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*

<table>
<thead>
<tr>
<th>Place &amp; Institution Visited</th>
<th>Total # of respondents interviewed</th>
<th>Men</th>
<th>Women</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dar es Salaam, CHRAGG</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>KII with CHRAGG leadership</td>
</tr>
<tr>
<td>Dar es Salaam, CHRAGG</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>KII with CHRAGG leadership</td>
</tr>
<tr>
<td>Dar es Salaam, the University of Dar es Salaam</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>KII with academic experts in the area of extractive industries</td>
</tr>
<tr>
<td>Dar es Salaam, Tanzania Petroleum Development Corporation (TPDC)</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>KII with staff of the TPDC/the national oil company</td>
</tr>
<tr>
<td>Dar es Salaam, Tanzania Human Rights Defenders Coalition (THRDC) and the Legal and Human Rights Center (LHRC)</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>KII with experts working in NGOs/CSOs</td>
</tr>
<tr>
<td>Dar es Salaam, Attorney General’s Chambers</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>KII with state attorneys in charge of FDI and contracts.</td>
</tr>
<tr>
<td>Location</td>
<td>Participants</td>
<td>Observations</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Dar es Salaam, Oil, Natural Gas and Environmental Alliance (ONGEA) and Policy Forum</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>KII with experts working in NGOs/CSOs</td>
</tr>
<tr>
<td>Dar es Salaam, Tanganyika Law Society (TLS) and the Lawyers Environmental Action Team (LEAT)</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>KII with expert/ lawyers working on extractive industries and legal AID/Travelling to Arusha</td>
</tr>
<tr>
<td>Arusha, Tanzania Mineral Dealers Association (TAMIDA) and Haki Madini</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>KII with the executive director of Haki Madini and the counsel/lawyer to the (TAMIDA)</td>
</tr>
<tr>
<td>Mererani, Manyara. TanzaniteOne, visiting ward/village leadership and community projects</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>KII with company officials and creating Rapport with the village/ward leadership</td>
</tr>
<tr>
<td>Mererani, Manyara 2 Focus Group Discussions (FGD) with Community members</td>
<td>21</td>
<td>08</td>
<td>13</td>
<td>FGD with community members around extractive operations</td>
</tr>
<tr>
<td>Two FGD with small scale miners (employees)</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>2 FGDs with community small scale members</td>
</tr>
<tr>
<td>Mwanza, Mwanza Regional Commissioners office/Regional Administrative secretary</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>Government leadership/Rapport creation and accessing statistics.</td>
</tr>
<tr>
<td>Mwanza, Tanganyika Law Society Mwanza Branch</td>
<td>6</td>
<td>2</td>
<td>4</td>
<td>FGD with lawyers/advocates on legal challenges of legal aid provision in the extractive sector in resource rich regions</td>
</tr>
<tr>
<td>Mwanza Press Club* (Appointment)</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>Discussions with</td>
</tr>
<tr>
<td>Activity</td>
<td>FGDs</td>
<td>KII</td>
<td>Meetings</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
<td>------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>to meet company leadership for AngloGold Ashanti did not work out</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mwanza, St. Augustine University of Tanzania (SAUT)</td>
<td>12</td>
<td>6</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Geita</td>
<td>22</td>
<td>08</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Geita and Travel back to Mwanza</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Arusha, Arusha Regional Miners Association (AREMA) and an extractives company</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Travel to Mtwara, meeting regional leaders/Regional administrative secretary’s office (DAS), district counsel</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Two FGD with villagers at Msimbati village</td>
<td>22</td>
<td>8</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>

- FGDs with community members in Katoma Sub-village, Geita District
- KII with lecturers/experts and graduate students
- Meeting a company official
- Government officials at the Zonal Mining Office
- FGD with community members in Nyakabale sub-village, Geita District
- KII with leaders of AREMA and Sammy Mollel-managing director of an extractives company
- Reporting at the regional and district leadership and soliciting relevant statistics and updates / rapport creation
- Two FGD with villagers at Msimbati village
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.
Bibliography


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%3D2D%2Fsearchlabel%3Dmore-20contracts...%2Ftemplate%3DCountryBody2%2Fintrotemplate%3DCountryHeader2%2Foutrotemplate%3DFooter&po=%3FContract%0A%3FContractType%0A%3FContractor%0A%3FHostGovernmentContract%0A%3FlocalStoreURLPlain%0A.


