



Human Rights in Tanzania's Extractive Sector

Exploring the Terrain



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December 2016

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Cite as: Institute for Human Rights and Business, "Human Rights in Tanzania's Extractive Sector: Exploring the Terrain" (December 2016), available at www.ihrb.org/focus-areas/commodities/human-rights-in-tanzanias-extractive-sector-exploring-the-terrain.

Acknowledgements: This Report was written and edited by Margaret Wachenfeld, IHRB Director of Research and Legal Affairs and Rose Kimotho, Programme Manager, Nairobi Process, with support from Waleria Schuele, Project Manager and Geoffrey Kerecha, Programme Assistant.

Elifuraha Laltaika carried out the field research and prepared the first draft of the Report. Stephanie Montaño, Visiting Lawyer, East Africa supplemented the draft with further research and writing.

It reflects information updated through mid-August 2016.

IHRB thanks colleagues for their comments and suggestions. IHRB also wishes to acknowledge Pierre Henri Gilliot and Jean François, legal interns at IHRB during summer 2016 who provided support in finalising the research.

IHRB wishes to thank The Netherlands Ministry of Foreign Affairs for its financial support for this Report. The views expressed are those of IHRB alone.

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List of Terms and Abbreviations

ACHPR	African Commission on Human and Peoples Rights	MDA	Mineral Development Agreement
AREMA	Arusha Mineral Dealers Association	MNC	Multinational Corporation
ASM	Artisanal and Small Scale Mining	NEMC	National Environment Management Council
BG	British Gas	NGO	Non-Governmental Organisation
CAO	Compliance Advisor/Ombudsman	NHRI	National Human Rights Institution
CERD	Convention on Elimination of All forms of Discrimination	NMGML	North Mara Gold Mine Limited
CHRAGG	Commission for Human Rights and Good Governance	NRGI	Natural Resource Governance Institute
CRC	Convention on the Rights of the Child	ONGEA	Oil, Natural Gas and Energy Alliance
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women	PPE	Personal protective equipment
CSOs	Civil Society Organisations	PSA	Production Sharing Agreements
CSR	Corporate Social Responsibility	PURA	Petroleum Upstream Regulatory Authority
DSE	Dar es Salaam Stock Exchange	SAH-RNGON	Southern African Human Rights Non-Governmental Organizations Network
Eds	Editors	TACAIDS	Tanzania Commission for AIDS
EIA	Environmental Impacts Assessment	TAMIDA	Tanzania Mineral Dealers Association
EITI	Extractive Industries Transparency Initiative	TEC	Tanzania Episcopal Conference

FDI	Foreign Direct Investment	TEITI	Tanzania Extractive Industries Transparency Initiative
FGD	Focus Group Discussions	TLS	Tanganyika Law Society
FPIC	Free Prior and Informed Consent	TMAA	Tanzania Minerals Audit Agency
GDP	Gross Domestic Product	TPDC	Tanzania Petroleum Development Corporation
GGM	Geita Gold Mine	TSF	Tailings Storage Facilities
GN	Government Notice	UDSM	University of Dar es Salaam
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome	UK	United Kingdom
ICESCR	International Covenant on Economic, Social and Cultural Rights	UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
ILO	International Labour Organization	UNEP	United Nations Environment Program
IFI	International Financial Institutions	UPR	Universal Periodic Review
KII	Key Informant Interviews	URT	United Republic of Tanzania
LEAT	Lawyers Environmental Action Team	US	United States
LHRC	Legal and Human Rights Center	USD	United States Dollar
LJ	Law Journal	WWF	World Wildlife Fund

