



# SIRD Bulletin

Supporting Inclusive Resource Development in East Africa

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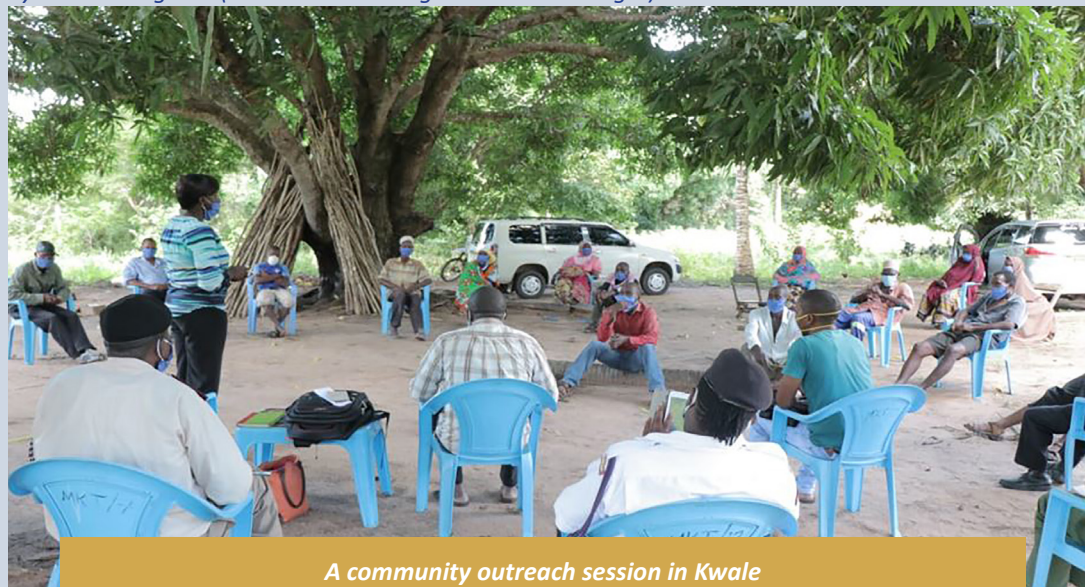
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## Foreword

*By Alnoor Meghani (SIRD Canadian Regional Field Manager)*



*A community outreach session in Kwale*

We are excited to bring to you the 6th edition of the SIRD in East Africa Bulletin. In this edition we cover SIRD project activities across East Africa for the past three months even as the prevalence of the Corona virus pandemic abates. Among the key areas covered by this edition are activities around legal and policy reform in the extractives sector to reflect principles of transparency, accountability and inclusion.

The edition also explores the impact and potential impact of the East Africa Oil Pipeline to the people and environment. The 1445 KM Pipeline is set to transport Uganda's crude oil from Kabaale-Hoima in Uganda to the Chongoleani Peninsular near the Tanga Port in Tanzania. The key questions currently being asked is whether there will be adequate compensation for project affected persons and whether the environment will be adequately protected.

Keeping in line with some of our core activities, this edition will also explore the various training and capacity building activities as well as community engagement initiatives undertaken over the course of the past few months. This includes mobile clinics and radio talk shows. Readers will also get a chance to read an exclusive feature article on recently set standards by the Tanzania Bureau of Standards to guide operations of artisanal and small-scale mining activities.

This edition will also explore the Africa Mining Vision and efforts put in place to ensure the Vision is domesticated and implemented.

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**ULS PM Gabriel Acaye during  
one of the talk shows**



**Radio talk show at Storm FM,  
a local Radio Station in Geita,  
Tanzania**



**A public Legal Education  
session in progress**

With Uganda recently joining EITI, this edition also explores efforts by SIRD to ensure the country joins the Transparency Initiative.

We thank all our partners for their contribution to the success of the project with special appreciation reserved for Global Affairs Canada for its immense financial contribution. Special appreciation also goes to project implementing partners in East Africa including the East Africa Law Society, Law Society of Kenya, Tanganyika Law Society and Uganda Law Society as well as the Canadian Bar Association and Canadian technical experts. We also appreciate all contributors to this edition.

# The East African Crude Oil Pipeline: Impact to Project Affected Persons

By David Sigano (SIRD Project Manager – EALS)

When the Republic of Uganda discovered close to 2.2 billion barrels of recoverable oil in the Albertine region to the West of the Country, there was cause for celebration given the expected revenue windfall. Since then there has been a flurry of activities to actualize this dream. The governments of the Republic of Tanzania and the Republic of Uganda have since signed an Inter-Governmental Agreement (IGA) on the 26th May of 2017 as well as the Host Government Agreement on the 10th of September 2020 together with Total. Other project activities already undertaken include project survey, environmental impact assessment (EIA), stakeholder engagements among others.

While the project nears actualization, there are those who still harbor reservations regarding the potential impact of the pipeline to the project affected persons and the environment. Environmental and Social Impact assessments have already revealed that the project threatens the right to livelihood of thousands of people with many set to be displaced. Most of these people are small scale farmers who are mainly women whose land is set to be acquired. It is estimated that the pipeline will pass through over 10,000 farmlands. This means thousands of persons are potentially going to be economically displaced threatening their right to survive.

