

Human Rights in Tanzania's Extractive Sector

Exploring the Terrain



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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.

1

Setting the Scene

Overview of Tanzania's Extractive Sector



1. Setting the Scene: Overview of Tanzania's Extractive Sector

1.1 The Role of the Extractive Sector in Tanzania's On-going Development

1.1.1 Brief History of the Mining Sector and Its Importance to Tanzania's Development

Tanzania's rich mineral endowment has long been considered a potential source of growth and poverty reduction. It is now considered one of Africa's most mineral-rich countries, with a rich mineral endowment including diamond, uranium, iron ore, nickel, copper, cobalt, and silver.³⁰ Numerous varieties of gemstones are also extracted: ruby, garnets, topaz, emeralds and tanzanite.³¹ Soda ash, gypsum, salt, phosphate, gravel, sand, and dimension stones are also extracted.³² The country is the only tanzanite producer in the world and is home to the only known tanzanite deposit in the world.³³ Tanzania's mineral deposits are found in different regions throughout the country. Gold mines are largely concentrated in the lake zone (described in the national policy as "*the greenstone belt, located to the east and west of Lake Victoria*")³⁴ and the Tanzanite mines are located in the Simanjiro district, located in the Manyara region.³⁵

Commercial mining for gold started as early as the 1890s near Lake Victoria.³⁶ Available records show that gold was "discovered" on the mainland of Tanzania (then known as Tanganyika) around the Lake Victoria region in 1894, during the German colonial occupation, which lasted from 1885 to 1919.³⁷ Large-scale mineral extraction of gold commenced during German occupation and has been underway since that time. However, evidence suggests that prior to German occupation, the local populations engaged in small-scale mineral prospecting.³⁸

Since 2008, the number of large gold mines has increased rapidly³⁹ with the commissioning of seven large-scale gold mines - Bulyanhulu, Buzwagi, Geita, Golden pride, New Luika, North Mara and Tulawaka, making Tanzania one of the largest gold producers in Africa.⁴⁰ Since 2000, mining has been the fastest growing sector in Tanzania with an average annual growth rate of about 15%, the largest recipient of foreign investment, and the largest contributor to the country's exports.⁴¹ Gold has only recently been eclipsed by tourism because of the drop in the export value due to the dramatic fall of the prices of the metal.⁴² The recent reforms of the extractive sector have coincided with Tanzanian growth and development.⁴³

The extraction of diamonds is also a very important aspect of Tanzania's mining operations, with the Williamson Mine, the first and only operating diamond mine in Tanzania, having started its operations in the 1930s at Mwadui.⁴⁴ The diamonds extracted were mostly

kimberlites and the mine was quite prosperous, with approximately 2M carats extracted since its inception. However, production has been decreasing due to the flooding of the mine and the exhaustion of resources.⁴⁵

A massive nickel mining project in Kabanga also began in 2005, now considered one of the biggest nickel mines in the world.⁴⁶ The current known reserves of nickel are approximately 209 million tons.⁴⁷ Tanzania also has uranium reserves. Exploration started in the 1970s, and it was discovered that the biggest uranium deposits were located in the Mkuju River.⁴⁸ In 2009, it was announced that 70 licences were delivered to various companies by the Ministry for Mining and Energy.⁴⁹ The Canadian Uranium One company was supposed to start mining in 2013, but the commercial production was pushed back to 2018.⁵⁰

Coal is also available, with reserves averaging 1.9 billion tons, of which 25% is proven, although geological studies have shown that the overall potential is closer to 5 million tons.⁵¹ It is exploited in small scale at the Kiwira Coal Mine in the Mbeya Region, and at the Tancoal Energy Limited Mine at Ngaka in Ruvuma Region.⁵² Tanzanian soil has also proven abundant in copper, which led to the activity of two mines (the Nyasa Kwamnera Handeni and the Ibagu copper mines), with the overall production standing at 2980 tons.⁵³

The Sustainable Management of Mineral Resources Project Phase II (SMMRP) is prioritising the sustainable development of artisanal and small-scale mining (ASM), a labour-intensive activity which already involves an estimated 1 million Tanzanians in rural areas, *“as a way to spread the benefits of mining and reduce rural poverty”* and *“improve benefits for Tanzania and Tanzanians”* with an emphasis on shared growth and poverty reduction.⁵⁴

Figure 1: Mining Map of Tanzania⁵⁵

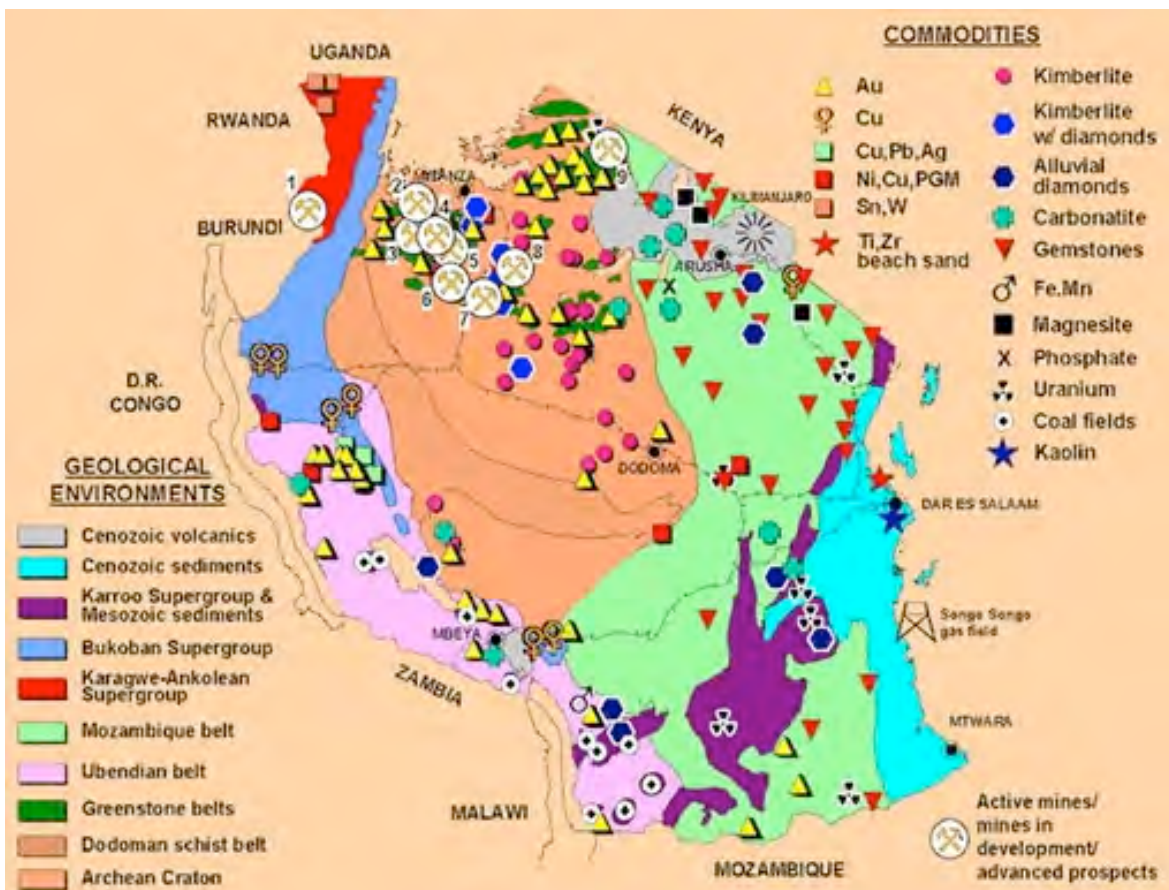


Figure 2: Mineral Occurrence in Tanzania⁵⁶



The latest TEITI Reports show that revenues from the extractive sector to the Government of Tanzania increased by 28%, from USD 602 million (TZS 956 Billion) in 2013 to USD 754 million in 2014 (TZS 1,221 billion) due mainly to the increased gold production and corporate tax paid by one company in the oil & gas sector, which represented 30% of total extractives revenue in 2014.⁵⁷ This is in addition to USD \$200,000 that extractive companies paid to local government authorities.⁵⁸

Within the mining sector, there are two large sub-sectors. Large Scale Mining (LSM) associated with large-scale FDI, infrastructure development, technology transfer, high productivity and high export earnings. LSM tends to be highly capital intensive but with very limited contributions to job creation. Artisanal and Small-Scale Mining (ASM) often involves local miners using basic methods to extract near-surface deposits. ASM is associated with low investment, low productivity and the use of informal marketing channels, but it accounts for over 90 percent of the sector's employment. It is far more accessible to the poor, especially in rural areas, who carry out ASM as a mean of income generation. ASM is spread across ten zones delineated by the Government. Between 1987 and 1997 ASM accounted for 95 percent of the country's mineral production, principally gold, copper and silver production. Currently, ASM accounts for roughly 10 percent of

Tanzania's gold production, and is a major producer of gemstones, copper ore, iron ore, tin, bauxite, industrial minerals and building materials.⁵⁹

As the World Bank noted,

"figures provided by the MEM [Ministry of Energy and Minerals] indicate that around 700,000 people are officially working in the sector, but an estimated 1 million people are believed to be involved in this activity, including women and children, along the supply chain. Typically, ASM generates four jobs for every person involved. However, it often operates outside formal channels and is associated with severe social, environmental, safety and security risks."

The Government policy with respect to ASM has been to actively encourage formalisation by simplifying procedures for acquiring licences, decentralizing services and providing financial assistance to artisanal miners willing to formalise. As a result of these efforts, the number of licences has risen dramatically, increasing from about 35 in 1999 to nearly 35,000 in 2014.⁶⁰

1.1.2 Brief History of the Oil & Gas Sector and Its Importance to Tanzania's Development

Tanzania is not an oil-rich country. The 2015 Pre-Assessment Report of the Tanzanian energy sector conducted under the Principles of the International Energy Charter and the Energy Charter Treaty, determined that no oil reserves have been found in Tanzania as of yet. As a result, the State must rely on imports of petroleum products from other countries, which account for approximately 3% of the total energy imports per year.⁶¹ However, exploration is ongoing; in October 2014 the Tanzanian Energy Ministry held meetings with oil giants Total and British Petroleum to discuss oil and gas exploration.⁶² In addition, the Tanzania Petroleum Development Corporation, a state-owned oil and gas company, opened another bidding round in April 2016 to allow more exploration companies to participate in the country's oil and gas sector.⁶³

In contrast, natural gas resources are abundant in Tanzania, both on- and offshore. Exploration for natural gas commenced in 1952 and the first discovery was made in 1974 at Songosongo Island in the Lindi Region.⁶⁴ As explained in a recent study on the sector,

*"[t]he reason why production for long was not viable had to do with the character of the finds. Most exploration companies were looking for oil, which is easier and cheaper to exploit and transport to distant markets, but what they found was gas. Until recently, gas was considered appropriate for domestic consumption only, in particular in developing countries. Tanzania with its very small domestic market was not commercially attractive."*⁶⁵

The presence of natural gas was discovered in 1974, at Songo-Songo in the Lindi Region.⁶⁶ Major explorations began in the 2000s.⁶⁷ Most of the natural gas deposits are found in onshore gas fields along the country's coast⁶⁸ in Songosongo, Mnazi Bay, Mkuranga, Kiliwani North, and Ntorya. The reserves are now estimated to be higher than 43TCF (and at least 57TCF), but many of the reserves are yet to be found and explored.

The production of gas is currently organised through a Production Sharing Agreement (PSA), which allows the Ministry of Energy and Minerals to grant licences to the Tanzania Petroleum Development Corporation.⁶⁹ As of December 2013, 26 PSAs have been signed between the Government and 18 different companies.⁷⁰ As many as 63 wells have been drilled (BG in Blocks 1,2,3; Statoil in Block 2; Petrobras in Block 5).⁷¹ As of 2013, the production of gas is "based on small discoveries at SongoSongo Island in Kilwa, and at Mnazi Bay in Mtwara Region."⁷²

The year 2014 was also the busiest year in terms of gas drilling so far, expectedly reaching 13 wells by different companies. As noted in a recent study,

*"The Tanzanian government has sought to convince the two major consortiums, BG in collaboration with Ophir and Statoil in collaboration with ExxonMobil, that they should join forces and construct an LNG plant together. The companies have announced that they will not take any decision until 2018. Local unrest in the region that is projected to host the LNG plant, fear of political instability related to the forthcoming 2015 elections, and fluctuating world market oil prices make them prefer to wait and see. This will delay the project well into the 2020s."*⁷³

Figure 3 – Tanzania Exploration Activity Map⁷⁴

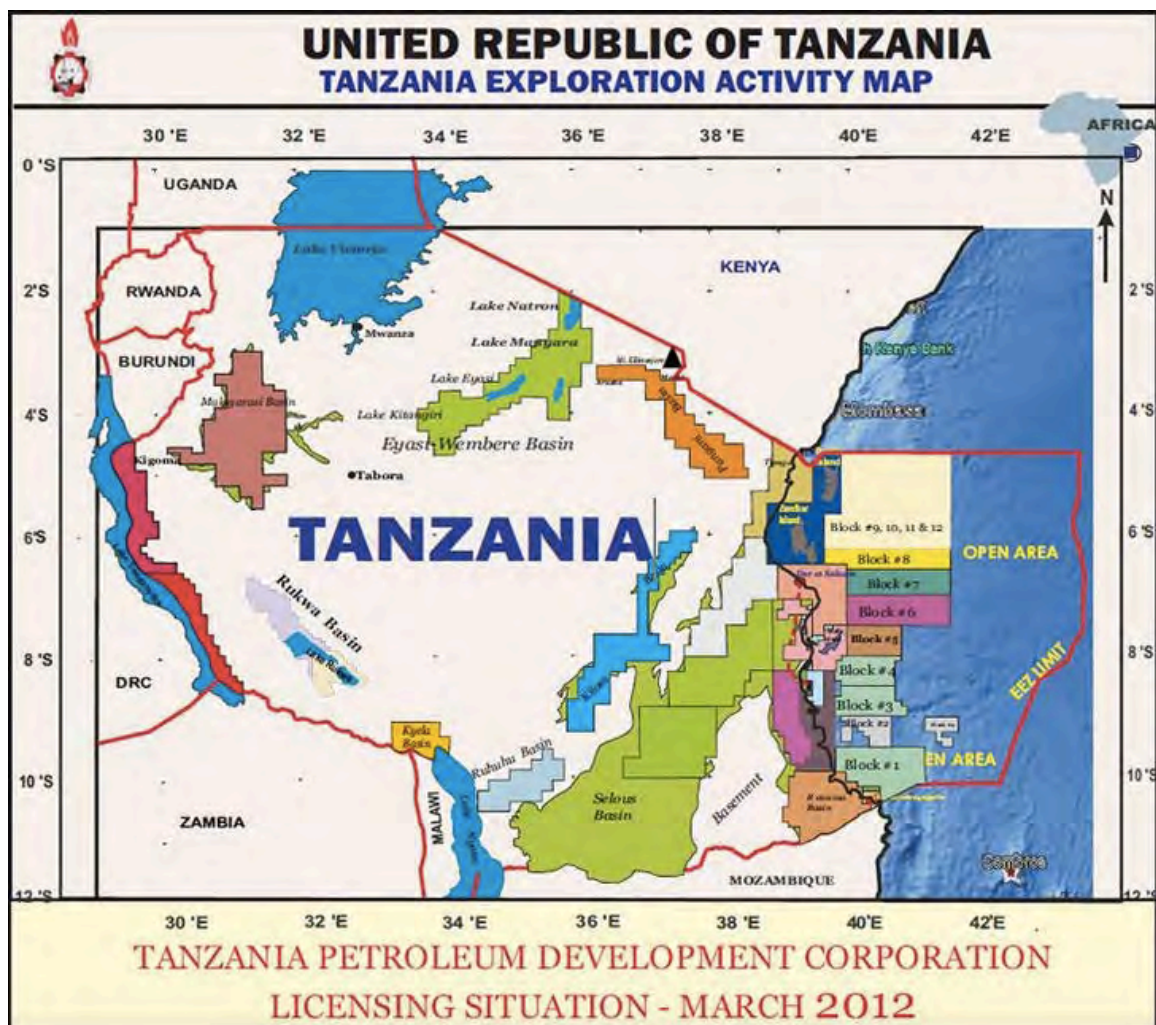
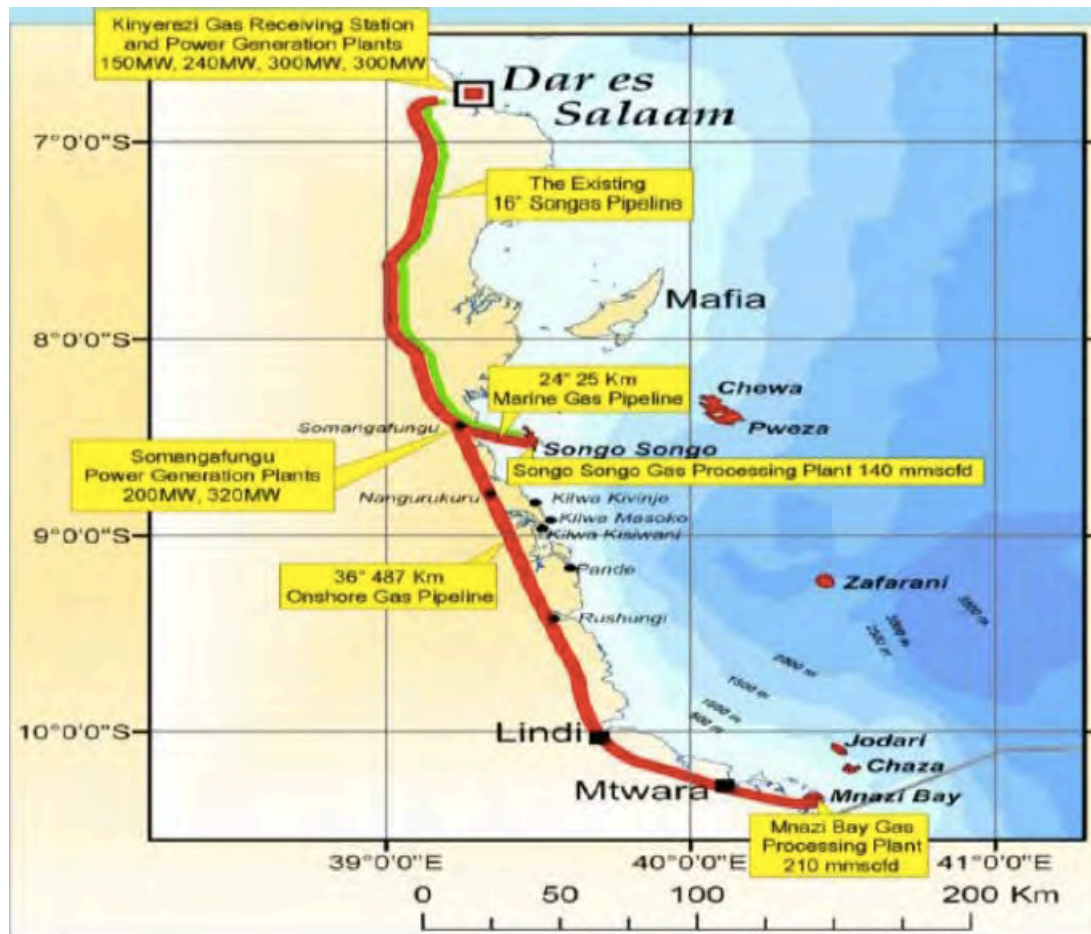


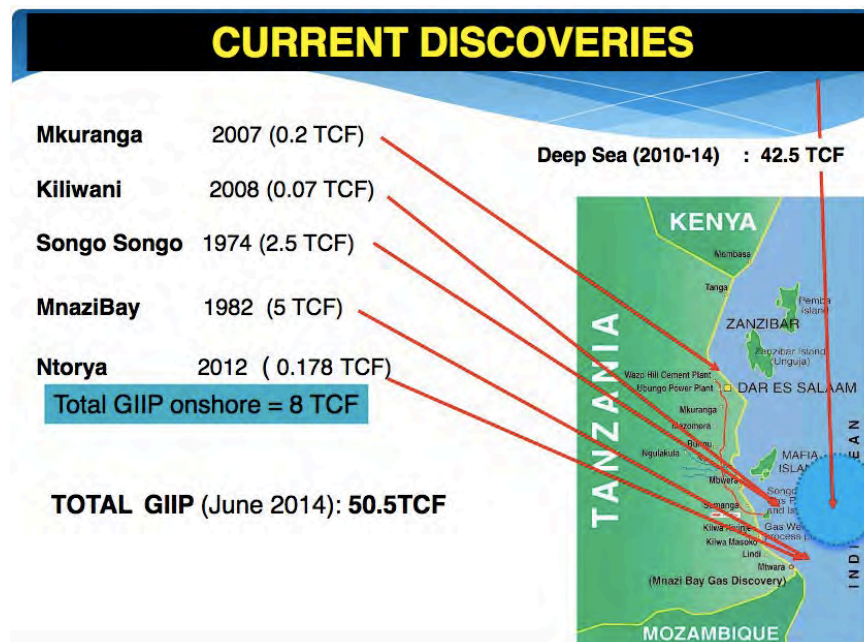
Figure 4: Natural Gas Pipeline Infrastructure⁷⁵



These figures exclude 2.7 million additional discoveries made on 25th February 2015 as reported in the local media.⁷⁶

The extraction and transportation of natural gas in Tanzania led to the necessary construction of pipelines near the shore. Recently, news has surfaced that the project for the construction of another pipeline going from Tanzania to Uganda is in discussion. This information is linked to the recent discovery of "an additional 2.17 tcf" of natural gas reserves in an onshore field.⁷⁷ The construction of a 520 km gas pipeline from Mtwara to Dar es Salaam was completed in October 2015.⁷⁸ The pipeline was made possible by a US\$ 1.2 billion loan from the Peoples' Republic of China.⁷⁹

Figure 5: Current Natural Gas Discoveries in Tanzania⁸⁰



1.2 Tanzania's General Governance Structure in the Extractive Sector

1.2.1 Division of Responsibilities between Mainland Tanzania and Zanzibar

The United Republic of Tanzania (URT), formed by union of the former Republic of Tanganyika (now referred to as Tanzania mainland) and the People's Republic of Zanzibar⁸¹ in April 1964⁸² is governed by the 1977 Union Constitution, which remains in force today. The Union has two autonomous governments: the Union Government⁸³ and the Revolutionary Government of Zanzibar.⁸⁴ The Union Government, exercises powers over the whole territory on "union matters" and on all other matters within Tanganyika (Tanzania Mainland)⁸⁵ including mineral resources.

