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Human Rights Implications of the Clinker Plant Construction in Kosiroi mining site.

Policy Brief



Policy Briefing Paper, 2025

Executive summary

With the setup of a clinker plant in Kosiroi, Tapac sub-county, Moroto district by Tororo Cement Limited Limited has brought to light a number of human rights issues that this briefing paper titled, *"Human Rights Implications of the Clinker Plant[1] Construction in Kosiroi mining site"* aim to highlight. The area is inhabited by the Tepeth, a minority community who have suffered decades of subjugation from both the Moroto local government and the national government.

The briefing paper has used the principle of Free, Prior and Informed Consent(FPIC) recognised by both international and national laws governing land transactions. However, in the Karamoja sub-region this has been ignored in many occasions. Investors and Government entities have often taken advantage of the local and vulnerable communities and took over their land without obtaining their consent and adequate compensation especially for mining activities leaving the local communities worse off than they were before.

The purpose of this policy brief is to enrich our knowledge on FPIC in the mining sector, analysing a specific case study: the clinker plant project by Tororo Cement Limited Limited in Moroto, Karamoja sub-region and making recommendations on policy and legal framework so as to ensure the mining companies obtain meaningful consent and ensure adequate compensation of the Minority and Indigenous Peoples(MIPs) before commencing mining projects.

We believe that this policy brief will go along way into addressing land wrangles in the country and ultimately kickstart a process of reforming our land acquisition legislative and policy framework nationally.

1 Clinker is a nodular material produced in the kilning stage during the production of cement and is used as binder in cement products. It is produced by heating limestone and clay to the point of liquefication at about 1400°C-1500°C in the rotary kiln. Clinker when added with gypsum and ground finely, produces cement. A Clinker Plant is therefore a factory in which the clinker is processed.

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1.0 Introduction

The United Nations in 2007 through the **United Nations Declaration on the Rights of Indigenous People's (UNDRIP)** for the first time recognized Free, Prior, Informed Consent (FPIC) of indigenous people's during land transactions (FAO,2016). Nationally, the right to property is deeply entrenched in **Article 26** of the constitution and this among others requires consent from land owners, prior to taking over their land. The Mining and Minerals Act, 2022 makes community engagement mandatory and requires each developer to enter into a Community Development Agreement(CDA) with the communities prior to commencing mining activities.

The Karamoja sub-region where the case study was undertaken is home to an estimated 1.3 million people, with about 70 percent living in rural areas, the total land area is an estimated 27,000 square kilometers[2]. The majority of these people are categorised as indigenous peoples and an in-depth study carried out by Human Rights Watch in 2013 found that companies have explored for minerals and actively mined on lands owned and occupied by Karamojong's, violating land rights established in the UN Declaration on the Rights of Indigenous Peoples, including the right to Free, Prior and Informed Consent[3]

Tororo Cement Limited, is one of the major mining companies in the Karamoja sub-region with its main activities being limestone mining in Moroto district. The company has two mining leases one acquired in 2003 (SML 4622) and another in 2010 (ML 0593) both in the same area of Katikekile Parish, Tapac Sub-County, Moroto district. It is estimated that over 1,200 people stay in Katikekile parish[4], the area in which Tororo Cement Limited is carrying out its operations.

To expand its operations but also ensure import substitution of the clinker, the company working with Uganda Investment Authority and Ministry of Lands, Housing and Urban Development has set out to acquire 500 acres of land to establish a clinker plant in the area. However, this land acquisition process comes at the backdrop of the company's failure to pay surface rights compensation on the mining leases acquired in 2003 and 2010 as earlier highlighted claiming that the land owners are not known owing to the undocumented customary nature of the land.

This 500-acre piece of land is being acquired within the current mining lease area. The company seeks to acquire a land title over the said mining leases and the whole acquisition process is marred by controversy and secrecy. The consent of the community seems to only be viewed as a formality and the company is not fully committed in obtaining the same. The community is aggrieved by the lack of meaningful consultation and transparency in this process and demands that the company follows due process in obtaining the land.

Resource Rights Africa (RRA) sought to write a policy brief expounding on this acquisition process of the clinker plant land and shading light on the legal framework governing Free, Prior and Informed Consent in the Karamoja mining industry and making recommendations on how best these processes should be handled in future projects.

Objectives were to;

i) To collect both documentary and oral information on the said land Acquisition process by Tororo Cement Limited for the clinker plant in Tapac sub-county.

ii) To compile the collected data and write a policy brief on the process with clear recommendations of how the procedure and legal framework of Free, Prior and Informed Consent in the extractives sector of Uganda.