The project also threatens the environment and the fragile ecosystem as it passes through several forest reserves like Wambabya and Taala forest reserve in Uganda. It is also estimated that the project on its way to Tanga will cross through over 200 rivers and streams. In Uganda



An Oil Pipeline (Courtesy EACOP Website)

alone, the rivers in the path of the pipeline include Wambabya tributary, river Kafu and 2 tributaries, river Katonga, Kibale and Jemakunya. The Tanzanian section being longer is likely to affect hundreds of such forests, game parks and rivers which are a key source of water for the livelihood of these people.

The pipeline also passes a mere 33 kilometers from Lake Vitoria, the largest source of fresh water in the region and source of the iconic river Nile which serves millions of people through East and North Africa. This close proximity to the Lake creates a major danger in case of leaks which may be caused by tremors and earth quakes, amongst other possible events.

These findings are according to two research reports released in September 2020. The reports, "Empty Promises down the Line?" researched by Oxfam and "New Oil, Same Business?" by the International Federation for Human Rights (FIDH) and the Foundation for Human Rights Initiative (FHRI), question the way oil companies are executing business in the Albertine Rift region.

The two reports highlight the major risks associated with this project and anticipate that at least 12,000 families in Tanzania and Uganda will or have already lost land. This is in addition to the endangerment of sensitive and vital ecosystems.

Livingstone Sewanyana, the head of FHRI, while launching the reports at the foundation's headquarters in Kampala requested government and oil companies to consider voices of communities and findings when implementing oil development in the region.

"There is need to assist the people with land where the pipelines are going to be constructed. Their voices must be respected," said Sewanyana.

FIDH Vice President Sheila Muwanga said the reports offer community-driven recommendations of urging oil companies and governments who are on the verge of making final investment decisions for pipeline construction that starts in March 2021, to undertake



measures that avoids human and environmental disasters.

“It is important to hear voices of communities on this sensitive topic. We have got testimonies of community members who have cited harassment,” she said.

According to Mr. Harrison Asaba, a resident in the Buliisa District, the companies undertaking the oil extraction have not compensated several homesteads that were in the range of 300 meters from wells but instead have forced them to vacate their lands.

It is a set global standard that before mining operations can commence, the government and mining companies must ensure that project affected persons are properly and adequately compensated. It is also a norm that all projects must safeguard and protect the environment especially where the projects are close to major sources of livelihood for the people.

The Constitutions of Uganda and Tanzania as well as the Treaty for the Establishment of the East African Community also guarantee these fundamental rights. Article 5 of the Treaty provides for the promotion of sustainable utilisation of the natural resources of the Partner States and the taking

of measures that would effectively protect the natural environment of the Partner States. A similar provision is found under Article 111 of the Treaty which obliges Partner States to adhere to environmental justice by acknowledging that development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a prerequisite for sustainable development. Indeed Article 101 (2) (d) requires them to protect environment when they supply affordable energy to their people.

# SIRD Led Community Messaging and Community Outreach Efforts Intensify Despite Health Crisis

By *Gabrie Acaye, Suzy Kimutai and Nelson Frank*



*ULS PM Gabriel Acaye during one of the talk shows*

The Corona Virus pandemic has disrupted life as we know it. A new normal has been created and people have learnt to adapt and operate amidst the pandemic. After initial slow-down in field activities, the SIRD Project across the region has resumed certain activities that are considered safe in the current circumstances. One of the major activities that has withstood the test of the pandemic was the delivery of gender sensitive public legal education activities, as well as awareness programming that continued to be delivered nationally and at selected districts.

Each of the three Law Societies undertook these activities using local radio stations and through local community-based organisations. These activities are as per each particular Law Society below.

## Uganda Law Society

ULS continued raising awareness on the rights of women and vulnerable groups and engaged them in various ways to make sure that they know their rights and what should be done in case they face challenges.

In fulfilling this duty, ULS held several radio talk shows which were attended by Head of Programs at Lake Albert Children Women

Advocacy and Development Organization (LACWADO) Mr. Kyamanywa Hillary, Community Development Officer (CDO) Biiso Sub County Buliisa District Mr. Ndozereho Nicholas and Community Women Champion Mrs. Namutebi Mbihya.

They sensitized and educated local women and girls and general populace on Gender Based Violence (GBV) and human rights abuses/ violations during Covid-19. They further created awareness amongst community members on Covid-19 preventive measures such as strict adherence of Ministry of Health Guidelines. The duty bearers urged the citizens to advance their economic livelihoods by engaging in income generating activities during lock down such as agriculture and animal rearing at home to create economically stable families. They also educated the women on the existing referral pathway mechanisms for the local woman to be in position to report cases of GBV. Local community members particularly women were given chance to ask questions/ engage the duty bearers on what was presented. They asked questions generally about the referral pathway mechanisms and these were adequately responded to by the duty bearers.

