

3

Pillar II

The Corporate Responsibility to Respect Human Rights in Tanzania's Extractives Sector



3. Pillar II: The Corporate Responsibility to Respect Human Rights in Tanzania's Extractive Sector – A Field Perspective

3.1 Introduction and Link to the UN Guiding Principles on Business and Human Rights³⁵⁹

Pillar II of the UN Guiding Principles sets out the global expectation that companies respect human rights. This applies to all companies operating everywhere, in all sectors. It therefore applies to large and small companies operating in the extractive sector in Tanzania. While some of the larger multinationals operating in the country have had experience in addressing human rights issues and implementing the steps set out in the UN Guiding Principles under the corporate responsibility to respect, there are still many challenges in companies committing to and applying the highest operational, environmental, social and human rights standards throughout their operations on a day-to-day basis. For smaller and national companies, complying with national laws is a first step on a path to reducing negative impacts and enhancing their environmental, social and human rights performance to attract new business partners. As these small companies are often operating among their neighbours, paying attention to the key issues discussed below is a way of demonstrating respect for and improving relations with their workers and neighbours.

The corporate responsibility to respect as set out in the UNGPs entails a three step process of: (i) developing an appropriate policy commitment to human rights and embedding it throughout the company; (ii) carrying out human rights due diligence; and (iii) providing for or cooperating in remedies where abuses may occur, including through providing operational level grievance mechanisms.

The human rights due diligence process in turn is comprised of a number of sub-steps that seek to ensure that companies methodically identify and address potential and actual human rights impacts: (i) identifying and assessing actual and potential human rights impacts; (ii) integrating and acting on the findings; (iii) tracking progress on addressing impacts; and (iv) communicating this information to stakeholders. There is an increasing range of guidance available for the extractive sector, large and small, to support extractive sector companies in developing their approach to respecting human rights that can provide useful guidance for operating in Tanzania.³⁶⁰

Under the UN Guiding Principles, the responsibility to respect extends to business relationships, as companies are directly linked to the human rights impacts of their

business partners – their contractors, suppliers, and exploration partners for example. So it behooves companies large and small to assess and address the actions of their business partners that are supplying goods or services or participate in their operations.³⁶¹ Larger multinationals with experience in addressing human rights can play a proactive role in developing capacity and sharing lessons learned with local extractive sector companies and other business partners in applying good practice and in their engagement of Tanzanian workers.³⁶² Local companies are likely to need clear messaging, contractual requirements and enforcement, coupled with capacity building support to take on board relevant international norms.

3.2 Human Rights Impacts of the Mining Sector – A Field Perspective

The human rights impacts – negative and positive – of the sector will vary over the life-cycle of mining. Each stage has its own distinct challenges but there are also cross-cutting challenges throughout, particularly around community engagement. The discussion below draws on the field research using the methodology outlined in Annex 1. While the field researcher sought to interview a balance of community, government and company representatives, to obtain a balance of perspectives on potential and actual human rights impacts of the sector, communities proved to be more accessible, and unsurprisingly, more open to discussing the impacts they experienced or believed were related to the presence of the sector in and near their communities. The presentation below therefore for the most part reflects the views of local communities and their representatives. However viewpoints from government and companies is included where such information was conveyed during interviews.

3.2.1 Groups at Risk

Women in ASM

Gender inequality is still a major challenge to socio-economic and political development in Tanzania. Women constitute over 50 percent of the country's population. About 90 percent of women living in rural areas engage in agriculture and livestock keeping for their livelihood and economic prosperity, and are hence vulnerable to poverty.³⁶³

Mining is historically a male-dominated industry. The under representation of women reflects social and economic inequalities between men and women. Cultural beliefs and traditions do not allow women in mining pits as they are considered by male miners to be unclean. Typically, women were engaged as labourers carrying and crushing ore, using hand hammers or pestle and mortars and sieving. Women were mostly engaged in non-mining activities as providers of goods and services ranging from food vending, barmaids, and domestic chores.³⁶⁴ One report estimates that women comprise just 25% of artisanal and small scale miners in Tanzania.³⁶⁵

