

**2nd  
Edition**



Lawyers are a pillar in securing justice for Communities affected by the extractive sector

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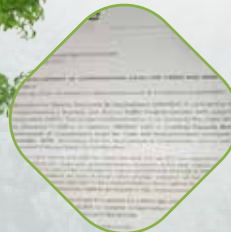
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# Editorial

Welcome to the 2nd Edition of Advocates for Natural Resources and Development (ANARDE) News Bulletin. The bulletin is a synthesis of ANARDE's pursuit of her three programmes, namely; Legal Aid, Nature Conservations and Extractives Justice programmes. It covers on one hand our research and policy advocacy at the national level and on the other hand community outreach, advocacy, legal outreach in Karamoja sub region and legal aid and advocacy in Albertine graben.

Our special thanks go to the Belgian Development Cooperation (DGD) for its immense financial contribution towards making our Extractive Justice program a reality, the European Union and Open Society Initiative for Eastern Africa (OSIEA) for their generous financial support towards our legal aid and nature conservation programmes.

Our work is a joint effort by our partners most especially Avocats Sans Frontieres (ASF) for its formidable partnership in implementing both the Belgian Development Cooperation (DGD) and the European Commission projects, the Gaia foundation for its partnership towards promoting Earth's Jurisprudence and Right of Nature in Uganda. The Judiciary of Uganda and the Uganda Law Society (ULS) have been so responsive and enabled us extend our capacity building and training to judicial officers and private lawyers respectively. Advocacy and dialogue with district officials, local communities has been without incident mainly due to cooperation of a district officials in our areas of operations, namely Moroto, Abim, Kotido and Nakapiriti districts. To members of civil society, various local communities and your respective leaders, your cooperation and warm reception gives us hope for a better tomorrow.

It's my hope that you will enjoy your reading. Kindly address any feedback and comments to **info@anarde.org**



**Frank  
TUMUSIIME**  
-Coordinator



## LAWYERS ARE A PILLAR IN SECURING JUSTICE FOR COMMUNITIES AFFECTED BY THE EXTRACTIVE SECTOR

Whereas communities rich in minerals and oil are supposed to see increase in standards of living and improved income, the reverse is always true. Instead, land tenure insecurity, involuntary displacements, opaqueness of contracts and destruction of the surrounding environment have become part and parcel of the resource rich communities.

Karamoja sub region and the Eastern part of Uganda are awash with mineral deposits such as lime stone, marble, gold, tin uranium and copper, the discovery of oil deposits in Karamoja is a also significant addition to this stock. The government has moved towards the commercial exploitation of oil in the Albertine Region and commercialization of the mining sector. Invariably, the increase of extractive activities should

lawyers at Mt Elgon Hotel Mbale held on the 28th and 29th of June 2018, aimed at promoting “Stronger access to justice mechanisms for communities affected by the exploitation of natural resources in Uganda.” The objective of the training was to equip lawyers with substantive knowledge of the law governing oil, gas and minerals and the procedure of assisting communities to secure remedies due from infractions from extractive activities both the cash and non-cash remedies to victims of human rights violations and the environment.

find equipped lawyers with capacity and ability to navigate the legal dynamics of the extractive sector and prescribe appropriate legal dosages for the for poor and vulnerable. In light of the above, ANARDE in partnership with Uganda Law Society and ASF organized a two days training for



Participants and lawyers post for a group photo

The training canvassed environment protection, essentials of taxation and implications on the mining industry, land compensation and compulsory and acquisition and gender equality in the extractive industry. The participants were as well introduced to Un Guidelines on business and Human Rights In general, the training covered the guiding principles on business and human rights and experiences in Uganda's oil and gas sector, impact of the extractive sector on the right to a clean and healthy environment, the available legal remedies to resource rich/ grass root communities, key extractive revenue terms, confidentiality and public interest, the role of an advocate in upholding transparency and accountability in extractive transactions and associated disputes, land tenure security, compulsory land acquisition and compensation in the extractive sector.

