



# Improving Access to Remedy for Tanzania's Extractives Sector





# Table of contents

<b>List of acronyms</b>	<b>5</b>
<b>Executive summary</b>	<b>6</b>
<b>Recommendations</b>	<b>8</b>
<b>To the government of Tanzania</b>	<b>8</b>
1. Improve compliance with decisions and orders	8
2. Prioritizing access to remedy in the new National Action Plan (NAP) on Business and Human Rights	8
3. Increase funding and independence of state-based mechanisms	8
4. Investigate allegations of threats and intimidation of victims and LAPs	8
<b>To state-based non-judicial mechanisms</b>	<b>8</b>
1. Raise awareness	8
2. Improve compliance with decisions and orders	8
<b>To companies</b>	<b>9</b>
1. Raise awareness and trust on operational grievance mechanisms	9
2. Develop transparent feedback processes	9
<b>To NGOs and legal aid providers:</b>	<b>9</b>
1. Build stronger networks at national and international levels	9
2. Coordinate capacity-building initiatives	9
3. Develop advocacy strategies on access to remedy	9
<b>1. Introduction</b>	<b>10</b>
<b>1.1. Background</b>	<b>10</b>
<b>1.2. Tanzania's extractive sector</b>	<b>10</b>
<b>1.3. The human rights impacts of large scale extractive projects</b>	<b>11</b>
1.3.1. The right to life and the right to personal security	11
1.3.2. The right to a clean and healthy environment	11
1.3.3. The right to work	12
1.3.4. The right to land	12
1.3.5. The specific rights of women	14
<b>1.4. Study sites</b>	<b>14</b>
1.4.1. The East African Crude Oil Pipeline	14
1.4.2. North Mara Gold Mine	15
1.4.3. Williamson Diamond Mine	16
<b>2. Remedy mechanisms in Tanzania</b>	<b>18</b>
<b>2.1. State-based mechanisms</b>	<b>19</b>
2.1.1. Judicial mechanisms	19
2.1.1.1. <i>The court system</i>	19
2.1.1.2. <i>Land courts</i>	21
2.1.1.3. <i>Foreign and regional Courts</i>	22
2.1.2. Non-judicial mechanisms	23
2.1.2.1. <i>Local Government Authorities</i>	23
2.1.2.2. <i>Mining Commission</i>	23
2.1.2.3. <i>Chief Government Valuer</i>	23
2.1.2.4. <i>Commission for Human Rights and Good Governance</i>	24
2.1.2.5. <i>National Environment Management Council</i>	25
2.1.2.6. <i>The Energy and Water Utilities Regulatory Authorities</i>	26
2.1.2.7. <i>Commission for Mediation and Arbitration</i>	26
<b>2.2. Non state-based mechanisms</b>	<b>26</b>
2.2.1. Operational-level Grievance Mechanisms	26

<b>3. Communities' and legal aid providers' perceptions</b>	<b>28</b>
3.1. Methodology	28
3.2. Findings	28
3.2.1. Domestic judicial mechanisms	29
3.2.2. Foreign courts	30
3.2.3. Non-judicial mechanisms	31
3.2.3.1. <i>Local Government Authorities</i>	31
3.2.3.2. <i>The Mining Commission</i>	32
3.2.3.3. <i>The Chief Government Valuer</i>	33
3.2.3.4. <i>The Commission for Human Rights and Good Governance</i>	33
3.2.3.5. <i>The National Environment Management Council</i>	34
3.2.3.6. <i>The Energy and Water Utilities Regulatory Authorities</i>	35
3.2.3.7. <i>The Commission for Mediation and Arbitration</i>	35
3.2.4. Non state-based mechanisms: Operational-level Grievance Mechanism	35
3.2.4.1. <i>EACOP</i>	36
3.2.4.2. <i>Williamson Diamond Mine</i>	36
3.2.4.3. <i>Barrick North Mara Gold Mine</i>	37
<b>Acknowledgments</b>	<b>39</b>

# List of acronyms

---

ACHPR	African Charter on Human and Peoples' Rights
ASF	Avocats Sans Frontières
CATA	Canada Tanzania Mining Company Limited
CHRAGG	Commission for Human Rights and Good Governance
CGM	Community grievance mechanism
CGV	Chief Government Valuer
CNOOC	China National Offshore Oil Corporation
CMA	Commission for Mediation and Arbitration
CSO	Civil Society Organization
DGD	Belgian Directorate-General for Development Cooperation and Humanitarian Aid
DLHT	District Land and Housing Tribunal
EACOP	East Africa Crude Oil Pipeline
FEMATA	Federation of Miners Associations of Tanzania
EAC	East African Community
EACJ	East African Court of Justice
EIA	Environmental Impact Assessment
EMA	Environmental Management Act
EWURA	Energy and Water Regulatory Authority
GDP	Gross Domestic Product
GGML	Geita Gold Mining Limited
GISTM	Global Industry Standards of Tailings Management
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IGM	Independent Grievance Mechanism
ILO	International Labor Organization
IM	Independent Monitor
IPIS	International Peace Information Service
LAP	Legal Aid Provider
LEAT	Lawyers' Environmental Action Team
LHRC	Legal and Human Rights Center
LGA	Local Government Authority
LNG	Liquefied Natural Gas
NEMC	National Environmental Management Council
NGO	Non-Governmental Organization
OHCHR	Office of the UN High Commissioner for Human Rights
PAP	Project-Affected Person
THDRC	Tanzania Human Rights Defenders Coalition
TIC	Tanzania Investment Center
TLS	Tanganyika Law Society
TPDC	Tanzania Petroleum Development Corporation
TSF	Tailing Storage Facility
UDHR	Universal Declaration of Human Rights
UNGP	United Nations Guiding Principles

# Executive summary

Extractive industries are a major source of economic activity in Tanzania, with the mining sector alone contributing 9.7% to the country's total GDP in 2022.<sup>1</sup> In the global rush to achieve the energy transition towards cleaner renewable technologies, the demand for critical minerals extracted in Tanzania, including lithium, cobalt, nickel, graphite, and rare earth elements, will continue to grow.<sup>2</sup>

However, extractive projects are also a source of many human rights concerns, including environmental degradation, land rights infringements and forced evictions, the disruption of livelihoods, and violence towards communities, in particular women. The growing recognition of the impacts of businesses on human rights has resulted in the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), which affirmed the duty for governments to protect human rights, the responsibility of private actors to respect human rights and the importance of access to effective remedies. In the context of growing mining operations in Tanzania, the question of access to effective remedy for communities affected by extractive industries is and will continue to be very relevant, even if it is marred by many obstacles.

It is against this background that *Avocats Sans Frontières* (ASF) supported a research study to (a) identify the available remedy mechanisms at the national and local level in Tanzania and (b) understand the experience of host communities and legal aid providers (LAPs) in engaging with these remedy mechanisms. The research sought to better understand how available remedy mechanisms function, whether affected local communities have attempted to access them and what barriers and obstacles they have encountered when doing so. The ultimate objective of the study is to offer practical recommendations and advice to LAPs in Tanzania on how best to engage with these remedy mechanisms and to improve their engagements with affected communities and state and non-state actors.

The research focused on the experiences of communities affected by three extractive projects, namely the East African Crude Oil Pipeline (EACOP), Barrick North Mara Gold Mine and Williamson Diamond Mine. It looked into the three types of remedy mechanisms highlighted by the UNGPs: state-based judicial mechanisms, state-based non-judicial mechanisms and non-state-based mechanisms. State-based judicial mechanisms refer to the domestic court system. The findings indicate that community members and LAPs often struggled to access these courts, due to a lack of financial means or access to a lawyer. Even if they were broadly aware of how to access them, the delay in proceedings often discouraged victims or their representatives to use the courts to access remedy. Confidence therefore varied and was influenced by personal experiences: some respondents preferred foreign courts, given the remedy provided after a court case against Williamson Diamonds in the UK. Others questioned the independence of the court system, given the Tanzanian government's involvement in the aforementioned extractive projects.

As for state-based non-judicial mechanisms, the findings of the research indicate that there is a general lack of awareness among affected communities on how they function, how to access them and what kind of remedies they can provide. Affected persons primarily turn to local government authorities (LGAs), which are the most accessible remedy platform given their presence at the lowest government level, their mediatory role and the oral nature of the proceedings. Though almost all aggrieved persons at some point interacted with these LGAs, the data shows that host communities have low confidence in them, due to perceptions of limited leverage over companies or other government actors, or a bias towards the national government's views. There was very little awareness about the Mining Commission, the Energy and Water Utilities Regulatory Authorities (EWURA) or the Chief Government Valuer and on how they could be

1. The Citizen (2023), How government plans to boost mining's GDP contribution to 10 percent before 2025, <https://www.thecitizen.co.tz/tanzania/news/national/how-government-plans-to-boost-mining-s-gdp-contribution-to-10-percent-before-2025--4245214>
2. World Bank, "Mineral Production to Soar as Demand for Clean Energy Increases," World Bank, 2021, <https://www.worldbank.org/en/news/press-release/2020/05/11/mineral-production-to-soar-as-demand-for-clean-energy-increases>



used to access remedy. LAPs mentioned technical barriers for accessing these mechanisms, which was also the case for the Commission for the Mediation and Arbitration (CMA), with whom there were more positive, albeit limited, experiences among community members.

Other state-based non-judicial mechanisms, such as the Commission for Human Rights and Good Governance (CHRAGG) and the National Environment Management Council (NEMC), are better known among LAPs, but are perceived as having insufficient financial resources to investigate human rights violations and lacking enforcement powers to have their recommendations or orders implemented, either by state actors and companies. This affects the credibility of these institutions, which often results in a lack of trust and confidence in these mechanisms by local communities and LAPs.

The research also analyzed operational grievance mechanisms (OGMs) managed by the companies involved in the three extractive projects under study. The research found that companies had not sufficiently engaged with local communities to raise awareness on the existence of these OGMs and had insufficiently consulted or involved local LAPs in the design of the OGM, which would have contributed to increasing the engagement with these mechanisms. This led, again, to a general lack of awareness about how to access them, and limited experiences among affected communities. LAPs also found that there was a general lack of responsiveness by companies' grievance officers with regard to complaints from local communities, and a lack of

transparency on how cases were being handled.

Based on the conclusions of the research, it is recommended to all remedy actors mentioned in this report to improve awareness-raising about their access and functioning, by putting in place effective and targeted outreach strategies at local levels (ward, villages), resulting in regular community engagements. In order to improve the performance, effectiveness and accessibility of the complaint systems, they should create regular feedback mechanisms, that can feed into the functioning of the mechanisms. The government of Tanzania, in particular, should enhance the access to state-based mechanisms and ensure compliance, by both state and non-state actors, with their decisions, to increase the credibility and the confidence of affected communities in the different remedy mechanisms.

# Recommendations

## To the government of Tanzania

### 1. Improve compliance with decisions and orders.

The government has an important responsibility in ensuring that state actors or private companies comply with decisions and orders issued by state-based judicial and non-judicial remedy bodies. It should monitor compliance and take action if this is not the case.

### 2. Prioritizing access to remedy in the new National Action Plan (NAP) on Business and Human Rights.

Tanzania is currently in the process of developing a NAP, under the coordination of the CHRAGG. Improving access to remedy should be a key pillar of the plan.

### 3. Increase funding and independence of state-based mechanisms.

The government should guarantee that state-based mechanisms have the means at their disposal to fulfill their mandate, including for the timely and adequate handling of complaints brought to them. It should also ensure that non-judicial mechanisms can function in an independent manner according to their mandate, and prevent or punish any interference in their functioning.

### 4. Investigate allegations of threats and intimidation of victims and LAPs.

The government should ensure it investigates any allegations of intimidation or other reprisals against victims, community members or their representatives who seize remedy mechanisms mentioned in this report, and ensure that those responsible are held to account.

## To state-based non-judicial mechanisms

### 1. Raise awareness.

State-based non-judicial mechanisms should increase their efforts in raising awareness on their mandate and functioning as a remedy body, including through public outreach campaigns targeting communities which are particularly affected by extractive projects.

### 2. Improve compliance with decisions and orders.

State-based non-judicial institutions should build stronger relationships and synergies among state authorities engaged in the execution of judgments or orders, in order to increase implementation of their decisions, and use other means at their disposal (ie. court proceedings) in case the latter efforts do not yield results.



## To companies

### 1. Raise awareness and trust on operational grievance mechanisms.

Companies, in particular their departments managing the OGMs, should prioritise effective and targeted outreach strategies at local levels (ward, villages) in order for affected populations to be aware about the mechanisms and how to access them. For confidence in the mechanisms to increase, companies should ensure that meaningful community engagements, formal and informal, are held regularly and not on a one-time basis. These should also engage with LAPs to ensure that the latter are best able to support individuals with grievances to access the OGMs.

### 2. Develop transparent feedback processes.

Companies should put in place public and transparent feedback and evaluation procedures to improve complaint-related processes. They should organize external evaluations of their complaint mechanisms, which include the input of users of complaint platforms and use the UNGP effectiveness criteria as benchmarks. The results of such evaluations should be used to improve the complaint processes and should be made public.

## To NGOs and legal aid providers

### 1. Build stronger networks at national and international levels.

LAPs should forge relationships with networks of advocates to facilitate referral of serious cases of human rights violations. Linkages with organizations in foreign jurisdictions could also be beneficial if foreign courts are considered a better option to hold companies, incorporated abroad, liable for abuses committed in Tanzania.

### 2. Coordinate capacity-building initiatives.

NGOs should increase efforts to reinforce the capacities of LAPs to navigate the intricacies of remedy mechanisms and to allow them to provide better legal aid and legal education services to affected communities.

### 3. Develop advocacy strategies on access to remedy.

LAPs and CSOs should develop and build advocacy strategies to address the shortfalls of existing remedy mechanisms at national level in order to improve the functioning and the engagements of host communities with these mechanisms.

# 1.

## Introduction

### 1.1. Background

This research was commissioned by Avocats Sans Frontières (ASF) in the context of a five-year project entitled “Empowered Tanzanian civil society for fostered justice and human rights in natural resource governance” funded by the Belgian Directorate-General for Development Cooperation and Humanitarian Aid (DGD) and implemented in partnership with International Peace Information Service (IPIS), Business and Human Rights Tanzania (BHRT) and HakiRasilimali. The project focuses on three interconnected result areas: (i) mapping and reporting of human rights issues; (ii) fostering access to remedy; (iii) facilitating evidence-based dialogues to promote policy change.

The extractive sector in Tanzania has been growing over the past couple of years, particularly in northern regions that are rich in minerals, and in areas affected by the transnational EACOP. While a key driver for economic development, such projects may also have potential harmful impacts for surrounding communities, such as environmental destruction, the exacerbation of economic or gender inequality, the rise of a precarious job market with a lack of decent working conditions and concerns around land rights, among other human rights violations.

In this context, it is fundamental for those suffering harms to be able to voice their complaints, find redress for their grievances and hold those who commit harm accountable for their actions. Remedy mechanisms to this end may be state-based (judicial or administrative bodies) or non-state-based, such as company grievance mechanisms.