The World Bank noted that the SESA on the mining sector *"identified access to finance as a major barrier to greater women's involvement in mining, because of inheritance and customary marriage laws, which preclude them from having rights to land as collateral for*

*bank loans.*³⁶⁶ For example, in a list of 111 artisanal and small miners who successfully applied for Government grants, very few women were awarded grants.³⁶⁷

Field research for this Report at the Mererani Tanzanite Mines in Simanjiro district, Manyara region, concluded that the percentage of women participating in the industry may only be slightly lower than the national average indicated above. Respondents estimate that women constitute 18% to 20% of the industry, many of which work as service providers. During interviews, respondents advanced various reasons for women's under representation in the sector. First, women are the primary caregivers of the family and as a result mostly remain home to take care of children and other family properties such as livestock, the house, and crops. One woman indicated that despite knowing that ASM is a potentially lucrative undertaking, she could only leave her children when someone she trusts, such as a male parent or close relative, agrees to stay with them. Second, it was evident during the interviews that unlike men, women are less likely to obtain the necessary bank loans to secure sufficient capital to engage in the extractive sector. This is because women do not own or have access to the necessary collateral, i.e. land or the family home, needed to secure the loans. Some women interviewed also admitted a lack of skills and knowhow in navigating the financial institutions.

The number of women, for instance in Mererani, who work in the underground operations of mines is less than 5%. Respondents indicated this figure is higher than in previous years because previously there had been an informal prohibition against women going into the mineshafts as a strategy to reduce incidents of rape. Male respondents accredited the rise in women's participation in the mineshafts to NGOs and Government campaigns to raise awareness on the rights of women as well as the scourge of HIV/AIDS as the reasons for the declining incidents of rape.

Child Labour in ASM areas

Article 15 of the Mining (Environmental Protection for Small-Scale Mining) Regulations of 2010 prohibit child labor in mining. The SESA on the mining sector nonetheless recognised that child labour in ASM is still an issue propagated by poverty and the itinerant tendency of parents who shift with children from community to community to mineral rushes also resulting in children being abandoned by parents or guardians. The SSMRP Phase I ASM baseline study estimated child labour prevalence in mine sites at 1.8%.³⁶⁸

According to respondents, the number of children involved in the underground operations has declined significantly when compared to conditions ten to fifteen years ago due to increased monitoring and inspection by the local government authorities and NGOS. Field observations confirmed an increase in monitoring efforts where a local Government checkpoint required entrants to present their identity cards before gaining entrance to the mining area.

However, several women were also observed carrying young children on their backs into the mining areas, hence exposing the children to the hazardous environment. Additionally, many school going-aged children in Mererani town were seen engaging in manual labour, suggesting that while child labour may have decreased in the digging of tanzanite, many children still perform ancillary roles in the extractive sector, hence denying them their right to education, among others, while exposing them to insecurity and unhealthy environments.

3.2.2 Community Engagement

Land valuation and interaction is handled by the Ministry of Land. Local community complaints about land compensation indicated that communities were aware by and large that this is a government-led process. Nonetheless, these early interactions on behalf of LSM operations, and the consequences of those interactions, have the potential to colour community engagement for a long time to come, as was evidenced during the field research where villagers tended to associate all negative impacts with “the company,” even where the choices made about allocated areas for mining, and the concessioning process were choices made by the Government.

Several of the company representatives from LSM companies recognise that some challenges exist with respect to community engagement. Companies are working with the communities to address such issues including by supporting economic empowerment programs for the community, mindful of the fact that prosperity and the good public image of the companies has a direct link with the quality of livelihoods and good relationships with the neighboring community. Where challenges do occur, they seek to address them jointly.

3.2.3 Land

During the field research, numerous respondents pointed out that adverse impacts on land rights represents the most prevalent complaint arising from the extractive sector in Tanzania.³⁶⁹ This is not only because resource extraction must take place beneath the land, but also due to the fact that land and extractive laws subordinate community rights to resource exploration and extraction.³⁷⁰ In the mining districts of Geita and Mtwara, community members consistently reported feeling dissatisfied with the amount of compensation for land acquisition and frustrations with the lack of security of land tenure.