2.0 History of Tororo Cement Limited in Moroto District

It is unclear how Tororo Cement Limited first set foot in Karamoja, however, there are different recollections on how it happened. The now Kosiroi mining site was at the time communal grazing land and had sparse settlements within[5]. Some say Tororo Cement Limited Ltd officials met the elders at the *Akeriket* (a cultural shrine) and donated to them free iron sheets[6], some say they only killed a bull and later started their mining activities[7], others say they met the elders and gave out a sack of coins of up to Uganda shillings Seventy-Five thousand (UGX 75,000/=)[8] but the bottom line is they only met a hand full of community members, were not clear as to the nature of their project and did not do sufficient engagement of the community prior to their mining activities. Therefore, it is can be stated that this weak foundation established by the company from the start contributed to its fragile relationship with the community.

Tororo Cement Limited Ltd first set foot in Karamoja sub region, specifically Moroto District, Tapac sub-county, Katikekile parish (Kosiroi mining site) around the year 2000 through a one Siraj who allegedly had

2 Uganda investment Authority, Karamoja Investment Profile, 2016.
3 (Observations on the State of Indigenous Human Rights in Uganda in Light of the UN Declaration on the Rights of Indigenous Peoples Prepared for the 26th Session of the United Nations Human Rights Council: Universal Periodic Review March 2016)
4 Focused Group Discussion with Catholic Diocese, Land Desk.
5 Interview Eko Edward, Principle Assistant Secretary, Moroto district, 4th Nov 2022.
6 Interview with Akello Sarah, Vice Chairperson - SOGDEK, 15th October 2022.
7 Forcussed group discussion with Catholic diocese, Land desk, 14th October 2022.
8 Interview with Tepeth County, MP Lokoru Albert, 2022, 2nd November 2022.

already known about the mineral potential of the area. The company then went on to do mineral exploration on the availability of Limestone in the said area until 2003, when the new Mining Act was passed and then acquired the 21-year mining lease in Tapac running till 2024 then later acquired a second mining lease in 2010 adjacent to the earlier lease with no proper engagement of the community **(SML 4622 of 2003 & ML 0593 of 2010 respectively)**. For the past 20 years that the has been in Karamoja, it has had a relatively rough relationship with the community in regards to issues such as payment of surface rights, miserly loading and offloading fees (which led to the bye law), environmental damage, payment of royalties and fulfilling of pledges such as schools, health centers etc[9].

In around 2014 a draft Memorandum of Understanding (MOU) was made between company and community in which Tororo Cement Limited Ltd was to compensate the community for surface rights[10]. However, at the point of signing, the company withdrew with no clear justification. From the period of 2019 – 2021, the community with the help of civil society such as Catholic Diocese- Moroto field office, Resource Rights Africa (RRA) and Advocates for Natural Resources and Development (ANARDE) came up with a bye-law on the track loading and offloading fees for the locals at Kosiroi mining site, which fees the company queried as being so high and refused to abide by the byelaw, unfortunately this byelaw was also not approved by the Central Government[11].

The Catholic Diocese- Moroto Land Desk has created a Communal Land Association (CLA) in the Tapac community and registered these CLA management committee and in 2022 acquired a Certificate of Customary Ownership (CCO) for the said land, the CLA is named the Naita Tepeth- Communal Land Association. The Naita Tepeth CLA has an estimated 1,200 members, 42 of them fall within the additional 50 acres of land. The Diocese has also mapped the acres of land covered by the licenses and the acres destroyed by the mining activities of the company and her argents which include 300 hectares of land.

3.0 Background to the acquisition of land by Tororo Cement Limited for the clinker plant

On the **7th of April 2021,** a multi-stakeholder meeting was called by Tororo Cement Limited in which the topic of discussion was Tororo Cement Limited bid to acquire 50 (fifty) acres for a clinker plant. According to different community sources, Tororo Cement Limited found it expensive to transport unprocessed raw limestone for hundreds of kilometers to the Tororo Cement Limited factory in Tororo district and hence the choice to establish a clinker plant in Katikekile parish, Tapac sub-county, Moroto district.

On **16th April 2021,** a meeting was held at Katikekile parish, Tapac sub-county, Moroto district, by the district officials i.e. CAO, RDC, DISO, Member of Parliament for Tepeth Constituency on the additional 50 acres of land required by Tororo Cement Limited to establish a clinker plant. Among others the following resolutions were made; It was agreed that a detailed M.O.U should be signed between the community and Tororo Cement Limited setting out clearly the terms and conditions of their engagement with the community and secondly that, Tororo Cement Limited should compensate the previous leases of 2003 and 2010 before acquiring the additional piece of land, the district was meant to relay this information to the company given that they were not present in this meeting[12].

On the **25th May 2021** a land survey of 50 acres was carried out by Tororo Cement Limited and some local district officials[13]. Since the beginning of 2021, various meetings both in open and closed doors, there have been held by company, government and community to resolve the land acquisition impasse but all attempts have remained futile.