## The participants made comments in recognition of the training:



**Professor Oboth Okumu**

"This is a very important meeting because lawyers are the custodians of people's rights.....We can conduct awareness meetings starting with vulnerable areas like Karamoja and inform the people of their rights to land, clean healthy environment and compensation rights"



**Mr. Okuku**

"It is the duty of lawyers to advocate for land tenure reforms.....The issue of our land tenure system is the source of all the land problems in Uganda. The solution to this would be to abolish the current tenure systems and come up with those that favour community ownership"



**Mr. Samuel Wegoye**

"This training has shown us how we should deal with our land laws. Uganda's laws have been robbed of their foundation. Clan ownership was the way land was held and land was never sold...-customary laws should be upheld. The other laws are just intended to rob people of their land."



**Ms. Patricia Achom**

"Concerning the principle to respect human rights versus corporate social responsibility, companies have taken advantage of corporate social responsibility to violate human rights. People whose rights have been violated are sometimes scared to come out because of different reasons"

It was recognized from the training that lawyers are key in promoting access to justice in the extractive sector. Furthermore, that it is important that the trainings also involve Judicial Officers who from time to time are called upon to enforce the law in this area which presently remains grey to many.

ANARDE remains committed to offering legal aid to vulnerable community members in the extractive industry and building capacity of like-minded partners. Engagements like lawyers training will therefore continue.

## A TRAINING OF JUDICIAL OFFICERS: HUMANS RIGHTS FRAME WORK FOR DELIVERING JUSTICE TO COMMUNITIES AFFECTED BY EXTRACTIVE ACTIVITIES.

By Arafat Musoke

For many centuries, business corporations have participated in some of the gravest violations of human rights. In the 18th Century for example, the East Indian Company was singlehandedly responsible for the conquest of India. Its officials participated gross human rights abuses like torture, killings of many Indians, plunder of religious treasures, among others. The conduct of Transnational Companies has not changed over the years. Despite major human rights documents coming into force post 1945, incidents like the 1984 Bhopal disaster in India and desecration of Ogoni land by Shell Petroleum reveal the Trans National Companies (TNCs) continued approach to human rights.

To combat human rights violations by TNCs, the United Nations created a mandate on business and human rights on the issue of human rights and transnational corporations and other business enterprises in 2005. Professor John Ruggie was appointed by the United Nations Secretary General as a special representative for business and human rights.

The Human Rights Council adopted the “Protect, Respect and Remedy” framework in 2008 and in 2011, the United Nations General Assembly adopted the United Nations Guiding principles on Business and Human Rights (UNGPs).

By adopting the UNGPs, the United Nations created a regime clearly delineating perimeters through which business entities would conduct their affairs and an entity would no longer act in total ignorance of its obligations. The principles are further innovative in expounding on the meaning of the state duty to “protect” and to “respect”.

Despite the revolutionary traits of UNGPs, it must be noted that they are not legally binding. If incorporated into judicial decisions however, they can



obtain the force of law through the doctrine of precedent. This makes the role of the judiciary very crucial.

Under paragraph 4 of the UNGPs, it is stated that nothing in the general principles should be read as creating new international law obligations. This implies that the UNGPs are a reflection of the already existing laws. This grants court an opportunity to enforce the law in light of the international law principles incorporated in the UNGPs.

Given the wide range of activities in Uganda's extractive sector, the concept of business and human rights is more critical than ever before. However, the concept remains very novel in Uganda's legal system particularly in the field of litigation and adjudication of the related cases. The need to hold conversations with the administrators of justice cannot be over emphasized. Contrasted with the traditional view of assessing damages and awarding damages, new fields require new and innovative approaches in assessing social economic losses encountered by people especially the local communities.

In light of the above, ANARDE, ASF and Judicial Training Institute Uganda organized a two days symposium for the judicial officers at the judicial training institute on the 25th and 26th of April 2019, with an objective of promoting "Stronger access to justice mechanisms for communities affected by the exploitation of natural resources in Uganda."