Prior Consultation with Landowners or Occupants

The laws relating to land acquisition for extractive operations as well as computation of compensation payable when relocation ensues expressly define land to exclude minerals and petroleum.³⁷¹ This means that community land occupancy rights do not cover minerals and petroleum, which are owned by the State. Accordingly, the Government can allocate land to extractive companies without imposing any obligation on the part of the companies to consult the community on land acquisition procedures or the compensation payable.³⁷² This conflicts with the newer Mining Act which requires consent, albeit it can be overridden. (See Section 2.4.1 above).

Prompt and Fair Compensation

Despite the constitutional safeguards and legal procedures³⁷³ compensation constitutes a leading source of dissatisfaction³⁷⁴ in the communities interviewed, reflecting a common concern and issue of conflict between local communities and mining companies and local government in many mining countries around the world.

The situation in Geita District is demonstrative of some of the challenges faced, even where there are legal requirements in place and even where they are followed. Through interviews

with an LSM company representative, local government authorities, personal accounts by community members, and as corroborated by copies of letters from village leaders, the problem in the district is that even after valuation has been properly performed, a number of other false claimants lodge complaints. A senior government officer at Geita District reported that a group of individuals locally referred to as "makota" fuel land-related conflicts. According to the officer, these individuals approach villagers and promise to channel their complaints in exchange for money. He says the group takes advantage of any change in leadership in the district to renew complaints that have been previously resolved.

Villagers also blamed associated injustices on the corruption of local government authorities and procedures used to arrive at the valuation. In their views, the problem is in the assessment or valuation - government valuation officers based calculations on wrong estimates instead of counting the exact number of trees or crops affected. They also explained that payments take a very long time to be paid (for some of them up to five years), and no interest is payable as a result of the delay. This resonates with the situation in the natural gas rich Mtwara where villagers disclosed that they were paid only Tsh 240 per square meter, an amount, which they say, is far below the market value.³⁷⁵

Security of Land Tenure

As indicated on land policy and law, an extractive concession overrides land tenure. Villagers expressed a lack of security of land tenure, explaining that most of the land in Geita District, which is rich in gold, has been earmarked by the Government for allocation to large-scale gold mining companies for mineral exploration or extraction. The villagers further reported that most of the land has already been allocated even though it is still under the villager's occupation.

The field findings elucidated several reasons why communities living in extractive resource rich areas in Tanzania have less security of land tenure when compared to other communities:

- First is the general legal position that prioritises resource extraction over other land uses.³⁷⁶
- Second, exploration licenses issued for LSM generally cover large tracks of land. This means that while companies may be mining small areas, their licenses cover a much wider area.
- Third, land speculation by urban dwellers is rampant in areas with potential extractive deposits compared to other villages. For example, during interviews in Nyakabale village in Gita, a respondent narrated repeated incidents by which the moment minerals are discovered, people from outside their village produce documents attesting that they are the lawful owners of the land occupied by villagers. As only 15% of villages have been surveyed and issued certificates, unscrupulous prospectors take advantage of un-surveyed villages, compounded by corruption in land administration in the country, to obtain titles on village lands. This repeated occurrence suggests that corruption is used to obtain land titles from the commissioner for lands.
- Fourth, villagers interviewed for this Report stated that where areas have been licensed for gold exploration and extraction, they have been informed by the bank that they

cannot obtain a loan by mortgaging their land because it is not owned by them. These factors exacerbate uncertainty in tenure which can exacerbate poverty in the area through a number of pathways – a failure to invest in land due to uncertainty future ownership, through disputes about ownership that deprive longstanding occupants of their main asset or drain limited resources in defending those assets, through physical displacement and resettlement which can result in reduced standard of living.

