



**African Energy & Minerals
Management Initiative (AEMI)**

AEMI LEGAL AID PROGRAM (LAP)



ANALYTICAL REPORT

FOR

**THE LEGAL CHALLENGES FACED BY THE ARTISANAL SALT MINERS AT
LAKE KATWE IN UGANDA AND THE POSSIBLE PRACTICAL SOLUTIONS.**

LOYOLA KAROBWA AND SUSAN NAKANWAGI

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Fig. 1: Photo of an older woman involved in artisanal salt mining at Lake Katwe.

EXECUTIVE SUMMARY

This Report has been prepared for the AEMI Legal Aid Program which is a program of the African Energy and Mineral Management Initiative (AEMI). The Report is a result of a field work study visit undertaken by the AEMI team at the Katwe Salt Mines found at Katwe, Kabatoro Town Council in Kasese District, South Western Uganda. This Report utilises findings of earlier studies at the site by AEMI, it examines the legal status of artisanal and small-scale mining in Uganda, and the law and policy on provision of legal aid. It further analyses the findings of the field work by considering the legal problems identified by the Katwe artisanal salt miners. In addition, the authors make recommendations for practical legal aid solutions to the legal problems identified. The study discovered that the legal problems faced are both mining related and non-mining related and require legal aid solutions. AEMI is committed to finding and giving practical and affordable solutions to the legal needs of persons engaged in the energy and mining industries in Africa.

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Abbreviations

AEMI	African Energy and Minerals Management Initiative
AMV	African Mining Vision
ASM	Artisanal and Small Scall Mining
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
LASPNET	Legal Aid Service Providers Network
NEMA	National Environment Management Authority
NGO	Non-Governmental Organisation
SDGs	Sustainable Development Goals

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CHAPTER 1

INTRODUCTION

African Energy and Minerals Management Initiative (AEMI) strives to ensure that extractive resources are utilised in a manner commiserate with sustainable development. Sustainable development entails peaceful and inclusive societies that ensure access to justice for all as well as fair, effective and accountable justice systems more so for the least privileged – Sustainable Development Goal No. 7.¹

Globally, over 1.5 billion people are not in a position to solve their justice problems due to unreported violence or crime, or loopholes in the administrative justice system.² Also, approximately 4.5 billion people are excluded from the opportunities that are provided by the law while over 2 billion are employed in the informal sector exposing them to abuse and exploitation, as well as limited access to economic opportunities and public services.³

According to studies, justice entails (1) Rendering legal advice, assistance and empowerment to communities by paralegals, lawyers, legal advice centres, unions or advocacy groups; (2) Formal justice institutions which play a central role in resolving conflicts, disputes and grievances; (3) Alternative dispute resolution mechanisms; and (4) Accountability mechanisms for an efficient justice system.⁴

The present study, therefore, sought to improve access to legal aid for the people involved in the energy and mining industry of Africa, particularly those who practice artisanal and small-scale mining. It builds on other ventures of the AEMI such as providing and ensuring access to protective equipment by the miners, advocating for the use of green energy, policy advocacy and enhancing mechanisation of the mining activities. As such, AEMI conducted a fact-finding field study to Lake Katwe to find out both mining-related and non-mining associated legal problems faced by salt miners. The AEMI team used group interviews, consultations, individual interviews, as well as observation in conducting the study. This research was aimed

¹ See, Transforming our world: the 2030 Agenda for Sustainable Development, 2015' http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

² Task Force on Justice, Justice for All – Final Report. (New York: Center on International Cooperation, 2019), available at <https://www.justice.sdg16.plus/>

³ Ibid.

⁴ Ibid.

at identifying the specific legal aid gaps experienced by artisanal salt miners, to recommend tangible legal aid solutions.

This Chapter briefly lays down the purpose and methodology of the field study. Chapter Two examines the legal framework of artisanal and small-scale mining (ASM) in Uganda as well as the legal status of the provision of legal aid in Uganda. Chapter Three discusses the findings of the study regarding the legal problems faced by the miners, and concurrently makes recommendations for legal aid solutions. The proposed solutions are guided by the suggestions of the miners, observation, existing literature on the subject, and the benchmarked experience of AEMI derived from experiences from other areas and jurisdictions. The Conclusion in Chapter 4 wraps up the Report.