Judicial officers pose for a group photo

The symposium targeted judicial officers all over the country with the objective of equipping them with knowledge regarding natural resources and human rights violations as well as the remedies available. It was attended by more than 15 judicial officers and it was manned by the appropriate national and international facilitators in the area of natural resources and business & human rights.



Frank Tumusiime presenting the landscape of corporate accountability & human rights adjudication



Mr. Ernie Niemi, Natural Resources Economist from USA, trains on the assessment of damages due from business projects, and remedies for lost ecosystem services and functions



Mr. Denis Kakembo of Cristal advocates trains on Petroleum and Mining Taxation

The discussion entailed assessment of non-monetary damages, use of experts in assessment, implications of business activities on human rights, Petroleum and mineral taxation, Legal, contractual and fiscal regimes for oil and gas and mining.

The symposium was a very engaging event where a lot of experiences and lessons were shared. At the conclusion of the event, Dr. Henry Adonyo Peter (Executive director of the Judicial Training Institute) emphasized that the training was a way forward for the country's judiciary to develop and effectively enforce human rights. He therefore called upon courts and judicial officers to play their respective roles of enforcing the law.

## USING LEGAL OUTREACH TO ADDRESS INJUSTICES IN COMMUNITIES

By Emmanuel Achellam, Programme Officer

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In recent years, Uganda has seen a surge in its construction industry. Residential and commercial buildings are being erected at faster rate than ever before while extensive infrastructure developments like road constructions are also taking place.  
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The above activities require sand and have made it one of the most valuable and needed resources in the country. The need for sand has led to indiscriminate, illegal and irresponsible sand mining in various parts of the country. No area has been affected more than Lwera Wetland which accounts for over 80% of Uganda's sand production.





Chinese firm owned dredger excavating sand



Newspaper extract as ANARDE sued sand mining companies

As a result of the illegal and irresponsible sand mining activities, Lwera Wetland is now very susceptible to flooding and the open pits are potential breeding ground for many vectors of diseases like malaria which threaten the healthy and livelihood of the surrounding areas. The sand mining activities have also negatively impacted on the local communities' major economic activity of fishing and are a potential for inter-racial conflicts.

The situation as described above could not be allowed to continue. In 2019, ANARDE filed a public interest suit against Capital Estates Limited, Seroma Limited, Zhongs Industries Limited and Mango Tree Group Limited, the four companies engaged in sand mining in Lwera Wetland, challenging their acts which are detrimental to the environment and Ugandans' rights to life, livelihood, health as well as the right to a clean and healthy environment.

The case is yet to be heard by court and the process has been interrupted by the ongoing lockdown occasioned by the COVID-19 pandemic. ANARDE remains committed to follow up the case to its logical conclusion.





## CAPACITY BUILDING IN COMPILING AND SETTING COMPENSATION RATES IN KARAMOJA SUB REGION

**By Isabella Orishaba, Project Advocate.**

The National Development Plan and Vision 2040 consider Civil Society Organizations as critical partners of government in achieving social economic development. Despite this, many organizations have not chosen to work closely with government and realize the change they advocate for.

In ANARDE's day to day engagements with communities and Local Governments in the Karamoja Region, one critical factor which has always stood out is the lack of compiled compensation rates to guide during community compensation for crops and buildings of semi-permanent structures.

There are currently several development projects for example roads, mining and other infrastructural projects going on in Karamoja Region. However, neither Moroto District Local Government nor any other district in sub region has compensation rates in place. Consequently, this poses a challenge especially to the protection of the rights of the land owners and their property as required by law.

Whereas, it is a mandate of the District Land Board to compile and maintain a list of compensation rates and review the same every year, this has not been the practice hence the need for consultation as a process towards setting the agenda for capacity building activities aimed at coming up with compensation rates for the region.

