



BUSINESS AND HUMAN RIGHTS TANZANIA

**REMOTE LEGAL AID PROVISION & AWARENESS -
ACTIVITY REPORT**



PROJECT: *Improving monitoring, research and dialogue on
Business & Human Rights in Tanzania*

2020/2021



Prepared by; Business and Human Rights Tanzania (BHRT) as part of the project “*Improving monitoring, research and dialogue on Business & Human Rights in Tanzania*”, implemented in partnership with the Tanzanian Commission for Human Rights and Good Governance (CHRAGG) and the International Peace Information Service (IPIS) and funded by the European Instrument on Democracy and Human Rights.

Project name; Improving monitoring, research and dialogue on Business & Human Rights in Tanzania Project: This activity has been commissioned to support individuals and communities affected by or vulnerable to corporate harm to claim their rights and access justice in order to hold corporations/business actors to account. “Remote Legal Aid Provision & Awareness” is an initiative funded by European Union as part of the project “Improving monitoring, research and dialogue on Business and Human Rights in Tanzania”. The activity is led by BHRT in liaison with IPIS and paralegal centres working in two communities identified as priority: Kahama (in Shinyanga region) and Kilombero (in Morogoro region). “Remote Legal Aid Provision & Awareness” builds on information, needs and priorities identified during fact finding missions, done in collaboration with CHRAGG (Project Partner), to Kahama and Kilombero in 2019 as part of the same project.



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ABBREVIATIONS

BHRT – Business and Human Rights Tanzania

CHRAGG – Commission for Human Rights and Good Governance

EU-European Union

GDP- Gross Domestic Product

IPIS – International Peace Information Service

KPL-Kilombero Plantation Limited

LHRC-Legal and Human Rights Centre

TAWLA- Tanzania Women’s Lawyers Association

UNGPs –United Nations Guiding Principles on Business and Human Rights

US\$-United States Dollar

NGO – Non-Governmental Organization

WLAC – Women’s Legal Aid Centre

WiLDAF- Women in Law and Development in Africa

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BACKGROUND INFORMATION

The overall objective of the project “Improving monitoring, research and dialogue on Business and Human Rights Tanzania” is to enhance national and local capacities for the protection of vulnerable groups from, the monitoring of, the reporting on, the prevention of, and ensuring accountability for corporate human rights harm in Tanzania. BHRT, as one of the implementing partners, is committed to providing evidence-based advice and assistance for empowering local and national civil society organisations, community members and their leaders, and (potential) victims of corporate human rights harm to step up for the protection of their rights. To this aim, BHRT is executing a series of activities within its expertise and mission.

Besides revealing instances of corporate human rights harm through fact-finding missions, the protection of basic rights also requires making sure people are aware of their rights and have access to justice / remediation for harm done. To realize this, BHRT set up a campaign to provide legal aid to communities where specific needs were identified during previous fact-finding missions into corporate human rights harm. These fact-finding missions were conducted in partnership with CHRAGG, as part of the above-mentioned EU-funded project.

To address existing legal aid provision and awareness needs (see more in Section 2), BHRT had planned to set up mobile legal aid clinics in communities around Kilombero (Morogoro region) and Kahama (Shinyanga region) during the second half of 2020. However, due to the outbreak of Covid-19, original plans were considered undesirable, as it was advised to limit long-distance travel and any kind of gatherings. Considering the delays incurred due to the pandemic and the November 2020 national elections, legal aid/accountability missions (mobile legal aid clinics) were replaced with the *development of dedicated awareness raising campaigns on legal aid and remote legal aid provision, targeted to the needs of 2 local communities (Morogoro - Kilombero and Shinyanga – Kahama)*. This alternative offered a “Covid-proof” way of working on legal aid provision with local communities and still fulfills the main aim of this activity, i.e., to enhance local capacities by providing tailored legal aid and assistance to those affected by corporate human rights infringements.

