



NewsBulletin

3rd Edition

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Editor's Remarks

In a special way, Advocates for Natural Resources and Development (ANARDE) welcomes you to the 3rd Edition of her News Bulletin. Because of the need to keep a track record on the major activities implemented; raising awareness and generate debate on the key concerns raised in our fields of operation, we always feel that a publication of this sort is a necessity.

We wish to extend our vote of thanks to the Belgian Development Cooperation (DGD); the Open Society Initiative for Eastern Africa (OSIEA) and the European Commission for their immense financial support towards making our Extractive Justice and Nature Conservation programmes a reality.

We also appreciate the Avocats Sans Frontières (ASF) for her formidable partnership in implementing two projects namely; "Promoting Sustainable Development Goals by Strengthening Access to Justice in Uganda 2017-2021", and "Empowering communities and civil society to demand for good governance in natural resource management" supported by the Belgium Development Cooperation and the European Union respectively.

The Gaia foundation are also great partners in promoting Earth Jurisprudence and securing the recognition of Rights of Nature in Uganda. In a special way, we owe our success to our national and grass root partners especially in Karamoja region and Albertine Graben who have been so instrumental in setting up the right environment for our project activities.

Special tribute goes to the project implementation team at our secretariat for the immeasurable commitment in ensuring that we meet all the target objectives and outcomes. I take the honor to invite all to read and share with all persons and or organizations. For any comments and or editorials, please address them to; info@anarde.org.

Frank TUMUSIIME,
Coordinator, ANARDE



A quest for **Gender inclusion**

in Mourita mining sites of Nakapiripirit District.
By Emmanuel ACHELLAM, Project Legal Officer

Today, women in Karamoja live in a region of great opportunities such as natural resources, a budding agricultural practice, increased infrastructure development and better security. However, similar opportunities facilitate even greater challenges. At the current growth rate, Uganda's population is projected to grow up to 61 million by 2030. This without doubt is good though, equally important is to note that no country, community or economy can achieve its potential or meet the 21st century challenges without full and equal participation of all its populace including women and men, girls and boys, the able and the disabled.

Whilst Uganda's legal and institutional framework regulates gender equality and inclusion, implementation remains a great challenge most especially in rural areas and mining communities. Sometimes this is premised on the communities' deep entrenchment into patriarchal cultural values, which stems unequal power relations between men, and women direct from family levels to the larger community.

Despite the challenges here and there, ANARDE's day to day activities always afford adequate attention to gender inclusion through engaging women groups, communities and Local Governments in the Karamoja region in order to influence gender inclusion.

In a similar manner, ANARDE conducted a site visit to Mourita Mining Site with an intention to ascertain the plight of women miners. Following the visit, we identified various gender concerns worth highlighting.

Women are the breadwinners in this society since the men are polygamous and often abandon their families. This leads to double labour requirements to work for a living as well as raise a family. It is all too common to see women working with their infant children besides them in the mines.

Mining is an only option for women to earn a living since alternative employment or income generating opportunities such as agriculture and livestock farming are dwindling. This is attributed to many factors including illiteracy that keeps them out of formal employment, poor soil fertility, impacts of climate change such as changing weather patterns, lack of access to resources such as land. Moreover, gender roles bring women too close to land. It is estimated that women are responsible for 70-80 percent of food that is put on the table in rural households.

Largely, artisanal and small-scale mining in Mourita is informal. This portrays a working environment typical of mercury use; poor health conditions; child labour; heavy and long work hours; lack of physical planning for sites; unfair remuneration, exploitation by middlemen, low bargaining powers and rampant gender inequalities. They suffer economic discrimination, which translates into abuse of their labour rights, safety and health at work.



Figure 1: A woman artisanal miner in a pit at the Mourita gold mining site

Deep gender inequality entrenched by the cultural normative in Karamoja region is another challenge. The society is male dominated with women largely edged out in the decision making process. This is so despite the minimal participation of women in leadership

such as in Nakapiripirit district where Nangi Hellen is the Community Development Officer. At the local government level, women enjoy some form of leadership opportunities like women councillorship and secretariat positions but these do not guarantee participation at the table of men.