In view of the above, ANARDE organized and conducted consultative meetings with key stakeholders from Nadunget, Tapac, Rupa, Katikekile sub-

counties-North and South Divisions of Moroto Municipality starting from 26th to the 28th November 2019. The main objective was to build capacity of the stakeholders about laws, practice and processes of compilation of compensation rates for crops and semi-permanent buildings for communities in Moroto District. Furthermore, to determine the assistance required from ANARDE in terms of capacity building.

These consultations considered factors that have hindered the development of property rates; the last time/year the rates were developed; whether the district officials had any predetermined plan in place for revision of the rates and whether the officials were comfortable with ANARDE bringing in an expert to facilitate the process. It was interesting to note that contrary to what is normally perceived government and local government officials are ready and willing to work with different partners for the realization and fulfillment of government objectives.

Following the consultative meetings, it was agreed that ANARDE continues its drive in helping the District Officials and facilitate the process of development of compensation rates for crops and buildings of a semi-permanent-

structures. Although the process has been interrupted by the current COVID-19 pandemic, it is expected to resume as soon as the condition in the country normalizes.



Letter to the CAO Moroto, seeking his indulgence on the proposed activity for the development of compensation rates

The current gold rush and demand in Moroto district in Karamoja sub region has resulted into considerably large mercury emissions. Artisanal miners use mercury to recover minute pieces of gold that are mixed in soil sediments. To reduce the use of mercury and the subsequent health impact to gold miners and local inhabitants, knowledge and awareness in the community need to be increased.

With the help of the community-based volunteers, ANARDE rolled out an awareness raising program in December 2019, with an objective to evaluate the level of knowledge on; mercury, potential routes of exposure, health risks for children versus adults, mercury related health effects, reproductive risks and effects on the environment.

This move came at a time when all over the country, from Mubende to Busia and Karamoja, tens of thousands of Ugandans, including children and women, were increasingly flooding small gold mines in the quest for to earn a living. In Loolung, a small-scale gold mining site located in Rupa Sub County, Moroto District, we witnessed miners, including children mix the mercury into the ore with their bare hands, create a gold-mercury amalgam, and then burn the amalgam over an open flame. This is done in ignorance of its adverse effects on the health and lives of these miners.

## SENSITIZING ARTISANAL MINERS AGAINST USE OF MERCURY IN MINING PROCESSES.

By Joseph Ahimbisibwe

Mercury use in artisanal and small-scale gold mining has negative effects on human health and the environment. Prolonged and high exposure to mercury by inhalation damages the nervous, digestive, and immune systems. When ingested, mercury can accumulate in living organisms, and cause serious damage to the nervous system.





Miner elaborating panning method as an alternative to mercury use in gold extraction

Beyond the health risks, mercury affects the aquatic life and causes toxic pollution to water sources and soils which bio accumulates and biomagnifies especially in the aquatic ecosystem. Recent evidence suggests that mercury is responsible for a reduction of micro-biological activity vital to the terrestrial food chain in soils over large parts of Europe – and potentially in many other places in the world with similar soil characteristics.

Under the socio-economic and political conditions found in the small-scale gold mining operation, the

use of mercury is often considered as the easiest and most cost-effective solution for gold separation. ANARDE has rolled out series of community out reaches to educates the miners on the alternatives of gold separation other than mercury due to the dangers it has on their health and environment. Gold is heavier than most other particles, so alternative methods typically use motion or water to separate the gold from lighter



particles. These include panning, sluicing, chemical leaching and smelting. With continuous advocacy and engagement of mining communities, there is hope of stemming the practice to a total halt.

## LAUNCH OF STATE OF KARAMOJA PLATFORM (SOK)

Karamoja is a mineral rich sub region that is currently a home to mining of precious metals like marble stones, uranium, lime stones, gold, platinum, copper, magnesium and other stones such as ruby, red garnet, magnetic stones. It is a region that government is looking at as being instrumental in fueling its economic development and at the moment has faced the influx of many investors and business.

