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GOLD AND GOVERNANCE: LEGAL INJUSTICES AND LOST OPPORTUNITIES IN TANZANIA

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ABSTRACT

Following advice from the World Bank, and hoping for economic growth and independence from donors, a number of African countries have opened up opportunities for large-scale mining by foreign investors over the last decade and a half. Tanzania, one of the 'new' mining countries, is now among the largest gold producers in Africa, but investor-friendly contracts have resulted in extremely low government revenues from mining, totalling less than 5 percent of what the country receives in development aid. In response to widespread discontent, and acknowledging the plight of affected communities, the government amended the 1998 Mining Act in 2010. However, improved legal provisions may have limited effect if the present governance challenges are not resolved. The article demonstrates that the legal provisions meant to protect the rights of affected people are not followed, and that poorly functioning local democracy is particularly dangerous for pastoralists who are 'represented' by local authorities often dominated by non-pastoralist immigrants. Compensation to smallholder farmers is either non-existent or too low – or the compensation money is embezzled by the authorities entrusted to distribute it.

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LARGE-SCALE MINING BY FOREIGN INVESTORS HAS BECOME one of the most controversial issues in Africa in recent years. Three aspects stand out as particularly contested: over-generous incentive packages which have resulted in limited government income from large-scale mining; conflicts between artisanal/small-scale miners and mining companies; and the plights of local communities affected by large-scale mining.

The massive mining investments came as a result of advice from the World Bank Group (WBG) in the 1980s and 1990s, encouraging

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developing countries to liberalize and to be investor-friendly. In some cases, revision of existing legislation was a premise for continued loans. In Africa, 35 countries rewrote their mining and investment codes[1] and investors quickly responded to the new opportunities offered by democratic, politically stable countries like Mali, Tanzania, and Zambia. It was envisaged that mining would be a key driver for growth, and that the industry would eventually help eradicate poverty and make African countries independent of foreign aid. However, despite relatively large mineral production, mining has contributed little to the economic and social development of the new mining countries in Africa.[2] On the contrary, poverty and corruption have increased.[3] Internationally, large-scale mining combined with weak governance of the rule of law has been found to be closely connected with human right abuses, particularly in connection with forced displacement.[4]

This article offers an empirical background for understanding some of the problems connected with large-scale mining in new mining countries in Africa, with a focus on displacement in Tanzania. The study describes displacement and compensation conflicts between local land users, local authorities, and international mining companies in three mining districts in northern Tanzania: Kahama, Geita, and Simanjiro. The article is based on a literature review as well as interviews with bureaucrats, politicians, affected people, and mining companies.[5]

I argue that the mining and land legislation that was introduced in the late 1990s dramatically changed the power relationship not only between the Tanzanian government and foreign investors, but also between Parliament and the government officials in charge of mining, between central and local authorities, and between the state and its citizens. This

1. Bonnie Campbell, 'Factoring in governance is not enough: mining codes in Africa, policy reform and corporate responsibility', *Minerals and Energy – Raw Materials Report* **18**, 3 (2003), p. 4.
2. Abraham Kumah, 'Sustainability and gold mining in the developing world', *Journal of Cleaner Production* **14**, 3–4 (2006), pp. 317–18.
3. Scott Pegg, 'Mining and poverty reduction: transforming rhetoric into reality', *Journal of Cleaner Production* **14**, 3–4 (2006), p. 379.
4. Chris Ballard and Glenn Banks, 'Resource wars: the anthropology of mining', *Annual Review of Anthropology* **32** (2003), pp. 287–313.
5. Fieldwork was conducted in the period May to September 2004, for three weeks. Dr Flora Musonda took part in the planning of the fieldwork, while research assistants Monica Kimaro and Godwill Wanga accompanied the author in the field. For a complete list of interviews, please see Siri Lange, 'Benefit streams from mining in Tanzania: case studies from Geita and Mererani' (Report, Chr. Michelsen Institute, Bergen, in cooperation with ESRF, 2006). The field visit was funded by the World Bank, as part of the Bank's initiative to build capacity in natural resources governance and benefit streams management in selected African and Asian countries. Informants clearly saw the research team as an opportunity to get their voices heard, and acknowledged the fact that we represented independent research institutions from Norway and Tanzania, not the World Bank. The case study from Kahama is based on secondary sources.

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rushed process of putting the new Mining Act and Land Acts in place resulted in incoherent legislation, which has made it difficult for mining companies, government authorities, and not least affected people to know how displacement should be handled. Central and local government's lack of capability and resources has meant that legal provisions are not enforced.

Another factor that negatively affects the rights of smallholder farmers and pastoralists is corruption. While the resource curse literature has focused, among other things, on the link between natural resource endowment and corruption at higher levels of political office,[6] this article demonstrates that mining-related corruption at the local level is common, and that it has, like corruption at higher levels, negative consequences for democracy and people's relationship with the state. Across the four mining areas, there is a strong feeling among people of having been 'betrayed' by their own government (*serekali*). Bitterness is fuelled by the fact that large-scale mining has contributed little to the government coffers. Many refer to the country's first President, Julius Nyerere, who said that the country's natural resources belong to all Tanzanians. If he had still been around, people say, this would never have happened. Mining, in short, has become not only one of the most heated political issues in the country, but also a major factor for ordinary people's increasing resentment of the state.

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Displacement, regulation and compensation

The WBG and some scholars have argued that forced relocation can be defended since mining tends to generate large revenues. In the late 1990s Richard M. Auty asserted: 'The limited number of people displaced by such mining renders the costs of compensation for livelihood disruption and social upheaval small compared with total mine revenues.'[7] In the years that have passed since then, however, it has become evident that revenues for the host countries have not in fact, been as high as expected.[8] Increasingly it is realized that investor-friendly mining codes have in fact been too friendly, leaving host countries with very low revenues.