It is evident that women are victims of Gender Based Violence both at home and as well as at work. Where a woman refuses to surrender her earnings from the heavy mining works to the spouse or usually male superior, they are subjected to heavy beatings. The major cause is alcoholism among men and lack of awareness as to equality of all persons and dignity of a woman. Sexual harassment is common in these mining sites. The women also move for long distances to come to work and are exposed to rape on these insecure pathways.

Women face many health complications as compared to the men at the site. They carry gallons of water to enable them sieve the gold dust, the effects of which are long term. Physical effects such as back ailments and maimed body parts; respiratory diseases due to dust from the gold or use of mercury in gold beneficiation, fertility issues are suffered by women at this site. The Mining and Mineral policy brings this out by stipulating the effects of hazardous work imposed on women.

They also lack access to hospitals as there is no nearby health facility thus forcing women and children to move far distances to get medical attention. For instance, Tokora health centre - the nearest health facility, is over 24km away from Mourita mining village. Additionally, these health facilities are not affordable for most of the women and many remain sick until they raise the required amount of money.

Cultural restriction against women owning land. Cultural norms largely negate the rights of women to own land contrary to Article 26 of the 1995 Constitution. Women in Mourita neither own nor are they allowed to inherit land placing the sustainability of their operations at the mercy of the men.

¹ UNDP Uganda gender journey 1988-2017

² A Double Challenge: Building the Voice of Women Affected by Mining. Interview with Samantha Hargreaves

Inter-ventions

by ANARDE

ANARDE has created platforms through which stakeholders such as government have established institutional mechanisms that mainstream gender in policy designs and implementation, public financing, and performance measurement systems.

ANARDE has proposed the formulation of women associations and societies as a platform for increasing the status of women in decision making in the said mining sites.

These require formalisation to create certainty and Light work for women as a practical solution to the health risks associated with mining at Mourita. There is need to consider light work for women in order to reduce bodily harm and injuries inflicted on them during the mining. Equally, ANARDE is in the process of procuring protective equipment to improve the working conditions of women there.

ANARDE undertook massive sensitization of women on their rights and duties in the mining operations. This creates a balance between the inalienable rights guaranteed by the constitution and the limitations imposed by culture in the region. It is risky to divorce the two.



Figure 2: ANARDE official, Isabella and Rhina while on a sensitization drive on women's rights at Akica FM radio station

ANARDE has engaged district officials on matters of women and health in the said mining site as well as Karamoja region at large. This is a bid to extend health services to the rural women in the mining communities who work in harsh conditions.

ANARDE is in the process of rolling out a sensitisation programme on mercury and its effects on human health especially to women and their natural role of childbirth. This will curb the unhealthy use of mercury in gold mining and avert the generational effects associated with mercury use.

Are Mining companies illegally exceeding their licensed Land Area Units?

ANARDE Probes into a land conflict between Sun belt Mining company and Local communities

● By Kevin BAKULUMPAGI, Research Fellow

Earlier in 2018, information circulated that a Chinese-owned mining Company (Sun Belt Mining Company) had obtained a mining licence and was planning to commence mining in Rupa Sub County. Following that, ANARDE spent some good time in the mining communities of Nanyidik and Lobuniet, Rupa Sub County conducting capacity building and fact finding to prepare the communities for what lies ahead. ANARDE stressed matters of rights to land, valuation of land, duties of extractive companies, environmental considerations and rights of vulnerable groups such as women, PWDs, children and the elderly.



Without doubt, the pre-visits and sensitizations-built communities' capacity and resilience. It was after such sensitization that the community through a community-based trust, Rupa Community Development Trust (RUCODET), was able to demand for surface rights compensations from Sun Belt. As a result, a Memorandum of Understanding (MoU) was entered between the Trust and the Company and 1.8 billion was remitted as payment for the same.