The prevalence of minerals in the Karamoja region coupled with the nomadic nature of the communities and customary systems of land ownership have subjected many members of the local communities to rampant land evictions. This is compounded by the communities' ignorance of their rights and avenues of redress in the event of violations.

Currently, there are many civil society organizations working in the region. Each of these aims at improving the welfare of the local communities and stop resources linked injustices. However, the violations continue unabated. The standards of living in the region have not improved and neither has poverty reduced. So what could be the issue? The problem lies in each organization tending to work alone and the disjointed activities ending up not having much impact.

To solve the above problem, ANARDE came up with an idea of a forum which would link different actors in the region with the communities. This forum would include members of the local communities, local governments, cultural leaders, civil society organizations, mining companies, development partners, among others. It would be an avenue for the communities to directly engage with different stakeholders on the issues arising from their communities.

Accordingly, ANARDE together with its grassroots partners launched the State of Karamoja Platform (SOK) on the 17th of March 2020. The Platform is intended to be an avenue through which community grievances can be aired and solutions proposed. At the launch, a steering committee was formed to bring into effect the purpose of the Platform. Though affected by the current nationwide lockdown, there is a lot of hope that the Platform will yield positive results



M/s Isabella Orishaba, project advocate speaking at the launch of the State of Karamoja Platform at Kalipp hall, Moroto Municipality- March 2020



Hon. Joseph Piril, an elder, speaking at the launch of the SOK



Participants for the launch of SOK pose for a group photo.

## THE ROLE OF COMMUNITY VOLUNTEERS IN PROMOTING ACCESS TO JUSTICE

**By Rinah Ashaba, Research Assistant.**

Since July 2017, ANARDE has been implementing a project in Karamoja Region aimed at promoting sustainable development goals by strengthening access to justice in Uganda.

One of the approaches ANARDE uses to promote access to justice is incorporation of community volunteers in implementation of its activities.

Community volunteers are selected persons from the local communities who are given basic legal training. They are given basic skills like recording of complaints and mediation training. Through their training, they obtain legal knowledge and can teach their fellow community members.





ANARDE team engaging Kotido district Paralegals for a review meeting -March 2020-Sky Line Hall



14 Kotido district Paralegals at a review meeting

The various trainings they receive empower them and make them a strong voice that the communities can rely on to agitate for positive change. They also have the potential to continue enriching other community members with their experiences and create an empowered citizenry that can ably demand for accountability and respect of their human rights and freedoms.



ANARDE team engaging Abim district Paralegals for a Review meeting - Ebenezer Hall, 2020

From our experience, we have observed that community volunteers are key. However, there are some challenges faced in engaging them. Whereas they are meant to work voluntarily, from time to time they expect and demand remuneration and yet there are no funds to cater for that. Some also work from hard to reach areas and are hence difficult to access and utilize. The challenges notwithstanding, community volunteers are very instrumental that every organization doing community work should incorporate them in its activities. Organizations must find ways of resolving challenges faced in utilizing them as they are too important to be ignored.

The role and importance of community volunteers has not yet been fully understood by many organizations working with communities yet the reasoning behind the need for community volunteers is obvious. They are members of the communities and as such can easily link the organization to the people. Furthermore, they have an in depth understanding of the community issues which enables the organizations not to provide plastic solutions. Most importantly, engagement of community volunteers offers a permanent solution.



## USING LEGAL OUTREACH TO ADDRESS INJUSTICES IN COMMUNITIES

By Paul Keishaari, Project Advocate

One of the approaches used by ANARDE to implement its project activities is holding mobile legal clinics. In ANARDE's context, a mobile legal clinic involves a team of legal experts camping in a community for a number of days. They interact with the community and sensitize it on certain aspects of the law. They also offer legal advice and counseling to community members with different legal issues.