In preparation of this activity, BHRT has undertaken actions to ensure that legal aid provision is performed in an effective and efficient manner. Therefore, BHRT has enhanced its internal capacity for legal aid provision by researching the current laws and regulations governing legal aid provision in Tanzania, through exchange programs on best practices with other legal aid providers such as the Legal and Human Rights Centre (LHRC), the Tanzania Women’s Lawyers Association (TAWLA), Women in Law and Development in Africa (WiLDAF) and Women’s Legal Aid Centre (WLAC), by the mapping of partners for referral of cases and by updating BHRT’s internal “Remote Legal Aid Strategy”. More details on these preparatory capacity

enhancement activities can be found in the Exchange Program Report page number 3-6¹.

In this report, we describe the aims and objectives, methodologies and execution of legal aid provision and awareness activities as executed during 2020-2021 in the framework of the project “Improving monitoring, research and dialogue on Business and Human Rights in Tanzania”. We also offer a critical evaluation of these activities and its outcomes, highlighting some success stories, but also lessons learned and recommendations for future work.

1. INTRODUCTION

1.1 Access to Justice

Most of Tanzania’s community lives are profoundly affected by their inability to access legal services, which includes access to legal information, legal advice and legal aid. This situation is worsened due to the lack of knowledge of existing legal frameworks and the justice system in general by a majority of Tanzanians.

Judiciary is one of the three pillars of a democratic state with a role of dispensing justice. The judiciary is charged with the responsibility of interpreting laws and adjudicating over disputes². In Tanzania, this pillar is arranged into hierarchy from the primary court to the court of appeal³. Primary court⁴ is the lowest court where most normal citizens would mostly seek justice. However, most disputes related to land are dealt with specific tribunals set for that matter and if the lowest tribunal fails to resolve the dispute the case will be taken to the highest tribunal according to the rank. These tribunals include; Village land tribunal, Ward Tribunal, District Land and Housing Tribunal and High Court Land Division⁵.

According to the Constitution of United Republic of Tanzania of 1977, as amended from time to time, everyone has fundamental rights to be upheld. This includes the right to access justice. Also the Tanzania Legal Aid Act, 2017 provides that anyone who cannot afford the legal fee can seek legal aid assistance from legal aid providers.

As the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁶ elaborate, all people, regardless of financial or other barriers, should have reasonable access to justice / effective remedy in case of any (corporate) human rights violation. Remediation can be sought via non-judicial mechanisms (e.g., mediation) or judicial mechanisms, of which legal aid is an example. However, access to effective remedy

¹ Available upon request

² Issa Shivji et al Constitutional and Legal System of Tanzania: A Civics Source Book Mkuki na Nyota p221

³ There are ward tribunals that are established by the Ward Tribunals Act, these are not part of the formal judicial system but exist at ward level and are manned by lay people

⁴ Established by the Magistrates Courts Act RE 2002

⁵ Village land Act No. 5 of 1999 and Land Act No. 4 of 1999

⁶ Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework. Office of the High Commission on Human Rights (OHCHR); 2011. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx#:~:text=Human%20rights%20due%20diligence%20is,with%20which%20they%20are%20involved.&text=The%20prevention%20of%20adverse%20impacts,people%20not%20risks%20to%20business.>

in cases of harm remains a key challenge⁷ and a critical hurdle, especially to rural communities. As in Tanzania the rural population was estimated at 65.5 % of the total population in 2019⁸, accessing justice remains a significant challenge for a large portion of its population.

1.2 Definitions

Legal Aid implies giving free legal services to the needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority.

Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds and/or knowledge. Therefore, the main objective is to provide equal access to justice and making justice available to all levels in the society (especially to poor and disadvantaged groups).

Remote legal aid occurs when a lawyer and client are separated by distance and therefore cannot meet in a traditional setting/in physical presence.

Legal issues are legal questions which are the groundwork of a case and which require a court decision to settle the case. It can also refer to a point on which the evidence is needed to prove the matter on the ground. The outcome of the case will depend on the evidence adduced and court's interpretation of the law.

1.3 Challenges of legal aid provision in Tanzania

Access to justice is a fundamental principle regardless of geographical location, income, education, language and gender; abuse to one's justice leads reflects poorly on the whole justice system.

Most legal aid providers in Tanzania are found in urban centers and towns⁹. For Tanzania's rural population and remote communities, accessing justice remains a challenge, due to issues such as the absence of nearby legal aid centres, language, understanding of laws and regulations and financial means.