In response to the many critical voices, the WBG decided in 2000 to conduct a review of its activities in the mining sector. The Extractive

6. Anthony Bebbington, Leonith Hinojosa, Denise Humphreys Bebbington, Maria Luisa Burneo, and Ximena Warnaars, 'Contention and ambiguity: mining and the possibilities of development', *Development and Change* **39**, 6 (2008), p. 892; Michael Lewin Ross, 'Does oil hinder democracy?', *World Politics* **53**, 3 (2001), pp. 325–61.
7. Richard M. Auty, 'Social sustainability in mineral-driven development', *Journal of International Development* **10**, 4 (1998), p. 494.
8. Bebbington *et al.*, 'Contention and ambiguity', p. 909.

Industries Review (EIR) constituted a paradigmatic change in the WBG's thinking on mining.[9] Governance, or the lack of it, became the key issue. It was acknowledged that mining did not lead to the anticipated economic development in countries where government authorities lacked the capacity and/or resources to enforce regulations.

In a systematic analysis of the World Bank's conceptualization of poverty and the Bank's theoretical rationale for supporting mining even after the EIR, Scott Pegg argues that while the idea that mining can contribute to economic development intuitively makes sense, evidence shows that 'mining is more likely to lead to poverty exacerbation than it is to poverty reduction'.[10] Bebbington *et al.*, in their review article on mining and development, argue that the institutional reforms that were introduced to enable foreign investment 'have dramatically and deliberately reduced the capacity of the state to govern'.[11] Not only have governments let go of power in favour of international corporations through changed legislation, they write, but within governments in the new mining countries, power has been centred in mining ministries or mining commissions. I would add to this that the relationship between central government and local governments has also changed, particularly in cases where land used to be the domain of local authorities but is now allocated to investors by bodies operating under central government.

Recently, a number of African countries, including Mali, Tanzania, and Zambia, have opted for a revision of the legislation that was put in place in the 1990s. The main reason that African governments revise mining legislation is in order to increase government income from direct revenues. Another area of concern to politicians, academics, and ordinary people, is the desire to secure employment within processing and small-scale/artisanal mining, since large-scale mining provides employment for a very limited number of people. Finally, environmental pollution and forced relocation have been contested issues, particularly since many people lack formal rights to the land from which they are displaced.

It has long been accepted that sovereign states have a right to control their territories and populations. Expropriation laws enable states to appropriate land for public or private sector developments, frequently entailing tension between local and national development priorities.[12]

9. World Bank, *Striking a Better Balance: The extractive industries review* (World Bank, Washington, 2003).
10. Pegg, 'Mining and poverty reduction'.
11. Bebbington *et al.*, 'Contention and ambiguity', p. 909.
12. Anthony Oliver-Smith, 'Development-forced displacement and resettlement: a global human rights crisis' in Anthony Oliver-Smith (ed.), *Development and Dispossession: The crisis of forced displacement and resettlement* (School for Advanced Research, Santa Fe, 2009), p. 3; Susanna Price, 'Prologue: victims or partners? The social perspective in

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It is estimated that development projects cause the displacement of 15 million people globally each year, and many of these people end up impoverished.[13] A number of studies have documented that national frameworks seldom provide sufficient protection or compensation to people whose land is expropriated. First, only a limited range of physical assets are compensated, and valuation methods do not capture either market value or the true costs of replacing lost assets. Second, land users without legal title are usually not compensated. Third, compensation may be poorly implemented by central and local governments – in the worst cases corrupt practices mean that compensation never reaches entitled groups. Fourth, land acquisition acts are often based on laws that were established in the colonial era, giving the state wide-ranging discretionary powers.[14] In Africa, as in other parts of the developing world, national legal frameworks seldom respond to social issues or the protection of displaced people.[15]

Theodore Downing has identified six factors that, if combined, increase the chance that mining-induced displacement and resettlements (MIDR) will be significant issues: (1) rich mineral deposits; (2) relatively low land acquisition costs in the global market; (3) open-cast mining; (4) mines located in regions of high population density; (5) poor definitions of land tenure; and (6) politically weak and powerless populations, especially indigenous peoples.[16] These factors are present in many of the new mining countries in Africa.

The World Bank's operational policy on involuntary resettlement (OP 4.12) emphasizes that displacement should only take place 'where it is not feasible to avoid resettlement'; that displaced people should never be worse off after involuntary resettlement; that they should be consulted and offered 'opportunities to participate in planning and implementing resettlement programmes'; and, finally, that 'resettlement activities should be conceived and executed as sustainable development programmes, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits'.[17] While the Bank's Operational

development-induced displacement and resettlement', *Asia Pacific Journal of Anthropology* **10**, 4 (2009), p. 272.

13. S. M. Banchirigah, 'How have reforms fuelled the expansion of artisanal mining? Evidence from sub-Saharan Africa', *Resources Policy* **31**, 3 (2006), pp.165–71; Oliver-Smith, 'Development-forced displacement', p. 3.

14. Price, 'Prologue: victims or partners?', p. 272.

15. *Ibid.*, p. 278.

16. Theodore E. Downing, 'Avoiding new poverty: mining-induced displacement and resettlement' (Mining, Minerals and Sustainable Development Report No. 58, International Institute for Environment and Development and World Business Council for Sustainable Development, London and Geneva, 2002), p. 6.

17. World Bank, 'Operational Policy 4.12 Involuntary Resettlement' (World Bank, Washington DC, 2007).

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Policy (OP 4.12) and Procedures (BP 4.12) are laudable, implementation has turned out to be problematic. The main reason is that social, environmental, and human rights standards are not mandatory nor legally binding for investors and their host countries, but voluntary,[18] and some states see these policies and procedures as an infringement on national sovereignty.[19] A survey conducted in 2001 showed that close to 80 per cent of mining companies 'had no system of accounting for social costs and benefits'.[20] In the cases when companies do take some form of responsibility, the companies seldom have qualifications in areas like social development and rehabilitation.[21]