4.0 Exposure visit to Mombasa

Between **6th – 10th October 2022**, about 40 Stakeholders including; District administrative and political leaders, Moroto Catholic Diocese- Land Desk, community leaders, elders and youths were taken to Mombasa by Tororo Cement Limited to see progress and developments of the Tororo Cement Limited's sister company. This was organized to show the stakeholders what developments and benefits the establishment of the clinker plant in Moroto district would have for the community basing on the developments the same owners of Tororo Cement Limited had made in Mombasa through Mombasa Cement. While the exposure visit was rated as successful, some of the participants noted that the visit was aimed at luring those who participated to support the clinker plant project and stop questioning the social and environmental costs that will come with the project.

5.0 The "Issues at hand"

During the above-mentioned meetings, there were disagreements between the company and community on various aspects of the clinker plant land acquisition process as summarized below;

a) First of all, the exact location where the clinker plant is to be placed was in dispute, others wanted it to be moved Kokleng parish other than being left in

9 Forcussed group Discussion with Catholic diocese (Ibid).
10 Interview with Akello Sarah, Vice Chairperson – SOGDEK Miners Association.
11 Interview with Akello Sarah (Ibid)
12 Interview with Lokoru Albert, Tepeth County, Member of Parliament.
13 Focused Group Discussion with Catholic Diocese, Land Desk.

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Katikekile parish of Tapac sub-county which was being actively being used for grazing and other activities by the community.

b) There is also lack of clarity as to how much land was required, the company first indicated they wanted 50 acres but later it was discovered that they intended to acquire close to 300 acres. The question is why would a clinker plant need 300 acres to be established, for those who visited Mombasa Cement, it was estimated that a clinker plant would need only about 4 acres to be established.

c) Furthermore, the mining act requires that 5% of royalties trickle down to the land owner or lawful occupier of the land. It is notable that the land the company desire's falls within its first mining lease area which means they would become the land owners of the mining area and as a result avoid payment of royalties to the communities.

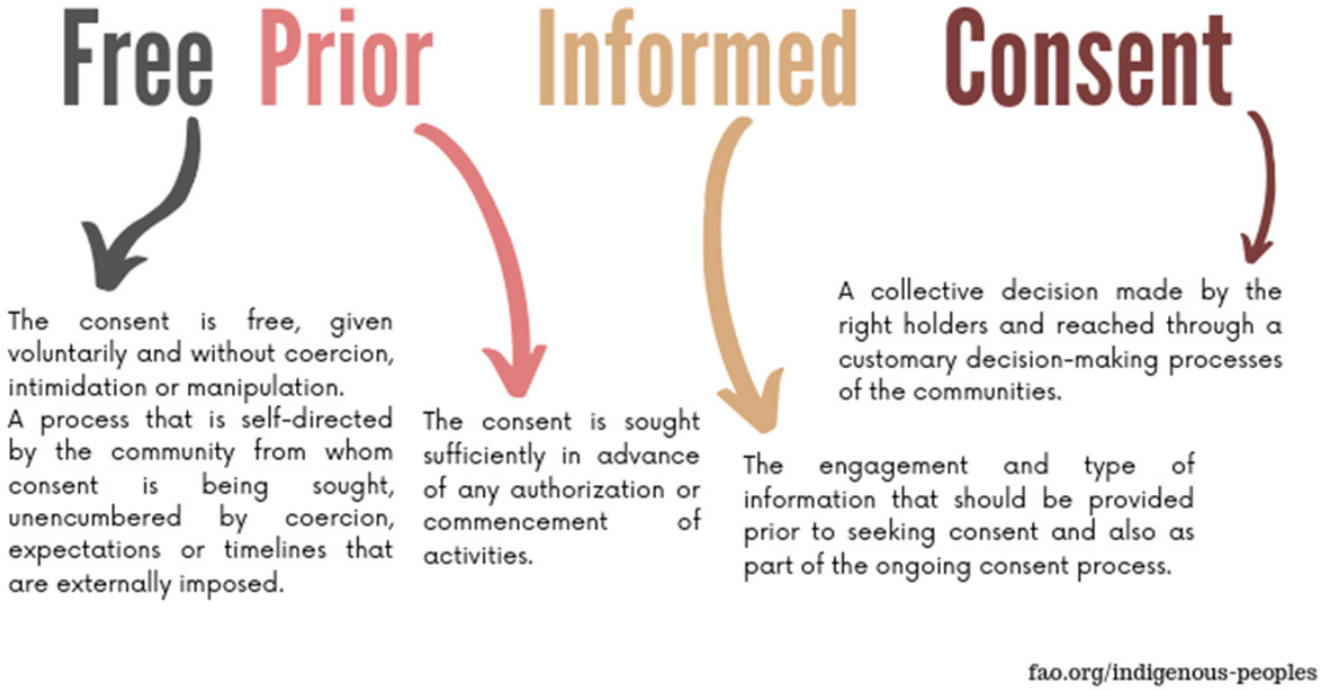
d) For avoidance of doubt Tororo Cement Limited seeks to purchase the said land and not lease it out. However, the community does not want to be deprived of their land and hence only want to lease it for a short period of time other than sell it off. During the interviews with community members, it was confirmed that no land titles had been processed over land at the time of carrying out this research[14].

e) The looming issue of failure to pay surface rights compensation for the last two mining leases was also brought up during these negotiations and the community required that Tororo Cement Limited pay surface rights compensation for the two licenses before being granted extra land for the clinker plant.