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Executive Summary

Tanzania is a relative newcomer to managing large-scale extractive sector operations. Small-scale mining has been going on in the country for over a hundred years, and to date, Tanzania is predominantly a mining country with both small and increasingly large-scale operations. It is already Africa's fourth biggest gold producer¹ but also has a wide range of other mineral resources. There is potential for Tanzania's diversified mining sector to contribute as much as US\$2.5 billion in fiscal revenues in the coming years.² In addition, the past few years have seen significant increases in exploration for gas and oil along the coast, with recent discoveries of offshore gas reserves in deep-water off the coast bordering Mozambique in the south-east. So far, no major crude oil discovery has been made. The recent discovery of significant natural gas reserves and potential revenues from a proposed liquefied natural gas (LNG) plant, will "dwarf" most other sources of government revenue, but even without the LNG project, *"the potential derived benefits [of the natural gas discoveries] in the form of electrification and industrial development are exhilarating."*³

Like its other East African neighbours, Tanzania is coming to grips with the fact that extractive industries are expected to become an important engine of growth in the country, with the potential to substantially contribute to development in the country. As Tanzania is currently ranked 151 out of 188 in the Human Development Index,⁴ the contribution may fundamentally alter the politics and economy of the country, even if there is a slowdown or cancellation of some of the current projects.⁵ The opportunities are enormous, as are the challenges. Anticipated revenue will be a short-lived phenomenon that needs to be effectively captured and managed to ensure that revenues realised are used to raise and sustain standards of living for Tanzanians - both present and future generations.

These are challenges facing any nation that is emerging as a new extractive sector producer.⁶ Contextualizing these challenges in Tanzania, there are clear strengths to play to in building a sustainable resource sector but also clear challenges. For a country with endemic poverty, high rates of youth unemployment, high illiteracy levels, inadequate infrastructure and unequal provision of health and education, the years it will take to bring major extractive production on line may seem like a long time to a large population eager for development. However, the wait also gives the country time to strengthen what is a clear advantage in its economic development policy – a diversified economy that does not yet rely predominantly or even significantly on the extractive sector for its growth.

The extractive sector has not yet come to dominate the Tanzanian view of itself. The country's new Vision 2025 document (only the third since independence) does not mention the extractive sector. The Second National Strategy for Growth and Reduction of Poverty (2010/11 - 2014/15) (known as MKUKUTA II in Kiswahili)⁷ recognises mining as a sector that has a great potential to contribute to gross domestic product (GDP) if sustainably exploited and efficiently managed. This requires enforcing security and adherence to laws and regulations concerning environmental and labour standards, and occupational health, and safety at workplaces.⁸ Oil and gas are mentioned within the context of energy production. The improvement of human rights, good governance and accountability are given prominence within the Plan.

Tanzania's Five Year Development Plan 2011/12 – 2015/16, implementing Vision 2025, highlights five priority areas for development, but extractives is not one of them.⁹ The Plan does cover mining, noting that *"Tanzania is poised to be one of the mining giants of Africa, owing to its mineral resources endowment."*¹⁰ Noting that despite this, the mining sub-sector currently contributes only minimally to economic development, the Plan highlights the five year Sustainable Mineral Resource Management Project (SMRMP) with the World Bank which is designed to strengthen government capacity to manage the sector by fostering good governance, accountability and transparency, and managing the negative soil and environmental impacts of pollutants.¹¹ This signals an important understanding underpinning the government's approach to the sector: the impacts of the sector on sustainable development must be addressed alongside the sector's potential for contributing to the country's economic development. Scaling up investments in energy infrastructure and leveraging the country's natural gas reserves is also featured in the Five Year Development Plan.¹²

Mining and gas are seen as playing an important role in the country's development and industrialisation, because they will be a major source of Government revenue for productive and social investments and because they can provide inputs to energy power plants, thereby solving the shortage of energy supply¹³ that has hampered the country for so long. At the same time, the Five Year Development Plan emphasizes the critical importance of good governance and rule of law in the process of creating wealth, sharing benefits and ensuring Tanzanians are empowered with the capacity to make their leaders and public servants accountable. The *"aspiration embodied in Vision 2025 is to have good governance permeate the national socio-economic structure, thereby ensuring a culture of accountability."*¹⁴ Enhancement of human rights and administrative justice is one of the core goals of the Development Plan.¹⁵