1.3.1 Language and Education

Language is an essential element which plays a vital role in adjudication processes. The language of law in Tanzania is English although Kiswahili is also marginally used¹⁰. In practice, Kiswahili is the core language of most institutions in Tanzania which is spoken by almost every resident in Tanzania. It unites more than one hundred and twenty (120) tribes existing across the country. The use of English in

⁷ See e.g. https://www.ohchr.org/Documents/Issues/Business/2nd_Revised_LBI_IGWG6th_session.pdf

⁸ <https://tradingeconomics.com/tanzania/rural-population-percent-of-total-population-wb-data.html>

⁹ <http://internationallegalaidgroup.org/miscdocs>

¹⁰ Magistrates' Courts Act [Cap 11. R.E 2002], s 13

legal processes has deterred access to justice to most community members who are not user-friendly with English language. Moreover, Table 1 indicates that a large portion of Tanzanians is still illiterate.

Besides this, the language of law is difficult for non-experts, because of its terminologies and ambiguous phrasings. This has created the perception that legal issues are only meant for the elite and their lawyers. Ordinary people are often discouraged by this fact to seek legal help. Moreover, they can lose their rights by not being aware of legal issues.

Additionally, various studies have clearly indicated that, awareness on basic rights and accessing rights remains limited in Tanzania¹¹. There is an education service inequality between rural and urban communities¹², which leads to a limited ability of most rural populations to understand various rights issues, including a basic understanding of human rights or issues of corporate human rights harm ('business and human rights').

	TOTAL	MALE	FEMALE	YEAR
ILLITERATE POPULATION				
15- 24 years	1,417,168	652,463	764,704	2015
15 years and older	6,240,144	2,362,853	3,877,290	2015

TABLE 1-Tanzania level of illiteracy in 2015¹³

Overall, all these hurdles make it difficult for laypersons to understand the language of the law and their options to use the law to defend their rights.

1.3.2 Income

The economy of Tanzania is a lower-middle income economy¹⁴ since 2020. Tanzania's economy has been transforming from a command economy to a market economy since 1985. Tanzania's gross domestic product (GDP) per capita for 2017 was US\$ 1,005, an increase of 3, 97% from 2016. Tanzania's GDP per capita for 2018 was US\$ 1,061, an increase of 5.59% from 2017. In 2019, it was US\$ 1,122, an increase of 5.76% from 2019¹⁵.

The above data clearly shows that there is growth of GDP per capita in the country. However, there are still income challenges to communities, particularly rural communities. In terms of income, there has been urban-rural inequality due to

¹¹ <https://ipisresearch.be/home/capacity-enhancement/voices-from-the-south/voices-from-tanzania> and Tanzania Annual Human Rights Report ,2020 by Legal and Human Rights Centre

¹² <http://africainequalities.org/wp-content/uploads/2016/10/Tanzania>

¹³ <http://uis.unesco.org/en/country/tz>

¹⁴ "New World Bank country classifications by income level: 2020-2021"

¹⁵ [www.macrotrends.net › countries › TZA › gdp-per-capita](http://www.macrotrends.net/countries/TZA/gdp-per-capita)

different opportunities that accelerate variance on per capita income. These are associated with different opportunities in crucial areas such as employment, accessibility of social facilities (markets, better schools, infrastructures, hospitals supplied with enough medicines and facilities), income, parental and family circumstances. In rural communities, insufficient financial means creates challenges for claiming rights. Simply put, most people's income in rural areas is not sufficient for them to seek legal aid and to afford costs for follow-up of their claims/cases. This, in turn, limits their access to justice.

2. LEGAL AID ISSUES IN KAHAMA & KILOMBERO

In 2019, BHRT and CHRAGG conducted a series of fact-finding missions into claims of corporate human rights violations, including issues reported in communities surrounding Kilombero Plantation (Kilombero, Morogoro) and Bulyanhuru Gold Mine (Kahama, Shinyanga). As described briefly below, several legal issues were reported during these missions, which relate mostly to land rights and environmental issues. From the fact-finding missions it was revealed that, awareness on matters related to land and environment among the community members were limited, also there was limitation on accessibility of legal aid services due to remoteness of the areas.

