

CMIREPORT

Land Tenure and Mining in Tanzania

Siri Lange

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1. Introduction

Tanzania is a relatively new mining country. This study argues that unclear land and mining rights, and conceptual differences in how land and mining rights are perceived, contribute to considerable conflict in the country and to a feeling among both local people and human rights advocacy groups that the government has betrayed ordinary people.¹

The main challenge with the current legislations is that there was little or no coordination between the lawmakers at the time when the land and mining laws were drafted in the late 1990s. The Village Land Act goes far in providing ordinary people with customary rights to land – but since there has been no surveying or registration, these rights are fluent and unclear. Moreover, since all land is under the president/state, people don't own land, but have use rights. In cases where the government needs the land for "development purposes" like mining, the law allows the government to order people to move. According to the law, occupants of the land will be paid compensation for the investment/work that they have done on the land, but not for the land itself.

In short, land rights are only valid for *surface land*, while rights to minerals are secured through prospecting and mining licenses. This means that mining licenses are often given for areas of land where people live and have customary rights to the land. In some cases, people with customary rights have mined, with or without mining licenses. Many of the conflicts that have come up since Tanzania opened up for foreign investment in the mining sector concerns artisan miners who protest against foreign mining companies being given mining rights to areas that they claim to have discovered themselves and which they have obtained mining licenses for in the past (mining licenses are limited in time and the authorities may simply refuse to renew them in the case when an international company expresses interest).

The Tanzanian legislation does not differentiate between artisanal and small scale mining, but in 2000 a senior official with the Ministry of Energy and Minerals 2000 classified small scale mining into two groups (Tesha, 2000:5):

- i) *formal* small-scale miners who have a primary mining license,
- ii) *informal* small-scale miners or artisanal miners who "hardly ever have a legal right to the mineral deposits they exploit".

This study follows this terminology. In cases where the sources are unclear whether small scale/artisanal miners have licenses or not, I will use the term 'small-scale miner'.

Outline of the study

Following this brief introduction, chapter two presents land legislation in Tanzania. The emphasis is on the 1999 Land Act, the Village Land Act, and the way customary land rights are treated in these documents, but a historical context will be provided. Chapter three looks at the 1998 Mining Policy and the Mining Act. Chapter four presents seven examples of recent conflicts between mining companies and villagers and/or small scale miners. Chapter five looks at government initiatives to increase revenue from FDI and to reduce mining conflicts. Chapter six presents existing consultation and conciliation mechanisms that can be used in conflict resolution. Chapter seven, the conclusion, summarizes the findings – which show, unfortunately, that it would be too optimistic to hope for a drastic reduction of mining conflicts in Tanzania in the near future.

¹ This study is a follow-up of a report based on fieldwork in mining areas in Tanzania in 2004 (S. Lange. Benefit streams from mining in Tanzania: Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11).

2. Land tenure legislation in Tanzania

One of the main sources for conflict about mining at the local level in Tanzania is the unclear regulation of land tenure. Since colonial times and up to today, all land in Tanzania has been under the state, but customary rights are respected in the new land laws. This chapter provides a brief historical background to land tenure in Tanzania, and describes the different categories of land and land legislation. The last part of the chapter presents recent initiatives to formalize land rights and the human rights perspectives of land tenure in Tanzania.

2.1 Historical background

In 1895 the German colonial power issued an Imperial Decree which said that "...all land in German East Africa shall be regarded as unowned".² When the British took over Tanganyika after the first World War, they continued this practice, issuing in 1923 a Land ordinance which stated that all land was public, under the Governor. In 1958 the colonial government proposed the introduction of individual ownership of land, so-called "freehold". This reform was not implemented due to strong opposition from TANU (Tanganyika African National Union).

At independence, in 1961, President Nyerere declared that "land is a free gift from God to all". Two years later, in 1963, TANU decided that chieftainship should be abolished. The chiefs had traditionally been authorities of land allocation and guardians of customary law (Fimbo, 2004:11). Land allocation was from now under the District Administrations and villages. Unlike in Mozambique and Uganda, the chiefs have never been reinstated.

Another change in the socialist era with drastic consequences was the Range Development and Management Act. This act applied to the whole of the Maasai district as well as to many other pastoral areas – except national parks. Under the new law, pastoralists had to organise themselves in Ranching Associations in order to have land rights. When registering, they became a corporate with consequential rights. With the implementation of the law, all customary rights and titles to land, grazing and water rights were extinguished.

In 1973 the infamous Operation Vijiji (Villagisation) was carried through. The operation, termed one of the greatest social experiments in post-colonial Africa, entailed forced relocation of hundreds of thousand, perhaps millions, of people. The government wanted people to live in *Ujamaa* (Socialist) villages to facilitate services and communal farming. Registered villages usually have a population between two and four thousand. District Development Councils allocated land to registered *ujamaa* villages (so-called village land), and Village Councils (first elected in 1975) allocated a piece of land to households. The authorities expected that customary tenure would cease to exist as a result of the operation, but this did not happen. In the 1980's, when the villagisation project was abandoned, many people moved back to their original homeland, only to find that other people had settled there. The result has been land tenure confusion and disputes all over the country. Peasants whose land had been taken and handed to other peasants have used the court system and in most cases won the land back (Fimbo, 2004). A major problem in the whole post-colonial period has been the unclear procedures concerning who in fact has the authority to allocate land. When urban and rural local government was reintroduced in the late 1970s and early 1980s, the administration of land got more unclear than ever:

² This section is based mainly on the book "Land law reforms in Tanzania" Fimbo, G.M. 2004. Land law reforms in Tanzania. Dar es Salaam University Press, Dar es Salaam.

Ambiguous lines of accountability blurred the division of authority of the officers of the Ministry of Lands so that it was unclear who possessed the authority to allocate land. This set off an intra-government conflict which the Ministry of Lands attempted to resolve in its favour in 1988 through the issuance of the a Ministerial Directive ‘clarifying’ the correct procedure for the allocation for land. The Directive established Land Allocation committees at the District, Regional and Ministerial levels but failed to protect against the continued occurrence of double- and wrongful allocations, caused to a large extent by the unchecked usurpation of powers to allocate land by local officers (Sundet, 1997:138).