While the Union has existed for over fifty years, the exercising of governance powers by the two governments has not been as clear cut. While "mineral oil resources, including crude oil, other categories of oil products and natural gas" are explicitly listed as Union matters, hence outside of the Revolutionary Government of Zanzibar's jurisdiction, implementation of mineral governance has proven to be a thorny issue.⁸⁶

This Report focuses on the extractive sector laws in mainland Tanzania because up until the time of writing, no natural gas discoveries have been made in Zanzibar and exploration activities have stalled due to legal uncertainties as Zanzibar insists on a need for full autonomy over oil and gas matters that fall under Union matters according to the Union Constitution.⁸⁷ There is a stalemate between the Tanzanian Government authorities and

those in Zanzibar over the distribution of benefits from natural resources found on the island's territory, where the latter had taken the stance that Zanzibar should receive all revenues. The stalled constitutional process was supposed to have addressed the issue but in the meantime, amendments that had been proposed to the new Petroleum Act pave the way for Zanzibar to take control over its resources.⁸⁸

1.2.2 Government Institutions Governing the Extractive Industry in Tanzania

The Government of the United Republic of Tanzania has the overall responsibility to administer exploration, extraction and management of the country's extractive resources.⁸⁹ The President appoints Ministers to oversee ministries/cabinet level institutions.⁹⁰

The Ministry of Energy and Minerals

The Ministry of Energy and Minerals (MEM) is responsible for the development of energy and mineral sectors in Tanzania. It envisions its function as playing *"an important role in poverty reduction and in supporting socioeconomic development in Tanzania."*⁹¹ MEM works with a range of stakeholders: public, private, public-private partnerships, local communities, NGOs and civil society and has a Client Service Charter defining these relationships.⁹² Its divisions include:

- The Environmental Section Unit has responsibilities of ensuring compliance of environmental issues.
- The Minerals Division Commissioner is responsible for the day-to-day administration of the regime, and is supported by various officers.⁹³
- The Small-Scale Mining Development Division under the Commissioner of Minerals acts as a national centre for small-scale mining management, and is responsible for coordinating outreach programs, among other things.⁹⁴
- The Mining Advisory Board advises the Minister on various matters relating to the administration of the Mining Act.⁹⁵ While the President appoints the chair of the Board, the Minister appoints its other members.⁹⁶
- The Geological Survey of Tanzania is responsible for advising the Minister on geological matters, and undertaking the geological mapping of Tanzania.⁹⁷
- The Energy Division Commissioner is responsible for oil and gas as well as electricity and renewables.

The Energy and Water Regulatory Authority

The Energy and Water Regulatory Authority (EWU RA) is the autonomous regulator of midstream and downstream activities, including transportation of gas.⁹⁸

The National Environment Management Council (NEMC)

The NEMC is responsible for environmental enforcement, compliance, review and monitor environmental impact statements, research and awareness raising.⁹⁹ The main mission of the NEMC is to promote environmental management in Tanzania through coordination, facilitation, awareness raising, enforcement, assessment, monitoring and research.

Ministry of Natural Resources and Tourism (MNRT)

The Ministry of Natural Resources and Tourism of the United Republic of Tanzania is responsible for management of natural, cultural and tourism resources. The Ministry is involved in the extractive sector in that it aims to conserve natural, cultural resources sustainably and develop tourism for national prosperity and benefit of mankind through development of appropriate policies, strategies and guidelines; formulation and enforcement of laws and regulations; monitoring and evaluation of policies and laws.¹⁰⁰

2

Pillar I

Tanzania's Policy & Legal Framework Relevant to the Extractive Sector



2. Pillar I: Tanzania's Policy and Legal Framework Relevant to the Extractive Sector

2.1 Introduction and Link to the UN Guiding Principles on Business and Human Rights

Pillar I of the UNGPs addresses the Government duty to protect against human rights abuse within its territory and/or jurisdiction by business enterprises through effective policies, legislation, regulations and adjudication.¹⁰¹ This includes setting clear expectations for business as well as putting in place the appropriate policy and legal frameworks to implement the corporate responsibility to respect human rights.

This section examines Tanzania's policy and legal framework for the extractive sector. The aim is to assist the Government in considering whether the current framework is fully aligned with its international human rights obligations or whether the existing policies and laws need further adjustments to address any gaps or shortcomings. For companies, it is important to understand whether the policy and legal framework reinforces their own responsibilities to respect human rights or where it may leave gaps or in the worst case scenario, contradicts international human rights standards. Where gaps in the policy and legal framework exist, they present a challenge to a level playing field among companies as these can be filled by good – and bad – practices. The UNGPs set out clear expectations that where national standards conflict with international human rights standards, companies should seek ways to honor the principles of internationally recognized human rights.¹⁰²

2.2 Constitutional Analysis

Under the 1977 Constitution,¹⁰³ the President is the Head of State, the Head of Government, and the Commander in Chief of the armed forces.¹⁰⁴ The legislature is comprised of a unicameral National Assembly,¹⁰⁵ and the judiciary forms a third and separate branch of government.¹⁰⁶ In 2011, the Government launched a process to draft a new constitution for the country¹⁰⁷ but it has still not been approved. The existing Constitution covers the following matters:

- Chapter 1: declares the fundamental principles of state policy and the fundamental rights and duties of the country's citizens.
- Chapters 2-5: cover the three branches of state authority: the Executive, the Legislature and the Judiciary and the distribution of powers and functions among them.
- Chapter 6: Establishes the country's National Human Rights Institution, the CHRAGG, setting out its functions and powers.

- Chapter 7: regulates the finances of the United Republic.
- Chapter 8: establishes the local government authorities of the cities, municipalities and the rural districts.
- Chapter 9: establishes the existence and control of the Armed Forces of the United Republic.¹⁰⁸

The Bill of Rights is contained in Chapter 1 of the Constitution,¹⁰⁹ which includes a number of internationally recognized human rights as set out in the Universal Declaration of Human Rights (UDHR) (see Table 1 below). International human rights that are incorporated into national constitutions enjoy clearer visibility and protection than rights that are not covered in a constitution so it is relevant to understand what human rights are covered in a constitution and which are not. Nonetheless, countries that sign and ratify international human rights conventions accept the obligation of protecting those rights – whether or not they are included in the constitution.¹¹⁰

Article 25 to 28 of the Tanzanian Constitution imposes duties on every individual to respect the rights of others and society. Article 29 covers the right of *“every person in the United Republic has the right to enjoy fundamental human rights and to enjoy the benefits accruing from the fulfillment by every person of this duty to society, as stipulated under Article 12 to 28.”* Article 30 of the Constitution limits the application of these rights subject to law but also allows any person to challenge any law or act/omission, which contravenes his or her right, or the Constitution.

Table 1: International Human Rights from the Universal Declaration of Human Rights (UDHR) that are included in the 1977 Constitution

International Human Right	Article of the UDHR	Relevant Article of the Constitution of the United Republic of Tanzania
The Right to Equality	1 and 2	12
The Right to life	3	14
Equality before the law	6 and 7	13
Access to justice	8	13
Right to property	17	24
Freedom of expression	19	18
Right to participation	21	21
Right to work	23	22
Right to education	26	11
Right to personal freedom	3	15
Right to privacy	12	16

Right to freedom of movement	13	17
Right to freedom of religion	18	19
Person's freedom of association	17 and 20	20

The Tanzania Constitution provides for some of the fundamental human, social, and environmental rights and protections that should underpin the on-going development of Tanzania's extractive industry -- including participation, access to information, land ownership, livelihood, environment, security, and at-risk-groups. Additionally, the Constitution creates institutions charged with the implementation and enforcement of human rights protections, including the court and the national human rights institution.¹¹¹ However, given the date of the current Constitution – 1977 – it does not reflect the progressive protection of human rights and socio-economic rights that characterise some of the more modern African Constitutions – notably Kenya and South Africa.

2.2.1 Thematic Issues Relevant to the Extractive Industry

Community Participation/Engagement, Information & Transparency

The Constitution provides several types of protections for community participation and access to information. First, the Constitution explicitly provides that every person has the right to seek, receive, and disseminate information¹¹² and that every person has the right to be informed of important events and activities.¹¹³ Further, the Constitution explicitly provides that *"[e]very citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting, him, his well-being or the nation."*¹¹⁴ Finally, the Constitution provides that *"[e]very person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons."*¹¹⁵

Labour Rights

The Constitution also protects a person's right to work,¹¹⁶ entitlement to "just remuneration" for work performed,¹¹⁷ and to access education.¹¹⁸

Land Ownership

All extractive sector activities require access to and use of land. The Constitution explicitly provides that every person has a right to own and protect property.¹¹⁹ Further, no person can be deprived of his property, for any reason, without "fair and adequate" compensation.¹²⁰

In a case involving the right to property, the court of appeal held in the case of Attorney General v. Lohai Akonaay and Joseph Lohai¹²¹ that customary land rights are *"real property protected by the provisions of Article 24 of the Constitution of the United Republic of Tanzania."* The court emphasized that the Constitution prohibits deprivation of a customary land right (also known as deemed right of occupancy)¹²² without fair compensation.¹²³

Based on this precedent, the constitutional right to property should protect communities holding customary land rights in or around existing or potential extractive operations from violation of their land rights without fair compensation.¹²⁴

Livelihoods

The Constitution imposes a duty on the state to ensure that every person earns a livelihood regardless of the persons *"old age, sickness or disability, and in other cases of incapacity"*.¹²⁵

Groups at Risk

The Constitution expressly provides that every person is born free and equal.¹²⁶ The Constitution further provides that *"[a]ll persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law"*¹²⁷ and that *"[n]o person shall be discriminated against by any person or any authority acting under any law or in charge of the functions or business of any state office."*¹²⁸ The Constitution provides an important foundational framework for the protection of all persons as being equal in dignity and value but does not provide for specific protection for women, children, youth, disabled, minorities and marginalized, and the elderly.

Environmental Protection

Apart from fundamental human rights encompassed in the Bill of Rights, the Constitution also contains citizens' duties. One duty, in particular, that is more relevant to the extractive sector appears under Article 27. While the current Constitution leaves much room for improving these protections, it does provide that *"[e]very person has the duty to protect the natural resources."*¹²⁹ The significance of this provision in relation to the extractive sector is twofold. Firstly, it expressly enjoins Tanzanian citizens to participate in the management of the country's natural resources. Secondly, it implies a duty on the Government to create an enabling environment for citizens to take part in natural resources management, including extractives sector activities.

Community and Public Security

Finally, the Constitution provides for a person's right to security.¹³⁰

2.2.2 Challenges around the Implementation of the Bill of Rights

The Basic Rights and Duties Enforcement Act¹³¹ provides the procedures for enforcing rights contained in the Bill of Rights. The law specifies a requirement for a full bench, comprising three judges, to determine a case involving allegations of human rights violations.¹³² In practice, it has been difficult for the understaffed¹³³ judiciary to simultaneously pull three judges away from their already overloaded case dockets to preside over such cases in a timely fashion. Consequently, the law has had the effect of hindering the effective protection of human rights because when compared to other civil or criminal cases, these cases take disproportionately longer to be heard and adjudicated.¹³⁴

In addition, Article 30(4) of the Constitution¹³⁵ provides that the High Court of Tanzania is the first court of instance in adjudicating human rights cases. Unlike lower courts or other quasi-judicial tribunals, it is difficult for a layperson to defend oneself (*propria persona*) at the High Court or the Court of Appeal due to the complexity of the legal procedures and technicalities involved.¹³⁶ To date, no disaggregated data exists on the number of human rights cases filed per year in Tanzania. However, according to a speech by the Chief Justice of Tanzania, a total of 7,857 cases touching on various causes of action were filed at the High Court in 2013 alone.¹³⁷

Another hindrance relates to the inability of communities to access the court due to lack of technical knowhow and financial resources. A report on the implementation of the International Covenant on Civil and Political Rights in Tanzania indicates, for example, that while the majority of Tanzanians live on below \$1/day,¹³⁸ *preparation of small and simple legal documents by an Advocate say a pleading costs \$500 [and] consultation fees range from a minimum of \$10 and above.* During the course of this study, twenty-six (26) out of forty-one (41) respondents that were interviewed in Geita district described in exasperation how very difficult it is for them to file court cases or to challenge violation of their human rights by extractive operations without the assistance of volunteer lawyers. One Geita respondent further lamented, *that [the court of law] is not a place you can just walk to, straight from your house. You need to know the law and you need money to pay for so many things that they tell you to pay the moment you meet the first official.*

Specifically, the communities depend to a large extent on human rights organisations such as the Lawyers Environmental Action Team (LEAT), the Legal and Human Rights Center (LHRC), and the Tanganyika Law Society as well as some academic institutions such as the Legal Aid Committee of the University of Dar es Salaam, which offer free legal aid. Not only are these legal aid clinics few in number, but they cannot meet the public demands for legal assistance, and they remain heavily donor-dependent.

2.3 Tanzania's International Human Rights Obligations

Tanzania has ratified a number of international human rights treaties. The Government therefore has the duty to respect, protect and fulfil the human rights covered by these treaty obligations.¹³⁹

Table 2: Tanzania's Ratification Status of International Human Rights Obligations¹⁴⁰

Treaty	Signature Date	Ratification Date: Accession date (a) Succession date (d)
CCPR - International Covenant on Civil and Political Rights		11 Jun 1976 (a)
CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights	-	-

CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	-	-
CED - Convention for the Protection of All Persons from Enforced Disappearance	29 Sept 2008	
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	17 Jul 1980	20 Aug 1985
CERD - International Convention on the Elimination of All Forms of Racial Discrimination		27 Oct 1972 (a)
CESCR - International Covenant on Economic, Social and Cultural Rights		11 Jun 1976 (a)
CRC - Convention on the Rights of the Child	01 Jun 1990	10 Jun 1991
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		11 Nov 2004 (a)
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		24 Apr 2003 (a)
CRPD - Convention on the Rights of Persons with Disabilities	30 Mar 2007	10 Nov 2009
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	-	-
CAT-OP - Optional Protocol of the Convention against Torture	-	-
CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	-	-

Table 3: Tanzania's Ratification Status of ILO Fundamental Conventions¹⁴¹

Treaty	Signature Date
CCPR - International Covenant on Civil and Political Rights	
CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights	-
CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	-
CED - Convention for the Protection of All Persons from Enforced Disappearance	29 Sept 2008
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	17 Jul 1980
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	
CESCR - International Covenant on Economic, Social and Cultural Rights	
CRC - Convention on the Rights of the Child	01 Jun 1990
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	
CRPD - Convention on the Rights of Persons with Disabilities	30 Mar 2007
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	-
CAT-OP - Optional Protocol of the Convention against Torture	-
CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	-

2.3.1 Indigenous People

Tanzania is a multi-ethnic State, with more than 120 ethnic and minority groups. Tanzania was one of the states that supported adoption of the UN Declaration on the Rights of Indigenous Peoples, unlike its neighbor Kenya that abstained.¹⁴² The Tanzanian Government's official position is that *"all people of African descent were indigenous"*.¹⁴³ Nonetheless, the Government recognizes that there are groups that need special protection within the country, including¹⁴⁴ three distinct groups which identify themselves as

indigenous peoples: Harzabe and the pastoralist Barbaig and Maasai.¹⁴⁵ The Government had taken various measures to provide political, social and cultural amenities to such groups in the fields of health, politics, employment and education. These groups have been recognized by the African Commission on Human and People's Rights as having indigenous status.¹⁴⁶ The Legal and Human Rights Centre further identified the Iraque and the Sandawe as self-identifying indigenous peoples.¹⁴⁷

The key issue for the groups on the ground will be how these protections are applied through laws, regulations, contracting, jurisprudence and in particular in practical application in protecting their way of life. This will also play out against the wider and very active discussions globally about the impact of the extractive sector on indigenous peoples' rights (see below).

In Focus:

Indigenous Peoples and the Extractive Sector¹⁴⁸

There has been a long and often contentious history of interaction between extractive companies, governments and indigenous people around extractive operations. The worldwide drive to extract natural resources, with much of the remaining resources on the lands of indigenous peoples, means there are increasing and ever more widespread effects on indigenous peoples' lives. It is not the case that all extractive resource development is incompatible with indigenous people's development; the UN Special Rapporteur on Indigenous Peoples draws attention to alternative business models for the sector.¹⁴⁹

The adoption of international instruments on indigenous people's rights,¹⁵⁰ increasing sensitivity of governments, private sector companies, extractive sector industry associations, IFIs and CSOs, combined with improved environmental and social management processes, has meant that at least in some operations, impacts of extractive operations have been prevented or minimized. As significant as these developments are in bringing improvements, there remains in many countries significant challenges for indigenous peoples in exercising their rights to "*determine priorities and strategies for the development or use of their lands and territories*"¹⁵¹ and for protection of their wider set of rights.

The principles of consultation and free, prior and informed consent (FPIC) are instrumental to rights of participation and self-determination and are part of a wider process of engagement with indigenous peoples on the wider set of rights that may be impacted by extractive operations. FPIC is also part of a wider set of safeguards, including the use of impact assessments, prevention and mitigation measures, benefit-sharing and compensation schemes.¹⁵² The FPIC process envisioned between indigenous peoples, the government and companies seeks to provide an important process to enable indigenous peoples to set their own priorities and strategies for development. Where extractive projects will go ahead subject to FPIC (or within limited

scope of exceptions to FPIC),¹⁵³ the process can set the terms for sustainable relationships between indigenous peoples and extractive companies based on genuine partnerships.

The path to recognition of FPIC and the broader suite of rights of indigenous peoples by governments and extractive companies had been a long and at times fraught discussion both in principle and in practice, but with some significant improvements in the overall recognition of indigenous peoples rights and in particular examples of laws that seek to provide a consent process and wider recognition in company policy and practice.¹⁵⁴ Application of the concept of FPIC by companies, especially where it is not recognized in national law remains challenging on numerous levels.¹⁵⁵ A continuous, open, and meaningful engagement of governments and indigenous communities constitutes the sine qua non for FPIC to fulfill its purpose. The absence of such government-indigenous interaction shifts responsibilities from the government to companies and burdens the FPIC process with demands that often are unrelated to projects impacts or beyond the competencies of companies. Yet there is a worrying trend to unload such responsibilities on companies, weakening the guarantor and arbitration role the government must play. This is an area where continued, collaborative dialogue involving government, the private sector and indigenous peoples is needed to continue to evolve new models that can provide broader benefits to indigenous peoples.

2.3.2 Survey of UN Human Rights Treaty Monitoring Bodies

As part of the research for this Report, concluding observations of various UN treaty monitoring bodies, the UN Human Rights Council periodic review process and regional human rights bodies were analysed to ascertain key human rights concerns around the extractive industry in Tanzania. These included:

- The core international human rights instruments that Tanzania has ratified;¹⁵⁶
- Tanzania's Universal Periodic Review (UPR) at the UN Human Rights Council;¹⁵⁷
- concluding observations of the African Charter on Human and Peoples Rights (ACHPR).¹⁵⁸

The findings of the treaty monitoring bodies on the Convention on the Right of the Child (CRC)¹⁵⁹ and the International Covenant on Civil and Political Rights (ICCPR)¹⁶⁰ contain explicit recommendations with respect to the human rights situation in Tanzania's extractive sector. They indicate that crucial human rights concerns included forced evictions, toxic spillage into drinking water, unfair compensation, and exposure to highly toxic substances such as mercury.¹⁶¹ Other concerns involving the sector included the impacts of toxic chemicals on artisanal miners, the environment and livelihoods of local communities; contamination of water sources; the lack of benefits flowing to local communities from extractive operations; and the negative impacts on families and children, such as the economic exploitation of children for sex and labour and their exposure to harmful substances.¹⁶²

2.4 Policy & Legal Framework for the Extractive Sector

2.4.1 Mining Policy, Law and Institutional Framework

The African Union's Africa Mining Vision (AMV) seeks to integrate Africa's mineral sector into the continent's social and economic development process through six related goals, providing guidance to subsequent government policy in the sector:

- Fostering a transparent and accountable mineral sector, in which resource rents are optimised and utilised to promote broad economic and social development.
- Promoting good governance of the mineral sector, in which countries and citizens participate in mineral assets, and in which there is equity in the distribution of benefits.
- Improving the knowledge, and optimising the benefits, of finite mineral resource endowments at all levels of mining for all minerals.
- Harnessing the potential of small scale mining to improve both rural livelihoods and integrating the rural economy into national development.
- Fostering sustainable development principles based on environmental and socially responsible mining, which is safe, inclusive and appreciated by communities and all stakeholders.
- Building human and institutional capacities towards a knowledge economy that supports innovation, research and development.

This vision seeks to address the common decision-making processes that have tended to favor bi-polar initiatives (government and private sector) while excluding local communities and civil society at large, resulting in local costs associated with mining (such as environmental impacts, and social and cultural disruptions) not being adequately recognized or compensated for.¹⁶³ These parameters should therefore find expression in the mining policies, laws and regulations, which constitute important instruments for these countries to realise the goals of the AMV.

The World Bank noted in a recent report on the Tanzanian mining sector

"notwithstanding the remarkable improvements in terms of tax contributions from the [formal mining] sector—in the form of mining royalties, PAYE, withholding tax, etc.—perception remains that industrial mining in Tanzania has not sufficiently played a role in poverty-alleviation, particularly in the rural areas where mining occurs. Two commissions led by government concluded with a new resolve to intensify efforts to leverage mining for development. Subsequently, the Revised Tanzania's Mining Act was passed in 2010 with new provisions around local content, beneficiation, and increased participation of Tanzanians."¹⁶⁴

In order to improve the socio-economic benefits of mining, the Government has adopted a two-prong approach: (i) improving the linkages of LSM with the local economy and local communities, including through better integration of corporate social responsibility programs and local development planning in mine affected areas; and (ii) encouraging the

formalisation and sustainable development of ASM as a means of boosting local entrepreneurship and employment in mining.¹⁶⁵

The Mineral Policy of Tanzania 2009¹⁶⁶

The Mineral Policy is the main document that articulates the Government's vision for the mining sector, aiming to *"increase the mineral sector's contribution to the GDP and alleviate poverty by integrating the mining industry with the rest of the economy."*¹⁶⁷ The main objective for this policy is to *"increase the mineral sector's contribution to the GDP and alleviate poverty by integrating the mining industry with the rest of the economy."*¹⁶⁸ The 2009 Mineral Policy aimed to strengthen links between the mineral sector and other sectors of the economy, improve the investment climate and maximise benefits from mining.

