

'Conducive environment' for development?: Globalization, national economy and the politics of plunder in Tanzania's mining industry

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INTRODUCTION

We live in a world transformed in ways that even the most brilliant of the 19th and early 20th century philosophers and political thinkers would find hard to recognize. The power and mobility of finance capital has created the conditions under which rapid scientific and technological change has taken place. This has in turn augmented this power and made it extremely difficult for the state to direct economic and social policy. Capital and foreign exchange controls have everywhere been scrapped; regulations which protected jobs, consumers and the environment; subsidies which benefited the lowest strata of both the urban and rural masses have all gone, as have trade restrictions meant to protect local industries and increase government revenue. These processes have now attained the sanctity of international law through the instrumentality of such institutions as the World Bank Group and WTO and its trade negotiation rounds that have produced GATS, TRIPs, etc. The frontiers of the state have indeed been rolled back.

These processes have produced a massive growth in international trade, foreign direct investment flows and unprecedented wealth. Yet they have not led to general prosperity across the world, particularly in poor countries such as Tanzania. On the contrary, general impoverishment comes as an integral part of a global economic order in which an ever-shrinking 'arrogant officer class', to use the phrase of an eminent British author, lives in affluence. On the other hand of the scale, however, an overwhelming majority of people live in permanent poverty, insecurity and are fearful for their jobs in an age of permanent 'downsizing', 'cost-cutting' and 'casualization.'

Even the benefits of growth in international trade, investment and general wealth have not been evenly distributed across the globe or even within particular economies. In a Masters thesis I submitted to the University of Warwick in England seven years ago, I argued that international trade and investment outflows remain overwhelmingly concentrated within the existing advanced economies. Three quarters of the total world overseas investment in the 1980s and 1990s were concentrated in the United States, European Union or Japan; while the ten most important developing countries (including the so-called 'Asian Tigers') accounted for a mere 16.5 per cent. The rest of the world received only 8.5 per cent and Africa got only one per cent of the total foreign direct investment of the multinationals in the mid-eighties! As I argued then quoting Hirst and Thompson (1996:68), "nearly two thirds of the world is virtually written off the map as far as any benefits from this form of investment are concerned." The situation as I described in 1996 remains pretty much the same or has indeed worsened in some respects.

Globalization thus produces pockets of fantastic wealth and power amidst vast seas of poverty and hopelessness between and within continents, regions, countries and societies. As John Kenneth Galbraith, one of the most prominent theorists of the 'affluent society' of the 1960s argues in a 1992 book, the wealth, comfort and economic well being of the small percentage of the population "is being supported and enhanced by the presence in the modern economy of a large, highly useful, even essential class that does not share in the agreeable existence of the favoured community.... (This class) is integrally a part of a larger economic process and serves the living standards and the comfort of the favoured community." Globalization has accomplished this by transforming and redirecting the state power towards serving the needs and interests of finance capital and the 'favoured community' and thwarting or curbing the needs and interests of the vast majority of humanity. The power and the role of the state has, therefore, not disappeared or even diminished. It has only been reconstituted and given a new mission statement. In other words politics and governance are still at the core of economic policy making.

I concern myself in this presentation to showing how the role of the Tanzanian state was transformed and redirected towards serving the needs and interests of the foreign corporate mining interests. In the process I show that the most important decision-making powers in relation to our country's natural resources have been taken over by international financial institutions that represent these interests. I also concern myself with showing how the transformation of the country's politics and governance has been central to opening up Tanzania's mineral sector to the foreign multinationals. I argue that loss of sovereignty over mineral resources has been the most troubling but least discussed aspect of the 'globalization' of Tanzania's mining industry. I also argue that the socio-economic dislocations and impoverishment of rural masses in mineral-rich areas; the gross human rights abuses and colossal environmental disaster that looms on the horizon are organic byproducts of this transformation.

HISTORY REVISITED

In a recent discussion paper on mining law reform in Tanzania, the Law Reform Commission of Tanzania reveals that during the industry's first five decades it was characterized by lack of interest from the big multinational operators.[1]

According to the Commission, corporate disinterest in Tanzania's mining potential had more to do with negative economic trends in the global metals exchanges than with internal policy or legislative arrangements. As the Commission amply demonstrates, this historical fact has been known for years in academic discourse. In policy debates, however, a myth continues to hold sway that the policy arrangements that ushered in dirigiste economic policies after the 1967 Arusha Declaration were responsible for 'scaring' the foreign investors away from Tanzania's mining industry.

The precious minerals sector in Tanzania has, therefore, historically been dominated by artisanal miners from the earliest days of colonial rule through the first three decades of independence. These miners carry out mining operations which are entirely self-financed using simple techniques and tools. Artisanal mining is particularly labor intensive. It thus provides employment and incomes to large numbers of people who are generally uneducated, poor and live in remote areas where no opportunities exist for formal employment. It is a largely poverty driven activity, typically practiced in the poorest and most remote rural areas of the country by a largely itinerant, poorly educated populace with little other employment alternatives.

Perhaps due to these factors than anything else, artisanal mining became a much-maligned activity during much of the first three decades of independence. It thus tended to operate in the peripheries of the official economy and was barely tolerated by officialdom. From the late 1980s through the early 1990s, however, it became one of the most important and dynamic sectors of the economy once the Government of Tanzania introduced a number of policy and legislative reforms beginning with the Mining Act, 1979.[2] The Act – described by the Law Reform Commission as “the turning point in the development of a comprehensive legal framework for the mining industry”- was the first framework mining legislation in post-colonial Tanzania and laid the legislative basis for the artisanal mining boom that characterized Tanzanian mining in the late 1980s and early 1990s. It also laid the legislative foundations for the corporate mining boom that began even before the new Mining Act, 1998[3] was even enacted into law. This merits deeper analysis. The 1979 Act made a distinction between rights that could be granted to large scale, mostly foreign, operators and the small-scale artisanal miners. Part III of the Act governed ‘Mineral Rights’, i.e. rights that could only be granted to individuals or companies whose operations involved “substantial expenditure (of finance capital) or the use of specialist technology.”[4] On the other hand, Part IV of the Act regulated the activities of, and conferred ‘mining rights’ to, persons whose mining operations did not involve substantial expenditure of capital or the use of specialist technology, i.e. artisanal miners. Section 69 empowered the Minister to set aside ‘designated areas’ and prescribe the minerals for the beneficial use of artisanal miners under the procedure provided therein. Between 1980 and 1996 successive ministers responsible for mining exercised their section 69 powers to set aside large areas countrywide for artisanal mining operations.[5] In addition, though mining rights were of a much shorter duration than Mineral Rights,[6] the 1979 Act expressly prohibited any grants of Mineral Rights in respect of areas that had been set aside for artisanal miners.[7] This analysis shows that by the time the much-heralded ‘Small Scale Mining Policy’ came into being in 1983, the legal basis for the artisanal mining operations was already firmly in place. It also shatters the notion widely held and often expressed by senior government officials and mining companies that artisanal miners operate illegally. This has in turn been used to justify forced evictions from their lands and rationalize the unprecedented human rights crimes that have been committed against the artisanal miners’ communities in recent years. We will return to this theme in later sections. Perhaps to justify the policy directions adopted in the latter part of the 1990s, the official position of the Government of Tanzania remains that “the contribution of the mineral sector to the national economy (prior to the reforms of the late 1990s) has been dismal.” This, however, is only partly true. As the Law Reform Commission shows, it is only the large-scale mining sector whose contribution to the national economy was dismal.[8] There is, on the other hand, ample evidence to show that the artisanal mining sector played an increasingly important role in the national economy from the late 1970s and particularly from the 1980s through the mid-1990s. Indeed, the growth in the mining sector that the Commission acknowledges[9] took place in the early 1990s came almost entirely from the artisanal miners. This is widely accepted in both academic and non-academic literature (CCM, 1992; Chachage, 1995a; Chachage, 1995b; ESRF and IBI, 1997; Phillips et al, 2001; Tanzania, 2002).