Since rights of occupancy could be granted without a legal procedure to check whether anybody claimed customary rights over the area, there were “close to anarchic conditions” in many areas, particularly in pastoral parts of the country (Sundet, 1997:139).

2.2 Categories of land

The surface area of Tanzania is 94.3 million ha. Only 5 percent (5.1 million ha) of it is cultivated. An area twice this size, (10 million ha.), is arable land that is not cultivated, but to a large degree used as pasture, first of all by pastoralists. Almost a quarter of the surface area, 23%, is reserves, a larger share than any other country in Sub-Saharan Africa (URT, 2007b).

Table 1. Land use in Tanzania

Land use	Million ha
Forest Reserves	10.1
Arable land, not cultivated	10.0
Game Reserves	7.7
Cultivated land	5.1
National Parks	4.2

Reserved land: All land set aside for special purposes (forest reserves, game parks and reserves), land reserved for highways and public utilities, land designated under the Town and Country Planning Ordinance, and hazardous land.

General land: All land that is not Reserved Land or Village Land. However, the act opens up for ambiguity: “‘general land’ means all public land which is not reserved land or village land and includes unoccupied or unused village land” (quoted in Sundet, 2005:3). The definition of General Land in the Village Land Act does not include the last part of the sentence.

Village Land: Village land is land that belongs to registered villages – importantly, the village councils do not *own* the land, they only manage it (Wily, 2003:19). A village is an administrative unit in the local government system and usually has a population between two and four thousand. Each village has a Village Government. Members of the village government are hamlet/sub-village chairpersons, a Village Chairperson, and a hired Village Executive Officer. Three to four villages make up a ward. At the ward level, there is a Ward Development Committee, and a hired Ward Executive Officer. During local elections, citizens elect a councilor who represents the ward in the Full Council meetings at the District Council. In elections up to 1980’s traditional leaders were often elected sub-village leaders and councilors, and in some areas former chiefs became Village Council Chairmen. Over the two last decades this trend has changed, since communities increasingly elect educated, younger persons (Wily, 2003:6). Village land is administered by the

Village Council on behalf of the Village Assembly (all members of a village 18+ years). There are a lot of uncertainties concerning the borders and size of village land:

“The law is generous in providing grounds upon which a community’s land area (Village Area, or Village Land) may be defined – too generous, with confusion and conflict encouraged. The main source of conflict will be between boundaries defined in 1975 at the time of first registration of the village, or later when trying to secure a Village Title Deed (now not applicable) and the common sense routes – agreement between a village and its adjoining neighbours (s.7). Drafters of the law may not have appreciated just how frequently the boundary originally registered (or mapped in preparation of entitlement in the 1980s) only included settlement and farms, not the commonage. Villagers were given highly various instructions at both events as to what they could include as ‘village land’” (Wily, 2003:10).

Wily’s observations to a large degree explain the many conflicts about land in Tanzania. The ambiguous land rights get even more complicated when coupled with the mining legislation – which offers investors mineral rights in areas where people may already have “surface” rights to the land.

2.3 The Land Act of 1999

In January 1991, the Presidential Commission of inquiry into Land Matters was established. The commission worked for almost two years, concluding their work in November 1992. In the same year, the Regulation of Land Tenure Act was passed. The law provided for extinction of customary tenure without compensation. The law was held to be unconstitutional after two peasants tried their cases.

As a result of the many land conflicts, a new Presidential Commission was established in 1994. The commission had this to say about the relationship between the right of occupancy and “customary rights”:

“The land tenure system is based on multiple land regimes all existing side by side and none of which shall be considered superior to the other and interests under each of them shall enjoy equal security of tenure under the law”

In 1995 the Government promulgated the National Land Policy (NLP) – a major guide to local authorities on land use. However, the division of responsibilities was unclear:

The NLP direct that “permits, licenses, claims and rights for exploitation of natural resources be issued in line with land use policies, and environment conservation policies and programmes” (paragraph 4.2.10 of the NLP). However, it is not clear how licensing mandates will be coordinated at the local and central government levels. Another apparent gap in the policy in the unclear devolution of land management responsibilities from the Commissioner for Lands to the local government (LEAT, 2007).

When the National Land Policy was in place, the Land Acts were drafted by a British consultant, and later translated to Swahili. It has been noted that the laws are very long (800 pages), extremely complex, and that the meaning is unclear in some places (Palmer, 1999). With translation, there is the danger that the laws have become even more unclear, and/or that the two versions differ, particularly in an area like customary law – where Swahili expressions may have other connotations than the ones used in the English version.

The Acts provide detailed legislation for Village Land, General Land, and Reserve Land. (Sundet, 2005:2). The Acts have been subject to intense debate. Geir Sundet reports that the pro and contra ‘camps’ can be exemplified by Liz Willy, who see them as “basically sound”, and going far to vest “authority and control over land at local level”, and Issa Shivji, who argues that “the administration, management and allocation of land are placed squarely in the Executive arm of the Central Government under a centralized bureaucracy” (Sundet, 2005:2).

The Land Act was passed in 1999, effective from 2001 (Wily, 2003: 1). The act made it clear that there would not be any land reform in Tanzania – all land would remain public land - vested in the President. The land is administered by the Commissioner for Lands on behalf of the President (LEAT, 2007). The Land Act confirms tenures that were introduced under colonialism: Granted right of occupancy, customary tenure, and leasehold estates. Customary tenure applies to village land, general land, reserved land as well as urban land and peri-urban areas.