While standards such as the UNGPs, endorsed by the UN Human Rights Council in 2011, have found their way into public and corporate policies

across the world in the past ten years, limited data exists on the experience of local communities and the LAPs who engage with them.

This research wants to address this knowledge gap, review which state-based and non-state-based remedy mechanisms are available at national and local level, and explore the experiences of LAPs and communities in engaging with them. The research adopted a specific focus on the regions of implementation of the DGD-funded project, namely Manyara, Mara, Shinyanga and Tanga, and gathered data from populations affected by key large-scale extractive projects in those regions.

### 1.2. Tanzania’s extractive sector

Tanzania is endowed with an abundance of extractive resources. In 2018, the country was estimated to hold over 57 trillion cubic feet of natural gas<sup>3</sup>, 45 million ounces (1276 metric tons) of gold reserves and 38.1 million carats of diamond reserves.<sup>4</sup> The country is also globally known for its richness in Tanzanite, which is only available in Tanzania. In addition, the country has significant deposits of many other minerals, including coal, nickel, iron, uranium, ruby, and graphite.<sup>5</sup>

After independence, the state took control of the mining sector to unlock its public benefits, but this did not survive the economic reforms of the 1980s to 1990s. Currently, most mining investments involve a combination of government and private ownership, except for the artisanal and small-scale mining sector, which involves individuals, cooperatives, or small companies. State participation in the mining sector is reflected through the government’s ownership of free carried interests of at least 16% in nearly all large

3. The term “trillion cubic feet” (abbreviated as “tcf”) is a volume measurement of natural gas used in the oil and gas industry. It is roughly equivalent to 28 billion cubic meter.  
4. Natural Resources Governance Institute (NRGI) (2018), Nurturing Civil Society Engagement in Tanzania, <https://resourcegovernance.org/publications/nurturing-civil-society-engagement-tanzania>. Tanzania Invest (2021), Minerals in Tanzania, <https://www.tanzaniainvest.com/minerals>  
5. Ibid.

mining ventures.<sup>6</sup> Currently, the mining sector's contribution to Tanzania's gross domestic product (GDP) stands at 9.7 %.<sup>7</sup>

Unlike minerals, Tanzania has limited experience with the petroleum and gas subsectors. Natural gas commercial production began in 2004 and, in June 2022, the country signed a framework agreement for a 38 billion euro Liquefied Natural Gas (LNG) export terminal.<sup>8</sup> Although Tanzania has no active oil production, the Tanzania Petroleum Development Corporation (TPDC) is still exploring possibilities onshore and offshore. In 2021, Tanzania signed a deal to host EACOP, which is the world's longest heated oil pipeline, expected to transport oil from Uganda's Lake Albert to the port of Tanga in Tanzania. The country expects the project to bring economic growth to the country, creating 3 billion euro in revenue and 18,000 jobs over 25 years.

## 1.3. The human rights impacts of large scale extractive projects

Natural resource wealth is widely seen as a potential opportunity for economic growth and development, through increased exportations and job creation. However, the extractive sector can also have a negative impact on communities, particularly 'host communities' who live in the vicinity of resource-rich areas. This section describes some of the potential human rights harms linked to extractive industries.

### 1.3.1. The right to life and the right to personal security

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR) and the Tanzanian Constitution all establish the right to res-

pect for one's life, liberty and personal security.<sup>9</sup> Despite those legal safeguards, the safety of the host community and individuals living in the periphery of extractive projects is often negatively impacted, in particular through the use of excessive force by private security forces hired by the companies. Private security providers have been accused of human rights abuses, including brutal beatings and extrajudicial killings, against people suspected of trying to intrude mining sites.<sup>10</sup> For example, in 2022, UK-based NGO RAID reported that actions by the security team at North Mara Gold Mine, located in Tarime district, Mara region, led to death, injury, and unwarranted invasion of residential areas.<sup>11</sup> In another example, the construction of the Mtwara-Dar es Salaam gas pipeline resulted in a number of security incidents that led to death and injury, such as the shooting of a pregnant woman during house-to-house searches by security forces following protests.<sup>12</sup>

### 1.3.2. The right to a clean and healthy environment

The right to a clean and healthy environment is universally recognized and protected by national and international frameworks. The UDHR does not explicitly state the right to a clean environment, but such a right is implied through related human rights such as the right to life and to an adequate standard of living.<sup>13</sup> Moreover, Tanzania ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes the right to an adequate standard of living, and to the "highest attainable standard of physical and mental health", implying the right to a clean environment.<sup>14</sup> The ACHPR also acknowledges the collective right of peoples to freely dispose of their natural resources in their own interest, and the right to "a general satisfactory environment favourable to their development".<sup>15</sup> In July 2022, the UN General Assembly passed a resolution recognizing the right to a clean, healthy and sustainable environment.<sup>16</sup> However, Tanzania abstained during the vote on the resolution.

6. Section 10 of the Mining Act, 2010. Free Carried Interests refer to an equity interest granted to the State by the company holding a license, whose primary purpose it is to give the State an ownership stake in the project, as well as generate dividends.
7. The Citizen (2023), How government plans to boost mining's GDP contribution to 10 percent before 2025, <https://www.thecitizen.co.tz/tanzania/news/national/how-government-plans-to-boost-mining-s-gdp-contribution-to-10-percent-before-2025--4245214>
8. Al Jazeera (2022), Tanzania signs deal with Equinor and Shell, <https://shorturl.at/oMQY3.com>
9. Article 3 of UDRH, Article 6 of the ICCPR, Article 4 of the ACHPR, Article 14 and 16 of the Constitution of the United Republic of Tanzania
10. Mining.com (2021) "Petra Diamonds probes new claims of human rights abuses in Tanzania", <https://www.mining.com/petra-diamonds-probes-fresh-claims-of-human-rights-abuses-in-tanzania/>
11. RAID (2022) Re: Complaint concerning further serious human rights abuse at Barrick's North Mara Gold Mine, [https://www.raid-uk.org/sites/default/files/raid\\_letter\\_lbma\\_23-03-2022\\_.pdf](https://www.raid-uk.org/sites/default/files/raid_letter_lbma_23-03-2022_.pdf)
12. BBC (2013) Tanzania Mtwara gas riots: 'Pregnant woman killed', <https://www.bbc.com/news/world-africa-22652809>
13. Article 3 and Article 25 of the Universal Declaration of Human Rights, 1948
14. Articles 11 and 12 of the International Covenant of Economic, Cultural and Social Rights, 1966.
15. Articles 21 and 24 of the African Charter on Human and Peoples' Rights, 1986.
16. United Nations General Assembly Resolution 76/300

Under domestic law, the Constitution guarantees the right to life, which has been given a broader definition by the courts to address cases of pollution which endanger people's lives.<sup>17</sup> Furthermore, the Constitution requires citizens to safeguard natural resources and ensure their sustainable use for current and future generations, promoting environmental management with equity principles. National legislation, such as the Environmental Management Act (2004), also explicitly provides for the right to a clean and healthy environment.<sup>18</sup> The Act obliges mining and petroleum companies to comply with environmental standards, and acknowledges the extractive industry's potential harms to the environment. To prevent such potential harms, it creates a requirement for companies to conduct environmental impact assessments (EIA) before mining and petroleum activities commence.

Despite being rich in provisions, gaps persist in Tanzania's legal framework on the environmental impact of extractive companies. For example, Tanzania has not domesticated the Global Industry Standards of Tailings Management (GISTM), which hinders the effective response to and remediation of environmental damages caused by extractive companies.<sup>19</sup>

There have been numerous reports of abuses of the right to a healthy and clean environment near Tanzania's mining sites.<sup>20</sup> Mining companies' heavy trucks, traveling on unpaved public roads, emit air pollution, affecting community health and livestock. Water pollution through inadequate treatment of wastewater is also a health hazard for communities and a threat to their livelihoods. The use of explosives in extraction harms neighbouring homes, causing structural damage and air pollution, and affects the well-being of neighbouring communities. Environmental pollution from mining activities, such as dust and noise, also disrupts daily life and hazardous tailings, which can result in the forced relocation of people living close to the relevant locations.

### 1.3.3. The right to work

The right to work is universally recognized in numerous international law instruments, including the UDHR, the ICESCR, and the International Labor Organization (ILO) Convention of 1950 on the Abolition of Forced Labour.<sup>21</sup> The ACHPR also recognizes the right to work "under equitable and satisfactory conditions."<sup>22</sup> Tanzania guarantees and promotes the right to work under its Constitution and national laws, such as the Employment and Labour Relations Act and the Labour Institutions Act. These laws, among other things, prohibit unfair termination of labour contracts and establish institutions to resolve labour disputes, such as the Commission for Mediation and Arbitration (CMA) and the Labour Court.<sup>23</sup>

Tanzanian laws governing the extractive industry protect local employment opportunities. For example the Mining Act (2010) requires mining companies to create and implement a specific program for training and hiring Tanzanians.<sup>24</sup> Companies have to report to the Mining Commission every year on progress in establishing and implementing such a program. In the oil sector, the Petroleum (Local Content) Regulation 2017 establishes that qualified Tanzanian citizens should be given priority in employment and training.<sup>25</sup>

### 1.3.4. The right to land

There is no such thing as an internationally recognized right to land. However, several sources of international human rights law, including the UDHR and the ACHPR, mention the importance of the right to property.<sup>26</sup> In two resolutions, the UN General Assembly has also stated the right to land of specific groups, such as indigenous people and peasants.<sup>27</sup> Most recently, the Committee on Economic, Social and Cultural Rights adopted a General Comment to clarify the impact of access to land over key rights enshrined in the

17. Festo Belegele and other 794 others, Miscellaneous Civil Cause No. 90 of 1991, High Court of Tanzania, at Dar es Salaam, (Unreported) In the case, the Court held that the Dar es Salaam City Council would be acting against article 14 of the Constitution (right to life) if it continued disposing refuse and waste in a residential area, causing smoke, smell, attracting flies, and thereby polluting and endangering people's lives.

18. Section 4 of the Environmental Management Act, 2004.

19. Tailings are the product of the separation of valuable minerals from other material and often contain ground-up rock, process water or chemical agents. They are processed within tailing facilities (or tailing dams), some of which have, in the past, encountered catastrophic failures which have led to the death of communities and environmental destruction. The GISTM establishes specific measures and best practices to prevent the catastrophic failure of tailing facilities,

20. See for example The Guardian (2019), Murder, rape and claims of contamination at a Tanzanian goldmine, <https://www.theguardian.com/environment/2019/jun/18/murder-rape-claims-of-contamination-tanzanian-goldmine>.

21. Article 23 of the Universal Declaration of Human Rights, 1948, Article 6 of the International Covenant on Economic, Social and Cultural Rights, 1966. The Abolition of Forced Labor Convention of 1950 is under the framework of the International Labor Organization (ILO). Tanzania adopted the Convention on January 30, 1962.

22. Article 15 of the African Charter on Human and Peoples' Rights, 1986

23. Article 22 of the Constitution of the United Republic of Tanzania, 1977 and section 3(a) of the Employment and Labor Relations Act, 2004.

24. Section 103 of the Mining Act, 2010.

25. Article 8 of the Petroleum (Local Content) Regulations, 2017

26. Article 17 of the Universal Declaration on Human Rights; Article 14 of the African Charter on Human and Peoples' Rights

27. Articles 25 to 28 of the UN Declaration on the Rights of Indigenous Peoples (UNGA Resolution 61/295, 2007), articles 5 and 17 of the United Nations Declaration on the rights of Peasants and Other People Working in Rural areas (UNGA Resolution 73/165, 2018)

ICESCR.<sup>28</sup> These include the right to be free from hunger, the right to adequate housing, the right to water, the right to the highest attainable standard of physical and mental health, the right to take part in cultural life and the right to self-determination.<sup>29</sup>

As per the Land Act of 1999, Tanzania defines land to mean the upper part of the earth's surface, the development made on that surface, and the lower part of it, excluding minerals, oil, and gas. Land is, according to the Act, categorized into three categories, namely general land, village land and reserve land.<sup>30</sup> The Constitution of Tanzania recognizes and protects the right to private property ownership, prohibits deprivation of private property without lawful authority and provides for fair and adequate compensation.<sup>31</sup> In the case of *Attorney General vs. Lohay Akonay and Joseph Lohay* (1995), the Court of Appeal held that even a customary right in land is considered property protected under article 24 of the Constitution.<sup>32</sup> Occupation of such land cannot therefore be extinguished without fair compensation.

Both the Land Act of 1999 and the Village Land Act of 1995 declare all land in Tanzania as public land, and vest in the President the duty to manage land as a trustee on behalf and in the benefit of the public.<sup>33</sup> In the exercise of this duty, the President may acquire any parcel of land for public interest, including for mining and petroleum activities.<sup>34</sup> However, exercise of such powers must be in the ambit of the law that provides for full, fair and prompt compensation.<sup>35</sup> Tanzania's courts have further clarified these provisions through jurisprudence. For instance, in the case of *Lalata Msangawale vs. Henry Mwamlima*, the High Court made it clear that a private title to land cannot be extinguished until compensation is paid to the holder of that land, in accordance with the law.<sup>36</sup> The same position was further emphasized by the court in the case of *Ntiyahela Boneka vs. Kijiji cha Ujamaa Mutala*.<sup>37</sup>

Most mining projects in Tanzania are operated by foreign companies and the land acquisition process in the field of foreign investment has some specificities. When a foreign company seeks to use land for a mining project, the government first acquires the land and issues the title to the Tanzania Investment Centre (TIC) or Tanzania Petroleum Development Corporation (TPDC). The TIC can then issue derivative rights for occupancy to mining companies, while TPDC will lease the land to petroleum companies. After the project concludes, land rights revert to the government.

The process of land acquisition and compensation for the purpose of extractive activities can be the source of grievances when public participation in the process is not ensured, or specific provisions of the law are not respected. Chief government valuers, who are in charge of valuating land, engage with Project Affected Persons (PAPs) as required by law. This results in varying interpretations of land valuation and limited awareness among PAPs of their rights, including to contest valuations. Moreover, despite legal requirements to compensate land owners within six months of valuation, compensation is often delayed due to practical challenges. Extractive companies are required to deposit funds into the land compensation fund for timely government pay-outs to landholders. However, companies sometimes negotiate agreements with the government allowing them to pay directly to landholders' accounts.<sup>38</sup> Additionally, delays stem from companies avoiding land acquisition, citing inflated payable compensation due to late-developed lands.

Finally, despite the legal obligation to pay interest on delayed compensation, this requirement is sometimes violated. For example, while conducting this study, it was found that some communities affected by the EACOP project received a meagre flat-rate interest of 400,000 Tanzanian shilling (150 euro) after a 24-month compensation delay, breaching both the minimal interest requirement and the deadline of 24 months.

28. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12qc26-general-comment-no-26-2022-land-and>

29. Articles 1, 11, 12, 15 of the International Covenant on Economic, Social and Cultural Rights, 1966

30. General Land means all public land which is not reserved land or village land includes unoccupied or unused village land. Village Land means the land declared to be village land under and in accordance with section 4 (of the Land Act) and includes any transfer land transferred to a village; Reserve land is (a) land designated or set aside under the provisions of the (i) Forest Act, (ii) National Parks Act; (iii) Ngorongoro Conservation Area Act; (iv) Wildlife Conservation Act; (v) Marine Parks and Reserves Act; (vi) Urban Planning Act; (vii) Roads Act; (viii) Public Recreation Grounds Act; (ix) Land Acquisition Act. (b) land parcel within a natural drainage system from which the water resource the concerned drainage basin originates; (c) land reserved for public utilities; (d) land declared by order of the Minister in accordance with the provisions of this Act to be hazardous land. Where a right of occupancy has been acquired, revoked or surrendered in general land which is within or contiguous to an area of reserved land, the President may declare that general land to be reserved land of the same nature and subject to the same law as the reserved land of which it has, by that declaration, become a part.

31. Article 24(1) and 24(2) of the Constitution of the Republic of Tanzania, 1977

32. *The Attorney General vs. Lohay Akonay and Joseph Lohay*, (1995) TLR 80.

33. Section 4 of the Land Act, 1999.

34. Sections 3 and 4(1)(e) of the Land Acquisition Act, 1967

35. Section 3(1) (g) of the Land Act, 1999.

36. *Lalata Msangawale vs. Henry Mwamlima*, (1979) LRT, 3.

37. *Ntiyahela Boneka vs. Kijiji cha Ujamaa Mutala* (1988) TLR 156.

38. EACOP website <https://eacop.com/> (accessed March 10th, 2023)



### 1.3.5. The specific rights of women

The extractive sector in Tanzania particularly impacts the human rights of women in multiple ways. They face higher risks to their personal safety and security as a result of conflicts between mining companies and communities. In the workforce, challenges such as fair treatment, gender-based discrimination, and limited opportunities are prevalent.<sup>39</sup> As landholders, women may suffer disproportionately during land acquisition, experiencing difficulties accessing fair compensation and exclusion from decision-making. Furthermore, the negative environmental impact from mining activities can indirectly affect their health and well-being, especially as they often play key roles in managing household water and food resources.<sup>40</sup>

Mining activities in Tanzania have at times led to tensions between mining companies, communities, and artisanal miners. In such situations, women living in or near mining areas may face increased risks to their personal safety and security, including sexual and gender-based violence, abuse, or harassment. A 2019 investigation by the Guardian revealed allegations of rape perpetrated by security forces at North Mara Gold Mine.<sup>41</sup> According to the investigation, survivors received compensation after legal action, but there was no admission of guilt by the company.

This case highlights the prevalence of sexual violence, which, when it occurs near mining sites, is often only acknowledged after international investigations.

## 1.4. Study sites

This study focuses on access to remedy in the context of three major extractive projects in the oil, gold and diamond mining sectors. Projects of interest to the study have been selected based on their scale, as well as on reports of human rights abuses which render the issue of access to remedy particularly important for victims. All of the projects are also owned by foreign companies.

### 1.4.1. The East African Crude Oil Pipeline

The EACOP is a 1,443-kilometer heated pipeline that will be constructed to transport over 200,000 barrels of crude oil per day from Uganda's oil fields in the Albertine Graben region to Tanzania's Tanga port. 80% of the pipeline will be located in Tanzania, covering eight regions, 24 districts, 116 wards and 231 villages and hamlets. The EACOP project is a joint venture between the governments of Uganda and Tanzania and international oil companies, namely French company TotalEnergies, and the China National Offshore Oil Corporation (CNOOC).



39. World Bank (2022), Tanzania Can Do More to Protect Its Women and Girls and Promote Gender Equality, <https://www.worldbank.org/en/news/press-release/2022/04/05/tanzania-can-do-more-to-protect-its-women-and-girls-and-promote-gender-equality>

40. Leuenberg et al. (2021), Health impacts of industrial mining on surrounding communities: Local perspectives from three sub-Saharan African countries, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0252433>

41. The Guardian (2019), Murder, rape and claims of contamination at a Tanzanian goldmine, <https://www.theguardian.com/environment/2019/jun/18/murder-rape-claims-of-contamination-tanzanian-goldmine>



The EACOP project is expected to bring significant revenue and job opportunities to Tanzania, but concerns have been raised about its impact on climate change, the environment around the trajectory, and the rights of local communities. EIAs have been conducted in both countries, but some experts believe that the rights of affected communities have not been adequately addressed. NGOs and experts have flagged issues regarding land acquisition, compensation delays, and the loss of culturally important resources, and calls for mandatory human rights due diligence in business practices have been made to ensure adequate consideration of human rights.<sup>42</sup>

### 1.4.2. North Mara Gold Mine

North Mara Gold Mine is located in Tarime district, Mara region. The mine is a combined open pit and underground gold mining operation. The process plant has the capacity to process an average of 8,000 tonnes of gold ore per day. It is owned and operated by North Mara Gold Mine Limited, a Tanzanian company that has been majority-owned by Barrick since 2019. Through its Twiga Minerals (Twiga) joint venture with Barrick, the Tanzanian government holds a 16% stake in North Mara.<sup>43</sup>

North Mara Gold Mine has previously been the subject of numerous allegations of human rights abuses and, more recently, of litigation. Starting from 2009, the mine was said to be responsible for polluting water sources in Tarime, which reportedly led to the death of 20 people and over a thousand animals, as well as skin infections in host communities.<sup>44</sup> In July 2009, NEMC recommended either a total shutdown of the mine or the provision of compensation to communities within its proximity, and instructed the mine to repair its water management system. The company attended to the latter request, but was not compelled to shut down the mine or compensate communities. Later, in 2019, tailings from the mine again polluted Tarime's environment. The company was ordered to pay 5.6 billion Tanzanian shillings (approximately 2 million euro) as a fine for the pollution.<sup>45</sup> Most recently, in 2022, the waste water pipes of the mine failed, causing waste water to spread around the area.<sup>46</sup> The company was fined 1 billion Tanzanian shillings (approximately 374,000 euro). The company was never ordered to compensate the people affected for the losses suffered due to these incidents.



42. IPIS (2020), IPIS Briefing September 2020 – The human rights impact of the East African Crude Oil Pipeline, <https://ipisresearch.be/weekly-briefing/ipis-briefing-september-2020-the-human-rights-impact-of-the-east-african-crude-oil-pipeline/?hilite=East+African+Crude+Oil>

43. TanzaniaInvest, Twiga Minerals, <https://www.tanzaniainvest.com/twiga-minerals>

44. The Citizen (2009), Tanzania: Close North Mara Mine – Activists, <https://allafrica.com/stories/200906291391.html>

45. Mara Online News (2019), NEMC stops use of Acacia North Mara gold mine over seepage leakages: <http://www.maraonlinenews.com/2019/07/nemc-stops-use-of-acacia-north-mara.html>

46. Mara Online News (2022), A water pipe that is feared to be poisonous at the Barrick North mine once burst, flows into the Tigtte river, MP Waitara arrives at the scene, [https://www.maraonlinenews-com.translate.goog/2022/04/bomba-la-maji-yanayohofiwa-kuwa-na-sumu.html?\\_x\\_tr\\_sl=sw&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=sc&\\_x\\_tr\\_sch=http](https://www.maraonlinenews-com.translate.goog/2022/04/bomba-la-maji-yanayohofiwa-kuwa-na-sumu.html?_x_tr_sl=sw&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc&_x_tr_sch=http)

Beyond environmental harms, North Mara Gold Mine has also seen alleged abuses of the rights to life, to liberty and personal security and the prohibition of torture. In November 2022, communities from Tarime brought a claim against North Mara Gold Mine before a court in Ontario, Canada, where its majority shareholder Barrick Gold Corporation is headquartered. The case, which is based on allegations of unlawful torture, shootings and killings of the villagers perpetrated by police officers contracted by the company, is still pending.<sup>47</sup> Finally, when it comes to land rights, North Mara Gold Mine has not compensated communities in localities such as Komarera, Nyamichel, and Mrwambe for losses incurred due to the impossibility of developing land after the cut-off date, and the issue remains unresolved.<sup>48</sup>

### 1.4.3. Williamson Diamond Mine

The Williamson Diamond Mine is a diamond mine located in Kishapu district, Shinyanga region. The mine was established in 1940 and has been in operation for several decades. It has played a significant role in the development of Tanzania's diamond industry.<sup>49</sup> Between February 2009 and 2021, Petra Diamonds Ltd, a diamond mining company based in the United Kingdom, held 75% of the shares while the government owned the remaining 25%. However, its ownership has evolved, with the Tanzanian government acquiring additional shares in 2021, and Petra also selling shares to Pink Diamonds Investments Limited, a Tanzanian company.<sup>50</sup> Petra and Pink Diamonds now each own 31.5% of the shares, with Petra maintaining a controlling interest in the venture, while the Government of Tanzania owns a 37% share.

In 2020, Petra Diamonds Ltd, then majority holding company of Williamson Diamonds Mine, was charged in the High Court of London for alleged assaults, killings and unlawful detention of people entering the mine site. The case involved 71 plaintiffs who were represented by British law firm Leigh Day. Before the court issued its judgement, the parties agreed to a settlement decision on a condition of no admission of liability.<sup>51</sup> The company paid 12.5 billion Tanzanian shillings (approximately 4.7 million euro) as compensation. The number of the paid plaintiffs to the claim increased to 96, and include relatives of the people who were shot dead at the mine.<sup>52</sup> Moreover, Williamson Diamonds Mine also agreed to establish a number of community projects and a medical support program for victims, and promised to facilitate community access to the mine. It also agreed to establish a new Independent Operational-level Grievance Mechanism (IGM) to investigate and resolve complaints alleging severe human rights violations and abuses linked to security operations at the mine.<sup>53</sup>

In November 2022, a breach formed in the wall of the Tailing Storage Facility (TSF) of the mine, flooding two villages, and impacting a total of 13 households and over 50 individuals. No fatalities or injuries were reported. A study conducted by IPIS confirmed that the inhabitants of the two villages, Ng'wangh'olo and Nyenze, suffered loss of property, income and livelihoods as a result of the tailings dam breach.<sup>54</sup> In recognition of the losses to the people and the environment, NEMC issued restoration orders against the company. Production resumed in July 2023 after seven months of suspension.<sup>55</sup>

47. RAID (2022), Key Questions: Canadian Legal Action by Tanzanian National Against Barrick Gold, <https://raid-uk.org/q-and-a-new-legal-action-tanzanian-human-rights-victims-against-barrick-gold-canada-november-2022/>

48. Daily News (2023), Tarime legislator conduct riles Speaker Tulia, <https://dailynews.co.tz/tarime-legislator-conduct-riles-speaker-tulia/>

49. TanzaniaInvest (2021), Diamonds, <https://www.tanzaniainvest.com/diamonds>

50. Mining.Com (2023), Petra Diamonds sells half its stake in Williamson mine, <https://www.mining.com/petra-diamonds-sells-half-its-stake-in-williamson-mine/>

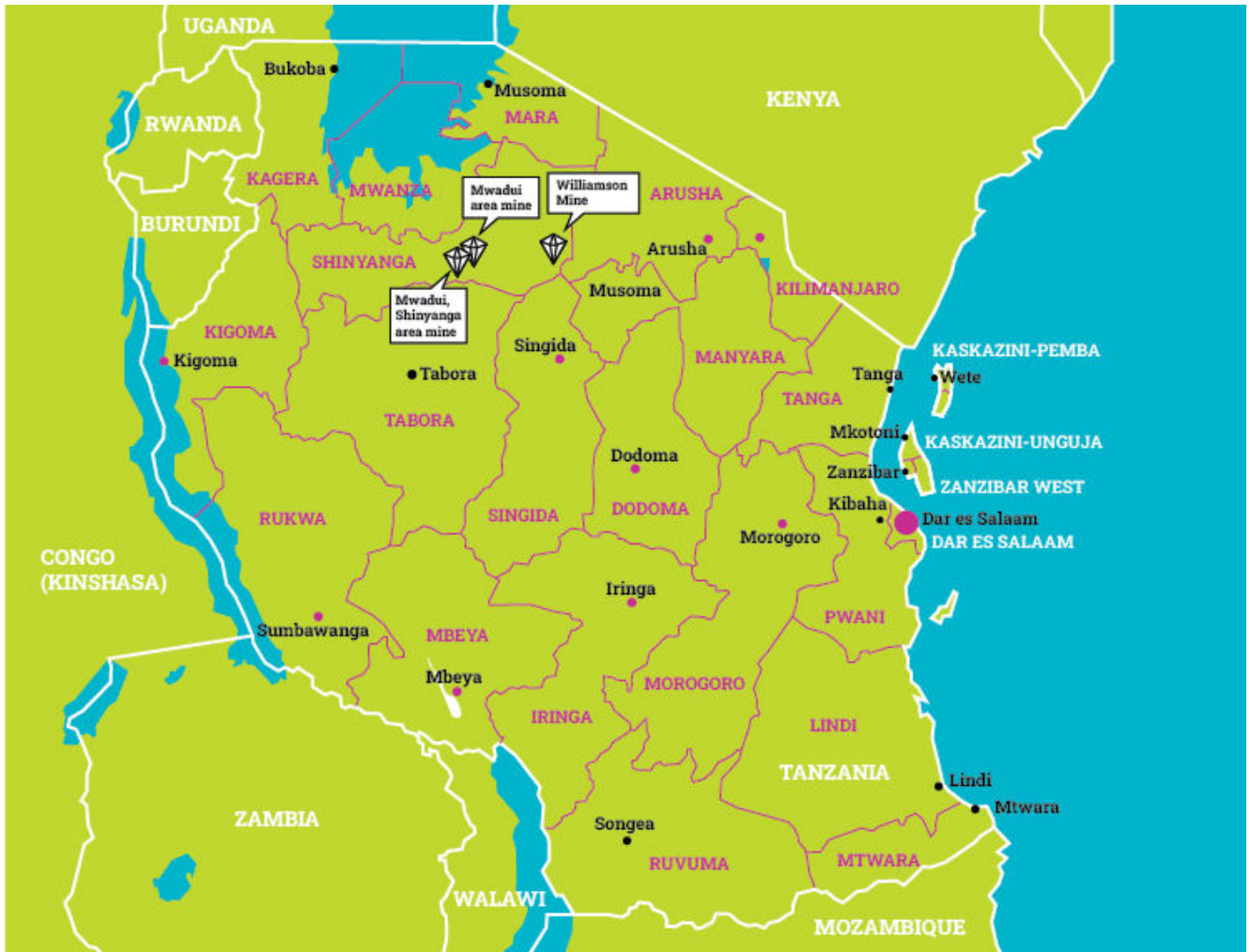
51. The Guardian (2021), Petra Diamonds pays £4.3m to Tanzanians 'abused' by its contractors <https://www.theguardian.com/global-development/2021/may/18/petra-diamonds-pays-43m-to-tanzanians-abused-by-its-contractors>

52. Leigh Day (2021) Settlement Agreed with Petra Diamonds Limited following claims of serious human rights abuses, <https://www.leighday.co.uk/news/news/2021-news/settlement-agreed-with-petra-diamonds-limited-following-claims-of-serious-human-rights-abuses/>