In furtherance of awareness rising on the rights of women and vulnerable group, ULS produced radio messages and announcements which had a very informative information on raising awareness of different rights and obligations that the Community has in relation to the oil and gas sector in Uganda. The Audio messages which were produced had gender sensitive messages aimed at sensitizing the public on their rights and they were further translated into Alur, Lugungu and Runyoro. The audio messages captured many issues including:

**Message 1:** *Should you or your family require assistance to visit a lawyer for advice or counsel, please note that the Uganda Law Society's -SIRD Project has a fund available for women to use to Access these legal services. Please Contact, Uganda Law Society (ULS) on 0800 100150 or 0800 100151, for more information on how to access this fund.*

**Message 2:** *Have you or your family members faced any gender-based violence? If so, please report the incident immediately to the local police station at Buliisa. If you need further information or legal assistance, the Uganda Law Society's -SIRD Project has a fund available for women to use to access these legal services.*

*Please Contact Buliisa Initiative for Rural*



*Radio talk show hosted by Biiso FM*

*Development Organisation (BIRUDO) on 0772 994527 or Lake Albert Children Women Advocacy and Development Organisation (LACWADO) on 0774 423617, for more Information on how to access this fund.*

**Message 3:** *Do you know that a husband is required by law to seek and receive the consent of his wife before proceeding to transact with family property? Women are equal partners in marriage and are entitled to be consulted on any matters concerning them and their family's wellbeing. As a woman, have you faced a situation where this has not been the case and you need legal assistance? The Uganda Law Society's -SIRD Project has a fund available for women to use to access these legal services.*

*Please contact, Buliisa Initiative for Rural Development Organisation (BIRUDO) on 0772 994527 or Lake Albert Children Women Advocacy and Development Organisation (LACWADO) on 0774 423617, for more information on how to access this fund.*

**Message 4:** *Did you know that under the Occupational Health and Safety Act, an employer is supposed to provide measures for the protection of the employees? The working conditions for miners pose a huge risk to the miners. There are also safety officers who can be reached. Please contact Buliisa Initiative for Rural Development Organisation (BIRUDO) on 0772 994527 or Lake Albert Children Women Advocacy and Development Organisation (LACWADO) on 0774 423617 if you are facing unsafe work conditions.*

**Message 5:** *Do you know that pollution of rivers and other water sources can cause disease that can eventually lead to death? Report any form of environmental pollution as soon as you see it happening to Buliisa Initiative for Rural Development Organisation (BIRUDO) on 0772 994527 or Lake Albert Children Women Advocacy and Development Organisation (LACWADO) on 0774 423617.*

**Message 6:** *Did you know that no one can take your property without your consent? And that appropriate compensation has to be paid if the land has been taken? If you have faced this situation in the context of extractive industry, please contact: Buliisa Initiative for Rural Development Organisation (BIRUDO) on 0772 994527 or Lake Albert Children Women Advocacy and Development Organisation (LACWADO) on 0774 423617*

After the production of the audio messages, these messages were aired out on Biiso FM for a period of one month and as a result of the said audio messages, a very big population especially people in Albertine graben were reached and since then ULS has continued to receive calls from people inquiring about a number of issues some which among include access to the women fund, legal assistance and advise.

During the live radio sessions, local community members particularly women were



given chance to ask questions/ engage the duty bearers on what was presented and these were given 10 minutes. They asked questions generally about the referral pathway mechanisms and these were adequately responded to by the duty bearers.

Some of the comments/questions from the callers included;

1. A female caller from Siba Village Kapapi thanked the duty bearers for standing up for women's rights and educating local populace on Covid-19 prevention measures.
2. Another female caller Kikali Biiso Boda Stage cautioned other women to respect families of their fellow women and avoid rumor mongering.
3. A caller from Nalwera Village cautioned parents to respect children rights and guard their girls well during Covid-19 lock down period.
4. A caller from Butiaba Sub County cautioned both partners to respect one another and to seek mediation from parents in case they have failed to solve their differences.

## Law Society of Kenya



*A community outreach session in Kwale*

Due to the Covid-19 pandemic, the Government of Kenya banned the holding of Public Meetings with more than 15 participants, the SIRD Project identified innovative ways to continue to reach communities in project areas through women funded advocacy activities, legal aid and to sensitize them on important topics touching on their wellbeing, and access to justice to enable them to continue to advance their rights.

During women advocacy activities funded by the SIRD Project, the organizers invited public officers from various government agencies, lawyers and extractives sector companies to speak to community members on topics of public interest such as on their rights and obligations on issues related to land, succession, prevention and reporting mechanisms in cases of gender-based violence, children

rights, sexual and reproductive rights etc. By inviting government officials to activities, the project has given community members the opportunity to interact freely with public officers, who were previously feared by community and seen as inaccessible.

During this period, the project held community support outreach activities in ten villages in Kwale County, Kenya during which time the project representatives collaborated with Police-Gender Office, Ministry of Health officers and Ministry of Interior officers to raise community awareness on matters of Covid-19, gender-based violence and land rights. Public officials were also invited to the SIRD hosted Radio Program held in May 2020, where they sensitized a broader audience of community members.

The SIRD Project also held Legal Aid outreach activities over the period in Nguluku Village in Kwale County during which time LSK Lawyers in attendance offered legal advice and sensitized community on their rights related to land and operations of extractive industries.

During the outreach on 30th May 2020, the project representatives met community members who informed them that they had been left behind during a selective relocation and compensation exercise that had taken place in 2014. Community informed SIRD Pro-bono lawyer that Base Titanium Limited initially mapped out a buffer zone and that all persons who resided in the mapped area were supposed to be evacuated and compensated. However, only community living on the upper slope of the village were compensated and relocated while those living in the lower part of the slope (next to the dam) were left out despite being equally adversely affected by the mining company's operations. SIRD pro-bono lawyer found that there had been serious negligence on the part of the company in its reluctance to take responsibility despite its mining operations adversely affected the community and the environment.



