



Grievance and redress mechanisms: What should I do when my rights are infringed?

What are redress mechanisms?

Redress mechanisms refer to ways in which persons who feel they have been wronged are able to obtain relief or compensation. In investment related disputes, local communities need to have effective redress mechanisms to deal with cases where investors interfere with their land rights or fail to deliver on promises.

Background

The laws and contracts governing relations between investors and local communities create rights and obligations. It is important that communities can get redress if their rights are violated. This would include rights established by contracts, but also other rights which were not necessarily contemplated at the signing of the contract. A conducive environment for investors and local communities would be one where mechanisms to settle potential disputes are functional and known by the parties well in advance. Yet sometimes dispute mechanisms are not in place, or they are unclear or unknown to many people, especially local communities living in rural areas. The land laws of 1999 introduced dispute settlement mechanisms for land matters that are independent of standard litigation processes. However, there is no specific redress mechanism for investment related disputes that arise between investors and local communities. The Tanzania Investment Act, 1997 establishes a dispute mechanism between the government and investors but has not provided mechanisms to settle disputes between local communities and investors.

This brief discusses the nature of redress mechanisms relevant to investment related disputes. It pays particular attention to the redress mechanisms under SAGCOT for matters of compensation and resettlement.

Common grievances between local communities and investors

Disputes between communities and investors touch on a wide range of issues, and it is impossible for this brief to provide a comprehensive typology. However, many disputes are rooted in the manner in which land was acquired, in controversies about payment of compensation and in unfulfilled promises made by the investor. Investors may promise to provide social infrastructure for education, health or water access. But these promises may not be properly reflected in written, enforceable agreements. In many cases, investments raise high and perhaps unrealistic expectations among local communities. Where investments fail and stop operations, they leave behind a trail of disappointment and frustration among local communities and also among labourers. For some types of disputes, the law indicates the relevant redress mechanisms. For example, labour disputes can be taken to court using the industrial dispute settlement machinery. Disputes concerning land acquisition and compensation can be settled through the procedures provided under the Land (Courts Disputes Settlement) Act 2002, which will be discussed in this brief.



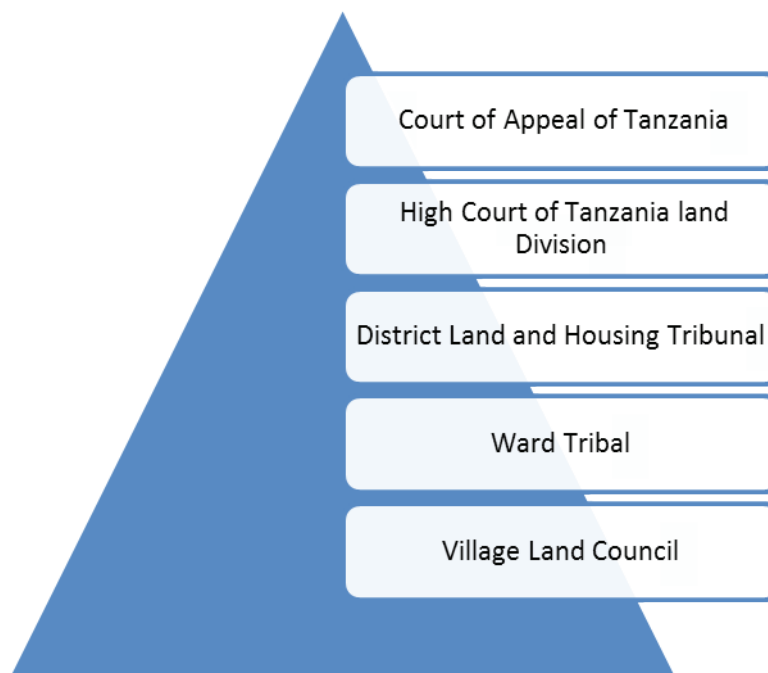
Dispute settlement under the Investment Act, 1997

The Tanzania Investment Act, 1997 regulates the settlement of investment related disputes between the Tanzanian government (and its institutions and departments) and the investor, but it does not shed light on how disputes with local communities will be dealt with. According to this law, disputes between government and investors should be resolved amicably - that is, through discussion and negotiation. If amicable settlement fails, investors can bring disputes to arbitration in accordance with arbitration laws of Tanzania, the rules of the International Centre for the Settlement of Investment Disputes or any bilateral or multilateral agreement on investment between Tanzania and the host country of the investor.

Investors tend to value the ability to bring disputes to arbitration, rather than national courts. They are typically concerned about the time it takes for disputes to be settled in national courts. Delays in dispute settlement can have major implications for returns on investments. Also, investors may be concerned that courts in the host country may not be impartial or effective.