53. Ibid.

54. IPIS (2023), Petradiamonds' 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, <https://ipisresearch.be/wp-content/uploads/2023/11/20231107-Petra-Diamonds-attempts-to-come-clean-with-its-tarnished-past-in-Tanzania-Full-report.pdf>

55. PetraDiamond, Williamson mine: <https://www.petradiamonds.com/our-business/our-operations/williamson/>



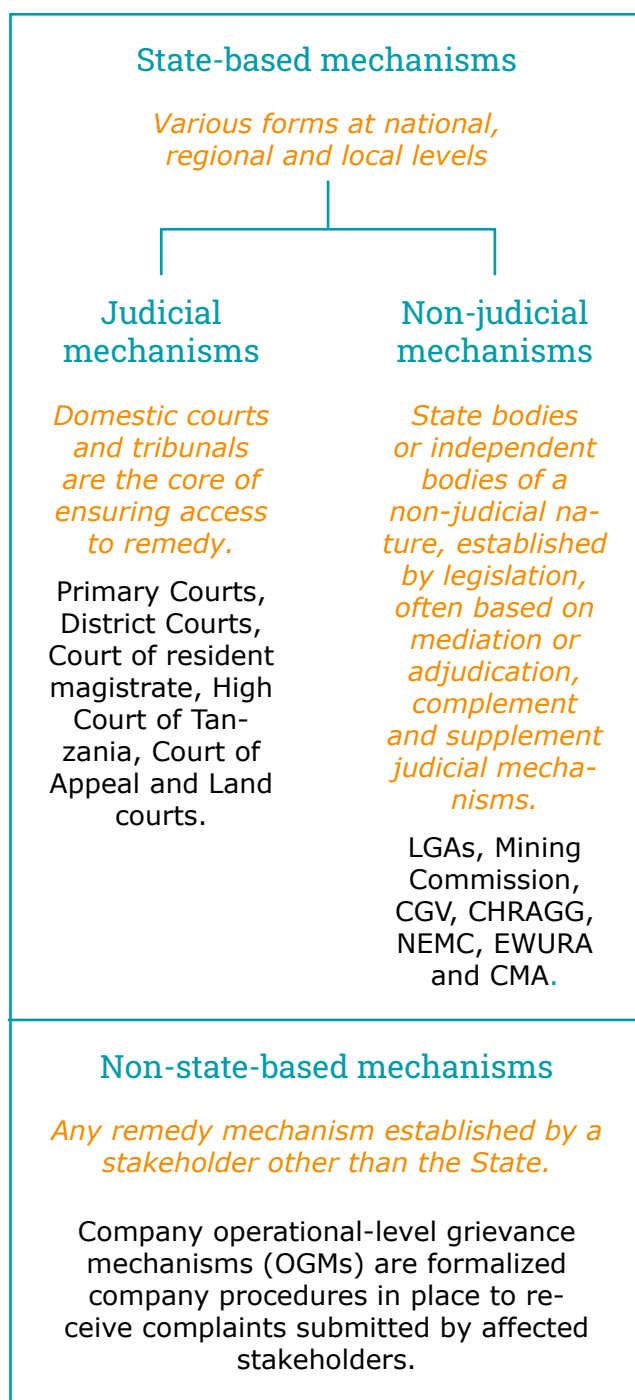
## 2.

# Remedy mechanisms in Tanzania

In order for human rights to be effective, individuals or communities whose rights have been violated should have access to a procedure that can help put an end to abuses and repair any harm that has been caused. This is often referred to as remedy, which can be described as a procedure that can provide redress or compensation to victims of human rights abuses. The availability of effective remedies is an essential aspect of ensuring accountability and justice for human rights abuses.

To ensure meaningful access to remedy, it is important for legal frameworks to be in place, including access to courts or other appropriate mechanisms. The UN Guiding Principles on Business and Human Rights (UNGPs) define remedy or grievance mechanisms as “any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuses can be raised and remedy can be sought” (see Box I).<sup>56</sup> This chapter presents the key remedy mechanisms available to aggrieved communities in Tanzania.

### UNGPs classification of remedy mechanisms



56. Office of the High Commissioner for Human Rights (OHCHR) (2011), Guiding Principles on Business and Human Rights

## 2.1. State-based mechanisms

State-based remedy mechanisms are those that are administered either by a branch or agency of the state, or by an independent body created by legislation. They can be judicial or non-judicial. According to the UNGPs, it is the state's responsibility to "facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support for doing so".<sup>57</sup>

### 2.1.1. Judicial mechanisms

In mainland Tanzania, the Court system has four tiers: (i) the primary courts, (ii) the Resident Magistrates' courts and the District courts (iii) the High Court and (iv) the Court of Appeal.

A specific system has been established for land disputes, which is made up of Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal (DHLT), the High Court (Land Division) and the Court of Appeal. The establishment of land courts does not bar ordinary courts from dealing with land cases, as long as the land title is not in question. They can for instance hear cases about contractual obligations relating to land, compensation for losses arising from negligence or torts, such as the tort of trespass.

A specialized tribunal, the Environmental Appeals Tribunal, was established by the Environmental Management Act of 2004 to handle complaints about environmental impact assessment (EIA) certificates. Unfortunately, it was never made operational by the government. Despite its pertinence in theory, due to its inexistence, it will not be discussed in this chapter.

#### 2.1.1.1. The court system

##### *Primary courts*

Primary courts are the lowest courts in the judicial hierarchy of Tanzania. They have jurisdiction over the district where they are established, on both civil and criminal cases. Parties to a dispute to the primary court can be repre-

mented by a relative or another member of their household, or by an authorized person of a legal entity such as a company, but not by an advocate. Only when cases before a primary court are presided by a magistrate with a resident magistrate status can parties be represented by advocates. The language of the primary court is Kiswahili.<sup>58</sup>

For civil cases, available remedies through the primary courts include payment of damages or compensation, restitution of any property, and court orders (such as mandatory or prohibitive injunctions). Appeals against the decision of the primary court go to the district court and have to be filed within 30 days from the date of the decision of the primary court. For criminal cases, the primary court only handles selected offences whose punishment does not exceed 12 months of imprisonment (e.g. common assaults, assaults occasioning actual bodily harm).<sup>59</sup>

##### *District Courts*

The district courts are established by the Magistrates' Courts Act of 1984 and have territorial jurisdiction over the district where they are based. Similar to the primary court, the district court has both civil and criminal jurisdiction. While the civil jurisdiction of the district court is limited with regards to the monetary value and the subject matter, its criminal jurisdiction is limited to selected offences: the court cannot preside over economic crimes, murder and treason. The district court also has appellate and revisional jurisdiction over decisions from the primary court.<sup>60</sup>

As is the case for primary courts, the district court may preside over claims of compensation (except for compensation arising from land acquisition), cases arising out of contractual obligations, and cases based on torts (including environmental pollution cases) provided that the damages claimed are within the limits in terms of monetary value set out in the Magistrates' Court Act.<sup>61</sup>

The parties to a dispute may choose to be represented by advocates and they may, at any time before the decision of the court, settle their dispute and enter a consent judgment which shall have the same weight as the decision of the court. No appeal can be introduced against such

57. Ibid.

58. Section 3, 13 and 33 of the Magistrates' Court Act, 1984

59. Section 2 of the Code, Third Schedule, Section 3, Fourth Schedule and Section 20 (3) of the Magistrates' Court Act, 1984

60. Sections 20 to 24 and 40 of the Magistrates' Court Act, 1984

61. Section 40 of Magistrates' Court Act, 1984



decision.<sup>62</sup> If no settlement has been reached, the court shall render its decision, which can include the payment of damages or compensation, restitution of any property, or an order to refrain from certain actions.

### *The court of the resident magistrate*

Unlike the district court, which is present in every geographical district, the court of the resident magistrate is established by the Chief Justice, which determines its territorial jurisdiction in an official order.<sup>63</sup> The court of the resident magistrate has similar jurisdiction as the district court with regard to the subject matter and pecuniary value. The main difference between the district court and the resident magistrate court is the territorial jurisdiction. While the district court is empowered to preside over matters and persons residing within its district, the court of a resident magistrate presides over matters and persons over its territorial mandate as dictated by the Chief Justice in his order establishing the court. Additionally, the court of the resident magistrate is mandated to execute decrees arising from the decision of the Mining Commission.<sup>64</sup>

### *The High Court of Tanzania*

The High Court is present in a total of 19 zones, including in mining areas such as Shinyanga, Manyara, Musoma (in Mara region) and Tanga. It has five divisions, including a land court division and a labour court division. The High Court has territorial jurisdiction over the whole Mainland Tanzania. However, disputes are filed at the registry/sub registry where the land in dispute is situated, the defendant resides, or the alleged pollution occurred.

The High Court has overall jurisdiction in both civil and criminal cases. It also has original jurisdiction on civil cases with a value beyond 300,000,000 Tanzanian shilling (approximately 113,000 euro) for immovable property and beyond 200,000,000 Tanzanian shilling (approximately 75,000 euro) for other claims. This includes claims for compensation for land, trespassing or recovery of land, claims based on nuisance or negligence, contractual matters or applications for injunction orders.

## Protecting communities through interim orders<sup>65</sup>

In *Penina Mhere and others v. North Mara Gold Mine*, a group of landholders from Tarime district, Mara region, filed a case at the High Court of Tanzania (Musoma Sub-Registry), disputing compensation by North Mara Gold Mine. The applicants claimed that the compensation paid to them was neither fair, adequate nor just. Despite the pending dispute on the compensation, the mining company issued an eviction notice against them. To counter the eviction notice and the risk of demolition of their houses, the applicants filed an application at the same court for an order to restrain the respondent from evicting them and overtaking their land. The applicants succeeded and the court ordered the mining company not to evict them until the main suit is finally determined.

To obtain an order as in the above case, respondents have to prove that they would suffer additional and irreparable losses if the order is not granted, which would be more than the respondent would if the order is granted. This can help prevent evictions or house demolition, until the main suit is determined. If no such applications are made, the extractive companies may enter into possession of the land and destroy properties of which compensation will be hard to prove when calculating damages in a later phase. This was for example the case in 2017 when communities successfully sued mining company Geita Gold Mining Limited (GGML) for trespassing on their land. Even if the court ruled in favour of their demands, the victims could not prove the specific damages to their property, because GGML had already destroyed it after illegally occupying the land.

62. Section 70 (3) of the Civil Procedure Code, 1966

63. Section 5 of the Magistrates' Court Act, 1984

64. Section 121 of the Mining Act, 2010

65. Reference is made to *Penina Mhere and others v. North Mara Gold Mine*, at the High Court of Tanzania, Musoma Sub-Registry, Miscellaneous Application No. 43 of 2022, (Unreported) and *Geita Gold Mining and another v. Ignas Athanas*, Court of Appeal of Tanzania, at Mwanza, Civil Appeal No. 227 of 2017 (Unreported).



As noted, the High Court also has a labour division which presides over labour complaints when mediation fails and a party has preferred to approach the labour court rather than opt for arbitration under CMA (see below).<sup>66</sup> The law stresses however that the labour court shall refuse to handle a complaint when parties did not go through mediation or when the application is not urgent.<sup>67</sup> An appeal against the decision of the labour court lies with the court of appeal.

Finally, the High Court also has revisional and appellate jurisdiction. It is mandated to revise all matters tried by the subordinate courts, in a similar way as the district courts can revise decisions of the primary courts. This can be done upon application or on the court's own initiative. The High Court can also act as an appeal court with regard to the decisions of subordinate courts, including the district court, the court of the resident magistrate, and quasi-judicial bodies, including the DHLT and the Mining Commission (see below).

### *The Court of Appeal*

The Court of Appeal is the highest court in the judicial hierarchy. It has no original jurisdiction over any case and can only revise or handle appeals against decisions of the High Court. Before lodging an appeal, a party must seek and obtain leave of the High Court or of the Court of Appeal.<sup>68</sup> An appeal has to be filed within 30 days from the date of the first instance decision.<sup>69</sup> Parties to suit are often dependent on legal representation by advocates, since the court focuses on points of law, which can be challenging to lay persons.

## **2.1.1.2. Land courts**

### *The Village Land Council*

Village land councils were established by the Land Act, and have a mandate to mediate land disputes within its geographical jurisdiction, following mutual consent by parties to refer their dispute for mediation.<sup>70</sup> The platform of the village land council is free from legal technicalities, rendering it rather accessible, and parties can be represented by relatives. The platform does not render a judgment but assists the parties to reach an amicable resolution.

The government has not issued specific guidelines for the charges linked to filing and pursuing dispute resolution via the village land councils. The absence of such guidelines allows a council to determine the rates themselves, which sometimes result in arbitrary or (overly) elevated charges for disputing parties.<sup>71</sup>

### *Ward Tribunal*

In case mediation with the village land council fails, an aggrieved party can refer it to the Ward Tribunal, which also has a mediatory role. It is however not a requirement to go through the village land councils before seizing the ward tribunals. Parties or LAPs assisting affected communities can go straight to the ward tribunals, which were established by the Ward Tribunals Act of 1985.<sup>72</sup> The Land Act mentions the ward tribunal among the land courts, mandated to mediate land disputes when the land is situated on one of the lowest administrative entities, over which it exercises jurisdiction.<sup>73</sup>

The parties to a dispute at the ward tribunal can be represented by a relative or another member of their household, or by an authorized person in case of a legal entity such as a company, instead of an advocate.

The ward tribunal is expected to facilitate mediation within 30 days after receiving the dispute. In case mediation fails, the tribunal issues a certificate of failed mediation and parties can proceed to the District Land and Housing Tribunal – they can do so without certification if they can prove that the tribunal has failed to mediate the dispute within 30 days.<sup>74</sup>

### *The District Land and Housing Tribunal*

The Land (Disputes Courts) Act directs the minister responsible for land to establish, in each district, region, or zone, a District Land and Housing Tribunal (DLHT). The DLHT investigates and determines disputes about land situated within its territorial jurisdiction and whose value is not beyond 300,000,000 Tanzanian shilling (approximately 113,000 euro). A DHLT can also preside over trespassing cases and other civil cases (for example about contractual obligations relating to land) when the claim does not exceed 200,000,000 Tanzanian shilling (approximately 75,000 euro).

66. Section 50 of the Labour Institutions Act, 2004 and Section 86(7)(b)(ii) of the Employment and Labour Relations Act, 2019

67. Section 94(2) of the Employment and Labour Relations Act, 2019

68. Section 5(1)(c) of the Appellate Jurisdiction Act, (Cap 141, R.E. 2019)

69. Rule 68 of the Court of Appeal Rules, 2009

70. Section 167 of the Land Act, 1999, (Cap 114, R.E. 2019); Section 7 of the Land (Courts Disputes) Act, 2002.

71. The Law Review Commission of Tanzania (2020), Report of the Review of the Legal Framework Governing Land Dispute Settlement in Tanzania, Published by the Ministry of Constitutional and Legal Affairs, Dodoma, Tanzania, <https://shorturl.at/fuwH7>

72. Section 3 of the Ward Tribunals Act, 1985, (Cap 206, R.E. 2002).

73. Section 10 of the Land (Courts Disputes) Act, 2002.

74. Section 13 of the Land (Court Disputes) Act, 2002 (as amended by the Written Laws (Miscellaneous Amendments) Act, (No.3) of 2021)

As mentioned above, the DLHT requires a proof of failed mediation by the ward tribunal, as evidenced by a certificate of failed mediation issued by the ward tribunal or proof that the ward tribunal failed to facilitate mediation within 30 days.<sup>75</sup> In these suits, an applicant can be represented by his relative or another member of his household, by an authorized officer in case of a legal entity (such as a company), or by an advocate.

