



School of Law,
Makerere University
Old Law Building,
Main Campus

P. O. Box 7062,
Kampala
Tel: 0414 531195
Email: pilac@lists.mak.ac.ug



7th March 2016

Dear Sir/Madam

Baseline Study on Effects and Impact of Corporate Actions on Human Right

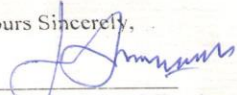
The Uganda Consortium on Corporate Accountability (UCCA) is a Civil Society Consortium aimed at enhancing accountability by corporations, States, international finance institutions and development partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs). At present, the Consortium has a membership of four organizations specializing in different areas of rights protection, including the Public Interest Law Clinic, School of Law, Makerere University (PILAC), the Initiative for Social and Economic Rights (ISER), Center for Health Human Rights and Development (CEHURD) and Legal Brains Trust (LBT).

Under the leadership of PILAC, the Consortium is conducting a baseline study on the effects and impact of corporate actions on the enjoyment of ESCRs in Uganda. During the baseline the Consortium will meet some of the key players in the sector of corporate accountability in Uganda. We believe given your experience in the field, you will provide us with key insights to help fully understand the status of corporate accountability in Uganda.

We are requesting for an appointment to meet with you anytime, either on Thursday 10th or Friday 11th March 2016. This interaction will take between 45 minutes to 1 hour.

Looking forward to a positive response

Yours Sincerely,


Dr Christopher Mbazira
Assoc. Prof/PILAC Coordinator

*All stake holders
Please accord the necessary
the assistance they
deserve during the baseline
study.
Counting on you,
24/03/16*

For: CHIEF ADMINISTRATIVE OFFICER
MUKONO DISTRICT

Ngoma Ngime

Charles B. KAGWE

Nangwa Village - Namuyenje
P.O. Box 259
MUKONO - Uganda
Tel: 0712.542.208
e-mail: nngime@hotmail.com

NN/05

March 19, 2008

The Managing Director
Seyani Brothers & Co. (U) Ltd.
P.O. Box 21745
KAMPALA

STONE QUARRYING ACTIVITIES IN NAMUYENJE T.C.

I, together with other residents of Namuyenje Trading Center and Nangwa Village have learnt of your acquisition of land formerly belonging to a Mr. Katumba, in Namuyenje Trading Center.

We further understand that your company is in advanced stages of constructing a stone quarry on this land! This information has been confirmed by Mr. Dilip Hilai, the Plant & Equipment Manager of your company. Heavy equipment has been in Namuyenje over the last ten days carrying out various activities aimed at erecting the stone quarry.

These actions gravely infringe upon the constitutional rights of the residents of this area, and are in blatant breach of the Laws of Uganda governing land use. Namuyenje Trading Center is a residential/commercial area. Your proposed development and the start-up activities that you have embarked upon have caused enormous anxiety and restlessness amongst the population.

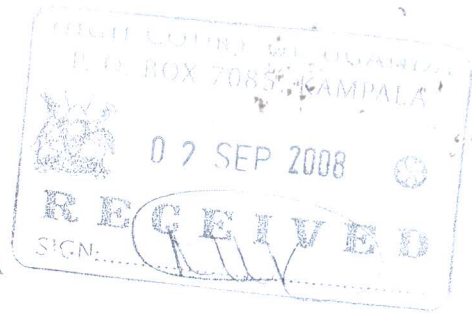
Suffice it to say, any plan to build a quarry in a densely populated residential area shall cause untold suffering and inconvenience to the people. Moreover, this dangerous and harmful activity is being done without due regard to the law, as if Uganda is a jungle where anybody can wake up one day and build an environmentally harmful quarry in a residential area?

March 19, 2008

On behalf of the affected residents, I would like to inform you that we do not agree with your proposed development and we hereby request the appropriate authorities to take actions to protect the constitutional rights of the residents in respect of right to ownership of property and their rights to enjoy a clean and secure environment.

Ngũgĩ

c.c: *The Chairman LC.5 Mukono*
The RDC Mukono
The Chief Administrative Officer Mukono
The District Environment Officer Mukono
The Chairman LC.3 Nakisunga Sub-County
The Chairman LC. 1 Nangwa
The Chairman LC. 1 Namuyenje



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CIVIL SUIT NO.184.....OF 2008

- 1. ONAN KAZIBWE }
- 2. DICK MUKASA }.....:PLAINTIFFS
- 3. NGOMA NGIME }
- 4. KAYONGO LAWRENCE }

VERSUS

- 1. SEYANI BROTHERS & CO. LTD }
- 2. NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY }.....:DEFENDANTS

SUMMARY OF EVIDENCE

The plaintiff shall at trial prove that the actions of the defendant by operating a stone Quarry in residential area constitutes a nuisance but also violates the right to a clean and healthy environment. The plaintiff's shall further prove that the defendant's actions have caused the plaintiffs and their families to suffer damage to their houses, anxiety and inconvenience.