Recent discoveries have increased expectations among citizens over potential revenues from gas discoveries in particular. Increases in gold production fuelled robust economic growth, but the benefits of the resource-induced growth were not widely shared. In particular, the employment impact of mining was quite small, which was not adequate to reduce rural poverty. Closer to home, communities expect jobs and spillover support from extractive sector development within their areas. There are already ongoing public debates about whether the State receives a 'fair share' from its extractive deals, and how revenues are being used to the benefit of citizens. This signals that in parallel with the increasing optimism and aspirations for the economic potential of a rapidly developing extractive sector, there are also concerns related to the risks of adverse economic, social and environmental impacts of the sector. Handled well, extractive resources can have a unifying potential, by contributing to economic growth and prosperity and supporting the social contract that binds societies together. Handled poorly, resource extraction can increase inequality, entrench divisions between different groups, which potentially fuel conflict and widen the gap between government and people.

Mitigating these challenges will require action by all stakeholders: government, extractive sector companies, civil society organisations and independent oversight institutions. Tanzania has entered the game more recently and has the opportunity to learn from the experiences of others as well as from international best practice guidelines and transparency initiatives. The Tanzanian Government's task is to continue to review and upgrade its policy and legal framework to ensure that it is driving the sector in a direction that is productive while at the same time incorporating important principles of sustainable

development and responsible business conduct to ensure the protection of affected people and the environment. Responsible business conduct by extractive sector companies must become the norm, rather than an add-on for foreign or large operators only. Sustained, independent oversight of both private and public sectors as well as safe avenues to address grievances will improve the transparency and accountability of the sector.

Tanzania has taken an important step forward in that direction by becoming the first African country to join the Extractive Industries Transparency Initiative (EITI).¹⁶ In joining the EITI, Jakaya Mrisho Kikwete, former President of Tanzania noted *"[w]e are committed to the EITI process because it is aligned with our policy of promoting transparency and accountability in the management and use of our natural resources. It is critical for promoting sustainable development and poverty eradication in the country."*¹⁷ There is a multi-stakeholder group leading EITI implementation, Tanzania EITI (TEITI) and the initiative has been backed by both private sector and civil society participants since Tanzania was accepted as an implementing country in 2009.¹⁸ Tanzania has also adopted the Natural Resource Charter and is undertaking a benchmarking exercise.¹⁹ Tanzania is not a member of the Voluntary Principles on Security and Human Rights, another multi-stakeholder initiative designed to guide companies, public and private security in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.

Tanzania's membership in the Open Government Partnership is also an opportunity to reinforce an approach of openness, transparency and accountability.²⁰ While some countries have specifically linked their commitments on EITI to OGP, Tanzania's OGP plans focus on the health, education and water sectors.²¹ As part of its OGP Action Plan, the Government is organising joint sector reviews that involve public officials, civil society organisations (CSOs), private sector and development partners. These have covered other sectors like agriculture and water to date but not extractives.

The Norwegian Oil for Development Programme,²² the World Bank, and a number of other donors have active programmes in the sector. The Government of Canada has organised an extractive sector working group among donors. This support may help explain Tanzania's²³ relatively high score on "Safeguards & Quality Controls" section of the Resource Governance Index, but despite the support, it received a "weak" score of 50, ranking 27th out of 58 countries because of poor performance on other components²⁴ indicating that there are still many improvements to put in place to improve extractive sector governance. Tanzania ranks 117 of 68 on Transparency International's Corruption Transparency Index – a score that has been improving very slowly but consistently and one that puts it ahead of its neighbours.²⁵

The current Constitution of Tanzania does not provide a sufficiently detailed or robust bill of rights. Talks on a new Constitution, long-stalled in discussions, provides the opportunity to strengthen human rights protections in line with its more progressive neighbours on the continent. The extractive sector policy and legal frameworks on the whole take into consideration sustainable development considerations and show an awareness of the need to address the environmental and social impacts of the sector, but not human rights specifically. The sectoral laws do not make explicit reference to human rights issues. A strengthened Constitution and more explicit consideration of human rights in extractive sector legislation would give a more explicit mandate to government agencies and a far clearer signal to extractive companies that this is a priority for the country.