In a major study of Tanzania's precious minerals boom of the early 1990s, Phillips et al., provided statistics that estimated total mineral exports for 1996 alone at over US\$ 130 million.[10] Statistics from the government on the other hand, understated the total exports at only US\$ 16 million or slightly over 12 percent of the total estimated value. The study explained this huge difference in terms of the combined effects of smuggling and undervaluation on export declarations that characterized this period. As the study observed, “official statistics have shown substantial current account deficits for decades, combined with consistent budgetary deficits. One would expect Tanzania to have experienced hyperinflation and rapid currency devaluation in such circumstances, but that has not happened. Invisible exports of gold and gems go a long way to explaining why the real economy is healthier than the official statistics would suggest.”[11]

Artisanal mining also contributed enormously to job creation and poverty alleviation, particularly in rural areas. The studies cited above have, for example, estimated that at its height in the mid-1990s artisanal mining directly employed between 500,000 and one million people in the country. In addition, according to Phillips et al., secondary economic activities associated with it generated an estimated 3 jobs for every single one directly employed in mining. Thus, according to this study, the sector accounted for about 46% of the total middle-income jobs in 1995.

The basic income in mining towns was also estimated at about 6 times above what rural men could earn doing farm labour. “Moreover”, the study observed, “the money coming from artisanal mining appears to be staying local, greatly enhancing cash flow in isolated rural areas.” And while “splurging” after a rich find is commonplace, “not all of the income is going into the proverbial ‘wine women and song.’ Miners are building up capital to move up into a career ladder into brokering and dealing (and) some are investing in more stable business such as shops, restaurants and guesthouses.”[12] The inevitable conclusion was unequivocal: “No other sector or other job-creation programme has injected (more) dispersed incomes into the rural areas, stimulated (greater) cash flow and reduced rural poverty and on such a (larger) scale.”[13]

In an earlier study of the gemstone and gold marketing, ESRF and IBI had reached pretty much the same conclusion with regard to the contribution of artisanal mining sector to the national economy. Describing small-scale mining and related commerce as one of Tanzania’s “most significant economic activities in the decade since liberalization of the sector began”, ESRF and IBI stated that the rapid growth of mining had “helped the Tanzanian economy to survive the structural adjustment process and maintain a relatively healthy economy.”[14] The liberalization of mineral marketing also had “a major impact on Tanzania’s ability to create a sound macro-economic framework ... (and) appears to have had a strong positive effect on growth...” With an estimated US\$300 million in exports in 1995 alone, the study concluded that “the export income generated by minerals (exports) has stabilized the actual current account balance...” And although its estimate of the artisanal population was, at 200,000 people, much lower than subsequent studies have shown, the ESRF and IBI study noted nevertheless that artisanal mining had “generated employment and income rates never achieved in any other sector.”[15]

As the contribution of the artisanal miners to the national economy continued to grow, so did the official recognition of the sector. Thus in 1992 the ruling Chama cha Mapinduzi (CCM) party promised in its program for the 1990s that “small-scale miners shall be encouraged and supported with proper tools and markets for their products. ... Furthermore, steps that have already been taken to enable the small-scale miners to sell gold and diamonds to the central bank shall be maintained for their benefits to the nation have become much clearer.”[16] CCM would acknowledge this fact again six years later in 1998 when it concluded, in a critical self-assessment, that the growth of the mining sector in the early 1990s “came about as a result of the Government’s ... decision, through the Bank of Tanzania and its agents – the National Bank of Commerce and the Cooperative (and Rural Development) Bank, to start buying precious minerals from small-scale miners in April 1990.”[17]

It was during this period that the World Bank appeared on the Tanzania mining scene and eventually steered the country’s policy directions away from artisanal mining to corporate large-scale mining dominated by foreign multinationals. This is the subject of the next section.

ENTER THE WORLD BANK ...

As the Bank’s Operations Evaluation Department (OED) points out in a recent report, the Bank has been deeply involved in Tanzania’s economic policy making since the country’s independence in 1961. During the first two decades of independence, Tanzania, with active technical and financial support of the World Bank, pursued economic policies based on state control and ownership of the major economic enterprises. With regard to the mining sector, the government inherited almost wholly the legislative and policy framework that had been adopted by the British colonial state since the late 1920s that had emphasized strong state presence in the sector. By the mid-1980s, however, the Bank changed course and started to demand the adoption economic liberalization policies as a key condition for its continued support of the country’s economy.

A major pillar of the liberalization package that the Bank pushed was the opening of the Africa’s mineral resources to foreign investors. In a 1989 prognosis that Sub-Saharan Africa was moving away “from crisis to sustainable growth”, the Bank argued that large-scale investment in precious minerals was necessary if any meaningful development of the sector was to take place (World Bank, 1989). Blaming past policies it had helped create and sustain, the Bank observed that past experience in mining in Africa had been marked by stagnation and loss of markets, caused by low levels of private investment. Investors were, according to the Bank, scared away by government restrictions and controls, cumbersome regulatory procedures, punitive taxation arrangements and unstable macro-economic performance. As a result, the Bank declared, Sub-Saharan Africa had missed the benefits of the boom in the prices of precious minerals in the 1970s and 1980s. There was now a need to create an “enabling environment” for the mining industry, if the 1990s were not to be another “lost decade” for African countries! This “enabling environment” would usher in a new type of partnership between foreign mining companies that have the capital and the know-how, and the cash-strapped African governments. (ibid., 122) The Bank advised African governments to rethink their roles and their policies for the mining sector. It was not necessary for governments to take a significant stake in mining ventures, as “taking a minority interest ... is sufficient for governments to keep abreast of mine developments and protect national interests.” (ibid.) All that was required of governments was to create an enabling environment by reforming foreign exchange regimes, taxation policies, and provisions relating to repatriation of profits and the regulatory and institutional framework. The ever-generous Western donor community was allotted the role of financing specialized advisory services to help African governments negotiate “technically sound and fair mining agreements.” (ibid.)

In 1992 the Bank published its “Strategy for African Mining” technical paper. The Strategy went even further in urging African governments to open up their mineral resources to penetration by, largely, Western multinational corporations and finance capital. The aim was crystal clear: “Overall, the main objective of donor intervention in African mining – whether through technical assistance or investment financing – should be to facilitate private investment and help reduce the country and project-related risk for the private investor.” Poignantly, the Strategy specifically advised African governments against using mining as a potential source of employment creation. Investors in the sector “should not be obliged to use or be offered incentives to use employment-increasing techniques.” Rather, tax revenue from mining should be invested in employment-creation initiatives in other sectors of the economy. (World Bank, 1992:28)

With regard to Tanzania, the Bank’s “intellectual leadership” of the country’s mineral policy-making began from very early on. In September 1990 the Bank published a Mining Sector Review for Tanzania.[18] This Review and the 1992 Strategy paper set the tone for the Mineral Sector Development Strategy for Tanzania that was implemented as the Mineral Sector Development Project of the Ministry of Energy and Minerals beginning in 1993. The Strategy and the Project would set as its order of the day, the subsequent review of the country’s policy, regulatory and fiscal framework for the mining sector. As part of this review, a Bank consultant was hired to carry out “an extensive analysis of the Tanzanian small-scale mining sector and ... provide a proposed plan of action towards the end of the year (1997).” That same year saw the adoption of a new National Mining Policy (NMP) by the Government of Tanzania. As the Law Reform Commission observes, the NMP was adopted with a “strong guidance and fiscal support of the World Bank” and its sole objective was “to place the mining sector in the hands of international capital”![19] The NMP apart, the World Bank also played a prominent role in the drafting of the law to implement the Bank’s mining agenda in the country. According to Canadian diplomats who closely followed these developments on behalf of Canadian mining interests, the Bank financed the British and Tanzanian consultants who drafted the new Mining Act enacted into law in 1998.[20] The British consultants hired by the Bank for this purpose were Messrs. Transborder Investment Advisory Services Ltd., an investment advisory firm based in the City of London.[21]

This evidence suggests that the governance of Tanzania’s mineral sector and the ‘ownership’ of the country’s policy-making processes with regard to the sector increasingly shifted away from the hands of the Tanzania government and onto the hands of the World Bank. The latter not only diagnosed the disease and prescribed the medicine it also hired the physician to administer that bitter pill! And as we all know, the Bank’s prescriptions are never mere advice to our policy makers. Behind every such advice there are all sorts of conditionalities and economic blackmail that governments of poor countries like Tanzania can ill-afford to ignore. And so it came to pass that the government of Tanzania adopted the Bank’s recommendations lock, stock and barrel. This is evident from the three new pieces of legislation that came in quick succession during this period. These are examined below.