Mining in Tanzania

The mining sector in Tanzania was nationalized in 1967, and in 1972 the State Mining Corporation (STAMICO) was established to operate the sector. The mineral production under STAMICO was small, and in 1983 the government started a liberalization of the sector, encouraging small-scale and artisanal mining. According to official figures, the reported gold production was only 401 kilograms in the four-year period 1986–9, but it has been estimated that 73 percent of the total gold production was smuggled out of the country.[22] In 1989, after a donor-sponsored Economic Recovery Programme (ERP) had been adopted, a gold and gemstone rationalization policy was introduced, allowing private trading of minerals. At the same time, the Bank of Tanzania started offering world market prices for gold. Reported gold production increased tremendously, totalling more than 13,000 kilograms in the period 1990–3.[23]

A major shift in the process of changing the regulatory framework of mining came in 1993, when the World Bank initiated a five-year Mineral Sector Technical Assistance Project. A central component of the project was assistance to rewrite relevant national legislation in order to attract foreign investment, including the new Investment Act of 1997 and the Mining Act of 1998.[24] Simultaneously, new land legislation was put in

18. Pegg, 'Mining and poverty reduction', pp. 385–6.
19. Oliver-Smith, 'Development-forced displacement and resettlement', p. 10.
20. J. S. Andrew, 'Potential application of mediation to land use conflicts in small-scale mining', *Journal of Cleaner Production* **11**, 2 (2003), p. 119.
21. Banchirigah, 'How have reforms fuelled the expansion of artisanal mining?', p. 19.
22. K. Kulindwa, O. Mashindano, F. Shechambo, and H. Sosovele, *Mining for Sustainable Development in Tanzania* (Dar es Salaam University Press, Dar es Salaam, 2003), p. 60–1.
23. *Ibid.*, pp. 3, 61.
24. Paula Butler, 'Tanzania: liberalisation of investment and the mining sector. Analysis of the content and certain implications of the Tanzania 1998 Mining Act', in Bonnie Campbell (ed.), *Regulating Mining in Africa: For whose benefit?* (Nordic Africa Institute, Uppsala, 2004), p. 68.

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place, but there was little or no coordination between the law makers. In terms of attracting investment, the new mining code was successful. Close to 4,400 prospecting licences have been issued since 1998, almost exclusively to foreign investors.[25] In the period 1995–2005, seven large-scale mines were established in the country. A mineral-rich country with insignificant production at the turn of the millennium, Tanzania was ranked the third-largest gold producer in Africa by 2008.

When Tanzania decided to open up to foreign investment in mining, some politicians optimistically predicted that the country would be able to free itself from aid and donor influence. The Mineral Sector Policy of 1997 set the goal that mining would contribute 10 percent to GDP by 2025, but by 2010 mining's contribution to GDP was only 2.3 percent.[26] Unlike successful mining countries such as Papua New Guinea and Botswana, where government income from mining enabled the former to get rid of foreign debt,[27] and the latter to become a middle-income country, mining has not yielded the anticipated government revenue for Tanzania. In the period 1998–2002, mining companies kept more than 90 percent of the total value of the exports, and in 2002 government revenue from the seven major mines was only US$36.2 million.[28] This was a result of the provisions of the 1998 Mining Act, which set the royalty payable for gold at only 3 percent, as well as granting tax holidays. Five years later, in 2007, when some of the mines had passed the five-year period of VAT and duty exemption, the government's revenue from mining had risen to US$119.2 million.[29] This yearly income is still disappointingly low after the optimistic predictions, and compared to what the country received in official state-to-state development assistance (ODA) in the same year: US$2,820 million,[30] or 23 times its income from mining.

Low government revenue, coupled with mining conflicts, entailed widespread discontent among the Tanzanian public. In response to this, and acknowledging that the Mining Act and the Land Acts were incompatible, the government commenced a process of amending the Mining Act in 2000. It took ten years. The revised Mining Act was tabled in Parliament

25. Tanzania Chamber of Minerals and Energy. 'Incentives and achievements – the effects of policy changes', <http://chamberofmines-tz.com> (28 September 2010).
26. 'Tanzania Mining Report Q2 2010', *Business Monitor International*, 7 April 2010, p. 46, <http://www.fastmr.com/prod/56806_tanzania_mining_report_q2_2010.aspx> (28 October 2010).
27. Gavin Hilson, 'An overview of land use conflicts in mining communities', *Land Use Policy* **19**, 1 (2002), p. 68.
28. Lange, 'Benefit streams', p. 11.
29. Tanzania Chamber of Minerals and Energy, 'Incentives and achievements'.
30. OECD, 'Development Co-Operation Directorate. Information by country'. <http://www.oecd.org/countrylist/0,3349,en_2649_34447_25602317_1_1_1_1,00.html#T> (12 October 2010).

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in April 2010, and aroused heated debate. While government executives claimed that the new act would ensure increased tax income, specific areas for small-scale miners, and fair compensation for displaced people, MPs argued that the amended act did not go far enough.[31] There was also widespread dissatisfaction that it will not affect existing mines. The level of discontent is illustrated by the fact that the main opposition challenger in the 2010 election, Willibrod Slaa, announced that, if elected, he would revoke all existing mining contracts.[32]

It should be noted that the controversies connected with large-scale mining in Tanzania are by no means related to legal provisions alone. For years, there have been rumours of alleged corruption among senior officials both in local authorities and in the Ministry of Energy and Minerals.[33] Mining contracts are confidential, and in one particular contested case, a large-scale mining contract was signed in a London hotel room, away from the public eye.[34] An official with the National Environment Management Council (NEMC) holds that although Environmental Impact Assessments (EIAs) are usually conducted prior to large-scale projects, 'most of the time there is no monitoring and evaluation of the performance after the projects take off', and that part of the reason is political and/or financial corruption.[35] The case studies below provide examples of how corruption negatively affects people in mining areas. First, however, I present the legal provisions relevant for land acquisition and land rights in Tanzania, with a focus on the 1998 Mining Act and the 1999 Land Act, and the incoherence between the two.