The idea behind the establishment of the DLHT was to enhance determination of land cases with minimal legal technicalities, time and costs. For these reasons, land courts such as the DLHT, were given exclusive jurisdiction over land matters. Nonetheless, in the case of *Anderson Chale v. Abubakari Sakapara*, the High Court held that “the exclusive jurisdiction of the land courts does not oust the jurisdiction of the ordinary courts to preside on torts arising from matter relating to land.”<sup>76</sup> Therefore, except for matters relating to the land titles, the DLHT has concurrent jurisdiction with the ordinary courts, namely the district and/or the resident magistrate court. Yet, the DLHT presents certain advantages over the ordinary courts: the procedure is less time consuming (the DLHT only presides over land cases, unlike ordinary courts) and they are more accessible in terms of legal fees and technicalities.

The main challenge with the DLHT is that not all of them are operational. As of April 2023, Tanzania had established a total of 139 DLHTs, equivalent to the number of districts, but only 92 (66%) were operational.<sup>77</sup> This means that some DLHTs cover more than one district.

### 2.1.1.3 Foreign and regional Courts

If mechanisms available in Tanzania do not provide satisfaction, individuals who have been aggrieved by extractive projects may be able to seek remedy outside of the country. Several international avenues may be available to claimants. The first lies in the judicial system of the extractive company’s home jurisdiction, which

may provide redress if the human rights harms alleged are addressed by the law of that jurisdiction. Though this avenue is resource-intensive and requires international networks, it has been used to address the human rights harms of the extractive projects of interest to this study. As mentioned previously, in the case of Williamson Diamond Mine, law firm Leigh Day filed a case in 2020 in the UK High Court on behalf of victims and their families against Petra Diamonds Ltd, the majority owner of the mine.<sup>78</sup> This led to a settlement in May 2021.<sup>79</sup> Barrick Gold was also the subject of legal proceedings regarding human rights harms resulting from North Mara Gold Mine in the UK in 2013, and is currently facing legal action in Canada following a lawsuit filed in November 2022.<sup>80</sup>

Regional and sub-regional courts can also constitute potential avenues for remedy. These include the African Court on Human and Peoples’ rights (of which Tanzania is a state party) and the East African Court of Justice (EACJ). Though these Courts can only hear cases against states, rather than companies, this can be helpful when the source of the human rights harms is linked to the state’s failure to sanction violations of rights guaranteed by the ACHPR, or by the Treaty for the Establishment of the East African Community (EAC). As shareholders of joint ventures operating extractive operations, states can also be held directly liable for violations. Significant barriers for accessing such (sub)regional courts do however exist. In 2019, Tanzania withdrew its declaration allowing individuals and NGOs to directly submit applications against it at the African Court, seriously limiting its access and relevance as a remedy mechanism.<sup>81</sup> Individuals or legal entities with residence in one of the EAC member states do have direct access to the EACJ, but they must do so within two months of the alleged act, or within two months from the time they first became aware of the act they want to challenge.<sup>82</sup> The latter requirement can often be a challenge for individuals, especially those with no direct networks with lawyers or NGOs.

75. Ibid.

76. Civil Appeal No. 21 of 2004. The High Court of Tanzania, at Dar es Salaam (Unreported)

77. The Ministry for Land and Development of Human Settlement (2023) The Speech of the Minister for lands and development of human settlements, [https://www.parliament.go.tz/uploads/budgetspeeches/1685015599-document%20\(4\).pdf](https://www.parliament.go.tz/uploads/budgetspeeches/1685015599-document%20(4).pdf)

78. Leigh Day (2020), Claim is filed over alleged human rights abuses at Tanzanian diamond mine, <https://www.leighday.co.uk/news/news/2020-news/claim-is-filed-over-alleged-human-rights-abuses-at-tanzanian-diamond-mine/>

79. Leigh Day (2021), Settlement agreed with Petra Diamonds Limited following claims of serious human rights abuses, <https://www.leighday.co.uk/news/news/2021-news/settlement-agreed-with-petra-diamonds-limited-following-claims-of-serious-human-rights-abuses/>

80. For the 2013 court action see Leigh Day, Barrick Gold, <https://www.leighday.co.uk/news/cases-and-testimonials/cases/barrick-gold/>; for the most recent Court action see RAID, Q&A following the new Canadian legal action launched on 23 November 2022, <https://raid-uk.org/q-and-a-new-legal-action-tanzanian-human-rights-victims-against-barrick-gold-canada-november-2022/>

81. Nicole De Silva (2019), Individual and NGO Access to the African Court on Human and Peoples’ Rights: The Latest Blow from Tanzania, <https://www.ejiltalk.org/individual-and-ngo-access-to-the-african-court-on-human-and-peoples-rights-the-latest-blow-from-tanzania/>.

82. Treaty for the Establishment of the East African Community, 1999, article 30(2).

## 2.1.2. Non-judicial mechanisms

Courts operate with limited financial and human resources and may be difficult to access for some complainants. The Tanzanian system is overburdened and underfunded. In 2022, there were fewer than two judges per million inhabitants, and individuals who want to access justice often need to travel long distances to courts.<sup>83</sup> Moreover, a judicial remedy may not be required in all cases, or may not be preferred by the complainant. According to the UNGPs, non-judicial mechanisms, which are also established by the state but often mediation-based or adjudicative, play an “essential role in complementing and supplementing judicial mechanisms”.<sup>84</sup> This section presents some of the key state-based non-judicial mechanisms available in Tanzania.

### 2.1.2.1 Local Government Authorities

Local government authorities (LGAs) include local structures such as kitongoji, villages, mitaa, wards, and councils such as district councils, small township councils, township councils, municipal councils and city councils. Their status, powers, functions and limitations are described in the Local Government (District Authorities) Act of 1982 and the Local Government (Urban Authorities) Act of 1982. LGAs are vested with a mediatory role. They can therefore deal with all kinds of disputes except those of a criminal nature, which only the police and the courts are allowed to deal with. Claims taken to LGAs can therefore include land cases (compensation, trespass, etc.), cases arising out of contractual obligation and cases arising on the tort of negligence. They are also able to receive complaints regarding civil servants and public institutions.<sup>85</sup>

### 2.1.2.2. Mining Commission

The Mining Commission was established in 2018 under the Mining Act and is, among other things, mandated to resolve disputes arising out of mining operations or activities.<sup>86</sup> The Commission

also presides over compensation disputes on which the Federation of Miners Associations of Tanzania (FEMATA) has failed to successfully mediate, even if parties are not legally obliged to commence with mediation at FEMATA.<sup>87</sup> This means the commission is a two-tier dispute resolution platform: it receives referrals after failed mediation as well as disputes which have not been mediated before by FEMATA.

The Mining Commission presides over conflicts between miners and host communities, such as disputes in which land rights owners complain that mining companies affect their rights to enjoy their land, for example by causing unpleasant smells, noise pollution, intolerable vibrations, cracks in building or waste water destroying properties (trees, crops, or livestock).<sup>88</sup>

While the law obliges mining companies to pay landowners fair and reasonable compensation for any disturbances or losses caused, the law recognizes that compensation offered by companies may be low and therefore entitles landholders to lodge their complaints to the Mining Commission. When a complaint is filed, the mining companies are given the chance to defend their case by proving that their compensation offer was fair and reasonable, considering the circumstances of the case.<sup>90</sup>

The hearing process may involve representation, production of documents as evidence, and witnesses, after which the commission will issue its decision.<sup>91</sup> If they are dissatisfied with the decision of the mining commission, the parties can appeal to the High Court.<sup>92</sup> The Commission offers certain advantages to complainants, as it has offices in all mineral-rich regions, making the platform easily accessible.

### 2.1.2.3. Chief Government Valuer

The position of the Chief Government Valuer (CGV) is established under the Valuation and Valuers Registration Act of 2016.<sup>93</sup> The office of the CGV is an avenue for remedy for communities aggrieved by the valuation exercise.<sup>94</sup> Com-

83. US Department of State (2022), Country Reports on Human Rights Practices: Tanzania, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/tanzania/>

84. OHCHR (2011), UN Guiding Principles on Business and Human Rights

85. Preface of the Guidelines for Handling Citizens' Grievances in Public Service, 2012

86. Article 21 and 22 of the Mining Act, 2010 as amended by Written Laws (Miscellaneous Amendments) Act, 2017

87. FEMATA is a coalition of small-scale miners' associations recognized under the Mining Act. It is mandated to resolve conflicts between miners, particularly small-scale miners, and host communities. This consists of complaints from communities against miners arising from Section 96 of the Mining Act, 2010, including noise, air and water pollution.

88. Section 96(3) of the Mining Act, 2010

89. Section 96(4) of the Mining Act, 2010

90. Rule 5 of the Mining (Dispute Resolution) Rules, 2021

91. Rule 9 and 15(1) of the Mining (Dispute Resolution) Rules, 2021

92. Section 121 of the Mining Act, 2010

93. Section 4 of the Valuation and Valuers Registration Act, 2016

94. Regulation 51, of the Regulations GN 136, Valuation and Valuers Registration Act, 2016

plaints that they submit to the CGV should prove that the valuation was not done according to the law, was marred by fraud, or handled by compromised valuers.

A complaint letter to the CGV is technically demanding, and requires the identification of specific grounds and evidence. The available remedy that aggrieved individuals can obtain is verification of the valuation report and the compensation schedules. As a result of the CGV's decision, the payable compensation can be revised in the benefit of the aggrieved person.

### The valuation process

A key step in the land compensation process – and the source of many disputes – is land valuation, or the exercise to determine the value of a piece of land. The valuation exercise follows rates issued or endorsed by the CGV, a government official. Only registered or authorized valuers who are appointed and instructed for the land valuation process are allowed to carry out such valuations. Valuation and compensation follow international standards, such as the International Finance Corporation (IFC) performance standards, commonly referred to by multinational companies. The majority of locally owned companies only use domestic standards of valuation and compensation of land.

After being appointed by the acquiring authority, valuers inspect the site, determine compensation rates, and involve local leaders. Following an initial field visit, they are required to conduct public sensitization meetings, during which they explain to the community the purposes of land acquisition, in particular for mining and petroleum activities. During such meetings, the valuers clarify the valuation process, duration, rates, and landholders' rights and obligations to the public. The valuer also communicates a cut-off date, which marks the point after which no further land development is allowed. This cut-off date is vital, especially in case a company ends up changing its decision to acquire land, which will still entitle landholders to compensation for losses incurred from the cut-off date.

After inspecting the property, the valuer records items that require compensation, followed by a certificate signed by local government officers and property owners. After seven days, the valuation report and the compensation schedules are approved by the CGV or the Assistant CGV in the zonal offices.

Upon approval of the valuation report, payment of compensation should be made within six months. In case of delays, compensation value shall be paid with monthly interest similar to the interest that the payable amount would accrue if it were deposited in a fixed deposit account at a commercial bank. The compensation report is valid for only two years: any payment for acquisition of land thereafter should be subject to a new valuation exercise. Compensation payment should be paid from the funds of the land compensation fund, which is established under the Land Act, 1999. Despite the launching of the land compensation fund in March 2018, it was not fully operational yet at the time of writing this report.

#### 2.1.2.4. Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRAGG) is an independent institution established by the Constitution to promote the protection of human rights and good governance.<sup>95</sup> CHRAGG is mandated to receive complaints about human rights violations and abuses.<sup>96</sup>

CHRAGG may investigate human rights issues at its own initiative or upon receiving a complaint. A complainant must submit his claim 24 months after he was made aware of the alleged human rights violation or abuse. After a complaint is submitted, CHRAGG is legally mandated to conduct an investigation to ascertain the truth of allegations. CHRAGG may refuse to investigate a complaint when it is convinced that the complainant should have exhausted other available remedies.<sup>97</sup> Therefore, CHRAGG has a degree of discretion on whether or not to investigate a case and assist complainants, which is also de-

95. Article 130(2) of the Constitution, 1977

96. Section 6(1) (b) of the Commission for Human Rights and Good Governance Act (No. 7) of 2001

97. Section 22(4) (b) of the Commission for Human Rights and Good Governance Act (No. 7) of 2001



terminated by its funding - its 20 years anniversary report mentions that the platform is under-funded.<sup>98</sup>

Unlike other non-judicial institutions, CHRAGG has no mandate to issue remedies to the aggrieved community. It can only assist victims in accessing remedy, for example by facilitating mediation among disputants, or by recommending to relevant authorities (for example EWURA, NEMC or the Mining Commission) to take action. In case its recommendations are not implemented, CHRAGG can file a court case to seek legal redress on the violations or abuses.<sup>99</sup> The below case illustrates the difficulty in enforcing CHRAGG recommendations.

#### CHRAGG and evictions in Serengeti National park

On October 8, 2001, the District Commissioner of Serengeti issued an eviction notice, to be executed within four days, to all villagers of Nyamuma village to facilitate the annexation of the village land to the Serengeti National Park. On the designated day, the police, acting forcefully, evicted the villagers, burned down their houses, and destroyed other properties. To assist the landless communities, the Legal and Human Rights Centre (LHRC), a human rights NGO, filed a complaint with CHRAGG on behalf of 135 villagers. CHRAGG conducted an investigation into the matter and found the government at fault. It recommended that the government resettle the communities on their ancestral land, provide compensation amounting to 800 million shillings (300,000 euro) to the communities, and take disciplinary measures against the police commanders involved.

In response, the government stated that it had conducted its own investigation and found no wrongdoing. Dissatisfied with the government's response, CHRAGG assigned LHRC to file a case at the High Court to enforce its recommendations. Upon hearing the case, the High Court ruled that it had no jurisdiction to enforce CHRAGG's recommendations. LHRC appealed to the Court of Appeal, which overturned the High Court's ruling and held that CHRAGG's recommendations are enforceable in the High Court. LHRC successfully

filed a new suit at the High Court, where the court affirmed CHRAGG's recommendations, including the resettlement of the villagers and the payment of compensation. The government has however failed to implement these recommendations.

#### 2.1.2.5. National Environment Management Council

The National Environment Management Council (NEMC) was established by the National Environmental Management Council Act of 1983, which was repealed by the Environmental Management Act of 2004. NEMC is mandated to monitor and enforce environmental standards, including on air and water quality, by issuing penalties and restoration orders to polluters. If environmental monitoring shows non-compliance with an EIA, NEMC can penalize companies with fines.<sup>100</sup> NEMC can also instruct companies to implement environmental protection measures and report on them. In case of persistent non-compliance, NEMC can also recommend the revocation of the EIA certificate, which is a prerequisite for extraction.