2.4 The Village Land Act of 1999

In common with the Land Act, the Village Land Act no. 5 was also passed in 1999. The particular objective of the law was to enforce the following Policy Statements of the Presidential Commission of inquiry into Land Matters: Section 4.2.2 (iii) which provide that village councils shall administer village land, section 5.2.1 which provide for demarcation of village boundaries and resolution of village boundaries disputes, and section 4.2.2 which provide for titling of individual parcels of land in village land. Put more broadly, the objectives of the law, according to the Ministry of Lands, is:

- To ensure that existing customary land rights are legally secured
- To ensure efficient and effective village land administration
- To enable villagers to participate in land administration
- To ensure gender balance in land administration and ownership

(URT, 2007a)

The Ministry of Land will be in charge of administering the implementation of the National Land policy and the Village Land Act, while the Local Government will be the implementers of the Village Land Act. The titling of individual parcels in village land is meant to increase people’s economic empowerment.

Up to now, there has been slow progress in the implementation of the laws (Adams and Palmer, 2007:50). The Village Land Act, in particular, has simply not been implemented, and the acts have not changed they way that land is administered at the local level (Sundet, 2005:1). Part of the problem is that the land sector is not a priority in most District Councils, and there is therefore an acute lack of budgets for different land activities. Implementers at the local level have not yet received training in the new procedures for administration and titling that the Village Land Act provide for (URT, 2007a:3).

2.5 Customary rights to land

Most land users in the countryside don’t have any formal certificate or title to the land that they are using. The process of attaining a certificate or title to a plot in rural areas is slow and expensive, and having a title does not always protect against disputes, since

(T)here is no reliable official system for registering titles and other documents that give rights to use land (and) ... certificates of title to the same land are sometimes issued by different officials to different people (Clark et al., 2007:12-13).

There are three main registers of land rights in the country: the Village Land Registry, the Local Land Registry, and the Registry of Titles. The three registers do not have the same standards for documentation, and are not coordinated.

The majority of rural people in Tanzania rely on a Customary Right of Occupancy - a legal right to occupy and use the land that they are now using, but with no official registration or certificate. According to the Village Land Act, “customary right of occupancy is in very respect of equal status and effect to a granted right of occupancy” (Sundet, 2005). In practice, however, customary rights are not secure, and property is usually held in the name of the male head of the family, which often leaves widows and children landless. Moreover, people tell stories of village land being sold off by Village Governments for personal profit:

At present, if you have a customary right of occupancy, or wish to buy a right of occupancy from somebody else, you can pay for a survey and apply for a certificate of title. However, the costs of this individual titling ‘on demand’ will be expensive, and it may make it easier for land to be allocated through deals between village leaders and outsiders or wealthier local residents, without the rest of the community being aware” (Clark et al., 2007:31).

The government allocates rangelands to investors (Clark et al., 2007:33) This is done through the Land Bank, operated by the Tanzania Investment Centre (TIC). This is a big threat to pastoralists in particular, who have used the rangelands through common land rights. Even land that lies under villages is assigned to the Land Bank, and there is general fear that the compensation offered is inadequate (Clark et al., 2007:35). Several researchers have been concerned about the fact that the court system is in practice inaccessible to ordinary people since it is so expensive (Clark et al., 2007:32; Gloppen, 2004; Kelsall et al., 2005).

2.6 Recent initiatives to formalise land rights

Recently, a number of initiatives have been taken to formalize land tenure in Tanzania:

- Commission for the Legal Empowerment of the Poor (CLEP)
- Property and Business Formalisation Programme (Swahili acronym MKURABITA)
- Strategic Plan for the Implementation of the Land Laws (SPILL)
- Business Environment Strengthening in Tanzania (BEST) – funded by the World Bank and other donors

Of these initiatives, SPILL and MKURABITA are relevant for the reduction of conflicts related to mining.

Strategic Plan for the Implementation of the Land Laws (SPILL)

SPILL is led by the Ministry of Lands and Human Settlement Development. So far, SPILL has “tried out ways to survey and give certificates of title to village and urban land” in Dar es Salaam and Mbozi district. In Mbozi, a certificate of title has been given to some people with customary rights, and most villages have been issued with certificates of title to village land. The process of titling is planned to be expanded to 30 other districts and some cities (Clark et al., 2007:22). A major obstacle to land registration in Tanzania is that historically, there has been very low capacity in professional land surveying. At the time of independence, the core departments of the Ministry for land development had no trained local professional staff (Silayo, 2005).

MKURABITA

Tanzania's Property and Business Formalisation Programme, known by its Swahili acronym MKURABITA, has as its goal to reduce poverty by registering poor peoples' wealth (land, houses and other property) in a unified system of property rights and businesses and thereby give them access to credit (Clark et al., 2007). The programme is still at the design phase. The idea is that the system "will be built from a harmonious marriage of standardized and modernized customary practices from the bottom-up and the relevant modified laws from the top-down" (Clark et al., 2007:iii). MKURABITA does not say much about the protection of women's rights (Clark et al., 2007:30).

In November 2006, the International Commission for Legal Empowerment of the Poor (CLEP) and MKURABITA arranged a national consultation conference in Tanzania on legal empowerment of the poor in Tanzania. Barriers that were mentioned were the following:

- Procedures for acquiring land titles are found to be very cumbersome, costly, very inconsistent and marred by corruption.
- There is lack of knowledge/awareness about land rights and the appropriate legal procedures of acquiring land titles.
- There are only four regional/zonal offices for application for land titles in only: the majority of the poor cannot afford the cost of traveling

(Adams and Palmer, 2007).

Development partners support inauguration in selected districts (Mbozi, Iringa, Handeni, Kilindi, and Babati). The process entails the establishment of the following:

- District and Village Land Registers
- Survey of village boundaries
- Issuance of Village Land Certificates (CVL)
- Adjudication of individual parcels
- Issuance of Certificate of Customary Right of Occupancy (CCRO)

(URT, 2007a).