For those who have been or will be impacted by the sector, a new Constitution will not solve all the broader issues of weaknesses in judicial administration and significant delays and impediments in seeking redress. There is a need to significantly improve the functioning of the judicial system. The alternative avenues for administrative remedy are expected to help in addressing certain types of complaints associated with the extractive sector (such as land and environmental complaints), but they too have to prove that they can function effectively.

As this Report, and the wide range of reports on the sector cited here and elsewhere attest, while there are positive indicators for the general future direction of the extractives sector, challenges remain for both the Tanzanian Government and companies in ensuring that the sector does not result in harm to human rights but instead provides benefits for workers, for neighbouring communities and the wider country.

Purpose of the Report

The Institute for Human Rights and Business (IHRB) East Africa Programme has focused on building and sharing knowledge on responsible business conduct in the extractive sector in several of East Africa's newly emerging producer countries, drawing on lessons learned from around the globe and the Institute's broader extractives work. The work has focused on research such as this report (the Report) and its twin report for Kenya²⁶ that draw together an evidence base to provide for more informed interaction among participants in the sector – the Government and Parliamentarians, the National Human Rights Institution (NHRI), extractive sector companies and their business partners, civil society organisations, trade unions and communities. The Report is particularly focused on supporting the NHRI in understanding key emerging concerns about and from the extractive sector in Tanzania and the actors involved so it can better target its actions to improving respect for human rights in the sector.

This Report was carried out by the IHRB's Nairobi Process, in collaboration with Tanzania's Commission for Human Rights and Good Governance (CHRAGG) – Tanzania's National Human Rights Institution (NHRI) – through both desk-based and field research in areas host to oil and gas (O&G) and mining activities. The purpose of the Report is to provide a more in-depth analysis of the many human rights issues and broader sustainable development challenges associated with the rapidly evolving extractives sector. While many of the issues are common to other countries with O&G and mining operations and vulnerable land-dependent rural populations and governance challenges, the Report seeks to contextualise these issues within the Tanzanian historical, political and economic context. The Report is particularly focused on supporting the NHRI in understanding key emerging concerns about and from the extractive sector in Tanzania and the actors involved so it can better target its actions to improving human rights in the sector.

The Report is framed by the concept of "responsible business conduct" and the standards that help define that conduct. The Report does not address technical operating standards for the extractives sector. Instead, it is grounded in international standards relevant to responsible business conduct, particularly those concerning impacts of business activities on human rights. This is because there is an increasingly global expectation that

businesses, big and small, should take responsibility for their adverse impacts on society – human rights, social, environmental, ethical, and consumer concerns – whether or not those impacts have been specifically addressed in national law. The UN Guiding Principles on Business and Human Rights (“the UN Guiding Principles” or “UNGPs”)²⁷ are an authoritative global standard that set out international expectations across the three-pillar ‘Protect, Respect and Remedy’ policy framework. The UNGPs were endorsed by the UN Human Rights Council in 2011 and have been widely endorsed and applied by governments, business and CSOs in the five years since adoption.²⁸ The UNGPs framework recognises the complimentary but distinct obligations that States and businesses have in protecting and respecting human rights, as well as in providing effective remedy mechanisms when those obligations are inadequately met. The UNGPs provide the first globally agreed upon standard that sets out these roles.

The UN Guiding Principles on Business & Human Rights

Pillar I: States’ duty to protect human rights against abuse by third parties, including business, through a mix of policies, regulation and adjudication.

Pillar II: Companies’ responsibility to respect human rights by avoiding infringing on the rights of others and address any harm to rights with which they are involved.

Pillar III: Access to effective remedy where people’s human rights are harmed to be provided through state, company and multistakeholder initiatives.