CHAPTER 2

LEGAL FRAMEWORK OF ARTISANAL AND SMALL-SCALE MINING (ASM) AND LEGAL AID IN UGANDA

2.1. Legal Status of ASM in Uganda

2.1.1. The 1995 Constitution of the Republic of Uganda Article 244 provides that the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. It adds that Parliament shall make laws regulating the exploitation of minerals; the sharing of royalties; the conditions for payment of indemnities arising out of the exploitation of minerals; and the conditions regarding the restoration of derelict land. Minerals and mineral ores shall be exploited in view of the interest of the individual landowners, local governments and the Government. The supreme law defines “mineral” to mean any substance, other than petroleum, whether in solid, liquid or gaseous form occurring naturally in or on the earth, formed by or subject to the geological process.

2.1.2. Section 2 of the Mining Act, 2003 defines “small-scale operations” to mean prospecting or mining operations which do not involve expenditure more than UGX 10,000,000/= (Ten million Uganda shillings), or the use of specialised technology. The law does not provide for or define “artisanal” mining.

2.1.3. The Minerals and Mining Policy 2018 provides for ASM in the policy context, as mining operations run by individuals, families or groups of local communities or migrant workers or local enterprises, the majority of whom have no formal technical training and depend on rudimentary tools. Cabinet approved this policy in May 2018.

2.1.4. The current Ugandan legal framework does not expressly provide for or regulate ASM. However, the policy framework does recognise ASM and makes policy directives and decisions accordingly. The Minerals and Mining Policy 2018 is intended to inform the proposed amendment to the Mining Act, 2003 and address the gaps existing in Uganda’s mining legal and regulatory framework.

2.1.5. Regionally, the African Mining Vision (AMV), 2009 envisages mineral resources to be exploited in a transparent, equitable and optimal manner to support broad-based sustainable

growth and socio-economic development. This also includes a mining sector which utilises the potential of artisanal and small-scale mining to encourage local/ national entrepreneurship as well as improve livelihoods and advance integrated rural social and economic development.

2.2. The legal and regulatory framework of Legal Aid in Uganda

2.2.1. The 1995 Constitution: Article 28 of the Constitution provides for the right to a fair hearing, which includes the right to counsel. Every person charged with a criminal offence which carries the maximum penalty shall in be entitled to legal aid at the expense of the State. This is known as the state brief system limited to criminal offences of a capital nature. It does not apply to the context of legal aid regarding ASM.

2.2.2. The Poor Persons Defence Act, Cap.20 provides that a prisoner shall receive legal aid in the preparation and conduct of his or her defence at his or her trial, where it appears desirable and in the interests of justice that the prisoner ought to have such legal aid. Yet, his/her means are insufficient to enable him/her to obtain such assistance. A certifying officer may certify that the prisoner ought to have the legal aid, and the prisoner shall be entitled to have an advocate assigned to him or her. An Advocate assigned to such a prisoner shall be remunerated from monies provided by Parliament. This legal aid is limited to criminal offences being committed to the High Court.

2.2.3. The Advocates (Legal Aid to indigent persons) Regulations, 2007 define legal aid to mean the provision of legal advice or representation by a lawyer, an advocate or a paralegal, to a client at no cost or a very minimal cost. For any person, organisation, or institution to provide legal aid to indigent persons, that person, organisation, or institution must be registered with the Law Council as a legal aid provider. Operating without a valid certificate of registration is a criminal offence.

2.2.4. An indigent person is one who has insufficient means to afford the services of an advocate on his or her own account. In assessing the means of a person for the purposes of determining whether that person qualifies for legal aid, the legal aid provider shall consider the income and assets of the person, excluding a dwelling house, beds and clothing, furniture, and tools used in his/her trade.

2.2.5. Before a person, organisation or institution is registered as a legal aid provider, they must meet stringent requirements including having a suitable office; be registered with the NGO Registration Board in the case of NGOs; pay a prescribed fee; and should not have been

convicted of any offence involving moral turpitude. A Certificate of Registration as a legal aid provider is renewable annually and is not transferrable.

2.2.6. The law sets standards for the quality of legal aid services, client care, supervision, and inspection by the Law Council. It also specifies the rules governing provision of legal aid, and the issues which shall be given priority over other matters. These include land disputes, inheritance and succession disputes, domestic violence, child maintenance and custody, torture and other forms of human rights abuse. Artisanal and Small-Scale mining issues are not an area of priority in the provision of legal aid.

2.2.7. A legal aid provider may engage the services of an Advocate in private practice to act in a matter on such terms as mutually agreed between the provider and the Advocate. Provision of legal aid may be terminated where the client ceases to be indigent. In addition to providing legal advice and representing clients in court, legal personnel may assist clients in negotiation or mediation of conflicts, and may sensitise, educate and create awareness.

