

DARUBINI

Access to Remedy and Extractive Industries: The Challenges of Legal Aid Providers in Tanzania



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Access to remedy and extractive industries

Tanzania stands as a nation abundant in natural resources, particularly in its thriving extractive industries. The promise of economic prosperity, however, is juxtaposed against a stark reality of the struggle for access to remedy when resource extraction causes harm to people or the environment. For the often-marginalized communities directly affected by these industries, seeking justice can feel like an insurmountable challenge. This article delves into the complexities faced by Legal Aid Providers (LAPs) in Tanzania as they navigate the intricate laws and policies governing extractive industries, aiming to shed light on the uphill battle in the face of corporate and economic might.

On 12th May 2021, Petra Diamonds Ltd., then the majority holding company of Williamson Diamonds Mine, agreed to pay 12.5 billion Tanzanian shilling (approximately 4.7 million euros) to seventy-one Tanzanian citizens, who had submitted a complaint in the High Court of London for alleged crimes of assault, killings, and unlawful detention in the context of the company's activities (BHRRC, 2021). Twenty-five additional claimants had later joined the suit, bringing the number of compensated victims to eighty-six. In return, the company would not be held liable for these allegations.

This case is often cited as a successful example of litigation, due to the settlement reached and the compensation in favour of the complainants. Yet, even if such much-publicized cases before foreign courts contribute to bringing about some form of justice to persons affected by the presence of extractive industries, much of the more invisible, but equally difficult groundwork on access to justice is conducted by LAPs.

The Tanzania Legal Aid Act (2017) provides that indigent persons are entitled to legal assistance from LAPs. As such, LAPs play an essential role in assisting affected community members who cannot afford formal legal representation to seek justice for human rights abuses and violations linked to the presence of private companies. They can contribute to providing redress to individuals or communities whose rights have been violated. The UN Guiding Principles advocate a "smart mix" of mechanisms through which effective remedy for business-related human rights violations and abuses can be achieved: this includes state-based judicial mechanisms, state-based non-judicial grievance mechanisms and non-state-based grievance mechanisms provided by businesses themselves (UN Working Group, 2016).

The pressing need for legal assistance in these cases is undeniable, yet LAPs often must navigate complex and diverse legal frameworks to assist victims in accessing these different remedy mechanisms.

The judicial system: limited resources

LAPs in Tanzania face a myriad of challenges when seeking justice through the judicial systems. LAPs are often small, localized paralegal organizations with limited resources and capacity to fully support communities in accessing remedies. The demand for legal representation often surpasses the available manpower and financial support, leaving many affected individuals without proper guidance. LAPs face constraints in their capacity to bring cases to court, as they lack the resources to represent clients. Those LAPs in Tanzania that can seek remedy through the court system are the ones that have strong ties with human rights organizations or coalitions, such as the Legal and Human Rights Center (LHRC) or the Tanzania Women Lawyers Association (TAWLA), who can assist them in retaining lawyers.

Non-judicial mechanisms: lack of trust

A variety of non-judicial mechanisms have been established in Tanzania to efficiently handle grievance arising from the presence of extractive industries. The country boasts of several state-based non-judicial remedy mechanisms, such as a national human rights institution with a recognized A-status, the Commission for Human Rights and Good Governance (CHRAGG), or the National Environmental Management Council (NEMC), a government body mandated to enforce environmental standards by monitoring and assessing the environmental impacts of extractive activities. Despite these available avenues, a research project supported by Avocats Sans Frontières (ASF), sheds light on a pervasive issue: a lack of trust in these mechanisms.

LAPs who took part in the study expressed considerable skepticism, particularly regarding CHRAGG's digitized system, which they deemed "intrusive" due to its requirement for extensive personal information when registering a complaint (CHRAGG). Fear of exposure and potential repercussions from local authorities deterred LAPs from engaging further with the platform. One LAP recounts: ***"I tried to file human rights complaints, but I stopped when I found that the system asked for too much information. was afraid that I would be exposed and dealt with individually"***.

This lack of confidence in the institution is reinforced by the limited awareness of state authorities of CHRAGG recommendations and its lack of resources to investigate human rights violations (IHRB, 2016). Similar frustrations emerged concerning the NEMC, which has the mandate to punish non-compliance with Environmental Impact Assessments. LAPs who assisted communities of rural Butiama (located in Mara region) in filing a water pollution complaint relating to Barrick's North Mara mine say that the NEMC did not make concrete efforts to monitor whether the orders they had issued against the mining company were complied with. Consequently, companies are hardly deterred from ending their wrongdoings or repairing the harms. This lack of faith in the effectiveness and integrity of these non-judicial mechanisms hampers the resolution of grievances within the extractive industries in Tanzania.