Policy statements with more relevance to human rights in the extractive sector include commitments to increase participation in mining activities;¹⁶⁹ development of small-scale mining;¹⁷⁰ establishment of land compensation and relocation schemes;¹⁷¹ promotion of relationship building between mining companies and communities surrounding mines;¹⁷² and increased employment training¹⁷³ and public awareness on mining activities.¹⁷⁴ The below paragraphs provide an analysis of the Policy's key human rights provisions.

Government and Citizen Participation in the Mining Sector

The Policy recognises that citizen participation in large-scale mining will increase the amount of benefits that the country is able to retain. One way the Government envisions this happening is through increased investment in local and foreign mining companies that conduct business in Tanzania. However, the Government acknowledges that in order for citizens to participate in large-scale mining, Tanzanians need access to capital to enable them to acquire shares in the mining companies. Accordingly, the Government has committed to facilitate the registration of foreign mining companies in the local stock exchange as a way to enable public participation in medium and large-scale mines. Yet, to date, the minister has yet to implement the necessary regulations that would require company registration, resulting in very few companies having registered in the Dar es Salaam Stock Exchange (DSE).¹⁷⁵

Establishment of Land Compensation and Relocation Schemes

The Policy specifically acknowledges that the establishment of medium and large-scale mines often causes communities to be relocated and their livelihoods to be disrupted. It provides¹⁷⁶ that where relocation is inevitable, the Government must conduct a valuation of the land and properties of the affected communities, and the investor must be responsible for payment of compensation to affected communities for relocation and resettlement. The Policy seeks to ensure transparency and adequacy of compensation rates, as well as proper valuation and prompt payment of compensation. Further, it states that investors will be required to prepare and implement sound relocation and resettlement schemes.¹⁷⁷

Correspondingly, the Government pledges to establish transparent and adequate land compensation, and resettlement schemes. This will require the government to review and harmonize relevant legislation to accommodate land compensation, relocation and resettlement schemes in mining operations as well as require investors to prepare and

implement sound relocation and resettlement schemes. This pledge is reflected in the Mining Act of 2010¹⁷⁸ which provides under section 96 that provisions of the Village Land Act and the Land Act 5 and 4 of 1999 respectively, shall be used to establish the market value of land for compensation, relocation and resettlement.

Promotion of Relationship between Mining Companies and Communities Surrounding Mines

Although it requires mining companies to implement credible corporate social responsibility policies, the Policy states that the Government will only “encourage [them] to involve local communities in setting priorities of community development projects and socio-economic aspects during the lifespan of their projects.”¹⁷⁹

Strengthening Management of Safety, Occupational Health and Environment in Mining Activities

The Policy acknowledges that the Government needs to strengthen regulation, monitoring and enforcement to reduce or eliminate the sector's adverse effects on health and safety, environment, and social issues, including among small-scale miners. The Government commits to strengthen its enforcement capacity, and require mining companies to set aside funds for environmental rehabilitation and mine closure.¹⁸⁰

Promotion of Women and Prohibition of Child Labour in Mining Activities

Recognising that women's participation in mining activities is important in the socio-economic development process, the Policy commits the Government to promote participation of women in mining activities. It also commits to collaboration with stakeholders to strengthen monitoring and enforcement of laws and regulations prohibiting child labour in mining activities.¹⁸¹

Development of Artisanal and Small Scale Mining (ASM)

The Policy provides that the Government's intention is “to support and promote development of small scale mining so as to increase its contribution to the economy.”¹⁸² A recent report by the Ministry of Energy and Minerals indicates that Tanzania has an estimated 500,000 to 1 million artisanal miners¹⁸³ of gold, diamond and tanzanite. ASM is an important sub-sector to the Tanzanian economy. For example, a report by UNEP points out that ASM accounts for 10% of the country's gold production¹⁸⁴ and every individual directly involved in the sector generates three more jobs. Despite this contribution, the ASM sector failed to receive the legal and policy attention it deserved until the Government enacted the Policy Act of 2009 and the Mining Act of 2010.¹⁸⁵

Accordingly, pursuant to the Mining Policy under review, the Government intends to establish a mechanism by which artisanal and small-scale miners can access capital in order to improve their productivity.¹⁸⁶ During the second implementation phase in 2015, the Government issued a total of Tanzanian Shillings 7,194,500,000 (equivalent to USD \$3,331,125) to 111 small-scale miners across different mining zones.¹⁸⁷ According to Government statements, the competitively selected small-scale miners were given funds on the condition that they would use the sums to modernise their mining operations through the adoption of technology.¹⁸⁸

The Mining Act No. 14 of 2010¹⁸⁹

The objective of the Mining Act is to regulate all aspects of the mining lifecycle on mainland Tanzania, including prospecting, mining, and the dealing in minerals.¹⁹⁰ It repeals the previous law dating from 1998 and implements the vision of the Government of Tanzania that wishes to have a strong, vibrant, well-organised private sector with a large and small scale mining industry that is conducted in a safe and environmentally-sound manner. This is important given that the sector contributes over 10% of gross domestic product coupled with a well-developed gemstone lapidary industry all of which provide employment to Tanzanians. As discussed below, the Act contains provisions that can be used to safeguard individuals and communities, as well as the environment against the actual and potential negative impacts of large scale extractive operations.

Primary licenses – for any minerals or mining of gemstones – are issued in areas have been set aside or designated exclusively for the prospecting and mining operations of Tanzanians.¹⁹¹ The law defines “primary mining license” to mean “*a license for small scale mining operations, whose capital investment is less than USD \$100,000 or its equivalent in Tanzanian Shillings.*” However, enforcing licensing requirements on the ASM has been difficult, causing many of them to operate without licenses or to procure them after starting mining operations. The Act seeks to prevent conflicts between small-scale and large-scale miners by giving the Minister power to designate areas specifically for small-scale prospecting and mining operations.¹⁹² But the Act’s attempts to formalize artisanal mining have been criticized for failing to recognize realities on the ground such as the fact that informal leasing and transferring of mining titles are common practice.¹⁹³

Involvement of foreign companies is only permitted through the special mining license which is defined as “*a license for large scale mining operation.*”¹⁹⁴ In particular, the law requires¹⁹⁵ that applications for a special mining license include a proposed plan to deal with the potentially detrimental impacts caused to the communities and individuals within the mining area, including relocation, resettlement and fair compensation for land. The law also requires a proposed plan¹⁹⁶ for the employment and training of Tanzanian citizens as well as a succession plan to phase out expatriate employees, if any, as may be required by the Employment and Labour Relations Act.¹⁹⁷ Additionally, the law requires applicants to submit an environmental certificate,¹⁹⁸ issued in accordance with the Environment Management Act, and a procurement plan¹⁹⁹ for the goods and services available in Tanzania. These requirements oblige large-scale mining companies, which in most cases are comprised of multinational companies (MNCs), to prove their willingness and capacity to honour and uphold property rights, environmental rights, the right to development, and labour rights before they are granted a special mining license.

However, applications for special mining licenses are not publicly available, and consequently, not open for scrutiny by the public.²⁰⁰ Secondly, Tanzania does not yet have a comprehensive local content policy applicable to the mining sector that outlines a concrete percentage of goods and services (including employment) to be procured locally, and there are no enforcement mechanisms for compliance.²⁰¹

With respect to advising on developments in the sector, the Mining Advisory Board,²⁰² is tasked with advising the minister on all matters referred to it for advice, including matters relating to the sound development of the gemstone industry and such other matters connected to the administration of the Act or its regulations as may be referred by the

minister.²⁰³ While the Act contains a core of useful provisions as highlighted above, its implementation requires advice and perspectives from those involved in the sector. The Board's composition is predominantly comprised of Government officers, technocrats and experts, with only one representative for small-scale miners and no community representative living near the extractive operations, nor are CSOs or CHRAGG included as representatives on the Board²⁰⁴ to bring the voice of communities into the Board's discussions.

In addition, the Mining Act has not eliminated the discretionary powers of the Minister in licensing and contract negotiations. It does not clearly outline the legislature's oversight responsibilities.²⁰⁵

Rights Over Land

Under the Mining Act, mineral rights holders cannot exercise their rights (including to enter onto land covered) *"except with thorough consultation with the relevant Local Government Authority, including the Village Council, and thereafter, the written consent of the lawful occupier"* where land is occupied or used for crops.²⁰⁶ While the provision in theory provides good protection for land owners and occupiers in that prior consent is required, the Act also severely limits that protection by providing that *"in the opinion of the Minister and on the advice of the Board being unreasonably withheld, the Minister may, on such conditions if any as he may impose, direct that the need for the consent shall be dispensed with."*²⁰⁷ This provides wide discretion to the Minister without further criteria, to waive the requirement for consent. As noted above, as there is no requirement for representatives from CSOs, communities or the CHRAGG on the Advisory Board, the community voice on such cases will not be present.

Where the mineral rights holder cannot exercise its mineral rights without *"affecting injuriously the interest of any owner or occupier of the land,"* the mineral right holder must advise the owner or occupier to vacate, consult the relevant local government authority on amendment of the land use plan and submit a proposed plan on compensation, relocation and resettlement of the owner or occupier of the land as per the Land Act. The procedures established under the Land Act and the Village Land Act with regard to establishing the market value of land apply in determining fair and reasonable compensation of land. In addition, if there is any damage to land, crops, trees, buildings, stock or works, the registered holder of the mineral right is liable to pay the lawful occupier fair and reasonable compensation. Where the amount of compensation to be paid is in dispute, either party may refer the matter to the Mining Commissioner.²⁰⁸

Mineral Licensing

MEM maintains an open mineral rights registry, both in hard copies and digital database known as Mining Cadastre Information Management System (MCIMS) aligned with the Mining Act 2010.²⁰⁹ The information in MCIMS is publicly available. The Ministry of Energy and Minerals is collaborating with TEITI to establish an open registry for disclosing names of individuals who own mineral rights for non-public traded companies.²¹⁰ A key step in completing the information available in the Portal is to address the legal issues surrounding the disclosure of beneficial ownership.²¹¹

Mineral Development Agreements

The Mining Act of 2010 empowers the Mining Minister to enter into a binding [mineral] development agreement with the holder, or applicant, of a special mining license.²¹² This effectively confers statutory status to the agreements, by not only limiting ministerial discretion,²¹³ but also subordinating the country's applicable laws to the Ministries, Independent Departments and Executive Agencies (MDAs).²¹⁴ This means that once a MDA is signed, parties to the MDA will look to the provisions in the MDA and not the laws of the country, whenever any covered issue arises, unless the MDA is itself in question.

Typically, MDAs cover a wide range of matters such as human rights, environmental protection, dispute resolution, and labour issues. These issues should not only be included in the law but also in the binding agreement between the Government and extractive operators. For example, the Model Development Agreement created pursuant to the Mining (Mineral Rights) Regulations²¹⁵ provides for the procurement of local goods and services,²¹⁶ employment opportunities and skills development,²¹⁷ corporate social responsibility,²¹⁸ as well as ancillary land, forestry and water rights.²¹⁹ As significant as these provisions are, the ability for CSOs and other non-state actors' to demand accountability are significantly challenged because of the breadth of issues covered and the potential lack of precision of the requirements. For example, measurable targets are not contained in the Agreements, which weakens the Government's and CSOs ability to monitor progress.²²⁰

The MDA provisions intended to develop skilled nationals also lack specific targets. For example, the MDA mandates that companies "*in as far as is practicable*" engage in activities that enable Tanzania to increase the number of appropriately trained personnel to be employed in the mining industry. This leaves considerable discretion in meeting these requirements. Without specified percentages or tangible figures for the employment of Tanzanian workers, companies are not effectively incentivised to improve employment opportunities for Tanzanians in the mining sector.

2.4.2 Oil & Gas Policy, Law and Institutional Framework

Tanzania recently completed an overhaul of the legal and institutional framework for the petroleum sector. A package of laws including a new Petroleum Act, an Oil and Gas Revenue Management Act and an Extractive Industries Act (Transparency and Accountability Act) was pushed through parliament under a Certificate of Urgency to support the sector, with only cursory examination by the Committee for Energy and Minerals and limited participation from civil society.²²¹ As the next step, the Government will prepare and implement a Natural Gas Utilization Master Plan and the Natural Gas Act and the Natural Gas Implementation Strategy.²²²

The Natural Gas Policy of Tanzania 2013²²³

In addition to addressing challenges faced by the natural gas industry more broadly,²²⁴ the Natural Gas Policy comprehensively articulates a framework for guiding the industry's development and optimizing citizen benefits accruing from the sub-sector.²²⁵ It aims to ensure that natural gas revenue is managed transparently, efficiently and effectively.²²⁶ It also aims to "*substantially improve corporate social responsibility in communities*

neighboring natural gas facilities and operations."²²⁷ However, CSOs expressed concern with the weak environmental management provisions of the draft policy.²²⁸ The policy pronouncements relevant to human rights include the promotion of local content and capacity building,²²⁹ corporate social responsibility,²³⁰ transparency and accountability,²³¹ and gender mainstreaming in the natural gas sub-sector²³² as elaborated below.

Promotion of Local Content and Capacity Building

The Policy commits the Government to empower Tanzanians to fully benefit from the country's natural gas resources. In particular, Tanzanians should be ensured opportunities for the supply of goods and services, employment and investment.²³³ It also commits the Government to building the capacities of Tanzanians to participate in the natural gas value chain through skills development, transfer of technology and applied research. While the Policy only came into force in 2014,²³⁴ the power of local content provisions, whether through enforcement or the message it sends can be a powerful driver of local procurement. For the construction of the Mtwara Port, 70% of the sum a gas operator invested were spent with local businesses creating 400 jobs.²³⁵ In 2014 the Government, in collaboration with other actors, started to implement this pledge as evidenced by the scholarships²³⁶ offered to 10 Tanzanians by an operator to pursue oil and gas studies at the University of Aberdeen to build the longer term skills base in the country,²³⁷ as well as supporting local institutions to offer such courses locally, and supporting lecturers in the local institutions to pursue such studies in the UK.²³⁸

Promotion of Corporate Social Responsibility

The Policy also aims to improve corporate social responsibility (CSR) practices in order to benefit communities that neighbor natural gas facilities, defining CSR as *"the commitment by the business to share benefits arising from the business with the community in which it operates."* The Policy adds, *"Beyond the 'feel good' outcome of such practice, CSR is instrumental in developing and maintaining sound and trustworthy relations between business and the community."* Significantly, the Government pledges to ensure that all investors and contractors in the natural gas value chain are guided by contractual obligations while undertaking CSR plans preferably through local government authorities and community-based organisations.²³⁹

The Policy requires that companies operating in the natural gas industry must submit a credible CSR action plan to the relevant authorities. However, the Policy and the implementing law (the Petroleum Act 2015)²⁴⁰ fail to provide the mechanism for doing so or to define what constitutes a credible action plan. The Petroleum Act does provide that local government authorities are tasked with overseeing the implementation of the plans, as well as preparing CSR guidelines, making local CSR action plans accessible in the district council offices, and providing awareness to the public on natural gas projects in the area.²⁴¹ Neither the Policy nor the law provides for specific penalties for failure to submit a plan, or equally as importantly, what steps are available to oversee implementation.

A study carried out by the Legal and Human Rights Center (LHRC) published in Human Rights and Business Report in Tanzania-2013,²⁴² indicates that 39.0% of community members interviewed do not think investments have benefitted their areas because they cannot concretely see an increase in employment or social services. The report further provides that investors have full discretion to decide where and on what to invest and the

pledges that companies make are not binding contracts.²⁴³ The study was carried out prior to the changes in the new law which require specific contractual commitments to carrying out community development plans. Neighbouring Kenya is in the process of developing a set of regulations under its new mining law specifically to guide such programmes.

The success of those plans will depend on whether they are developed with input from the community and implemented and monitored transparently going forward, building on the growing learning around community development programmes²⁴⁴ and agreements. That may start to address the perception among community members interviewed during the field research for this Report that such commitments are *"a mere public relations initiative or business showcasing."* What is evident from the earlier study is that communities expect that such agreements are focused on immediate benefits to the local community – i.e. increase in employment or social services. Going forward, if such community development/CSR plans are developed jointly, communities will not only have the opportunity to participate but also see the challenges around balancing short and longer term outcomes and have a voice in selecting beneficiaries.

Promotion of Transparency and Accountability

The Policy recognises the need to promote, monitor and evaluate transparency and accountability in the natural gas industry.²⁴⁵ Accordingly, it commits the Government to develop transparency and accountability guidelines, as well as enforce values of transparency and accountability in the entire natural gas industry.²⁴⁶ While no guidelines have been formulated yet, the newly enacted Tanzania Extractive Industries (Transparency and Accountability) Act 2015²⁴⁷ (the EITI Act) is aimed at implementing the policy pledge, in addition to giving domestic legal force to the EITI principles.²⁴⁸

The Policy further commits the Government to improve communication and provide accurate and timely information to the public on activities implemented throughout the natural gas industry. However, it does not specify how or what institutions or enforcement mechanisms will be implemented to realise this policy goal.²⁴⁹

Without outlining any concrete measures, the Policy also pledges to ensure public participation at all relevant stages of the natural gas development activities in an effort: (1) to instill a sense of ownership over the country's natural gas resources²⁵⁰ and (2) to manage public expectations about benefits and potential benefits connected to Tanzania's natural gas resources exploitation.²⁵¹

Mainstreaming Gender Equality and HIV/AIDS Awareness

The Government commits to ensure gender equality and mainstream HIV/AIDS awareness in the sector by combining these aims.²⁵² In particular, the Government is mandated to ensure that programs related to the natural gas value chain, including education and training opportunities, are based on gender equality.

While no disaggregated data exists showing its impacts in the extractive sector, the HIV/AIDS scourge is particularly prevalent in Tanzania, suggesting that the figures may have heightened the need for inclusion of HIV/AIDS awareness in the oil and gas sector.²⁵³ A report by the Tanzania Commission for AIDS (TACAIDS) indicates for example *"as of 2011,*

an estimated 1.6 million people in Tanzania are living with HIV and among them 1.5 million are aged 15 and older."²⁵⁴

The Government commits to facilitate education on HIV/AIDS to stakeholders in the natural gas industry. While this is an important and necessary step for the furtherance of gender inclusion and the right to health, the policy fails to provide concrete plans on how to create gender equality such as providing grants and loans to women to increase their participation as investors in the industry.

Petroleum Act 2015²⁵⁵

This law aims to implement sector policies²⁵⁶ in Tanzania mainland and Zanzibar, and it expressly provides that *"the entire property in and control over petroleum in its natural state are vested in, and shall exclusively be managed by the government on behalf of and in trust for the peoples of Tanzania."*²⁵⁷ The law covers upstream, midstream and downstream petroleum activities, and it tasks the minister in charge of petroleum development with enforcement of the law, including the *"granting, renewing, suspending and cancelling of petroleum exploration and development licenses with advice from the Petroleum Upstream Regulatory Authority (PURA)."*²⁵⁸

The Petroleum Act contains provisions relating to human rights and environmental impacts in the extractive sector. For example, the law requires²⁵⁹ that an application for a development license contain an environmental impact assessment (EIA) outlining the necessary measures to protect the environment.²⁶⁰ It also requires the applicant to provide a proposal for the employment and training of Tanzanian citizens, as well as plans for the procurement of local goods and services.²⁶¹ However, the law falls short of providing specific targets for employment or local purchases.²⁶¹

Additionally, the applicant is required to indicate the potential land use impacts caused by the proposed extractive activities as well as how facilities may be disposed of once petroleum activities come to an end.²⁶² This requirement explicitly seeks to protect Tanzanian environmental, labour and development rights.²⁶³ However, these documents are not made publicly available.

Finally, the law provides that the lawful holder of surface rights can retain grazing and cultivation rights.²⁶⁴ Specifically, it provides that a license holder shall not infringe on the surface rights of the lawful landowner, and if infringement occurs the developer is responsible for compensating the lawful landowner.

The Local Content Policy of Tanzania for Oil and Gas Industry 2014²⁶⁵

The objective of the Policy is to guide sustainable development and utilization of natural gas and to maximize the benefits therefrom for the purpose of contributing to Tanzania's economic transformation. To achieve this, the Government has committed to managing revenues that arise from natural gas in a manner that benefits present and future generations of Tanzanians.

The main human rights focus of the Policy is to boost local participation in the gas economy value chain. In fact, Article 2.4 states that, *"Oil, natural gas and minerals are National resource that belong to the people of the United Republic of Tanzania...[and therefore]*

Tanzanians must be engaged in the entire value chain..." Local content policies are seen as *"a fundamental pillar of the inclusive social economic transformation potential of the vast natural gas resources discovered in Tanzania."*²⁶⁶

Scaling Up Local Participation in the Oil and Gas Sector

The Government realizes the importance of providing training and skills opportunities for Tanzanians so that they are prepared to participate in the sector. The Policy commits the Government to collaborating with companies to support universities, and other institutions, to build and *"enhance [the] competency of Tanzanians in provision of full range of services required in the oil and gas industry"*.²⁶⁷ Significantly, the Policy states that the Government shall do all of the following: (1) support training and technical institutions, (2) establish a centre for excellence in oil and gas, and (3) strengthen research and development functions.²⁶⁸ However, the Government has not yet taken steps to implement any of these pledges.

The Policy also provides a Government commitment to improve employment and training opportunities in the sector. This is to be achieved by harmonising relevant laws related to skills development and employment in order to ensure adequate development of local technical capacity to service the industry, while at the same time requiring companies to employ local experts and develop succession plans enabling Tanzanians to take over expatriate positions. It is unclear whether any of these steps have been taken.