3.2.4 Livelihoods

Interviews with community members in the Katoma sub-village, which is located three kilometers from a large-scale gold mine located on their ancestral lands explained the impacts they experienced connected with the arrival of large-scale mining. Individuals reported being evicted from their land thereby resulting in the loss of economic activities such as herding and cultivation. They noted that alternative land in the area is dry making it unfit for agriculture, and further intensifying the importance of ASM as a livelihood option for villagers. However, the villagers blamed poor performance of small mining on the large-scale mining company because all artisanal miners in that area were forcefully displaced from their land to create room for the large-scale gold mining that carries the Government's strong backing, at the district and the national level.

This fits with wider trends whereby the rapid growth of large-scale mining in Tanzania since the mid-1990s has been accompanied with conflicts between ASM and LSM. A number of large-scale mines currently in operation started as ASM sites and were later allocated to foreign mining companies for LSM operations. Small-scale mining communities expected that large-scale mining would generate enough socio-economic benefits as to compensate for the loss of ASM activity *"but as these expectations failed to materialize, the incursion of ASM into LSM concessions became frequent and increasingly violent, especially in North Mara."*³⁷⁷

3.2.5 Environmental, Health & Safety

Current access to water and sanitation facilities in Tanzania is low in absolute terms (only 50 percent of the population has access to sanitation facilities, and only 57.8 percent and 86 percent of the population in rural and urban areas have access to safe water). The main challenge remains improving the access to both sanitation facilities and water sources in the rural areas.³⁷⁸

Local community members interviewed for this Report in Nyakabale and Katoma explained several environmental challenges they face due to large-scale mining operations. The most pressing problems in their view are twofold: (1) pollution of air and water resources on which their communities and livestock depend, and (2) structural damage and sometimes total collapse of their buildings and land as a result of mine site blasts.

A local government official reported that more than 50 houses have collapsed in Nyakabale village alone, due to mining explosions and underground operations. Villagers reported they live in *"a perpetual state of fear"* because explosions cause underground impacts on the rocks, which in turn cause buildings to collapse. Interviewees reported that a team of surveyors from the University of Dar es Salaam came to research the effects of explosives on their land but did not involve them in the process; later on, the same team marked homes

and informed villagers they were living in unsafe places owned by the company. Interestingly, the villagers interviewed blamed their leaders for not involving them in making decisions that affect them. The incident reflects the challenges of informing and involving local community members in decisions that involve them. There may be balances to be struck in carrying out necessary research to protect safety without creating undue alarm or interference. These and other interviews also reinforced complexities of flows of information even within smaller communities, making it difficult for outsiders to understand whether information is being withheld as a function of control or power or whether there are broader issues of understanding the complexity of activities that may affect villagers' lives or whether communication is simply ineffective.

As is often the case around LSM, local communities are justifiably concerned about mining impacts on their environment. In one area of field research, respondents eloquently explained their worries about air and water pollution caused by the use of cyanide which they believed to be the cause of a number of deaths in their community since mining operations commenced in their ancestral land. Where local communities do not have access to trustworthy information about environmental impacts from reliable government monitoring, or feel they cannot trust information from companies, incidents in the community become associated with mining operations, whether accurate or not.

The newly established government body – the Tanzania Minerals Audit Agency (TMAA) may start to go some way in addressing these gaps. As noted above, the TMAA monitors and conducts audits, including environmental audits.³⁷⁹ In its 2014 annual report (latest available),³⁸⁰ the agency audited the compliance of environmental rules and standards by major mine operators, including six gold mines and one Tanzanite mine. Specifically, the agency reviewed mining operators' environmental management plans, conducted physical inspections of the mines to verify implementation, and assessed whether the funds allocated by the company for the environmental management activities were adequate. Following the review, the agency provides a report containing recommendations to reduce detrimental impacts on the environment. The agency's report states that "*[n]oted shortfalls with recommended remedial actions were communicated to auditees for corrective actions.*" However, these do not appear to be made public. The only public information in the annual report on this issue involves highlights of rectification of the noted shortfalls by large and medium scale mines in line with TMAA's environmental audit recommendations.³⁸¹ While this is a useful start, putting more detailed information into the public domain, also on corrective actions that were still underway or not yet taken, could start to provide the facts to provide a more evidenced-based discussion.