2.1 Legal Issues Facing Communities in Kahama

A joint fact-finding mission (CHRAGG – BHRT) was conducted to investigate claims of violations of land and environment rights around Bulyanhuru Gold Mine at Kahama District in Shinyanga Region. This claim was brought before CHRAGG by a Tanzanian NGO known as Lawyers Environmental Action Team (LEAT). The mission revealed that:

- i. There was a procedural dilemma on the issue of land acquisition due to lack of prompt/timely and fair compensation to the communities around Bulyanhuru Gold Mine
- ii. some villagers of villages around Bulyanhuru Ward such as Namba Tisa villagers had not been compensated for unexhausted land improvement by the government
- iii. The communities disputed and complained against the verification report by the Chief Government Valuer, which they see as unfair and not transparent. Therefore, disputes remained on fair compensation and the valuation made by a Government valuer from Kishapu District.

The fact-finding mission came out with several recommendations and some of the key recommendations were awareness raising, legal aid provision and continuous follow-ups on the cases identified.

2.2 Legal Issues Facing Communities in Kilombero

A fact-finding mission was done on a land dispute near Kilombero Plantation Limited (KPL) that has invested in cultivating rice in Kilombero district, Morogoro. The fact finding mission was conducted in collaboration with CHRAGG, following information presented in the media.

The following are the issues found that drove BHRT to conduct the legal aid in this case:

- i. The village boundaries demarcated by the authorities during the subdivision of the villages led to some villagers not being satisfied, such as villagers from Mkangawalo, Ijia, Mngeta and Luvirikila.
- ii. There are still a number of claims and complaints that compensations of the land were not full, fair and prompt.
- iii. There is an outstanding case of environmental pollution. In 2009, KPL applied herbicides on its land using aerial spraying (i.e. a herbicide was sprayed from an airplane). Villagers with fields near the KPL farm said that they experienced damages to their crops from the non-selective glyphosate used by KPL and they were not compensated.

3. REMOTE LEGAL AID PROVISION & AWARENESS CAMPAIGNS IN KAHAMA & KILOMBERO

3.1 Rationale & Objectives

In adaptation to the Covid-19 pandemic, BHRT devised a strategy for awareness raising and remote legal aid provision targeted to the needs of local communities in Kilombero and Kahama.

The objectives of these activities were;

- i. To undertake awareness raising and capacity building (public education) on land and environment
- ii. To provide remote legal aid to 2 local communities (Morogoro - Kilombero and Shinyanga – Kahama).

Generally, these activities were used to respond to the challenges facing the communities as identified during the fact-finding mission, especially on the issues of land and environment.

It is worth noting that this provision of remote legal aid and awareness raising was designed to empower and assist vulnerable communities **affected** by **corporate human rights violations**, and specifically those harmed in their land and environmental rights. These rights include: the right to adequate, fair and prompt compensation, the right to be informed before acquiring land and the right to clean,

healthy and safe environment. The long-term aim of the activities was to capacitate these communities for future protection and realization of their rights.

This activity is in line with the overall objectives of the project “*Improving monitoring, research and dialogue on Business and Human Rights in Tanzania*” as it aims (1) to give a voice to local communities affected by business activities and work on the underreporting of corporate harm; (2) to protect the rights of those affected by corporate harm and assist them in seeking redress and ensuring corporate accountability; and (3) to raise awareness, promote, and improve the implementation and monitoring of the relevant international frameworks for business and human rights.

3.2 Methodology for Remote Legal Aid & Awareness

To provide awareness raising and capacity building, a combination of tools was used that are flexible in response to various circumstances:

3.2.1 Phone Legal Aid & advice

Two mobile phones lines were set up for remote legal aid and advice. Affected communities were able to call and the send messages to these numbers: 0672 189 192 and 0756 486 233.

During a 5-day visit to each district (January – February 2021), 2 staff members from BHRT raised awareness on these support communication channels through community radio programs (see 3.2.3) and various written tools (see 3.2.2) that were disseminated amongst community members.