ANARDE has ascertained that Sun Belt Mining Company obtained land measuring 3.3km². It is also alleged that in addition, the company unscrupulously occupied land measuring approximately 7.4km² beyond that specified in the Environment and Social Impact Assessment. This allegation is still under heavy investigation and upon clear survey, ANARDE will support local communities in undertaking legal action.

Complaints by former District Chairperson of Moroto District (Mr. Awol Mark Muskoka) and the chairperson of Moroto District Minerals Watch Platform (Mr. Jackson Angella).



Figure 3: Meeting with Lobuinet Mining Site Artisanal Miners Watch Platform and the former district chair person of Moroto District

In addition, the company continues to threaten occupants of land with eviction should they refuse to sale stones to the company at an unreasonable value of Uganda shillings one Hundred Thousand only (About twenty-nine USD).

It was of great concern to the community as well as ANARDE, that the MoU was signed from Kampala by RUCODET representatives and a team of community elders, and only feedback was brought to the community. The agreement also provided that land used by the company had to be annually rented at lump sum price of 25 million shillings for a period of 21 years. That aside, communities were haphazardly informed that the MoU contained 1.8 billion Ugandan shillings whereby 200 million was for people's pits while 1.6 billion was for the community. To date, however, community members claim that they are not aware of when, how and what was distributed more so to whom.

ANARDE also found out that another agreement (addendum) was signed but never disclosed to the community. It was also exposed that there are some other two companies (Agro-Mechanize and Hima Cement) which expressed interests in the communities' land. Agro-mechanize arrived in the region in 2015 and carried out land mapping and survey. After the survey, they commenced work in October and paid RUCODET and other a few personnel who did not provide full disclosure of information to the public.

Such information is not readily available to relevant stakeholders such as the community members and civil society organisations. This lack of access to information goes against the rights of access of information under Article 41 but also negates tenets of free prior and informed consent before takeover of land as envisaged under Article 26(2)(b)(i) of the 1995 Constitution.


Anarde Efforts

ANARDE has through its project on “Empowering communities and civil society to demand for good governance in natural resource management” undertaken activities that build capacity and guide local communities on free prior and informed consent. The consent is to purchase of land, utilisation of land, the environmental effects to come out of the operations so that all this is computed to come to what is agreeable as fair compensation.

Continuous engagement with the district authorities and as well as the community trusts or associations when it comes to set up of large-scale mining companies in the region. When ANARDE has set up meetings with stakeholders before any such agreements are entered into so as to examine the proposed agreements and provide free legal advisory services to the community.

ANARDE is conducting further research and with tangible information, shall publish a report to clearly highlight the same. The report shall inform strategic response to the alleged unlawful land occupation by Sun Belt Mining Company and other mining companies including strategic litigation, petitions and robust advocacy on the matter.





ANARDE continues to champion the drive for generating compensation rates.

Compensation Rates are key to fair and adequate Compensation in Extractives Industry.

● By Isabella ORISHABA, Project Advocate.

With the eyes of government and many investors turned towards Karamoja region, there is anticipated land acquisition meant to support the various infrastructure developments. Presently, there are numerous development projects in Karamoja sub region including road construction (such as Lokitinyara road), dams, large scale mining sites and other government programmes on the brink of development. Moreover, Moroto was recently elevated to a city status.

For ANARDE, land acquisition is always to the inconvenience of local land dwellers who often have little knowledge or financial muscle to enforce the legal protections available to them. They give up land, forfeit property such as houses and granaries, lose crops and trees, shift their buried ancestors, do away with their traditional worship areas, are deprived of long-standing ecosystem services and yet these are not adequately considered in the compensation claims. In the effort to enforce the principle of prompt payment of fair and adequate compensation under Article 26(2)(b)(i) of the Constitution, ANARDE has embarked on a vigorous exercise to develop compensation rates for Karamoja region beginning with Moroto City, Kotido, Nakapiripiriti and Abim districts

Compensation rates are developed to atone for compulsory acquisition of part of or all the person's land or a right or interest over a given property. There are various principles entailed in developing such rates as espoused in international instruments such as the IFC Performance Standards, 2012 as well as national policies and guidelines to include the Guidelines for Compensation Assessment under Land Acquisition, 2017.