Local Content in Model Production Sharing Agreement

The Government's efforts to implement these policy intentions in practice can be assessed through an analysis of the Model Production Sharing Agreement (MPSA) issued by the National Oil Company – TPDC²⁶⁹ as well as a publicly available Production Sharing Agreement (PSA) signed by the Government of Tanzania and the Pan African Energy Tanzania Limited.²⁷⁰ Even at the agreement level, there remains vague wording and a lack of measurable targets on meeting employment and contracting levels.. While some flexibility is needed, given the length of most of the agreements, sufficient clarity is nevertheless required in order for the Government to monitor progress and ensure implementation of stated commitments.

For example, a review of the PSA found that the agreement states that the company shall give preference to the employment of Tanzanian workers, but only *"as far as [the Tanzanian workers] are financially and technically competent and possess the necessary skills..."* Further, the company only commits to *"endeavor to employ Tanzanian citizens having appropriate qualifications to the maximum reasonable extent."* While these commitments sound promising, Tanzania presently has an insufficient supply of personnel who possess the required professional and technical skills necessary to meet the demand. Specifying a percentage or concrete number of employment positions reserved for locals with an alternative measure if they cannot be filled, such as implementing measurable targets and plans to educate and train locals to fill these positions in the future, would create the right incentives for companies to work together with local and national government and other partners to put such training programmes in place.

The Oil and Gas Revenue Management Act 2015²⁷¹

Following recent discoveries of natural gas, in 2015 the Government established the Oil and Gas Revenue Management Act. This law provides fiscal rules which regulate transfers of oil and gas revenues to local government authorities that host oil and gas operations. Section 17 (4) empowers the Minister for Finance in consultation with the Minister responsible for local government to develop fiscal rules to guide expenditure and savings.²⁷²

The MEM is developing a framework of cooperation between companies and district authorities that will collect a service levy to ensure funds are used on projects that benefit communities. The TEITI has conducted workshops on social accountability to empower communities to demand accountability on those expenditures.²⁷³

This law establishes the Oil and Gas Fund (to which funds accruing from the oil and gas sector will flow), and provides the framework for fiscal rules and other matters related to the management of oil and gas revenues.²⁷⁴ In relation to the TEITI Law, discussed above, this law further reinforces accountability and transparency by requiring the collection, deposit and disbursement of oil and gas revenues are undertaken in a transparent and accountable manner.²⁷⁵ Section 11 also prohibits certain uses of money deposited in the Fund, which is comprised of a revenue holdings account and revenue savings account. The following is prohibited:

- Providing credit to the government, public enterprise, or private sector entities;
- Providing collateral or guarantees for any commitments or other liabilities for any other entity; and
- Seeking rent or being the subject of corrupt practices, embezzlement or theft.

The Fund's leading objectives are to maintain fiscal and micro economic stability, finance investments in oil and gas, and enhance social and economic development as well as safeguard resources for future generations. Cumulatively, these objectives make the Act an important tool for protecting and promoting human rights in the extractive sector, and in particular the right to development. The goals and prohibitions of this law evidence Tanzania's intention to avoid the detrimental impacts of the "resource curse," which is further evidenced by its creation of the "Tanzania Natural Resource Charter Expert Panel."²⁷⁶

Promotion of Broadly Shared Values of Transparency and Accountability

The law states that the Minister shall publish all oil revenues and expenditure records, in whatever form.²⁷⁷ It also requires the Tanzanian central bank to report on the operational performance of the Fund and to publish an audit report in the official gazette and website.²⁷⁸ However, Section 18, which governs revenue transparency and accountability, provides that the collection, disbursement, and auditing of funds shall be performed in accordance with the current laws. Given widespread scandals around embezzled public funds under the current laws,²⁷⁹ the new law should provide a more robust provision on financial accountability, rather than relying on outdated mechanisms.²⁸⁰

2.4.3 Environmental Laws Relevant to the Extractive Sector

Environment Management Act 2004

Tanzania's Environmental Management Act (EMA)²⁸¹ is the framework legislation supported by sector legislation (such as the Mining Act 2010) and implemented by subsidiary legislation. The EMA provides the legal and institutional framework for the sustainable management of the environment in mainland Tanzania. It is a comprehensive piece of legislation that includes compliance and incentive mechanisms at all levels of governance, from the national level to the sub-national level, involving district and village representatives in the management of environmental resources and enforcement of the law.

The National Environment Management Council (NEMC) has primary responsibility of enforcing environmental legislation. It has been established as a semi autonomous entity mandated with a number of tasks including: oversee compliance and enforcement of environmental laws and standards; review and monitor environmental impact assessments and other assessments; undertake and coordinate research; carry out environmental investigations and inspections; and coordinate environmental inspectors. The NEMC is also charged with facilitating public participation in environmental decision-making; raising environmental awareness; and collecting and disseminating environmental information.²⁸² It has five offices throughout the country.

As to the coordination between the Ministry of Environment and relevant sectoral ministries, the EMA also requires each sector to establish an environmental section to ensure that sectoral operations are conducted in accordance with the law's provisions, to coordinate aspects related to the environment, and to ensure that environmental considerations are integrated into sectoral planning and project implementation (such as mines). The Ministry of Energy and Minerals has developed a Sector Environmental Action Plan (SEAPs) which commits it to strengthening its monitoring capacity on environmental compliance in resource exploration and extraction.²⁸³ This includes adopting a set of performance indicators on environmental compliance in resource exploration and extraction, including one indicator for upstream gas and petroleum activities.

Strategic Environmental and Social Assessments of the Extractive Sector (SESA)

A Strategic Environmental Assessment is an assessment of the environmental and social impacts of proposed strategies and policies governing a sector. The Government carried out a SESA of the mining sector in Phase I of its Sustainable Management of Mineral Resources Project.²⁸⁴ In addition, the preparation of a strategic environmental and social impact assessment for the gas sector is underway.²⁸⁵

Environmental Impact Assessments (EIA) in the Extractive Sector

An environmental impact assessment (EIA) is a process used to identify and assess major potential environmental impacts of proposed projects, evaluate alternatives and design appropriate mitigation, management and monitoring measures. Many extractive sector operators carry out combined environmental and social impact assessments (ESIAs),

recognising that extractive operations have both types of impacts that are often interlinked. Increasingly, extractive sector companies are carrying out human rights impact assessments (HRIA) as well, either as part of an integrated ESIA or as a stand-alone study, particularly in high-risk situations.²⁸⁶ Impact assessments provide a structured process for understanding and avoiding negative impacts, including on human rights. Involving those affected, including local communities is a critical part of the process.

The Government has also recognized the need to strengthen environmental impact assessment of large-scale projects as this is one of the key performance indicators in Tanzania's current Five Year Development Plan.²⁸⁷ EIAs are also required under the Petroleum Act and the Mining Act.

The Environmental Impact Assessment and Audit Regulations 2005²⁸⁸

The Environmental Impact Assessment and Audit Regulations set out rules concerning the procedures used to carry out environmental impact studies and environmental audits. These Regulations prohibit projects from being carried out if an EIA has not been conducted beforehand, and they also set the framework and the basic principles surrounding the EIAs and the environmental audits.

The Regulations require that an environmental impact assessment takes into account environmental, social, cultural, economic, and legal considerations²⁸⁹ and develops an environmental and social management plan in response to the assessment. The Regulations do not directly address human rights issues. The MEM has developed a specific guidance document for mining EIAs.²⁹⁰

Sections 89 and 90 of the EMA as well as Section 17 of the EIA Regulations require public participation in the EIA processes. However, while the law requires the NEMC to disseminate environmental information (including EIA reports) to public and private users,²⁹¹ in practice NEMC does not make the EIA reports public after issuing certificates.²⁹² Nor does the Ministry of Energy and Minerals - there are no EIAs available through the website, despite the presence of EIA Guidelines explaining the EIA procedure in Tanzania.²⁹³

A person who is aggrieved by a decision taken under the Regulations²⁹⁴ may appeal to the Environment Appeals Tribunal with the further possibility of an appeal to the High Court within thirty days of the decision.²⁹⁵ The appeal procedures are targeted to those who are the subject of the EIA rather than those who may be affected by a project or the failure to carry out an EIA, such as local communities.

A newly established government body – the Tanzania Minerals Audit Agency (TMAA) – monitors and conducts *“financial and environmental audit[s] as well as auditing [the] quality and quantity of minerals produced and exported by miners....”*²⁹⁶ In its 2014 annual report (latest available),²⁹⁷ 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.²⁹⁸ Following the review, the agency provides a report containing recommendations on improvements to reduced detrimental impacts on the environment.

2.4.4 Transparency Laws Relevant to the Extractives Sector

Tanzania Extractive Industries (Transparency and Accountability) Act 2015²⁹⁹

As the title suggests, this law aims at implementing the EITI principles³⁰⁰ in Tanzania, and thereby enhancing transparency and accountability in the sector.³⁰¹ The regulations implementing the law are expected to be published in October 2016.³⁰²

Three aspects of the law are closely related to the promotion and protection of human rights in the extractive sector, namely (1) the establishment of the Tanzania Extractive Industries (Transparency and Accountability) Committee,³⁰³ (2) the obligation to publish extractive industry related information,³⁰⁴ and (3) the requirement to submit local content and corporate social responsibility reports.³⁰⁵

The Tanzania Extractive Industries (Transparency and Accountability) Committee

According to the law, the Tanzania Extractive Industries (Transparency and Accountability) Committee "TEITI Committee" is an independent government entity that functions as an oversight body for the purpose of promoting and enhancing transparency and accountability in the country's extractive industry.³⁰⁶ Currently, this oversight function is performed by members of a multi-stakeholder group that was established prior to this law coming into force.³⁰⁷

The TEITI Committee is a 16 member tripartite body composed of members from the Government, CSOs, and extractive companies. The law provides that members from CSOs and companies shall be appointed by their respective umbrella organisations³⁰⁸ and the Minister of Energy and Minerals shall appoint members from the Government.³⁰⁹ While this composition reflects inclusion of important stakeholders in the industry, it overlooks the opportunity to make gender inclusion a statutory requirement, and also fails to require representation of communities living in or close to the extractive operations,³¹⁰ or a representative of CHRAGG.³¹¹ Involving representatives from local communities and the NHRI would have strengthened the Committee and helped ensure it was able to address human rights challenges from a practical and more informed standpoint.

Obligation to Publish Information

Another important provision for the promotion and protection of human rights appears under Section 16, which requires the Minister of Energy and Minerals to publish all concessions, contracts and licenses relating to extractive industry companies on the Ministry website, or through widely accessible media, in order to foster transparency and accountability in the sector. Access to information is essential for accountability and enforcement and is a key procedural right without which other rights discussed in this Report would be difficult to attain.

Significantly, the law applies retroactively as it does not exempt from disclosure any mineral development agreement (MDA) or production sharing agreement (PSA) signed prior to the Act coming into force.³¹² The law gives the multistakeholder Committee discretion to exempt information from disclosure on the basis of confidentiality.³¹³ TEITI in association

with the Ministry of Energy and Minerals, is now preparing a regulation which will be used as a guide in disclosure of contract, and set procedures for determining areas which may be confidential.³¹⁴ TEITI is also piloting disclosure of beneficial ownership of extractive companies.³¹⁵ This should address the earlier battles that pre-dated the law between the Minister of Energy and Minerals who denied access to the parliamentary accounts committee to signed Production Sharing Agreements (PSAs). The parliamentary committee ordered the arrest of the two top officials of the Tanzania Petroleum Development Corporation (TPDC)³¹⁶ in an effort to pressure them into releasing 26 PSAs for scrutiny.³¹⁷

In an effort to ensure sustainable management of the environment in relation to mining, oil and gas operations, Section 16(b) of the Act provides power to the TEITI Committee to cause the Ministry of Energy and Minerals to publish environmental management plans to be carried by the extractive industries. This seeks to ensure compliance of extractive companies to mine closure plans and reinstatement of the areas used for mining, oil and gas operations.³¹⁸

Tanzania EITI will also make contract information available through its website³¹⁹ but its 2015 work plan indicates engagement with extractive sector companies and Government in reaching consensus on establishing an open contracts registry.³²⁰

Submission of Local Content and Corporate Social Responsibility Reports

In an effort to ensure community development, Section 15 of the Act requires extractive companies to submit annual reports to the Committee containing information on local content and corporate social responsibility. Further, the law provides that failure to produce such information could result in a minimum fine of 150,000,000 shillings. While this requirement is commendable, it lacks any specific benchmarks or targets for companies to meet nor is there a mechanism to monitor compliance.

However, social payments are not mandated by law in Tanzania. Noting the difficulties of reconciling social contributions, the TEITI MSG agreed to include social payments in the TEITI reports for information purposes only. Although these expenditures were not reconciled, they can provide useful information that stakeholders may wish to follow-up with district government officials.³²¹

No Access to Information Law

Tanzania does not have a comprehensive freedom of information law. This makes it difficult for citizens, communities and CSOs to request access to information related to extractive operations that government authorities or the companies themselves do not put into the public domain.

In theory Article 18³²² of the Constitution provides for the right to information including the right to freedom of expression, and the right to seek, receive and disseminate ideas regardless of the frontiers. However, this right is exercisable only subject to the limits prescribed by ordinary legislation.³²³ For example, the Newspapers Act³²⁴ empowers the Minister in charge of information to ban newspapers if in the Minister's opinion the contents are considered to be in opposition to national interests. Accordingly, the application of the Newspapers Act poses a hindrance to the "right to seek, receive and, or

disseminate information" more broadly, including in the context of the country's extractive industry.³²⁵

Additionally, the Environmental Management Act³²⁶ acknowledges the right to access publicly held environmental information pertaining to the current state of the environment as well as future threats to the environment.³²⁷ However, the very same law specifically permits the Minister to adopt regulations to limit the exercise of this right.³²⁸

The Tanzanian Government should accelerate the process to adopt and implement an access to information law. The Government's OGP action plan promises to "*study global best practice of freedom of information laws in order to generate inputs for preparation of a potential freedom of information Bill.*"³²⁹

2.4.5 Land & Resettlement Policies and Laws

The National Land Policy,³³⁰ which is a precursor to land law reforms in Tanzania, provides that all land in Tanzania is public land and is held by the President as a trustee on behalf of all Tanzanians.³³¹ The implication of this policy is that landowners do not have absolute land rights, but revocable rights to occupy a given piece of land,³³² referred to as "*the right of occupancy.*"³³³ The right of occupancy is further restricted to the "land [surface]", which is defined to exclude subsurface resources such as minerals, petroleum and hydrocarbons.³³⁴ To implement this policy, the Government enacted two framework land laws: the Land Act³³⁵ and the Village Land Act.³³⁶

According to the Land Act, all land in Tanzania falls into three categories (1) General Land,³³⁷ (2) Village Land³³⁸ and (3) Reserved Land.³³⁹ "General Land" covers land in urban areas, while "Village Land," as the name suggests, covers land in rural areas. "Reserved Land", according to the Act, includes land set aside in accordance with the laws governing the conservation of forests, marine resources, and wildlife and includes national parks, game reserves and forest reserves.³⁴⁰ While there is no special category for land reserved for resource extraction, the laws of Tanzania do not prohibit mineral exploration or extraction in any of the land categories, including national parks.³⁴¹

The Village Land Act 1999 divides land into three categories: (1) communal land (e.g., public markets and meeting areas, grazing land, burial grounds); (2) occupied land, which is usually an individualised holding or grazing land held by a group; and (3) vacant land, which is available for future use as individualised or communal land. The Act does not recognise grazing land as a separate category, but pastoralists can assert customary rights of occupancy to grazing land.³⁴²

There is in principle, an open and transparent system of village land allocation that requires the Village Assembly to pass a resolution to allocate Village Land to an individual or a firm that has submitted land request to the Village Government. The Village Assembly constitutes all villagers with or above 18 years. According to the Village Land Act, Village Leaders have no mandate whatsoever to allocate land.³⁴³

Only 15% of all villages in the country have been surveyed, in part, because there is a lack of funds.³⁴⁴ The process of surveying, parceling and titling of land is lagging far behind the demand for acquisition of land for both settlement and commercial purposes. The Five Year Development Plan sets a target of increasing the proportion of households with land

certificates (e.g. certificates of title and customary right of occupancy) from 5% in 2009 to 10% by 2015/16.³⁴⁵

Land Acquisition and Compensation for Land and Assets³⁴⁶

The Constitution provides that no persons shall be deprived of property for any reason whatsoever, including nationalization (or expropriation), without "adequate and fair compensation."³⁴⁷ The Land Act no. 4 of 1999 provides that every person is entitled to full, fair and prompt compensation if their right to occupy or use the land is interfered with or revoked.³⁴⁸ Additionally, the Act provides for the payment of interest at market rate.³⁴⁹ However, by excluding minerals, petroleum, oil and gas, from the definition of land that communities and individuals can have rights over, the law expressly disentitles community ownership of natural resources found in their ancestral lands, and in turn no community right to compensation for underground resources.

The Land (Assessment of Values for Compensation) Regulations 2001³⁵⁰ provides the procedures to be followed in evaluating land for the purpose of payment of compensation. The relevant regulation provides that the basis for the assessment of the value of any land for the purpose of compensation shall be the market value of such land.³⁵¹ While market value is the guiding criteria for real property compensation, the law provides a long list of additional items that must be paid if interfered with or revoked. The list includes a disturbance allowance, transport allowance, loss of profit or accommodation, the cost of acquiring the subject land, and any other loss or capital expenditure incurred in the development of the land.

The Regulation provides three methods for computing the appropriate land value, (1) the comparative method, which is based on recent sales of similar properties, and for properties that possess intrinsic value there are the (2) income approach method and (3) replacement cost method. Once the Ministry for Lands, in collaboration with the local authorities, establishes the value of the land in line with legal procedures, companies pay the district council which in turns pays the individual villagers whose lands are taken for extractive operations.

Compensation amounts are determined by Government valuation not based on negotiations between a willing buyer and willing seller.³⁵² While market value is generally accepted as a reliable metric for calculating compensation, it is often ineffective in the village context because no 'market' exists in such cases where properties are 'for sale'. Moreover, sporadic sales of land in villages are often motivated by urgency factors, such as a need to pay hospital bills or send a child to school out of the region, which undermine the reliability of existing 'market values'. Because these urgency factors are contrary to arm's length negotiations, the resulting sales values are unfit to be used as value determinants.

Tanzania has in place a regulatory framework for valuing land which is already a significant step in providing protection to rural land owners and long-standing occupants as well as guide posts for extractive sector companies. There are pluses and minuses in the system Tanzania has in place that should be considered within the broader management of the sector. While Government valuation may protect vulnerable land-owners from unscrupulous negotiations in a willing buyer-willing seller circumstance, because communities have no say in the rate of compensation for their most valuable asset, this inevitably takes control of the situation out of community hands, often leading to feelings of frustration and

unfairness with the procedures and values set. While there is opportunity for corruption and mismanagement in willing buyer-willing seller procedures, a fully government controlled procedure without absolute transparency certainly heightens the risks of corruption and mismanagement at not just one, but many points along the chain in making the valuation, collecting payment and disbursing payment.

Compulsory Acquisition

The Land Acquisition Act of 1967 provides for the compulsory acquisition of land for public purposes. The law requires that the Government give landholders at least six weeks' notice of the acquisition, and lays down procedures for prompt and adequate compensation. Compensation can, 'at the option of the government,' take the form of monetary compensation or a combination of plots or buildings of comparable quality, plants and seedlings, and/or regular supplies of grain and other basic foodstuffs.³⁵³

Resettlement

There is no specific legislation that governs resettlement in Tanzania. Instead, sections in different legislation provide for issues related to compensation and resettlement including the Mining Act of 2010; Land Act of 1999 (Cap 113); Village Land Act of 1999; Land Acquisition Act of 1967; Land Disputes Courts Act, (Cap 216); Grave (Removal) Act of 1969; Environmental Management Act of 2004; Antiquities Act of 1964 (amended 1979); Land (Compensation Claims) Regulation 2001; and the Forest Act of 2002.³⁵⁴

Land Disputes³⁵⁵

Under Tanzania's formal law, land disputes can be brought before both formal and informal tribunals. The Courts (Land Disputes Settlements) Act of 2002, the Land Act and the Village Land Act recognise the jurisdiction of informal elders' councils, village councils and ward level tribunals.³⁵⁶ Village councils can establish an adjudication committee, with members elected by the village assembly. The primary mode of dispute resolution in these forums is negotiation and conciliation.³⁵⁷

Women's Right to Land

Tanzania's Land Act no. 4 of 1999 expressly states that women shall have equal rights to obtain and use land. The legal framework for land rights also provides for women's representation in governing bodies: the Village Land Act provides that three of the seven positions on village councils shall be filled by women and a quorum requires at least two women. However, despite this, women hold only an estimated 20% of the land registered in Tanzania and the percentage of women holding primary rights to use and control land under customary law is likely far lower.³⁵⁸

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 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.

4

Pillar III

Access to Remedy for
Extractive Sector Impacts



4. Pillar III: Access to Remedy for Extractive Sector Impacts

4.1 Introduction and Link to the UN Guiding Principles on Business and Human Rights

The third pillar of the three-pillar UNGP framework is about access to remedy for victims or potential victims of human rights impacts – whether by the state or companies or their business relationships. The idea behind this pillar is to counteract or make good any human rights harms that have occurred or to prevent further recurrence of harms or foreseeable harms. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Remedy procedures should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

Remedies can be provided through state-based judicial mechanisms – such as through several types of courts that are part the Tanzanian legal system set out below. But it is not just courts – non-judicial grievance mechanisms, such as the Tanzanian National Human Rights Institution, the Commission for Human Rights and Good Governance (CHRAGG), as well as labour inspectorates and environmental authorities can all play a role in trying to resolve disputes between parties around emerging extractive operations and provide remedies. These state-based mechanisms should form the foundation of a wider system of remedy that includes company-led or collaborative based operational-level grievance mechanisms that can provide early stage recourse and resolution. These state-based and non-state based mechanisms, in turn, can be supplemented or enhanced by international and regional human rights mechanisms and other international mechanisms.