A workshop held in May 2007 to discuss the implementation process in Handeni district, revealed that in around 50% of the villages it had been impossible to carry through the survey since the villagers disagreed strongly on boundaries. Even in the cases where surveys are done, there is often no place to store the Village Land Registers since many Village Governments lack offices. Finally, registration is complicated by the fact that there is no national ID system in the country. The introduction of a unified identification system is now being considered (Clark et al., 2007:11). The MKURABITA has started looking at how local Government "can organize 'blanket surveying' of all (or most) plots in a village, and issue title to those plots at one time" (Clark et al., 2007:31). This solution, however, will be in conflict with the Act, which specifically says that a "local government authority shall not ... make an offer of or grant any right of occupancy to any person or organization", and further that "only the Ministry, through the Commissioner of Lands, has the authority to issue Grants of Occupancy" (quoted in Sundet, 2005:3).

2.7 Human rights perspectives

Tanzania has signed the United Nations Agreements on Human Rights. The United Nations International Covenant on Civil and Political Rights details the basic civil and political rights of individuals and nations. Among the rights of individuals is "the right to legal recourse when their

rights have been violated, even if the violator was acting in an official capacity". On natural resources, the covenant says that people have a right to dispose of their natural wealth:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence (part 1, article 1).

In the case of Tanzania, the complicating factor is that individual rights to land are so ambiguous (Ik Dahl, 2007). In a dissertation on the politics of land in Tanzania, Geir Sundet argues that while settlers held land under statutory law in the colonial period, customary use of land was never seen as ownership of land:

"The Africans held their land under 'customary law', and their deemed Rights of Occupancy were permissive rights which were seen to be actively 'provided' and guaranteed by the government rather than being indisputable rights held by smallholders and pastoralists in their own right" (Sundet, 1997:135).

Sundet's analysis shows that central tenets of land policy have remained "virtually unaltered since the colonial period" (Sundet, 1997:134). While the new land acts appear to be radical, there are provisions which enable the government to disregard customary rights when there are alternative usages that may contribute to "development", like large scale mining.

3. Mining and mining legislation

3.1 Brief historical background

The German colonial government was not involved in mining. Most mining activities were small scale, although a couple of companies were in operation. When the British took over Tanganyika after the First World War, native interests were to be given due regard, since Tanganyika was a protectorate. With the discovery of gold in the 1920's, however, The Tanganyika Order-in-Council made it clear that all minerals were vested in the Governor:

The Order-in-Council, Article 8. (3), says:

All mines and minerals being in, under on any lands in the occupation of any native tribe or any members thereof or person not possessed of the right to work such mines and minerals shall be vested in the Governor ... in like manner as mines and minerals in, under or on any public lands (quoted in URT, 2001:11).

In 1929, the 1920 Ordinance was amended. One of the reasons was to prevent the development of a class of poor whites – hundreds of Europeans from neighboring countries had flocked to the gold rich areas. The 1929 Ordinance on mining said that prospecting by private companies was to be done in association with the government. This ordinance was effective up to 1969 when a Mining Ordinance (Amendment) Bill was introduced to give the Minister full control over prospecting licenses.

A decade later, the 1979 Mining Act vested ownership of all mineral resources in the State. (URT, 2001:12-14). In the years that have passed since then, mining policy has been strongly related to structural adjustment and the opening up for investors. According to the homepage of Tanzania Investment Center (TIC), the center is the government's "investment promotion agency" and where potential investors in mining should make their first contact. Seven senior officials, including one from the Lands Department are permanently stationed there (TIC, 2006). However, while some investors entered directly through IPC, some appear to have gone through both the IPC and the Ministry, while yet others have dealt with the Ministry only. This has resulted in ambiguity and lack of overview of the sector.

3.2 The Mineral Policy of 1997

In October 1997, the Ministry of Energy and Minerals published The Mineral Policy. The policy envisages small and large-scale mining developed side by side. Tanzanian nationals are given exclusive rights to key roles in the small scale mining sector (mine claim holder, broker, and dealer). Large-scale mining on the other hand, is open to international companies with the needed capital and experience. The policy further argues for a decentralization of the monitoring function of the mineral sector, "strengthening communication and the flow of information between Ministry Headquarters and zonal and district mines offices", and for "streamlining the licensing procedures to harmonize small-scale and large-scale mining operations; ensuring transparency and fairness" (URT, 1997:11)

The main problem is that the government has been unable to carry through its own policies, and there is too much ambiguity in the laws. It is also worrying that so much power is vested in the Commissioner of Mining. Villagers and/or small scale miners who disagree with mining concessions seldom have enough resources to use the court system.

3.3 The Mining Act of 1998

The 1998 Mining Act became effective as of August 1999. The Act itself counts 161 pages. The Mining Act grants immense power to the Commissioner to issue prospecting rights in any mining area in Tanzania (URT, 2001:28). The Mining Regulations comprise 325 pages and was signed by the then Minister for Energy and Minerals, Abdallah O. Kigoda in July 1999. The regulations have three main sections: Information about applications and application forms (112 pages), Environmental Management and Protection (39 pages), and Safe Working and Occupational Health (172 pages). The first prospecting license is normally issued for three years and is renewable for two terms. If the company has not completed its explorations by then, the license can be renewed for two more years (Lipili, 2007).

Under division D, the Act provides specific provisions for small scale mining. The aim of the provisions is to curb illegal mining and trading, address environmental effects, assist small scale miners “to operate in a more organised manner”, to provide formal small scale miners with technical support, and to promote viable small-scale mining activities (Tesha, 2000:1). Artisanal and small scale miners can obtain Primary prospecting license (12 months, renewable) and primary mining license (5 years, renewable, used to be one year under the former act). These licenses, which are only eligible for Tanzanians, can be converted into a mining or special mining license, “usually by entering into a joint venture with a company that is able to meet the annual expenditure requirements” (Butler, 2004:75).

Section 14 of the 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.” (URT, 2001:27).

The law has a very short section on disputes. The law gives the commissioner for Minerals 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 etc (URT, 1998:118, 2. 101 (1)). The commissioner makes 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.