Another example of an evidenced-based approach to monitoring and understanding environmental impacts involved the creation of a joint committee formed by villagers to assess and monitor mining operation impact on livelihoods, the environment, and community safety. Villagers explained that the committee is composed of community members and officials from a LSM, whose role is to use the findings to determine best solutions to mitigate and remedy adverse impacts. Joint monitoring can be useful to both companies and communities – if it is accurate, used and understood. However, interviewees reported that they were unaware of any committee findings. Both village officials and a company officer referred to the committee as a permanent "good neighboring committee," which has no deadline or specific deliverables.

The lack of trust around environmental impacts could be seen in another anecdote about water. Villagers appreciate the LSM company's efforts to increase local access to water from Lake Victoria. The villagers knew the company treats the water used by its staff but expressed grave doubts about whether the water intended for their use was similarly treated. They felt this left them with unsafe water for their use and consumption. This indicated a clear lack of information or a lack of trust in the information provided.

3.2.6 Community Security

Under the union's Ministry of Home Affairs, the Tanzanian Police Force has primary responsibility for maintaining law and order. While there have been serious incidents of violence around mining operations in Tanzania involving private sector mining operations, the field researcher was not informed of particular security concerns in the areas of operations covered in the Report.

In Focus:

A Field Perspective on ASM

Mererani is a small mining town in Simanjiro district, Manyara region, which is home to the only known deposits of Tanzanite in the world. It is located 70 kilometers South of Arusha town and according to the 2012 National census (latest in the country), the population of Mererani is 13,450, of which approximately 25% are small-scale miners of Tanzanite. Historically, this area was predominantly home to the Maasai pastoralists, but now it is comprised of Tanzanians from across the country.

To get to the Tanzanite mines, one only has to go four kilometers from the small town. All small-scale mines (except TanzaniteOne) are fenced and a visitor must pass through a gate guarded by employees of Simanjiro district council to enter. Although small-scale mining practices operate differently from one mining company to the next, they generally involve a company owned by local businesspersons who "employ" small-scale miners on the condition that the miner will be paid once Tanzanite has been found.

In fact, forty-two (42) small-scale miners and villagers that were interviewed reported a lack of government support, which was reflected in the unsafe working environment, and attested to by the archaic tools used for mineral extraction. Thirty-three out of the forty-two small-scale miners interviewed witnessed at least one accident that claimed peoples' lives, and they attributed the accidents to a lack of personal protective equipment (PPE). During the time of writing this Report, six small-scale miners were trapped when a pit on which they were extracting gold collapsed at Nyagalata gold mine, located in Kahama District. In what the media dubbed "miraculous survival" five of them were found still alive more than forty days later.

3.3 Human Rights Impacts of the Oil & Gas Sector – A Field Perspective

3.3.1 Land Rights and Compensation

Similar to the field research involving mining operations, communities around gas operations interviewed for this Report highlighted complete dissatisfaction with the rates at which compensation for land is payable.³⁸³ Given that land holdings are often the only core asset of rural communities besides their labour, it is not surprising that this is consistently a source of grievance and impact. This has interesting implications for management of the sector as in Tanzania, unlike some other countries, this step is in the Government's hands.

Under the Natural Gas Policy of Tanzania 2013, the Government committed to optimising citizen benefits accruing from the sub-sector, targeted towards benefits at the back-end of the operation cycle. This includes employment and eventually, once revenue starts to flow, transparent revenue management and distribution as opposed to front-end issues around land acquisition and resettlement. Given the consistency and specificity of community complaints, improving land acquisition, compensation and resettlement procedures, capacities and transparency could be an important step in implementing the Government's important policy commitments.