LIST OF WITNESSES:

- 1. Onan Kazibwa
- 2. Dick Mukasa
- 3. Nantumbwe Sylvia
- 4. Ziraba Biral Shadrak
- 5. Napuku Ronnie
- 6. Any other with leave of Court.

LIST OF DOCUMENTS:

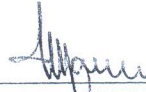
- 1. Certificate of Approval of EIA No. 000641 .

2. Letter from NEMA addressed to Minister of Land dated 17th June 2008.
3. Letter addressed to Minister of water and Environment dated 30th June
4. Newspaper Clip "Daily Monitor Friday June 20, 2008"
5. Letter dated 25th July 2008.
6. Letter dated 31st March 2008.
7. Letter from the plaintiffs to the 1st Defendant dated 19th March 2008
8. Any other with leave of Court.

LIST OF AUTHPORITIES:

1. The Constitution of the Republic of Uganda.
2. The National Environment Act Cap 158
3. The Land Act Cap 227
4. The Civil Procedure Act Cap 71
5. The Civil procedure Rules
6. The Environment Impact Assessment Regulations S.I Supplements 13/98
7. Advocates Coalition for Development and Environment and Sharif Budhugo – Vs – Attorney General, Misc. Cause No. 100 of 2004.
8. Sierra Club National Audubon Society, Friends of Earthk International – Vs – William Collema Jr. United States District Court for the District of Columbia, Civil Action No. 75-1040 (USA).
9. Wildlife Society – Vs – Minister of Environment, Transkei Supreme Court 1996.
10. Oposa –Vs- Factoran, Supreme Court of Manila Philippines.
11. Kajing Tubek and Ors –Vs- Ekran Bud and 4Ors, High Court of Kuala Lumpar Malaysia No. 55/96.
12. M.C Mekta –Vs- Kamal Nat and Ors, Writ Petition (C) No. 182 of 1996 (S.Ct of India Dec. 13 1996) Supreme Court of India (1997): Supreme Court Cases 388.

DATED at Kampala this ^{28^H}.....day of August.....2008.



COUNSEL FOR THE PLAINTIFFS

Drawn & Filed By:
Kakuru & Co. Advocates
Plot 26B Old Kampala Road
P.O.Box 6256
Tel: 0414-252397
KAMPALA.

Mr. Ngoma Ngime

Save Namuyenje Committee
Nangwa LC. 1 – Namuyenje
Nakisunga Sub-County
MUKONO

C/o P.O. Box 33291, Kampala
Tel Nos: 0775 789533
0772 603264
0782 471127
0754 018119

30th June, 2008

Hon. Maria Mutagambwa
Minister of Water and Environment
Kampala

Dear Madam;

**PETITION AGAINST THE NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY AND M/S SEYANI & BROS.CO.LTD. IN THE MATTER OF ILLEGAL
STONE QUARRYING IN A RESIDENTIAL AREA IN NANGWA NAMUYENJE
TRADING CENTRE**

We have pleasure in informing you that the residents of Nangwa and Namuyenje appointed a committee consisting of the under mentioned persons to handle on our behalf all issues related to the above subject matter. The committee is made up of the following members: Mr. Dick Mukasa as Chairman, Mr. Bakulumpagi Kayongo as Secretary, Mr. Kazibwe Onan as Treasurer, Mr. Bagenze Charles as Publicity Secretary.

This committee wishes to associate itself with the various complaints raised by Mr. Ngoma Ngime on behalf of the residents. That is to say, all complaints variously raised by him were done on behalf and with the approval of the residents of the area.

We also wish to categorically state that the allegations that the community was consulted and that they gave a "no objection" or "consent" to the proposed stone quarry by M/S Seyani Brothers, as purported by the Executive Director NEMA are baseless and not true.

We would also like to make the following observations:

1. Recently we learnt of the intentions of Seyani Brothers, a construction company based in Nsambya, Kampala to build a stone quarry in our residential area.

2. We approached the National Environmental Management Authority (NEMA) to clarify why M/S Seyani was being allowed to build a Stone Quarry in a residential area. The Executive Director of NEMA denied knowledge of the intended development.
3. A team from NEMA was duly sent to Namuyenje on April 22, 2008 and it made an in-depth inspection of the on-going illegal development by Seyani Bros. and the team used that chance to make an inspection tour of the other quarries in the Nangwa area.
4. The NEMA team concluded its tour by asking Seyani Bros to suspend its on-going developments until it had followed the proper procedures, namely to carry out an Environmental Impact Study (EIS) of the proposed project and obtaining appropriate approvals from NEMA.
5. No sooner had this been done than another team comprising the NEMA Deputy Executive Director and the area MP visited Nangwa village on April 29, 2008 and undid the work of the earlier team.
6. We are shocked by the impunity with which the environmental watchdog is breaking the law. M/S Seyani claim they have an EIS that was approved by NEMA for a Mr. Katumba (of Nangwa Stone Quarry) in 2003. This alleged EIS was contested by the people of Nangwa, since it was done secretly and did not involve the area residents and local leaders as required by the law. Mr. Katumba's actions were resisted when he tried to put up sign posts indicating that the area in question was a stone quarrying site. He subsequently abandoned the plans to build the Nangwa Stone Quarry, only for this project to resurface under Seyani Bros. In law, Nangwa Stone Quarry can not be Seyani Stone Quarry. There is no transferable on-going concern in this case.
7. Even if Mr. Katumba's approved EIS was transferable in law, he was licensed (albeit illegally) in 2003. He failed to start the quarry at that time, and it is strange for Seyani Bros to claim that they are authorized to proceed with this project in 2008 when a lot of development has already taken place in this area! NEMA has denied to have given Seyani permission to build this quarry.
8. We are displeased with the turn of events in our village in respect of the plans to build the Seyani Quarry. Before an Environment Impact assessment is made, Seyani Bros have already carried out massive