Mining and land acquisition

All land in Tanzania is formally owned by the state, but land can be leased for a period of 5–99 years (renewable). Land can be leased in three different ways: government-granted right of occupancy; Tanzania

31. Rodgers Luhwango, 'Mining bill raises storm,' *Guardian on Sunday*, Dar es Salaam, <www.ippmedia.com> (30 May 2010).
32. Polycarp Machira, 'I will revoke mining contracts if elected President, Slaa vows', *This Day*, <http://www.ippmedia.com> (7 October 2010).
33. 'Corrupt politicians behind chaos at mines – Mengi', *Guardian*, Dar es Salaam, <http://www.ippmedia.com/> (28 March 2010); Michael Bradburn-Ruster, 'A golden example of globalization: Bulyanhulu, the World Bank and the kinder, gentler president', <http://www.zmag.org/content/2003> (20 June 2007), p. 3; M. Curtis and T. Lissu, 'A golden opportunity? How Tanzania is failing to benefit from gold mining. Second Edition' (Report, Christian Council of Tanzania, National Council of Muslims in Tanzania and Tanzania Episcopal Conference, Dar es Salaam, 2008), p. 35.
34. Peter Tindwa, 'Mining contracts not for public consumption – Yona', *The Guardian*, Dar es Salaam, 1 October 2003.
35. Wanzala Pius Nambiza, 'Whose development counts? Political ecology of displacement of Bulyanhulu mining community in Tanzania' (MA Dissertation, Norwegian University of Science and Technology, 2007), p. 3.

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Investment Centre derivative rights; and sub-leases created out of granted right of occupancy by the private sector.[36]

The majority of rural people in Tanzania rely on a customary right of occupancy – a legal right to occupy and use the land they are on, but with no official registration or certificate. This right is secured in the Customary Rights Act of 1972, which also grants rights to water for people organized in water associations. According to the Village Land Act of 1999, the 'customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy'.[37] In practice, however, customary rights are not secure until they have been registered. It has been argued that this means Tanzania 'in theory gives legal status to some customary land rights, but in practice disregards them'.[38]

There are a number of reasons why land ownership – both customary and registered – is unsecure. First, there is no single comprehensive law to secure property rights.[39] Second, customary rights are traditionally fluid and are, as Rie Odgaard has pointed out, 'continuously being invented and/or reinvented'.[40] Third, in cases where private land ownership has been registered, the land registers are often not updated to reflect deaths, inheritance, or even sale.[41] Fourth, there has been limited surveying and registration, and customary rights are therefore generally very insecure. In cases where the government needs the land for 'development purposes' like mining, the 1999 Land Act permits the government to expropriate both village land and privately held land. Up to 2004, occupants of the land would only be paid compensation for the investment/work that they had put into the land, but not for the land itself. With an amendment of the Land Act in 2004, private ownership of unused land is recognized, but land rights are only valid for *surface land* – a limitation which is of importance in relation to mining.

Rights to minerals are secured through prospecting and mining licences, in accordance with provisions of the 1998 Mining Act. In the Tanzanian context, 'large-scale mining' denotes mining operations

36. Tanzania Investment Centre (TIC), 'Land acquisition', <http://www.tic.co.tz/TICWebSite.nsf/> (31 June 2010).
37. Government of Tanzania, *Village Land Act 1999*, 18 (1).
38. Katherine Homewood, Ernestina Coast, and Michael Thompson, 'In-migrants and exclusion in East African rangelands: access, tenure and conflict', *Africa* **74**, 4 (2004), p. 600.
39. Bureau of economic, energy and business affairs, US Department of State, 'Investment climate statement – Tanzania', <www.state.gov/e/eeb/rls/othr/ics/2009/117190.htm> (31 May 2010).
40. Rie Odgaard, 'Scrambling for land in Tanzania: process of formalisation and legitimisation of land rights' in T. A. Benjaminsen and C. Lund (eds), *Securing Land Rights in Africa* (Frank Cass, London and Portland, OR, 2002), p. 73.
41. Issa G. Shivji and Marc Wuyts, 'Reflections: interview with Issa Shivji by Marc Wuyts', *Development and Change* **39**, 6 (2008), pp. 1079–90.

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managed by international or national companies holding mining licences. The companies vary in size. Prospecting licences, in particular, are often held by relatively small 'junior' firms. 'Small-scale mining', on the other hand, is mining performed by the holders (currently numbering about 5,600) of a Primary Mining Licence (PML), which only Tanzanian citizens can obtain.

Investors are allocated land from the Land Bank, through the Tanzania Investment Centre (TIC). Customary rights to land are not mentioned on TIC's homepage – the prime official information channel for potential foreign investors. The Land Bank was established in 1998, and is in charge of all land which at that point had not been granted in title to individuals or groups, or which was perceived as not used. Section 14 of the 1998 Mining Act gives the Minister responsible for minerals – in consultation with the Mining Advisory Committee – the right to 'designate any vacant area as an area exclusively reserved for prospecting and mining operation, if he determines that it would be in the interest of the orderly development of the Mining Industry in Tanzania'.[42] The term 'vacant area' is not defined – and investors have been allocated licences within forest reserves and on village land.[43] The fact that land rights are valid for surface land only, as mentioned above, means that smallholder farmers are not eligible for compensation as long as their fields are not directly affected by exploration activities, disregarding the fact that noise and dust in their immediate environment negatively affects their daily lives year after year. The magnitude of the problem can be illustrated by the fact that Lake Victoria Mining Company alone has been granted 28 prospecting licences covering at least 5,300 square kilometres of land, much of it inhabited.[44]

Despite obvious injustices, there have been few violent clashes in connection with displacement of smallholder farmers.[45] The forced villagization of the 1970s, which affected 70 percent of the population, is a backdrop that perhaps makes rural populations accept displacement with

42. United Republic of Tanzania, 'The Law Reform Commission of Tanzania: Position paper on the legal framework for the development of the mining industry', (URT, Dodoma, 2001), p. 27.

