



Human Rights Watch Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of its Pre-Sessional Review on Uganda November 2014

We write in advance of the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) pre-sessional review of Uganda to highlight indigenous communities’ rights to cultural life; discriminatory legislation impacting the right to health; the ability of all children to enjoy the right to education; and the impact of corruption across all economic, social, and cultural rights. We hope to see the Committee take up these issues as part of its examination of the Ugandan government’s (“the government”) implementation of the International Covenant on Economic, Social and Cultural Rights (“the Covenant”).

For additional information about our work on Uganda, please see Human Rights Watch’s Uganda page: <http://www.hrw.org/africa/uganda>

The Right to Take Part in Cultural Life (Covenant article 15)¹

The government’s increased focus on development of the extractive industries—mining in both the east and west and oil and gas exploration in the Albertine Rift—has prompted serious concerns over the lack of a legislative framework protecting the rights of indigenous people to determine how their lands are used and they can benefit from such use.

¹ Interpreting article 15, UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that “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.” General Comment No. 21: Article 15(1) (Right of Everyone to take part in cultural life), December 21, 2009, paras. 36 and 37.

For example, the exploration work by various mining companies, particularly in the remote northeastern region of Karamoja, illustrates the problems arising from the absence in the mining laws of a requirement that the free, prior and informed consent of the population be obtained. The indigenous communities in Karamoja have traditionally survived through a combination of pastoral and agro-pastoral livelihoods, balancing cattle-raising with opportunistic crop cultivation. The Ugandan government has [massively accelerated licensing of companies](#) to carry out exploration and mining operations in Karamoja. 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 prior to or 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 government 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 at an additional risk 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 the government's role in the companies' operations.

The companies operating in Karamoja do not appear to have followed basic human rights standards, such as the UN Guiding Principles on Business and Human Rights or other key norms. For example, they did not secure free, prior, and informed consent from the local communities before they started operations on communal lands. Nor has the government required that companies adhere to this international standard. Companies have promised communities benefits, including schools, hospitals, boreholes, jobs, scholarships, and money in exchange for their acquiescence. But often exploration work was undertaken without enforceable written agreements and even though communities had yet to see those promised benefits and others that were supposed to help mitigate current and future loss of land use, livelihood, and other impacts.

While communities have not actively opposed exploration or mining activities on their lands, community members repeatedly stress 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' responsibilities under national laws and international standards. Local governments were similarly uninformed.

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' rights are protected as explorations and mining escalates.

The World Bank, International Finance Corporation, and other donors have an important role to play by ensuring respect for human rights in all activities that they finance. This requires identifying potential human rights impacts of proposed activities, and then mitigating or avoiding any adverse impacts. The World Bank's ongoing safeguards policy review is an ideal opportunity for the bank to commit to respecting human rights and systematize human rights due diligence.

The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health (Covenant article 12)

On May 3, 2014, the parliament passed the deeply flawed [HIV Prevention and Control Act](#) and President Museveni signed it into law on July 31. The act requires mandatory HIV testing for pregnant women and their partners, and allows medical providers to disclose a patient's HIV status to others. It also criminalizes HIV transmission, attempted transmission, and behavior that might result in transmission by those who know their HIV status.

According to the Uganda's Health Ministry 2012 AIDS Indicator Survey, an estimated 1.5 million Ugandans were living with HIV. There are at least 140,000 new infections annually, including 28,000 from maternal to child transmission. Uganda's HIV policies over the last decade have emphasized abstinence-only approaches for youth and marital fidelity. Combined with punitive laws against sex workers and homosexuals, these approaches are

known to have increased the stigma and discrimination around HIV and discouraged more people from being tested and treated, impeding realization of article 12 of the Covenant on the prevention, treatment and control of epidemic disease and violating the right of everyone to the enjoyment of the highest attainable standard of health.

Mandatory HIV testing and the disclosure of medical information without consent are contrary to international best practices and violate fundamental human rights. The criminalization of HIV transmission, attempted transmission, and behavior that might result in transmission by those who know their HIV status is overly broad, ineffective, promotes stigma, can be discriminatory, and its arbitrary application is counterproductive.