soil extraction which has resulted into substantial environmental degradation, including blocking a community river.

9. The residents of this area have heeded President Museveni's call to invest in the "*Prosperity for All*" programs and have invested heavily in pond fish farming, poultry farming, vegetable production, and the growing of vanilla and coffee, among others. Besides, there are several schools and an orphanage that have been established in this area. All these activities are now at the risk of being destroyed by Seyani Bros.
10. We have fundamental problems with this particular project and wish to appeal for your assistance in defending our rights to the ownership of private property and our rights to a clean and safe environment which is guaranteed by the Constitution and the Laws of Uganda:
 - i. *Why is NEMA and the area MP in a hurry to derogate our rights to live peacefully in our country?*
 - ii. *Do we have secondary rights in our own country vis-a-viz a "developer" who has no respect for our people. We requested Mr. Nitin Vekariya, a Director of Seyani to consider setting up a user friendly project like a residential estate in our village, instead of a Stone Quarry, and he flatly stated that he could not put good money in "our bush". Well, we may be in a "bush" but we are not monkeys, and we have a right to life and ownership of property in our own country.*
 - iii. *Why is NEMA acting outside the law?*
 - iv. *Why is NEMA insensitive to the environmental rights of the people of Nangwa. This village is already over-saturated with stone quarrying activities. There are so far five operating stone quarries in our village, and these are all within a one-kilometer radius of one another. The quarries are carrying out their activities in violation of the conditions set by NEMA for their operations. The Mukono NEMA officer has failed to supervise the operations of the existing quarries. Our previous attempts to get NEMA take necessary corrective actions against the breaches by the quarry operators have yielded no response.*
 - v. *In light of these previous failures by NEMA to carry out its duties in Nangwa, we are left with no choice except to believe that some government officials have sold our rights for a pittance. M/S Seyani*

has been spending heavily in dishing out bribes to different people. Seyani are currently the official transporters of public officials in Nakisunga Sub-county, including our Chairman LC.3. A lot of money has changed hands in this matter.

- vi. We are not opposed to investment by bona fide developers, but what is the purpose of choosing to site a dangerous stone quarrying activity amidst our homes and agricultural investments? Have our investments been demeaned by the government, and is it now the official policy of the NRM government to destroy its own people's livelihoods by superimposing other investors over the developments by the citizens. Are our rights less important than those of the new developers?
- vii. Even if the answers to the above questions were in the affirmative, why choose a heavily populated area for such a destructive activity? Uganda, and esp. Mukono is blessed with abundant quantities of stone and good quality rock. Why choose a site that is likely to cause social upheaval and disturbance to a great number of residents. Are there no other areas where this project could be sited with minimum disturbance to the people?
- viii. Is it true that the Seyani Stone Quarry is a government project, and is therefore in the public interest? The Hon. MP for Mukono South has sworn to relocate residents of four villages in Namuyenje Parish to make way for this project. For a private project? This would be tantamount to avarice and theft of private property!



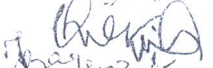
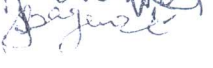
Hon. Minister, we have previously not resisted the rapacious exploitation of our environment in Namuyenje, partly because we were convinced that it was helping the public good, and moreover the other quarries are not as close to the center of the population areas, as is the proposed Seyani quarry, and due process of the law was followed in their establishment. For us, the Seyani Quarry is a *do-or-die matter*, and we are prepared to do everything in our means to defend our rights and to save our lives!

In conclusion, Madam, we are requesting for the intervention of your honorable office to save our lives in the following manner:

1. Stop the illegal exploitation of our environment by M/S Seyani Bros.
2. Stop NEMA from breaking the law, and "cutting corners" by the irregular authorization of unlawful activities by Seyani.

