

## Access to Remedy for Human Rights Violations in East Africa: Lessons learned from the perspective of Civil Society Organizations during the East African Business and Human Rights Conference

### Context

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On June 14 and 15, 2023, the first sub-regional conference for East Africa on business and human rights was held in Kampala. It was entitled "*Opportunities for integrating human rights and environmental considerations into land investments*".

The East African region is one of the most resource-rich in the world and is the subject to a lot of interest from different economic actors, especially in the extractive and energy sectors. Those investments contribute to GDP growth and agri-food value chains, which are essential to meeting the food security challenges that persist in the region. They can contribute to economic, employment and infrastructure development in the region but they also can significantly harm the environment and affected population's human rights.

In this context, the aim of the event was to discuss the opportunities and challenges of integrating human and environmental rights concerns into business activities, particularly those of foreign private companies, with a focus on [national action plans on human rights \(NAPs\)](#). The conference also provided an opportunity to strengthen dialogue and multi-stakeholder alliances in the region, and to assess the regional situation with regard to the risks associated with land investments, by examining sectoral value chains. Finally, the conference aimed to explore the potential impact of the European Due Diligence Directive on companies based in East Africa.

The conference brought together over 100 representatives of government institutions, civil society organizations, private companies and researchers from the member states of the East African Community (EAC).

## **Access to judicial and non-judicial remedies: Perspectives from NGOs and CSOs in the DRC, Tanzania and Uganda**

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One of the sessions of the conference focused on the essential question of access to remedies in the event of human rights violations by companies. This session was organized by ASF on the basis of concrete experiences shared by the organization and some of its partners and other organizations in East Africa. The aim of the session was to highlight the challenges associated with access to remedy for rights holders in disputes involving corporate activities, to formulate recommendations and to collaborate on the development of new strategies to ensure access to effective remedies.

During this session, participants sought to understand the main challenges faced by human rights holders in accessing remedy, to identify critical obstacles and opportunities within existing remedy mechanisms, and to consider what policies and mechanisms could be implemented to ensure effective access to remedies, whether judicial or non-judicial, for individuals and communities affected by these violations. These discussions highlighted regional disparities in the implementation of national legal frameworks, while examining the implications of judicial and non-judicial approaches to these complex challenges. In the context of the Democratic Republic of Congo (DRC), where the exploitation of natural resources is a crucial sector of the economy, human rights violations in the context of extractive industry activities are a systemic issue. And, despite these persistent challenges, the country is still slow to draw up an energy transition policy or a national action plan to address the situation.

ASF is actively involved in supporting legal clinics that offer free consultations and legal assistance to members of communities

affected by the exploitation of natural resources. But civil society is struggling to play its full role in the face of the many challenges and obstacles it faces.

One of the major challenges is the dysfunctional judicial systems in the DRC. The courts are unable to meet victims' needs for justice. Furthermore, companies involved in the exploitation of natural resources are sometimes unwilling to take concrete steps to protect human rights. They may also be reluctant to engage in dialogue and seek peaceful solutions to conflicts.

Endemic corruption and lack of transparency in the natural resource governance sector are major obstacles for rights holders to access justice.

The Legal and Human Rights Centre - Tanzania has shared its experiences with state judicial mechanisms, which are widely favored by local justice seekers, particularly those proposed by the Tanzanian High Court. Public bodies such as the Mining Commission also have the competence to deal with disputes in the extractive industries. However, it should be noted that non-state mechanisms, such as company-level grievance procedures, remain relatively unknown and under-utilized.

Challenges associated with state judicial mechanisms include factors such as the geographical remoteness of courts, which hampers access to justice for isolated populations. In addition, these mechanisms face problems related to corruption and judicial independence, which can complicate the process of seeking redress for victims.

Non-governmental organizations involved in the protection of human rights frequently come up against the difficulty of providing evidence, which may be difficult to obtain, or can be destroyed or withheld by the parties concerned. Furthermore, the various state institutions responsible for resolving similar conflicts lack harmonization in their mandates and approaches, which can

generate inconsistencies in the search for solutions.

During the session, [The Uganda Association of Women Lawyers \(FIDA-Ouganda\)](#), an organization that works to strengthen access to justice for vulnerable women and children, improve gender-sensitive governance, ensure women's effective participation in public life and promote socio-economic justice for women, shared its experience.

Women in Uganda are particularly vulnerable to human rights violations, especially in the agricultural sector, where they are victims of many forms of systemic discrimination. The allocation of compensation is a major point of contention, particularly in a country where land ownership is predominantly a male affair.