The Tanzania Investment Act does not provide for specific mechanisms for the determination of investment disputes between local communities and investors. Those disputes would need to be determined by national courts on the basis of applicable national law. As discussed, disputes relating to land can be taken to the dispute settlement mechanism that was established by the land laws of 1999, namely the Land Act and the Village Land Act. The diagram below illustrates the hierarchy of courts in land disputes. Any aggrieved person can take a dispute to this court system. Land owners and those who hold other types of rights in a piece of land can both bring disputes to court. The lower courts at village level (Village Land Council) and in the Ward Committee can be accessed with relative ease, without major difficulties in terms of procedure or costs, but when one appeals upwards to the District Land and Housing Tribunal, High Court or the Court of Appeal, matters become more technical and dispute settlement more costly, as the parties will invariably need to be represented by lawyers. Accessibility of courts at the higher levels is also complicated by the fact that these courts are mostly located in urban centres that are far from rural areas. Long distances have implications for costs and can cause delays in the dispensation of justice. To overcome these problems, some large investment projects have set up tailored grievance mechanisms that can allow communities to voice grievances and seek redress through processes other than formal court litigation.

Diagram 1: Hierarchy of land disputes courts



Case study: Grievance and redress mechanism under SAGCOT

The Southern Agricultural Growth Corridor (SAGCOT) offers a good example of how investment processes can involve the establishment of tailored grievance mechanisms to complement opportunities for redress provided by national courts. The SAGCOT mechanism is still in the making and there is as yet no experience on how it will work in practice. But it is useful to raise awareness about the features of this mechanism before it is implemented.

Institutional context: The SAGCOT Grievance Committee

According to the SAGCOT Resettlement Policy Framework of September 2013, it is expected that a Grievance Committee will be established to deal with any grievances that may arise. This committee is expected to bring together different parties that are relevant in the expected disputes, including an official working on the implementation of the investor's Resettlement Action Plan (RAP), a representative of the District Lands and Natural Resources Department, a representative of the Village Council and a representative of the Project Affected Persons (PAPs). The committee will bring on board a competent valuer in the event the dispute relates to contested compensation. The multi-stakeholder set up may help in building trust between stakeholders - an important issue in dispute settlement. Local communities are likely to prefer this mechanism to national courts since it is expected to be less costly and to resolve disputes expediently.

Procedures for grievances in respect of resettlement and compensation

PAPs will be informed about the existence of the procedure as well as how to register complaints on compensation and relocation. The mechanism will first try to resolve matters amicably and promptly, away from courts and administrative channels in higher levels of government. The procedure will involve several stages, which are outlined step by step in the box below.

Box 1: SAGCOT Grievance mechanism procedure

1. The affected person should file his/her grievance in writing to the Village Leader. The grievance note should be signed and dated by the aggrieved person. Where the affected person is unable to write, he should obtain assistance to write the note and emboss the letter with his/her thumbprint.
2. The Village Leader should notify the Grievance Committee and respond within 14 days, during which any meetings and discussions to be held with the aggrieved person should be conducted. If the grievance relates to valuation of assets, an independent valuer should be requested to revalue the assets, and this may necessitate a longer period of time. In this case, the aggrieved person must be notified by the Village Leader that his/her complaint is being considered.
3. If the aggrieved person does not receive a response or is not satisfied with the outcome within the agreed time, s/he may lodge his/her grievance to the District Administration.
4. The Grievance Committee will then attempt to resolve the problem (through dialogue and negotiation) within 14 days of the complaint being lodged. If no agreement is reached at this stage, then the complaint can be taken through the formal court process, i.e. to the Village Land Council, the Ward Tribunal where relevant, District Tribunal and the High Court (Land Division) at the National level.

Source: SAGCOT, Resettlement Policy Framework, September 2013

The SAGCOT grievance mechanism is quite different from the legal procedures prescribed by the laws of Tanzania. It aims to provide a simpler and more accessible dispute settlement process than that available before national courts. But SAGCOT redress mechanism does not completely replace legal and formal dispute resolution. If an aggrieved party is not satisfied with the SAGCOT redress mechanism, they can bring the dispute to national courts under the land laws. So the SAGCOT grievance procedure is a hybrid mechanism between corporate grievance mechanisms and national courts. It was adopted from the compensation and resettlement guidelines currently in use by the Ministry of Infrastructure Development in relation to the construction of roads. The different possible stages of the grievance mechanisms, and its combination of alternative dispute resolution and formal court proceedings, are illustrated by the diagram below.

Diagram 2: SAGCOT Grievance Redress Mechanism