3. Force NEMA to act professionally, without fear, bias and undue influence in the execution of its duties

Signed by the members of the *Save Namuyenje Committee*:

	NAMES	TITLE	SIGNATURE	TEL. NO
1.	Dick Mukasa	Chairperson		0775 789.533
2.	Bakulumpagi Kayongo	Secretary		0772.603.264
3.	Kazibwe Onan	Treasurer		0782.471.127
4.	Bagenze Charles	Publicity Sec.		0754.018.119

ON behalf of the people of Namuyenje.

c.c Hon Minister of Lands and Housing
Hon Minister of State for Environment
The Permanent Secretary, Min. of Water & Environment
The Permanent Secretary, Min. of Lands & Housing
The Executive Director NEMA
The District Chairperson, Mukono
The RDC, Mukono

**Save Namuyenje Committee
Nangwa LC. 1 – Namuyenje
Nakisunga Sub-county
MUKONO**

May 1, 2008

Hon. Emmanuel Dombo
Chairperson, Natural Resources Committee
THE PARLIAMENT OF UGANDA
Kampala

Dear Sir;

**PETITION AGAINST THE NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY AND M/S SEYANI & BROS. CO. LTD. IN THE MATTER OF
ILLEGAL STONE QUARRYING IN A RESIDENTIAL AREA IN
NANGWA/NAMUYENJE T.C.**

WE, the undersigned citizens of the Republic of Uganda, and residents of Nangwa village and Namuyenje Trading Center of Mukono district do hereby petition your honorable committee and the Parliament of Uganda on the above mentioned matter as follows:

1. Our villages are located as on the attached sketch map.
2. Recently we learnt of the intentions of Seyani Brothers, a construction company based in Nsambya, Kampala to build a Stone Quarry in our residential area!
3. We approached the National Environmental Management Authority (NEMA) to clarify why M/S Seyani was being allowed to build a Stone Quarry in a residential area. The Executive Director of NEMA denied knowledge of the intended development.
4. A team from NEMA was duly sent to Namuyenje on April 22, 2008 and it made an in-depth inspection of the on-going illegal development by

Petition to the Parliament of Uganda by the people of Namuyenje, May 1 2008

Seyani Bros, and the team used that chance to make an inspection tour of the other quarries in the Nangwa area.

5. The NEMA team concluded its tour by asking Seyani Bros to suspend its on-going developments until it had followed the proper procedures, namely to carry out an Environmental Impact Study (EIS) of the proposed project and obtaining appropriate approvals from NEMA.
6. No sooner had this been done than another team comprising the NEMA Deputy Executive Director and the area MP visited Nangwa village on April 29, 2008 and undid the work of the earlier team.
7. We are shocked by the impunity with which the environmental watchdog is breaking the law. M/S Seyani claim they have an EIS that was approved by NEMA for a Mr. Katumba (of Nangwa Stone Quarry) in 2003. This alleged EIS was contested by the people of Nangwa, since it was done secretly and did not involve the area residents and local leaders as required by the law. Mr. Katumba's actions were resisted when he tried to put up sign posts indicating that the area in question was a stone quarrying site. He subsequently abandoned the plans to build the Nangwa Stone Quarry, only for this project to resurface under Seyani Bros. In law, Nangwa Stone Quarry can not be Seyani Stone Quarry. There is no transferable on-going concern in this case.
8. Even if Mr. Katumba's approved EIS was transferable in law, he was licensed (albeit illegally) in 2003. He failed to start the quarry at that time, and it is strange for Seyani Bros to claim that they are authorized to proceed with this project in 2008 when a lot of development has already taken place in this area! NEMA has denied to have given Seyani permission to build this quarry.
9. We are displeased with the turn of events in our village in respect of the plans to build the Seyani Quarry. Before an Environment Impact assessment is made, Seyani Bros have already carried our massive soil extraction which has resulted into substantial environmental degradation, including blocking a community river.

Petition to the Parliament of Uganda by the people of Namuyenje, May 1 2008

10. The residents of this area have heeded President Museveni's call to invest in the "**Prosperity for All**" programs and have invested heavily in pond fish farming, poultry farming, vegetable production, and the growing of vanilla and coffee, among others. Besides, there are several schools and an orphanage that have been established in this area. All these activities are now at the risk of being destroyed by Seyani Bros.
11. We have fundamental problems with this particular project and wish to appeal for your assistance in defending our rights to the ownership of private property and our rights to a clean and safe environment which is guaranteed by the Constitution and the Laws of Uganda:
- i. *Why is NEMA and the area MP in a hurry to derogate our rights to live peacefully in our country?*
 - ii. *Do we have secondary rights in our own country vis-a-viz a "developer" who has no respect for our people. We requested Mr. Nitin Vekariya , a Director of Seyani to consider setting up a user friendly project like a residential estate in our village, instead of a Stone Quarry, and he flatly stated that he could not put good money in "our bush". Well, we may be in a "bush" but we are not monkeys, and we have a right to life and ownership of property in our own country.*
 - iii. *Why is NEMA acting outside the law?*
 - iv. *Why is NEMA insensitive to the environmental rights of the people of Nanqwa. This village is already over-saturated with stone quarrying activities. There are so far five operating stone quarries in our village, and these are all within a one-kilometer radius of one another. The quarries are carrying out their activities in violation of the conditions set by NEMA for their operations. The Mukono NEMA officer has failed to supervise the operations of the existing quarries. Our previous attempts to get NEMA take necessary corrective actions against the breaches by the quarry operators have yielded no response.*

Seyani Bros, and the team used that chance to make an inspection tour of the other quarries in the Nangwa area.