Discrimination against lesbian, gay, bisexual and transgender (LGBT) people in the health care sector is also a serious concern. Uganda's Constitutional Court declared the [Anti-Homosexuality Act null and void](#) on August 1 after President Museveni had signed the bill into law earlier in February. When parliament had passed the bill seven months earlier, Ugandan LGBT population experienced an increase in violence, arbitrary arrests, police extortion, loss of employment, evictions and homelessness.

The law has also resulted in [reduced access to health services](#) and HIV prevention information for LGBT people. On April 4, police raided the Makerere University Walter Reed Project, a US-funded HIV research and treatment center that provides health information and services to LGBTI people. The police erroneously claimed the center was "recruiting" people into homosexuality. Two community-based organizations that provided HIV testing, condoms, and lubricant to men who have sex with men (MSM) closed their doors after the bill became law. They have reinitiated some services, but no longer receive drop-in clients. TASO, Uganda's largest HIV/AIDS organization, has suspended its "Moonlight Clinics," through which it conducted outreach to MSM and other vulnerable groups, offering them HIV testing and education.

It was only on narrow procedural grounds that the court struck down the bill in August, and unsurprisingly a new draft has now surfaced. The new draft legislation, entitled the Prohibition of Promotion of Unnatural Sexual Practices Bill, is pending with an ad-hoc committee of parliamentarians and has yet to be formally introduced to parliament at the time of writing. This bill defines any same sex sexual conduct as an "unnatural sexual

practice” and criminalizes any such conduct, specifying that adult consent is not a defense. A highly discriminatory and dangerous aspect of the old act was the law’s criminalization of “promotion” of homosexuality, a provision that has resurfaced as “promotion of unnatural sexual practices”. Once again, individuals and organizations implementing HIV information, prevention, and treatment programs for MSM could be targeted for harassment or arrests under these provisions, leading to these programs shutting down and jeopardizing human rights and public health advocacy and outreach and violating basic principles of non-discrimination.

In February 2014, the [World Bank delayed a \\$90 million](#) loan for health care infrastructure in Uganda out of concern over the passage of the now nullified [Anti-Homosexuality Act](#) and its institutionalization of discrimination in accessing health care. Health, LGBT, and other human rights organizations have urged the World Bank to put in place effective measures to prevent discrimination in the provision of health care prior to proceeding with this loan.

The Right of Everyone to Education (Covenant article 13)

Vulnerable children face ongoing obstacles accessing an education in Uganda. Over half of all Ugandans are under 15, and children are the single largest demographic group living in poverty.

In 1997 the government introduced Universal Primary Education (UPE) which was meant to ensure free education for all. But there are limited numbers of government-run schools and additional educational costs arise—from school uniforms to books and other supplies. As a result, poor families can choose to keep some children out of school and make them work at home. Children who object to being kept from school may work on the streets to gather money to pay their own school costs and choose to live on the streets.

The Ministry of Gender, Labour and Social Development is charged with protecting children and has created multiple programs and policies intended to protect the rights of vulnerable children, including street children. However, the ministry is failing to respond adequately or effectively to the needs of these children or to stop abuses they face living and working on the streets, particularly in regards to economic and social exploitation outlined in the Covenant’s article 10.3.

Street children throughout Uganda's urban centers [face human rights violations](#). Police and other officials beat, extort money from, and arbitrarily detain street children after targeted roundups. In police cells children have faced further beatings and forced labor, including cleaning the cells and police living quarters. On the streets, homeless adults and older children harass, threaten, beat, sexually abuse, force drugs upon, and exploit street children, often with impunity.

The Ministry of Gender working with local government officials should focus on ending the stigma associated with being a street child. The Ministry of Education and Sports should ensure that Uganda's UPE system meets the basic educational needs of all Ugandan children. In particular, it should formulate and implement a national strategy to progressively reduce and eliminate costs related to education that often prevent children from going to or staying in school. The government should allocate sufficient funds to construct and maintain facilities for homeless children as an alternative to existing remand homes that house children in conflict with the law. These facilities should provide children who have had to leave school with a safe environment and educational opportunities, including vocational training for older children.