These principles include -

- Fair, adequate, prior and prompt compensation;
- Local people know what the local prices are;
- Eligibility for compensation is determined by the cut-off date which must be adequately disclosed and documented prior to the census and valuation surveys;
- Valuers must seek the relevant expertise to guide their assessment where there are special purpose properties (including ancestral or religious affiliated properties);
- Existence of a trusted grievance settlement mechanism among other principles.

For most of Karamoja for instance in Moroto city, Kotido and Nakapiripiriti districts, compensation rates for the year 2020/2021 have not been developed to date and the impact of Covid -19 has pushed further any efforts to realise these. For the financial year 2019/2020, there were not such rates. In districts where they are developed, they have not been assented to by responsible authorities.

It is dangerous for such a lacuna to exist in a rural community that has few literate members. This exposes the land owners/occupiers to exploitation by well-connected and shrewd land buyers. In the years, ANARDE has carried out various sensitisation campaigns on compensation rates. These involved capacity building of stakeholders about principles, laws, practice and processes of compilation and computation of compensation rates for crops and other semi -permanent structures in Karamoja region.

ANARDE has devised a more effective mechanism to execute this mechanism of natural resources governance. We are taking the information to media houses to sensitize the masses to request for compensation rates from their districts before any land acquisition process. We believe this will generate enough pressure on the district to incorporate this into their urgent deliverables.



Figure 4. ANARDE Project Advocate Isabella (L) and Eko Edwards during a radio talk show on compensation rates at AKICA FM

ANARDE is committed to following up the annual development of compensation rates in Karamoja region while providing financial and technical support to the district officials to develop these. Equal effort will be exercised in pushing communities to demand for these.

With the much-anticipated aerial survey of the karamoja region underway, there is need to have record of these to allow for fair compensation when buyers flock the region.

Access to Justice needs more than Adversarial Court Proceedings:

ANARDE utilises Mediators in the Implementation of the Extractive Justice Programme.

● By Emma ACHELLAM, Project Legal Officer

Communities in mineral-rich areas require increased access to justice to resolve the ever-increasing disputes between companies and communities as well as amongst community members themselves. These needs have to be balanced with the limited access to Courts of law due to illiteracy of affected persons, prolonged court processes, expensive litigation procedures and the diminishing faith in the operations of the Courts of law especially in matters against big extractives.

Amongst other laudable approaches, ANARDE has continued to use mediators to promote and implement her "Promoting Sustainable Development Goals by Strengthening Access to Justice in Uganda 2017-2021", project. These are ANARDE-trained individuals that assist communities in dispute resolution. ANARDE has continuously trained these mediators on basic aspects of natural justice, paralegal works and good negotiation abilities.

Mediators hold dynamic, structured and interactive sessions where disputing parties have been helped to resolve their conflicts through the use of specialized communications and negotiation techniques.



Mediators being a team of selected personnel, they always need to be engaged and acquainted with basic legal trainings, provided with information, tools and special skills like listening tactics, recording of complaints and case handling itself.

There after ANARDE conducts periodic review meetings to further guide the dispute resolution process. These meetings are meant to collect files for all the cases handled by the mediators, to share the reporting templates and also to understand challenges faced by the mediators including challenges posed by the Covid -19 pandemic.



Figure 5: An ANARDE meeting with a group of mediators to review their cases

So far ANARDE-trained mediators have handled close to thirty-eight cases. Most of the cases involve gender based and domestic violence; Child abuse; land compensation, unlawful evictions among others.