All these issues have dragged the paradox between Tororo Cement Limited and the community for close to 2 years now and this all drives back to failure of Tororo Cement Limited to obtain Free, Prior and Informed Consent(FPIC) in their first engagement with the community[15].

6.0 Assessing whether TCL ensured FPIC during the land acquisition for the clinker plant

To begin with, there is need to understand what Free, Prior, Informed Consent (FPIC) is that can be described as follows;



16

14 Interview with Micheal Kinyosi – Land Officer, Moroto District Local Government.
15 Interview with Akello Sarah (Ibid).
16 https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/

7.0 Legal and Policy frameworks guiding FPIC in land acquisition in Uganda.

In short consent should be sought before any project, plan or action takes place (prior) it should be independently decided upon (free)and based on accurate, timely and sufficient information provided in a culturally appropriate way(informed)for it to be considered a valid result or outcome.[17] The major advantages of obtaining FPIC is that helps companies avoid conflicts"[18] and it also creates a strong relationship between the company and community[19].

In the context of global land grabs, FPIC is a basic democratic right and principle that was enshrined in UN declarations and international human rights law and jurisprudence only after many years of hard struggle by Local communities and indigenous organisations. The principle of FPIC traces back to at least the 1989 adoption of International Labour Organization (ILO) Covenant 169, and even earlier to 1975 when an advisory opinion of the International Court of Justice (ICJ) specified consent as a basic requirement of relations between states and indigenous peoples[20].

The International Labour Organisation- Indigenous and Tribal Peoples Convention, 1989 (No.169) (ILO 169) specified FPIC for relocation of communities (Article 16); implied it for setting priorities and control of development (Article 7); and required it for national programs and institutions as well as use of land and resources (Articles 2, 6 and 15). Later, the **UNDRIP** adopted in 2007 specified FPIC for relocation (Article 10), for historical and archaeological sites (Article 11), for legislative and administrative measures (Article 19), for land and resources (Article 29), for military activities (Article 30), and for land, territories, and resources "particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (Article 32)[21].

Article 10 of the United Nations Declaration on the Rights of Indigenous Person's (UNDRIP), is to the effect that Indigenous people shall not be forcibly removed from their land or territories. Similarly, the declaration notes that no relocation shall take place without the free prior and informed consent of the indigenous peoples concerned and after agreement on just fair compensation and, where possible, with the option of return. Uganda has not ratified the ILO but is signatory to the UNDRIP, it is in the spirit of inclusive development, and good practice that the principle should be promoted in Ugandan context during land acquisition[22].

The UN Guiding principles on Business and Human Rights, 2011(UNGPBR) under Principle One (1) emphasizes States must protect its citizens against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

EITI Principles[23] also provide for transparency in the mining sector, they provide for disclosure of mining revenues, community- company contracts and other related information to the public. This is to promote accountability and reduce corruption in the mining sector. Uganda became party to the EITI in 2019 and is now bound by the principles therein, therefore companies such as Tororo Cement Limited must abide by the EITI principles and embrace transparency and accountability in their mining activities.

How has Uganda envisaged the principle of free prior and informed consent in its land acquisition laws.

The Ministry of Lands, Housing and Urban Development is undertaking reforms of land laws and enacting new policies to protect the land rights of the people. Among the laws under review is the Land Acquisition Act 1965 which is now Land Acquisition (Amendment) Bill 2018 (LAB) and a draft Land Acquisition Resettlement and Rehabilitation Policy (LARRP), the newly enacted Mining and Minerals Act 2022 is the cornerstone in the mining sector[24] these are to buttress the principles already embedded in Chapter Four of the Uganda Constitution and the growing demands by the country's developing economy.

The Constitution of Uganda.

The 1995 Constitution of the Republic of Uganda as amended provides for the Freedom from deprivation of property by an individual or a group by virtue of **Article 26** of the same constitution. In some cases, government may propose land reforms to cater for development prospects. Such reforms alter the power structure, both economic and political, since land has always been a source of wealth, income, status and power[25].