The highest authorities for mining are the Minister responsible for minerals, and the Commissioner for Minerals. Applications for prospecting licenses, “including an application in respect of land in an area reserved for applications by tender for prospecting licenses” are sent to the Minister. The Minister may then, on behalf of the United Republic, enter into a development agreement with the holder or applicant of the right. The Minister shall be advised by a Mining Advisory Committee (s. 20 (1)).

The Commissioner for Minerals is appointed by the President and should be a “suitably qualified public officer” (URT, 1998:29, s 16 (1)). The Commissioner, or any official appointed to act on his/her behalf, is in charge of surveying, mapping, and demarcation of mining areas (URT, 1998:31, s 19). The law says that “Agreement should be made with the lawful occupiers of land and their written consent obtained to carry out mining or prospecting operations” (URT, 2001:16). The Mining Act defines a *lawful occupier of land* in the following way:

Lawful occupier in relation to any land means a person who is in actual occupation of the land or any part of it and where there are more than one person, means that one of them who is the owner, or who is responsible or would be so responsible if the land were let at a rent or otherwise occupied in circumstances in which

consideration or damages for such occupation would be payable (URT, 1998: 14, s. 4).

According to the act, “The holder of a Mineral Right *shall not* exercise any of his rights under his license or under this act” (...) “except with the written consent of the lawful occupier thereof, in respect of:”

- (i) any land which is the site of, or any inhabited, occupied or temporarily unoccupied house or building;
- (ii) 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;
- (iii) any land from which, during the year immediately preceding, agricultural crops have been reaped.

While the Mining Act in this section appears to give local people good protection, the ultimate power still lies with the central authorities. The act states that if Minister and the Mining Advisory Committee thinks that such consent is withheld “unreasonably”, the “need for the consent shall be dispensed with” and the paragraph “*shall not have effect*” (URT, 1998: 111, s.95,b, italics added).

The law says that owners of Mineral Rights shall exercise their rights “reasonably” and not “so as to affect injuriously the interest of any owner or occupier of the land over which those rights extend” (URT, 1998:113 s. 96 (1)). 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” (URT, 1998: 113, s. 96 (2)), but mining companies are obliged to pay compensation for damage to crops and buildings that were already there:

(3) “Where, in the course of prospecting or mining operations, any disturbance of this 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”

(5) Where the amount of compensation to be paid pursuant to subsection (3) in any particular case is in dispute, either party may refer the matter to the Commissioner who shall, subject to section 101, deal with the matter in accordance with Part VIII. (URT, 1998:114 s. 96 (3,5)).

With widespread allegations that any person holding the commissioner post is in danger of becoming corrupted, ordinary people do not trust the commissioner as someone who will treat conflicts between large mining companies and local communities in a fair way.

Paula Butler, who has compared the 1979 and 1998 mining acts, warns that when the provision that Ministry of Mines officials could not own shares in mining companies or mining licenses was dropped in the 1998 act, this would:

“(S)eem to open the door to an increased potential for ministry officials to act with private, versus state or public interests, in mind. It also created an additional avenue

for influence or enticements directed at public officials by private mining companies” (Butler, 2004:75).

So far, no public officials have officially been accused of corruption in connection with mining contracts, but rumors abound in mining areas as well as in Dar es Salaam.

3.4 The 2001 Position Paper on the legal framework for the development of the mining industry

A few years after the Mining Act had been passed, the government saw the need in 2001 to publish a position paper on the legal framework for the development of the mining industry. The position paper was written by The Law Reform Commission of Tanzania, and emphasizes that although the mining industry is governed by the Mining Act, “*there are other equally important legislation which impact on this sector that need to be harmonized*”, like the Land Act and the Village Land Act (URT, 2001:18, italics added). The paper also says that “Mining laws need to be reviewed and harmonized with other statutes being administered by other institutions that directly or indirectly affect the development of the mining sector to avoid unnecessary legal and institutional conflicts” (URT, 2001:19 s 4.6). This envisaged harmonization, unfortunately, appears not to have been carried through.

The policy paper refers to the Mining Policy of 1997 and emphasizes that it spelt out that the Mining Act would have to be coordinated with other government bodies:

All laws are supposed to establish a co-ordinate consultative mechanism within the government especially with central ministries and institutions responsible for planning, health, finance, environment, lands, water, works law and order, and regional authorities for the effective development of the sector” (URT, 2001:19 s 4.7).

Due to capacity problems, this coordination has been insufficient in the mining sector and has resulted in many conflicts, particularly related to land. The position paper expresses deep concern over the conflict between mining and the environment, particularly in reserves. The potential conflicts are discussed over several pages. Potential conflicts with the Land Act and the Village Land Act, on the other hand, are mentioned far more briefly.

The commission refers to Section 14 of the act, which, as we saw earlier, 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.” The term ‘vacant area’ is not defined – and may therefore include village land and/or reserves (URT, 2001:27). The position paper warns that due to lack of consultations, the many mining licenses may become “a breeding ground for litigations”, and further states that the Mining Act does not provide for sufficient compensations to land owners (URT, 2001:33). The position paper concludes that conflicts between concerned authorities are inevitable:

(S)imply because the authorities responsible for the management of land, village land, the environment, water, livestock, agriculture and minerals are different and have their own very strong legal frameworks and policies. When these policies and legal frameworks were being designed, the designers did not necessarily consult each other. Each ministry concerned came up with its own policy and consequent legislation. This was the time for policies, visions and mission and therefore every ministry went out to win this race (URT, 2001:36).

Unfortunately, the critical points that were raised in the position paper do not seem to have been dealt with over the years that have passed since it was published.