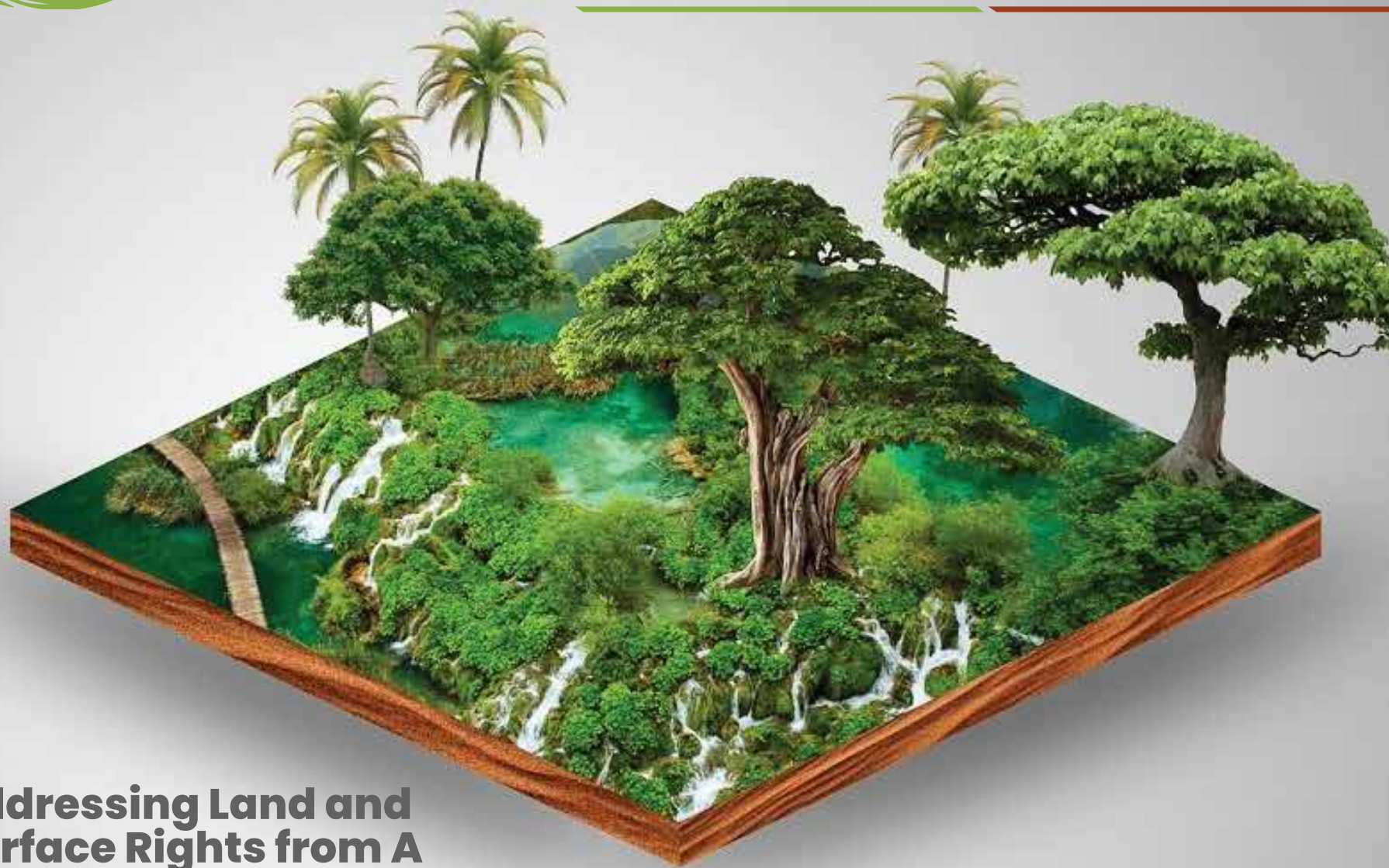
Some of the most common challenges faced by mediators include –