The Advocate and the community agreed that appropriate legal action would be undertaken to ensure that the affected community members were relocated from the area and were properly compensated. Resulting from the outreach and the measures proposed to be taken, the Base Titanium Ltd Representatives were compelled to visit the area and have begun negotiations with community on resettlement and compensation. This exercise is currently ongoing and SIRD representatives in Kwale County are keeping a close eye on the process to ensure that the proceedings of valuation, compensation and relocation are

properly recorded and carried out to ensure that the community get their fair, legal and proper rights during the exercise.

The SIRD project continued to broadcast scheduled radio announcements on a half hourly basis on Radio Ranet FM in Kwale County for a period of 30 days from the 21st of April to the 21st of May 2020. The purpose of the announcements was to inform and educate community members on a variety of issues that affect them and to inform them that the project had set aside funds to assist women to receive legal assistance whenever they required it.

A total of eight hundred and forty (840) Messages (140 for each of the 6 selected messages) were broadcast in Swahili in order to reach the broadest audience with the following messages:

**Message 1:** *Should you or your family require assistance to visit a lawyer for advice or counsel, please note that the Law Society of Kenya's - SIRD Project has a fund available for Women to use to access these legal services. Please contact, Kwale Youth & Governance Consortium (KYGC) on 0701315691 for more information on how to access this fund. This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

**Message 2:** *Did you know that a husband is required by law to seek and receive the consent of his wife before proceeding to transact with family property? Women are equal partners in marriage and are entitled to be consulted on any matters concerning them and their family's wellbeing. As a woman, have you faced a situation where this has not been the case and you need legal assistance? The Law Society of Kenya's - SIRD Project has a fund available for women to use to access these legal services. Please contact, Kwale Youth & Governance Consortium (KYGC) on 0701315691, for more information on how to access this fund. This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

**Message 3:** *Have you or your family members faced any incidences of gender-based violence. If so, please report the incident immediately to the gender desk at local police station at 0727583334. If you need further information or legal assistance, the Law Society of Kenya's*



*Radio Announcements - Radio Ranet Kwale County*

*-SIRD Project has a fund available for women to use to access these legal services. Please contact, Kwale Youth & Governance Consortium (KYGC) on 0701315691 for more information on how to access this fund. This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

**Message 4:** *Did you know that under the Occupational Health and Safety Act, an employer is mandated to provide measures for the protection of employees? The working conditions of miners pose a huge risk to their health and safety. There are safety officers who can be reached when safety regulations are breached. Please contact, Public Health Officer on 07064195450 if you are facing unsafe work conditions.*

*This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

**Message 5:** *Did you know that the pollution of rivers and other water sources can cause serious diseases that could eventually lead to death? Report any form of environmental pollution as soon as you see it happening to The National Environmental Management Authority (NEMA) office on 0734423574.*

*This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

**Message 6:** *Did you know that no one can take your property without your consent? And that appropriate compensation should be paid to you should your land be compulsorily acquired for public or private development projects? If you have faced this situation in the context of extractive industry, please contact Kwale Youth &*



*Radio talk show in Kwale*



Governance Consortium (KYGC) on 0701315691 for assistance.

*This message has been brought to you by the Law Society of Kenya in collaboration with Supporting Inclusive Resource Development Project which is supported by Global Affairs Canada.*

## Tanganyika Law Society



Radio talk show at Storm FM, a local Radio Station in Geita, Tanzania

During this period, SIRD TLS organized one radio talk show at Storm FM, a local Radio Station in Geita, Tanzania. The objectives of the show included educating community members on COVID- 19 and making available legal aid services offered with the support of the SIRD project.

The radio talk show, held on 23rd May 2020 at Storm FM had three panelists. During show, listeners were given a general overview of COVID-19 and its preventive measures. Indeed, one of the panelists was a health officer. The Officer explained how the disease can spread from one person to another and demonstrated how a person can take precautions. Some of the precautions he elaborated on included the use of hand sanitizers, the use of running water for those who may not be able to afford to buy hand sanitizers, wearing of masks whenever a person goes to congested areas avoidance of handshaking or any other unnecessary form of physical contact. The health officer also advised listeners on possible/ likely measures to keep body immunity active by among others, regular physical exercises; the use of lemon mixed with ginger among others.

The second speaker elaborated on the relationship between COVID-19 and the protection of women and young girls who are staying at home during the outbreak. He noted their vulnerability and the likely GBV scenarios that might occur. He also noted the importance of reporting GBV incidences immediately they occur for assistance.

Listeners were also taken through pro bono legal aid services offered by the SIRD project through TLS and NELICO. Community members with legal issues (problems) were advised to visit NELICO for assistance.

Listeners were then given a chance to contribute and more than 15 questions were raised. They appreciated the efforts of the SIRD project in the provision of community awareness on the COVID-19 and the availing of legal aid services.

