

# Enhancing Access to Remedies in Tanzania's Extractive Industry: A Focus on Environmental Appeal Tribunal

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## Key Messages

- *Tanzania's extractive industry significantly faces Human rights violations issues which are positively correlated with the challenge of access to remedy.*
- *Government failure to operationalize the Environmental Appeal Tribunal weakens Environmental Impact Assessment-related disputes and environmental concerns in resource extraction activities.*
- *The Government must appoint qualified members and allocate necessary resources to ensure the tribunal's effectiveness in addressing environmental grievances, particularly in the extractive industry.*

### Introduction.

The development driven by extractive resources is often viewed as a pathway to improving societal welfare. However, the benefits of this industry could be overshadowed by its adverse impacts on local communities, particularly those close to extraction sites. A recent study conducted by ASF has shed light on significant human rights violations, particularly about the right to private ownership of property, the right to privacy, the right to a clean and healthy environment, and the fundamental right to work (ASF, 2024). The study found that as human rights violations continue to escalate due to extractive operations, the aggrieved communities face challenges when seeking redress through existing remedy platforms such as Local Government Authorities (LGAs), company grievance mechanisms, the Commission of Human Rights and Good Governance (CHRAGG), the National Environment Management Council (NEMC), the police force, and the judiciary.

### Existing Legal Framework.

Tanzania, like other nations, has established legal frameworks to regulate extractive industries and protect human rights. These frameworks among others, guarantee communities' rights to a clean and healthy environment. National Environment Management Council was established under the Environmental Management Act 2004 to enforce environmental standards, and issue restoration orders against polluters, such as mining and petroleum companies. NEMC is involved in the process of issuing the Environmental Impact Assessment certificate as well as monitoring to ensure the standard and quality of the environment. These certificates are essential for the commencement of mining and petroleum projects. However, the sector is still encountered with, so many environmental challenges negatively associated with people's lives and welfare. This raises a critical concern about the impartial tribunal mentioned in the Environmental

Management Act 2004 to address complaints about issuing Environmental Impact Assessment (EIA) certificates, which are vital for commencing mining and petroleum projects. Therefore, this policy brief focuses on the non-existence of the Environmental Appeals Tribunal for redressing human rights violations in the extractive industry.

### Identified Administrative Gaps.

Despite the legal provisions, Tanzania is yet to operationalize its Environmental Appeals Tribunal. The tribunal exists only in statutory language, lacking practical implementation (The journal of environment and development, 2022). This failure undermines the intended protection of both the environment and human rights, leaving affected communities vulnerable to exploitation and pollution. Additionally, the tribunal's role in interpreting environmental laws remains unfulfilled, hindering the development of Tanzania's legal system. (ASF, 2024).

### Reflecting On Tanzania's Own Experience.

In mid-2009, North Mara Gold Mine faced accusations of water pollution in Tarime, resulting in severe consequences including 20 human fatalities, over 1000 livestock deaths, and skin ailments among local communities. Subsequent investigations by NEMC revealed governmental omissions allowing the mine's operation near residential areas. Recommendations by NEMC included either a complete mine shutdown or compensating affected communities within potential buffer zones. Despite these suggestions, NEMC remained hesitant about compensating the impacted communities for their losses due to pollution.

Incidents continued in subsequent years. In 2019, the North Mara Gold Mine's tailings polluted Tarime's environment, resulting in a hefty fine of 5.6 billion shillings (The Citizen, 2024).

Further, in 2022, wastewater pipe failures exacerbated pollution, leading to a 1-billion-shilling fine. Surprisingly, despite these events, affected communities received no compensation from the North Mara Gold Mine.

Similarly, the catastrophic failure of Williamson Diamond Mine's tailing storage facility in early November 2022[1] intensified the situation(MINETEK,2022). This incident affected two villages, impacting 13 households and over 50 individuals, engulfing their homes, farms, water sources, and belongings in tailings. Swift action by the company's rescue team prevented fatalities.

Following the Williamson Diamond Mine incident, a commission was formed, concluding no harm to people or the environment from the allegedly toxic-free tailings. However, recognizing the losses incurred, NEMC issued restoration orders against the company. Operations were suspended, with directives to address tailing storage issues. Such episodes underscore the critical importance of operationalizing the Environmental Appeals Tribunal to hold companies accountable and prevent future occurrences. If the Environmental Appeals Tribunals were operationalized in Tanzania as mandated by the Environmental Management Act of 2004, the remedy for the environmental and social damages caused by incidents like those involving the North Mara Gold Mine and Williamson Diamond Mine would have been more effectively pursued

#### Recommendations.

##### 1. Operationalize the Environmental Appeals Tribunal.

The government must appoint qualified members and allocate necessary resources to ensure the tribunal's effectiveness in addressing environmental grievances, particularly in the extractive industry.

##### 2. Foster Transparency in Environmental Information.

Enhance the disclosure of environmental information to the public, enabling greater community involvement in decision-making processes and facilitating access to Environmental Impact Assessment reports.

##### 3. Strengthen Autonomy of NEMC.

Elevate the National Environment Management Council (NEMC) to an autonomous authority within the Ministry responsible for the environment, empowering it to issue EIA certificates and ensuring independence from political interference.

##### 4. Promote Public Awareness of the Tribunal.

Implement targeted awareness campaigns to educate the public, including communities and NGOs, on the role and importance of the Environmental Appeals Tribunal in safeguarding the environment and human rights.

#### Conclusion.

Operationalizing the Environmental Appeals Tribunal is crucial for addressing human rights violations and environmental concerns in Tanzania's extractive industry. By implementing the recommended measures, the government can ensure greater accountability, transparency, and community participation, ultimately fostering sustainable development and protecting the people's rights.

The establishment of an independent Environmental Appeals Tribunal serves several important purposes beyond what regular courts with general jurisdiction can provide. While regular courts can hear Environmental Impact Assessment (EIA) appeals, a specialized environmental tribunal offers distinct advantages. Firstly, the judges within such a tribunal would possess specialized expertise in environmental law and related issues.

This specialization enables them to better understand the complexities of environmental cases, including scientific evidence, regulatory frameworks, and the unique challenges associated with environmental disputes. Additionally, a dedicated environmental tribunal would likely have streamlined procedures and resources tailored specifically to handle environmental cases efficiently and effectively. This specialization ensures that environmental matters receive the attention they deserve and are determined by individuals with the necessary knowledge and experience to make informed decisions. Moreover, having a separate tribunal reinforces the importance of environmental protection and ensures that environmental concerns are given priority within the legal system.