2.2.8. Pro bono service is work undertaken without charge, for free. Legal aid services may be provided without charge or at a subsidised charge. The Advocates (Amendment) Act of 2002 mandates Advocates to provide legal services pro bono to indigent persons. The Advocates (Pro Bono Services to Indigent Persons) Regulations, No. 39/2009 requires Advocates to provide a minimum of 40 hours free services per year. The Advocates (Student Practice) Regulations 2004 allows lawyers who are students of the Bar Course to provide unpaid representation to indigent persons in the Magistrates Courts under the supervision of a lawyer with a valid practicing certificate.

2.2.9. However, the Justice, Law, and Order Sector recognised a policy vacuum regarding the provision of legal aid and has sought to address this vacuum. The Draft National Legal Aid Policy (Draft 6 June 2012) recognises the urgent need to introduce legislation and to establish a full capacity national legal aid body devoted to the provision of access to justice. The Draft policy recommends a national legal aid scheme accessible to all persons in Uganda; consolidating the legal framework on legal aid in one comprehensive Act; and recommends a mixed model of legal aid delivery based on private-public partnerships between the state and non-state actors.

2.2.10. At a regional level, the African Charter on Human and Peoples' Rights (ACHPR) Article 7, ratified by Uganda on 10 May 1986 provides for the right to defence, including the right to be defended by counsel of one's choice. The Protocol to the ACHPR on the Rights of

Women in Africa (Maputo Protocol) Article 8 ratified by Uganda on 22 July 2010 requires State parties to take appropriate measures to ensure effective access by women to judicial and legal services including legal aid. The African Youth Charter Article 18(f) stipulates the right to every young person accused or convicted to a lawyer.

2.2.11. At the international level, several international instruments oblige States to ensure effective delivery of legal aid to those in need including The Universal Declaration of Human Rights Article 11 provides that everyone charged with a penal offence shall be granted all the guarantees necessary for his or her defence. The International Covenant on Civil and Political Rights signed by Uganda on 21 June 1995 Article 14(3)(d) guarantees individuals the right to legal assistance without payment if the person does not have enough means to pay for it. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Article 2(c) ratified by Uganda on 22 July 1985 declares it a duty to the State to establish legal protection of the rights of women on an equal basis with men.

CHAPTER 3

LEGAL PROBLEMS FACED BY THE SALT MINERS AT LAKE KATWE AND THEIR POSSIBLE PRACTICAL SOLUTIONS

3.0 Introduction

This chapter discusses the findings of the study identifying the legal problems faced by the salt miners. The study sought to address the following questions: What legal mining-related issues do the miners face? What non-mining related legal problems do the miners face? How do the miners access legal help, if any? What kind of legal aid do the miners need; and what type of education or sensitisation do they require? This Chapter also concurrently makes recommendations for legal aid solutions.



Fig. 2 Photo of a Group consultation meeting of AEMI personnel with miners at Katwe Salt Mines regarding the legal challenges.

3.1. Unregulated Artisanal and small-scale mining sector

The current Ugandan legal framework does not expressly provide for or regulate ASM. As a result, the activities of the miners are often regarded as illegal. Considering the lack of formalisation, they do not pay taxes and do not receive social services. The miners also largely disregard environmental protection and health and safety guidelines. The insufficient regulatory framework hinders commercialisation, access to regional and international salt markets, leads to low prices offered to the miners for their salt products, and the failure by local leaders to advocate for the rights of miners.

Recommendations

3.1.1. Information, sensitisation, and creating awareness

Legal Aid includes legal education, awareness, and any form of legal advice. Despite the unregulated nature of the ASM sector, the salt miners still have legal rights and obligations as ordinary citizens and people engaged in a commercial activity. However, they are not aware of these rights. The provision of legal aid in form of information and sensitisation bridges this gap and makes the miners aware of their rights and obligations.

For example, legal aid may provide basic legal education on how to enter into contracts for the buying and selling of salt products and simple templates of agreements localised and structured to fit the miners' needs. This would enable the miners to directly enter into binding contracts with buyers of their products in accordance with the Contracts Act 2010 and get rid of middlemen traders who mostly take advantage of the miners. Such contracts would be enforceable in courts of law under Small Claims procedure, and ordinary civil procedure. This would give the miners validity, improve their bargaining power, and generally improve the economic returns of their operations.

3.1.2. Advocacy and lobbying

Legal aid includes anything done by an Advocate for and in the interest of his/her client. Lawyers and Advocates should advocate for proper and effective regulation of ASM in Uganda. The Minerals and Mining Policy 2018 recognises that effective regulation and management of ASM is pertinent for sustainable mineral development and wealth distribution. The regulation will enable the miners to have access to financial assistance from banks or microfinance institutions amongst many other benefits. Advocacy provided through legal aid

may include practical steps like a Petition to the relevant Ministry, Departments or Agencies of Government and other stakeholders, presented in the interest of the communities of salt miners.