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”. 45 Comp. & Int'l L.J. S. Afr. 428 2012. Available at: http://repository.up.ac.za/dspace/handle/2263/40811


UN General Assembly, “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories” (July 2011), A/HRC/18/35


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/PAD11770P]PROPO 0Boxx391421B00OUO090.txt

http://documents.worldbank.org/curated/en/273821468312599035/pdf/840280PGD0P145010Box382156B00OUO090.pdf


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5. The DIIS Study, p.5
8. Ibid, p.50
9. The 5 sectors are: (i) Infrastructure; (ii) Agriculture; (iii) Industrial development; (iv) Human capital and skills development; and (v) Tourism, trade and financial services.
11. Ibid, p.25
12. Ibid, p.29
13. Ibid, p.74
15. Ibid, p.55
16. See: https://eiti.org/Tanzania
17. See: https://beta.eiti.org/implementing_country/23
20. OGP is built on key pillars of good governance namely: transparency, citizen participation, accountability and integrity and technology and innovation. See Tanzania OGP Action Plan available at: http://www.opengovpartnership.org/country/tanzania
21. See: http://www.opengovpartnership.org/country/tanzania
22. The DIIS Study, p. 18, noting that “The signing of contracts in 2012-13 on institutional cooperation in between the government of Norway and that of Tanzania, establishing a three year Oil for Development programme, is indeed conspicuous in its timing, initiated only a couple of years after Statoil, had made major offshore gas finds two years before, in 2010.” The Oil for Development programme is providing support to ensure the coverage of environmental and safety issues in the review of petroleum policy and in the legislative and institutional frameworks, to strengthen knowledge, institutional competencies and regulatory capacities, and is also providing support in the areas of environmental data management systems and capacity building.
24. See: http://www.resourcegovernance.org/our-work/country/tanzania
25. See: https://www.transparency.org/country/WTZA
28. See: http://www.ihrb.org/focus-areas/benchmarking/podcast-john-ruggie
experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda”, (2012), Tanzania case study. Available at: http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Formalization_ARM/Cas e%20Study%20Tanzania%20June%202012.pdf


40 WB PAD, p.29


42 WB PAD, p.13


44 See https://www.mbendi.com/indy/ming/dmnd/af/t/a/p0005.htm


50 See: http://www.tanzaniainvest.com/mining


52 See: http://www.tmaa.go.tz/minerals/view/coal

53 See: http://www.tcmne.or.tz/mining-in-tanzania/industry-overview/


57 See: https://beta.eiti.org/node/4470
The regulation provides that Mining Companies shall pay Local government levies of 0.3% of the turnover. See: United Republic of Tanzania, “The local government finances act, 1962”, (2000), available at: http://www.tic.co.tz/media/Local%20government%20Finance%20Act%201962.pdf

WB PAD, p. 4

WB PAD, p. 6


See : http://www.venturesafrica.com/tanzanias-oil-reserves-have-energy-giants-in-hot-competition


DILS study, p.9


United Republic of Tanzania, “Constitution of the United Republic of Tanzania”, (1977), Article 54(I)


See: https://mem.go.tz/clients-service-charter/

See: https://mem.go.tz/background-history/

See: https://mem.go.tz/cits-service-charter/


United Republic of Tanzania, “Constitution of the United Republic of Tanzania”, (1977), Article 54(I)

See: https://mem.go.tz/background-history/

See: https://mem.go.tz/cits-service-charter/


United Nations Environmental Program (UNEP), “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”, (June 2012), available at: http://www.tanzania.go.tz/profile1f.html

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End Notes


2. Ibid

3. Ibid


5. Ibid

6. Ibid

7. See: http://www.mrtt.gov.tz/


10. See: http://www.constitutionnet.org/country/tanzania-country-constitutional-profile

11. See http://www.tanzania.go.tz/home/pages/8


13. Ibid, article 18(b)


15. Ibid, article 21(2)

16. Ibid, article 20(1)

17. Ibid, article 22(1)

18. Ibid, article 23(2)

19. Ibid, article 11(2)

20. Ibid, article 24(1)

21. Ibid, article. 24(2)


23. 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

24. 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”.