... AND THE SHIFT TOWARDS FOREIGN INVESTMENT

The first new legislation to come out of these processes was the Tanzania Investment Act, 1997[22](hereafter “the Investment Act”). As its preamble makes clear, this Act was enacted in order “to provide for more favourable conditions for investors.” This is done with extraordinary generosity. The investors are, for instance, given very generous ‘incentives’, which term is defined by the Act as “tax reliefs and concessional tax rates which may be accessed by an investor under the Income Tax Act, 1973, the Customs Tariff Act, 1976 and the Sales Tax Act, 1976 and any other law for the time in force.”[23] The said tax reliefs and concessional tax rates “shall not be amended or modified to the detriment of the investors enjoying those benefits” under this Act.[24] In other words, the government cannot, under any circumstances, raise any tax, royalty or charge currently payable by the investor or impose new taxes and other fiscal imposts or lift any waiver or immunity from taxes that investors may enjoy at any given time. This is, allegedly, done “for the purposes of creating a predictable investment climate”![25]

There are other generous benefits. For example, the investors are guaranteed “unconditional transferability” through any authorized dealer bank in freely convertible currency of net profits or dividends; payments in respect of loan servicing; royalties, fees and charges in respect of any technology transfer; remittances of proceeds in the event of sale or liquidation; and payment of salaries and other benefits to foreign personnel employed by the investor.[26] In lay language ‘unconditional transferability’ means the investors are at liberty to repatriate outside Tanzania 100 percent of whatever profits and related income they make out of the country’s mineral wealth and in freely convertible foreign currency. There are, in addition, other benefits. Firstly, the investors are afforded significant protections against expropriation, nationalization or compulsory acquisition by the government.[27] Secondly, the investors are given an automatic immigration quota of up to five foreign employees during the start up period.[28] This immigration quota can be raised with the authorization of the Tanzania Investment Center after consultation with the Immigration Department.[29]

The Investment Act expressly excludes foreign investment in the mining sector or oil exploration, production or transportation from its application.[30] Nevertheless, investors in the mining sector or oil production are entitled to all the benefits, entitlements and protections afforded to all other investors that we have set forth above. According to section 2(3) of the Act, “the provisions of Section 21 which relates to guarantees of transfer of capital, profits and dividends and Section 22 which relates to the guarantees against expropriation, shall apply to any business enterprise which holds a mineral right granted under the Mining Act, 1979...”

By far the most important fiscal legislation to be enacted specifically to protect foreign investors in the mining sector from payment of taxes is the innocuously named Financial Laws (Miscellaneous Amendments) Act, 1997[31] (hereafter “the Amending Act”). Perhaps to make it hard for people to understand the true import of this Act, its title and the very short preamble – “an Act to amend certain Financial Laws” – sound innocent enough. Its substantive provisions are, however, anything but innocent. These provisions implement almost all the conditions that the World Bank had demanded of African governments in both its 1989 prognosis and the 1992 Strategy for African Mining technical paper. This is done by way of wide ranging amendments of the taxation laws enacted in the early 1970s to remove or significantly reduce the tax liability of the investors in the mining sector. For instance, as part of the wide-ranging amendments to the Income Tax Act, 1973 a whole new Part III was inserted for the specific purpose of making “deductions in respect of mining operations.” The import of this new addition is to reduce or remove a wide variety of taxes on incomes, profits, dividends, fees, etc. that investors in the sector would otherwise pay to the government. The Amending Act also made significant amendments to the Customs Tariff Act, 1976, removing or substantially reducing the liability for payment of customs duties for importation of explosives, fuels, lubricants, industrial items and other supplies, machinery, vehicles and other capital equipment and spare parts used in mining operations.[32] Equally amended was the Sales Tax Act, 1976, whose new section 4A exempts foreign investors from payment of sales tax on explosives, fuels, lubricants, industrial items and other supplies, machinery, vehicles and other capital equipment and spare parts imported for use in non-chargeable mining operations. The Amending Act defines “chargeable mining operations” as mining operations whose output is not substantially exported and that takes place after the first anniversary of the commencement of commercial production. Non-chargeable mining operations that are exempted from payment of sales tax are, therefore, those operations that produce minerals for export. All major new mines that have opened up in the past decade fall under this category. In other words minerals produced for the local market such as salts, building materials or coal are all subject to payment of sales tax while gold, diamonds and gemstones that are exported are exempted from taxation.

In line with the World Bank injunction that African governments should not look towards the mining industry for employment creation, the Amending Act also amended the Immigration Act, 1995 to remove restrictions on employment of non-citizens in the mining sector. Thus whereas, as we have seen, all other investors have to make do with an initial automatic immigration quota of up to five persons during the start up period of their ventures, “the immigration quota in respect of mining and petroleum operations shall be determined by the investor depending on the nature of the operations.”[33]

To understand the true import of the above provision, one has only to look at the employment statistics given by Minister for Energy and Minerals Daniel Yona during his recent budget speech for the fiscal year 2003-2004.[34] According to Minister Yona, the number of foreign workers employed by the six major mining companies[35] has risen from 12 in 1997 to 1197 in 2002. This represents a whopping 9375% increase in six years with an annual increase of some 1562.5 percent! By contrast, during the same period the employment of Tanzanian workers increased from 1769 workers in 1997 to 5885 in 2002, a rather modest increase of about 233 percent in six years or about 39 percent annually. Minister Yona’s figures also show that foreign workers made up about 17 percent of the total workforce in those six major mines. The Mining Act, 1998[36] (hereafter “the 1998 Act”) finished the legal architecture under which Tanzania’s mineral wealth has been handed over to foreign mining monopolies. The Act makes it far easier for foreign investors to gain access to, and complete control of, Tanzania’s mineral resources. Under this Act, for example, holders of Mineral Rights are entitled to exclusive right of ownership of the mining operations and the minerals recovered as well as complete power to dispose of the said minerals recovered.[37] In addition, the Act entitles the foreign investors with a right to assign or otherwise transfer Mineral Rights or a portion thereof to any other person.[38] Even though this right appears restricted by the requirement for a written consent to be given by the Minister prior to the assignment or transfer taking effect, evidence available suggests that foreign investors have been transferring Mineral Rights without any problem. The 1998 Act also makes fiscal provisions for foreign investors. Firstly, the Minister is given wide discretionary powers to enter into ‘development agreements’ with the investors relating to, inter alia, the financing of mining operations under a special mining license.[39] These agreements may “contain provisions binding on the United Republic ... which guarantee fiscal stability of a long term mining project ... with respect to the range and applicable rates of royalties, taxes, duties, fees and other fiscal imposts and the manner in which liability in respect thereof is calculated....”[40] Secondly, the Act sets the amount of royalty on the net back value of minerals that the government receives from the foreign investors at 5 percent in the case of diamonds and 3 percent in the case of other minerals.[41] And in terms of section 87, the Minister is obliged to defer the payment of even this meager amount upon application by the investor that “the cash operating margin” of his operations has fallen below zero!