4. Conflicts related to mining

In the book *Mining for sustainable development in Tanzania*, Kassim Kulindwa et al. identify two main causes of land conflicts related to mining. First, there is lack of planning and co-ordination at the national level. Potential investors are given maps that have not been updated for years. Other claim holdings, and even villages, schools or health facilities may lie within the prospecting area without being marked in the map. The mining companies do not feel that they are obliged to compensate such land users as long as they have not been informed about them (Kulindwa et al., 2003:90). In their view, they will all be illegal occupiers upon their property. In Geita, there have been cases where investors have been allocated licenses within reserved forests. Kulindwa refers to four villages that had been established in Geita and Mkombazi Forest reserves. The villages had applied for government registration around 1989, but more than ten years later, in 2002, their registration had not yet been completed. The villages are therefore non-existent in national records, something which further complicates the issue of compensation. Second, there is often a misconception among local people with regard to both land ownership and legal rights over mining (Kulindwa et al., 2003:91-92).

The great majority of conflicts between mining companies and local people in Tanzania are related to informal small scale miners' illegal mining on mining companies' concessions. However, as the examples below will show, reported conflicts cover a whole spectrum, including disputed claims, relocations, and pastoralists' customary rights. The conflicts are presented in chronological order.

4.1 Mahenge: Tom Mines vs. small scale miners

One of the earliest reported cases of violent confrontations between foreign investors and local, small scale miners after the liberalization of the economy took place in Mahenge in 1993. Two small scale miners who were accused of illegal mining in an area licensed to a Thai owned company were shot dead by two Thais (URT, 2001:26). A year before, in October 1992, Augustine Mrema, then Minister for Home Affairs, had visited the area. Miners told him that it was hard for Tanzanians to mine since the areas had been given to Thais. Allegedly, Mrema had told the miners to get a claim for a certain area as soon as possible. The miners started mining, found the area to be resourceful, and then went to peg a claim with the Zonal mining officer. The officer told them that the area already belonged to the Thais. The miners continued mining, even after the District Commissioner warned them that they would have to face the consequences, and that all miners without licenses would have to leave the area. The 1993 shooting led to a demonstration by around 4000 people from the mining communities. The paramilitary Field Force Unit (FFU) was used to enforce a curfew. According to Chachage Seithy L. Chachage, no further action was taken by the authorities against the Thais (Chachage, 1995:37-38). In this case, a high-ranking politician is said to have made a somewhat 'populist' promise without consulting the mining authorities. The same thing is said to have happened in Bulyanhulu, to which we turn now.

4.2 Bulyanhulu, Kahama: Barrick vs. small scale miners

The conflict at Bulyanhulu is the most well known and controversial mining conflict in Tanzania. Allegedly, more than 50 small scale miners were buried alive when the pits were filled. The conflict also concerns relocations.

Small scale miners claim that the process when Sutton Resources got the concession for the 52 sq kilometer mine was irregular, and that the mine legally belonged to SSM, since they had been promised the mining site by a number of politicians over the years, including former President Ali Hassan Mwinyi (in power from 1986 to 1995). The Kahama mine initiated a case to evict the artisanal miners in 1995, and the High Court ruled in favour of the small scale miners on 29

September 1995 (Bradburn-Ruster, 2003). The mining company appealed, but withdrew the appeal seven months later. On July 30 1996, the then Minister of Minerals, Dr. Shija, decreed that the small scale miners would have to vacate within a month (Bradburn-Ruster, 2003).

According to the Ministry, artisanal miners who had invaded the license area in the exploration stage of the property refused to move, and this “forced the Government with financial assistance from the owning company, to take steps to remove them by force, fill their mining pits, fence the area and provide security up to when the company started to build the mine” (Tesda, 2000:11). It is during the filling in of the pits that around 50 miners – who had not followed the vacation order - allegedly were buried alive.

In 2002, the Tanzanian NGO Lawyers’ Environmental Action Team (LEAT) sent a complaint to the Compliance Advisor Ombudsman (CAO) of IFC on behalf of small scale miners. The complaint regards the process around the concession, and the alleged burials. LEAT claims that the shafts were filled the morning after the decree, the CAO’s review says that it happened some days later. Neither the SSMC nor LEAT have been able to provide the CAO with a list of names of those who allegedly were trapped. According to the CAO report, neighbours of people who claim to have lost relatives when the shafts were filled in, say that these people are either alive or died before August 1996.

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 (CAO, 2002:8). According to an article published by a western NGO in 2003, the families who were relocated had their cases treated by the High Court and the Court of Appeals:

In August 1998, two suits were filed in Tanzania’s High Court, one of them on behalf of villagers, including 42 families who were removed, claiming that they were paid less than \$100 per family for loss of grazing lands, crops and buildings. Although the High Court dismissed both cases on grounds that it lacked jurisdiction in matters of constitutional rights, the Court of Appeals soon accepted the cases and set a series of hearings to begin in May of 2000, by which time Barrick had acquired Sutton (Bradburn-Ruster, 2003:3).

According to the CAO report, the families who were resettled within the concession now live in poor conditions, and they refrain from planting crops since they are uncertain about what they can do on the land and whether they will be moved again. The CAO states that there should have been more communication at the side 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” (CAO, 2002:8). The report further claims that ten days before the hearings were to start, the Kahama District Commissioner “yielded to pressure from Barrick” and the villagers were given 12 hours to move. The following day, it is claimed, police razed houses and destroyed the crops (Bradburn-Ruster, 2003:3).

In 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. Amnesty International have expressed interest to visit Bulyanhulu but have been denied access by Tanzanian authorities (Simbeye, 2002).

4.3 Geita: Geita Gold Mine and re-locations³

With the re-opening of Geita Gold Mine in 1999, a village called Mtakuja had to be relocated. The company paid US\$ 5.06 million into a government-controlled bank account, and left it to the government and District Council to deal with the practicalities. According to several sources, at least 857 people who were entitled for compensation never received their money (AllAfrica.com, 2001; Knight, 2001). Apparently, the lists contained fake names, while people who were living in the village were never registered. It is also said that “most people compensated received less money than is shown in the government records” (AllAfrica.com, 2001). The CEO of the company informed the press that according to the law, 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 some committee members were sharing Tsh 100,00 (\$120) to prepare bogus claims” (AllAfrica.com, 2001).