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


27. Ibid, article 12(1)

28. Ibid, article 13(1)

29. Ibid, article 13(4)

30. Ibid, article 27(1)

31. Ibid, article 16(2)


33. Ibid, section 10

34. 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)

35. 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 Lolondo, 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


See: http://www.lrtc.go.tz/treaties-conventions/


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


Id. pp. 10-11.


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

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)


See: http://www.achpr.org/Files/instruments/achpr/banjul_charter.pdf

See: http://www.achpr.org/Files/instruments/achpr/banjul_charter.pdf

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

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


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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/PADI177OPJPR008Boxx391421B000D000930.txt

165 Ibid.


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


176 Ibid


179 Ibid, article 6.1

180 Ibid, article 6.2

181 Ibid, article 5.6

182 Ibid, article 5.9


185 Ibid, p.5


188 Ibid


190 Ibid

191 Ibid, section 16

192 Ibid, section 16


195 Ibid; section 4(4)(a) to (i)

196 Ibid; section 4(4)(h)


198 Ibid; section 4(4)(e)

199 Ibid; section 4(4)(g)

200 Ibid; section 4(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

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Ibid, section 23(2)(a)-(c)

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

See: http://www.resourcegovernance.org/our-work/country/tanzania


Ibid, section 95(b)

Ibid, section 96

See: http://portal.mem.go.tz/map


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.”

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.


G.N (Government Notice) 405 of 2010 (not available on line, copy in the author’s file)

Ibid, article 7

Ibid, article 8

Ibid, article 9

Ibid, article 10

Interview with Dr. John Jingu, University of Dar es Salaam, October 2015.


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.

Natural Gas Policy, article 2.1.

Natural Gas Policy of Tanzania, article 2.4.2 (c).

Natural Gas Policy of Tanzania, article 2.4.2 (h)


Natural Gas Policy of Tanzania, article 3.1.7.

Natural Gas Policy of Tanzania, article 3.1.8.

Natural Gas Policy of Tanzania, article 3.2.1.

Natural Gas Policy of Tanzania, article 3.2.3.

Natural Gas Policy of Tanzania, article 3.1.7.

The document was finalized in October 2013.

See the official website of BG Group Tanzania, available at: http://www.bg-group.com/324/where-we-work/tanzania/operations/

The Scholarships are named after BG Group Plc, a British multinational oil and gas company with operations in Tanzania.

See Ten Tanzanians to begin Oil, Gas studies in the UK, the Guardian, available at http://www.ippmedia.com/frontend/?i=71773
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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.


241 See article 223(4)(a) and (c) of this 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.


244 See for example: https://www.csrm.uq.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.


248 See https://eiti.org/news/tanzania-ensacts-eiti-legislation

249 See 3.11.1 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.”


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.


256 The policies are the Energy Policy and the Natural Gas Policy discussed above.


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.

261 See 67(l) of the Petroleum Act 21 of 2015.

262 See Section 221 and 222 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 an application for a petroleum development license.

264 Section 111 of the Petroleum Act.


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&format=template%3Dmainlabel%3D-2D%2Fsearchlabel%3Dmore-
20 contracts...%2Ftemplate%3DCountryBody%2FIntrotemplate%3DCountryHeader%2FOutrotemplate%3DFooter&coter%3FContractType%3FOA%3FHostGovernmentContract%3FOA%3FLocalStoreURL%3DPlain%3A. 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.


27. Ibid. p. 13
27. See the long title to the Act, supra.
27. See section 18 of the Act.
27. See Section 18(4).
27. See Section 18(7).
27. 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/30091264
28. 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..."
29. Ibid.
29. See the vision of the Tanzania Minerals Audit Agency (TMAA), available at: http://www.tmaa.go.tz/tmaa/about/category/aim_mission_vision

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The Law came to force following presidential assent in August 2014. However, implementing regulations are yet to be formulated.

See the long title to the Tanzania Extractive Industries (Transparency and Accountability) Act.

Section 15 of the Tanzania Extractive Industries (Transparency and Accountability) Act.