Article 26 of the Constitution stipulates that, Every person has a right to own property either individually or in association with others, no person shall be compulsorily deprived of property or any interest in or right over

17 Free prior and informed consent: An indigenous people's right and a good practice for Local communities.
18 Reclaiming Free Prior and Informed Consent (FPIC) in the context of global land grabs By Jennifer Franc
19 ibid
20 Reclaiming Free Prior and Informed Consent (FPIC) in the context of global land grabs By Jennifer Franco https://fra.ug/the-principle-of-free-prior-and-informed-consent-fpic-a-way-to-inclusive-development
21 Reclaiming Free Prior and Informed Consent (FPIC) in the context of global land grabs By Jennifer Franco
22 https://fra.ug/the-principle-of-free-prior-and-informed-consent-fpic-a-way-to-inclusive-development/
23 EITI, "Uganda joins the EITI," Accessed March 1, 2021. Available at https://eiti.org/news/uganda-joins-eiti.
24 Ibid 7
25 https://www.globalrightsalert.org/sites/default/files/LAND%20ACQUISITION%20BILL%20A5_2019%281%29.pdf.

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property of any description except where the following conditions are satisfied the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health the article further stipulates that the compulsory taking of possession or acquisition of property is made under a law which makes provision that before the land is taken prompt payment of fair and adequate compensation prior to the taking of possession must be done.

Courts Interpretation of the Freedom from deprivation of Property.

The courts of law have also not been silent on the requirement of consent, however, this has majorly been in the context of compulsory land acquisition, In the case of **Uganda National Roads Authority Vs. Irumba Asumani & Peter Magelah, Supreme Court Constitutional Appeal No.2 of 2014**, In reemphasizing the Right to property (freedom from deprivation of property for all citizens), The Supreme Court upheld the Constitutional Court decision that the Land Acquisition Act was inconsistent with Article 26 of the Constitution and therefore Unconstitutional. The Supreme Court held further that whereas Article 26 was not among the non-derogable rights, this does not give powers to government to compulsorily acquire people's land without prior payment, and that such planned Government projects do not fall under the exceptions of disasters and emergences.

The courts have also interpreted basing on common law that unconsented entry into land amounts to Trespass to land. This has been reemphasised in various cases one of which was **Sheikh Muhammad Lubowa Versus Kitara Enterprises Ltd. (1987) HCB 68**.

The Land Act.

The Land Act (1998) identifies the four forms of land tenure systems in Uganda which include Customary, Leasehold, Freehold and Mailo, grants all legitimate and bona fide occupants property rights, establishes land tribunals and decentralizes land administration[26].

Before possession of the Land by the government or any person granted utilisation of the Land in any of the above-named land tenure systems, they are required to ensure consent and compensation is made first. Furthermore, under **Section 41(b)** of the Land Act clearly stipulates that no person from whom land is to be acquired under this section shall be required to vacate that land until he or she has received the compensation awarded to, or agreed to, by him or her.

Most communities in Uganda most especially in Karamoja and the northern Uganda regions own land under customary land tenure, **Section 3 of the Land Act** provides for the above land tenure as a particular piece of land that is prescribed for specific group of people , that Land ownership and use is guided by the cultural norms of the particular tribe in occupation .When dealing with Customary Land **Section 27** emphasises consideration of rights of women, children and persons with a disability, before any decision taken in respect of customary land, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned any decision to the contrary is in violation of **Articles 33, 34 and 35 of the Constitution** on any ownership, occupation or use of any land and shall be null and void. The above section envisaged the need of consulting the PAPs before accessing any communal land.

The Land Acquisition Act.

The above laws supersede the **Land Acquisition Act Cap 226** under **Section 2** that gives power to the Minister to give authority to the person or entity permitted to have access to the Land before consulting the person or even compensating them, **Section 7** further gives them power that once declaration is made by the minister the authorised person can take possession even before compensation is made. The courts as noted above have also nullified various provisions of this act. However, the new **Land Acquisition Bill, 2018** tries to address this and states that once an interested party puts in a request to the Minister, if permitted, He ought to give notice to the person in possession 7 days before coming to survey or collect samples furthermore at the time of possession the government is supposed to first pay full and fair compensation prior to possession.

Mining legislation in the context of land acquisition.

According to the constitution all minerals underneath land belong to government, however, the land on top of the mineral remains for the respective land owners, as such this warrants the need for FPIC prior to commencement of any mining activity. The government has made it easier to abide by the above principles through amending and formulating new laws such as the **Minerals and Mining Act 2022** which clearly envisages the principle of FPIC, **Section 228(2)** of the Mining and Minerals Act provides that before commencement of operations, the holder of a mineral right must negotiate and conclude a Community Development Agreement (CDA) with representatives from communities likely to be affected by the holder's mining operations. This is a mandatory requirement.

To guide the process, **Section 229(5)** enjoins the Minister to develop a model CDA. The law provides under **Sub section 6** for adequate consultation of the affected community in the process and **Sub section 7** the need to consider interests of indigenous or tribal communities

26 https://www.globalrightsalert.org/sites/default/files/LAND%20ACQUISITION%20BILL%20A5_2019%281%29.pdf.

and utilization of international instruments in the process.