4.2 Constitutional Analysis of Access to Remedy

The Tanzanian Constitution provides for impartiality in access to justice without due regard to social or economic status.³⁸⁷ When the rights and duties of any person are being determined by a court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.³⁸⁸ It also provides that victims of wrong doings are to be awarded reasonable compensation in accordance with the relevant law enacted by the Parliament. However, the Constitution does not have specific provisions or guarantees on access to justice that provides reasonable or cost-free access.

4.3 Remedy in Tanzania and through International Mechanisms

4.3.1 *Judicial Mechanisms in Tanzania*

In Tanzania, the judiciary is a third, independent branch of the Government, respecting the constitutional principles of separation of powers. The Constitution provides for an independent judiciary, and respect for the principles of the rule of law, human rights and good governance.

The Judiciary in Tanzania has four tiers: The Court of Appeal of the United Republic of Tanzania,³⁸⁹ the High Courts for Mainland Tanzania and Tanzania Zanzibar, Magistrates Courts, which are at two levels, i.e. the Resident Magistrate Courts and the District Court, both of which have concurrent jurisdiction. Primary Courts are the lowest in the judicial hierarchy.³⁹⁰

The High Court (mainland Tanzania) has established 10 sub Registries in different zone of the country and has two specialised divisions, the Commercial Division and the Land Division. There are specialized tribunals, which form part of the judicial structure that include District Land and Housing Tribunal,³⁹¹ the Labour Reconciliation Board, the Tanzania Industrial Court. Appeals can be made from tribunals to the High Court for judicial review.³⁹² Other institutions with jurisdiction to entertain land cases are the Village Land Council, the Ward Tribunal, the High Court (with a special Land Division),³⁹³ and the Court of Appeal.³⁹⁴

As noted in the Universal Periodic Review of Tanzania, there is an acute shortage of courts, as well as judges and magistrates to preside over cases, severely affecting access to competent tribunals.³⁹⁵ There is very limited judicial enforcement of environmental law. There are very few cases that have been adjudicated in courts of laws and prosecution of environmental cases is very low. Instead many cases are resolved through administrative mechanisms.³⁹⁶

4.3.2 *Non-Judicial Mechanisms in Tanzania*

Courts are not the only option for addressing human rights grievances. Especially in countries with encumbered judicial systems such as Tanzania, workers and communities will often look to other, non-judicial mechanisms to resolve grievances involving the extractive sector, including the state-based mechanisms immediately below, or non-state based mechanisms, set out in Section X below, including through company operational level grievance mechanisms.

State-Based Non-Judicial Grievance Mechanisms: CHRAGG

The Commission for Human Rights and Good Governance (CHRAGG) is Tanzania's National Human Rights Institution (NHRI) that was established through the Constitutional Amendment Act no. 3 of 2000.³⁹⁷ CHRAGG is an independent government department³⁹⁸ that functions as the national focal point institution for the promotion and protection of human rights and good governance practices. According to the Constitution and the

Commission's founding legislation, CHRAGG has a broad mandate and wide ranging functions, which include:

- Human rights protection and promotion
- Dealing with administrative justice and maladministration
- Dealing with good governance issues

CHRAGG is additionally tasked with investigating any human rights or maladministration complaints filed by any natural person, legal person, or any other person acting on behalf of others, or on its own motion.³⁹⁹ Upon completion of an investigation, CHRAGG has a number of options it may pursue to resolve the complaint, which include initiating amicable settlement negotiations between complainants and respondents; reporting the findings to the person or institution impacted by the complaint; and making recommendations that call upon the relevant authority to take action that will lead to the effective settlement, remedy or redress of the issue.⁴⁰⁰ Significantly, CHRAGG may also initiate a court case seeking relief or enforcement of one of its recommendations.

CHRAGG is well positioned to contribute to the protection and promotion of human rights in Tanzania in the extractive sector, building on inquiries into human rights violations in the extractive sector to date.⁴⁰¹ There are numerous examples of investigations and settlement negotiations that CHRAGG has carried out, however, the majority of the reports on these visits have not been made public. In other cases, recommendations have not been acted on and CHRAGG has not had the resources to follow up.

Residents of the Katoma and Nyakabale villages in the Geita district submitted complaints to CHRAGG stating they had been forcefully evicted from their land in order to pave the way for mineral extraction. In order to bring their complaints to the attention of CHRAGG, complainants travelled to CHRAGG's head office, in Dar es Salaam.⁴⁰² Upon receipt of the complaints, CHRAGG deployed a team of investigators, who investigated the claims and prepared a draft report of their findings. However, due to budgetary constraints the report was never finalised.⁴⁰³

In response to community complaints, CHRAGG has conducted fact finding investigations in the extractive sector communities in a number of districts, including the Nzega district (Tabora region) and Simanjiro district (Manyara region).

CHRAGG assisted in reaching a negotiated settlement on compensation, in the Kilindi District, Tanga Region, between artisanal miners and the holders of a special mining license (large scale miners).⁴⁰⁴

Commissioner for Minerals & Zonal Mining Offices

The Mining Act 2010 provides dispute settlement and grievance mechanisms for aggrieved persons, including host communities or communities living close to extractive operations,⁴⁰⁵ and entrusts the Commissioner for Minerals⁴⁰⁶ with the responsibility to resolve disputes arising in the mining sector, including assessment and payment of compensation.⁴⁰⁷ The Commissioner has authority to issue orders and remedies in support of its decision.⁴⁰⁸ Such orders may include *"payment, by any party to the dispute of such compensation as may be reasonable, to any other party to the dispute."*⁴⁰⁹ For enforcement of decisions, the Commissioner may file the order or decision with the nearby court of law for execution. This

is on paper a useful, more direct administrative avenue to addressing issues, including around compensation. There is a right of appeal against the Commissioner decision to the high court.⁴¹⁰ However, this must be taken within thirty days from the date of the decision – an extremely short deadline for community members that may be unaware of filing requirements.

The research and field interviews undertaken for this Report tested community awareness and use of this mechanism. Interviews with a range of community members and experts indicated the perception that rather than being neutral, the office appeared to be closer to mining companies. Accordingly, community members did not feel it was a proper forum for them to address grievances concerning land compensation or conflicts with ASM. The Commissioner will need to demonstrate that the office is effective in resolving grievances quickly and effectively to gain trust and as an important counterbalance to the impediments in securing judicial remedies.

Respondents reported a number of additional challenges that make appeals to the high court difficult to access in practice. First, interviewees reported they were unable to access the high court due to a lack of funds required to engage practicing lawyers to assist in the drafting of necessary appeal papers, filings, and court representation. Consequently, community members seeking to appeal a Commissioner's decision must rely on public interest lawyers through pro bono representation through organisations such as the Lawyers Environmental Action Team (LEAT), the Legal and Human Rights Center (LHRC), and the Legal Aid Committee of the University of Dar es Salaam (UDSM). Second, even when a community member is able to obtain legal assistance through public interest lawyers or the payment of scarce monetary resources to a lawyer, the judicial process is characterized by unbearably long delays and adherence to technicalities, both of which operate as hurdles to the dispensation of justice. For example, the case of Jovina Mtagwaba and 85 others V. Geita Gold Mining Limited was filed in 2004 and up until the time of writing this Report, the community is yet to obtain a substantive decision due to technicalities and delays. In fact, in 2014 the court of appeal ruled on technical grounds that the community lawyer had cited to an inapplicable provision in the law.

Apart from using the zonal mining office of the Ministry as a grievance mechanism, interviewees stated that it provides an avenue for them to write letters to the executive arm of the Government, particularly to the regional and district commissioners, pleading for intervention. One respondent shared that in order to get a letter sent to the Geita regional commissioner it must first be endorsed by three offices – the office of the village executive officer, office of the ward executive officer, and the office of the district commissioner, indicating the level of challenges in using administrative mechanisms.

The MEM maintains publicly available client service charters. The Energy and Water Regulatory Utilities Authority has a customer rights and obligations service which helps in handling citizen complains.⁴¹¹

The NEMC and other specialized environmental agencies have some powers of enforcement and adjudication. Orders from NEMC can be enforced by and appealed through the quasi-judicial bodies, the quasi-judicial body, the Environment Appeals Tribunal.⁴¹²

The Commissioner of Lands can operate as an independent adjudicator. The Commissioner has authority to commission an inquiry on land matters, conduct proceedings and reach

determinations. The proceedings do not require adherence to rules of evidence. However, research on land conflicts in Tanzania has noted that the procedure is distrusted by many rural communities that prefer to find local solutions to conflicts.⁴¹³

Non-State-based Non-Judicial Grievance Mechanisms

Traditional Community Grievance Handling

Both formal and informal tribunals have jurisdiction to hear land disputes under Tanzania's formal law. The Courts (Land Disputes Settlements) Act of 2002, the Land Act and the Village Land Act recognise the jurisdiction of informal elders' councils, village councils and ward-level tribunals. Village councils can establish an adjudication committee, with members elected by the village assembly. The primary mode of dispute resolution in these forums is negotiation and conciliation. The forums have not yet realized their potential to address land disputes. More than a decade after adoption of the legal framework for land, the dispute-resolution tribunals are not operating. Causes for the delay include lack of funding and lack of capacity for creating the necessary institutions. In general, most people prefer to have their land conflicts resolved as close as possible to the place where the conflicts occur. Most people try to resolve problems using family and clan members and village elders with personal knowledge about the area, its history, the parties and the issues in dispute. Local forums often tend to reinforce existing hierarchies, and women and socially marginalised people may obtain less equitable results than if they had brought their claims in other tribunals. Nonetheless, many people prefer the rapid and socially legitimate results that can be achieved using local relationships and institutions.

Company Operational Level Grievance Mechanisms

The UNGPs call on companies to set up operational level grievance mechanisms to make it possible for grievances from workers, individuals and communities to be addressed early and remediated directly.⁴¹⁴ These mechanisms are typically administered by companies, alone or in collaboration with others, including relevant stakeholders. They support the identification of adverse human rights impacts as part of a company's ongoing human rights due diligence by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. These mechanisms make it possible for grievances to be addressed and for adverse impacts to be remediated early and directly by the business, thereby potentially preventing harms from compounding and grievances from escalating. Such mechanisms should incorporate the UNGPs effectiveness criteria to ensure that they actually deliver on remedies in a manner that is effective and aligns with human rights requirements (see Box x below).⁴¹⁵ These criteria can be met through different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters.⁴¹⁶

In Focus:

UN Guiding Principles Effectiveness Criteria for Non-Judicial Grievance Mechanisms

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State based, should be:

- **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of the grievance process;
- **Accessible:** being known to all stakeholders groups for whom they are intended, providing adequate assistance for those who may face particular barriers to access;
- **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means monitoring of implementation;
- **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- **A source of continuous learning:** drawing from relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- Operational-level mechanisms should also be:
- **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

A number of interviewees indicated that if they have grievances, they make these known directly to the companies involved. A number of the larger extractive companies – most of which are multinational companies – have grievance mechanisms and run these as part of their community engagement process. Community members noted the lack of clarity about where to address complaints about ASM operations.

4.3.3 International and Regional Grievance Mechanisms

The first “port of call” for communities or workers or individuals who feel they have been negatively impacted by an extractive operation may be the company itself. If companies are not accessible or open to addressing concerns or fail to address grievances to the

satisfaction of the complainant, the local, Tanzanian-based mechanisms to address and resolve grievances involving the extractive sector through judicial and non-judicial mechanisms provide a next line of remedy. There are also a number of international avenues that may be available to Tanzanian claimants, depending on the home state of the company or companies involved and the source of finance for extractive sector operations. The following overview provides a short summary of additional options for accessing remedy at the international level.

Courts in a Company's Home Jurisdiction

A more recent example is a case that was filed with the High Court of England and Wales in London on 30 July 2013. Represented by Leigh Day, a UK based law firm, 12 complainants sued Barrick Gold Mine (now Acacia Mining) and North Mara Gold Mine Limited alleging that the company condoned the excessive use of force by the police in the North Mara gold mine areas, which resulted in the deaths and injuries of community members. The plaintiffs even alleged that *"the police are an integral part of the mine's security and that they shoot at the villagers using tear gas and live ammunition."*⁴¹⁷ In 2015, the parties reached a confidential and privileged out of court settlement.⁴¹⁸

The African Commission on Human and Peoples' Rights⁴¹⁹ and the African Court on Human and Peoples' Rights⁴²⁰

The Commission can hear complaints from individuals and CSOs, but only concerning violations by a State party to the African Charter on Human and Peoples' Rights of one or more of the rights covered by the Charter, rather than against companies. Tanzania is a state party.⁴²¹

The East African Court of Justice

The East African Community (EAC) is a regional intergovernmental organisation of 6 Partner States: the Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and the Republic of Uganda, with its headquarters in Arusha, Tanzania. The regional co-operation and integration is wide ranging, involving co-operation in political, economic, social and cultural fields, research, technology and skills development, defence, security and legal affairs for mutual and equitable development in the region. The intention is to establish a Customs Union as the entry point of the Community, a Common Market, subsequently a Monetary Union and ultimately a Political Federation of the East African States.

The Treaty for the Establishment of the East African Community includes as an objective *"the promotion of sustainable utilisation of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States."*⁴²² Respect for human rights is one of the underlying principles of the EAC.⁴²³ The Court has jurisdiction over cases between the member states of the EAC, not against companies in the EAC.⁴²⁴ However, the Court may hear cases brought against a state that involve the management of natural resources that could involve extractive companies. The Court has already ruled on this objective of the Treaty in a 2014 case brought by an NGO challenging the Government of Tanzania's plans to build a highway across the Serengeti national park. The Court held that this is unlawful and an infringement of Articles 5(3)(c),⁴²⁵ that provides for the promotion of sustainable utilization of the natural resources.

OECD National Contact Points

If a company involved in extractive sector operations in Tanzania is from one of the 46 countries⁴²⁶ adhering to the OECD Guidelines on Multinational Enterprises,⁴²⁷ a 'specific instance' (complaint) can be filed with the OECD National Contact Point (NCP) in the home country of the company if the complainant (typically a civil society organisation or a trade union) considers that the company has not observed the OECD Guidelines for Multinational Enterprises in their operations or through their business relations.⁴²⁸ The Guidelines set out a set of recommended standards for conduct across a range of topics, including human rights and labour rights. The NCPs are charged with contributing to the resolution of issues that arise from the alleged non-observance of the Guidelines. NCPs are supposed to offer investigation and mediation, either themselves or through independent mediators, to work with the parties and agree on steps to resolve the complaints. Many of the specific instances to date have involved the extractive sector.⁴²⁹

International Accountability Mechanisms of Multilateral and Bilateral Development Banks

If the extractive sector operator or the Government of Tanzania have received financing for operations from a multilateral or bilateral development bank ("Development Finance Institutions" or DFIs), it may be possible to file a complaint with the international accountability mechanism of the DFI. These accountability mechanisms provide access to remedy for individuals and communities that are adversely affected by DFI-financed activities and to hold them and their clients accountable to the DFI's own policies. To date there are more than a dozen such mechanisms and together they formed the Network of Independent Accountability Mechanisms.⁴³⁰ Some of the well-known IAMs include, the Inspection Panel of the World Bank, the Compliance Advisor Ombudsman of the International Finance Corporation, the Project Complaint Mechanism of the European Bank for Reconstruction and Development, the Accountability Mechanism of the Asian Development Bank, the Independent Review Mechanism of the Africa Development Bank and the newly established Independent Complaints Mechanism that is shared between the Dutch and German development banks, FMO and DEG, respectively.⁴³¹ While these offer an additional avenue for redress, as with other international mechanisms, complainants must meet certain criteria before the IAM will address the complaint. As a result of the application of the criteria, they have been shown to reject a large proportion of the complaints that they receive.⁴³²

In one case involving mining in Tanzania, the Lawyers Environmental Action Team (LEAT) filed a case with the Compliance Adviser Ombudsman (CAO) (World Bank Group) representing small scale miners and land holders in a case involving mining in the Bulyanhulu area. The allegations concerned the process of consultation regarding eviction and land clearance as well as resettlement and compensation of small scale miners; human rights abuses as a result of the eviction process; and the failure to conduct thorough and competent due diligence and address issues through consultation. LEAT also alleged that the Environmental and Social Impact Assessment conducted was "*inaccurate and inadequate*."⁴³³ The CAO carried out an investigation and issued an assessment. As the complainants' response to CAO's assessment was unfavourable, the case was closed in January 2005.⁴³⁴

Voluntary Multi-stakeholder Initiatives

There are a number of multi-stakeholder initiatives in the extractives sector with some form of addressing grievances within the mechanism or being developed.

The Voluntary Principles on Security and Human Rights (VPSHR)

This is a multi-stakeholder initiative involving governments, extractive companies and CSOs, established in 2000 to guide the extractive sector in designing and maintaining security for their operations in a manner that respects human rights.⁴³⁵ The Principles are non-binding and do not include an independent grievance mechanism. There is an internal process of discussion among members. Tanzania is not a member of the VPs but several of the companies operating in Tanzania are members and would be expected to apply the Principles in all countries where they operate.

The International Code of Conduct for Private Security Providers⁴³⁶

The International Code of Conduct Association (ICoCA) requires signatory companies to establish grievance procedures⁴³⁷ and is also in the process of establishing a complaints procedure to receive complaints from individuals or their representatives on alleged violations of the Code and / or the non-compliance of Member Companies' grievance mechanisms with the Code. The ICoCA will establish a process to support and oversee companies' responsibility to provide fair and accessible grievance procedures that offer effective remedies to address claims alleging violations of the Code.⁴³⁸ Currently, there are no private security providers headquartered in Tanzania that are members of ICoCA.⁴³⁹

5

Conclusion & Recommendations



5. Conclusion & Recommendations

Tanzania's extractive sector has great potential to contribute to the country's development, playing an increasingly significant role in underpinning the Government's vision of reaching middle income country status by 2025.⁴⁴⁰ To meet this potential, there is a need to strengthen actions by all actors. The Government of Tanzania, and the many local governments that are now charged with governing the extractives sector are still putting important parts of the governance, legislative and regulatory framework in place. Tanzania has drawn on lessons learned and embedded sustainable development and to a lesser extent responsible business conduct, at the heart of its extractive sector framework. It is building a foundation to hold extractive companies and the Government itself to account. Once that is done, as highlighted in this Report, it faces the titanic task of strengthening governance capacity across national and local agencies responsible for the many different dimensions of the sector.

The country is attracting international companies across the mining and oil & gas sector. Extractive sector companies are expected to live up to a growing number of international norms that seek to define what "responsible business conduct" means in the extractive sector -- respecting human rights, protecting the environment, and promoting the interests of local communities. In response, companies, industry associations, and multi-stakeholder initiatives mentioned through this Report have developed policies and practices that are meant to prevent or at least minimise impacts on human rights. As "above ground risks," which includes scrutiny on human rights, can be at least as significant as "below ground risks" figuring out how to avoid such risks makes good business sense. These companies can bring and spread good practices that can be shared with local business relationships and within their supply chains.

Industry players have made real progress in accepting the relevance of these topics to operations as well as developing policies and refining global management systems. However, implementation still remains a big challenge on the ground in some circumstances, especially in the far corners of the country involving real life consequences for local communities. Communities and the CSOs that work with them must continue to be given a voice and support in holding companies – large and small – to account for their human rights performance.

Smaller extractive sector companies have an even steeper learning curve. The recent move to bring ASM into a more formalised relationship only begins the long road of building the capacity of that sub-sector to deal with the impacts they create and those to which they contribute. To date, an unregulated ASM sub-sector has been allowed to operate with very little, if any, regard for human rights and the environment and as a result, most negative impacts have gone unreported and unresolved.

Many communities have expressed an interest in the Government having a more hands-on approach in dealing with human rights challenges. The CHRAGG has a good opportunity to

answer this demand and to address some of these challenges through the implementation of programs that will supplement the efforts of other stakeholders already promoting human rights in the extractives sector. The ultimate test of CHRAGG's effectiveness will be whether or not it can help prevent human rights abuses and provide a just resolution mechanism for victims when abuses do occur.

Finally, much effort will need to be made over the coming months and years by businesses and the Government to educate the public on realistic expectations for communities from extractive sector activities and to shape sustainable and inclusive community benefits that can have real impact on poverty reduction. The majority of the communities interviewed as part of this Report expressed high expectations for benefits from extractive operations. The communities are right that these natural resources exist in their communities, and most often on their lands; therefore, if they stand to lose the most in extractive activities, they should also stand to benefit. On the other hand, community expectations must be managed to ensure they are not unrealistic. This can be achieved by raising widespread awareness about extractive sector lifecycles, as well as through education and ongoing community engagement and appropriate community investment programmes.

The sections below set out a series of specific recommendations to the various actors in the extractive sector to address gaps and weaknesses based on the analysis presented in the Report above.

5.1 Government of Tanzania and Parliamentarians

- The Government has made the right high-level commitments to strengthening the links between the sector and its contributions to poverty reduction as well as the need to address negative impacts on the environment, on society and human rights. It has demonstrated its commitment to transparent and accountable governance of the sector through its participation in EITI and the adoption of a new EITI law. There remain some weaknesses in the policies and laws that should be taken into consideration in future updates, filling in the gaps in the legal framework identified in this Report. The existing policies and laws now need to be followed through by incorporating these commitments into its on-going regulations and into the Model PSC and MDAs. The commitments need to be cascaded through each level so they become increasingly specific and therefore enforceable.
- One way to begin to better reflect widening perspectives on the sector is to include representation from local communities and the NHRI in extractive sector advisory boards, such as the Mining Advisory Board. This would be an important step in bringing practical and informed perspectives on stakeholder concerns to decision-making and considerations. Tanzania already has experience in multi-stakeholder decision making for the sector through the TEITI MSG.
- Understanding that access to land and land compensation are major concerns around extractive projects, the process of surveying and titling land should be accelerated so that local communities have better protection. Given the date of the regulations

governing the process for land valuation (2001) and the importance of the process to rural communities, the Government should consider whether procedures could be updated in light of lessons learned from the region and more globally on land titling and management. In addition, given the absence of a resettlement framework, the Government should develop a clear legal framework on resettlement that incorporates human rights protections based on the right to housing⁴⁴¹ and other relevant human rights and drawing on international standards, such as IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.⁴⁴²

- There is a recognised need to strengthen environmental governance and enforcement of sector standards in this area. The Government is planning a SESA for the gas sector that should provide a useful input. It should make sure that local communities and CSOs are a core part of that process. Further strengthening and follow up on ESIA's and their implementation is necessary. Further strengthening of attention to OHS in terms of legislation and enforcement is required.
- The Government has made important commitments to EITI implementation. Taking the next step of ensuring that extractive sector contracts are finally made publicly available will help all parties to build confidence in the commitments and contributions of the sector and will support efforts to hold extractive sector companies accountable.
- A key missing component of the kind of accountable governance Tanzania has set as a goal is the absence of a freedom of information law.
- The Government has made a significant step in recognising and supporting the ASM sub-sector. Given the negative impacts of the sub-sector both on workers, children and the environment, it is important that the Government follows through on its plans to reduce child labour and improve environmental and labour practices.
- There have been incidents of significant human rights violations by public security forces in connection with extractive sector operations in the past, indicating a need for appropriate standards and training for public security forces. Given the expected expansion of the extractive sector, it is important for local communities to be able to trust public security forces as part of the greater trust building that needs to go on in the sector. Joining the Voluntary Principles on Security and Human Rights, like its neighbor Ghana, would provide a relevant framework and lessons learned for Tanzania public security forces and private security forces.
- Inhibiting or intimidating community members around extractive operations is a violation of freedom of expression and assembly but also significantly impedes the long-term relationship building that should go on. Instead, Government actors at all levels should engage effectively with local communities and civil society organisations in advance of companies entering the community to commence extractive sector activities and during operations. Local communities need to see that the Government is committed to hearing their concerns and grievances and to supporting their informed participation in decision-making on land, employment, local contracts, and environmental protection. In addition, given the long-term perspective of the sector in the country, the Government should be actively promoting positive engagement with and by the sector.