43. Kulindwa *et al.*, *Mining for Sustainable Development in Tanzania*, p. 912.

44. Calculated from numbers and maps available at <http://www.lakevictoriaminingcompany.com/index.php> (6 October 2010).

45. The violent clashes that have taken place appears to have been related to a general frustration with large-scale mining. In 2008, for example, approximately 4,000 villagers raided the North Mara gold mine and destroyed equipment worth US$16 million. The purpose of the raid was to access the open pit deposits and steal gold ore. See 'Tanzania: villagers storm Barrick gold mine: inflict much damage, FFU police deployed to disperse them', *This Day*, <http://www.corpwatch.org/article.php?id=15263> (19 October 2010).

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less protest than would be found elsewhere.[46] Wenzala Nambiza has argued that involuntarily displaced people in Tanzania in most cases complain of low and unfair compensation, not displacement in itself.[47]

Village governments have little or no power to object to the expropriation of land for mining purposes if the government sees this as being in the national interest. If such acquisition takes place, the village council is obliged to inform villagers who have a certificate of customary right, but they are not obliged to inform people who have 'only' customary land rights.[48] The latter group is often the majority. The 1998 Mining Act defines a 'lawful occupier in relation to any land' as 'a person who is in actual occupation of the land or any part of it'. According to the act, 'The holder of a 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' of any land which is the site of a house, or within 50 metres of land that has been cultivated during the year 'immediately preceding'.[49] While the 1998 Mining Act in this section appears to give local people good protection, the ultimate power still lies with the central authorities. The act says that if the Minister and the Mining Advisory Committee think that such consent is withheld 'unreasonably', the 'need for the consent shall be dispensed with' and the paragraph '*shall not have effect*'.[50] The law is also clearly biased towards agriculturalists, since grazing land and water sources – both central to the viability of pastoralists – are not mentioned.

The 1998 Mining Law states that owners of mineral rights shall exercise these 'reasonably' and not 'so as to affect injuriously the interest of any owner or occupier of the land over which those rights extend'. Lawful occupiers of land are not allowed to erect buildings or other structures in the area 'without the consent of the registered holder of the mineral rights concerned', but mining companies are obliged to 'pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage'.[51] Under the 1999 Land Act, village land cannot be transferred 'until the type, amount, method and timing of the payment of compensation has been agreed upon between … the village council and the Commissioner'.[52] Compensation is to be approved 'after the claim forms have been endorsed by the following officials: the officer who conducted

46. Leander Schneider, 'High on modernity? Explaining the failings of Tanzanian villagisation', *African Studies* **66**, 1 (2007), p. 12.
47. Nambiza, 'Whose development counts?'
48. Geir Sundet, 'The 1999 Land Act and Village Land Act: a technical analysis of the practical implications of the acts', (Research on Poverty Alleviation, Dar es Salaam, 2005), p. 8.
49. Government of Tanzania, *Mining Act 1998*, 14, s. 4.
50. *Ibid.*, 111, s. 95 b.
51. *Ibid.*, 113 s. 96 (1 and 2).
52. Sundet, 'The 1999 Land Act and Village Land Act', p. 8.

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the valuation, the Government Chief Valuer, Ward Executive Officer, Land Officer, District Commissioner, and Regional Commissioner'.[53] As the case studies below show, neither of these propositions in the 1998 Mining Act and the 1999 Land Act have been followed.

The settlement of disputes is the area where the 1998 Mining Act and the Land Act differ most profoundly. The Land Act says that both the constitution, the act itself, and customary laws can be applied by courts in settling disputes about land. Land dispute resolution systems are to be independent from all levels of government and are to 'settle disputes swiftly and fairly'.[54] In ascending order, villagers may bring disputes to the Ward Tribunal, the District Land and Housing Tribunal and to the Land Division of the High Court.[55] The 1998 Mining Act, by contrast, says that disputes that involve local people are to be solved by the Commissioner of Minerals. The law gives the Commissioner immense power, stating that the Commissioner may 'decide all disputes between persons engaged in prospecting or mining operations, either among themselves, or in relations to themselves and third parties' in connection with boundaries, compensations, and so on.[56] The Commissioner gives an order, which can be sent to a local civil court to be enforced. Parties in the conflict are entitled to appeal to the High Court within 30 days. In contrast to the Land Act, then, which says that land dispute resolution systems are to be independent from all levels of government, the 1998 Mining Act states that the Commissioner of Mining is to decide all disputes. This demonstrates how the institutional framework introduced to enable large-scale mining was inherently different from other laws and far less democratic.

As the case studies below demonstrate, however, one of the greatest problems in regard to land disputes in connection with mining has been that displaced people find it extremely difficult and expensive to use the legal system, to the extent that many never try their case. The compensation to which local land users are entitled has been lacking or insignificant – or it has been embezzled by the people entrusted to organize it.

Kahama: impoverishment of displaced people

Rich gold deposits were discovered in Kahama District by small-scale miners in the mid-1970s.[57] The mining area covers seven villages and is

53. Nambiza, 'Whose development counts?'
54. Liz Alden Wily, 'Community-based land tenure management: questions and answers about Tanzania's new Village Land Act, 1999', (Issue Paper No. 120, International Institute for Environment and Development, London, 2003).
55. *Ibid.*, p. 52.
56. Government of Tanzania, *Mining Act 1998*, 118, 2.101 (1).
57. Chachage Seithy L. Chachage, 'New forms of accumulation in Tanzania: the case of gold mining', in Peter Gibbon (ed.), *Mining and Structural Adjustment* (Nordic Africa Institute, Uppsala, 1993).