Complaints can be filed digitally (by the affected citizens or by their representatives), with no time limit and without exhausting other available remedies. Parties are not mandated to mediate their dispute before filing a complaint to NEMC. NEMC has five operating zonal offices across the country (Northern zone, Lake zone, Southern zone, Southern Highlands zone and Eastern zone). An advantage of NEMC is its capacity to conduct on-site investigations on environmental abuses.

The duty of NEMC in enforcing standards is complemented by other state authorities such as the Basin Water Boards. Mining and petroleum companies are obliged to treat their wastewater to bring it to the permissible levels of contamination before they can discharge the water into a river or any other water body. To effectively prevent water pollution by extractive activities, the law obliges extractive companies to seek and obtain the permission of the Basin Water Board before they discharge the treated wastewater.<sup>101</sup> The law also prohibits undertaking any human activities, including mineral extraction, within 60 meters from water sources.<sup>102</sup>

98. CHRAGG (2022) Ripoti ya Miaka 20 ya Tume ya Haki za Binadamu na Utawala Bora, <https://www.chragg.go.tz/uploads/documents/sw-1665407606-MIAKA%2020%20FINAL.pdf>.

99. Section 6(1) (e) and (g), 15(1) and 22 (4) (a) of the Commission for Human Rights and Good Governance Act (No. 7) of 2001.

100. Section 3 of the Environmental Management Act (No. 19) of 1983. Section 100, 151 and 231 of the Environmental Management Act, 2004.

101. Section 63 of the Water Resources Management Act, 2009.

102. Section 57 of the Environmental Management Act, 2004.

### 2.1.2.6. The Energy and Water Utilities Regulatory Authorities

The Energy and Water Utilities Regulatory Authorities (EWURA) is a government institution established under the Energy and Water Utilities Regulatory Authorities act of 2001.<sup>103</sup> EWURA is mandated, among other things, to regulate midstream (transport and storage) and downstream (finished products) petroleum activities. In protecting the community's rights to live in a clean environment, EWURA is legally required to cooperate with NEMC. EWURA's role is only to investigate, for example pollution by petroleum companies, but it relies on NEMC to issue orders for the polluters to compensated aggrieved communities. Remedies such as restoration orders to restore the degraded environment and offer compensation are only issued when EWURA collaborates with NEMC.

### 2.1.2.7. Commission for Mediation and Arbitration

The Commission for Mediation and Arbitration (CMA) is a labour dispute resolution platform, established under the Labour Institutions Act of 2004 to resolve disputes between employers and employees through mediation and arbitration. Therefore, CMA can be accessed as a remedy platform by employees or former employees of the extractive companies, for example if a former employee of an extractive company believes his contract was unfairly terminated.

During mediation, a party may seek representation by a trade union, an employees' association, an advocate, a relative or any other person of his choice. The mediator can meet jointly or separately with the parties involved to explore ways to reach an amicable agreement. Such mediation meetings are private and confidential, which often helps the parties to quickly resolve the dispute. Mediation is expected to be concluded within 30 days.<sup>104</sup>

If the dispute is settled through mediation, the settlement decision becomes binding on the parties and can be executed as a decree in the labour court.<sup>105</sup> If mediation fails and the dispute remains unresolved, a party may refer a dispute to the CMA for arbitration, or to the labour court for determination. The ar-

bitrator conducts arbitration proceedings under the CMA according to what he finds appropriate to resolve the dispute timely. The proceedings pay more consideration to the substantial merits of the dispute than the legal technicalities. In 30 days after conclusion of proceedings, the arbitrator shall issue an award, which is binding and enforceable as a decree of a labour court. A complainant can challenge an award at the High Court, within six weeks after the award was served to him.<sup>106</sup>

## 2.2. Non state-based mechanisms

### 2.2.1. Operational-level Grievance Mechanisms

The UNGPs advise companies to establish or take part in operational-level grievance mechanisms (OGM) to enable access to remedy for communities who may be adversely affected by their activities.<sup>107</sup> Companies can administer such mechanisms alone, in collaboration with others, or through recourse to an external expert or body. An OGM should not require that a complainant first access other means of recourse; they are instead supposed to be directly accessible by aggrieved communities or individuals. The UNGPs establish the below criteria as "benchmarks" for the effectiveness of non-judicial grievance mechanisms.<sup>108</sup>

#### UNGP effectiveness criteria

**Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

**Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

**Predictable:** providing a clear and known procedure with an indicative time frame

<sup>103</sup>. Section 4 of the Energy and Water Utilities Regulatory Authority Act, 2001 (Cap 414, R.E. 2006)

<sup>104</sup>. Section 86(4) and (6) of the Employment and Labour Relations Act (Cap. 366 R.E. 2019)

<sup>105</sup>. Section of the Employment and Labour Relations Act (Cap. 366 R.E. 2019)

<sup>106</sup>. Sections 86 and 87 of Employment and Labour Relations Act (Cap. 366 R.E. 2019)

<sup>107</sup>. Principle 29, UN Guiding Principles on Business and Human Rights

<sup>108</sup>. According to the UNGPs, the criteria (save for the last one) are valid for both state-based and non-state based grievance mechanisms.



for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;

A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms

Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

All three projects of interest to the study – EACOP, Williamson Diamond Mine and North Mara Gold Mine – have OGMs in place. EACOP (the most recent project) has accessible online documentation regarding its grievance mechanism in Uganda.<sup>109</sup> There is little information online about the grievance mechanism in Tanzania, though a toll free number is present on the online document, and field teams conducting research for this study reported that information materials were disseminated physically in affected communities through notices. Williamson Diamond Mine also publishes concise updates on the progress of its new two-tiered grievance mechanism created following the UK court action and subsequent settlement reached in 2021 between Petra Diamonds Ltd and local communities.<sup>110</sup> However, there is still limited publicly available information on the mechanism's design and its functioning.<sup>111</sup> Finally, Barrick has alluded in various reports to a grievance mechanism being in place across all its mining operations.<sup>112</sup>

109. East African Crude Oil Pipeline (2022) The grievance procedure, <https://eacop.com/wp-content/uploads/2022/08/GRIEVANCE-PROCEDURE-1.pdf>

110. E.g. Petra Diamonds (2022), Williamson Mine: Update on IGM and Community Projects for Q4 FY 2022, <https://petradiamonds.com/wp-content/uploads/2023/07/Williamson-IGM-and-RJPs-July-Update-for-website-19-July-22.pdf>

111. IPIS (2023), Petra Diamonds' attempts to come clean with its tarnished past in Tanzania, [https://ipisresearch.be/wp-content/uploads/2023/11/20231107\\_Petra-Diamonds-attempts-to-come-clean-with-its-tarnished-past-in-Tanzania\\_Full-report.pdf](https://ipisresearch.be/wp-content/uploads/2023/11/20231107_Petra-Diamonds-attempts-to-come-clean-with-its-tarnished-past-in-Tanzania_Full-report.pdf)

112. Barrick Gold Corporation (2021), Annual Report to The Voluntary Principles on Security and Human Rights, [https://www.voluntaryprinciples.org/wp-content/uploads/2022/03/Barrick\\_2021\\_Annual\\_Plenary\\_Report.pdf](https://www.voluntaryprinciples.org/wp-content/uploads/2022/03/Barrick_2021_Annual_Plenary_Report.pdf)

# 3.

## Communities and legal aid providers perceptions

### 3.1. Methodology

In order to gain insight into the effectiveness of existing remedy mechanisms, the research team adopted a qualitative methodology, through key informant interviews and in-depth case studies in the vicinity of the extractive projects of interest to this study. Through this approach, the research sought to go beyond a legal analysis of remedy mechanisms, to gain insight into their complexities, challenges, and benefits. Researchers primarily gathered data from those with lived experience of seeking remedy, namely communities and LAPs. Interviews were also conducted with representatives of extractive companies and with access to remedy stakeholders, including representatives from LGAs, NEMC, CHRAGG, EWURA and court officers.

Qualitative data collection was conducted under two phases. Phase one involved the physical presence of four data collectors, who visited company offices and PAPs. Phase two was undertaken with the specific purpose of addressing and bridging data collection gaps that remained from the first phase. Data collection teams visited the four administrative regions of Shinyanga, Mara, Tanga and Manyara. In Mara, data was collected in Tarime district in relation to the Barrick North Mara gold mine. In Shinyanga, teams visited Kishapu district to gather information on Williamson Diamond Mine. Finally, the team gathered data on EACOP in the relevant districts of Shinyanga, Tanga and Manyara administrative regions.

The first phase of the study reached a total of 106 respondents including 62 community members (both primary and secondary PAPs), 17 LGA officers, nine LAPs, eight officers of the courts, five staff members working for EACOP, three NEMC officers, three EWURA officers, two CHRAGG officers, and three mining companies'

officers from Barrick North Mara and Canada Tanzania Mining Company Limited (CATA) mining – a company not under focus in this report. As part of the second phase, the study collected information from an additional 16 PAPs, four NGO staff and eight LAPs.

The research team consulted secondary data including literature on access to remedy, academic publications, research reports, news outlets, laws and regulations, and case law. The team also examined extractive company websites and any reports and documentation these companies made available to the public.

In December 2023, the research team formally requested meetings with all stakeholders cited in the study, in order to discuss its findings and to give these institutions the opportunity to respond to the conclusions of the research before its publication. Out of the ten institutions and companies contacted, only two responded and agreed to meet in-person, namely CHRAGG and EACOP. Following in-person meetings in Dar es Salaam, formal letters were sent to CHRAGG and EACOP, to which EACOP also responded in writing. A summary of both organizations' responses have been integrated in the report.

### 3.2 Findings

Interview data reveals that decisions about which remedy platform to approach to is subject to several factors, including understanding of the platforms, confidence in the platform and its accessibility. The most used platforms for remedy among respondents for this study were LGAs, the judiciary, and private companies' OGMs. Few respondents reported using NEMC and CHRAGG, and almost none knew that the mining commission or FEMATA can also provide remedy. Furthermore, the study highlighted that few community respondents interacted with the village land council, as most of them

prefer the ward tribunal and the DLHT. This section reviews the experiences of communities and LAPs with the main remedy pathways mapped in Chapter two.

### 3.2.1. Domestic judicial mechanisms

Courts are evenly situated across the country, but they are only accessible when communities have the financial resources to file cases and retain private legal practitioners, or when they have access to LAPs. Most respondents to the study did not have such access. Cases may also be delayed for a long time, which can make the court system appear inefficient to communities.<sup>113</sup> Nevertheless, respondents demonstrated a good understanding of the role of the judiciary in deciding cases and awarding them remedies, if the proof they provide responds to the required standards.

A national baseline assessment on the implementation of business and human rights frameworks in Tanzania conducted by CHRAGG found that there were many barriers encountered by citizens in Tanzania to access justice through the courts, including the length and the financial cost of the process. The study also concluded that most citizens did not have sufficient knowledge about where to file a complaint and that the few judgements awarding compensation to affected persons have either not been complied with, or were complied with after much delay.<sup>114</sup>

Community respondents to the study demonstrated diverse levels of confidence in the court system. For instance, respondents from Kishapu (Shinyanga) demonstrated preference for foreign courts rather than domestic courts. This is likely due to the successful settlement obtained by Leigh Day against Petra Diamonds Ltd (at the time majority stakeholder of Williamson Diamond mine) following a case in a British court. There was a certain scepticism among respondents about the ability of domestic courts to act against companies, due to government shares in mining companies. Bringing a domestic court case against an extractive project (such as Williamson Diamond mine) in which the government has a significant share was considered similar to bringing a case against the government itself.

Communities' limited legal knowledge, and the lack of public legal education, can also be a barrier for obtaining remedy through the domestic courts. Both elements are demonstrated by the following case study:

#### Fear and limited knowledge to confront EACOP in court

Mr. Pius is a resident of Hanang district affected by the EACOP project. He asserts that during the valuation of his land, he was asked to sign the valuation form without being given adequate time to read and understand its content. He later learned that he was entitled to 14 days to read and understand the forms before signing.

After he expressed his discontent, EACOP staff told him to go to court. However, given the government's shares in EACOP, he felt that legal action may be a source of trouble. According to him, many others were in the same situation.

Some time after the above facts, the Ministry for Energy visited the area and heard the villagers' complaints. The minister however stated that most of the complaints were time-barred and would be dismissed by the courts. He told the villagers to bring "actionable complaints that he can help resolve." Mr. Pius felt that, if he had benefited from legal education before the valuation exercise, or from the help of a paralegal, he would have been able to pursue his rights in a timelier manner.

LAPs' level of experience with the court system varied. Some could not easily bring cases to court due to limited technical and financial resources, as well as a lack of advocates. The study observed that LAPs in Kishapu, who are linked with human rights' organizations such as the Tanzania Human Rights Defenders Coalition (THDRC) or who can retain lawyers from the Tanganyika Law Society (TLS) to represent aggrieved communities in courts, were more frequently able to seek remedy through the court system.

113. The Citizen (2023), Access to justice in Tanzania: It is high time the legal system was decolonized, <https://www.thecitizen.co.tz/tanzania/oped/access-to-justice-in-tanzania-it-is-high-time-the-legal-system-was-decolonised-4250022>

114. National Baseline Assessment of current implementation of business and human rights frameworks in the United Republic of Tanzania (November 2017), [https://globalnaps.org/wp-content/uploads/2017/11/tanzania-bhr-nba\\_final\\_nov2017.pdf](https://globalnaps.org/wp-content/uploads/2017/11/tanzania-bhr-nba_final_nov2017.pdf)

However, even when LAPs were able to file court cases, they noted that companies often interfered with the trials in an attempt to settle with complainants out of court so that they would abandon the case. For this reason, some cases were dismissed before they could be finally determined on their merits. Such settlements can be problematic as they often result in much more limited financial compensation than could have been obtained in court by victims.

### Pressure to settle out of court

Mr. Imran is a LAP working in Kishapu district, Shinyanga region. He has handled many cases involving communities affected by Williamson Diamond Mine. He explained that his organization prefers going through the courts, which it perceives as more reliable than the company's OGM, and more effective than LGAs who can only mediate disputes. However, even court cases are subject to challenges.

In 2022, Mr. Imran's organization took up the case of a group of fishermen who were allegedly attacked while intruding into the licensed area of the mine. One of them was shot dead. However, during the court case, the witnesses disappeared, making it impossible for the prosecution to continue. Mr. Imran suspects that an unofficial, out-of-court settlement took place with the company, leading to the witnesses withdrawing from the case.

As the main point of entry for criminal complaints (including assaults, destruction of property, sexual and gender-based violence, etc.), the role of the police in access to judicial mechanisms was also discussed with respondents. A police investigation is the first step towards a criminal court case, and later civil proceedings. In case of physical assaults, the police is responsible for delivering a form to be submitted to hospital before medical services can be offered to the victim.

Community respondents in this study knew about the role of the police, which is present across the districts and relatively easily acces-

sible. Some had filed police cases against extractive companies when their or their relatives' right to life, liberty and security had been compromised. Communities often filed police cases immediately after the alleged violation or abuse occurred and without the advice of LAPs.