- Logistical challenges such as airtime, transport refund and meals on days of mediation
- infrastructure hindrances such as poor roads;
- Physical assault where disagreements turn violent;
- Covid-19 restrictions on convening meetings;
- Insecurity in areas where conflicts are ripe

ANARDE continues to conduct quarterly meetings to keep track of all the cases handled by the mediators. In this, there is review of the best amicable solution to disputes, discussion of changing status quo and determining any other strategic action in that regard

ANARDE has kept an open-door policy in Karamoja region. At its recently constructed regional office, it has set up adequate facilities, space and a cordial environment, to allow for mediation to take place at neutral grounds to allow for fair settlement of disputes.

ANARDE continues to engage all relevant stakeholders in promoting non- adversarial resolution of disputes. These stakeholders include police, local council chairpersons, mining companies, other civil society organisations, Uganda law society and government.



Addressing Land and Surface Rights from A Constitutional Point of View:

ANARDE Sues the Attorney General



By Kevin BAKULUMPAGI,
Research Fellow

As a result, ANARDE decided to file a Constitutional Petition in public interest to challenge constitutionality of Section 82(2) and (3), Section 83 of the Mining Act, 2003 and Section 139 (2) and (3) of the Petroleum (Exploration, Development and Production Act, 2013 on ground that the impugned provisions are inconsistent with and contravene the constitution.

The Sections contravene- Article 21 on freedom from discrimination as such provisions do not apply to other land owners whose land is not subject to mineral rights or petroleum licences of which they have a host of remedies in case of dissatisfaction; Article 26 (1) and (2) on the right to property which further provides under Article. 21(2)(b)(ii) for access to Court as a means of securing the right; and Article 28 (1) on the right to a fair and just hearing which looks for a fair opportunity to be heard that is hampered by the unreasonable 1 year or 4 year time limitation.

Additionally, under the Petroleum Law, the arbiter is the Chief Government Valuer, who sets the original values that are contested. The Chief Government Valuer is also a government employee, who is often biased against the community dwellers thereby flaunting the basic tenets of natural justice.

ANARDE went further to tackle the issue of royalty payment in the same petition arguing that Section 83 of the Mining Act, 2003, which coerces land owners or occupiers to opt for either compensation for surface rights or payment of royalty, is unconstitutional in so far as it hampers the right to property of land owners or occupiers of land subject to mineral rights. ANARDE believes the two benefits accruing from land rights are distinct and exclusive and one cannot be used as a substitute for the other.