Section 172(1), ibid. See section 5(4) of the Tanzania Extractive Industries (Transparency and Accountability) Act.

This is however possible through the slots provided for CSOs, but the law should have provided expressly.

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.”

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.”


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.


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.

See section 5(4) of the Tanzania Extractive Industries (Transparency and Accountability) Act. See section 5(2)(a) of the Tanzania Extractive Industries (Transparency and Accountability) Act. This is however possible through the slots provided for CSOs, but the law should have provided expressly.

The National Company established under section 8 of the Petroleum Act for the purpose of undertaking Tanzania’s commercial aspects in the petroleum.

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.

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.”

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.”


As of the writing of this Report, this was still under construction; see:

http://www.teiti.or.tz/contracts/


Available at: http://www.judiciary.go.tz/downloads/Constitution.pdf

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.”


Section 172(1), ibid.

Section 172(1), ibid.


Ibid., p.9

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

Available at http://polis.parliament.go.tz/PAMS/docs/3-1976.pdf

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.”


As of the writing of this Report, this was still under construction; see:

http://www.teiti.or.tz/contracts/


Available at: http://www.judiciary.go.tz/downloads/Constitution.pdf

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.”


Section 172(1), ibid.

Section 172(1), ibid.


Ibid., p.9

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

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.” 5.2 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.”


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.


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.”


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


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.


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


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


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

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


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End Notes

360 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)


362 See the list of recipients appearing here http://www.opengov.go.tz/files/publications/attachments/42ce1f924e4109662792110557d912.pdf


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

365 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/laa196719.pdf

366 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 covered by water.”

367 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.

368 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.

369 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).

370 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.

371 See the Land Acquisition Act of 1967.


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


376 Ibid.

377 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 November 2015.

378 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.

379 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-comes-to-a-standstill/-/1840392/1855832/-/ftpga1/-/index.html


381 Article 107(A) of the Constitution

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

383 Article 108 of the Constitution

384 See: http://www.tanzania.go.tz/home/pages/362

385 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_downloads/documents/02- 2002_LandDisputes%20Settlements%20Act%202002.PDF

386 See: http://www.nyulawglobal.org/globalalex/Tanzania.html

387 See: http://www.judiciary.go.tz/background-history/
108
See: http://eacj.org/?p=2221
See: http://www.achpr.org/instruments/achpr/ratification/
See section 102 to 105 of the Mining Act of 2010
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...”
See: http://www.achpr.org/communications/
See: http://eacj.org/?page_id=33
See: http://eacj.org/?p=2221
See: http://www.oecdwatch.org/filing-complaints
See: http://www.achpr.org/communications/
See: http://eacj.org/?page_id=33
See: http://www.oecdwatch.org/filing-complaints
See for example Section 243(4) of the Petroleum Act.
See: http://www.achpr.org/communications/
See: http://eacj.org/?p=2221
See: http://www.achpr.org/communications/
See section 102(2) of the Mining Act.
See Section 104 of the Mining Act.
See Section 104 of the Mining Act.
See: http://www.achpr.org/communications/
See: http://eacj.org/?p=2221
See for example Section 243(4) of the Petroleum Act.
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See for example Section 243(4) of the Petroleum Act.
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433 See: http://www.caomombudsman.org/cases/case_detail.aspx?id=113

434 Ibid


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/icoca-association,


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-P3Ep0O0Kid2ALGMTZL9MWopG-wqCzr9LVg4MdZwE&form_id=_search_for_members_filter_form#search_for_members_list

440 The United Republic of Tanzania, “The Tanzania Development Vision 2025”, available at: http://www.unesco.org/education/edurights/media/docs/061eb2ed52b81f1b09b25a8845438f9d5ae0ad.pdf


444 Section 29 of the Commission for Human Rights and Good Governance Act, no. 7 of 2001 provides, “The funds of the commission shall consist of moneys (a) appropriated by parliament for the purpose of the commission (b) accruing to the commission from any other source, or (c) which are donations or grants from sources within or outside the United Republic.


446 Ibid

447 See: http://www.nanhri.org


449 See: http://www.ihrb.org/focus-areas/kenya/


452 United Nations Guiding Principles, Principle 31

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.

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