The 1998 Act also streamlines decision-making processes regarding the allocation of mineral concessions by concentrating considerable powers in the hands of the Minister and other government bureaucrats. However, it offers investors significant protections against bureaucratic red tape by imposing significant limitations of time within which the bureaucrats are required to act on applications for mining concessions.[42] It further shields foreign investors from local or national scrutiny by divesting local and national institutions of powers to deal with disputes between the government and the investors.[43] It also seeks to shield investors from having their operations challenged in courts of law by local communities by giving the Commissioner of Minerals powers to decide on disputes between the investors and local communities.[44] And although the Act provides for mandatory requirements for preparation of environmental impacts

assessment (EIA) and environmental management plans (EMPs) for almost all mining undertakings, there are significant loopholes. For example, the Minister may exempt, in terms of section 64(2), an applicant for a mining license or gemstone mining license from the mandatory requirements to commission and produce an EIA or EMP.

THE FLOODGATES FOR PLUNDER OPENED!

It is the enactment of these three statutes more than any other that has been responsible for the transformation of the mining sector in Tanzania from its predominantly artisanal, small-scale base to the large-scale industrial operations currently in place in the goldfields of Northwestern Tanzania. That this legal and fiscal architecture has been extraordinarily generous to foreign investors is widely acknowledged abroad, particularly in the countries of origin of the foreign investors. For example, a recent survey of mining regulation in Africa that was published by the British-based industry magazine Mining Journal had this to say with specific regard to Tanzania:

“A new mining code was introduced in Tanzania during 1998 following a five-year World Bank-financed sectoral reform project.... Tanzania has taken steps to create a policy environment that is highly attractive to foreign investors. It allows 100% foreign ownership, provides guarantees against nationalization and expropriation, and offers unrestricted repatriation of profits and capital. As with Mali and Guinea, the revised mining code offers a low royalty rate of 3%, as well as a variety of incentives such as waived import duties and tax exemptions. Whereas the previous 1979 Mining Act required applicants for mining licences to present a plan for local procurement of goods and services, such a stipulation is entirely absent from Tanzania’s 1998 Mining Act.”

The foreign investors and industry magazines such as the Mining Journal have very good reasons to be that upbeat about their prospects for profit maximization in Tanzania. According to statistics provided by Minister Yona in his budget speech, in the five years between 1997 and last year, the six foreign mining companies mentioned earlier earned a total of US\$ 895.8 million from exporting gold, tanzanite and diamonds out of Tanzania. During the same period, the companies spent the grand sum of US\$ 86.8 million in government taxes and royalties and other charges. This represents less than 10 percent of the revenue that the six mining companies made out of our mineral wealth. The companies spent another US\$19.9 million and US\$6.98 million on community development projects and training of workers respectively. The latter figures are astonishingly small considering the deafening brouhaha the companies have made about their financial support for community development projects and their workers welfare!

These figures suggest that the Tanzanian economy lost US\$782.12 million net in those six years as a result of the policy and legal reforms under which foreign mining interests have gained control of our mineral resources. More ominously for those who harbour the mistaken belief that these companies will start contributing more meaningfully to government coffers and to the national economy at some unspecified time in future, Minister Yona’s Bunge speech reveals that the Tanzanian Government has “tax stability” agreements with these investors under which the government will not upwardly revise taxes or royalties payable to it during the “full project life” of the mining operations!^[45] We are too poor a nation to afford this reckless pandering to the rich foreign mining multinationals and the resultant hemorrhaging of our natural wealth and badly needed resources.

Worse yet, evidence exists that suggests that the mining ‘investors’ have made hundreds of millions of dollars out of our precious minerals even where they have not made any meaningful investment to develop the mineral deposits. They have accomplished this by simply exercising their rights under both the 1979 Act and the 1998 Act respectively to assign or transfer Mineral Rights to other foreign investors. For example, according to a 1999 article in a leading Canadian newspaper, Samax Gold Inc. of Vancouver, Canada – whose Tanzanian subsidiary Samax Resources did not pay a penny in compensation to thousands of local small-scale miners who were violently ejected from the Lusu gold deposits in Nzega District in September 1996 - later sold the Lusu deposits to Ashanti Goldfields for US\$213 million in a deal struck on September 1, 1998.^[46] Ashanti Goldfields for its part presumably sold the area for an unspecified sum of money to Australia’s Resolute Mining Ltd. The latter spent US\$45 million to build the Golden Pride Mine, according to an industry magazine.^[47]

For that investment Resolute, according to the former minister of Energy and Minerals Abdallah Kigoda’s budget speech in 1999, produces about 180,000 ounces of gold (about 5.4 tons) annually, valued at US\$ 50 million.^[48] Information available on Resolute Australia’s website shows that by 2002, Resolute had produced some 650,000 ounces of gold worth approximately US\$180 million in the four years since the Mine was opened in November 1998.^[49] A quick calculation of the amount payable to the government on the basis of the 3 percent royalty charge reveals that the Tanzanian government would have “benefited” by getting a mere US\$ 5.4 million during that period! The amount received by the government may indeed be much lower than that if, as we have seen above, deductions are made on construction and operating costs as is required under the fiscal regime created under the Amending Act.

Lusu is not alone in this sense. In a March 1999 deal, another Vancouver-based ‘investor’, Sutton Resources - who violently drove out the hundreds of thousands of the Bulyanhulu communities in August 1996 - sold the Bulyanhulu deposits to Barrick Gold Corp. for US\$280 million. Barrick Gold Corp. later built the Bulyanhulu Gold Mine and expects to rake in revenue of about US\$3 billion during the fifteen years expected lifespan of the Mine. According to the Multilateral Investment Guarantee Agency (MIGA), a private sector insurance arm of the World Bank that has provided over US\$172 million in political risk guarantees for the Canadian investors in Bulyanhulu, Tanzanian government will receive US\$5 million annually in royalties, taxes and other charges!

And for its labours in Nyabigena and Nyabirama areas in Tarime District, Australia's East African Gold Mines Ltd., have recently made a handsome US\$252 million from the Canadian giant Placer Dome out of an investment of about US\$90 million in building the Afrika Mashariki Gold Mine.[50] Out of these multi-million dollar deals between the foreign investors, neither the Tanzanian government nor the local peoples in the areas concerned ever received a single penny even though the gold is found underneath the Tanzanian soil.

Even the official government statistics themselves attest to the fact that the nation is getting a raw deal from the mining investors. For example, according to statistics given by minister Yona during his 2002/2003 budget speech, whereas mineral exports earned US\$312 million during the year 2001, the contribution of the sector to the national economy (GDP) had grown by a mere 1 percent in five years reaching to 2.5 percent in 2001 from 1.5 percent in 1996![51] Likewise, the Poverty and Human Development Report for the year 2002 published by the government shows that mineral production has increased dramatically in the past few years. "Recovery of diamonds increased from 25,500 carats in 1994 to 354,400 carats in 2000, nearly a 15-fold increase. Similarly, gold had a dramatic increase of over 400 percent ... (between) 1994 (and) ... 2000."[52]

The quantity of gemstones, the Poverty and Human Development Report shows, also increased by more than 200 percent during the same period; while minerals accounted for some 39 percent of total exports and 55 percent of non-traditional exports in 2001. Furthermore, the number of prospecting and mining licenses increased from 235 in 1996 to 389 in 1998, an increase of over 65 percent. Notwithstanding these impressive figures, the Poverty and Human Development Report provides a very gloomy assessment of the contribution of the sector to the national economy: "Despite this growth", says the Report, "the share of mining in GDP is still small at 2 percent.... Economic linkages between mining and the rest of the economy, including through the government budget have been limited.... The tax/royalty incentives ... have so far resulted in limited tax revenues, though clearly, increased export earnings have been generated. Some observers believe that the new large-scale mining concessions leave very little value added in the country.... Secondly, direct employment effects have been constrained by the inadequacies of local skill capacity." In a footnote to this analysis, the Report finds fault with the fiscal arrangement in the mining sector: "Foreign mining companies in Tanzania are given up to 5-year tax holiday at the beginning of production, pay to the Tanzanian government a royalty fee of only 3 percent of the value of their mineral output, and thereafter are free to take out of the country 100 percent of their profits. Most of their mining equipment is also not taxed." With the exception of the tax holiday which they got wrong, the rest of the findings and conclusions of the Poverty and Human Development Report are in all fours with the evidence we have presented herein.