Corruption and the Realization of Rights under the Covenant

The escalation of foreign investment in Uganda in recent years and, in addition to mining in Karamoja, development of the oil sector in the western part of the country has renewed concerns about political patronage, the ability of civil society to critique government development plans, and corruption. Corruption in Uganda is severe, well-known, cuts across many sectors, and is frequently debated and discussed in the media. By unlawfully diminishing resources that should be available to realize fundamental rights such as the rights to health, water, food, and education, corruption leads to violations of human rights that may have disastrous consequences.

No high-ranking government official, minister, or political appointee has ever served a prison sentence despite investigations into the corruption scandals and an impressive array of anti-corruption institutions. [Corruption scandals](#) have had a direct impact on human rights in Uganda over many years, including the right to health, education, and

other essential economic, social and cultural rights. Donor funding worth US\$12.7 million was stolen from the Office of the Prime Minister in late 2012. The money was earmarked for rebuilding northern Uganda, a region ravaged by a 20-year war, and Karamoja. Other scandals have rocked health programs, like the \$4.5 million diverted from the Global Fund to Fight AIDS, Tuberculosis, and Malaria in 2005, and the \$800,000 stolen from the Global Alliance for Vaccines and Immunisations in 2006.

A lack of political will to investigate and hold accountable high-ranking members of the government who are involved in corruption has crippled Uganda's anti-corruption institutions, undermining their efforts through political interference, harassment, and threats. The government has failed to hold to account senior officials implicated in the theft and diversion of public funds over the last few years.

Activists fighting corruption face arrest and criminal charges. For example, despite renewed pledges to fight corruption in 2013, the Ugandan government arrested at least 28 anti-corruption activists who were distributing information to the public. Some have been charged with inciting violence and unlawful assembly, and are required to report regularly to the police. Such actions seriously call into question the government's commitment to fighting corruption and rather than harassing activists and obstructing public access to information, the government should support the crucial role of activists in upholding human rights and anti-corruption efforts.

Political interference in the work of anti-corruption institutions has also derailed high-level prosecutions. In some cases, senior officials have directed prosecutors to delay prosecution or prematurely try a case with weak evidence. Investigators, prosecutors, and witnesses involved in such cases have been the targets of threats and bribes. The Ugandan government should provide greater protection for those involved in prosecutions and a more robust system for protecting witnesses and ensuring that quality evidence against high-ranking members of government comes to light.

Uganda's donors should maintain strong and consistent political pressure on the government to allow anti-corruption institutions to pursue robust and independent investigations and prosecutions of high-level corruption in a non-partisan manner. Furthermore, any development assistance should be project-specific, require effectively

monitoring over the long-term, and have a clear and explicit exit strategy should allegations of graft arise.

Recommendations for Steps the Ugandan Government Should Take to Address the Above Concerns:

- ***On the Right to Take Part in Cultural Life:***
 - 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.
 - 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.

- ***On the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health:***
 - Repeal the HIV Prevention and Control Act.
 - The government should change its current HIV strategy from criminalization of transmission and forced testing to a rights-based approach which ensures confidentiality, consent and counseling. The strategy should focus on supporting and partnering with people living with HIV and civil society to implement strategies to eliminate discrimination, lower rates of transmission and improve access of testing and treatment.
 - Halt all steps to move the new Prohibition on the Promotion of Unnatural Offenses bill forward, and cease efforts to introduce other legislation that would criminalize human rights and public health work, protected by human rights law.

- ***On the Right of Everyone to Education:***
 - Take measures to fight stigma and discrimination against street children.

- Initiate investigations into complaints about the abuse of street children; in cases of child labour and other forms of economic and social exploitation ensure disciplinary measures and criminal sanctions where appropriate are pursued.
- Formulate and implement a national strategy to progressively reduce and eliminate costs related to education that often prevent children, particularly those from low-income households, from going to or staying in school.
- *On Corruption and the Realization of Rights under the Covenant:*
 - Publicly commit to eliminating political interference at the Anti-Corruption Court, and facilitating an environment for non-partisan accountability for corruption.
 - Encourage robust and independent investigations of high-level grand corruption and desist from making public comments on the quality of evidence of pending investigations or prosecutions of high-level members of government, including ministers and permanent secretaries, or their alleged innocence.
 - Stop all arrests, harassment, and intimidation of anti-corruption activists and immediately drop all criminal charges related to the distribution of anti-corruption information.