5. The NEMA team concluded its tour by asking Seyani Bros to suspend its on-going developments until it had followed the proper procedures, namely to carry out an Environmental Impact Study (EIS) of the proposed project and obtaining appropriate approvals from NEMA.
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Petition to the Parliament of Uganda by the people of Namuyenje, May 1 2008



October 31, 2016

**Business and Human Rights Resource Centre
630 Ninth Avenue,
New York,
NY 10036, USA.**

Dear Mr. Joseph Kibugu & Mr. Gregory Tzeuschler Regaignon

RE: SEYANI BROTHERS & Co. (U) LTD RESPONSE ON CERTAIN ISSUES IN THE UGANDA CONSORTIUM ON CORPORATE ACCOUNTABILITY REPORT “THE STATE OF CORPORATE ACCOUNTABILITY IN UGANDA.”

I. The Uganda Consortium on Corporate Accountability

The Uganda Consortium on Corporate Accountability (UCCA) is a newly established Civil Society Consortium aimed at enhancing accountability by Corporations, States, International Financial Institutions and Development Partners for violations or abuses of Economic Social and Cultural Rights (ESCRs). Currently, the Consortium has a membership of four organisations specializing in different areas of rights protection, including the Public Interest Law Clinic, School of Law, Makerere University (PILAC), the Initiative for Social and Economic Rights (ISER), the Center for Health Human Rights and Development (CEHURD) and Legal Brains Trust (LBT).

Between February and June 2016, the Consortium conducted a *“baseline study on the effects and impact of corporate actions on the enjoyment of ESCRs in Uganda.”* The purpose of this study was to establish the status of business and human rights in Uganda in terms of the nature of the legal framework, reported abuses and affected communities, frameworks of accountability as well as best practices and innovations. One of the communities visited was that of Nakisunga in Mukono district—especially that affected by stone quarrying activities. The findings from the research and the report were launched and discussed at the 3rd Annual National Conference on Economic Social and Cultural Rights held on September 14th and 15th 2016 and Makerere University, under the theme *“Business and Human Rights in Uganda: Social Responsibility vs Accountability for Corporate Abuses in Uganda.”*



II. Appreciation

Thank you for sharing the response from SEYANI BROTHERS & CO. (U) LTD (SEYANI) in regard to the section in the report that referenced their activities. We also thank SEYANI for taking off time to compressively share their social responsibility endeavors—way beyond the issues noted in the report and also sharing their numerous engagements with the community albeit without a broader capture of the corporate accountability principles. In our perspective, the Company response is a clear indication of the need to engage more in the area of corporate accountability beyond mere voluntarism around corporate social responsibility (CSR). It is a perfect reflection of the issues that were broadly discussed at the just concluded 3rd Annual National Conference on Economic, Social and Cultural Rights that focused on Business and Human Rights. The theme of the conference is very relevant to the SEYANI response. Nowhere in the entire response, does the company mention nor acknowledge the existence of any form of accountability measures entrenched in our legal framework that corporations are bound to respect human rights.

Whereas we appreciate the numerous social responsibility endeavors that that Company has undertaken or promises to undertake in the communities where they operate, these do not negate its responsibility to respect constitutionally protected fundamental human rights.

III.A Few Clarifications

Before raising some issues we deem critical for the better appreciation of our work around corporate accountability and the importance of the baseline study, we think it necessary to clarify a few issues from the SEYANI response.

1. It is important to clarify that the UCCA report is a Baseline study intended to analyze the status of corporate accountability in Uganda and was conducted to inform broader Consortium projects including later in-depth research around different thematic areas or sectors. This early step evaluation was intended to get clear benchmarks and indicators that will inform further research projects. As such, the study could not engage deeply in the numerous company/community agreements and promises undertaken under corporate social responsibility.
2. We also find it important to briefly address the SEYANI response suggesting the unprofessional working methods of our researchers in conducting the baseline,



especially as it represents them. They further question whether the researchers indeed visited the Company quarrying site on March 24, 2016 and the lack of effort to reach company officials. It is our honest opinion that any officer stationed at a quarrying site supervising the daily operations should be able to speak on issues that are not administrative in nature but affect the employees and the communities around.

3. Sempape Memorial Primary School: The SEYANI response attributes the report to have placed the primary school near their quarrying site. However, the discussion about the school on Page 67 of the report clearly references the school in proximity to another quarrying company Tong Da China International and not Seyani Brothers.
4. Complaints and Petitions: In our report, we categorically note that the labour office in mukono has never received any complaints about Seyani Brothers. In our discussion with the office, the labour officer acknowledged that they have also never visited the quarrying site. This however, does not prove a lack of abuses of human rights. There have been petitions and a high court suit against NEMA and SEYANI Brothers. It is not clear why the SEYANI response doesn't make mention of any of these and only paints a clean picture with no community complaints whatsoever. *(The complaints are attached)*
5. Research Purpose: The SEYANI response found it 'alarming' that our research team did not dig deep into the access to health challenges being faced by the community. We need to clarify that there are different types of research and for different purposes. As noted in the beginning, ours was a baseline study on the effects and impact of corporate actions on human rights. This doesn't mean that health issues are not a problem that requires further research, but unfortunately that was not what we set out to do and we could not turn to it simply because it is an important issue to SEYANI. Delivery of health services in Uganda is the mandate of the government and even where non-state actors come up with additional measures to supplement the sector, their services do not make up for the violations and abuse of human rights that may arise in the implementation of their activities.