In February 2020, ANARDE arranged mobile legal clinics in Nabilatuk district. These clinics were stationed at Lolachat and Lorengwedwat villages and Nabilatuk Sub County in Nabilatuk District. The activities involved general sensitization and teaching on human rights, land rights, compulsory land acquisition, women and children rights. Thereafter, there was a feedback session where the community members were allowed to interact with the team on the issues arising from the discussions. Community members were also given an opportunity to consult on individual legal issues.



ANARDE legal team conducting legal clinics to communities of Nabilatuk Sub County in Nabilatuk district, March 2020

The interaction with community members at Nabilatuk Sub County raised very pertinent issues. The community members for example expressed a concern that from time to time, some of them are arrested by the Police asserting that they have violated the Constitution. This is puzzling to them since they do not understand what the Constitution provides in terms of what it guarantees them and what it forbids them from doing. They also wondered whether they could use the same Constitution to extract themselves from trouble with the police.



ANARDE legal team conducting legal clinics to communities of Nabilatuk Sub County in Nabilatuk district, March 2020

The community members also complained about the activities of Uganda Electricity Distribution Company Limited which is putting electricity poles in people's lands without paying them any compensation. They stated that when they raised their concerns to their District leaders, they were informed that they should not expect compensation since electricity is for their benefit. Furthermore, that whoever resists

the exercise would be imprisoned. This position is of course contrary to the provisions of Article 26 of the Constitution.

It is important to note that the state has a constitutional duty to promote public awareness of the Constitution by translating it into local languages and disseminating it as widely as possible. 25 years after the promulgation of the Constitution, it has failed to do so.

ANARDE's interaction with the local communities proved that there are certain violations the local communities may be committing against each other simply because they do not understand the provisions of the law forbidding them.

Further, that if they did, they would be a more law abiding community. In addition, that the ignorance of the communities about the law is taken advantage of by those who violate their rights since it denies them a voice to stand against the perpetrators.

What stood out was that if properly sensitized, these community members would be able to demand for accountability and insist on the realization and enforcement of their constitutional rights. ANARDE undertakes to continue conducting these community engagements.

## ANARDE SUCCEEDS IN HER PURSUIT TO INCORPORATE RIGHTS OF NATURE INTO UGANDA'S LEGAL SYSTEM

By Frank Tumusiime

Whereas Article 39 of the 1995 constitution provides that every person has a right to a clean and healthy environment, it ignores the fact that the Environment/Nature too has the right to be and to regenerate without obliteration and interlude. Human beings and Nature are interdependent phenomenon on mother earth, and people should know that their survival is impossible without Nature. For example; Bobby McLeod (1947 – May 30, 2009) an Aboriginal activist said “when the Earth is sick and polluted, human health is impossible.....to heal ourselves we must heal our planet.....”

As stewards of mother earth, ANARDE with financial support of Open Society Initiative for East Africa (OSIEA) centered its advocacy on the inclusion of the Rights of Nature into Uganda's legal system. Lucky enough, the National Environment Act was tabled for amendments in 2018 which afforded us an opportunity to meet the Natural Resources Committee of Parliament and drew their attentions to the truth that “there is no creator of rights, but rather rights are universal and to be enjoyed by all creatures of the Universe.”



Appearing before the Natural Resources Committee of parliament Frank Tumusiime presented proposals to incorporate Rights of Nature into the proposed National Environment Bill



Hon. Engineer Sabiiti Denis and Hon. Lawrence Biyinga Songa, Vice chairperson of the Natural resources committee, at the conference organized by ANARDE for incorporation of Rights of nature, held at Imperial Royale Hotel, Aug 2018.



Frank Tumusiime again presenting a case to the National stakeholders for the inclusion of rights of nature in the 2018 Proposed National Environment Bill at Imperial Royale Hotel

Accordingly, we made numerous proposals on the universality of rights and not just the application of human rights, but the inclusion of other rights enjoyed by non-humans. Though not adopted in totality, our efforts saw light with introduction of section 4 in the National Environment Act 2019, on “Rights of nature” which among others provides that; Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.



