

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

Dear Mr. Joseph Kibugu & Mr. Gregory Tzeutschler 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

First and most importantly, 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 out 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. Nevertheless, the entire 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 Conference. 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 are appreciative of the numerous social responsibility endeavors that that Company has undertaken or promises to undertake with in the communities they operate, these do not negate its responsibility to respect constitutionally protected fundamental human rights.

III. A Few Clarification

Before we raise some key issues we deem critical for the better appreciation of our work around corporate accountability and the importance of the baseline study, we think it crucial 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 find it crucial to briefly address the SEYANI response suggesting the unprofessional working 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 attempt 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. After the initial discussion, a letter was sent to the head office requesting for a meeting and also for the validation workshop and no response was received.
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 neither have they also visited the quarrying site. This however, does not signify 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.
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 research on, 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 cough out mechanisms to supplement in the sector it doesn't shield them from 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 Annex A*) 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 indication of social

responsibility engagements, there were evidence of frustrations within the community members about the lack of corporate accountability. 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 SEYANI on the matters. (*See Annexes B, C & D*)

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 the complicit 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 Ugandan—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 prerogative. 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 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 further engagements we can do with them to address some of the community complaints and issues to enhance their appreciation of corporate accountability. I reiterate the State of Corporate Accountability in Uganda report is a baseline study and more in-depth research is planned on different specific issues as noted in the baseline. We shall continue to collaborate with different corporations to ensure that respect for human rights is a core element in the implementation of their activities.

Thank you,

Yours Truly

Arnold Kwesiga
Project Coordinator
Uganda Consortium on Corporate Accountability