IV. OTHER KEY ISSUES

1. The Field Research & Community Engagement

The team of researchers that visited Nakisunga in Mukono first had a meeting at the local government office with the Labour Office and the Chief Administrative Officer who both acknowledged some of the challenges faced by the communities around the quarrying areas. (*See Attached CAO Letter*) The team proceeded to the quarrying site accompanied by a member of the local community. As noted in the report, the SEYANI employee, supervising the site declined to speak to us and requested one of the workers to attend to us. We were left to have a discussion with the gentleman and then proceeded to speak with the community members resident around the quarrying site. There were attempts to contact the main office and unfortunately letters requesting for an appointment went unanswered.

A validation workshop was later conducted in June and an invitation was also extended to SEYANI but no representative attended. Community members from Mukono again participated in the validation workshop and reinforced the issues that were highlighted during the field mission. The UCCA later in October organized another community dialogue in the area and this was attended by the LC 5 chairman of the area, LC 3 and the Speaker of the Mukono Local government. The same issues were interrogated and whereas there were clear evidence of social responsibility engagements, there were frustrations within the community members about the lack of corporate accountability regarding the negative impacts of the stone quarry activities. In fact the community members largely castigated their local leaders for failing to address the issues as have been raised for years since the start of the quarrying. The community shared their petitions to parliament and the Ministry of Water and Environment on the matter, and their judicial attempt to seek remedy in the suit against SEYANI and NEMA. They also shared a letter they wrote to the Director of SEYANI on the matters. (*See Attachments*)

2. The UN Protect, Respect and Remedy Framework

Since 1990, the debate concerning the responsibilities of businesses in relation to human rights has been a prominent one on the global agenda. There was extensive research and consultations with governments, business and civil societies from five continents led by Prof. John Ruggie that led to the adoption of the UN Guiding Principles on Business and Human Rights in 2008. These



principles which are commonly referred to as the UN Protect, Respect and Remedy Framework have been instrumental in the global discussion around corporate accountability.

a. The Corporate Responsibility to RESPECT

One of the three pillars of the UN Protect, Respect and Remedy Framework is the corporate responsibility to respect human rights, which entails acting with due diligence to avoid infringing on the rights of others and to address adverse impacts that may occur in the implementation of their activities. The other two are the state duty to protect against human rights abuses by third parties, including business entities, through appropriate policies, regulation, and adjudication; and ensuring access by victims to effective remedy both judicial and non-judicial.

Both national and international standards agree that business entities have a **duty to respect human rights** irrespective of where they operate or even in absence of concrete state mechanism to protect. This is largely due to the fact that corporate related abuse of human rights occurs mostly in **weak governance countries**—with weak policy and legal frameworks. As noted by SEYANI, and reinforced in the UCCA Report, the law governing corporate accountability is weak both in design and implementation. Respect for fundamental human rights is one area companies have failed to adhere to and in certain instances with complicity of the state. The increasing corporate capture in the country has triggered high levels of displacement, neglect for free prior and informed consent principles, land acquisition conflicts, community resettlement and relocation irregularities, environmental degradation and violation of the right to live in a safe and healthy environment. Some companies fail to secure the ‘social license to operate’ and therefore rely on private security firms to ensure physical and business safety. Similarly, this lack of social license and adherence to accountability principles is normally traded off by a vibrant social responsibility machinery which stifles communities abilities to enforce their rights.

3. Corporate Social Responsibility vs. Corporate Accountability

The concept of corporate social responsibility *vis-à-vis* corporate accountability is of great interest to the Consortium and one that will largely require unpacking in our engagements with different corporations to enhance its appreciation in implementation of different activities. As noted in the Preface to the UCCA Report, understanding of ‘*corporate social responsibility (CSR)*’ as a phrase has come to be synonymous with corporations engaging with the communities in which they operate, usually connoting charitable acts. From the SEYANI response, this is an area within which they present in-depth engagement with the communities.



However, CSR is a voluntary mechanism geared at giving back to the community through addressing key community needs in health, education or infrastructural challenges as SEYANI notes. Nevertheless, CSR lacks the binding element of corporate accountability as envisaged in both the domestic and international legal frameworks. To ensure the protection of, and respect for, human rights by business and corporations, accountability must go beyond voluntarism. It is increasingly necessary to recognise that both corporate responsibility and accountability are essential elements and key drivers to ensure economic and sustainable development.