#### 4. Rights of nature.

(1) Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

(2) A person has a right to bring an action before a competent court for any infringement of rights of nature under this Act.

(3) Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.

(4) The Minister shall, by regulations, prescribe the conservation areas for which the rights in subsection (1) apply.

#### 5. Principles of environment management.

(1) The Authority shall ensure that the principles of environment management set out in subsection (2) are observed, taking into account the finite nature of non-renewable resources and the productivity of the available renewable resources.

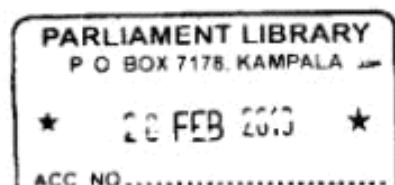
(2) The principles of environment management referred to in subsection (1) include—

- (a) encouraging the participation by the people of Uganda, in the development of policies, plans and programmes for the management of the environment;

The provisions grant nature the right to sue on its behalf. Akin to other corporations and municipalities that are usually represented by the board of directors or an executive head, experience from other countries such as New Zealand and Ecuador tell us that Nature will find no difficulty in enforcement and enjoyment of its rights.

The appointment of custodians who are usually members of indigenous and local communities living in the locality of a particular entity such as a forest or water body; to serve alongside central government representatives will help to ensure that the integrity of rivers, forests or ecosystem is maintained through closer monitoring.

Despite the above positive steps, the course towards realization of rights of nature in Uganda requires extra ordinary approaches. In this era no one argues that rights of nature shouldn't be recognized. However, a certain section of people are against these rights claiming that they are a barrier to economic prosperity.



An extract from the National Environment Act, 2019 of Section 4

Whereas Section 4(1) of the NEA 2019 provides that Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution, on the other hand sec. 4(4) plays as a crawl-back clause, whereby only the minister is mandated to come up with regulations which prescribes the conservation areas for which the rights of nature apply.

ANARDE's next course of action therefore is to see that regulations for the Enforcement and Enjoyment of Rights of Nature are in place.

Towards achieving this task, in August 2019, we embarked on a field study on the implementation of the rights of nature in Uganda. Different questionnaires were administered to multiple concerned personnel and institutions with diverse knowledge on ecological governance system; nature protection, conservation and preservation; legal interpretation and enforcement; indigenous knowledge on ecology etc. Amongst others, our respondents included: judicial officers; Indigenous communities of Buliisa region; Ministry of Water and Environment; Line Authorities; CSOs which fight for Environment; Local leaders in Buliisa District; Environmental law Lecturers; etc.

This study intended to come up with policy recommendations that are meant to be put in a policy brief which is supposed to be presented to the line authorities. At the time of this publication, a policy brief on the subject has been concluded and is awaiting publication. Thereafter, dialogues with the concerned stakeholders shall be conducted.

## BEING AN EFFECTIVE LEGAL AID SERVICES PROVIDER: THE NEED FOR ADOPTION OF STRATEGIC LITIGATION APPROACH

By Paul Keishaari, Project Advocate

Any organization providing legal aid services in Uganda is bound to face a dilemma. The number of people in need of legal aid services is enormous while legal aid service providers are few. The judicial process itself is bound to frustrate. The judiciary is understaffed and underfunded. It is battling a heavy case backlog that on average a case will take a minimum of 3 years to be heard. When one considers the appeal process, a case may take 15 years in court. Given such state of affairs, a legal aid services provider must adopt a strategy that ensures the best results. One such strategy is strategic litigation.

Strategic litigation is the practice of bringing law suits intended to effect societal change. Therefore, whereas a legal aid services provider is usually concerned with the immediate concerns of his/her clients, he or she focuses on filing those matters and using approaches intended to generate positive impacts beyond the immediate concerns of his/her clients. One of ANARDE's key areas of operation is provision of legal aid services. The organization represents communities in the Karamoja and Albertine Region and at present is offering legal aid support to over 1,000 people in various courts. In its legal aid support, it has applied the strategic litigation strategy and obtained very positive results. From the cases handled, I will pick two examples to demonstrate how it has worked.