A survey conducted in 2023 found that Tanzania's police enjoys relatively high levels of public trust compared to that of other countries in Africa; however, it was still perceived as the most corrupt institution within Tanzania.<sup>115</sup> Confidence in the police varied amongst respondents for this study. For instance, respondents from Tarime who saw companies disobeying police orders to provide compensation had little confidence in the effectiveness of the police in assisting them to access remedy. On the contrary, respondents from Kishapu who had recourse to police after shooting incidents around Williamson Diamond Mine had more positive perceptions of the police.

However, in some occasions, respondents perceived the police to side with extractive companies. Beyond the issue of corruption, some extractive companies also retain the services of police to secure their perimeter, rather than contracting a private security company. In such case, it becomes practically impossible for communities to get support from the police themselves. LAP respondents confirmed these dynamics. One LAP in Kishapu said: "After I started helping Leigh Day to collect evidence of human rights abuses by Williamson Diamond Ltd, I was threatened not to continue helping the people. I was arrested by the police, and they searched my house and confiscated my items, including phones and my laptop, which they have not returned to date."

### 3.2.2 Foreign courts

Foreign courts can be very effective, as demonstrated by the following case study, which concerns the settlement obtained by Leigh Day following a UK court case against Petra Diamonds Ltd:

115. Afrobarometer (2023), Tanzanians express trust in the police but cite shortcomings in professional conduct, Afrobarometer survey shows, <https://www.afrobarometer.org/articles/tanzanians-express-trust-in-the-police-but-cite-shortcomings-in-professional-conduct-afrobarometer-survey-shows/>

In 2013, Mr. Jonas' was shot in the leg and amputated after unlawfully entering the licensed area at Williamson Diamond Mine. He pursued remedy via multiple platforms, including the miners' association of Shinyanga (SHIREMA) and LGAs, and he even wrote to the Prime Minister. A meeting with the company took place, presided by the then-Minister for Minerals, where Petra Diamonds was ordered to pay him compensation. However, these measures were never implemented.

Mr Jonas could not afford to hire a lawyer, and did not trust the courts to give him a favorable outcome, given the government's position as a shareholder in the mine. Instead, he narrated his story to local journalists, which caught the attention of the Legal and Human Rights Center (LHRC), a Tanzanian human rights based NGO, which in turn reached out to British law firm Leigh Day. Over the following years, Leigh Day documented human rights abuses committed by Williamson Diamond mine and its contractors, and filed a class suit in London against the mine's holding company (Petra Diamonds Ltd) for 71 claimants, including Mr Jonas, for alleged unlawful assaults, stabbing, killings and detentions.

In May 2021, a settlement was reached in which Petra Diamonds Ltd agreed to pay financial compensation to the victims, establish community-based restorative justice measures, a medical support programme, enable community access to certain parts of the mine, and develop an independent operational-level grievance mechanism to deal with severe human rights impacts of Williamson Diamond Mine.

Despite its potential effectiveness, this remedy pathway is difficult to access for the majority of host communities in Tanzania. To use courts of foreign jurisdiction, the grievance must involve a company headquartered abroad, in a country where a case can be made according to the law. Even then, resources and access are necessary to carry the case forward. Communities and LAPs with no international networks (with international NGOs and/or foreign law firm) can therefore not consider foreign courts as a viable remedy option.

## 3.2.3. Non-judicial mechanisms

### 3.2.3.1. Local Government Authorities

From a purely practical standpoint, LGAs are the most accessible remedy platform to the aggrieved communities, as they start from the lowest local government level, Kitongoji, over the village/Mtaa and ward level, up to district and regional levels. LGAs are situated throughout the country, are accessible at a low cost and are thus perceived by communities as an appropriate first point of entry before escalating a claim. Every respondent who had a complaint against an extractive company had somehow engaged with LGAs in pursuit for remedies. The study also learned that the aggrieved communities most often filed complaints at LGAs orally and by themselves, without any assistance of LAPs.

Interview respondents generally expressed low confidence in LGAs as a remedy platform, which seemed to be linked to the limited powers of LGAs to solve disputes. As LGAs only have a mediatory mandate, they often do not have sufficient power to influence companies. In fact, none of the study respondents who resorted to LGAs obtained a satisfactory outcome.

There was also a perception among communities that LGAs side with companies over communities. In Mara region, one respondent affected by a medium-scale extractive project (not among those of focus for the study) said: "We thought that because we had our local government leaders, they would help us. We started with the village chairperson (and continued) to the District Commissioner, (but) all we got were empty promises. That is when we learned that LGAs leaders are not with us at all."

One respondent from Tarime similarly stated: "Every time the LGAs summoned Barrick for a meeting, Barrick did not come. They will wait until I leave, and then be told: 'When you just left, they came and did not find you.' It happened that way every time a meeting was arranged."

Additionally, some aggrieved communities consider LGAs as money-oriented rather than operating in the public interest. Particularly respondents in Tarime district (Mara region) accused LGAs of unlawfully deducting 5% of their compensation payments. For instance, one respondent said: "I asked the company why they deducted 5% of my compensation payment. They said it was paid to the village government."



When I asked the village government, they said it is deducted to support village development. I asked for enabling legislation, but they could not respond. I asked the District Commissioner, who referred me back to the village government. I gave up." Such perceptions may cause strong mistrust from communities towards LGAs as a remedy pathway.

Even if they are, in some cases, perceived to be neutral, the mediatory role of LGAs is only effective in providing remedy when the parties are willing to compromise and reach an agreement. When parties are unwilling to reach an amicable solution, LGAs do not represent a viable option for remedy. Communities' testimonies highlighted that the effectiveness of LGAs is also subject to the commitment of the person in charge, as shown by the following case study:

#### Lack of follow-up on LGA actions in Kishapu

Mr. George is a LAP in Kishapu district. According to him, LGA platforms are only as effective as the individual holding the office. He recounted the case of Hawa Ng'umbi, who was the District Commissioner for Kishapu district in 2016. During her tenure, she made it a priority to understand the grievances of local communities affected by diamond mining. She visited the villages and held numerous meetings with communities, as well as with companies themselves and LGA representatives. During the meetings she organized, complaints were noted and next steps agreed on. However, a few months later, her appointment was revoked and the newly appointed authorities did not attempt to follow up on the progress made.

Similar to host communities, most LAP respondents asserted that LGAs are not reliable when pursuing remedies against extractive companies. However, one LAP affirmed that LGAs can be relevant in claims involving compensation distributed to families of men killed while allegedly intruding into mining areas. Some respondents asserted that LGAs are the most popular yet least effective remedy option, and emphasized the perception that these authorities side with extractive companies. For instance, one LAP said: "LGAs would always stop us from convening a meeting that seeks to inform communities of the available platforms for remedies against extractive companies. I personally cannot advise my client to lodge a complaint

with such officers." Another LAP said: "The mining company is often hosting paid meetings with LGA officers and the LGA officers hardly give feedback to the people of what the discussions were about." According to LAPs, LGAs often associate extractive projects with the government, which deters them from working against the interest of companies, even when it comes to supporting communities. The case of a ward councillor interviewed for this study also shows how severe the power imbalance can be between local officials and companies:

#### The risks of pursuing remedy for a councillor in Kishapu

Mr. Joseph is an elected ward councillor in Kishapu district. In 2021, an alleged intruder was shot dead in the buffer zone that demarcates the El Hilal mine from surrounding villages, located in Mr. Joseph's ward. The post mortem medical report claimed that death was not caused by a bullet but by a sharp object, which effectively cleared the El Hilal company of any responsibility. As a representative of the community, Mr. Joseph questioned the medical report and approached the relatives of the deceased to help them file a court case claiming compensation. According to him, his acts of assistance were considered seditious, and he was arrested and detained in police custody. After retaining an advocate, he managed to secure his release. Despite his arrest, Joseph moved forward with the original court case. The company ended up approaching the relatives of the deceased and giving them a relatively small out-of-court payment of 1,700,000 Tanzanian shillings (approximately 640 euro).

Overall, although LGAs represent a particularly accessible option for remedy (from a practical as well as financial standpoint), data gathered from respondents thus point to limitations concerning their effectiveness, legitimacy and transparency in the eyes of the affected communities.

#### 3.2.3.2 The Mining Commission

Respondents to this study were not adequately aware of the mining commission and its roles in presiding over compensation disputes between them and the mining companies. None of the aggrieved communities queried had ever interacted with the commission.

### 3.2.3.3. The Chief Government Valuer

Most LAPs and community respondents were not familiar with the CGV as a remedy platform for valuation related claims. Nonetheless, a land rights practitioner interviewed for this report did not perceive the CGV as an impartial avenue for remedy. He said, «If I were assisting host communities today, I would advise them to go to the High court rather than the office of the Chief Government Valuer. The officer who sent his subordinates to value your properties and approved his subordinates' reports cannot truly redo his approval at your request. Filing complaints for him is as bad as making him a judge of his cause.»

### 3.2.3.4. The Commission for Human Rights and Good Governance

CHRAGG does not have any office in the regions covered by this study. As a consequence, very few community respondents expressed knowledge of CHRAGG and its role, and none had ever lodged a complaint. Among LAPs, knowledge of CHRAGG was higher, but interactions with it as a remedy option remained low. A LAP in Tarime explained that LAPs follow the communities' choice of their preferred remedy option: «It is always the client's case, not the LAP's case. When clients do not want to engage with CHRAGG, I cannot force them. I act according to their choices». Given their limited knowledge of CHRAGG, few aggrieved persons request to use its mechanism.

Furthermore, LAPs showed some scepticism regarding CHRAGG's electronic complaints filing system, which was felt to demand a lot of personal information from the complainants. For example, one LAP said, «I tried to file human rights complaints, but I stopped when I found that the system asked for too much information. I was afraid that I would be exposed and dealt with individually.» Such responses indicate that LAPs lack confidence in the confidentiality among state institutions, even if they are formally independent from the executive branch, as is the case for CHRAGG. However, according to CHRAGG, complainants can submit anonymous complaints at CHRAGG offices if they provide sufficient information to allow the commission to follow up.<sup>116</sup>

LAP respondents also mentioned a lack of confidence in the enforceability of CHRAGG's recommendations. One mentioned: «After many people were shot by security guards of Williamson Diamond Mine and were living with bullets in their bodies, CHRAGG came, investigated, identified the victims, and recommended that the company should compensate them. Some were compensated, and some were not.» This has led to a feeling among some respondents that companies may choose not to comply with CHRAGG's recommendations without facing any consequences.

Another LAP said that CHRAGG may develop sensible recommendations, but the government may choose not to implement them, and there is no way to compel the government. The LAP gave the example of the case of the villagers of Nyamuma, where LHRC, after being assigned to represent CHRAGG, successfully filed a court case to enforce CHRAGG's recommendations up to the Court of Appeal. At the time of writing of this report, the government has never implemented the court orders. The LAP added: «In assisting communities whose land was arbitrarily taken, you may file a complaint with CHRAGG, and CHRAGG would investigate, develop recommendations, but the government may choose not to implement any of them, even in the face of court orders.» CHRAGG representatives interviewed by ASF, however, gave several examples on how their recommendations were followed through, either by companies, or by government bodies.<sup>117</sup>

There was a feeling among LAPs that CHRAGG could be a viable remedy option if it were not an under-funded public body, as this compromises CHRAGG's capacity to address human rights concerns in communities. A LAP working in the mineral-rich regions of Geita and Mara said: «After I assisted host communities filing complaints of human rights violations against the big players in the mining industry, I did not hear anything from CHRAGG. It was only when I made some calls to inform them that I had filed a complaint online that they responded with a letter confirming that the complaint was received and that they would send an investigation team. As of the day of our conversation, it has been two years, they have not sent investigators. Last time I called, they said they are awaiting budgetary allocations.»

<sup>116</sup>. Interview with CHRAGG representatives, 13th of December 2023, Dar es Salaam

<sup>117</sup>. Interview with CHRAGG representatives, 13th of December 2023, Dar es Salaam

With respect to these claims, CHRAGG indicated that it is very common for the general public and institutions themselves to be under the impression that they lack enough financial resources to fulfil their mandate. CHRAGG insists that there are no budgetary difficulties and that all grievances are given the adequate attention, even if the focus is often on more strategic issues. During a meeting with ASF, CHRAGG added that some complaints, for example those of a criminal nature, simply did not fall under their jurisdiction and that they are transferred to the competent authority, which does not imply that CHRAGG has failed in implementing its mandate. CHRAGG representatives for example said they referred cases to the office of the Prime Minister, responsible for labour issues, or to the CMA. They also dismissed criticism around its late response, citing the need to ensure credible investigations and seeking dialogue with stakeholders, rather than a hasty, public response.<sup>118</sup>

### 3.2.3.5. The National Environment Management Council

Awareness of NEMC as a remedy platform varied among community respondents. For instance, respondents from Tarime were familiar with NEMC, probably due to several incidents of environmental pollution by North Mara Gold Mine. After these incidents, NEMC visited the villages, took samples and on several occasions fined the company for pollution of the environment. Such involvement by NEMC was not common on the other sites visited for this study. The fact that NEMC only has five operating zonal offices across the country may make it difficult to access for a number of beneficiaries, and many may also not have the technological means to file a complaint using the digital system. An aspect of the work of NEMC which may make it unattractive to communities is also that it issues fines rather than restoration orders or compensation. This means that companies sanctioned by NEMC do not provide reparation to communities directly.

Some respondents from the community expressed a lack of confidence in NEMC's impartiality. For instance, one respondent who filed a complaint said: "We wrote a complaint letter to NEMC against a mining processing company

for their pollution of water sources and the air quality. NEMC, who came to inspect the plant, agreed to pollution claims but said the government cannot take strict measures against the polluting company for it is afraid of losing so much revenue." According to the respondent, this was a sign that NEMC is not in a position to provide equitable access to remedy. Such focus on economic benefits of extractive activities was also highlighted in an interview by TV5Monde with the NEMC chairman, who highlighted the foreign investments, employment and trade that EACOP would generate, rather than zooming in on the environmental impact of the project.<sup>119</sup>

Experience with NEMC was quite limited among LAPs as well. One LAP in Tarime emphasized the lack of trust in NEMC among communities. He attributed this to an incident where the then President John Magufuli publicly rejected NEMC's investigation report, which cleared Barrick North Mara of all pollution allegations.<sup>120</sup> The late president had said that the environment was polluted and the report was tampered with, and ordered a new investigation. According to the LAP, the president's accusations against NEMC have impacted NEMC's integrity and trust among the communities in its ability to independently perform its mandate.

There was also a feeling that NEMC processes lacked transparency, and that it was often unclear on which basis the Council responded to certain complaints and ignored others. For example, one LAP said: "In 2020, I assisted communities in drafting a demand notice to a state company requiring it to refrain from emitting noise pollutants, or they will be sued. When sending the letter, I copied NEMC, but NEMC did not show interest in helping me measure the noise to strengthen the communities' case."

He added that: "A year later, I assisted communities of rural Butiama in filing a water pollution complaint with NEMC against a mining company. A month later, NEMC made a site visit, during which they ordered the polluter to stop polluting the environment or they would close the mining plant. Nonetheless, NEMC did not make concrete efforts to monitor if their orders were complied with. In fact, pollution continued as if nothing happened."