## Messaging

As part of the general messaging initiative, five different messages with contact information were developed and aired at the Storm FM in Geita. The contents of the five designed messages were on legal aid, health and safety, Women's fund, compensation and gender-based violence. A total of seven hundred and fifty (750) messages were aired for one month. (25 per day for one month). The contacts information given was meant to assist community members in Geita in channelling their grievances to responsible government departments/ institutions. All messages were aired in Swahili Language.

# TBS Sets Standards for Small Scale Mining Sector

By Paul Jacobs – Africa Mining Markets

**Tanzania Bureau of Standards (TBS) has developed more than 100 standards which will be used to safeguard the mining sector. These standards cover the exploration, extraction and processing stages of ASM mining activities.**

Speaking on the sidelines of the ongoing 3rd Minerals and Technology exhibition in Geita, Tanzania, TBS spokesperson Roida Andusamile said: "As the expansion of the mining sector has contributed to higher economic growth and increased exports and capital inflows in Tanzania, TBS has created standards that will ensure safeness in the sector," she said.

According Ms Andusamile, the standards will cut across both large-scale and small-scale miners. The reason behind the formulation of the standards was to make sure that mining activities in the country are conducted in a safe environment.

"Exclusively, TBS has the role to undertake measures for quality control of products of all description and to promote standardisation in industry and commerce countrywide. That's why we developed these standards to control quality in the mining and minerals sector," the TBS spokesperson said.

TBS Standards Officer in Mining and Minerals, Mr. Filbeta Magidanga said they are proud to say that there are more than 100 standards that have already been gazetted for the mining and minerals sector.

“Standards such as guidelines on the establishment, use and management of refugee chambers and classification of mine accidents ensure safety of personnel during mining activities,” she said.

The standards have been developed by TBS Divisional Standards Committee which has the task to build up standards in terminologies, sampling methods, test methods, code of practices, classifications and specifications for goods and services involved in minerals exploration, extraction and processing. Ms Magidanga pointed out that the committee oversees the activities of nine (9) Technical Committees formulating standards in mining and minerals sector.

She named areas that the standards will control including exploration, mine planning, operations and services, solid mineral fuels and related products, mining and earth moving equipment.

Others are advanced automated mining systems, ores and concentrates, jewellery, lapidary, gemstones and precious metals, rare earth elements



*(ASM Miners, Courtesy African Mining Markets)*

and minerals processing and equipment.

Some of the standards under development include – mine closure and reclamation management and grading polished and cut Tanzanite, hence making a call to all interested stakeholders to air out their comments in the formulation of these standards.

TBS is the national standards body for Tanzania established by the government as part of the efforts to strengthen the supportive infrastructure for industry and commerce sectors across the economy within the country.

The Bureau was established by Parliamentary Act No. 3 of 1975 as the National Standards

Institute and became operational on 16th April 1976. Subsequently, it was renamed Tanzania Bureau of Standards under Act No. 1 of 1977.

On 20th March 2009, the Standards Act No. 3 of 1975 was repealed and replaced by the Standards Act No. 2 of 2009.

The Bureau was established as part of the efforts by the government to strengthen the supporting institutional infrastructure for the industry and commerce sectors of the economy.

*(This article was first published by Paul Jacobs in the African Mining Markets).*

# The Promise of the Africa Mining Vision: SIRD Participates in Meeting to Validate Assessment of Mining Laws in Kenya with a View to Implementing the Vision

*By Suzy Kimutai, LSK SIRD Program Manager*

The Africa Mining Vision (AMV) was formally established in 2009 by the African Union (AU) to promote equitable, broad-based development through the prudent utilization of the continent's natural wealth. The AMV looks broadly and deeply at how development can be achieved through the creation of local value, driven by the strategic use of mineral resources in Africa. It charts a path for generating and realizing various types of linkages arising from the mineral sector through industrial development and technical upgrading. The AMV recognizes the contribution of artisanal and small-scale mining (ASM) to local economic development, and promotes women's rights and gender justice. It establishes a progressive fiscal regime that can curb the hemorrhaging of the African continent's resources through tax evasion and avoidance and illicit financial flows from the mineral sector. It upholds the principle of Free, Prior and Informed Consent (FPIC) 1 for mining-affected communities and addresses the social and environmental impacts of mining.



The AMV is designed to be flexible and dynamic; implemented through derivative policy instruments (Country Mining Visions, African Mineral Governance Framework and Compact with the Private Sector) while maintaining an integrated, strategic vision for national development.

However, over ten years since its inception, questions remain over the slow pace of implementation of the AMV, and whether it is meeting the purposes for which it was created. Although more than 24 out of the 54 AU member states are in various stages of nationally implementing the AMV, the progress has been slow and therefore out of step with the feverish expectations surrounding its creation. Only one country, Lesotho, has fully adopted the AMV through the development of a Country Mining Vision. Today, there is a general lack of awareness of the AMV, particularly among key stakeholders in Africa's mineral sector. Civil society, which could act as a champion for the AMV, has not been fully engaged in grassroots mobilization and policy advocacy which could influence its uptake and impact. Above all, there is insufficient independent analysis of the shortcomings in the AMV that should be addressed. There are also important lessons to be learned from the ongoing country experiences of implementing the framework.