We conclude this part by recalling the words of Michael Moore, a highly acclaimed American satirist, when analyzing similar developments in the United States: Each year in the US, "freeloading corporations grab nearly \$170 billion in tax-funded federal handouts to help them do things they should be paying for themselves...." According to Moore, this 'Aid to Dependent Corporations' comes in a variety of forms but principally through outright cash payments, extraordinarily generous tax breaks and exemptions as well as governmental goods and services at low or no cost. It is clear that the conditions that created these 'corporate welfare mothers' and industry 'fat cats' are no longer confined to the shores of their home countries. African countries such as Tanzania appear now to have been successfully 'educated' on the virtues of globalization and have adopted similarly "conducive environment" for courting the corporate suitors. The country has nevertheless paid a staggering cost in terms pervasive impunity, bribery and corruption and egregious human rights abuses as the reality of the situation at Bulyanhulu amply testifies.

BULYANHULU AND THE TRUE COST OF 'DEVELOPMENT'

As the Tanzanian press has reported over the years, the advent of foreign investors in the sector has led to the forced and violent evictions of potentially hundreds of thousands of artisanal small-scale miners from their lands and settlements. In Bulyanhulu alone, according to extant press reports, an estimated 200,000 to 300,000 artisanal miners were dispersed from the area in the aftermath of bloody events that preceded the takeover of the area's gold deposits by Canadian investors in August 1996.[53] These estimates are broadly supported by similar estimates in project documents prepared between 1998 and 2000 by Kahama Mining Corporation and Barrick Gold Corporation of Toronto, Canada who are current owners of the Bulyanhulu Gold Mine.

According to the latter estimates, prior to the 1996 evictions, there probably were about 20,000 people directly employed in small-scale mining activities. Many thousands more were employed in auxiliary economic activities associated with artisanal mining. Together with dependents, the total population came to potentially hundreds of thousands. As Barrick's project documents argue, although no records were kept of the number of artisanal miners, associated entrepreneurs and 'opportunists' who were living and working at Bulyanhulu prior to the 1996 evictions, "estimates range between 30,000 and 400,000." This population created an economic boom for the area. As Barrick's project documents readily admit, as a result of the artisanal mining operations, "the lives of the majority of the people in Kakola and the whole of Bugarama Ward became closely linked to mining activities at Bulyanhulu." Such was the boom that "significant sums of money spent in local villages, various markets and businesses also greatly stimulated the development of a local cash economy. There has been a significant decline in such benefits since the departure of the artisanal miners."[54]

Equally significant are the candid and forthright admissions about the positive socio-economic conditions pertaining to small-scale mining operations and the negative consequences of their expulsion. A few quotations from these documents may not be out of place here: According to one project document, “the artisanal mining activities had the positive effect on local households of providing additional income-earning opportunities, increasing disposable income and the number of income generators, and improving services such as transportation and shops....” Likewise, “... it is believed that before the closure of small-scale mines, the average income in the study area was the highest in the Shinyanga region. These have fallen since the closure of small-scale mining.”[55]

Elsewhere in its documents, Barrick has drawn similar conclusions on the socio-economic conditions subsequent to the evictions: “The closure of small-scale mining had a major negative effect on economic activity, population and social development, which has been felt beyond the immediate mining area.” Likewise, “the closure of illegal small-scale mining activities and related works at Bulyanhulu had an extensive impact on the socio-economic aspects of local people’s lives. The mine was a source of income to a majority of people ... and made life different for many. (These economic (activities) stopped after the closure.” [56] Yet another report makes the same conclusion that “after cessation of artisanal mining at Bulyanhulu in August 1996, the income of the majority of people declined significantly, the populations in Kakola and other villages in the Ward of Bugarama decreased, and services either decreased or disappeared.”[57]

To understand the enormous tragedy that befell the Bulyanhulu area after the Canadians took over, we can only quote a Communications Officer from the Multilateral Investment Guarantee Agency (MIGA) of the World Bank who told a Canadian journalist in August 2001 that, “after the forced eviction of April (sic!) 1996, the project sponsors were left with 56 families to resettle; 40 on the site of the proposed townsite, and 16 on the site of the proposed tailings disposal area.” And this is aside from the massive evidence of murder and mayhem that occurred there that has been widely reported by the local and international press and that the government and the investors have consistently refused to have independently investigated.

It seems, therefore, that there is sufficient basis for our proposition that the Bulyanhulu Gold Project has undermined the real national economic interests of Tanzania. It has also sabotaged the national poverty alleviation goals in that rather than leading to an improvement in the social and economic conditions of the Bulyanhulu communities and the nation as a whole, it has in fact intensified poverty and socio-economic malaise of the area and the country as a whole. Nor is Bulyanhulu the only area to have seen such massive and violent displacement of thousands of artisanal miners and local peasant population to make room for the international fortune hunters. Indeed, in many ways Bulyanhulu created a violent precedent that has since been replicated elsewhere in the mineral-rich areas of Tanzania.

A VIOLENT PRECEDENT

Massive upheavals have occurred and continue to occur in the mineral rich areas of Tanzania in the period following the bloody events at Bulyanhulu. For example, according to the ESRF study cited earlier,[58] about 30,000 artisanal miners were removed in 1998 and 1999 when the construction of the first two modern gold mines began at Nzega and Geita respectively. Furthermore, press reports have continued to report on the yet unresolved conflict between a South African gemstone mining firm AFGEM and thousands of small-scale miners at Mererani in Arusha. The conflict often leads to bloody confrontations between the artisanal miners and private security guards employed by AFGEM.[59] And when that happens the government and its law enforcement agencies are often too eager to make sure that the law does not take its course with regard to the offending investors.[60] Now we know from recent press reports that a government commission of inquiry headed by the former chief of the Tanzanian armed forces had recommended that tanzanite mining and marketing should be left to artisanal miners and big corporate players such as AFGEM should be kicked out of the industry.[61] The report of that commission has not been made public over a year after the commission was first appointed.

There is yet another conflict pitting over 50,000 small-scale miners in Mwabomba area in the newly created Bukombe District of Shinyanga Region and a British mining company called Twigg Gold Exploration Ltd.[62] The latter company has been granted Mineral Rights over the Mwabomba gold deposits that small-scale miners discovered and thousands of them moved into the area following the bloody events at Bulyanhulu in August 1996. By the end of October 2001, newspapers were giving dire warnings of the “Sword of Damocles that was hanging over Mwabomba small-scale miners due to the designs of the British gold diggers and their friends in the high circles of the government.[63]

Further north in Tarime District of Mara Region, over 10,000 villagers and artisanal miners from the Nyamongo area were rendered homeless when the Australian-owned Afrika Mashariki Gold Mines Ltd., set up shop at Nyabigena and Nyabirama areas with the generous assistance of Tanzania Government’s Field Force Units in August 2001.[64] Several local landowners and artisanal miners were shot and grievously wounded during that armed operation to ‘pacify’ the restive local population. Today the Australian investors are directly funding the stationing of a permanent FFU force in the area whose sole objective appears to be to terrorize the local population into submission. Therefore, to paraphrase a correspondent in a September 1996 article, hell has always broken loose whenever and wherever foreign investors have entered the mining areas previously occupied and worked by citizen small-scale miners.