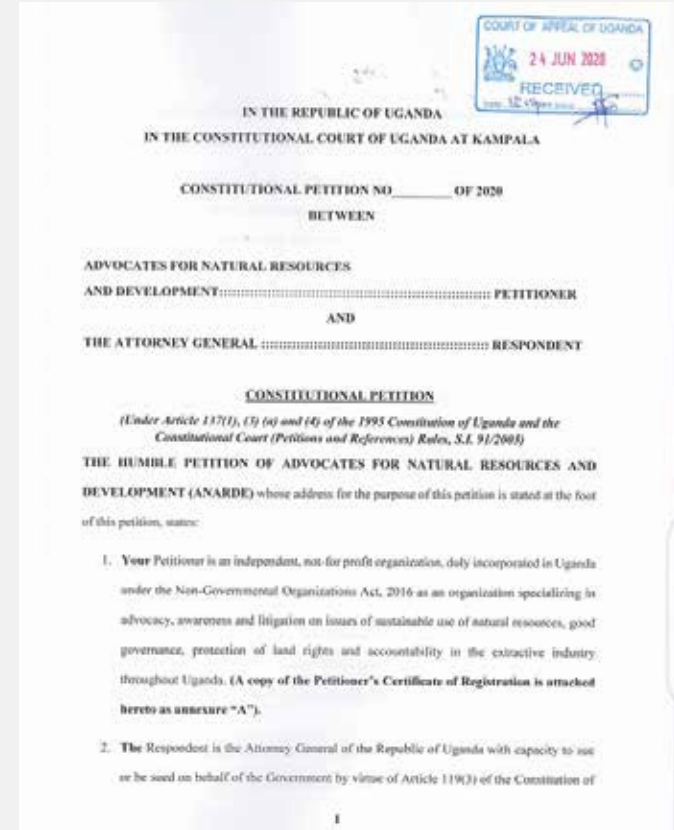


Figure 6: Notice of Presentation of Petition duly received by the Registrar-Constitutional Court. On the right is the Front page of the Petition.

The petition is timely given the multiple mining companies finding their way to the mineral/oil rich regions such as Karamoja, Albertine Graben, Mubende, Buhweju to mention but a few.

To make the remedies more practical, the petitioner sought for a structural interdict by Court directing the Attorney General to report to it on the progress of the amendments.

ANARDE is equally alive to the fact that the Mining Act, 2003 is under review and the Mining and Minerals Bill, 2020 has been approved by Cabinet. However, the Bill does not reflect the position which the Petition seeks Court to determine and as such, the efforts by ANARDE to highlight this injustice still stand.

The entire exercise of the petition is to ensure that land and surface rights of all natural resource-rich communities are secured through reasonable, fair and accessible dispute resolution mechanisms which the law seems to neglect.

Improving good governance of natural resources is our mission:

ANARDE Conducts a study on the Impact of Mineral Revenues in Karamoja

● By Joseph AHIMBISIBWE, Program Officer



Presently, Karamoja is amongst the leading regions in Uganda with thousands of square kilometres harbouring different minerals as well as oil and gas deposits. Reflecting on the Sustainable Development Goals and Uganda Vision 2040 which among others aim at transforming Uganda from a predominantly peasant, highly indebted and low-income state to a competitive middle-income country, Karamoja's endowment is among the key factors in realising the same.

Since the colonial era, Uganda's endowment with significant natural resources like gold, copper, marble among others, has been a hope for economic growth and development. Parties involved in mining have throughout been paying revenues for their extractive activities either directly in form of license fees, royalties, fines, rent or indirectly through payment of Value Added Tax. Additionally, certain companies have at times voluntarily committed themselves to corporate social responsibility services in their host mining areas.

Whilst the industry has lived since then, Uganda's tolerance to erratic economic management, corruption, political instability and cultural affiliations explains why mining has failed to meet its expected economic goals. Karamoja is no exception to this status quo. Despite the region's rich endowment, which has so far attracted a lot of mining companies, middlemen and artisanal miners it is prone to absolute poverty, low literacy rates, poor standards of living, un-desirable infrastructural development and lowest rates of modernity.

Following that background, ANARDE conducted a study on how mineral revenues generated from Karamoja extractives have been used to impact on people's lives and contribute to the infrastructural development of the region. We engaged multiple concerned personnel with diverse knowledge on mineral benefits management such as the district heads; sub county leaders; officials from Directorate of Geological Survey and Mines (DGSM); community members, civil society organisation among others. Consequently, the following findings were born.



Whether satisfactory or below expectations, companies pay royalties and revenues. This comes after assessment by government through the DGSM of company's purchase records in order to determine their tax liability. Later such company gets a Uganda Revenue Authority (URA) account where royalties/revenues are paid. Immediately after the money is deposited, it crosses to the consolidated account where ministry of finance has absolute control.

The above procedure explains why remittance of the communities' share is still a challenge. The law only provides for who should share, and the portions each category is entitled to, but is silent on the procedure through which the local government and land owners' share can be achieved. It is due to the above bureaucracy and ambiguities that remittance of communities' share cannot be traced.