It is for this reason that SIRD LSK on the 4th of June 2020 joined other stakeholders in a virtual validation meeting of a report commissioned by Transparency International on the assessment of mining laws in Kenya with an eye on the implementation of the African Mining Vision.

The meeting was attended by LSK SIRD Program Manager Ms. Suzy Kimutai along with other stakeholders including Mr. Moses Njeru (Chamber of Mines) Prof. Arthur Ndegwa (University of Nairobi), Mr. Philip Mutio (TI), Benard Ochieng (Kenya Land Alliance) Angela Mutsotso (KCSPOG) and Gladys Mongare (KCCB).

The consultant involved in the preparation of the report, Mr. David Achero took participants through the report and informed them that the report was based on a SWOT analysis he undertook to determine how far Kenya had reached in adopting and implementing the recommendations presented in the African Mining Vision (AMV) and the Extractive Industries Transparency Initiative (EITI)

Weaknesses in compliance with AMV and EITI identified by the report included: -

- The African Mining Vision is a policy document and not a law. It is a framework developed to guide individual countries to formulate their own visions to adopt best practices in the governance of the mining sector. Implementation of the recommendations of the vision therefore remains at the discretion of individual countries.
- In July 2015 the Kenyan Government made an announcement that it would join the EITI. However, since the announcement was made, no further steps have been taken in joining the initiative. Kenya is therefore not a participating member of the EITI and cannot be bound by its principles.

Kenya has adopted and incorporated some of the provisions of the EITI into its own legal regime. However, there is still lack of openness and transparency particularly with regard to areas of access to information, secrecy of contracts, licensing, production and revenue sharing.

Kenya is yet to formulate its Country Mining Vision. Prof. Ndegwa informed participants that drafting of the Country's Mining Vision and an action plan for the implementation of the AMV had commenced (with funding from UNDP in collaboration with the State Department of Mining) but that this had stalled due to funds drying out before the work was completed.

The following feedback was received from stakeholders at the validation meeting: -

- Participants found that there were some glaring errors in the report with particular regard to CDA regulations, licensing procedures and local content and agreed that the consultant would review the report and present it for a second validation before it could be made public.
- Inclusion of the EITI unnecessarily convoluted the report. The consultant should focus on the implementation of the AMV and leave EITI out.

It was agreed that Transparency International and LSK SIRD would invite stakeholders to a second validation meeting once all concerns raised during the meeting were addressed by the consultant.

# SIRD Ensures Production and Dissemination of Public Legal Education Materials despite the Persistence of the Corona Virus Pandemic

By Suzy Kimutai, Nelson Frank and Gabriel Acaye



*A public Legal Education session in progress*

**Provision of Public Legal Information is one of the Cornerstones of the SIRD project. The project has so far created a robust public legal education program and has engaged both policy and pro bono lawyers it trained to offer direct services to communities within which the project operates.**

Public legal education is mostly undertaken by the Law Society of Kenya, Uganda Law Society and Tanganyika Law Society in collaboration with local community based organisations in the project areas of Kwale County in Kenya, Geita in Tanzania and Buliisa in Uganda. In Kenya, under LSK SIRD, over the past quarter, the project developed and distributed the following public legal documents:

## 1. Flyers and Stickers

The project printed a total of 3600 flyers and stickers with Public Legal information messages (in both English and Kiswahili languages) for dissemination in Kwale County. The flyers and stickers contain important information in the following areas:

- Importance of community engagement for social license - 100 flyers in English; 100 stickers (English); 200 flyers (Kiswahili) and 200 flyers (Kiswahili)
- Duty to Care 100 flyers in English; 100 stickers (English); 200 flyers (Kiswahili) and 200 flyers (Kiswahili) Land Rights 100 flyers in English; 100 stickers (English); 200 flyers (Kiswahili) and 200 flyers (Kiswahili)
- Health & Safety Mining 100 flyers in English; 100 stickers (English); 200 flyers (Kiswahili) and 200 flyers (Kiswahili)
- Gender Mainstreaming 100 flyers in English; 100 stickers (English); 200 flyers (Kiswahili) and 200 flyers (Kiswahili)

The stickers and flyers were disseminated during the SIRD community outreach activities, during radio programs and at outreach legal aid clinics held in April and May 2020 in Kwale.

## 2. Legal Aid Case Intake Forms (booklets) and Referral Pathway case intake forms (booklets)

The project printed booklets to be used by pro-bono advocates and referral pathway members to record all cases brought to them by community members. These booklets will enable the project have proper records and better keep track of cases/complaints brought by community members and how to better address any follow up actions that need to be taken to resolve the matters.

## 3. Translation of Take-Away Materials for Community based training – Women, referral pathway and paralegals

Kiswahili is the most widely spoken and understood language in Kwale County. During the trainings held for Duty bearers in February 2020, many participants requested that training materials be translated to Kiswahili to enable them better understand the content.



In order to ensure that future community-based training is carried out in the most effective way, the SIRD Project translated PLE Take-away materials to Kiswahili, these materials contain vital information, infographics and simplified laws which inform community members of their rights and which they can continually refer to whenever they encounter situations with or are dealing with mining companies.