3.2. Environmental degradation

The pollution of the environment is a major problem at the Katwe Salt Mines. This was deduced through observation by the AEMI team. They observed that many of the salt pans/wells especially those near the shores were highly contaminated by polythene and plastic carrier bags (popularly/locally known as ‘*buveera*’ and plastic bottles. See Figure 3 for a picture showing contamination of the wells by polythene bags. When the miners were asked why they dump the ‘*buveera*’ in the wells, they said they have always done so, despite some of them knowing the dangers of the bags to the environment.

The Natural Resources Committee of the Parliament of Uganda has found that the dangers of plastic carrier bags include: the fact that plastic carriers bags are non-biodegradable, natural processes cannot degrade polythene because it does not breakdown and takes between 50-400 years to break down; polythene blocks the inherent permeation of water, air, and other nutrients in the soil thereby ruining soil productivity; plastics contain up to fifty-four potential or cancer-causing agents; polythene results in dirty littered streets/paths, blockage of gutters, drainage sewerage pipes and channels, and poor sanitation. Plastic waste in water bodies is a major threat to public health. It blocks the sewerage system leading to its collapse and increasing the pollution of water bodies.

This is also contrary to the essence of sustainable development. The 1992 Rio Declaration stipulates that for development to be sustainable, it must be exercised in such a way as to equitably meet the developmental and environmental needs of both the present and future generations.⁵ Furthermore, the miners expressed ignorance of the laws and regulations on environmental degradation.

⁵ See the Rio Declaration on Environment and Development, 1992. Available at www.unesco.org/education/pdf/RIO_E.PDF



Fig.3 Photo showing the extent of environmental pollution (dumping of buveera) of the Katwe salt mines by the miners.

3.2.1 Recommendation: Sensitisation and Creating awareness

Legal Aid should be provided to educate the miners on the grave dangers of use and improper disposal of plastic carrier bags. Lake Katwe sustains thousands of Katwe inhabitants and more than 3,000 miners. Salt mining is the only source of income for these communities and Lake Katwe is has been their only source of livelihood for generations. Bearing in mind the significance of Lake Katwe, the miners should be educated on how to keep the lake free from pollutants like plastic bags which destroy the lake and hinder salt mining.

The National Environment Act, Cap.153 Section 3 guarantees every person's right to a healthy environment and imputes a duty on every person to maintain and enhance the environment, including the duty to inform the National Environment Management Authority (NEMA) or a local environment committee of all activities that may affect the environment. The Authority or the local committee is entitled to bring an action against any person whose activities or

omissions have a significant impact on the environment. The law also criminalises pollution of the environment and creates an offence where upon conviction, one is liable to imprisonment of eighteen months. Creating awareness among the miners of the repercussions of polluting the lake and the environment would deter the vice.

3.3. Disruption by law enforcement personnel

The people engaged in salt trade at the mines lamented that they are often disturbed by the law enforcement people like the police while they carry out their work. This is after the traders have paid all the requisite fees such as rents, revenue and even issued with receipts. They said that of recent, they face problems while at the salt loading weighing system- the security officers delay their work or also confiscate their merchandise despite meeting all the specifications of the maximum weight limit of the salt loaded onto the trucks.

“We pay all the fees requested and even make sure we weigh the trucks with salt before leaving the mining site, but the policemen still tell us that we do not meet the permitted weight standards at the weighting system...we are delayed, make losses and sometimes we have to ‘pay’ them to let us go.”- Birungi

Margaret (a salt miner/ trader)

Recommendations

3.3.1. Engaging the local authorities and law enforcement agencies to understand the legal concerns of the police and for the police to take note of the miner’s rights, with the aim of fostering peaceful coexistence. There is no lawful reason for the police to confiscate the miner’s merchandise if the latter has fulfilled all necessary legal requirements.

3.3.2. This is a problem which would also be managed by the formalisation of ASM. Legal aid services should be provided to enable miners to organise and apply for all required permits or licenses. When miners have valid legal authorisations, law enforcement agencies have no lawful reason to disrupt their activities.