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referred to as Bulyanhulu.[58] In 1995, the Canadian company Sutton Resources acquired exploration rights in the area, and four years later Kahama Mining Corporation, a subsidiary of Barrick Gold, acquired the concession. In 2000, the company was granted a US$115.8 million political risk guarantee through the World Bank Group's Multilateral Investment Guarantee Agency (MIGA). The guarantee promises to cover the investment 'against the risks of transfer restriction, expropriation, and war and civil disturbance'.[59]

Soon after Kahama Mining had been granted this guarantee, a Tanzanian NGO, Lawyers' Environmental Action Team (LEAT), sent a complaint to the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) on behalf of small-scale miners and smallholder farmers in Bulyanhulu. The complaint concerned a number of human rights abuses: first, the resettlement and inadequate compensation of small-scale miners in 1996; second, the alleged live burial of 62 small-scale miners who were still in the shafts in August 1996 when these were filled in; third, the transfer of the concession to Barrick Gold upon its acquisition of Sutton Resources; fourth, the resettlement of people in 1998; and, finally, the failure of MIGA to investigate the forced displacement and alleged live burial before granting the political risk guarantee.[60] In response to the complaint, the CAO visited Bulyanhulu in March 2001 and conducted interviews with small-scale miners and smallholder farmers. While the CAO report is highly critical of the way LEAT and their 'international allies' have presented allegations of murder without convincing evidence, the report expresses concern about the way relocated people have been treated.[61]

At the time when large-scale mining was initiated, the majority of residents in Bulyanhulu were immigrants who had come to seek their fortune from mining, and many left the area without claiming compensation. Long-term inhabitants who were eligible for compensation, however, claim that 'the valuation exercise was rushed and almost arbitrary, and was supervised by officials from the mining company'.[62] While more than 3,000 houses are said to have been demolished,[63] only 42 families were

58. Nambiza, 'Whose development counts?', pp. 49–50.
59. Multilateral Investment Guarantee Agency, 'Kahama Mining Corporation Limited', <http://www.miga.org/index_sv.cfm> (21 December 2011).
60. International Finance Corporation, Compliance Advisor Ombudsman (CAO), 'Tanzania/Bulyanhulu Project-01/Kankola', <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=113> (13 January 2010).
61. International Finance Corporation, Compliance Advisor Ombudsman (CAO), 'Assessment report summary: complaint regarding Miga's guarantee of the Bulyanhulu gold mine, Tanzania', <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=113> (20 October 2006), p. 8.
62. Nambiza, 'Whose development counts?', p. 83.
63. *Ibid.*, p. 83.

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part of a legal initiative to claim fair compensation. Petitions to the High Court and the Court of Appeals were sent in 1998. The families claimed that the compensation they received for the loss of buildings, crops, and grazing land was less than US$100 per family.[64] The High Court dismissed the cases since it 'lacked jurisdiction in matters of constitutional rights', but the cases were accepted by the Court of Appeals, and a series of hearings were set.[65]

According to the CAO report, three years after the court cases, the families who were resettled within the concession lived in poor conditions, and they refrained from planting crops since they were uncertain about what they could do on the land, and whether they would be moved again. The CAO states that there should have been better communication on the part of the mining company and concludes that 'this is the sort of issue that the CAO realistically expects MIGA to pick up in its supervision of Category A guarantees, but in this case it did not'.[66]

A report by Michael Bradburn-Ruster states that ten days before the hearings at the Court of Appeals were to start, the Kahama District Commissioner 'yielded to pressure from Barrick' and the villagers were given 12 hours to move. The following day, he writes, police burned houses and destroyed the crops.[67] In a press release about the conflict, the Inspector General of the Police denied the allegations that miners still in their shafts had been killed, but he admitted that around 200,000 residents had been evicted.[68] In 2001, the same year as the CAO visited the mine, LEAT invited a team of international observers to investigate the allegations. The team was ordered to leave after three days by the Minister of Home Affairs, who claimed that they could not conduct investigations since they had entered the country on tourist visas. Similarly, Amnesty International expressed interest in visiting Bulyanhulu but was denied access by Tanzanian authorities.[69] Later that year, both Rugemeleza Nshala, president of LEAT, and Augustine Mrema, national chairman of the Tanzanian Labour Party, were arrested and charged with sedition in connection with the Bulyanhulu case.[70]

64. The official compensation rates for one hectare of rice, maize, or cassava were US$84, 59, and 29 respectively in the period 1992–8. *Ibid.*, p. 101.
65. Bradburn-Ruster, 'A golden example of globalization', p. 3.
66. CAO, 'Assessment report summary', p. 8.
67. Bradburn-Ruster, 'A golden example of globalization', p. 3.
68. Nambiza, 'Whose development counts?', p. 77.
69. Finnigan wa Simbeye, 'Barrick and Tanzania government muzzling evidence on Bulyanhulu murders', 'The Perspective' (website), 7 May 2002, <http://www.theperspective.org/bulyanhulu.html> (20 June 2007).
70. Bretton Woods Project. 'Tanzanian authorities attempt to silence activists on Bulyanhulu case', <http://www.brettonwoodsproject.org/art-15988> (30 November 2010).

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Geita: embezzlement and farming restrictions

Gold mining in Geita District dates back to the late 1880s. In 1996, Ashanti Gold of Ghana acquired the mining rights for Geita Gold Mine, which had been closed for thirty years. In 2000, the company entered into a partnership with South African-owned AngloGold, and in 2004 the two businesses merged under the name AngloGold Ashanti.[71]

With the reopening and expansion of Geita Gold Mine in 1999, around 1,800 persons living in three villages in Mtakuja ward were forcibly displaced.[72] In line with the law, the company paid US$5.06 million into a government-controlled bank account, and left it to the central government and the district council to effect the payment of compensation. According to several sources, almost half of the people who were entitled to compensation, at least 857 persons, never received their money.[73] Apparently, the lists of people to be displaced contained fictitious names, while people who were living in the village were never registered. The CEO of the company informed the press that according to the law, the organization of compensation for crops and structures is the responsibility of the government, and that ten government officials from local authorities had been present during the exercise. 'It is our understanding,' he said, 'that fictitious names have been added to the claims' and that 'most people compensated received less money than is shown in the government records'.[74] The Resident Mines Officer of Geita told us that the officials in charge of the exercise had paid villagers in small notes, and had then asked them to sign before they had completed counting their money.[75]

The government's Prevention of Corruption Bureau (PCB) investigated the compensation scandal in 2002. Two GGM employees and a number of lower-level civil servants were found guilty, but people in Geita have the feeling that people at higher levels got away with their crime. Resentment and anger towards the district council is further fuelled by embezzlement in connection with community development projects sponsored by Geita Gold Mine.[76]