118. Ibid.

119. TV5Monde (2023), Tanzanie : la biodiversité marine en danger, <https://information.tv5monde.com/afrique/video/tanzanie-la-biodiversite-marine-en-danger-2682276>.

120. The Guardian (2018), JPM gets tough on NEMC over water pollution by gold mine, <https://web.archive.org/web/20180908183026/https://www.jpmedia.com/en/news/jpm-gets-tough-nemc-over-water-pollution-gold-mine>

### 3.2.3.6 The Energy and Water Utilities Regulatory Authorities

Community members and LAPs interviewed for this study in the various sites were either not aware of the existence of the Energy and Water Utilities Regulatory Authorities (EWURA), or did not know of its role as a potential remedy platform. No data could therefore be collected on its processes.

### 3.2.3.7. The Commission for Mediation and Arbitration

The CMA, which attends to labour complaints, has offices in the different regional capitals, and is therefore present throughout the country, but still distant from people living in rural areas. The platform involves legal technicalities that require support by trained lawyers, and is therefore only a viable option for those with sufficient financial resources to retain an advocate or with access to LAPs.

Former employees of extractive companies met during data collection were aware of the CMA and its role in protecting their right to work. They expressed some confidence in the mechanism's impartiality. However, one respondent explained that success depends on the quality of the work done by the advocate acting on one's behalf: "In the first phase, my case was struck out because my advocate had poorly drafted the necessary documents. I was afraid I would lose my rights but after I got legal assistance from the LAP, the case was refiled and it ended in my favour."

Some of the LAPs interviewed for this study also had interacted with CMA, and considered it a viable option for labour disputes. A LAP in Butiama said: "I think CMA is a practical platform for labour disputes because it has original jurisdiction that ordinary courts do not have, and it works to compel employers on issues that trade unions could not help resolve."

However, LAPs also added that most employees who had a dispute with their employer prefer the assistance of trade unions over LAPs. Mining industry employees pay monthly contribu-

tions to trade unions such as the National Union of Mine and Energy Workers of Tanzania (NUMET) to receive help (including legal representation) when in trouble with employers. For this reason, LAPs asserted that they hardly work on labour cases.

### 3.2.4 Non state-based mechanisms: Operational-level Grievance Mechanism

As explained in Chapter II, the UNGPs provide a number of effectiveness criteria for non-judicial grievance mechanisms, including company OGMs. For the purposes of this study, the research team attempted to gather information on the companies' OGMs through a desk review of the available information, as well as interviews with communities and LAPs.

A consistent finding across all OGMs was that there was a lack of information available online on the existing process, although to different degrees depending on the company involved. It was hard to access information on Williamson Diamond mine, and most of the available information concerned the independent grievance mechanism (IGM) set up following legal action against Petra Diamonds Ltd, its holding company, in the United Kingdom. While Barrick North Mara Gold Mine and EACOP both had online materials available on their grievance mechanisms, these were not fully available in Kiswahili at the time of research, which may prevent some from accessing and understanding their content. After ASF and LEAT raised this with EACOP, they asserted it was a technical issue and corrected it.<sup>121</sup>

This lack of information and the unwillingness of certain companies to take part in the study made it somewhat difficult to fully assess the state of each grievance mechanism according to the UNGP effectiveness criteria. It was also found that even those companies who explicitly had an OGM did not necessarily refer to it when dealing with community complaints, which made it difficult for communities to understand whether their case was being handled in an ad-hoc fashion, or as part of a clearly defined process. The section below discusses perceptions collected from communities and LAPs on each company grievance mechanism.

121. Interview with EACOP representatives, 12th of December 2023, Dar es Salaam, and correspondence received on 18th January 2024.



### 3.2.4.1 EACOP

The research team did not manage to interview respondents who had used EACOP's grievance mechanism, though some respondents mentioned they had attempted to bring complaints about EACOP through the LGAs. This may be because of varying degrees of awareness of the existing company grievance mechanism. Some respondents among communities affected by the EACOP project in Manyara, Kiteto district, were aware of a complaints desk managed by the company and located at the district council office, while respondents from Hanang district asserted that they were never made aware that EACOP operated such a complaint desk. A respondent from Hanang even stated that he was advised by EACOP staff themselves to go to court after he expressed his discontent with the land valuation process. Though the presence of the OGM at the district council office may make it more physically accessible, a LAP commented that this may lead to confusion among communities between the OGM and the LGA system. EACOP also operates a toll-free line, but there was no response when researchers attempted to call the line. EACOP said it later responded to the missed calls, which was difficult to verify.<sup>122</sup>

The LAPs reached during the study also had had few interactions with EACOP's grievance mechanism. This could be attributed to the fact that the project is still in its early stages. However, one of the LAPs interviewed by the research team seemed to indicate that there were limited engagements from EACOP, even after the project was launched:

Mr. Peter works with a paralegal organization in one of the districts hosting EACOP. In 2021, the district office invited him to attend a workshop for all district stakeholders about the EACOP project. He asserts that LAPs present at the meeting were told to prepare to offer legal aid to communities on their fundamental rights, including the right to fair, prompt and adequate compensation, and the right to remedy. However, there was no further engagement from EACOP or the district government in the following two years. When Mr. Peter's organization made inquiries about the project's progress, they were told to wait until the government reverts to them. Mr Peter told

the research team: "After we were told to prepare for the EACOP project, we even wrote proposals that demonstrated how we would work with the government and other stakeholders to raise community awareness on compensation, the relevant procedures and on the right to remedy. However, our efforts were fruitless... They haven't gotten back to us."

ASF and LEAT discussed these findings with EACOP and made a request for their reaction and comments. EACOP indicated, in a written response, that significant consultations were undertaken with key stakeholders and influential community members. It added that the Environment and Social Due Diligence and the Human Rights Due Diligence exercises carried out by international experts concluded that there was a good awareness of the grievance management procedure, but EACOP did not provide more data on the awareness of the grievance mechanism within the communities or effectiveness of community engagements. They insisted that various channels were used to allow communities to access the OGM, including the toll-free number, a grievance form available in Kiswahili, as well as representatives based in the project areas.

With respect to grievances received, EACOP indicated that most cases (82%) concerned land and resettlement grievances, followed by employment and supply chain complaints (10%), and livelihoods complaints (4%). EACOP said only 25 cases were still pending, but did not respond to requests for more information on how many other closed-out grievances were resolved or not, and whether complaints were satisfied with the outcome.

### 3.2.4.2 Williamson Diamond Mine

Efforts to reach out to staff of Williamson Diamond Mine during fieldwork were fruitless. Since 2021, there are supposedly two OGMs operating for the mine: a community grievance mechanism (CGM), which receives complaints linked to day-to-day mine operations, and an independent grievance mechanism (IGM), established by the company as one of the follow-up measures from the settlement agreement with Williamson's holding company Petra Diamonds Ltd.<sup>123</sup>

<sup>122</sup>. Interview with EACOP representatives, 12th of December 2023, Dar es Salaam, and correspondence received on 18th January 2024.

<sup>123</sup>. See 3.2.9 (Foreign Courts) for details.



Little information has been publicly made available on this two-tier system. In a report from February 2023, Petra Diamonds claimed that the IGM had become operational on 28th November 2022, starting with a pilot phase to “allow for the IGM’s systems and procedures to be tested against the UNGP’s effectiveness criteria” and to “take into account learnings”.<sup>124</sup>

During fieldwork for this research, there was a perception among host communities that the company established the IGM not to attend to community but simply to comply with the settlement agreement. According to respondents, thousands of grievances were registered as soon as the mechanism was created, but none of them was significantly attended to. One LAP in Kishapu said: “Williamson Diamond Ltd adopted the grievance mechanism as compliance to orders by the High Court of London in 2021. Sincerely, the company never wanted to have such mechanisms in place. That is why, immediately after the order, the company registered over 3,000 complaints without attending to any of them.” Civil society organisations have also expressed doubts over the years about its existence and effectiveness, and pointed out the lack of publicly available information about the mechanism.<sup>125</sup>

In October 2023, the IGM’s appointed Independent Monitor (IM) published his first report, which contains his assessment about the work of the IGM so far, in light of the UNGP.<sup>126</sup> The report sheds some light on the functioning of the IGM, and goes over some of the adjustments made following the pilot phase, which lasted from November 2022 to May 2023. In the report, the IM recommended a review of all decisions made by the grievance mechanism during the pilot phase, which may explain some of the delays experienced. Among other recommendations, the report also highlights the need for increased community engagement by the IGM, to enable trust from all stakeholders. More data collection may be needed in the future to verify progress by the IGM and satisfaction among communities and LAPs.

A recent IPIS report on the IGM found that “considerable efforts were made to raise awareness about the IGM” and that different methods were used to reach out to communities, through community relation managers, radio broadcasts and cars equipped with loud speakers going around villages to inform of the existence of the IGM and the registration process. However, the complaint handling process is still experiencing shortcomings, as most complainants had not heard from the company after lodging their complaints for over a year.<sup>127</sup>

### 3.2.4.3 Barrick North Mara Gold Mine

Community respondents who had interacted with Barrick’s grievance mechanism expressed a lack of confidence in the company’s commitment to respond to and handle complaints. One respondent with a claim against Barrick North Mara said: “They told me to write a letter. I wrote it but I have never received any response.” Another respondent said: “When you go to [Barrick’s] grievance department, they make sure you do not get to see the manager of the company.”

Respondents also had doubts in the company’s willingness to implement reparations following incidents affecting the community. A respondent recounted: “After my neighbour’s roof was destroyed by Barrick’s security guards during the guards’ armed confrontation with intruders, he reported to the police station. The police came, along with a Barrick grievance department officer, and ordered the company to repair my neighbour’s roof. The company agreed to it but they never did it. My neighbour lived under the destroyed roof until he repaired it from his own pocket.”

A similar lack of willingness to follow up on agreements was noted by another respondent in the context of land valuation. Several respondents who had contested the valuation of their land mentioned that the company had agreed to carry out a new valuation exercise. However, this had not been done by the time of the study, as illustrated by the example below.

124. Petra Diamonds Ltd (2023), Williamson Mine: Update on IGM and Community Projects for Q2 FY 2023, <https://www.petradiamonds.com/wp-content/uploads/IGM-and-RJPs-Update-for-Website-21-Feb-23-PDF.pdf>

125. RAID (2022), Correspondence between RAID and Barrick July 2021–November 2022, [https://raid-uk.org/wp-content/uploads/2023/04/correspondence\\_barrick-raid\\_november\\_2022.pdf](https://raid-uk.org/wp-content/uploads/2023/04/correspondence_barrick-raid_november_2022.pdf)

126. Independent Grievance Mechanism Williamson Diamond Mine (2023), First Report by the IGM Independent Monitor, <https://www.petradiamonds.com/wp-content/uploads/1st-Independent-Monitor-Public-Report-Aug-2023-IGM-Williamson-Diamonds-Mine-091023.pdf>

127. IPIS (2023), Petradiamonds’ 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, [https://ipisresearch.be/wp-content/uploads/2023/11/20231107\\_Petra-Diamonds-attempts-to-come-clean-with-its-tarnished-past-in-Tanzania\\_Full-report.pdf](https://ipisresearch.be/wp-content/uploads/2023/11/20231107_Petra-Diamonds-attempts-to-come-clean-with-its-tarnished-past-in-Tanzania_Full-report.pdf)

## Uncertainty and risks around Barrick's grievance mechanism

In 2014, Barrick North Mara expressed its intention to acquire Mrs. Grace's land, which includes five residential houses. During the valuation exercise, the valuers did not show Mrs. Grace any forms. After the valuation was completed, she was called at the company's community relations office and informed about the value of her land, which she considered too low. Together with some of her neighbours, she opposed the findings, and the dispute got the attention of the then - Minister for Minerals, who commissioned a probe committee to investigate the process.

In February 2023, after several years, the company's grievance department called the aggrieved land holders for a meeting. The meeting resulted in an agreement that the company would communicate new compensation schedules and carry out a fresh valuation exercise. However, at the time of the study, this had still not been done.

Grace does not know when the company will revert to her, as no timeframe was established. Some of her neighbours accepted compensation and relocated to other areas, which leaves her surrounded by company land. As a result, the company has built walls all around her land and left only one way for her to move in and out of her parcel. As the company is concerned that illegal miners may use her house as an entrance to the mine, her house is always surveilled by armed police. She feels that this situation constitutes intimidation and infringement of her right to privacy.

There was a perception among LAP respondents that, while Barrick had adopted a comprehensive grievance resolution manual, the procedures established in the manual were not followed in practice. A LAP who had tried to engage with the grievance mechanism said: "The company adopted a well-written grievance mechanism but it has no commitment to implement it. I had a client case and I asked for meetings but the grievance officers kept on dodging the meeting every day it was arranged."

To get the company's attention, LAPs sometimes had to adopt other strategies. The same respondent expressed that, following the company's failure to meet with her client, she resorted to digital media and wrote about the company's human rights abuses. The publications caught the attention of the holding company abroad, and the LAP believes it is for that reason her client was finally paid compensation for land acquisition. She added: "It wasn't until I wrote the online complaint that my client was called and paid his fair compensation. It was fair compensation, but not prompt because it was paid very late. If they really wanted to implement their grievance mechanism, they would not have avoided the meetings. They would not have waited until I published an article online. Their grievance mechanism is a topic for engagements with stakeholders, but I don't find them committed to walk the talk." The LAP insisted that extractive companies would adopt grievance mechanisms only to comply with international standards, and not resolve community grievances.

Furthermore, another LAP in Tarime added: "Barrick's grievance officers always ignore us when we present complaints and request settlement. The only moment the companies would resolve complaints internally via their own grievance mechanisms is when they think that the evidence against them is obviously strong, the cost of avoiding settlement is higher than the cost of settling it and the complainant is backed by competent lawyers, and watchdog organizations such as the Mining Watch, RAID and Leigh Day." To the LAPs, such factors are of value before deciding whether or not a LAP should advise the aggrieved communities to lodge complaints with the company's grievance mechanism.

# Acknowledgments

---

This study was made possible thanks to funding provided by the Belgian Directorate - General for Development Cooperation and Humanitarian Aid. Desk and field research was conducted by the Lawyers Environmental Action Team (LEAT) based in Dar es Salaam. The study was written and edited by LEAT and ASF' East Africa regional team, based in Kampala. ASF and LEAT wish to thank all the research participants for their valuable time and input, and CHRAGG and EACOP for engaging with them about their preliminary findings.



■ **Avocats Sans Frontières**

Non-profit association under Belgian law

Avenue de la Chasse 140 Jachtlaan  
1040 Brussels  
Belgium  
Phone: +32 (0)2 223 36 54

**Help bring about a fairer world  
by supporting justice  
and the defence of human rights.**

Make a donation to Avocats Sans Frontières  
IBAN: BE89 6300 2274 9185  
BIC: BBRUBEBB

Or at [www.asf.be](http://www.asf.be)



**Belgium**  
partner in development



ASF.AdZG



ASF\_NGO



avocats\_sans\_frontieres