- The State-based judicial and non-judicial mechanisms available for communities and workers to bring complaints and have them resolved in a timely and effective manner are very weak. Without access to effective and trusted mechanisms to resolve complaints, community members bear the brunt of negative impacts. There is a need to improve access to and functioning of administrative mechanisms. In addition, in practice, it has been hard for the understaffed judiciary to hear cases involving complaints under the Bill of Rights because of, in particular, the high hurdles of requiring three judges to preside over such cases.
- Establishing the CHRAGG in the Constitution is a testament to the importance the Government attached to an independent institution charged with addressing human rights and good governance. That prominence has not been matched in deeds. The Government should provide further financial resources to the CHRAGG so it can play an important role in helping mediate between companies and communities.⁴⁴³ This limitation has been observed by treaty supervisory bodies as well as the UN Human Rights Council UPR, which have called upon the Government of Tanzania to sufficiently fund the NHRI with the requisite financial resources,⁴⁴⁴ including for Commission staff and commissioners to attend national and international meetings on the emerging trends of human rights and business in the extractive sector.
- The discussions on the new Constitution offer the opportunity to strengthen the Bill of Rights by expanding its coverage to reflect Tanzania's wider human rights commitments and improving enforcement and access to justice.
- The Government should provide clear and accurate information to local governments and local communities about expected revenue flows from extractive operations to help manage expectations.
- Following the lead of its East African neighbor Kenya, Tanzania should prepare a National Action Plan on Human Rights and Business, one of the action points under the more general National Human Rights Action Plan,⁴⁴⁵ developed by the Ministry of Constitutional & Legal Affairs (Tanzania). The National Action Plan would provide an opportunity to involve a wide range of stakeholders from civil society, business and trade unions in a discussion on improving implementation of the UNGPs in the country. It would provide an opportunity for the Government to set out clear expectations for companies large and small operating in the extractive sector.⁴⁴⁶

5.2 Commission on Human Rights and Good Governance (CHRAGG)

- CHRAGG is uniquely positioned to promote respect for human rights in the extractive sector. To do so, it needs to scale up its expertise and work on issues relating to the extractive sector. The CHRAGG should use reports such as this one, plus other training opportunities offered through other organisations such as the Network of African National Human Rights Institutions⁴⁴⁷ to build understanding of the extractive sector. The Tanzanian National Action Plan on Human Rights specifically recommends that “a

*coordination team on trade, business, and human rights and a position desk within CHRAGG to provide leadership for advocacy” should be established.*⁴⁴⁸

- Scaling up could usefully start with collecting reliable and current data on human rights abuses in the extractive sector so as to better understand the scope of interventions and remediation needed. This will entail conducting an independent and broad investigation of the impacts caused by extractive sector activities, particularly related to the dispossession of livelihood assets and productive resources, as well as the complex social impacts caused by the displacement of communities in order to ensure proper redress and compensation for losses.
- Working with CSOs and CBOs would allow the Commission to leverage the geographical coverage that these organisations provide to deliver its objectives. CHRAGG currently has only four offices, in Dar es Salaam, Zanzibar, Lindi, and Manzi which means it is unable to reach a considerable part of Tanzania.
- The CHRAGG might consider setting up a multi-stakeholder Extractive Sector Forum⁴⁴⁹ such as exists in Kenya to bring together actors to promote effective collaboration.
- It could also provide technical training through seminars on human rights and business-nexus, with a focus on the extractive industries key stakeholders to inform them of their roles on issues relating to human rights in the extractive sector. Stakeholders include businesses, government officers from key ministries and departments, representatives of communities around extractive operations, academia, the media, and civil society organizations.
- Work with the Ministry of Land and the land survey process in the country to ensure land rights and territorial rights of communities are protected to the greatest extent possible in the extractive concessioning processes, given the limited protections currently in place.
- Engage with extractive sector companies to promote independent human rights, environmental, social, cultural, and economic impact assessments before projects are advanced. Support companies in improving their community engagement and in setting up their own operational level grievance mechanisms. (see below)
- Develop collaboration with the NEMC to address complaints arising from communities concerning environmental contamination caused by extractive companies. This could include supporting communities in bringing claims to the appropriate administrative authorities, working with communities and companies to mediate and potentially develop new ways to collaboratively monitor environmental impacts, or to build their own capacity to monitor and hold companies accountable, working with NEMC to improve accessibility to communities and awareness of the human rights dimension of such complaints.
- Given CHRAGG’s limited resources, it may not have the opportunity or resources to actively participate in the EITI or OGP processes, but it should be aware of those processes, the actions being taken to improve transparency and accountability through those mechanisms and consider how the mechanisms can be mutually reinforcing with CHRAGG’s work. Given the growing significance of the sector to the overall protection

of human rights in the country, CHRAGG should proactively seek a representative seat on the Mining Advisory Council.

- Act as a focal point of information on avenues for access to remedy to handle complaints that emanate from workers at extractive sector sites and from aggrieved community members as a result of extractive sector operations. Provide technical and financial assistance to train local communities to know their rights and their options to demand accountability in the extractive sector.
- Mobilise and advocate for adequate resources to implement work on human rights issues in the extractive sector. Due to limited funding, CHRAGG may need to explore creative ways of fulfilling this mandate such as identifying strategic partner organisations to build and carry out joint programs.

5.3 Companies in the Extractive Sector

- The first obligation of companies is to comply with national law. But as Tanzania is still evolving its extractive sector framework, it is appropriate for companies in the sector to look to international norms for appropriate guidance. The UN Guiding Principles on Business and Human Rights apply to all companies, everywhere, of whatever size. Given the extractive sector history in Tanzania and abroad, it is particularly important that extractive sector companies operating in the country implement their responsibilities consistent with the UNGPs in carrying out their operations. This includes developing appropriate policies and guidance, carrying out human rights due diligence, and supporting and enabling access to remedies, including through operational level grievance mechanisms.
- This Report has sought to assist companies in their human rights due diligence processes by identifying key human rights challenges existing in the country – both in terms of the existing policy and legal frameworks and its gaps – and key issues from the perspective of communities and workers. As companies carry out their due diligence processes to understand the human rights challenges in the context of Tanzania, they should draw on this Report and other sources of information to shape their policies and practices to prevent negative human rights impacts to the greatest extent possible.
- One of the key messages coming out of the field research was the apparent lack of engagement between local communities and companies of all sizes. In some cases, this was because communities felt inhibited by the Government, while in others a lack of information and engagement was evident. Given the potential for negative impacts, meaningful community engagement from the very start of operations, including during the exploration stage, is important to avoiding adverse impacts of extractive operations as well as optimising potentially positive contributions.⁴⁵⁰ Community engagement, including by juniors in the sector, can play an important role in framing longer-term relationships positively and negatively.⁴⁵¹ Communicating early, often, and clearly with stakeholders helps manage expectations and avoid risks, potential conflict, and project delays and indicates from the very start an openness to taking community concerns seriously.

- Given the lack of effectiveness of judicial and administrative mechanisms in Tanzania, communities and workers may have few reliable means to address their concerns. Rather than relying on this state of affairs, in line with the overall message from the Government about building an accountable sector, companies should put in place robust grievance mechanisms to handle complaints from workers and aggrieved community members as a result of actions or inactions in extraction operations. These grievance mechanisms should meet the “effectiveness criteria” of the UNGPs.⁴⁵² At the same time, for serious impacts, such as those of a criminal nature, companies should not impede access to judicial mechanisms that do exist.
- Companies should ensure due diligence in the extractives value chain. Where extractive companies have hired contractors to carry out operations or provide services, they must address the risks associated with these hires because often contractors have a larger and deeper footprint than the extractive company. One way to do this is to ensure that all contractors are aware of and trained on the principles of human rights and business.
- The Government has set clear expectations for companies that they engage in “CSR” programmes. There has been a good deal of learning among large extractive sector companies and institutions (often less by governments around the world) about how investments with and in local communities can contribute to the social, economic, and institutional development of local communities in a manner that goes beyond mitigating any adverse effects involving businesses. Corporate programmes focused only on building an isolated school or health clinic are being replaced by more strategic approaches to community investments, including through specific community development agreements. The Government, communities and companies should be building on the latest learning in designing community support and the distribution of benefits. Government and communities should be careful to ensure that such community development programmes are not used to compensate for negative impacts as these should be addressed separately.⁴⁵³

5.4 Investors in Tanzania's Extractive Sector

- Investors should conduct enhanced due diligence on companies in their portfolios that are involved in the extractive sector in Tanzania.
- They should engage with companies they invest in that involved in the extractive sector in Kenya to ensure these companies meet or exceed international standards on responsible business conduct relevant to their business in Tanzania.
- Investors should urge companies doing business in the extractive sector in Tanzania to report robustly on how they manage risks and impacts associated with investments and operations in the country.

Annex I: Research Methodology

Sampling and Sample Size

The report is a result of Key Informant Interviews (KII) and Focus Group Discussions (FGD) conducted during field research, which was carried out in seven regions in Tanzania, including Arusha, Dar es Salaam, Mwanza, Mtwara, Manyara, Geita and Mwanza. During the field research, a total of 203 individuals were interviewed, national and local government, CHRAGG, extractive sector company personnel, community members, members of the academia, independent experts, and individuals working with CSOs and NGOs on issues of human rights and extractive industries between August and December 2015.

The research also benefited from a review of relevant literature, including laws, policies, and international human rights instruments and published books.

Table 4: Key Respondent Manifest

Place & Institution Visited	Total # of respondents interviewed	Men	Women	Remarks
Dar es Salaam, CHRAGG	3	3	0	KII with CHRAGG leadership
Dar es Salaam, CHRAGG	3	2	1	KII with CHRAGG leadership
Dar es Salaam, the University of Dar es Salaam	3	2	1	KII with academic experts in the area of extractive industries
Dar es Salaam, Tanzania Petroleum Development Corporation (TPDC)	7	4	3	KII with staff of the TPDC/the national oil company
Dar es Salaam, Tanzania Human Rights Defenders Coalition (THRDC) and the Legal and Human Rights Center (LHRC)	5	3	2	KII with experts working in NGOs/CSOs
Dar es Salaam, Attorney General's Chambers	2	1	1	KII with state attorneys in charge of FDI and contracts.

Dar es Salaam, Oil, Natural Gas and Environmental Alliance (ONGEA) and Policy Forum	2	1	1	KII with experts working in NGOs/CSOs
Dar es Salaam, Tanganyika Law Society (TLS) and the Lawyers Environmental Action Team (LEAT)	3	2	1	KII with expert/lawyers working on extractive industries and legal AID/Travelling to Arusha
Arusha, Tanzania Mineral Dealers Association (TAMIDA) and Haki Madini	2	2	0	KII with the executive director of Haki Madini and the counsel/lawyer to the (TAMIDA)
Mererani, Manyara. TanzaniteOne, visiting ward/village leadership and community projects	5	5	0	KII with company officials and creating Rapport with the village/ward leadership
Mererani, Manyara 2 Focus Group Discussions (FGD) with Community members	21	08	13	FGD with community members around extractive operations
Two FGD with small scale miners (employees)	21	21	21	2 FGDs with community small scale members
Mwanza, Mwanza Regional Commissioners office/Regional Administrative secretary	4	2	2	Government leadership/Rapport creation and accessing statistics.
Mwanza, Tanganyika Law Society Mwanza Branch	6	2	4	FGD with lawyers/advocates on legal challenges of legal aid provision in the extractive sector in resource rich regions
Mwanza Press Club* (Appointment	4	2	2	Discussions with

to meet company leadership for AngloGold Ashanti did not work out				journalists working in the area of human rights and the environment in the extractive sector
Mwanza, St. Augustine University of Tanzania (SAUT)	12	6	6	KII with lecturers/experts and graduate students
Geita	22	08	14	Meeting a company official Government officials at the Zonal Mining Office FGD with community members in Katoma Sub-village, Geita District
Geita and Travel back to Mwanza	21	21	21	2 FGDs with community in Nyakabale sub-village, Geita District
Arusha, Arusha Regional Miners Association (AREMA) and an extractives company	3	3	0	KII with leaders of AREMA and Sammy Mollel-managing director of an extractives company
Travel to Mtwara, meeting regional leaders/Regional administrative secretary's office (DAS), district counsel	4	2	2	Reporting at the regional and district leadership and soliciting relevant statistics and updates / rapport creation
Two FGD with villagers at Msimbati village	22	8	14	Two FGD with villagers at Msimbati village

Two FGD with villagers at Msimbati village	23	11	14	Two FGD with villagers at Msimbati village
Meeting CHRAGG directors to go through the first draft and get their recommendations	5	3	2	Meeting CHRAGG directors to go through the first draft and get their recommendations

Data Collection Methods

Each respondent was asked to respond to a series of survey questions in one of two methods – (1) the one-on-one interview or (2) focus group discussion.

In-depth interviews

In the one-on-one interview, the researcher interviewed each respondent using the questions contained in the survey. In-depth interviews were held with key informants who come from different backgrounds but have an interest in the extractive industry. These included national government ministries officials, county government officials, oversight body representatives, extractive companies, religious leaders, village leaders, and civil society.

Focus Group Discussion (FGD)

Representative case studies were selected to undertake FGDs in communities where oil and gas exploration and mining exploration and exploitation are taking place, with a view to highlight the overall challenges and opportunities for government, business, and civil society stakeholders – as well as CHRAGG – to ensure greater human rights accountability and protecting the rights of communities from adverse impacts linked to the extractives sector.

Field Observations

Observation was used to capture the nature of human rights abuses on the ground as well as the activities being undertaken by communities to promote their rights. Observations were presented as anecdotes and used to supplement the analysis of data collected in the other forms.

Desktop Review

A thorough desktop review of literature on the extractive sector, Tanzania and East Africa was carried out.

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¹¹⁹ Ibid, article 24(1)

¹²⁰ Ibid, article. 24(2)

¹²¹ See: <http://www.saflii.org/tz/cases/TZCA/1994/1.pdf>

¹²² Section 2 of the Land Act no. 4 of 1999 defines customary right of occupancy or deemed right of occupancy to mean "a right to title of a Tanzania Citizen of African descent using or occupying land under and in accordance to customary law". It means a right accruing from customs as opposed to the one granted under the commissioner for lands, in most cases in towns and cities.

¹²³ While no definition is provided of what fair compensation entails in concrete terms, section 3(1)(g) of the Land Act no. 4 of 1999 provides that compensation should be "full, fair and prompt".

¹²⁴ Apart from the constitution, the Land Act no. 4 of 1999 and its regulations provides details on payments of compensation.

¹²⁵ United Republic of Tanzania, "Constitution of the United Republic of Tanzania", (1977), article 11(1)

¹²⁶ Ibid, article 12(1)

¹²⁷ Ibid, article 13(1)

¹²⁸ Ibid, article 13(4)

¹²⁹ Ibid, article 27(1)

¹³⁰ Ibid, article 16(2)

¹³¹ United Republic of Tanzania, "Basic Rights and Duties Enforcement Act", (1994), available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86534&p_country=TZA&p_count=270

¹³² Ibid, section 10

¹³³ According to a speech by the former President Jakaya Kikwete, up until 2015, there were only 81 high court judges out of 120 required. In 2005, there were only 35. Available at <http://www.ikulu.go.tz/index.php/media/speech/1331> (in Kiswahili)

¹³⁴ Though not related to extractive industry, a glaring example of such is delay is presented in the following case: Miscellaneous Application Number 15 of 2010. This was a constitutional case filed by indigenous Maasai communities in Loliondo, Ngorongoro District on 14 December 2010 to challenge the constitutionality of the forceful eviction from their ancestral land by the government of Tanzania allegedly to make room for trophy hunting. Under a certificate of urgency, several NGOs filed a constitutional case to the High Court of Tanzania, Arusha Registry against the Ministry of Natural Resources and Tourism; and the Attorney General. However, up until the time of writing this Report, the case is yet to be heard on merits for the reason that there are not enough judges to constitute the required quorum. Accordingly, the University of Dar es Salaam authoritatively describes the Act as "counterproductive in the smooth operation of the Bill

of Rights and the general operation of human rights in the country” because the requirement that three judges to preside over every human rights matter is hard to implement in practice owing to the number of judges. Legal and Human Rights Center (LHRC), Tanganyika Law Society (TLS) and the Southern African Human Rights NGOs Network (SAHRNGON). 2008. NGO Report on the Implementation of the International Covenant on Civil and Political Rights in Tanzania. Available at:
http://www.univie.ac.at/bimtor/dateien/Tanzan_ccpr_2009_NGO__info.pdf

¹³⁵ The United Republic of Tanzania, “Constitution of the United Republic of Tanzania”, (1977)

¹³⁶ Andrew Miraa, “Rule of Law: Technicalities and Role of Courts in Administering Justice”, (2009), available at http://www.arushatimes.co.tz/2009/22/society_2.htm

¹³⁷ See: <http://www.judiciary.go.tz/downloads/HOTUBA%20LAW%20DAY%202014.pdf>

¹³⁸ See: <http://hdr.undp.org/en/countries/profiles/TZA>

¹³⁹ See: <http://www.lrct.go.tz/treaties-conventions/>

¹⁴⁰ See:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN

¹⁴¹ See: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103476

¹⁴² See: <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>

¹⁴³ Human Rights Working Group on the Universal Periodic Review Council, “Draft Report of the Working Group on the Universal Periodic Review: The United Republic of Tanzania”, (July 2016), A/HRC/33/12, para 132, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/152/67/PDF/G1615267.pdf?OpenElement>

¹⁴⁴ Human Rights Working Group on the Universal Periodic Review Council, “Draft Report of the Working Group on the Universal Periodic Review: The United Republic of Tanzania”, (October 2011), A/HRC/WG.6/12/L.2, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/172/50/PDF/G1117250.pdf?OpenElement>

¹⁴⁵ Human Rights Council, “Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania”, (8 December 2011), para. 24, available at:
<http://www.refworld.org/docid/4f2695f22.html>

¹⁴⁶ ACHPR, “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities”, (2005), p.17, available at:
<http://www.pro169.org/res/materials/en/identification/ACHPR%20Report%20on%20indigenous%20populations-communities.pdf>

¹⁴⁷ Danish Institute for Human Rights, “Tanzania - Human Rights and Business Country Guide”, (2014), p. 21 available at: <http://hrbcountryguide.org/compile/>

¹⁴⁸ This is an excerpt from the IHRB-UNDP paper, “Promoting Human Rights, Ensuring Social Inclusion and Avoiding Conflict in the Extractives Sector”, (2014), pp.17-17, available at:
http://www.ihrb.org/uploads/reports/2015-02-05%2C_IHRB-UNDP_Report%2C_Promoting_Human_Rights%2C_Ensuring_Social_Inclusion_and_Avoiding_Conflict_in_the_Extractives_Sector.pdf

¹⁴⁹ He draws attention in particular to examples of indigenous-controlled resource extraction. UN General Assembly, “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories” A/HRC/18/35 (11 July 2011), available at:
<http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>

¹⁵⁰ Notably *ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples* (UNDRIP).

¹⁵¹ UNDRIP, Article 32, available at: http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

¹⁵² UN General Assembly, “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya”, Summary of activities: Progress report on study on extractive industries, A/HRC/21/47 (6 July 2012), available at: http://unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf

¹⁵³ Id. pp. 10-11.

¹⁵⁴ IFC, “Performance Standard 7: Indigenous Peoples” (2012), available at:
http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES, and UN Global Compact “A Business Reference Guide: UNDRIP” (2013), available at:
<http://firstpeoples.org/wp/a-business-reference-guide-to-undrip/>

¹⁵⁵ J. Owen, D. Kemp, “Free prior and informed consent’, social complexity and the mining industry: establishing a knowledge base” (2014), available at:
<http://www.sciencedirect.com/science/article/pii/S0301420714000300>.