## Advocates for natural resources and development Uganda national roads authority (constitutional Petition no. 40 of 2013)

Between 2010- 2012, the Government of the Republic of Uganda embarked on the upgrade of Hoima- Kaiso-Tonya road. This process required land and government compulsorily acquired plots of land belonging to the local communities along the road. The land was taken and communities told to open bank accounts where they would receive the compensation. Government relied on section 7(2) of the Land Acquisition Act, Cap 226 (enacted in 1965) which authorized government in cases of compulsory acquisition to first take possession before payment of compensation, a position that was contrary to the provisions of Article 26(2) (b) of the Constitution of the Republic of Uganda, 1995. Some Community members were compensated while others never received any payments. For those who were compensated, many complained about inadequate compensation.

In 2012, ANARDE was approached by the aggrieved community members who sought redress. ANARDE consequently filed Constitutional Petition No. 40 of 2013 in the Constitutional Court. Many would argue that at that moment, the immediate need of the clients was a redress in form of damages. This was possible if the matter was filed in the High Court. So why take to the Constitutional Court? ANARDE's approach was strategic. Compulsory land acquisition was rampant in the country then and indeed is still on the increase to date.

The enabling law had the effect of rendering many people landless and destitute and government would continue to rely on it despite the provisions of the Constitution. Therefore, it was in the best interests of all Ugandans to look beyond the immediate concerns of its clients on Hoima-Kaiso-Tonya road and ensure that such a law was rendered void once and for all. ANARDE thus filed the said petition and consequently, the said section was declared unconstitutional.

The effect of the petition is that currently, government cannot hide under any law to compulsorily dispossess people of their land before paying compensation. Its impact has been felt to the extent that government has from time to time proposed amending Article 26 of the Constitution but has failed to do so.

## The second example is the case **Uwonda Save-rio & 104 Others v Total E&P – C.S No. 13 of 2016 at Masindi**

In 2015, ANARDE was approached by community members from Kisomere and Kilyango villages in Buliisa District who had complaints against the acts of Total E&P. Their complaint was that from August 2013 to 2014, the Company conducted seismic activities in Kisomere and Kilyango villages and in the process destroyed their crops without compensating them for the loss.



It is important to note that Buliisa being an oil rich district, the conduct of similar activities would continue in future and it is not only the complainants who would continue to suffer violations. Therefore with the aid of ANARDE, the complainants filed C.S No. 13 of 2016. Due to the usual court challenges of backlog, the case is yet to be determined to its logical conclusion. However, the interactions with lawyers and the process of filing the case gave the community an insight of what ought to be done in case of such an activity. It also brought it to the attention of the company that the people were alert and ought not to be taken for granted anymore. Consequently, the community members reported that for subsequent seismic activities, they were adequately compensated for their crops. Thus far, the case has already yielded positive results.

From the foregoing I wish to point out that it is always the desire of a legal aid services provider to serve every person who approaches him/her and is in need of legal aid. However, given the limited resources and personnel, legal aid services providers must more often than not adopt strategic litigation strategy.

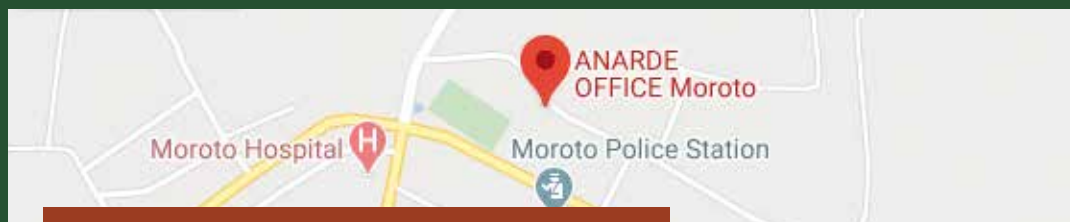


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