Structure of the Report

This Report looks at the three pillars of the UNGPs (see Box 1) to understand the state of human rights in the extractive sector in Tanzania as follows:

Pillar I – The State Duty to Protect Human Rights: An in-depth analysis of existing and proposed policy and legal frameworks that are applicable to the extractives sector. This human rights analysis is based on relevant international human rights standards, the Constitution’s Bill of Rights and international standards of responsible business conduct (in particular the UNGPs). (See Chapter 2).

Pillar II – The Corporate Responsibility to Respect Human Rights: Acknowledging that oil & gas and mining have distinct impacts, the Report analyses the impacts of each sector separately. The analysis draws on information about private sector extractive operations in each sector in order to identify common trends of impacts on communities across a range of extractive operations and where there are challenges for meeting the corporate responsibility to respect human rights in the extractive sector. (See Chapter 3).

Pillar III – Access to Remedy: Examining avenues for and experiences of individuals and communities in addressing concerns and complaints, the Report pays particular attention to enhancing the NHRI’s capacity to understand, promote and protect human rights within the

extractives sector, drawing from its constitutional and statutory mandate to address human rights. (See Chapter 4)

Audiences

Government and Parliamentarians

This Report aims to help Tanzanian Government agencies and Parliamentarians working on the extractive sector to better understand the current challenges facing the sector and those affected by it. With more detailed and relevant information, new policies, laws and contracts can be better structured to help prevent and mitigate potential harms involving the sector and to reinforce the potential for positive outcomes, in line with the country's commitment to the United Nations Sustainable Development Goals.²⁹ Adequate attention to longer-term impacts of the sector on society and human rights will support more equitable growth and poverty reduction for the broader Tanzanian population.

Commission for Human Rights and Good Governance (CHRAGG)

The NHRI, CHRAGG, has a Constitutional role to play in promoting human rights throughout the country, using the full range of tools at its disposal. Given the expected increase in extractive sector activities in the country, the Report is intended to support the CHRAGG in improving its knowledge base about the sector and communities' concerns so that it can be better prepared to provide informed input on relevant policy and regulation governing the sector and to address complaints concerning the sector.

Extractive Sector Companies

As companies gear up their exploration and operations, they will be required to conduct project-level Environmental Impact Assessments (EIAs) or other due diligence to help them understand the overall potential impacts of their sector and their project(s) on the country. The Report provides a strategic review of the broader policy and legal frameworks relevant to the sector. It also crystallises the acute issues that are central to operating in Tanzania which require proactive management by extractive companies and thus provides a "bigger picture" for companies coming into the country.

Local Communities and the Civil Society Organisations (CSOs) that Support Them

The Report can be used to support local communities, who are generally the rights-holders most directly impacted by extractive projects, to engage with companies and local authorities, and call on international standards to support their case.

National Civil Society Groups and the Media

The Report can also provide support to key societal voices so that they can participate in policy development and project planning for the extractive sector, leveraging international standards and approaches in their interventions.

Research Methodology

This Report is based on analysis of primary and secondary sources of information. Primary sources included the Constitution of the United Republic of Tanzania of 1977, relevant national legislation, judicial decisions, and regional and international instruments. Secondary information informing the report includes textbooks, journal articles, conference papers, and media articles; the main sources are cited in the bibliography.

Additionally, the Report is informed by field visits conducted by a Tanzanian legal researcher in the regions of Arusha, Mtwara, Geita, Dar es Salaam, and Manyara between August and December 2015. During the fieldwork, the researcher visited and interviewed 203 key informants, including: communities living around extractive operations; CHRAGG; Government officials; CSOs working on issues at the nexus of extractive industry operations and impacts on human rights, academia, and; extractive company officials.

During the field research, the researcher conducted focus group discussions (FGD) to collect data from community members and key informant interviews (KII) to obtain data from Government institutions, NGOs, CSOs. See Annex I for a further description of the types of research methods used and groups of stakeholders interviewed.