Company grievance mechanisms: implementation gaps

There is a perception among LAPs that companies are keen to adopt comprehensive grievance resolution manuals with expansive procedures on paper but lack the commitment to apply them in practice. Some LAPs have denounced the lack of responsiveness of such company's grievance officers, who are perceived to only take interest in abuses that are so flagrant that they could attract the involvement of international law firms or human rights organizations. A LAP in Tarime who had tried to engage with Barrick's grievance mechanism said: "The company adopted a well-written grievance mechanism, but it has no commitment to implementing it. I had a client's case and I asked for meetings, but the grievance officers kept on dodging the meeting every day it was arranged."

This absence of responsiveness and consideration, be it in the context of requests for information or complaints, has compelled some LAPs to favour protracted legal procedures within the court system. Moreover, LAPs and their complainants face additional challenges, including acts of intimidation and reprisals by the police when they want to pursue sensitive cases. Complicating matters further is the fact that certain companies enlist the services of the police for ensuring security of their perimeter, in addition to contracting private security companies, rendering the reporting of violent incidents to local law enforcement agencies an arduous task.

Consequently, this inhospitable landscape fosters an environment where LAPs face significant obstacles in their pursuit for justice for those they represent.

Recommendations for support to Legal Aid Providers

LAPs face numerous difficulties, that range from internal challenges, such as insufficient financial, human and technical resources, to external and structural challenges related to the remedy mechanisms themselves. To fortify LAPs in their vital role, comprehensive support in various aspects of their work is imperative. To bolster their effectiveness, LAPs could greatly benefit from stronger linkages with networks of advocates facilitating seamless referral of cases.

Additionally, coordinated capacity-building initiatives should be orchestrated, focusing on augmenting their understanding of prevalent legal intricacies and elevating the quality of legal representation provided to the affected communities.

Furthermore, it is imperative for both Tanzanian and international NGOs to expand their support in safeguarding LAPs. This can be achieved through proactive measures such as risk management training, aiming to mitigate potential risks and enhance LAPs resilience against adversities. Additionally, legal representation should be readily available whenever LAPs encounter threats, ensuring they have the necessary backing to navigate complex legal challenges.

Supporting LAPs is essential for ensuring that marginalized communities have access to justice and legal protection. Collaboration between various actors can strengthen the capacity of LAPs and improve their ability to represent and support those in need.



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Community Voices: How communities affected by industrial diamond mining in Shinyanga experience efforts by the mining company to remediate harm

Since the 1940s, the Williamson diamond mine in Kishapu district, Tanzania, has been the country's largest industrial diamond mining operation. Tensions have risen between the mine and nearby communities, particularly regarding the locals' traditional practices of entering the mine's concession for herding, collecting firewood, or artisanal diamond mining. While the mine views these activities as illegal intrusion, locals see them as a justified means of accessing essential resources for their livelihoods.

Over the past decades, incidents with intruders seem to have increased and escalated into the most severe harms that local people around the mine have suffered, including allegations of beatings, torture, illegal detention, indiscriminate shootings, sexual violence, and killings of locals by the mine's private security guards. Eventually, in 2021, claims of serious human rights abuses led to a substantial settlement between 96 Tanzanian claimants and Petra Diamonds, the then majority-owner of the Williamson mine.

The 2021 settlement had Petra embark on a journey of restoration and remediation with communities surrounding the Williamson diamond mine that includes compensation for victims, community development projects and the establishment of a grievance mechanism to remedy human rights harm (the 'independent grievance mechanism' or IGM). In a [new research report](#), IPIS is assessing whether these efforts can contribute to minimising harm, restoring trust with neighbouring communities and offering access to effective remedy. Central to the report's analysis is the question of how these efforts are experienced and perceived by affected persons and communities.

"His two friends who were with him that unfortunate day now live far away, somewhere in Simiyu region. I do not have their phone numbers, so I could not list that information in the complaint I submitted to IGM, and I do not have the money to send for them. I have had three meetings at the IGM office already. Even if I manage to reach these friends, I am not sure whether I will still get an opportunity to present new witnesses".

Testimony from a father who filed a complaint with the IGM on behalf of his son, who was killed by guards in 2015.