At the local government level, they receive royalties and also directly collect loading fees from trucks taking minerals. These fees depend on the Lorries' tonnage capacity i.e. as the 12[>] tone truck pays 20000ugx, the 12[<] tone truck pays 40000ugx. After collection, a ratio of 35% to 65% of the wholesome collected is applied between district and sub county respectively. Local governments also receive royalties. Allegedly, part of this money is used in promoting education, though communities contend that "there is so far not any developments registered from there share."

At the community level, all mineral revenues or benefits are received and managed by community trusts. The rationale behind is that since Karamoja's land tenure is communal, benefits have to be shared amongst all community members.

Revenue distribution by the trusts is clan centered/culturally driven. For example; one has to belong to the clan/tribe that controls a given location for him or her to claim share, otherwise one's rights to share are not guaranteed by location. For instance, a Tepeth from Katikekire sub county can benefit from revenue that is given to Tapac sub county simply because Tapac is for Tepeth tribe and they leave out a Matheniko who is found in Tapac. Allegedly, Trusts use part of the money received educate children.

While companies like Tororo cement and Sunbelt are commended for putting up infrastructural development as a form of CSR, contentions are still high that companies only put-up infrastructure that mostly benefit them. For instance; Lukwang Peter, a miner disclosed how he constructed roads that link his mining sites to main road of Rupa; the bridges and roads that Tororo and Sunbelt put up largely connect their sites to main roads; Tororo as well put up a mobile clinic and situated it particularly at Koziroi village where they are stationed. The only infrastructure that Tororo cement put for the community is a school which at the same time is of very poor quality with poor infrastructure and a sorry academic standard.

For Artisanal miners, mining has not caused any tangible impact on their livelihoods. It is a hand-to-mouth earning. The only money they directly receive is that which comes from their mineral sales, part of which is used to buy firewood for burning and weaken the rocks, another portion is used to buy food and the little left is for local enjoyment. This then leaves the miners without any savings for any other developments or even personal protective equipment.




To complicate matters further, mining companies use mineral dealers who are exploitative. The practice is that, companies excavate rocks and leave them to the artisanal miners to break them into smaller/transferable particles. Thereafter, middlemen/truck drivers buy the broken stones from the Artisanal miners. However, community members contend that middle men buy minerals at an unsatisfying purchase price and this is what angered community to demonstrate/strike in 2018. However, to their dismay, after the strike, instead middle men brought bigger trucks whose doubled tonnage capacities yet the prices never increased.

Although citizens are entitled to access information, in Karamoja, access to important information about mining is very limited. In particular, financial information is scarce to put a finger on, even by leaders of the community trusts. This is majorly blamed on lack of transparency, greed and corruption coupled with incorporation of ambiguous terms in the memoranda of understanding.

How the Study has informed ANARDE activities:

Firstly, ANARDE went ahead to file a constitutional petition in the matter. It is in relation to the Section 83 that looks to land owners or occupiers choosing whether to obtain royalties or surface rights compensation. We argued that this is unfair as all land owners must be entitled to payment of royalties.

Support of community Trusts. ANARDE has supported financially and technically, community trusts to build their capacity in dealing with mining companies. Trainings on financial management and transparency, training on relevant laws, ethical leadership and allowing for space for people to air their concerns have been underway and are providing tangible results.



There has been massive sensitisation on the right of access to information plus transparency. People are encouraged to seek for information on agreements signed between developer and trusts or family members. This has been through activities on free prior and informed consent. There is increased accountability in projects that are subsequent such as acquisition of land by companies such as Agro-Mechanized.

A gender sensitive programme on realising the rights of women in the mining sector. Women are the most vulnerable when it comes to mineral trading and they need affirmative action to protect them against such discriminatory tendencies. ANARDE has undertaken activities to build the capacity of women on financial behaviour and trade skill in the mining industry.

ANARDE has additionally supported the review of the Mining and Minerals Bill to provide for such details on royalty payments though with little success. There is need to revise royalties percentages and also to provide a detailed mechanism of how such royalties reach the last individual in the community.



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