¹⁵⁶ See section above: “Tanzania’s International Human Rights Obligations” see also:
<http://indicators.ohchr.org/>

¹⁵⁷ This is a charter-based human rights mechanism, which entails UN member states reviewing human rights records of other members. For more details see: Alex Conte, “Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism” (2011). And also: Obonye Jonas, “Reflection on the Practice and Experiences of African States in the African Peer Review Mechanism (APRM) and the Universal Periodic Review Mechanism (UPR): a human rights perspective”, (2012)

¹⁵⁸ See: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

¹⁵⁹ See: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

¹⁶⁰ See: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

¹⁶¹ United Nations Human Rights Office of the High Commissioner, “Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania”, (2011), paragraph 25, available at:
<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TZSession12.aspx>

¹⁶² United Nations Committee on the Rights of the Child, “Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania”, paragraph 21, available at
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/TZA/CO/3-5&Lang=En

- ¹⁶³ See: http://www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf
- ¹⁶⁴ World Bank, "Project paper on a proposed additional credit to the United Republic of Tanzania for the sustainable management of mineral resources project", (April 2015), quoting : "has facilitated transforming these government priorities as set forth in new policy and legislation, into practical applications in key mining areas", available at: <http://documents.worldbank.org/curated/en/846261468304269754/text/PAD11770PJPROPO0Boxx391421B000UO090.txt>
- ¹⁶⁵ Ibid.
- ¹⁶⁶ United Republic of Tanzania, "The Mineral Policy of Tanzania", (2009), available at: https://mem.go.tz/wp-content/uploads/2014/02/0014_11032013_Mineral_Policy_of_Tanzania_2009.pdf
- ¹⁶⁷ United Republic of Tanzania, "The Mineral Policy of Tanzania", (2009), article 4.0, available at: https://mem.go.tz/wp-content/uploads/2014/02/0014_11032013_Mineral_Policy_of_Tanzania_2009.pdf
- ¹⁶⁸ Ibid, article 40
- ¹⁶⁹ Ibid, article 5.5
- ¹⁷⁰ Ibid, article 5.6
- ¹⁷¹ Ibid, article 5.8
- ¹⁷² Ibid, article 5.9
- ¹⁷³ Ibid, article 5.12
- ¹⁷⁴ Ibid, article 5.13
- ¹⁷⁵ Clyde and Co, "Regulations requiring mining firms to register on the Dar es Salaam Stock Exchange", (July 2013), available at: http://www.clydeco.com/uploads/Files/Publications/2013/MEBE_-_006_-_Tanzania_mining_briefing_-_Eng_-_Jul2013.pdf
- ¹⁷⁶ United Republic of Tanzania, "The Mineral Policy of Tanzania", (2009), article 5.8, available at: https://mem.go.tz/wp-content/uploads/2014/02/0014_11032013_Mineral_Policy_of_Tanzania_2009.pdf
- ¹⁷⁷ Ibid
- ¹⁷⁸ United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, available at: <http://parliament.go.tz/polis/uploads/bills/acts/1452071244-ActNo-14-2010.pdf>
- ¹⁷⁹ United Republic of Tanzania, "The Mineral Policy of Tanzania", (2009), article 5.9, available at: https://mem.go.tz/wp-content/uploads/2014/02/0014_11032013_Mineral_Policy_of_Tanzania_2009.pdf
- ¹⁸⁰ Ibid, article 6.1
- ¹⁸¹ Ibid, article 6.2
- ¹⁸² Ibid, article 5.6
- ¹⁸³ United Republic of Tanzania Ministry of Energy and Minerals, "The environmental and social management framework and social assessment for the Sustainable Management of Mineral Resources Project (SMMRP) Phase II", (2014), p. 13, available at: <https://mem.go.tz/wp-content/uploads/2014/12/ESMF-FINAL-VERSION-2.pdf>
- ¹⁸⁴ United Nations Environment Programme, "Analysis of Formalization Approaches in the Artisanal and Small Scale Gold-Mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda: Tanzania case study", (2012), available at: http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Formalization_ARM/Cas e%20Study%20Tanzania%20June%202012.pdf
- ¹⁸⁵ Ibid, p.5
- ¹⁸⁶ United Republic of Tanzania, "The Mineral Policy of Tanzania", (2009), p.15, available at: https://mem.go.tz/wp-content/uploads/2014/02/0014_11032013_Mineral_Policy_of_Tanzania_2009.pdf
- ¹⁸⁷ See:
- ¹⁸⁸ <http://www.opengov.go.tz/files/publications/attachments/42ce1f9244e41096627921101557d912.pdf>
- ¹⁸⁹ United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, available at: <http://parliament.go.tz/polis/uploads/bills/acts/1452071244-ActNo-14-2010.pdf>
- ¹⁹⁰ Ibid
- ¹⁹¹ Ibid, section 16
- ¹⁹² Ibid, section 16
- ¹⁹³ J.B. Jonsson & N. Fold, "Handling Uncertainty: Policy and Organizational Practices in Tanzania's Small-Scale Gold Mining Sector", (2009), Natural Resources Forum, pp. 211 at 214, available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1477-8947.2009.01226.x/abstract>
- ¹⁹⁴ United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, section 4,
- ¹⁹⁵ Ibid, section 41(4)(a) to (i)
- ¹⁹⁶ Ibid, section 41(4)(h)
- ¹⁹⁷ ILO, "Employment and Labour Relations Act", (2004), available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/68319/66452/>
- ¹⁹⁸ Ibid, section 41(4)(e)
- ¹⁹⁹ Ibid, section 41(4)(g)
- ²⁰⁰ Ibid, section 41(5)
- ²⁰¹ For a discussion on local content in the country's mining sector, see: A. Kinyondo and S. Lange, "Local Content in the Mining Sector of Tanzania", (March 2015), available at: http://www.repoa.or.tz/documents_storage/20ARWS2B_PPT.pdf
- ²⁰² United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, section 23

- 203 Ibid, section 23(2)(a)-(c)
- 204 Borrowing from wildlife management practice for example, the Minister consistently appoints to the Board, a representative of the pastoralist Maasai community who live within the Ngorongoro conservation area authority in spite of lack of such a requirement in the law because the law does not specify which institutions Board members should be appointed from. See the Ngorongoro Conservation Area Act, (1959), available at: <http://faolex.fao.org/docs/pdf/tan17716.pdf>
- 205 See: <http://www.resourcegovernance.org/our-work/country/tanzania>
- 206 United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, section 94
- 207 Ibid, section 95(b)
- 208 Ibid, section 96
- 209 See: <http://portal.mem.go.tz/map>
- 210 TEITI, "Beneficial Ownership Implementation status", (2015), p.4, available: https://eiti.org/files/tanzania_bo_evaluation_report_0.pdf
- 211 TEITI, "Final Annual Progress Report", (2015), p.12, available: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>
- 212 United Republic of Tanzania, "The Mining Act, 2010", (2010), Act No. 14 of 2010, section 10 (1)
- 213 Ibid, section 10(5), which states, "Where this Act or the regulations confer on the Minister or, as the case may be, the Commissioner shall exercise such discretion subject to and in accordance with any relevant stipulation contained in a development agreement made under this section."
- 214 Regarding the legal status of MDAs more broadly, one authority in the area of Mining Law and Policy provides some useful clarifications. Tanzania's MDAs fall in the second category. The author states, "In many jurisdictions, Agreements become part of a subsequent statute passed by the parliament. This structure is not used in many jurisdictions, but where it does arise, it is important to understand the various ways in which it occurs. There are two basic schemes, which have significant differences for the contracting parties and also third parties: The legislation authorizes the Agreement but does not give it statutory force. This provides statutory recognition that the Agreement exists, thereby excluding any challenge to the validity of its original negotiation and entry. However, the Agreement remains a contract between the parties and so any breach of it will be 'illegal' in that it does not break a law of the jurisdiction. The Legislation confers statutory status onto the Agreement. In this form, arrangements specified under an Agreement have effect as if they are statutory provisions. The terms have public legal force beyond a simple contractual arrangement between parties.
- See: J. Southalan, "Mining Law and Policy: International Perspectives", (2012), The Federal Press, Australia
- 215 G.N (Government Notice) 405 of 2010 (not available on line, copy in the author's file)
- 216 Ibid, article 7
- 217 Ibid, article 8
- 218 Ibid, article 9
- 219 Ibid, article 10
- 220 Interview with Dr. John Jingu, University of Dar es Salaam, October 2015.
- 221 R. Hundsbaek Pedersen and P. Bofin, (DIIS) "The politics of gas contract negotiations in Tanzania: a review" (2015), p.5, available at: http://pure.diis.dk/ws/files/276453/WP_2015_03.pdf
- 222 The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), p.14, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGDOP145010Box382156B000UO090.pdf
- 223 United Republic of Tanzania. 2013. The National Natural Gas Policy of Tanzania. Available at http://www.tanzania.go.tz/egov_uploads/documents/Natural_Gas_Policy_-_Approved_sw.pdf
- 224 See page two of the Policy. The challenges touch on institutional and legal frameworks to administer the industry; availability of human resources with requisite skills, attitude, discipline and knowledge of the natural gas industry; a good working environment for foreign investment and high public expectation.
- 225 Natural Gas Policy, article 2.1.
- 226 Natural Gas Policy of Tanzania, article 2.4.2 (c).
- 227 Natural Gas Policy of Tanzania, article 2.4.2 (h)
- 228 Policy Forum Tanzania, "Analysing the Draft Gas Policy: The Tanzania CSO Extractive Industry Working Group Position" (2012) available at: <http://www.policyforum-tz.org/gas-policy-inputs-csos>
- 229 Natural Gas Policy of Tanzania, article 3.1.7.
- 230 Natural Gas Policy of Tanzania, article 3.1.8.
- 231 Natural Gas Policy of Tanzania, article 3.2.1.
- 232 Natural Gas Policy of Tanzania, article 3.2.3.
- 233 Natural Gas Policy of Tanzania, article 3.1.7.
- 234 The document was finalized in October 2013.
- 235 See the official website of BG Group Tanzania, available at: <http://www.bg-group.com/324/where-we-work/tanzania/operations/>
- 236 The Scholarships are named after BG Group Plc, a British multinational oil and gas company with operations in Tanzania.
- 237 See Ten Tanzanians to begin Oil, Gas studies in the UK, the Guardian, available at <http://www.ippmedia.com/frontend/?l=71773>

- ²³⁸ See 'BG Tanzania supports Tanzanian Graduates and Higher Education Institutions.', available at website <http://bg-group.com/288/where-we-work/tanzania/>
- ²³⁹ Contracts between oil companies and the government are not publically accessible. This is likely to change given the coming to force of the Tanzania Extractive industries (Transparency and accountability) Act, 2015. Specifically, section 16 of the law establishes the obligation to publish all information relating to ensuring transparency and accountability in the extractive sector, such as concessions and licenses.
- ²⁴⁰ Available at <https://mem.go.tz/wp-content/uploads/2014/02/17.06.15A-BILL-PETROLEUM-ACT-2015-Updated-version-15.6.15.pdf>
- ²⁴¹ See article 223(4)(a) and (c) of the Petroleum Act. However during the field research for this report, the researcher could not access them owing to lack of awareness of district council officials in Mtwara who insisted that such a document has not been developed.
- ²⁴² Legal and Human Rights Center, "Human Rights and Business Report 2014: Taking Stock of Labor Rights, Land Rights, Gender, Taxation, Corporate Accountability, Environmental Justice and Performance of Regulatory Authorities" (2014), available at <http://www.humanrights.or.tz/downloads/Human%20Rights%20and%20Business%20Report%202014%20final.pdf>
- ²⁴³ Legal and Human Rights Center (LHRC), "Business and Human Rights Report in Tanzania-2013", (2013) p. 107-108, available at : <http://www.humanrights.or.tz/downloads/LHRC%20Business%20Rep%202013.pdf>
- ²⁴⁴ See for example: <https://www.csr.mq.edu.au/mining-gender-local-level-development>, and see also: <https://openknowledge.worldbank.org/handle/10986/12641>
- ²⁴⁵ Natural Gas Policy of Tanzania, article 3.2.1.
- ²⁴⁶ Ibid.
- ²⁴⁷ Available at <https://mem.go.tz/wp-content/uploads/2014/02/17.06.15BILL-EXTRACTIVE-INDUSTRIES-FINAL-15.6.2015.pdf>
- ²⁴⁸ See <https://eiti.org/news/tanzania-enacts-eiti-legislation>.
- ²⁴⁹ See 3.1.11 of the Natural Gas Policy of Tanzania, which partly provides, "...this situation calls for the need to increase awareness on natural gas operations to the public and stakeholders, particularly local communities where natural gas projects and activities are undertaken. It is everyone's interest that communication and flow of information about the natural gas industry to the public is maintained in a satisfactory condition at all times."
- ²⁵⁰ Global Legal Insights, Ofotsu A. Tetteh-Kujorjie Mkono & Co Advocates, « GLI - Energy Second Edition, Tanzania » (2010), available at : http://www.mkono.com/pdf/GLI-EN2_Tanzania.pdf
- ²⁵¹ Natural Gas Policy of Tanzania, article 3.1.11.
- ²⁵² Natural Gas Policy of Tanzania, article 3.2.3.
- ²⁵³ Paradoxically, the National Mineral Policy does not contain a similar policy statement on HIV/AIDS intervention, and no records indicate that the scourge is more prevalent or more risky in the new oil and gas sector compared to the mining sector.
- ²⁵⁴ United Republic of Tanzania, « HIV/AIDS and Malaria Indicator Survey 2011-2012 ». p. 1, available at : <https://dhsprogram.com/pubs/pdf/AIS11/AIS11.pdf>
- ²⁵⁵ Act no. 21 of 2015, available at <http://parliament.go.tz/polis/uploads/bills/acts/1452057729-ActNo-21-2015-Book-21-25.pdf>
- ²⁵⁶ The policies are the Energy Policy and the Natural Gas Policy discussed above.
- ²⁵⁷ Section 4 of the Petroleum Act 21 of 2015. available at: http://nemc.or.tz/index.php?option=com_content&view=article&id=106&Itemid=250
- ²⁵⁸ See section 5 of the Petroleum Act 21 of 2015. Section 11 of the law establishes PURA and charges it with the regulation and monitoring of the petroleum upstream subsector in mainland Tanzania.
- ²⁵⁹ Section 67 of the Petroleum Act 21 of 2015.
- ²⁶⁰ Section 67(k) of the Petroleum Act 21 of 2015. It requires "environmental impact assessment in respect of development, including the necessary measures to be taken for protection of environment" to accompany an application for a petroleum development license.
- Section 67(l) of the Petroleum Act 21 of 2015.
- ²⁶¹ See Section 221 and 222 of the Petroleum Act 21 of 2015.
- ²⁶² Section 68 of the Petroleum Act 21 of 2015.
- ²⁶³ This assertion is based on the legal requirements to furnish EIA reports as well as employment plans as part of application for a petroleum development license.
- ²⁶⁴ Section 111 of the Petroleum Act.
- ²⁶⁵ United Republic of Tanzania, « Draft Local content Policy of Tanzania for Oil and Gas Industry » (2014), available at http://www.tanzania.go.tz/egov_uploads/documents/Natural_Gas_Policy_-_Approved_sw.pdf
- ²⁶⁶ Sufian Hemed Bukurura and Donald Eliapenda Mmari, « Hydrocarbon resources in Tanzania: Achieving benefits with robust protection », Special Paper 14/3, Dar es Salaam (2014), available at: http://www.repoa.or.tz/documents/REPOA__SP_14_3.pdf
- ²⁶⁷ See page 17 of the Draft Local content Policy of Tanzania for Oil and Gas Industry 2014 (Draft one) supra
- ²⁶⁸ Ibid.
- ²⁶⁹ Available at: <http://tpdc-tz.com/tpdc/downloads.php>
- ²⁷⁰ Government of the United Republic of Tanzania, "Petroleum Development Corporation and Pan African Energy Tanzania Ltd: Production Sharing Agreement relating to the SongoSongo Gas Field, Dar Es Salaam,, Tanzania" available at: [http://repository.openoil.net/w/index.php?title=Special:Ask&offset=550&limit=500&q=\[\[Category%3AContract\]\]&p=format%3Dtemplate%2Fmainlabel%3D-2D%2Fsearchlabel%3Dmore-](http://repository.openoil.net/w/index.php?title=Special:Ask&offset=550&limit=500&q=[[Category%3AContract]]&p=format%3Dtemplate%2Fmainlabel%3D-2D%2Fsearchlabel%3Dmore-)

20contracts...%2Ftemplate%3DCountryBody%2Fintrottemplate%3DCountryHeader%2Foutrottemplate%3DFooter&po=%3FContract%0A%3FContractType%0A%3FContractor%0A%3FHostGovernmentContract%0A%3FLocalStoreURLPlain%0A. It is important to note that before the enactment of the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015, there was no obligation to publish contracts entered into by the government with extractive companies; consequently, PSAs and MDAs were kept confidential.

²⁷¹ Available at <http://parliament.go.tz/polis/uploads/bills/1447070761-A%20BILL%20GAS%20REVENUE-DODOMA%2015%20june.pdf>

²⁷² TEITI Annual Progress Report (2015), p. 12, available at: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>

²⁷³ Ibid. p. 13

²⁷⁴ See the long title to the Act, supra.

²⁷⁵ See section 18 of the Act.

²⁷⁶ Uongozi Institute, "Tanzania Natural Resource Charter Expert Panel Launched", available at http://www.uongozi.or.tz/news_detail.php?news=1873

²⁷⁷ See Section 18(4).

²⁷⁸ See Section 18(7).

²⁷⁹ A glaring example in recent times in the energy sector, relates to the resignation of the then Prime Minister Edward Lowassa and the then minister for energy and mineral. See *The Economist*, "A Struggle for Power: Tanzania loses a Prime Minister after corruption scandal." Feb 11th 2008. available at <http://www.economist.com/node/10676185>

²⁸⁰ The main applicable law at the moment is the "Prevention and Combating of Corruption Act", Chapter 329 of the Laws of Tanzania, available at http://www.gov.go.tz/egov_uploads/documents/PREVENTION_AND_COMBATING_OF_CORRUPTION_ACT_sw.pdf

²⁸¹ Act no. 20 of 2004, available at <http://www.dlist-asclme.org/sites/default/files/doclib/TZ%20EMA%202004.pdf>

²⁸² This is the main, national-level institution charged with the enforcement of environmental laws and regulations in Tanzania. Its objective as stated under section 17 is in part, "to undertake enforcement, compliance, review and monitoring of environmental impact assessment and in that regard, shall facilitate public participation in environmental decision making, exercise general supervision and coordination over all matters relating to the environment assigned to the council..."

²⁸³ The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGD0P145010Box382156B000UO090.pdf

²⁸⁴ The World Bank, « Tanzania Sustainable Management of Mineral Resources Project Implementation Support Mission and Extractive Industry Transparency Initiative Implementation » (2011), available at: <http://documents.worldbank.org/curated/en/946951468777919365/pdf/TZOSMMP0Missi00201100AIDE0M0MOIRE.pdf>

²⁸⁵ The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), p.32, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGD0P145010Box382156B000UO090.pdf

²⁸⁶ See: IPIECA, "Guide to Integrating Human Rights into Environmental, Social and Health Impact Assessments" (2013), available at: <http://www.ipieca.org/news/20131206/integrating-human-rights-environmental-social-and-health-impact-assessments> and ICMM, « Integrating Human Rights Due Diligence into Corporate Risk Management Processes » (2012), available at: <https://www.icmm.com/page/75929/publications/documents/integrating-human-rights-due-diligence-into-corporate-risk-management-processes>

²⁸⁷ United Republic of Tanzania President's Office, « The Tanzania Five Year Development Plan », 2011/2012-2015/16 », available at: <http://faolex.fao.org/docs/pdf/tan151051.pdf>

²⁸⁸ Made under section 82(1) and 230(2)(h) and (g) of the Environmental Management Act No. 20 of 2004. available at <http://faolex.fao.org/docs/pdf/tan171740a.pdf>

²⁸⁹ See Article 16 of "The Environmental Impact Assessment and Audit Regulations" (2005), available at: <http://www.tic.co.tz/media/Environmental%20Audit%20Regulations%202005.pdf>

²⁹⁰ Mineral Sector EIA Guidelines, Document from the United Republic of Tanzania Ministry for Energy and Minerals, October 2014, p.15, available at <https://mem.go.tz/wp-content/uploads/2014/02/Mineral-Sector-extractive-sectorA-guidelines.pdf>

²⁹¹ See section 173(d) of the Environmental Management Act (2004).

²⁹² Instead, NEMC only provides a list of applicants who have been granted EIA certificates. See NEMC's website http://nemc.or.tz/index.php?option=com_content&view=article&id=106&Itemid=250

²⁹³ United Republic of Tanzania Ministry of Energy and Minerals, Mineral Sector Environmental Impact Assessment (EIA) Guidelines (2014), available at <https://mem.go.tz/wp-content/uploads/2014/02/Mineral-Sector-EIA-guidelines.pdf>

²⁹⁴ See Article 61 of "The Environmental Impact Assessment and Audit Regulations" (2005), available at: <http://www.tic.co.tz/media/Environmental%20Audit%20Regulations%202005.pdf>

²⁹⁵ Ibid.