The government’s Prevention of Corruption Bureau investigated the case in 2002. Two GGM employees and a number of lower level civil servants were found guilty. In February 2004 it was decided that the government should offer Tsh. 600 millions (US\$ 550 458) to those who had not been properly compensated. People in Geita still have the feeling that the “big fish” got away with their crime, and there are all kinds of speculations as to what levels of government were involved and who benefited from the compensation money. In a report, Geita Gold Mine states that “progress feedback from the Government is still awaited” (Geita Gold Mine, 2004).

4.4 Tarime: North Mara Gold Mine and officials vs. Nyangoto villagers

The North Mara Gold Mine was officially opened by former President Mkapa in September 2002.⁴ At his opening speech, the president said that the arrangement between the former claim owners at Nyabirama and Afrika Mashariki Gold Mines (AMGM) was “a step in the right direction” since small scale miners had capital and technological limitations, and that he encouraged it (Tanzania Chamber of Mines, 2002:4). In 2003, a group of villagers gave the Commission for Human Rights and Good Governance in Dar es Salaam a 40 page long complaint drafted by Lawyers’ Environmental Action Team (LEAT), and asked to have their case registered.

According to the document, mining had taken place informally in the area since 1987, but only in 1991 had the five villages been granted claims titles. The villages had then sub-granted mining rights to local individuals. In August 1993, a locally registered company (Winani Mining) that held claims in the same area, sold their rights to EAGM/Afrika Mashariki. In October 1994, this company started extensive drilling, including in the claims that belonged to the five villages. In August 1996, the Minister of minerals, Shija, granted EAGM/Afrika Mashariki new mining licenses in Nyabirama, excluding the claims already granted to the villages.

The complaint, directed against both government officials and the mine management,⁵ holds that that two government officials in Tarime District – the District Commissioner and the District Land Valuation Officer - had put undue pressure on 60 villagers to make them accept compensations that

³ This section is an edited and shortened version of a case study presented in Lange, S. 2006. Benefit streams from mining in Tanzania: Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11.

⁴ The North Mara mine was originally owned by East Africa Gold Mines, but was sold to the Canadian company Placer Dome in July 2003. The mine is operated by Afrika Mashariki Gold Mines Ltd (AMGM), a subsidiary of Placer Dome (Chevalier, P. 2003. Canadian Minerals Yearbook, 2003.

⁵ The complaint was directed at the director of the mine, the director of Placer Dome, the former and present Minister of Energy and Mineral Development (Abdallah Kigoda and Daniel Yona), Commissioner for Minerals, Public Relation officer of the company, District Commissioner, District Land Valuation Officer, the Regional Police Commander, and Villiam Shija.

were too low, and that they had threatened them with arrests if they didn't comply. According to LEAT, both the mining company and government officials "exerted undue influence upon the leadership of the villages to force them to illegally and irregularly sell the claim areas legally granted and held by the said five villages" (LEAT, 2003a:9). The AMGM company was accused of causing damage to houses and threatening villagers' health by blasting and dumping waste rock close to homesteads (LEAT, 2003b).

The Commission for Human Rights and Good Governance in Tanzania decided to make an interim order where the director of the mine, the director of Placer Dome, the Public Relation officer of the company, the District Commissioner, and the District Land Valuation Officer, were to "refrain from doing any act on the said disputed area until the final determination of the complaint" (Commission, 2003). In February 2007, the case was finally settled. The company agreed to pay the formal small scale miners one per cent of the proceeds from the gold mined in plots that "originally belonged to them" (Daily News, 2007b). The deputy Minister of Energy and Minerals, Mr. William Ngeleja, was reported to say that "the government cannot give back the plots to the artisans because they had entered into agreement with AMGM at their own volition" (Daily News, 2007b).

4.5 Lendanai: Rockland Ltd vs. Pastoralists⁶

This case differs from the forgoing since the conflict does not involve small scale miners. The conflict took place in Simanjiro, on the Masaai steppe, where Rockland Tanzania Ltd (a subsidiary of the Kenyan owned mining company Rockland) secured a 300x3000 meter prospecting claim from a local company in Lendanai village in 2003. The company was later granted a prospecting license for an area covering ten square kilometers and put up signs forbidding trespassing in that area. Lendanai is part of the Maasai steppe and the area contains a water source that 40 000 heads of cattle depend upon. In addition to the natural water source, there is a water pump and reserve cement water tank, constructed by a pastoralist in the 1940s.

A representative of the Maasai using the water source, Soipei Lenganasa, was able to arrange a meeting with among others the Minister for Energy and Minerals, The Minister for Water and Livestock, the MP from the constituency, and the Commissioner for Minerals to discuss the case. In a letter summing up the meeting, 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 said that minerals rights can only be exercised after written consent of the holders of surface rights and relevant local government authorities (see section 3.3 of this report).

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

The users of the water source contacted the Minister (responsible for livestock and water) again and had him write a letter to the mining company where he requested the company to respect the Mining Act. The owner of the mining company, Mr. Johnson Mudhama, then signed an agreement where he agreed to not hinder the pastoralists from using their water source. Later, the company, which had an exploration license only, was denied a gemstone license, and could therefore not start mining. Furious, the owner of the company sued the spokes person of the users of the water source,

⁶ This section is an updated and shortened version of a case study presented in Lange, S. 2006. Benefit streams from mining in Tanzania: Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11.

Lenganasa Soipey. The owner claimed that he had been forced by Soipey to sign the agreement, and that Soipey 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 CCM (the ruling party), who both said that the claims were true. Rumours have it that the two were paid a large sum of money to take the miner's side in the conflict. It is hard to find a another rational for the DC and the party chairman to take the company's side in the conflict, particularly since mining companies in Tanzania seldom hire local people, and are not obliged to pay revenue to local governments.