The **Mining and Minerals Act** clearly states under **Section 229(7)** that circumstances where indigenous people or tribal populations are part of the consultation, the parties shall refer to international guidelines as to the appropriate way to proceed and shall strive for full prior disclosure, informed participation and due consideration of issues put forward in advance of any decisions to be taken as part of the consultation.

Section 228 of the Mining and Minerals Act 2022 if read as a whole, advocates for the development of communities affected by the activities of the mineral right holder.

The laws of Uganda in various aspects provide a legal framework for FPIC but still leave loopholes that may in the long-term cause challenges for local defenceless communities like the Karamojong against large scale investors and developers, the law is also not comprehensive enough to effectively govern FPIC in terms of procedure, forums and remedy in the context of mining in Uganda given the nature of mining projects and the impact they have on the host communities.

8.0 Key Elements of an Effective FPIC Process[27].

i. Identify the decision makers and parties to the negotiation.
ii. Specify the decision-making processes of the respective parties. For example, Indigenous people or affected communities explain their customs, values, and norms for decision-making (e.g., only elders over age 70 make final decisions and only after deliberations are conducted in two village general assembly meetings).
iii. Reach initial agreements on the role of outside counsel or advisors. (Including the use of mediators or facilitators) Properly used, advisors, mediators, and facilitators can help to address capacity issues and power imbalances in FPIC processes.
iv. Discuss and seek to reach a common understanding of the applicable law and any other principles that will guide the FPIC process and inform negotiations about the interests and rights in question.
v. Agree on time periods and negotiation scheduling.
vi. Identify local communities' customs and protocols that the process should respect. For example, community customs may dictate that FPIC negotiations cease during a specific religious period, that all meetings are opened with a blessing, or that all company delegation entrances into the territory must be cleared first through a council.
vii. Agree on measures to create an environment without coercion or duress. For example, the parties may agree that the company can pay to transport people to a meeting but cannot pay any financial awards to individual leaders. Parties typically agree to the absence of military, police, or company security during negotiations.
viii. Determine how the affected communities will participate in the analysis of impacts and risks. A critical part of FPIC is ensuring that the affected Local communities are well informed of all potential impacts and risks of the proposed activities and can participate in decisions about how to avoid or mitigate them.
ix. Determine formats and protocols for sharing information.
x. Document FPIC outcomes and their binding nature. The concrete outcome of an FPIC process should be documented in a written agreement that is widely shared with members of the affected communities and with its current and successive leadership. The outcome document will likely reflect one of three outcomes: 1) consent to the activity proposed; 2) consent with conditions, such as modification of the activity or agreement to a benefit sharing package; or 3) no consent at all.
xi. Identify other company activities or circumstances that would trigger additional consent processes in the future. FPIC processes are iterative, and changes in fundamental circumstances can occur, particularly when company activities may be extensive and dynamic over time (e.g., new plantings that were not part of a previous FPIC negotiation).
xii. Define participatory monitoring and verification mechanisms. During negotiations and then in the written outcome agreement, the parties should outline how adherence to the agreement will be monitored and verified.
xiii. Specify how the parties will resolve any future disputes. Mediation, Arbitration or court.

The inclusive business approach vs compensation approach.

In Moroto District, Tapac sub county, it can be observed that majorly two approaches that Tororo Cement Limited Limited could adapt to engaging the community. The Inclusive business approach where the company works with the community in a co-existent relation for example employing them as artisans at the mining site other than compensating and relocating them or the compensation

27 SOURCE:" Operational Guidance on Free, Prior and Informed Consent June 2019 Requirements, best practices, and practical considerations for companies to fulfil their obligation to secure the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples and Local Communities."

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approach where the company compensates the land owners and relocates them without necessary including them in their business model, Tororo Cement Limited Limited has predominantly based on the former.

Inclusive Business Model.

The term "business model" refers to the way in which a company/firm structures its resources, partnerships and customer relationships in order to create and capture value. Whereas the term "inclusive" essentially refers to encompassing concerned parties. In this regard, "Inclusive Business Model" refer to collaborative arrangements between large-scale investors and local small-scale farmers and communities on fair and equitable terms[28].

This approach looks at companies going beyond compensation but rather minimising on some of their profits and utilising them to employ people within the communities through setting up projects, equipping them with skills, buying their products such as farmers to be used as raw materials in the industries. With this approach the benefits are continuous and not just a one walk away compensation.

The new reforms such as the Mining and Mineral Act 2022 seeks to ensure that Uganda benefits more from the mining sector. It therefore, demands technology transfers; research; recruitment, training and promotion of Ugandans and to prioritize the use of goods and services available in Uganda. This is a welcome development[29].