SECURITY OF LAND TENURE UNDERMINED

Modern large-scale gold mining operations, characterized as they are by strip or open cast mining techniques, require vast quantities of natural resources such as land, water and forests. To be profitable they thus require vast areas of land. For example, at about 52 sq. km., Barrick's Bulyanhulu operation is considered a rather small, if extraordinarily rich, concession. Barrick's other concessions in Tanzania cover about 7200 sq. km swathe of land south and south-west of Lake Victoria. Barrick is not alone in getting huge pieces of real estate in the country. Tan Range Exploration Corporation, another Canadian outfit holds some 4500 sq. km. of mining concessions in the same region, according to Jim Sinclair, its Canadian owner who also happens to have been the former chairman of Sutton Resources. On the other hand, the Geita Gold Mine owned and operated by AngloGold Ashanti - the new giant created by the recent merger of AngloGold and Ashanti Goldfields - is located inside a 220 sq. km. concession in Geita District.

This hiving off of large tracts of land to corporate mining interests has been going on since the mid-1980s when the shift towards opening up the country's mineral resources to foreign investors began. Thus in 1985, then Minister of Energy and Minerals Al-Noor Kassum removed the 417sq. km. Rwamagaza area; 1035sq. km. Geita area; 2500sq. km. Musoma area; 2403sq. km. Iramba-Sekenke area; and 605sq. km. North and East Mara area from the designated areas category they had been since 1980.[65] The move opened up the said areas to foreign gold prospectors.

The grant of mineral rights over such huge tracts of land has meant that the land is removed from other uses such as farming and livestock keeping. This not only has undermined food production and increased poverty, it has also led to the serious land tenure and land use conflicts with the thousands of local communities that have traditionally owned and utilized the lands and resources therein. No wonder the provisions in respect of land tenure issues were the subject of a lengthy and bitter debate in the National Assembly when the Bill for the 1998 Act came for legislative scrutiny in April 1998.[66] As the parliamentary record amply shows, many Members of Parliament were worried by the increased land-grabbing by the Government on behalf of foreign mining interests and the consequent intensification of tenure conflicts. To quote then Minister for Energy and Minerals Abdallah Kigoda: "Honorable Members were worried that should this Bill be left as it presently is it will lead to eviction of people from their lands and thus lead to land conflicts as is happening in South Africa, Australia and Zimbabwe right now."

Although Minister Kigoda dismissed the MPs worries,[67] even he could not but be aware of the rising discontent and conflicts in numerous mining areas in the country: "... Honorable Members have expressed concerns that the Bill would exacerbate land tenure conflicts in mining areas as in Kahama, Nzega, Geita, Korogwe and Mwadui." Although the minister played down the significance of land ownership as the source of the conflicts, he nevertheless admitted that artisanal mining was central to understanding the conflicts in these mining areas. It is out of these concerns that the Mining Bill that was sent to Parliament for enactment retained virtually unchanged the significant protections afforded to landholders under the 1979 Act.[68] In Minister Kigoda's rather optimistic assessment, these provisions were intended to "... prevent holders of mineral rights from entering into people's lands without their consent..."

There, indeed, are under the 1998 Act significant restrictions on the right of entry of holders of mineral rights into areas they intend to carry on mining operations. Thus under section 95(1)(b), the holder of mineral right "shall not exercise any of his rights under his licence or under this Act ... except with the written consent of the lawful occupier thereof, in respect of any land which is the site of, or which is within 200 meters of any inhabited, occupied or temporarily unoccupied house or building." Written consent is also mandatory in respect of entry into any land within 50 meters of land which has been cleared or ploughed or otherwise prepared in good faith for the growing of agricultural crops or upon which agricultural crops are growing;[69] or any land which during the year immediately preceding, agricultural crops have been reaped.[70]

There are further restrictions on the right of entry. The holder of a mineral right is, for example, prohibited from entering any land except with the written consent of the lawful occupier thereof in respect of any land within any township, registered village or demarcated settlement except with the written consent of holders of surface rights and of the responsible Minister or the authority having control over the township, registered village or demarcated settlement.[71] Restrictions on the right of entry also extend to entry into any street, road or highway or any land within 100 meters of any street, road or highway, etc. Here the written consent of the responsible Minister or of the authority having the control of the street, road or highway is required.[72]

Even where consent is lawfully obtained, the holder of mineral rights is duty-bound to exercise his rights reasonably so as not to affect injuriously the interests of any owner or occupier of the land over which those rights extend.[73] And where in the course of prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the registered holder of the mineral right by virtue of which the operations are carried on, is liable to pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier in the property concerned.[74]

The issue of payment of compensation featured prominently in the parliamentary debates when the Bill for the 1998 Act came up for debate in the National Assembly. Given the propensity of the mining activities to evict local communities from their lands without fair and adequate compensation, many Members of Parliament had demanded that compensation should include express provisions for resettlement cost. These demands, though accepted by the Government as reasonable, were however not included in the final Bill which was enacted into law.[75] They have,

however, been enacted as subsidiary legislation under the Village Lands Act, 1999 that became law the following year.[76]

As a saying goes, the taste of the pudding is in the eating. The efficacy of any legal protections is ultimately in the actual practice of enforcing those protections. It is here that we find Minister Kigoda's optimism about the land tenure protections under the 1998 Act rather farfetched. As we have seen, the 1979 Act had similarly worded provisions. These, however, did not prevent the Tanzanian state from using force to evict hundreds of thousands of rural people in mineral-rich areas of Tanzania while at the same time invoking the authority of the 1979 Act! Indeed, as we have seen, since the 1998 Act was itself enacted into law, many thousands more have been brutally evicted from their lands and settlements; numerous lives lost, livelihoods and property expropriated or destroyed and local economies devastated. Human rights abuses have thus been rampant, with utter disregard for the rule of law and legality the norm rather than an aberration.

CONCLUSION: A SUMMONS TO ACTION

In June of 2002 the leaders of the seven richest countries plus Russia met in the seclusion of Kananaskis Resort high in the Canadian Rockies to discuss, among other things, a proposal called the "New Partnership for Africa's Development" (NEPAD). A \$64 billion plan for African development, NEPAD had been sold to the G8 leaders by a small group of African leaders led by South African President Thabo Mbeki at the previous G8 Summit in Genoa, Italy. It's a development strategy for Africa that relies on deepening current macro-economic and governance "reforms" that seek to further open up the continent to foreign direct investment (FDI).

The central idea of NEPAD is to spend aid dollars to effect these reforms. FDI will take care of the rest. With regard to the mining sector, NEPAD proposes to ... create a regulatory framework conducive to the development of the mining sector; and establish "best practices" that will ensure efficient extraction of natural resources and minerals of high quality. To achieve these objectives it is proposed that African countries ... harmonize commitments to ensure reduction in the perceived investment risk in Africa; and harmonize information sources on business opportunities for investment. In other words, NEPAD presents as "new" precisely those policy prescriptions that have been applied without exception in almost all African countries at the behest of the multilateral financial institutions dominated by the same G8 countries since the mid-1980s and throughout the 1990s. And, as I have argued in this presentation using the experience of our own country, these policies have caused massive socio-economic upheavals and human rights abuses on a staggering scale, while their development benefits for the local population and the nation are far from clear.

