state land actors to establish a register of land-grabbing cases and a database of individuals and companies behind land-grabbing to develop and documented all forms of human rights abuses committed against community land and environmental defenders by a cartel of economically

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<sup>12</sup> Global Witness 2020.

powerful and politically connected individuals during the scheme of grabbing poor Ugandans' land.

- Prevent, investigate, punish, and redress corruption, human rights abuses, and environmental damage through effective policies, legislation, regulations, and reparations, including holding companies and investors to account for their obligations when operating projects or sourcing land-based goods, both at home and abroad.
- Make foreign aid and investment in projects conditional on whether specific measures for the security of land and environmental defenders are in place.
- Immediately consider and pass the Human Rights Defenders protection bill 2019 which provides for the recognition, legitimacy, and protection of Human Rights Defenders.
- CLRDS should be trained on the national and international protection mechanisms available to them when their rights are violated.
- CLRDS should be trained on their rights and responsibilities, including those elucidated in the Declaration on HRDs.
- CLRDS should be assisted to set up a fund for the defence of their rights violations
- CLRDS should establish a system of engagement with the authorities with a view to sorting out misunderstandings when they arise.
- CLRDS should form a strong network particularly to pursue collective action on security threats

## **5.0. Key Actors**

- Government and district local governments
- JLOS- Internal Affairs Ministry with its apparatus like Uganda Police Force (UPF) and Uganda Defense forces (UPDF)
- Traditional and Cultural institutions
- Government Ministries and Agencies like MLHUD, Uganda Wild Authority, Uganda Investment Authority (UIA), etc.
- Parliament
- National Coalition of Human Rights Defenders in Uganda (NCHRD-U)
- Civil Society Organizations
- The Uganda Human Rights Commission
- The Uganda Law Reform Commission
- Land Justice Governance and Security Programme

## **6.0. Available Influencing Platforms**

- Uganda Land Alliance
- Media
- NLC-UG
- World Bank Human Rights Council
- International Day for HRDs
- International Day on Human Rights

## **7.0. Conclusion**

The background paper on community land rights defenders indicates that despite the fact that CLRDS have gained prominence in Uganda; the Ugandan state either is the lead abuser and violator of the rights of defenders or is aiding and abetting the same. The situation is partly attributable to corruption and dysfunctional state machinery incapable of adjudicating disputes between communities and investors fairly and efficiently, rendering communities helpless as state institutions cannot guarantee them a minimum level of protection as the few CLRDS who dare to challenge the status quo are easily identified, isolated, and victimized. Sometimes the courts do issue judgments and rulings in favor of communities. However, the courts are rendered docile as court orders are ignored by law enforcement agencies. These vulnerable community land rights defenders are left at the mercy of NGOs to amplify their plight.

The state and commercial interests appear to have a convergence of interests that supersede the interests of local communities and their community land rights defenders.

Checks and balances at the level of the judiciary and parliament as counterbalances to executive power and authority appear to be getting blurry. With that, there is less room for rights defenders to challenge actions of the state and be assured of justice.

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**Annexes**

- UN Declaration On The Right And Responsibility Of Individuals, Groups And Organs Of Society To Promote And Protect Universally Recognized Human Rights And Fundamental Freedoms

**Annex I:**

**Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**

**ADOPTED**

**09 December 1998**

**BY**

**General Assembly resolution 53/144**

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

### **Article 1**

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

### **Article 2**

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia , by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

### **Article 3**

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

### **Article 4**

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

### **Article 5**

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- a. To meet or assemble peacefully;
- b. To form, join and participate in non-governmental organizations, associations or groups;



- c. To communicate with non-governmental or intergovernmental organizations.

## **Article 6**

Everyone has the right, individually and in association with others:

- a. To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- b. As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c. To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

## **Article 7**

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

## **Article 8**

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia , the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

## **Article 9**

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
3. To the same end, everyone has the right, individually and in association with others, inter alia :
  - a. To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to

- competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
- b. To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
  - c. To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
  5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

#### **Article 10**

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

#### **Article 11**

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

#### **Article 12**

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

### **Article 13**

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

### **Article 14**

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include, inter alia :
  - a. The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
  - b. Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.
3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

### **Article 15**

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

### **Article 16**

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia , understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

### **Article 17**

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

## **Article 18**

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

## **Article 19**

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

## **Article 20**

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.