In Moroto assessing by the current practice by Tororo Cement Limited it seems to be adapting this approach by buying the Limestone rocks from artisans within their mining area and not wholly relocating the community. However, the terms of this arrangement remain unclear and non-binding to both parties.

Compensation Approach.

A long-standing principle in many jurisdictions is that compensation should be guided by the objectives of "equity" and "equivalence" that is, the adequacy of compensation should be measured against the goal of ensuring that people are neither impoverished nor enriched[30].

A variation on this standard view argues that it may be appropriate in some cases, particularly where a taking is occurring in the context of a development project or program, to aim beyond equivalence to improving the position of those affected wherever possible. This is the principle articulated in the **World Bank Policy on Involuntary Resettlement**[31]: "Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.[32]"

This approach looks at compensating affected persons before possession of their Land and compensation made should be slightly to a better position than they were in the in first place **Section 41 (6) a** of the Land Act states that (a) any compulsory acquisition of land for purposes of implementing **Subsection (6)(b)** shall be at a fair market valuation assessed on a willing seller willing buyer basis.

In the context of Tororo Cement Limited Ltd, this would mean them undergoing a comprehensive valuation of the project land and then compensating the identified land owners and signing agreements with the land owners in which the land owners will be relocated and shall surrender their use and occupation of the land Temporarily or Permanently for the community. Tororo Cement Limited currently seems to adopt the Inclusive business approach but hasn't satisfactorily confirmed the terms and conditions of this arrangement with the respective land owners.

Challenges faced in obtaining FPIC in customary land ownership.

- **Difficulty in identifying the ownership of the Land.** In Karamoja land is held communally and used majorly for grazing, limited farming and cultural rites hence the difficulty in identifying land owners.
- **Weak traditional governance structures.** For instance, local community representatives or community members may participate minimally in meetings; participants may act inconsistently from meeting to meeting or participants may not know about agreements or materials from previous meetings, or not respect prior decisions[33].
- **Eligibility as to who is to participate in the negotiations.** Conflicts may arise around who is eligible to participate in consultations specifically, who are considered "members" of the people or

28 Development of Inclusive Business Models (IBM) for leveraging investments and development in Acholi sub-region. https://www.tro-caire.org/sites/default/files/resources/policy/180223_final_report_in-clusive_business_models_ibm.pdf.
29 UGANDA AND EXTRACTIVES An overview of Uganda's new mining law March 20, 2022 - by ACME teamcme-ug.org/2022/03/20/an-over-view-of-Uganda's-new-mining-law
30 (Keith, McAuslan et al. 2008).
31 World Bank Operational Policy on Involuntary Resettlement, OP 4.12, 2013.
32 Compulsory Acquisition of Land and Compensation in Infrastruc-ture Projects by Jonathan Mills Lindsay, Senior Counsel, Environmen-tal and International Law, Legal Vice-Presidency, World Bank. (Ibid).
33 Operational Guidance on Free, Prior and Informed Consent June 2019 Requirements, best practices, and practical considerations for companies to fulfil their obligation to secure the Free, Prior and In-formed Consent (FPIC) of Indigenous Peoples and Local Communities" https://accountability-framework.org/wp-content/uploads/2020/03/OG_FPIC-Mar2020.pdf

community. For example, an indigenous people may assert that only members of their people or community residing in the territory can participate in decisions affecting that territory, while non-indigenous individuals residing in their territory and members of the indigenous peoples living outside of the territory cannot participate[34].

- **Challenges in compensation.** Land held by groups or under some sort of collective arrangement can pose special challenges to the application of the principles of compensation, both in customary and some non-customary tenure contexts.
- **Discrimination of women due to cultural norms in regards to land rights.** Under patrilineal customary system of land tenure as is in northern Uganda, men have ownership of most customary land. FPIC is an international Human right principle that is non-discriminative in nature. Women are entitled to give their consent in matters concerning them Article 17 of the UNDRIP Law 3760 of 2007.

Steps missed by Tororo Cement Limited in their land acquisition process.

- The company failed to involve all the relevant stakeholders in the community but involved only a section of community members hence creating a "clique of beneficiaries" that raised a lot of concerns and suspicions from the rest of the community. Therefore, there is need to have all the relevant stakeholders in the community involved in the negotiations for the clinker plant land[35].
- The company also failed to give proper description and explanation of the project to the community as stated above, the legal implications of the acquisition of the land, amount of land needed, the nature of the project, the possible effect of the project on the environment and society, what the community will benefit from the project and the fate of the community members in the project affected area where all not exhaustively explained to the community.
- The company also failed to properly map out and identify the key parties to be involved in the negotiation process. It was noted that there were outsiders on the lists of land owners who were actually not from Tapac with others from as far as Amudat also included on the list.
- The company has also for the last 20 years failed to sieve or investigate information being brought to them by their middle men (Community liaison team), it can be identified that the one of the major issues between Tororo Cement Limited ltd and the community has been misinformation by their middle men. The middle men distort information from the community to the company and from the company to the community. For instance; on the lists of land owners, the so called Tororo Cement Limited ltd liasson team comprised of Mr. David Omido and Mr. Achia John, had their own list of land owners that was disputed as not including the true land owners of the project affected area.
- The company has also failed to resolve the long-standing issues between itself and the community such as non-payment of surface rights compensation, low wages for loaders and off loaders and failure to agree on the Byelaw on loading and offloading fees, which have loomed over and eclipsed the discussion on additional land for the clinker plant, with the community saying they will only grant the company more land after the company paying the surface rights compensation for the previous licenses.