But in an otherwise candid examination of its four decades of involvement in Tanzania's economic policy, the World Bank's OED claims that wherever the Bank has put its focus in Tanzania, "the outcomes have improved." That its assistance for the country "has improved in relevance and in the process has allegedly helped to generate substantial institutional development." [77] It seems obvious from the foregoing analysis that whatever "improvement in outcomes" or "relevance" the OED has in mind, it is certainly not in the sphere of human rights and social responsibility of the corporate mining sector. There does not appear to be any improvement in the country's economic "outcomes" either, for the Bank itself admits that after almost four decades of its Tanzania strategy "... the best available estimates suggest that per capita income today is certainly no higher than it was four decades ago" (ibid.)

Indeed, in many respects as we have seen with the country's mining sector, the Bank's strategy while helping the already rich foreign investors to get richer has undermined any possibilities for poverty alleviation that artisanal mining represented. It has also undermined any chances for building a national economy that meets the real needs of the vast majority of the poor. Incredibly, the World Bank has continued to push for even deeper 'reforms.' According to the country impact review prepared by the Operations Evaluation Group of the Bank's International Finance Corporation (IFC), "Tanzania has been difficult for private investors. It is getting better, but many investors still describe it as hostile, particularly toward foreign investors." [78] It is against this perceived hostility to foreign investors that the Bank Group has sought to tie the Tanzanian government's hands even tighter. It has accomplished this through the use of political risk insurance to investors via its private investment guarantee arm, MIGA. In this regard, the government of Tanzania dares not re-examine its iniquitous deal with Barrick Gold/KMCL for fear of punitive reprisals from the Bank Group and the donor community that nowadays increasingly coordinate their approach to developing countries.

It seems to us, on the basis of the foregoing analysis, that an agenda for reform of the mining sector must re-examine the very basis of the economic philosophy that attaches great importance on attracting foreign investors, rather developing internal capacities even when there is considerable evidence to show that those internal capacities are indeed able to make greater contributions to the social and economic development of the local communities and the nation. Indeed, the agenda for reform must first reject the economic dogma of the past two decades that has occasioned such disastrous social and economic impacts on rural communities.

Given the evidence that is now widely acknowledged, an agenda for reform of the mining sector must roll back the FDI-centered prescriptions currently in place and put artisanal mining back at the center of the sector. FDI must justify itself and it seems to me that it can only do so if it contributes more revenue to government coffers and invests in smaller-scale ventures that create jobs rather its current emphasis on large-scale capital and resource-intensive operations that do not create meaningful jobs and depend on state subsidies to survive. To paraphrase President Mkapa, it is about

time we asked whether the cost of foreign investment in the mining sector is economically acceptable or unacceptable or whether it is necessary.

An agenda for reform must of necessity put a respect for human rights and the meeting of local and national needs at the center of economic policy-making in the mining sector. Indeed this is a call for justice for communities and individuals that have suffered gross human rights abuses and destruction of livelihoods as a result of forced relocation and expropriation. As we have seen these forced relocations have gone unmitigated and uncompensated and even the corporate investors themselves acknowledge that the consequences have been disastrous.

An agenda for reform must finally address the political decision-making structures and processes as regards the mining sector. As the Presidential Commission of Inquiry Against Corruption (the Warioba Commission) found in a November 1996 report: "... (T)he country has witnessed the disappearance of transparency in transacting public business at all levels. Discretionary powers have been used in a manner that has created loopholes for favouritism and discrimination for lack of transparency. The basis on which decisions are taken has not been clear. This situation has created big loopholes for corruption and has generated more corruption." [79]

The Warioba Commission also extensively documented widespread abuses of power and illegality involving high state officials and senior politicians. It denounced, in its stinging report, the "grand corruption involving high level leaders and public servants whose involvement in corruptive practices is a result of excessive greed for wealth accumulation and money." [80] It is obvious, therefore, that structures and processes that are characterized by secrecy and subterfuge; that rely more on coercion and the use of force rather than negotiation, consensus-building and compromise, are too costly and must go. This is a call for democratizing decision-making processes in respect of the allocation of natural resources such as minerals that provide livelihoods for the vast majority of the poor and the marginalized.

[1] See Law Reform Commission of Tanzania, Discussion Paper On The Legal Framework For The Mining Industry, Dar es Salaam, July 2003 (mimeo.)

[2] No. 17 of 1979.

[3] No. 5 of 1998.

[4] Act No. 17/1979, *ibid.*, section 13.

[5] See Mining (Designated Areas) Notice, 1980, G.N. No. 6 of 1980 promulgated by Minister Al-Noor Kassum and published on January 18, 1980; Mining (Designated Areas)(Amendment) Notice, 1982, G.N. No. 154 of 1982 promulgated by Minister Jackson Makweta and published on December 17, 1982; Mining (Designated Areas)(Amendment) Notice, 1983, G.N. No. 2 of 1984, promulgated by Minister Paul Bomani and published on January 6, 1984; Mining (Designated Areas)(Amendment) Notice, 1984, G.N. No. 34 of 1984, promulgated by Minister Kassum and published on February 1, 1985; Mining (Designated Areas) Notice, 1987, G.N. No. 230 of 1987, also promulgated by Minister Kassum on July 2, 1987 but published in the Government Gazette on July 22, 1988; and Mining (Designated Areas)(Amendment) Notice, 1996, G.N. No. 106 of 1996, promulgated by Minister William Shija and published on June 14, 1996.

[6] This issue is addressed in later discussion of the 1998 Act (*infra.*)

[7] See sections 21(1)(c), 29(1)(c) and 39(1)(b).

[8] See the analysis between paras. 1.4.1 through 1.4.5 at pages 7 to 10 of the Discussion Paper.

[9] *Ibid.*, para. 1.5.5 at pp. 12-13.

[10] Tanzania's Precious Minerals Boom: Issues in Mining and Marketing, African Economic Policy Discussion Paper No. 68, March 2001. The study was financed by the United States Agency for International Development (USAID) and undertaken by researchers from the International Business Initiative (IBI) based in Roslyn, Virginia and Harvard University's John F. Kennedy School of Government both of the United States; and Tan Discovery Mineral Consulting (a Dar es Salaam-based consulting firm); State Mining Corporation (STAMICO), a government-owned parastatal; Ministry of Energy and Minerals; and the Economic and Social Research Foundation (ESRF), a reputable research institution based in Dar es Salaam.

[11] *Ibid.*, pp. 5-6.

[12] *Ibid.*, p. 7

[13] *loc. cit.*

[14] ESRF and IBI, Gemstone and Gold Marketing for Small Scale Mining in Tanzania, Draft Report for Phase I, August 13, 1997, Dar es Salaam, ESRF (mimeo.), pp. 60-61

[15] *ibid.*, p. 61

[16] See Programu ya Chama cha Mapinduzi : Mwelekeo wa Sera Katika Miaka ya Tisini, National Executive Committee, Dodoma, December 1992, paragraph 61.

[17] Chama cha Mapinduzi: Tathmini ya Miaka Ishirini ya CCM (1977 – 1997), National Executive Committee, Dodoma, February 1998, paragraph 102.

[18] Sector Review #9007 published on September 19, 1990.

[19] *Ibid.*, para. 1.5.11

[20] See memo dated April 14, 1997, from High Commissioner Edelstein to the Department of Foreign Affairs and International Trade (DFAIT), Ottawa.

[21] This is confirmed by then Canadian High Commissioner to Tanzania, Verona Edelstein, in a fax message to Michael Kenyon, then President of Sutton Resources of Vancouver Canada dated October 18, 1996. Sutton Resources

had acquired the Bulyanhulu concession that August and High Commissioner Edelstein wrote to thank Kenyon for his “very kind words to Ministers Axworthy and Eggleton for the Canadian High Commission’s and my own support for Sutton’s efforts here in Tanzania.”

[22] No. 26 of 1997.