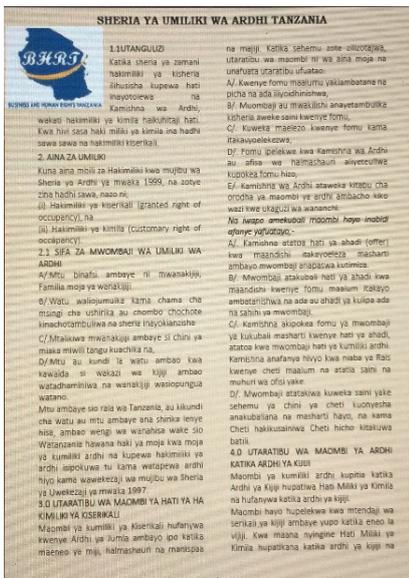
3.2.2 Written awareness tools

A total number of 2,705 copies of specifically developed written publications on **land** and **environment** were prepared and disseminated to community members in Kahama and Kilombero. These tools include flyers and self-help kits. These products include a simplified version of laws explaining the procedures to follow in the case of breaches of land laws. They are available in Kiswahili to ensure maximal understanding.

The written awareness tools were disseminated in collaboration with Paralegal centres located in Kahama and Kilombero. The dissemination process was proceeded by seeking the permission from and paying courtesy calls to the relevant authorities. The awareness tools were disseminated to community members, Local Leaders, community leaders and Paralegal Centres for further dissemination and to be used as Legal Aid references and for awareness raising.



Written materials disseminated at Kahama and Kilombero. From left to right: brochure on land dispute resolution, on environmental rights and environmental protection, and on land compensation



Written materials disseminated at Kahama and Kilombero. From left to right: information on land tenure law, land dispute resolution, and land acquisition



Legal Aid awareness tool dissemination in Kahama (top & bottom left) and Kilombero (top & bottom right)

3.2.3 Local radio programs

Community radio programs were also used to provide legal advice as well as to raise community awareness on various legal issues related to land and environment.

In total, 6 live radio programs were aired from 3 different local radio stations in Kahama –Shinyanga and Kilombero –Morogoro. The radio stations used are Huweso FM, Divine Fm and Pambazuko FM in Kilombero and Kahama. The coverage of the radio stations used to air the programs is as indicated in Table 2.

Radio programs in Kahama (Shinyanga)	Radio programs in Kilombero (Morogoro)
<ul style="list-style-type: none"> • Geita • Shinyanga • Tabora • Mwanza • Kigoma 	<ul style="list-style-type: none"> • Makete • Mufindi • Njombe • Kilolo-Iringa • Ulanga, Malinyi • Some areas in Kilombero • Some areas in Morogoro town

TABLE 2 –coverage of legal aid awareness programs aired in Kahama and Kilombero

Community responses from both Kahama and Kilombero were overwhelming. People had an opportunity to call during the radio programs, asking questions on land, environment, Matrimonial issues etc. Most of the questions asked on land related to compensation issues. E.g. (i.) What comes first in case of relocation; is it a relocation or compensation? The answer was compensation. (ii.) How long should someone wait for compensation? The answer given was within six months a person is supposed to be compensated and after expiry of the given period the person is supposed to be given interest on the amount due.

However, the public still demanded for more radio programs, to continue raising their awareness especially on land issues. They also argued that *“the radio programs will be of countless advantage to both community and corporations for reducing disputes, especially land disputes”*.



BHRT team during radio programs in Kahama and Kilombero

4. KEY RESULTS AND OUTCOMES

4.1 General findings

There were various methods and tools employed during the execution of this activity a total of 450 cases of legal aid and advice were provided in the communities surrounding Kilombero-Morogoro and Kahama-Shinyanga. Land cases on the matter of compensation were the most prominent one followed by matrimonial cases as per indicated data below.