Interviews with villagers in Southern Tanzania echoed complaints raised by villagers in the Geita district, especially with regard to land compensation. For example, during interviews, 44 community members reported that their farmlands had been purchased for use in constructing gas transportation pipelines and that they were "*grossly under compensated.*" Interviewees reported being paid Tanzanian Shillings 240 per square meter of land (where there are no trees), the equivalent of USD \$0.20, and an additional Tanzanian Shillings 235,000 for each tree crop affected, the equivalent of USD \$195.00. As per the land compensation procedures (see Section 2.4.5 above), the compensation amounts were determined not based on negotiations between a willing buyer and willing seller, but by government valuation.³⁸⁴

3.3.2 Livelihoods

Strict security measures including exclusion zones are put in place around offshore operations to ensure the security of the operation and the safety of those around the facility. Where those exclusion zones impact local fishermen, as they often do, the issue is whether measures have been put in place to consult with fishermen before putting in place the exclusion zone, to understand their fishing patterns, to work with them to find alternative fishing grounds and to provide training to ensure they understand the safety restrictions. In the field research, discussions with focus groups of fishermen concluded that they had not been given sufficient explanations on the prohibitions, and were not consulted before the decision was reached. They also noted that the exclusion zones around gas drilling installations had significantly reduced their fishing areas. In addition, the fishermen noted they were forced to move away from extractive operations due to mechanical noise and toxic chemicals that are used during gas drilling. They also claimed that they were not given alternative land or fishing areas.

While it was not possible to verify this, the discussion highlighted inadequate communication on many levels – from the Government side in not preparing communities reliant on maritime resources of forthcoming changes associated with offshore operations and of potentially a failure to consider offshore livelihoods in developing compensation schemes. It also indicated a lack of engagement between the company and local communities in explaining and updating on security measures, particularly where these have an impact on livelihoods.

In another area, coconut and cashew plantations were cut down to make way for a pipeline. While compensation was provided for up to 10 meters of land taken from each side of the pipeline, including crops affected, villagers complained that there was no prior consultation and no resettlement plans on the basis that there was to be no physical displacement of villagers. The lack of a resettlement plan would indicate that there was no planning made for alternative livelihoods for economic displacement situations. The villagers stated that compensation for affected crops should have taken into account the period taken to raise the trees to maturity, not just the value of the trees once they were finally producing - noting it takes up to 3 years onwards from planting to harvesting (for hybrid seeds), and up to 5 years and above for ordinary or local seeds for the trees to mature. Further, some villagers alleged that while they are compensated only for 10 meters from either side of the pipeline, in practice more land is affected or becomes unsuitable for cultivation, but was not compensated.

Villagers more generally indicated that due to the influx of people from other places in search of employment and entrepreneurial opportunities, prices of food and shelter have skyrocketed while their incomes have remained the same.

3.3.3 Environment

As was seen in communities surrounding mining areas, and indeed communities around extractive operations in many parts of the world, people interviewed for this Report expressed fear of potential adverse impacts of gas extraction on the environment, including disappearance of aquatic and terrestrial species. They linked this to chemicals used in the gas extraction and installation at sea and on land surface. Some residents interviewed alleged contracting health problems connected to the companies' use of toxic chemicals in the extraction as well as from air pollution.

3.3.4 Security

Earlier protests in 2013 against unclear benefit sharing arrangements that would accompany the construction of a of a 532km pipeline to Dar es Salaam pipeline turned violent.³⁸⁵ Instead of resolving the conflict through discussions and meaningful participation of the community, the Government used heavy police and military patrols, while at the same time putting an unofficial moratorium on the exercise of rights such as the holding of political rallies or capacity building projects by CSOs. The prime minister stated that the rioters 'should be beaten' and they were.³⁸⁶ During the field research, the researcher found that Extractive sites are surrounded by heavily armed police guarding natural gas plants with numerous bill boards warning members of the public not to get close or take any pictures.

This has an impact on the relationship between companies and villagers. Villagers interviewed for this Report stated that government institutions are the ones that settle conflicts involving extractive companies and the local communities, rather than villagers interacting directly with the company. They noted that the unusual police and military presence in the area made it difficult for other actors, such as CSOs or other community actors, to intervene.