3.4. Lack of knowledge of the requisite fees payable

The miners reported not knowing the exact fees and dues payable for the carrying out of their mining operations including revenues, rents, surface rents, and permits

Recommendations

3.4.1. Engaging the local authorities to define the exact fees payable, payment periods, where etc

3.4.2. Sensitisation of the miners and providing them with information on fees in the Mining Act and Regulations. so that they act within the prescriptions of the law

3.5. Lack of court representation

The miners have got ongoing court cases. Unfortunately, they must represent themselves in court with little legal direction/ help. A case in point is the matter between the different factions of salt loaders regarding permitting. This case is before the Magistrate Court. Here the ‘Katwe Salt Loaders’ feel marginalised.

Recommendations

3.5.1. Finding out further information from the miners’ factions regarding the matter. This can be through engaging the leaders like the Director of the ‘Katwe Salt Loaders- Mr. Moses Kabagambe and Mr. Asaba Deus, a member.

3.5.2. Sourcing for legal representation for the unrepresented parties from registered legal aid providers through their network Legal Aid Service Providers Network (LASPNET) which has a membership of over forty legal aid service providers, and from Advocates willing to provide pro bono services.

3.6 General Recommendations

3.6.1. The provision of legal aid and pro bono services should extend to and cover civil matters and legal advice regarding non-criminal offences. The current law and practice of legal aid is greatly restricted. State-funded, and state-provided legal aid is limited to the criminal justice system. Whereas non-state funded and provided legal aid may extend beyond the criminal justice system, practically, most legal aid providers provide services to suspects and accused persons in criminal prosecutions. It should be recognised that legal aid for civil matters is equally important. The legal problems faced by ASM miners are not criminal matters, but rather problems of a civil nature.

3.7.2. Sector-specific legal aid services should be provided to such communities where the community as a whole is heavily involved in the same sector. The legal challenges of salt miners are unique and specific to the activity. Accordingly, the legal aid solutions to those

challenges should be designed to fit the specific activity. A review of the list of approved legal aid service providers who constitute the network LASPNET reveals that most providers are sector-specific, including providers who focus on HIV/AIDS; Women and gender; domestic violence; poverty reduction; Torture victims; refugees; human rights; transitional justice; Children's rights; land; persons with disabilities; and public governance. It is necessary to have a legal aid provider whose area of specialisation and focus is ASM. AEMI may collaborate with lawyers and Advocates whose specialised area of practice is Mining and Extractives to provide pro bono services to miners. With its continued growth and development of capacity soon, the AEMI shall register as a legal aid provider and be able to provide specialised legal aid services to mining communities.

CHAPTER FOUR

CONCLUSION

This Report demonstrated that the provision of legal aid to the miners more so the indigent ones such as the artisanal and small-scale miners (ASM) is essential for the achievement of social, economic and environmental development in the mining sector. The miners have got legal problems ranging from weak regulation of the ASM sector, environmental degradation, lack of knowledge regarding the permitting and licencing system to disturbances by the law enforcement officers, among others. It is worth noting that these problems do cut across all miners and not limited to only the salt miners at Lake Katwe where the study was conducted. These miners, therefore, need all the legal help they can garner.

There are many legal provisions in the primary legislation, regional instruments as well as international instruments which guarantee the right of all persons to legal aid. For the miners to get tailored solutions to their legal-related challenges, however, it requires consorted efforts from all stakeholders such as the Government, NGOs, the legal fraternity, the miners and others. Such aid will foster the social and economic development of the people engaged in the mining industry.

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Loyola Karobwa is an Advocate of the Courts of Judicature of the Republic of Uganda with four years' experience in the energy and natural resources sector working with a Top Tier Law Firm advising on major mining, petroleum, energy, and infrastructure projects which are the first of their kind in Uganda and the sub-Saharan region. She has advised project developers, sponsors, and lenders on permitting and regulatory compliance, licensing, and policies for major mining, oil & gas and hydropower projects in Uganda. She has a strong background in commercial transactions, corporate restructuring and governance for project sponsors and developers. She has developed a great deal of knowledge, insight and understanding of the practical issues pertaining to the successful implementation of projects in Uganda.

Karobwa has also worked with a Public inquisitorial body on the effectiveness of the law, policies, and processes of the Land sector in Uganda, directly contributing to ongoing Land law reform. She has developed a niche in the area of land rights and environmental protection in the natural resources and energy sector.

In addition to her legal career, Karobwa has for over eight years volunteered time, talent and resources to innovative solutions for social change. She is a Global Change maker, a member of Rotary International, and has influenced national policy as a member of a Youth Think Tank on policy alternatives. Karobwa holds an LLB (Hons) from Makerere University and a Postgraduate Diploma in Legal Practice from the Law Development Centre Kampala. She has attended numerous seminars, conferences, and academies including the Clifford Chance Africa Academy, and Pepperdine University Center for Women in Leadership.

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