As evidenced in the SEYANI response, the company has done and also promises to do more around corporate social responsibility, however, the same cannot be said on the subject of corporate accountability, a notion that the baseline study found much lacking in most areas the UCCA team visited. The main aim of the UCCA baseline study was not to focus on the subject of CSR or as SEYANI faults our team, the '*alarming failure*' to research on the lack of access to health services in the Nakisunga community and highlighting what SEYANI has done to address this. The baseline study was focused on exploring the notion of corporate accountability in Uganda—especially as it relates to the applicable legal, policy and regulatory framework. It was tailored to look into the impact of corporations on the rights of communities and the various efforts by state agencies, CSOs and corporations to promote corporate accountability in areas of operation.

SEYANI as a company has no legal obligation to address the access to health challenges faced in the community. That is government responsibility, although Seyani can rightfully supplement the government services. Whatever voluntary undertakings they enter to build health centres, finance surgical operations, offer scholarships and construct water sources to ease the access to health, education and other livelihood needs in the community, do not expunge them from their overall responsibility of respecting fundamental human rights.

The report acknowledges both the negative and positive impact of corporations on poor communities. But we reiterate, positive engagements around CSR should never negate the corporate responsibility to respect human rights and ensure that where there are violations, there are effective remedies in place. As noted in the baseline report and quite evidenced in the SEYANI response, there is a lot of reliance by corporate entities on corporate social responsibility and other voluntary codes of conduct as a tradeoff for the negative impacts of their businesses on communities. Notwithstanding the positive impact of the company, the issues raised by the Nakisunga community, ranging from noise pollution, dust emissions, destruction of



properties, loss of rental income, inconvenienced standards of living and the health risks arising cannot all be negated by the mere CSR engagements of the company. There is need to move beyond voluntarism showcased in CSR engagements and demand for accountability for corporate abuses. Accountability for corporate actions should not be avoided by the mere existence of voluntary CSR actions.

V. Conclusion

All in all, we reiterate that corporate social responsibility is important but it cannot be used as a tradeoff against corporate accountability. Article 20 (2) of the 1995 Uganda constitution enjoins the state to ensure that non-state actors respect human rights. As the Uganda Consortium on Corporate Accountability we do appreciate and encourage any CSR principles by corporations to better the lives of the communities in which they operate. However, this should never be an undertaking to expunge their corporate accountability responsibilities.

We appreciate the different measures SEYANI Brothers has employed to address some issues and welcome any engagements we can have to address some of the community complaints and to enhance their appreciation of corporate accountability. The Consortium is also willing to facilitate further dialogue between the company and the community. We look forward to working with SEYANI as with other corporations in Uganda to ensure that businesses operate in an environment that not only promotes but also respects fundamental human rights.

Thank you,

Yours Truly

Arnold Kwesiga
Project Coordinator
Uganda Consortium on Corporate Accountability

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CIVIL SUIT NO. 184 OF 2008

RECEIVED
07 SEP 2008

1. ONAN KAZIBWE }
2. DICK MUKASA } PLAINTIFFS
3. NGOMA NGIME }
4. KAYONGO LAWRENCE }

VERSUS

1. SEYANI BROTHERS & CO. LTD }
2. NATIONAL ENVIRONMENT }
MANAGEMENT AUTHORITY } DEFENDANTS

PLAINT

1. The plaintiffs are all adult Ugandans of sound mind and residents of Nangwa Parish, Nakisunge Sub County, Mukono District and their address for the purposes of this suit shall be C/o Kakuru & Co. Advocates, Plot 26B Old Kampala Road, P.O.Box 6256, Kampala.
2. The 1st defendant is a limited liability company incorporated in Uganda and carrying on business in Kampala, Mukono and else where.
3. The 2nd defendant is a statutory body set up by an Act of Parliament and is charged with the management of the environment and natural resources in Uganda. The plaintiffs undertake to effect Court process upon both defendants.
4. The plaintiffs' cause of action is brought under the provisions of Section 2, 3, 19 and 71 of the National Environment Act Cap 153(NEA), Articles 50 and 39 of the Constitution and at common law. The action is brought jointly and severally by the plaintiffs on their own behalf and on behalf of the public effected and or likely to be effected directly or indirectly by the activities and proposed activities of the 1st defendant with the knowledge and support of the 2nd defendant.

2. Letter from NEMA addressed to Minister of Land dated 17th June 2008
3. Letter addressed to Minister of water and Environment dated 30th June 2008
4. Newspaper Clip "Daily Monitor Friday June 20, 2008"
5. Letter dated 25th July 2008.
6. Letter dated 31st March 2008.
7. Letter from the plaintiffs to the 1st Defendant dated 19th March 2008
8. Any other with leave of Court.