Recommendations.

- The Government ought to come up with proper guidelines or regulations that stipulate the procedure of carrying out effective FPIC Procedures in Land Transactions these could be regulations to the **Land Act cap 227** or specifically for the Mining Companies regulations could be drafted arising from the Mining Act specifically **Sections 228 and 229**, setting out the process of Free Prior Informed consent in that context highlighting procedure, legal requirements, officers responsible and dispute resolution mechanisms. This would guide companies like Tororo Cement Limited on how best to engage communities.
- FPIC should be recognized legally in national legislation and FPIC should be legally enforceable through the Courts of law. **Article 26** of the constitution majorly focuses on Compulsory land acquisition and falls short of clearly defining and emphasising the requirement of consent in non-government related developments, for example; Company – Community the Constitution needs to be amended to guarantee FPIC in all forms of land transactions.
- The Procedure of acquisition of a mining lease in the Mining and Minerals regulations, should be amended to include procedure for land acquisition for both Upstream (Extraction and quarrying) and Downstream (Mineral processing plants) so as to clarify on which procedure mining companies that want to establish mineral processing factories running along with extraction activities should adapt. for example, the clinker plant land title vis a vis the two Mining leases of Tororo Cement Limited is the process different, is the expiry date the same?
- The Model Community Development Agreement envisaged in **Section 228 (2) of the Mining and**

34 Ibid 17
35 Interview with Hon.Lokoru Albert, Member of Parliament, Tepeth County.

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Minerals Act, 2022 must include a requirement of Free prior informed consent of land owners for every new development's to be included in the mining projects for example; In case of placing waste disposal facilities, settlement structures for workers, storage facilities and factories etc.

- There is need for utmost transparency in the community engagement process, the community must be in the know of the stage and what they should expect from the respective stage.
- The Government of Uganda has to ratify and domesticate the UNDRIP through an Act of Parliament so as to give it legal enforceability within the laws of Uganda and entrench the right to FPIC for indigenous communities like the Tepeth in these circumstances. The government also has to become a signatory to and ratify The International Labour Organisation-Indigenous and Tribal Peoples Convention, 1989, (No.169) so as to broaden the Countries International legislative framework on FPIC.
- The Community engagement between company and community must be more inclusive all community stakeholders; women, elders, youth, civil society, local leaders and government officials, suffice to note that youth should take forefront due to rising alcoholism in elders and the fact that the youth stand to lose the most as the future generation where the land is sold off without their consent. In other words, the engagement must be bold and capture every affected person therein.
- The Role of Local Governments capacity must be enhanced to effectively execute their roles Under S.27 of the Mining and Minerals Act, 2022 of facilitating dialogue between the mining company and the community this is through; trainings on procedure in FPIC and creating a budget within the Local governments for facilitating such dialogues at the local communities and villages so as to avoid bribery by the investors.
- Government must upscale efforts to assist the customary land owners who are majorly in the Karamoja and Northern Uganda regions to register CLA's and acquire (CCO's) so as to simplify the identification of the land owners in the FPIC process.
- There is need for in-depth sensitisation and trainings of grass roots communities and their leaders on FPIC so as to enable them demand for FPIC from mining companies and whistle blow against companies overlooking this right in their respective communities.

Conclusion

There is need for a more comprehensive legislative and Implementation system on FPIC in Uganda, the newly amended Mining and Minerals Act 2022 has recently embraced the principle of FPIC which requires consent from Project Affected Person (PAP's) before possessing their land or carrying out any activities in their communities, the Land Acquisition Bill requires the developer to give notice before entering the land of the local communities. With these new reforms we are hoping to see sustainable development in our communities due to the cooperation between the Government, Investors and Local communities from the commencement of the project. Some amendments still need to be made to the respective laws so as to sufficiently accommodate FPIC and improve the implementation structures of the same.

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Resource Rights Africa is a Research and Development organisation formed in 2016 to advocate for the protection of people's rights in Uganda with smart projects in the right places. Oppose, discrimination, inequality, abuse of power and the unsustainable use of our natural resources including Oil and Gas, Minerals, Land, Forests, Water bodies as well as Flora and Fauna. The organisation is incorporated as a company limited by guarantee and without hang and share capital. Website:

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