In this context, FIDA-Ouganda shared its experience of supporting women working on commercial flower farms to access justice. Findings revealed serious human rights violations, including long working hours without breaks, the handling of hazardous chemicals without protective equipment, and companies' failure to comply with national labor and safety standards. In addition, many women working in the sector are affected by health problems – particularly reproductive health problems – because of the work.

FIDA-Ouganda has facilitated access to effective remedies for these women, mainly through the use of non-judicial mechanisms. Through direct dialogue with companies, FIDA-Ouganda has advocated for safe and dignified working conditions, financial compensation for women victims, and coverage of medical care. The organization has also run rights awareness campaigns, to enable women workers to claim their rights and hold their employers to account.

[Civic Response on Environment and Development \(CRED\)](#), which focuses on natural resource governance in the Bunyoro Albertine region, has highlighted that, in Uganda, non-judicial remedies are mainly

provided by state mechanisms such as the [Uganda Human Rights Commission \(UHRC\)](#) and the [Equal Opportunities Commission \(EOC\)](#). The UHRC, established under the 1995 Constitution, has a quasi-judicial remit, giving it the power to order legal remedies or reparations. In order to speed up the processing of cases, the UHRC uses simplified legal procedures that preserve the principles of natural justice. At the same time, non-state mechanisms frequently set up by companies and their representatives also exist, but they suffer from problems of legitimacy and limited accessibility for the parties concerned. In addition, the close links between these companies and the Ugandan government raise concerns about the transparency of procedures for affected parties.

Faced with these challenges, human rights defenders sometimes opt for alternatives to traditional judicial mechanisms, such as national courts, by turning to regional human rights protection bodies like the East African Court of Justice.

## **Recommendations**

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At the end of these enriching exchanges, the panel drew up several essential recommendations aimed at improving the effectiveness of remedies in the context of human rights violations linked to corporate activities:

- **Carry out awareness-raising campaigns within local communities;** communities need to be informed about their rights and the redress mechanisms available so that they can access justice. At the same time, it is essential to strengthen capacity-building efforts, enabling individuals and communities to better understand how to access and use remedies effectively.
- **Promote customary conflict resolution mechanisms as viable alternatives to existing formal**

**mechanisms;** as traditional dispute resolution practices within local communities can often prove more accessible and better accepted by the parties involved.

- **Enabling civil society to become fully involved in supporting populations;** this can be achieved by encouraging the formation of coalitions of actors committed to the defense of human rights. These coalitions can strengthen the collective voice of civil society and exert more effective pressure on companies and governments to ensure respect for human rights.
- **Actively involving companies;** to ensure that multi-stakeholder alliances work effectively, and to ensure that companies comply with their human rights obligations.
- **Strengthen sub-regional, regional and international mechanisms actively;** through awareness-raising and advocacy activities. These mechanisms can play a major role in ensuring access to effective legal remedies and combating human rights violations.
- **Maintain the commitment of stakeholders in strategic litigation;** stakeholders must continue to work together in a coordinated way to pursue their goals of justice and respect for human rights.

## Conclusion

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The conference for East Africa on business and human rights provided an opportunity for players in the region to come together, share knowledge and initiate new partnerships in the field of human rights and business in East Africa.

Following the event, a number of countries, including Burundi, Tanzania and Ethiopia, have launched plans to draw up National Action Plans. Although the NAPs are drawn up at national level, participants raised the idea of having a regional body in charge of overseeing and advocating the development of these plans, so that all EAC members progress to the same level. This goal could be achieved by strengthening the capacities of key institutions such as the Court of Justice and the East African Legislative Assembly, in order to integrate human rights at the heart of the region's legislation and policies, and improve access to justice in the event of fundamental rights violations.

In terms of access to remedy, the experiences of various East African countries reveal that, although national legislation offers several avenues of redress, access to justice and reparations for victims of human rights violations often remains ineffective. These shortcomings stem from inadequate community involvement, lack of information, budgetary constraints, judicial delays,

Civil society organizations' efforts to raise communities' awareness of the various redress mechanisms and legal clinics can help improve access to justice and, ultimately, the handling of alliance complaints.

In addition, the creation of specialized tribunals to deal with specific grievances, such as environmental tribunals, should be considered. Such specialized tribunals can contribute to a more effective interpretation of the law, although concerns about their governance and independence need to be addressed.

Last but not least, the adoption of the European directive on corporate due diligence can serve as a lever of accountability for communities, all the more so if they can count on the support of civil society organizations to monitor progress made by companies along supply chains. The negotiations underway at the UN Human Rights Council since 2014 also represent a historic opportunity to adopt a universally binding treaty that could fill legal gaps in remedies and reparations at national level. Such a treaty would be an important step forward in ensuring the accountability of transnational actors in their activities and guarantee justice for affected communities in the East African region and beyond.

## ASF SUPPORTS ACCES TO JUSTICE

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