LIST OF AUTHPORITIES:

1. The Constitution of the Republic of Uganda.
2. The National Environment Act Cap 158
3. The Land Act Cap 227
4. The Civil Procedure Act Cap 71
5. The Civil procedure Rules
6. The Environment Impact Assessment Regulations S.I Supplements 13/98
7. Advocates Coalition for Development and Environment and Sharif Badbugo – Vs – Attorney General, Misc. Cause No. 100 of 2004.
8. Sierra Club National Audubon Society, Friends of Earth International – Vs – William Collema Jr. United States District Court for the District of Columbia. Civil Action No. 75-1040 (USA).
9. Wildlife Society – Vs – Minister of Environment, Transkei Supreme Court 1996.
10. Oposa –Vs- Factoran, Supreme Court of Manila Philippines.
11. Kajing Tubek and Ors –Vs- Ekran Bud and 4Ors, High Court of Kuala Lumpur Malaysia No. 55/96.
12. M.C Mekta –Vs- Kamal Nat and Ors, Writ Petition (C) No. 182 of 1996 (S.Ct of India Dec. 13 1996) Supreme Court of India (1997): Supreme Court Cases 388.

5. Briefly the facts constituting the cause of action are as follows:

- (a) The plaintiffs are all residents of Nangwa Parish, Nakisunge Sub County, Mukono District where they have permanent homes and lived with their families for sometime now.
 - (b) Some time in 2003, a company known as Nangwa Stone Quarry Ltd proposed to set up a stone quarry within the neighborhood of the plaintiffs. Consultations were made but the plaintiffs and others objected to the project for environmental reasons. Although an Environmental Impact Assessment (E.I.A) was done and the 2nd defendant issued a conditional certified No. 000641 (Annexure "A"), the developers did not carry out any work as they failed to satisfy the conditions set out in the Environment Impact Assessment and as the project was opposed by residents and other affected persons. The project did not proceed.
 - (c) That subsequent to that the plaintiffs learnt that another company the 1st defendant was preparing to operate a stone quarry in the area and sought more information from the 2nd defendant whose Executive Director denied knowledge of the project.
 - (d) On 22nd April 2008 the 2nd defendant sent a team of Inspectors to investigate the activities of the 1st defendant. This was done in the presence of the plaintiffs and other residents. The team also inspected the quarries in the Nangwa area. A report was made by the said team and the plaintiffs shall seek the 2nd defendant to produce it and rely upon it at the trial. The report concluded that the proposed project was not in conformity with Environmental law requirements.
 - (e) On 29th April 2008 another team led by the Deputy Executive Director of the 2nd Defendant accompanied by the officials of the 1st defendant visited the proposed site of the quarry and reversed the finding of the technical team without hearing the residents or making any technical assessments at all.
 - (f) The 2nd defendant claimed that the 1st defendant could proceed with the project on basis of an Environment Impact Assessment conducted in 2003 by Nangwa Stone Quarry Ltd a different developer.
6. The plaintiffs have since made several complaints and appeals to the defendants, the minister in charge of environment and other Government bodies but nothing has changed as the 1st defendant has since moved the equipment and personnel to the site and is about to begin stone quarrying and crushing in total contravention of the law (Correspondences are annexed hereto and marked "B", "C", "D", "E" and "F").

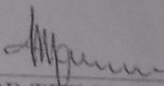
7. That the plaintiffs shall at the trial contend and prove that the 1st defendant's activities violate the right to a clean and healthy environment. That the 1st defendant's project and activities are illegal and contravene the provisions of the National Environment Act.
8. That the 2nd defendant has failed in carrying out its statutory duty to managing the environment but instead is assisting individual developers to openly violate environmental laws.
9. That the actions of the 1st defendant are criminal for which its officers ought to be prosecuted.
10. That the plaintiffs are aggrieved and have suffered harm and damage resulting from loss of value of their properties, damage to their houses, inconvenience and anguish.
11. That the activities of the 1st defendant have impacted on the livelihoods of the plaintiffs and their families and will reduce the quality of life of the plaintiffs and therefore are violation to the plaintiff's right to life.
12. That notice of intention to sue was duly served upon both defendants.
13. That the cause of action arises within the jurisdiction of this Honourable Court.

WHEREFORE the defendants pray for the following orders and declarations;

- (a) That an order of permanent injunction issue against the 1st defendant restraining it from carrying out the proposed project of stone quarrying at Nangwa Parish.
- (b) That an order of permanent injunction issue against the 2nd defendant restraining it from issuing an Environment Impact Assessment Certificate to the 1st defendant or any other person authorising them to carry out the activity of stone quarry at Nangwa.
- (c) A declaration that the proposed project is illegal as no valid Environment Impact assessment has been carried and no certificate has been issued.
- (d) That any certificate if issued subsequent to these pleadings is a nullity for non conformity with the law.
- (e) A declaration that the activities of the 1st defendant violate the plaintiffs' right to life and to a clean and healthy environment.
- (f) Costs of the suit.

13. Illinois Central Rail Road C. -Vs- Illinois 146 U.S. 387-36L Ed 1618 (1892) (U.S)
14. National Association of professional Environmentalists (NAPE) -Vs- AES Nile Power Ltd, High Court Misc. Cause No. 289/99.
15. Any others with leave of Court.

DATED at Kampala this.....28.....day of.....August.....2008.



COUNSEL FOR THE PLAINTIFFS

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