71. AngloGold Ashanti, 'Information on the company', <http://www.anglogoldashanti.com/NR/rdonlyres/91B74CA5-8170-4C66-B5A0-0B43D9C05C81/0/AngloGoldAshantiCompanyHistory.pdf2006> (10 February 2009).
72. Gavin Hilson and N. Yakovleva, 'Strained relations: a critical analysis of the mining conflict in Prestea, Ghana', *Political Geography* **26**, 1 (2007), p. 411.
73. 'Tanzania to probe gold scam', AllAfrica.com, <http://allafrica.com/> (20 October 2006); Danielle Knight, 'Tanzanian gold mine polluting causing deaths', <http://forests.org/archive/africa/tagomine.htm> (20 October 2004).
74. 'Tanzania to Probe Gold Scam', AllAfrica.com.
75. Interview, Donald E. Mremi, Geita, 21 May 2004.
76. Siri Lange and Ivar Kolstad, 'Corporate community involvement and local institutions: two case studies from the mining industry in Tanzania', unpublished draft MS.

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In Rwamgaza, another mining area located within Geita District, local resentment of mining activities is equally strong, but arises from different impositions. In 2003, the Australian-owned company East African Mines expanded its exploration licence from 2.5 square kilometres to 450 square kilometres, an area covering thirteen villages. Villagers are allowed to farm, but only annual crops, since the company does not want to risk having to compensate for perennial crops. Moreover, villagers are not allowed to plant trees or dig more than one foot into the ground. The restrictions apply to the whole area as long as East African Mines is still exploring, a period that can last up to eleven years. Villagers lament that the restrictions not only reduce their income from farming, but also hinder them from constructing latrines.

We recall that the mining law states that owners of mineral rights shall not 'affect injuriously the interest of any owner or occupier of the land', and that mining companies are obliged to 'pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage'.[77] Both the ward executive officer of Rwamgaza and the Rwamgaza village government hold that village governments in the area were never involved in the process and that villagers have had little or no information about what the new situation entails.[78] While claim holders, often immigrants, have been offered up to US$66,240 for productive claims, smallholders have not been offered any compensation at all, since they have not been displaced, but still live within the exploration area.[79]

Simanjiro: corruption and the importance of political representation

Simanjiro District is located in Manyara Region, and is part of the Maasai Steppe. The main mining site in Simanjiro is Mererani, where Tanzanite was discovered in 1967. The Maasai have lost land to both mining companies and to large-scale farming.[80] Historically, the Maasai in Simanjiro have been poorly represented both politically and in district administrations, since few have had formal education. Despite the fact that around 85 percent of the population in Simanjiro are Maasai, it was not until the 1995 election that the MP for the constituency belonged to this

77. Government of Tanzania, *Mining Act 1998*, 113 s. 96 (1).
78. Interviews with Thobias Ikangala, ward executive officer of Rwamgaza ward, Rwamgaza, 22 May 2004, and Elias M. Kapula, councillor of Rwamgaza ward, Rwamgaza, 24 May 2004.
79. Group interview with fourteen holders of Primary Mining Licences (PMLs), members of Mwanza Regional Miners Association (MWAREMA), Nyarugusu village branch, Nyarugusu, 25 May 2004.
80. O. L. Sangale, O. M. Nessele, and P. Mrosso, 'The 2002/3 Tanzania participatory poverty assessment: site report for Loiborsoit village, Simanjiro District, Manyara Region' (Economic and Social Research Foundation, Dar es Salaam, 2002).

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majority group. Even lower-level positions, such as village chairpersons and village secretaries, were usually held by immigrants from other parts of the country up to the 1990s. Such leaders from other areas 'encouraged their own people to own land, reside and practice economic activities … displacing the native pastoralists'.[81] As will be demonstrated below, political representation becomes extremely important in a situation where the district council is representing the local communities in negotiations with mining companies.

In 2003, Rockland Tanzania Ltd, a subsidiary of the Kenyan-owned Rockland, bought a 0.1 square kilometre claim from a local company in an area belonging to Lendanai village. The company later decided to expand, and was granted a prospecting licence for ten square kilometres. This area contains a water source that a number of Maasai families depend upon. In the 1940s, a Maasai cattle owner had a reserve cement water tank constructed, and there is also a water pump. To the great despair of the pastoralists, the company put up signs forbidding any trespassing in the whole area, endangering the survival of the herds, and thus the livelihood of the pastoralists.

A well-connected representative of the families using the water source, Soipei Lenganasa, arranged a meeting with among others the Minister for Energy and Minerals, the Minister for Water and Livestock, the constituency MP, and the Commissioner for Minerals to discuss the case. In a letter summing up the meeting, then Minister for Energy and Minerals, Daniel N. Yona, explains that their rights 'are being protected under the Mining Act Article 95 (1) subsection C', which says that minerals rights can only be exercised after written consent of the holders of surface rights and relevant local government authorities. The Minister ends his letter with the following words: 'It is my belief the company knows the mining act. In case they act to the contrary, stern measures will be taken. Those measures will include a default note to suspend or cancel the licence and the decision has to be implemented within 60 days.'[82]

From the government's point of view, the mining act secures the rights of the local communities. In this case, however, neither of the authorities that are supposed to represent local communities – the village government and the district council – appeared to be concerned about the water source. The Maasai strongly suspect the company of having bribed councillors to vote in favour of the mining company, and witnesses had seen

81. F. K. Bee, M. L. N. Diyamett, and E. Towo, 'Challenges to traditional livelihoods and newly emerging employment patterns of pastoralists in Tanzania' (Report, International Labour Organization, ILO-INDISCO, Geneva, 2002).
82. Letter made available to the author by Soipei Lenganasa, 29 May 2004.