Translated materials included the following: -

- i. Community Development Agreement Summary
- ii. Community Development Agreement infographic
- iii. FPIC & International Law
- iv. Gender Inclusivity
- v. How to register or transfer private land
- vi. Legal Framework - Snapshot of Local Content Bill, 2018
- vii. Legal Framework - Summary of the Energy Act 2019
- viii. Legal Framework - Summary of the Mining Act 2016 & Petroleum Act 2019
- ix. Snapshot on Laws & Institutions
- x. Legal Steps to Register Community Land
- xi. Legal Steps to Register Community Land
- xii. Summary of Compulsory Acquisition Process
- xiii. Summary of Mining on Community Lands
- xiv. What leaders & their Communities can do - useful hints
- xv. What local community champions, women, and women leaders do - Useful hints

Opportunities referral pathway personnel can explore to support local communities, leveraging on law and their expertise.

In Tanzania, the Tanganyika Law Society designed, printed and distributed posters and fliers with contact information. These would make it easier for potential victims to reach SIRD for support. A total of one thousand two hundred (1,200) posters and fliers were printed. The contents of the four designs were on health and safety, gender mainstreaming and inclusivity, mining closure obligations and community participation.

All posters and flyers were printed in the Swahili Language. This is because this is the lingua franca of the target group.

In Uganda, similar public legal education campaigns are also ongoing.

## Big Milestone to Transparency and Accountability in the Extractives Sector in Uganda as Country joins EITI

*By Gabriel Acaye, SIRD ULS PM*

**On Wednesday 12th August 2020, Uganda was officially welcomed into the Extractive Industry Transparency Initiative (EITI) group of countries by Helen Clark, the EITI Board Chair and former Prime Minister of New Zealand. This makes Uganda the 54th country to become an EITI member, and the 26th in Africa, joining other natural resource countries including Tanzania, Zambia, Ghana, and Afghanistan.**

The EITI is the global standard for the good governance of oil, gas and mineral resources. The EITI standard requires the disclosure of information along the extractive industry value chain, from the point of extraction, to contracts and licenses, production, revenue collection and allocation, social and economic spending, until the eventual point of public benefit. This information is

then widely disseminated to inform public debate and generate recommendations which are then followed up for the benefit, improvement and development of the national extractive sector.

Uganda's journey to the EITI membership started in early 2019, following a Cabinet decision where the Minister of Finance announced the government's commitment to join the EITI. Thereafter Mr. Moses Kaggwa was appointed the acting Director of Economic Affairs in the Ministry of Finance, Planning and Economic Development, to spearhead the effort and manage the process. Mr. Kaggwa was also appointed as the Chairperson of the Multi Stakeholder Group (MSG), a twenty three person Committee that was tasked with the oversight of EITI implementation in Uganda. The MSG comprises

representation from the three main constituencies involved in the extractive sector – government, industry, and civil society. Under the guidance of the MSG, Uganda prepared and submitted its candidature application to the International Secretariat on 13th July 2020. As a member of the EITI, Uganda will enjoy the adherence to and implementation of the EITI Standard which will in the process promote a more open and accountable form of extractive sector management leading to more investments.

The SIRD project has been quite instrumental in the application process for the EITI in Uganda. As a member of the Civil Society Coalition on Oil and Gas (CSSOG) as well as being the chairperson of the legal and policy thematic cluster of the same, the SIRD

Project made a tremendous input in the drafting of the terms of reference for the Multi Stakeholder Group (MSG) of the EITI which clearly outlined the different roles of every member of the MSG. Moreover, the SIRD project also contributed to the process of selection of the civil society members on the MSG which was a very crucial stage of the EITI process. This selection process took place on 3rd May 2019. The SIRD project was also key in holding a consultative meeting for the development of the EITI work plan for the Uganda EITI Secretariat which happened in Quarter 2 of Year 3. Given that the 2019 EITI standard requires governments and companies to report on the impact of extractives on gender and the extent to which women and other marginalized groups participate in extractives, Uganda's implementation of EITI will surely enrich the SIRD project insofar as gender is concerned.

# Gender Equity in Positions of Leadership in Kenya

By Suzy Kimuta, SIRD LSK PM



The debate on Gender equity in Kenya has taken center stage in the recent months particularly after the advisory issued by the Honorable Chief Justice of Kenya to His Excellency, the President of Kenya asking him to dissolve parliament for its failure to enact legislation to implement ARTICLE 81(b) OF THE CONSTITUTION OF KENYA (THE TWO-THIRDS GENDER RULE). In his advisory dated the 21st of September 2020, CJ Maraga stated that he was

responding to six petitions, including one from the Law Society of Kenya, seeking his advice on the matter. The petitions were based on the grounds that despite four previous court orders compelling Parliament to enact the legislation, Parliament had blatantly failed, refused, or neglected to do so. CJ Maraga added in his advisory that the two-third gender rule is the acronym for the constitutional imperative which prohibits any form of discrimination in appointment and elective positions in the country on the basis of one's gender. "Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres".

On the 14th of August 2020, The Law Society of Kenya through its Gender Committee had held a one-day conference on the two-thirds gender rule. The conference which was partially funded by Global Affairs Canada through the Supporting Inclusive Resource Development (SIRD) Project was organized into three-part panel discussions:

1. The First Panel discussed the Case for Gender equality in Kenya and the Ruling on the Advisory Opinion No. 2 of 2012 In the Matter of the Principle of Gender Representation in the National Assembly and the Senate.
2. The Second Panel discussed the journey towards implementation of the two-thirds gender rule in Kenya.
3. The third Panel discussed the steps taken by Parliament to enact legislation to operationalize the two-thirds gender rule and the petition by the Law Society of Kenya and other actors to the Chief Justice of the Republic of Kenya to advise the President of the Republic of Kenya to dissolve Parliament.