These cases included:

- 344 cases related to **Land=76%**
- 96 cases related to **Matrimonial matters=21%**
- 10 cases related to the **Environment= 2%**

Most community members reached the BHRT Remote Legal Aid Team through mobile calls, where answers were given and issues were clarified. Most cases reported were on land issues (76%), followed by matrimonial cases at 21% and Environment cases at 2%. In all cases, BHRT assisted with concrete advice for next steps or referral to other organisations. E.g., instructions were given to the community members who are in need of close assistant to contact the Kahama Paralegal Centre and Kilombero Paralegal Centre for further assistant.

Overall, we found that there was a limited understanding of laws and regulations governing land and environment among local communities, with a great need for awareness-raising. We also realized that the presence of Paralegal Centres would be of great important to the communities only if they are well capacitated financially. Referral centres for clients in rural areas are limited, especially on legal service provisions. There are only a limited number of Non-Governmental Organization providing Legal Aid in the area.

4.2 Success stories

A number of cases in which BHRT provided legal assistance are already a success. The clients followed the directives given and won their case. At the time of writing, only a few weeks after concluding the activity, two cases can already be considered closed/ a success.

One example is the case of Mr. K. from Malinyi, Kilombero. He was faced with land trespassing and threats from a trespasser. Upon advice from BHRT, he reported the matter to police, who managed to intervene / arrest and later was realized and ordered the trespasser to vacate the land within 24 hours and the order was honored.

4.3 Cases for follow-up

At the time of writing, most cases still need follow-up to provide legal assistance and monitor the case progress. One of the examples is the case of members of community x at Kilombero whose land planned to be acquired for public use without compensation. BHRT advised them to follow up on the matter with the district land-division and the government for the compensation (District Commissioner). BHRT guided the representative in the administrative procedures and directed them to the office/authority responsible for land issues. BHRT is monitoring the progress.

A second example is a case that is still ongoing is that of Luvirikila/Mkandawali village vs KPL. When KPL dug trenches for its agricultural activities, dirty water spilled on neighboring land and in homes. This led to the destruction of crops and peoples' shelters. Also, the issue of crop destruction due to aerial spraying of herbicides (see 2.2) is still pending. Community members unsuccessfully reported these matters to the company. BHRT is still making follow ups with the relevant authorities.

5. LESSONS LEARNED

During the execution of remote legal aid, BHRT's legal aid team learned the following valuable lessons:

- ✓ It is very important to include local leaders in our activities to successfully impart the knowledge needed by communities so that they can apply their knowledge on their own when they are confronted with legal issues and to share this knowledge with the community they are serving.
- ✓ The methods used were great as per feedback given by people during radio programs and face to face interventions. The things that need to be improved is the extension of time of the activities and printing more awareness materials for dissemination to the communities.
- ✓ Better means of transport would ease field work. Not all areas are easily reachable, villages are scattered, and infrastructure is often poor.
- ✓ Sufficient resources, in terms of publications/awareness materials, time and funds, are crucial to effectively conduct legal aid provision and awareness activities.

6. RECOMMENDATIONS

- ✓ Continue with capacity building and awareness training activities for communities by using various channels to reach them
- ✓ Dispute resolution mechanisms should be established to ensure easily access to justice by community members.
- ✓ Enhancing collaborative and inter-professional service provision. In this initiative the focus is placed on increasing collaboration between service providers and strengthening existing networks
- ✓ Improving the professional presence of paralegals, personnel trained to assess, identify and refer legal problems in communities for effective and efficient legal service provision
- ✓ Design of programs to promote the use of technologies (zoom, WhatsApp etc) as a means of overcoming distance barriers to other legal providers.
- ✓ Capacitate the communities in the use of technologies on reporting and requesting legal assistance.

7. CONCLUSIONS

Legal aid provision and awareness raising are important aspects of assuring the fulfilment and protection of human rights. They are needed to a greater extent especially in the periphery and rural areas in Tanzania. These are places that are left behind in various matters, including access to justice and remediation following corporate violations of human rights.

Development of a more sophisticated understanding of rural and remote legal aid and outreach in the delivery of the same is needed. Outreach strategies and fund are needed to address the unmet needs in terms of legal aid and access to justice. Improvement of the use of technology in communication between community members and legal aid providers could be one way to facilitate and improve remote legal aid provision. Hence, it has the potential to improve the access to justice among remote communities.