²⁹⁶ See the vision of the Tanzania Minerals Audit Agency (TMAA), available at: http://www.tmaa.go.tz/tmaa/about/category/aim_mission_vision

²⁹⁷ The United Republic of Tanzania, « Tanzania Minerals Audit Agency Annual Report 2014 », available at http://www.tmaa.go.tz/uploads/ANNUAL_REPORT_2014.pdf

- ²⁹⁸ The United Republic of Tanzania, « Tanzania Minerals Audit Agency Annual Report 2014 », p.6, available at http://www.tmaa.go.tz/uploads/ANNUAL_REPORT_2014.pdf
- ²⁹⁹ Available at <http://parliament.go.tz/polis/uploads/bills/acts/1452053429-ActNo-23-2015-Book-21-25.pdf>
- ³⁰⁰ The Law came to force following presidential assent in August 2014. However, implementing regulations are yet to be formulated.
- ³⁰¹ See the long title to the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰² TEITI, « Annual Progress Report » (2015), p. 15, available at: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>
- ³⁰³ See Section 4 of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰⁴ See section 16 of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰⁵ See Section 15 of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰⁶ See section 4(2) of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰⁷ The respective umbrella institutions nominated the 16 members of the group as follows: five from the government, five from civil society and 5 from extractive companies, plus the executive secretary of TEITI as the 16th member.
- ³⁰⁸ See section 5(4) of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³⁰⁹ See section 5(2)(a) of the Tanzania Extractive Industries (Transparency and Accountability) Act.
- ³¹⁰ This is however possible through the slots provided for CSOs, but the law should have provided expressly.
- ³¹¹ Given the unique position of NHRI globally as bridges between CSOs, community members and governments, the law misses an important opportunity of expressly providing for a representative of CHRAGG in the multi-stakeholder group.
- ³¹² See section “27(1), which provides that “All Mineral Development Agreements and Production Sharing Agreements and any other agreements signed prior to the coming into force of this Act, shall, upon coming into force of this Act, be subjected to disclosure requirement under this Act.”
- ³¹³ The relevant section provides, “27 (2), which provides that “Except for information that is confidential as the Committee may determine, all other information contained in the agreements referred to under subsection (1) shall be subject to disclosure requirements under this Act.”
- ³¹⁴ TEITI, « G7-Tanzania Partnership on Transparency in the extractive sector », p. 10, available at: <http://www.teiti.or.tz/wp-content/uploads/2016/04/G7-Tanzania-Partnership-on-Transparency-in-The-Extractive-Sector-Annual-Semi-Annual-Progress-Report.pdf>
- ³¹⁵ See p.9: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>
- ³¹⁶ This is the National Oil Company established under section 8 of the Petroleum Act for the purpose of undertaking Tanzania's commercial aspects in the petroleum.
- ³¹⁷ Ledger Kasumuni, « Muhongo: Why Bunge won't see gas contracts, » The Citizen, November 14th, 2014, available at <http://www.thecitizen.co.tz/News/Muhongo--Why-Bunge-won-t-see-gas-contracts-/1840392/2521930/-/ff5vvj/-/index.html>, DIIS, R. Hundsbæk Pedersen and P. Bofin, The politics of gas contract negotiations in Tanzania: a review (2015), pp.19-20, available at: http://pure.diis.dk/ws/files/276453/WP_2015_03.pdf, and the National Resource Governance Institute, « Tanzania and Statoil: What does the Leaked Agreement Mean for Citizens » (2014), available at, <http://www.resourcegovernance.org/analysis-tools/publications/tanzania-and-statoil-what-does-leaked-agreement-mean-citizens>
- ³¹⁸ TEITI « Annual Progress Report », (2015) p. 23, available at: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>
- ³¹⁹ As of the writing of this Report, this was still under construction, see: <http://www.teiti.or.tz/contracts/>
- ³²⁰ TEITI, “TEITI Workplan 2015” (May 2015), available at: <http://www.teiti.or.tz/wp-content/uploads/2014/05/TEITI-Workplan-May-2015.pdf>
- ³²¹ TEITI « Annual Progress Report » (2015), p. 20, available at: <http://www.teiti.or.tz/final-annual-progress-report-january-december-2015/>
- ³²² Available at: <http://www.judiciary.go.tz/downloads/Constitution.pdf>
- ³²³ Article 30 of the Constitution of the United Republic of Tanzania 1977 provides that “It is hereby declared that the provisions contained in this part of the Constitution, which sets out the Principles of rights, freedom and duties does not render unlawful any existing law or prohibit the enactment of any law or the doing of lawful act in accordance with such law.”
- ³²⁴ Act No. 3 of 1976 Available at <http://polis.parliament.go.tz/PAMS/docs/3-1976.pdf>
- ³²⁵ Ibid, S. 25 Act No. 3 of 1976 Available at <http://polis.parliament.go.tz/PAMS/docs/3-1976.pdf>
- ³²⁶ Act no. 20 of 2004, available at <http://www.dlist-asclme.org/sites/default/files/doclib/TZ%20EMA%202004.pdf>
- ³²⁷ Section 172(1), *ibid.*
- ³²⁸ Section 172(1), *ibid.*
- ³²⁹ Open Government Partnership, « Tanzania and the OGP: an update », (September 2012), available at: <http://www.opengovpartnership.org/blog/blog-editor/2012/09/11/tanzania-and-ogp-update>
- ³³⁰ The United Republic of Tanzania: « The National Land Policy », 2nd Edition 1997, available at <http://www.tzonline.org/pdf/nationallandpolicy.pdf>
- ³³¹ *Ibid.*, p.9
- ³³² The power to revoke a right of occupancy is vested in the President of Tanzania. Factors that may lead to the revocation of a right of occupancy include an attempt to sell the land to a non-citizen; abandoning the land for not less than two years; breach of conditions listed in the certificate of occupancy

and breach of regulations made under the law. See: The Land Act, 1999, Cap. 113 (R.E) 2002 available at <http://polis.parliament.go.tz/PAMS/docs/4-1999.pdf>

³³³ The Land Act defines the right of occupancy to mean “ a title to the use and occupation of land and includes the title of a Tanzanian citizen of African decent or a community of Tanzanian citizens of African decent using or occupying land in accordance with customary law.” S.2 supra ibid

³³⁴ See for example Section 3 of the Land Act no. 4 of 1999, which defines land to include “the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface.”

³³⁵ Act no. 4 of 1999, available at <http://faolex.fao.org/docs/pdf/tan23795.pdf>

³³⁶ Act no. 5 of 1999, available at <http://faolex.fao.org/docs/pdf/tan53306.pdf>

³³⁷ Section 2 of the Land Act (note 17) defines the land Act to mean “all land which is not reserved land or village land.” In practice, it includes areas of land falling in municipalities, townships and cities and which are under the supervision of the commissioner for lands.

³³⁸ This category of land is explained in details under S. 7 of the Village Land Act, supra note 22. It consists of areas of land falling within the jurisdiction of registered villages. A village is the lowest administrative unit in Tanzania. Others are a ward, a district and a region.

³³⁹ See Section 4 of the Land Act no. 4 of 1999.

³⁴⁰ Section 6 of the Land Act no. 4 of 1999.

³⁴¹ Specifically, section 22 merely requires the mineral right owner to provide notice of intention to enter into a national park to exercise the mining right. It provides in part, “22(1) Any person who holds a mining right in, over, under or in respect of land comprised in national park, may enter and exercise the same within a national park if he has first given a written notice to the Trustees and Minister and complies with any condition that the Minister in consultation with the Trustees, may impose: provided that the minister shall not impose any conditions inconsistent with the nature of any such mining right granted to such person.”

³⁴² USAID Country Profile, « Tanzania », available at : http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf

³⁴³ Tanzania Open Government Partnership Action Plan 2012-2013, p. 4, available at: http://www.opengovpartnership.org/sites/default/files/legacy_files/country_action_plans/OGP%20ACTION%20PLAN%20REVISED%20ON%2026-3-2012-1.pdf9__0.pdf

³⁴⁴ Interview with Emmanuel Sulle, independent expert in land tenure security in Arusha, October 2015.

³⁴⁵ United Republic of Tanzania President's Office, « The Tanzania Five Year Development Plan », 2011/2012-2015/16 », p.56 available at : <http://faolex.fao.org/docs/pdf/tan151051.pdf>

³⁴⁶ See also Part IV, Division E in the 2010 Mining Act.

³⁴⁷ Article 24 of the Constitution.

³⁴⁸ Section 3(1)(g) of the Land Act no. 4 of 1999.

³⁴⁹ See The Land Act 1999 Part 11, Fundamental Principles of National Land Policy.

³⁵⁰ Made pursuant to section 179 of the Land Act, available at <http://faolex.fao.org/docs/pdf/tan28341.pdf>

³⁵¹ Regulation 3 of the Land Regulations of 2001.

³⁵² Regulation 4 of the Land Regulations 2001.

³⁵³ See the USAID Country Profile on Tanzania, p. 13, available at: http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf

³⁵⁴ See: <https://mem.go.tz/wp-content/uploads/2014/12/ESMF-FINAL-VERSION-2.pdf>, p. ii.

³⁵⁵ See: http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf

³⁵⁶ See for instance the Courts (Land Dispute Settlements) Act 2002, Part III and the Land Act n°4, Part III article 14(4).

³⁵⁷ See for instance the Village Land Act, Part IV(C), article 52.

³⁵⁸ See the USAID Country Profile on Tanzania, p. 11, available at: http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf

³⁵⁹ For an overview on business and human rights in Tanzania, see the Danish Institute for Human Rights Country Guide for Tanzania, available at: <http://hrbcountryguide.org/compile/>

³⁶⁰ For further explanations of each step see: European Commission – Oil & Gas Sector Guide on Implementing the Corporate Responsibility to Respect (2014) and see other sources in the bibliography to the guide and the bibliography to this Report. See also: the IPIECA's guide to Integrating Human Rights into Environmental, Social and Health Impact Assessments (2013), available at : <http://www.ipieca.org/news/20131206/integrating-human-rights-environmental-social-and-health-impact-assessments> and ICMM, « Integrating Human Rights Due Diligence into Corporate Risk Management Processes » (2012), available at : <https://www.icmm.com/page/75929/publications/documents/integrating-human-rights-due-diligence-into-corporate-risk-management-processes>

³⁶¹ For a further explanation of the responsibilities vis-à-vis business relationships, see: http://www.ihrb.org/uploads/reports/EC-Guide_OG.pdf

³⁶² NRGI has noted in their Tanzania Country Strategy (2015) that these are issues they will be addressing as part of their in-country work. See: http://www.resourcegovernance.org/sites/default/files/documents/nrgi_tanzania-strategy_20160629.pdf

³⁶³ United Republic of Tanzania President's Office, « The Tanzania Five Year Development Plan », 2011/2012-2015/16 », p.40, available at : <http://faolex.fao.org/docs/pdf/tan151051.pdf>

³⁶⁴ See: <https://mem.go.tz/wp-content/uploads/2014/12/ESMF-FINAL-VERSION-2.pdf>, p. 15

³⁶⁵ Jennifer J. Hinton et al., « Women and Artisanal Mining: Gender Roles and the Road Ahead, in Hilson, G et al (eds), *The Social Economic Impacts of Artisanal and Small Scale Mining in Developing Countries*, » Sweets Publishers, the Netherlands. (2003)

³⁶⁶ The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), p.21, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGD0P145010Box382156B000U0090.pdf

³⁶⁷ See the list of recipients appearing here
<http://www.opengov.go.tz/files/publications/attachments/42ce1f9244e41096627921101557d912.pdf>

³⁶⁸ The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), p.21, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGD0P145010Box382156B000U0090.pdf

³⁶⁹ See the table indicating issues discussed and the percentage of respondents who vocalized them.

³⁷⁰ For example, the Land Acquisition Act no. 47 of 1967 provides that the President may acquire any land for the purpose of mining for minerals and oil. See section 3 and 4, available at http://www.saflii.org/tz/legis/num_act/laa1967174.pdf

³⁷¹ Section 2 of the Land Act no. 4 of 1999 provides that “land includes the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.”

³⁷² The government does this pursuant to Section 4(1)(e) of the Land Acquisition Act, 1967, which empowers the president to compulsorily acquire any land for the purpose of mining for minerals of petroleum.

³⁷³ For example, Regulation 6 of the Land (Assessment of Values for Compensation) Regulations 2001 provides, “the commissioner or authorized officer shall cause a notice to be published on a public notice board and serve a notice in a prescribed form on every occupier: (a) Notifying the occupier of the land which is subject to compensation (b) Requiring the occupier to submit his claim for compensation (c) requiring the occupier to appear physically on such date, place and time where assessment shall be done.

³⁷⁴ Judicial intervention in this area (at the courts of records, that is the high court and the court of appeal) has been minimal because the Mining Act provides that disputes or dissatisfaction should be forwarded to the commissioner for mining (out of judicial system).

³⁷⁵ According to Regulation 5 of the Land (Assessment of Values for Compensation) Regulations 2001, “qualified valuers” from the Ministry of land and human settlement and (some of whom work with local government authorities) conduct the land valuation.

³⁷⁶ See the Land Acquisition Act of 1967.

³⁷⁷ The World Bank, « International Development Association Program Document on a Proposed Development Policy Credit in the amount SDR 65.2 Million to the United Republic of Tanzania for a Second Power and Gas Sector Development Policy Operation » (2014), p.32, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/05/000442464_20140305111847/Rendered/PDF/840280PGD0P145010Box382156B000U0090.pdf

³⁷⁸ United Republic of Tanzania President's Office, « The Tanzania Five Year Development Plan », 2011/2012-2015/16 », p.63, available at : <http://faolex.fao.org/docs/pdf/tan151051.pdf>

³⁷⁹ See the vision of the Tanzania Minerals Audit Agency (TMAA), available at: http://www.tmaa.go.tz/tmaa/about/category/aim_mission_vision

³⁸⁰ The United Republic of Tanzania, « Tanzania Minerals Audit Agency Annual Report 2014 » (2014, available at http://www.tmaa.go.tz/uploads/ANNUAL_REPORT_2014.pdf

³⁸¹ Ibid.

³⁸³ Land compensation in this village relate to the construction of a gas pipeline aimed at transporting Natural Gas from Mtwara to Dar es Salaam. Interview conducted on 29th of November 2015.

³⁸⁴ According to Regulation 5 of the Land (Assessment of Values for Compensation) Regulations 2001, “qualified valuers” from the Ministry of land and human settlement and (some of whom work with local government authorities) conduct the land valuation.

³⁸⁵ See for example, Abdalah Bakari, 'Mtwara Comes to a Stand Still', *The Citizen*, Friday May 17 2013, available at <http://www.thecitizen.co.tz/News/Mtwara-come-to-a-standstill/-/1840392/1855832/-/ftpgal1-/index.html>

³⁸⁶ DIIS, R. Hundsbaek Pedersen and P. Bofin, *The politics of gas contract negotiations in Tanzania: a review* (2015), p.26, available at: http://pure.diis.dk/ws/files/276453/WP_2015_03.pdf

³⁸⁷ Article 107(A) of the Constitution

³⁸⁸ Article 13(6)(a) of the Constitution

³⁸⁹ Article 108 of the Constitution

³⁹⁰ See: <http://www.tanzania.go.tz/home/pages/362>

³⁹¹ Land Dispute Courts Act of 2002 establishes a District Land and Housing Tribunal with jurisdiction over land matters within the district, region or zone in which it is established see :

[http://www.tanzania.go.tz/egov_uploads/documents/02-2002_The%20Courts%20\(Land%20Disputes%20Settlements\)%20Act,%202002%20-%20.pdf](http://www.tanzania.go.tz/egov_uploads/documents/02-2002_The%20Courts%20(Land%20Disputes%20Settlements)%20Act,%202002%20-%20.pdf)

³⁹² See: <http://www.nyulawglobal.org/globalex/Tanzania.html>

³⁹³ See: <http://www.judiciary.go.tz/background-history/>

- ³⁹⁴ See:
https://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiXiuie15jOAhWJJsAKHX7CAYYQFggrMAI&url=http%3A%2F%2Fwww.hakiardhi.org%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D173%26Itemid%3D81&usq=AFQjCNGun8dvj10-Cr2915PJBZyH-Qzakw&bvm=bv.128617741,d.d2s
- ³⁹⁵ United Republic of Tanzania, "Human Rights Action Plan 2013-2017", p.12, available at: www.ohchr.org/Documents/Issues/NHRA/Tanzania_en.doc
- ³⁹⁶ See: <http://www.unep.org/delc/Portals/119/events/enforcement-environmental-law-tanzania.pdf>
- ³⁹⁷ Article 129 to 131 of the Constitution of the United Republic of Tanzania, 1977 (As amended from time to time), available at <http://www.judiciary.go.tz/downloads/constitution.pdf>
- ³⁹⁸ Modeled in accordance with the Paris Principles relating to the Status of National Human Rights Institutions, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>
- ³⁹⁹ See Section 15(1)(a) and (b).
- ⁴⁰⁰ See Section 15(2)(a) to (c).
- ⁴⁰¹ Interview with CHRAGG staff and commissioners in Dar es Salaam 2nd of December 2015.
- ⁴⁰² Interview with CHRAGG' Director of Research and Publications Mr. Godlisten Nyange in Dar es Salaam 2nd of December 2015.
- ⁴⁰³ Interview with CHRAGG's Director of Research and Publications Mr. Godlisten Nyange in Dar es Salaam 2nd of December 2015.
- ⁴⁰⁴ Interview with CHRAGG senior staff members, 17th November 2015. CHRAGG Offices, Dar es Salaam
- ⁴⁰⁵ See section 102 to 105 of the Mining Act of 2010
- ⁴⁰⁶ See section 102(1) of the Mining Act. It states in part, "The commissioner may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third parties other than the government..."
- ⁴⁰⁷ Section 102(1)(c) of the Mining Act.
- ⁴⁰⁸ See for example Section 243(4) of the Petroleum Act.
- ⁴⁰⁹ Section 102(2) of the Mining Act.
- ⁴¹⁰ Section 104 of the Mining Act.
- ⁴¹¹ TEITI G7 Report, p. 23, available at: <http://www.teiti.or.tz/wp-content/uploads/2016/04/G7-Tanzania-Partnership-on-Transparency-in-The-Extractive-Sector-Annual-Semi-Annual-Progress-Report.pdf>
- ⁴¹² See:
<http://www.asclme.org/reports2013/Policy%20and%20Governance%20reports/32%20Tanzania%20Policy%20and%20Governance%20Final%20Report%20ASCLME.pdf>
- ⁴¹³ See p.14 : http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf
- ⁴¹⁴ United Nations Office of the High Commissioner, « UN Guiding Principles », Principle 29, available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ⁴¹⁵ Ibid., Principle 31.
- ⁴¹⁶ See for instance: International Institute for Environment and Development, "Dispute or Dialogue: Community perspectives on company-led dispute mechanisms", (2013). available at: <http://pubs.iied.org/16529IIED.html>
- ⁴¹⁷ See: <https://business-humanrights.org/en/african-barrick-gold-lawsuit-re-tanzania>
- ⁴¹⁸ Ibid
- ⁴¹⁹ See: <http://www.achpr.org/communications/>
- ⁴²⁰ Tanzania has signed and ratified the Protocol establishing the Court, see: http://en.african-court.org/images/Basic%20Documents/Ratification_and_Deposit_of_the_Declaration.pdf
- ⁴²¹ See: <http://www.achpr.org/instruments/achpr/ratification/>
- ⁴²² Article 5(3) of the Treaty for the Establishment of the East African Community, available at: http://eacj.org/?page_id=33
- ⁴²³ Article 6 (d) of the Treaty : good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights
- ⁴²⁴ Interestingly, the Court notes that "The jurisdiction of the Court may be extended to human rights at a suitable date to be determined by the Council"(see: http://eacj.org/?page_id=27.), see also: <http://eacj.huriweb.org/wp-content/uploads/2013/09/Overview-of-the-EACJ.pdf>
- ⁴²⁵ See: <http://eacj.org/?p=2221>
- ⁴²⁶ For the current list of countries adhering to the Guidelines, see: <http://mneguidelines.oecd.org/ncps/>
- ⁴²⁷ OECD, « Guidelines on Multinational Enterprises » (2011), available at: <http://mneguidelines.oecd.org/text/>
- ⁴²⁸ See: <http://www.oecdwatch.org/filing-complaints>
- ⁴²⁹ See: <http://www.ihrb.org/focus-areas/commodities/meeting-report-oecd-national-contact-points-extractive-sector-second-event>
- ⁴³⁰ See: <http://ewebapps.worldbank.org/apps/ip/Pages/Related%20Organizations.aspx>
- ⁴³¹ "Glass Half Full? The state of accountability in development finance", (2016), p. 17 (reflecting the work of 11 civil society organizations), available at: http://grievancemechanisms.org/resources/brochures/IAM_DEF_WEB.pdf.

- ⁴³² SOMO, "The Patchwork of Non-Judicial Grievance Mechanisms", (2014). available at: <http://grievancemechanisms.org/attachments/ThePatchworkofNonJudicialGrievanceMechanisms.pdf>. See also "Glass Half Full? The state of accountability in development finance", (2016)
- ⁴³³ See: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=113
- ⁴³⁴ Ibid
- ⁴³⁵ The Voluntary Principles on Security and Human Rights. available at: <http://www.voluntaryprinciples.org/>
- ⁴³⁶ The International Code of Conduct Association is a multi-stakeholder initiative that aims to set principles and standards based on international human rights and humanitarian law, for the private security industry operating in complex environments, as well as to improve oversight and accountability for these companies. available at: <http://icoca.ch/en/icoc-association>,
- ⁴³⁷ The International Code of Conduct Association, « International Code of Conduct for Private Security Providers, » arts. 66-67. available at: http://icoca.ch/en/the_icoc
- ⁴³⁸ See: <http://icoca.ch/en/complaints-process>
- ⁴³⁹ See:
http://icoca.ch/en/membership?private_security_companies%5Bcompanies%5D=companies&area_of_operation=all&headquarter_country=222&keywords=&op=Search&view_type=list&form_build_id=form-p3EpyO0Kid2ALGMTZzL9MWopG-wqC2r9LV1g4MdZwE&form_id=_search_for_members_filter_form#search_for_members_list
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Human Rights in Tanzania's Extractive Sector

Exploring the Terrain

Background

Tanzania is Africa's fourth biggest gold producer and 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. In addition, the past few years have seen significant increases in exploration for oil and gas along the coast. Together, exploitation of these resources has the potential to significantly change Tanzania's growth trajectory.

Message

This report is the product of desk-based and on-the-ground interviews to assess the existing human rights and environmental impacts attributed to Tanzania's increasing extractive sector activities.

Recognising that the policy and legal framework plays an important role in setting the conditions to reinforce the corporate responsibility to respect human rights in the extractive sector, the Report includes an in-depth analysis of the policy and legal framework from a human rights perspective. Where these frameworks leave gaps or contradict international human rights standards, they present a challenge to a level playing field among companies, as the gaps can be filled by good – and bad – practices. This can result in significant adverse impacts for local communities, as the field research highlights. The field-based, on-the-ground interviews provide perspectives from local communities, businesses and local governments on challenges and the impacts across a range of human rights.

While the Report highlights a range of impacts, the increasing pace of granting mining and oil and gas concessions in areas occupied by communities has predictably made the adverse impacts on land rights the most prevalent complaint arising from formal and informal extractives activities in Tanzania. This is not only because resource extraction must take place beneath the land that communities rely on for livelihoods, but also because land and extractive laws subordinate community rights to resource exploration and extraction. Community members consistently reported dissatisfaction with compensation for land acquisition, the lack of security of land tenure, and the multiple impacts of resettlement.

Implications

All stakeholders in Tanzania's extractive sector – the Tanzanian Government, oil, gas and mining companies, investors, home governments, and civil society organisations – are encouraged to explore the terrain of human rights in Tanzania's extractive sector. This Report serves as a tool to better understand where the gaps exist and use the stakeholder-specific recommendations to effectively prioritise and advocate to close these gaps, providing a solid basis for the further expansion of Tanzania's extractive sector in line with sustainable development.