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representatives of the company offering cattle and beer to other members of the Maasai community to win their consent.[83]

The users of the water source contacted the Minister for Water and Livestock again and had him write a letter to the mining company in which he requested that the company respect the Mining Act. The owner of the mining company then signed an agreement with the users of the water source, agreeing not to hinder their access. Later, the company, which had an exploration licence only, was denied a gemstone licence, and therefore could not start mining. Furious, the owner of the company sued the spokesperson of the users of the water source, Soipei Lenganasa. He claimed that he had been forced by Lenganasa to sign the agreement, and that Lenganasa and one of his associates had threatened him with a gun on several occasions. The owner of the company was supported by the District Commissioner, and the District Chairman for the ruling party (*Chama cha mapinduzi*, CCM), who both said that the claims were true.[84] Rumours have it that the two were paid a large sum of money to take the company's side in the conflict.

Lenganasa contacted the Bureau of Prevention of Corruption and reported the case. The Bureau took the case seriously, but it never reached the court system since the owner of the mining company decided to flee to his home country, Kenya, when the Swahili press started writing about the conflict. In order to secure their rights in the future, the users of the water source formed four water associations in accordance with the Customary Rights Act of 1972. The registration of the associations secures rights to the water, but not to the land. Although the conflict ended in favour of the pastoralists, the case shows that the Mining Act does not give enough protection to local communities in a situation where local democracy does not function well. 'Local communities' are represented by village governments and district councils – which, as this case has illustrated, do not necessarily act in the interests of the people whose rights are affected.

Today, rangeland is the kind of land that most commonly is allocated to the Land Bank of Tanzania for investment purposes. Pastoralist organizations try to secure indigenous status and thereby special legal status, but in the present system these organizations don't have a formal role. The Lendanai case reached a happy ending primarily because local people found an unusually resourceful spokesperson. Soipei Lenganasa is

83. Participation by invitation in a meeting held by thirteen affected cattle owners, Lendanai, 30 May 2004. The purpose of the meeting was to plan joint action against the mining company.
84. E-mail and phone correspondence with Soipei Lenganasa, 25 October 2007.

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not only very wealthy (from trade in Tanzanite), but also has a university education and contacts and friends within the legal sector. A second factor is the fact that the mining company was relatively small and not one of the larger, well-connected international investors.[85]

Conclusions

This article has contributed to a growing literature arguing that large-scale mining by foreign investors has not turned out to be the blessing that the WBG and governments in the developing world envisaged in the 1990s. In Tanzania, government income from mining is insignificant compared to development assistance; and at the same time mining has adverse effects on livelihoods and the state–citizen relationship.

The mining conflicts that I have presented demonstrate that legal provisions meant to cater for the rights of affected people are not followed, and that poorly functioning local democracy is particularly dangerous for pastoralists who are 'represented' by local authorities that are often dominated by non-pastoralist immigrants. Compensation to smallholder farmers is either non-existent (as in Rwamgaza in Geita), too low (as in Kahama), or subject to embezzlement by the authorities entrusted to distribute it (Geita).

The population in general – not only those directly affected by mining – is extremely resentful of large-scale mining. If it had yielded a sizeable income to the state, and if the state had earmarked this income for specific national and local development tasks, including decent resettlement, perhaps people would not have reacted so strongly to the displacement of small-scale miners, subsistence farmers, and pastoralists. In the present situation, however, most people see no benefit from large-scale mining, and the feeling of having been betrayed by their own government is communicated in both private and public settings.

The central government has kept mining contracts confidential, and there are allegations that high-level government staff and politicians have been more concerned about their own pockets than the welfare of their country and communities in mining areas when signing mining contracts. Many Tanzanians also believe, rightly or wrongly, that high-ranking politicians and officials own shares in some of the mining companies, and that this explains the lack of government action against mining companies that break the law. While many Tanzanians, particularly in the urban areas, have had a cynical view of their political leaders since the 1980s, these sentiments have gained momentum with large-scale mining– and

85. Generally, junior companies have a poorer reputation in terms of community relations and respect for local decision-making processes than large companies (Bebbington *et al.*, 'Contention and ambiguity', p. 900). This is true in Tanzania.

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constitute a major challenge to the state–citizen relationship in a country that traditionally has taken pride in its national cohesion.

The 2010 Mining Act, which will guide new mining investments, is meant to improve the situation in terms of increased mining revenue for the state, better conditions for small-scale miners, and more reasonable and just compensation for displaced people. As this article demonstrates, however, it is not the legislation itself which is the problem – although incoherence has caused misunderstandings – but corrupt practices and people's difficulties in accessing the legal system. Moreover, as Terry Karl has pointed out, it is a great challenge to undo the political and institutional distortions that have emerged in mining countries, and changing legislations may not be enough. It is a task for the coordinated efforts of all stakeholders.[86]

Donors are a group of stakeholders that influence political decisions in many African countries. In the case of Tanzania, yearly net ODA fluctuated between US$1,800 and US$2,820 million in the period 2006–8.[87] Realizing the paradox of donating tax payers' money to poor countries that miss out on potentially large revenues from natural resources, donors have recently offered their support to the governments of Mozambique, Tanzania, and Zambia in an attempt to increase these countries' revenues from minerals, gas, and oil.[88] This initiative, although coming late, is laudable. Preferably, this support should address governance challenges in the sector more generally. While donors cannot create good governance or hinder network building among political and bureaucratic elites and international corporations, they can sponsor investigations that put corruption and mismanagement on the public agenda. With governance problems unresolved – particularly corruption, which has proved a central problem up to now – it remains to be seen whether the 2010 mining act will make a difference, or whether we will still find that people have legal rights but no justice in the rapidly expanding mining areas of Tanzania.

86. Terry Karl, 'Ensuring fairness: the case for a transparent fiscal contract' in M. Humphreys, J. Sachs and J. Stiglitz (eds), *Escaping the Resource Curse* (Columbia University Press, New York, NY, 2007), pp. 256–85, quoted in Bebbington *et al.*, 'Contention and ambiguity', p. 895.

87. OECD, 'Development Cooperation Directorate: information by country'.

88. Jan Speed, 'Zambias Skattekrig', *Bistandsaktuelt* 7, 4–6 (2010); Odd-Helge Fjeldstad, Chr. Michelsen Institute, personal communication (11 October 2010).

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