"When I told IGM officers about what the guards did to me in 2017 some of them responded that I was lying, that I was a criminal who illegally entered the mine and that the guards did nothing wrong. It hurt me very much to hear that, as I was so hopeful to finally get recognition"

Testimony from a young man from Songwa village who submitted a claim with the IGM related to a serious leg injury following beatings by the mine's security guards.

While the study concludes that important steps are taken to restore and rebuild community relations and set up meaningful grievance handling, it also offers many examples of how, why and where communities experience shortcomings. Often, these shortcomings seem rooted in the mining company's insufficient understanding of the local context and the day-to-day realities and needs of residents. As a result, initiatives that are set up feel out-of-touch, unrealistic, unbalanced and even adversarial to those who are supposed to benefit from them. Certain initiatives so far seem better on paper than they are in practice, due to the lack of appropriate structures to meaningfully engage with communities, to adequately share information and to consult them on matters relevant to them.

Take, for instance, the testimony of "Rose" (not her real name). In 2014, Rose went to visit her younger sister's child in the Mwadui hospital, which is located on the site of the Williamson concession. To reach her home in Ikonongo village soon after dark following the visit, Rose decided to take a short cut with her bicycle across the mine's concession area. She says that, on her way out of the mine site, she had an intimidating encounter with three private security guards, one of whom told her that he would let her go home safely only if she had sex with him. After she refused, she says he started beating her and violently raped her. After the incident, Rose explained, she hesitated to tell her husband, because she was afraid that he would blame and abuse her. She also did not see a doctor but only resorted to painkillers to get her through the days after the abuse. When her husband learned about what happened, he took the news badly, blamed her, beat her up and finally left Rose with their five children.

In 2021, Rose heard about the Williamson IGM and went to the mine's community relations office, to lodge a complaint. She was told that the office was not taking any complaints at that moment, but that someone from the IGM would call her when they opened registration. Rose did not receive any such phone call but heard from other villagers, in June 2022, that the office was again registering complaints. Soon after, Rose managed to indeed register her grievance. She was, however, not able to list any witnesses: not only had she been alone when the abuse happened, family members who had been with her in the aftermath could no longer testify. Her father had passed away and her younger sister now lives 500 km away. In February 2023, she was called for her first interview.

In April 2023 she got a second call, instructing her to come to the IGM office in Shinyanga town. She was told to travel to the office at her own expense, as the IGM vehicle had already passed several times by her village, and the IGM team had been unable to reach her. The IGM officer added on the phone that she should bring her witnesses, which she explained was impossible for her. In the end, she went to the second interview on her own, after which she was told to wait for another phone call. Rose says she has been waiting for that call ever since. You can read Rose's full testimony and other community testimonies in IPIS' report ["Petra Diamonds' attempts to come clean with its tarnished past in Tanzania. Challenges in securing access to remedy and restoring community relations after serious human rights abuse at the Williamson diamond mine."](#)

As part of their new grievance handling strategies, Petra and Williamson Diamonds indicate that they are committed to learning and improving as they continue to implement remediation and community restoration around the Williamson diamond mine. Doing so in a true, equal partnership with neighboring communities will be crucial to overcome previous shortcomings, restore trust and build long-lasting positive community relations.

"I lack explanation and information from the IGM. I do not get answers from them to help me understand whether I have appropriate and sufficient evidence for my complaint"

Complaint from an alleged victim of beatings by the mine's private security guards.



News in Brief: Updates on Williamson Diamonds' operations amid dam breach fallout

1. Williamson Diamond may face NEMC's wrath over facility breach. ([The Citizen](#))
2. NEMC insists that Williamson liable for dam victims' compensation. ([The Citizen](#))
3. Petra's Williamson Diamond Mine in Tanzania set to restart operations in Q1, 2024. ([The Business Wiz](#))
4. Petra Diamonds Delays Production Restart at Williamson Following Dam Breach. ([The Chanzo](#))
5. CHADEMA Rejects Findings Regarding Petra Diamonds Dam Breach. ([The Chanzo](#))
6. Study Recommends Measures Petra Diamonds Can Restore Community Relations. ([The Chanzo](#))
7. The Mwadui Diamond Mine Compensates the People Affected by The Mine Dam Breach. ([Shinyanga Press Club](#))
8. Compensation payments for the victims of the collapsed diamond mine dam in Mwadui have reached a satisfying level, and the damaged dam is undergoing repairs. ([Shinyanga Press Club](#))
9. EACOP hands over 339 houses to compensate affected people. ([Daily news](#))
10. EACOP hands over last house in compensation drive. ([The citizen](#))