The conference brought together key stakeholders from Civil Society, Academia, Political leadership and Sitting Members of Parliament to a discourse on gender equality and ART 81(b) of the Constitution. The Panel discussions focused on one outcome with regard of Parliament failing to implement



the two thirds gender rule according to Articles 27 and 81(b). Panelists debated the lack of political will to implement the two-thirds gender rule as well as the failed attempts by parliament to debate and implement the provision over the course of 10 years since the promulgation of the Constitution of Kenya, they also discussed the need for the electoral system to create equal access to winnable electoral seats for both women and men in political parties. Panelists concluded that Parliament had failed and neglected to implement two thirds gender representation in Parliament and that any Kenyan could petition the Chief Justice to dissolve parliament, they observed that no further debate to ensure compliance was necessary since all previous attempts to debate the provision had failed.

As we build on the reasoning that gender equality must be purposefully and deliberately sought and as we make an argument for gender inclusiveness in leadership roles, it is important for us to consider the reasoning behind the push to legislate for constitutionally mandated gender equity in appointive and elective positions.

Kenya is undoubtedly a patriarchal society, despite the latest population census carried out in 2019, pointing to the female gender as accounting for 50.5% of the population. There remains an obvious gap and gender bias in leadership, with women being significantly underrepresented in Parliament (19% of the National Assembly and 27% of the Senate).

The 2010 constitution requires equality of men and women in all spheres of life, and the elimination of all forms of gender-based discrimination and marginalization; however, gender roles, relations, norms and expectations have shaped the lack of progression to gender equity. In many societies in Kenya, the role of women in leadership is not traditionally entrenched. Where women have taken up the challenge of vying for elective posts, on many occasions, while on the campaign trail they have been met with stigmatization, intimidation, threats, violence, disownment, and name calling beginning right from the family setup as well as from male opponents and the community at large. This unfortunate trend has discouraged many qualified and able women leaders from stepping to the fore to declare their candidature and to vie for elective posts. The inability of women to “fight” for these elective positions on an equal footing stems mainly from societal socialization of gender roles where women are viewed more as care givers and less as leaders. Women who are able to withstand the pressure of elective contestations are the exception rather than the norm. This is much more pronounced and evident in the rural areas where society still strictly follows cultural and religious dictates, which further discourage women participation in leadership. Economic reliance on male family members, lack of education and sensitization on their rights further compounds the issue. The argument that because women constitute more than 50% of the population would mean that they have sufficient numbers to elect one of their own in a political contest does not hold water. It is a well-known fact that the decision on whom to elect in any given political contest is usually a “family decision” with women usually relinquishing the right to make this decision to the male members of their families. Given these barriers and biases, it is a fallacy to argue that women can equally and equitably compete for elective posts with their male counterparts.

In order for women to be equitably represented in elective posts, it is critical to enable women to vie for and attain these posts through affirmative measure put in place to ensure a safe and enabling environment where they can be free to contest without being stigmatized and victimized for their decision to step into the arena. With thoughtful attention and deliberate action, we can ensure this. The constitutional provision on the two-thirds gender rule deliberately created such a safe space which if implemented would see women get into leadership roles and enable them to circumvent the murky waters of social, economic, cultural and religious barriers, which would otherwise have exposed them to prejudice.

***“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.” Kofi Annan***

Debate on the implication of the Chief Justices’ Advisory on the legality of Parliament as currently constituted continues with LSK President Mr. Nelson Havi’s assertion on the 24th of September 2020 that “Following the advice by the Chief Justice to the President of the Republic of Kenya to dissolve Parliament, Members of the National Assembly and Senators of the 12th Parliament will be unlawfully in office effective 12th October 2020 being twenty-one days from the date of the said advice,” he said.

Several petitions have been filed challenging CJ David Maraga’s advisory to the President to dissolve parliament. Deputy Chief Justice Philomena Mwili appointing a five-judge bench to hear the cases. The five judges will be led by Justice Lydia Achode, others in the bench will include Justices George Odunga, James Makau, Anthony Ndungu and Pauline Nyamweya, the bench will sit on November 23rd 2020 to hear and determine the issues raised.

As the struggle for gender equality rages on, the question that should be addressed must be how and not if the two-thirds gender rule will be implemented. The implementation of this provision will ensure increased representation of women at all levels, substantially improving the lives of women and children who remain to be the most marginalized and vulnerable in society. It is a gross injustice to ignore the voice and inclusion of women, who are the majority, in decision making at the highest levels of governance, it denies women the opportunity to fully participate in the legislative making process and serves to omit gender specific issues from being fully and adequately canvassed and legislated.

It is rightly said that the wearer of the shoe knows best where it pinches. For women specific issues to be addressed, women must be adequately represented in both houses of parliament. We must lay bare these biases and barriers and support all efforts that aim towards the equitable representation of women in leadership.



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