[23] *Ibid.*, section 3

[24] *ibid.*, s. 19(2)

[25] *op. cit.*

[26] *ibid.*, s. 21

[27] *ibid.*, s. 22

[28] *ibid.*, s. 24(1)

[29] *ibid.*, s. 24(2)

[30] *ibid.*, s. 2(1)(a)

[31] No. 27 of 1997. The Act was passed by the National Assembly exactly one day after the Investment Act was enacted. The two statutes were both assented to by President Benjamin Mkapa on September 9, 1997 hardly two weeks after they were passed by the National Assembly.

[32] The new section 4A of the Customs Tariff Act sets new rates of customs duties payable for importation of these items at 5 per cent during the first year of operations. However, after the first year, such liability is completely exempted in terms of the new section 4B of that Act.

[33] See the new section 18(6) of the Immigration Act, 1995.

[34] See Tanzania, U.R., Speech by Minister for Energy and Minerals Hon. Daniel N. Yona (MP), When Submitting the Budget Estimates of the Ministry for Energy and Minerals to the National Assembly for the Fiscal Year 2003/2004, Dar es Salaam, Government Printer, p. 45.

[35] The six companies are Resolute (T) Ltd., owners and operators of the Nzega Golden Pride Mine; Afrika Mashariki Gold Mines Ltd. (Afrika Mashariki Gold Mine, Tarime); Kahama Mining Corporation Ltd. (Bulyanhulu Gold Mine); Geita Gold Mines Ltd. (Geita Gold Mine); AFGEM Merelani Mining Ltd. (Mererani, Arusha); and Williamson Diamonds Ltd. (Mwadui).

[36] No. 5 of 1998

[37] *Ibid.*, sections 43 and 49(1).

[38] *Ibid.*, sections 9(1) and 9(2). To be sure, there were similar provisions under section 60 of the 1979 Act.

[39] *Ibid.*, section 10(1)

[40] *ibid.*, section 10(2)(a)

[41] *Ibid.*, s. 86.

[42] *Ibid.*, s. 30.

[43] *Ibid.*, paragraph 5(3) of Schedule 4

[44] See the whole of Part VIII of the Act, *ibid.*

[45] See Speech by Minister Yona, *op. cit.* p. 49

[46] D. Walton, “Self-regulation in a murky world”, *The Globe and Mail*, Thursday, October 21, 1999. [47] See the Africa round up in the magazine *Engineering & Mining Journal*, January 1, 1999.

[48] See Tanzania, U.R., Speech by Minister for Energy and Minerals, Honorable Abdallah Omari Kigoda (MP), Presenting Budget Estimates for the Ministry of Energy and Minerals for the Fiscal Year 1999/2000 to the National Assembly, Dar es Salaam, Government Printer, p. 18.

[49] See www.resolute-ltd.com.au.

[50] See “East African Gold Mines Shareholders Accept \$A382 Million Placer Dome Offer”, News Release Issued Through Field Business Services Pty Ltd., Adelaide, Australia, dated July 9, 2003. See also “Vituko vya wawekezaji: Mgodu wa Dhahabu wauzwa”, *Majira*, Sunday, July 13, 2003.

[51] See Speech by Minister Yona, *op. cit.*, pp. 19, 21 and 38.

[52] Tanzania, U.R., Poverty and Human Development Report 2002, The Research and Analysis Working Group, Dar es Salaam, Mkuki na Nyota Publishers, 2002, pp. 76, 77.

[53] See, for instance, M. Islam and M. Rweyemamu, “Utata watawala maafa ya Kahama: waliokufa machimboni wahofiwa kufikia 52: Picha za maiti zapelekwa Dodoma: wadaiwa kufunikwa na magreda”, *Mtanzania*, Tuesday, August 13, 1996; A. Mbogora, “The day hell broke loose at Bulyanhulu”, *The Guardian*, Monday, September 9, 1996; A. Mbogora, “Final days at Bulyanhulu”, *The Guardian*, Wednesday, September 11, 1996; N. Kicheere, “Wachimbaji walihamishwa Bulyanhulu kihuni”, *Majira*, Wednesday, October 11, 1996; N. Kicheere, “Polisi waliua watu Bulyanhulu”, *Majira*, Saturday, October 12, 1996.

[54] See EIS Vol. 1 paragraph E-6.

[55] *Ibid.*, Vol. 3, Paragraph 8-2.

[56] *Ibid.*, paragraph 5-1.

[57] *Ibid.*, Vol. 1, Paragraph E-6.

[58] See footnote 1 above.

[59] The latest in a long line of press reports of AFGEM private security force using excessive force appears in the *Sunday News of Sunday*, September 14, 2003 (C. Nzo Mmbaga, “Trespasser injured in Mirerani shooting”); and in

Nipashe Jumapili of Sunday, September 14, 2003 (C. ole Ngereza, "Mchimba madini ajeruhiwa vibaya kwa risasi").

[60] See D. Frank, "Mchimbaji tanzanite apigwa risasi", Mtanzania, Friday, May 2, 2003; "Trespassing miner shot, wounded at Mererani", The Daily News, Friday, May 2, 2003; P. Sarwatt, "AFGEM official in court after shooting small miner: Double standards as suspect fails to get surety", The Guardian, Saturday, May 3, 2003; "Mahita, please follow this up", The Guardian, Monday, May 5, 2003; and "Afande Mahita umeesikia haya?", Nipashe, Monday, May 5, 2003.

[61] See "Tume ya Mboma yaiambia Serikali: Acheni wazawa wachimbe madini", Rai, August 21-27, 2003.

[62] See "Small miners say 'no' to government order", The Guardian, Wednesday, August 1, 2001; A. Nyahore, "Wachimbaji dhahabu Kahama wapinga kuondolewa", Nipashe, Wednesday, August 1, 2001.

[63] B. Mapalala, "Sword of Damocles hangs over Mwabomba small miners", The Guardian, Saturday, October 27, 2001.

[64] See "Tarime villagers invade gold mine", The Guardian, Friday, July 27, 2001.

[65] See Mining (Designated Areas)(Amendment) Notice, 1984, G.N. 34 of 1984 published on February 1, 1985.

[66] See Tanzania, U.R. (1998) The National Assembly: Parliamentary Debates: Official Record (Hansard) of the Eleventh Meeting, Sixth Session – 23rd April, 1998, Dodoma, Department of Official Parliamentary Record, at page 25-29.

[67] Minister Kigoda's argument was that "the circumstances which have caused the problems of concentration of land ownership in Zimbabwe, Australia and South Africa are not relevant to Tanzania. Those circumstances concern a few people owning large tracts of land in those countries while in Tanzania land is Government property."

[68] See section 48 of the 1979 Act.

[69] Mining Act, *ibid.*, s. 95(1)(b)(ii).

[70] *Ibid.*, s. 95(1)(b)(iii).

[71] *Ibid.*, s. 95(1)(e).

[72] *Ibid.*, s. 95(1)(f).

[73] *Ibid.*, s. 96(1).

[74] *Ibid.*, s. 96(3).

[75] Here, too, the provisions of the 1979 Act were retained intact. See Part V of the 1979 Act.

[76] See Part III of the Village Land Regulations, 2001, G.N. 86 of 2001.

[77] OED's Director General's Memorandum to the Executive Directors and the President, September 13, 2000, in World Bank, 2000, *ibid.*

[78] See OED Director General's "Memorandum to the Executive Directors and the President", Tanzania Country Assistance Evaluation, Operations Evaluation Department (OED), World Bank, September 13, 2000. According to the IFC review, there are five principal obstacles to private sector development: (1) slow pace of privatization, (2) delays in financial sector reform, (3) weak infrastructure and human resources, (4) social and governmental ambivalence toward private sector development, and (5) aid dependence (*op. cit.*)

[79] See Tanzania, U.R., Presidential Commission of Inquiry Against Corruption: Report on (sic!) the Commission on Corruption, Vol. 1, pp. 63-4.

[80] *Ibid.*, p. 5.