At the same time as the police investigated the charges the owner of the mining company had made against Soipey, Soipey contacted the Bureau of Prevention of Corruption and reported the case. The Bureau took the case seriously, but the case 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 for 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. The conflict ended in favour of the pastoralists. The case shows, however, that the Mining Act does not give enough protection to local communities. 'Local communities' are supposed to be represented by village governments and district councils – which, as this case has illustrated, may not act in the interest of the people whose rights are affected by mining activities.

The fact that the Lendanai case does not relate to a 'demarcated settlement', but a water source, makes the case even more complicated. Faustine K. Bee et. al. argue that with the implementation of the socialist Arusha Declaration in 1967, when all land was nationalised, 'farmers were provided with private user rights while the grazing land became the property of all' (Bee et al., 2002: 27). There was, in the 1970s, a US sponsored programme to formalise Maasai land rights, but the programme collapsed when the *ujamaa* (socialist villagisation) process took root (Homewood et al., 2004: 572). As a result of rangeland being delegated to national reserves, commercial farms, and mines, Maasai have migrated to new districts, often coming into violent conflicts with peasants. For instance, in 2000, 26 Maasai and two peasants were killed in a land dispute in Kilosa (Anderson and Broch-Due, 1999).

The Lendanai case reached a happy ending due to having an unusually resourceful spokes person. Lenganasa Soypei is not only very wealthy (from trade in tanzanites), he has university education and contacts and friends within the legal sector. Many pastoralists in East Africa are illiterate and find it hard to stand up against injustice and corruption. Today, rangeland is the kind of land that most commonly is allocated to the Land Bank of Tanzania for investment purposes. There is therefore a real danger that similar conflicts will arise in other areas, and without the positive outcome that the Lendanai case has had.

4.6 Mererani: AFGEM/Tanzanite One vs. Small scale miners⁷

In Mererani, the only site for Tanzanite mining in the world, a serious conflict has developed between the large scale mining company AFGEM, and small scale miners whose mines are adjacent to AFGEM.⁸ AFGEM received its license in 1999 and officially started mining in 2001. In May 2004, AFGEM sold the mine to a group called TanzaniteOne Group, a subsidiary of JABE, a British/Australian company specialised in mining.

⁷ This section is an edited and shortened version of a case study presented in Lange, S. (2006). Benefit streams from mining in Tanzania: Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11. Bergen, Chr. Michelsen Institute.

⁸ Shareholders included Industrial Development Corporation of South Africa, the African Development Bank and several private South African banks.

The AFGEM/Tanzanite One mine is situated in Block C, between Blocks B and D, which are both under small scale miners. According to a map made by AFGEM, old and new shafts enter far into AFGEMS property (Lange, 2006:32). In order to stop small scale miners, AFGEM has constructed a 400 meter long tunnel cutting across the reefs. In 2002, there was a violent confrontation between artisanal miners and AFGEM employees in one of the shafts. According to the AFGEM management, the small scale miners threatened the AFGEM workers with knives, and the AFGEM security guards shot back and wounded eleven miners.

People in Mererani claim that name given high ranking people in the Ministry of Minerals own shares in Tanzanite One through relatives, and they suspected that this was the reason why the company's security guards had not been prosecuted after killing the miners (Lange, 2006). In contrast to the 1979 Mining Act, which "expressly prohibited Ministry of Mines officials from holding shares in mining companies or mining licenses" this prohibition was dropped from the 1998 Act (Butler, 2004:75).

Small scale miners claim that between themselves, demarcations between licensed areas are only relevant at the surface, where the pit starts, while "there is no demarcation down the pits", and that anyone is free to follow a reef that starts within their mine. A study by Kulindwa et al. show that also between small scale miners, "quarrels over veins inside the mining pits can sometimes be very serious to the extent of causing injuries and even loss of life" (Kulindwa et al., 2003). Of disputes recorded by village leaders in Mererani, around 75% are related to land and mining rights.

In addition to the conflict between small scale miners and Tanzanite One regarding whether borders are relevant at the surface only, there is a conflict regarding the boundary separating Block C from block B. A commission of inquiry called General Mboma Probe Commission has been formed, but has not reached a conclusion. In June 2007, the conflict was discussed in Parliament, after having been raised by the MP from Simanjiro, Christopher Ole Sendeka, a Maasai by origin. The MP was very sceptical against the process:

"It is surprising to learn that the original file with all the necessary documents detailing the limits of the block at the center of the controversy went missing at the Ministry of Energy and Mineral together with 110 other files" (Shayo, 2007).

In June 2007, an inspector from the Ministry came to physically check 40 mines in Mererani to determine whether small scale miners (block A, B and D) mine in block C (Tanzanite One), and/or in each others concessions (Radio One, 2007). The conflict in Mererani has symbolic value to many Tanzanians, since Tanzania is the only country in the world where Tanzanite is mined.

4.7 Rwamgaza: Buck Reef - East African Mines/IAMGOLD vs. villagers⁹

Buck Reef Mine was owned by the state up to 1992. Since then, several companies have been involved in explorations.¹⁰ In the period 1994-2004 the mine expanded its exploration license from 2.5 square kilometres to 450 square kilometres, an area covering thirteen villages.¹¹

⁹ East African Mines is the name of the mine itself. It should not be confused with the company East African Gold Mines Ltd. This section is an edited, shortened, and updated version of a case study presented in Lange, S. 2006. Benefit streams from mining in Tanzania: Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11.

¹⁰ Among them the Australia based company Gallery Gold Limited.

¹¹ At this time the mine was called East African Mines.

Villagers are allowed to farm, but only annual crops, since the company does not want to risk having to compensate perennial crops. Moreover, villagers are not allowed to plant trees or dig more than one foot into the ground, a restriction which, they say, prevents them from digging even latrines. The restrictions apply in the whole area as long as explorations are going on.

When interviewed in 2004, the general view of village leaders in Nyarugusu and Rwamgaza was that they know very little about what is going on and that they would have wanted the government to be more open about the processes. The Ward Executive Officer of Rwamgaza claims that the village governments were never involved in the process and that villagers have had little or no information about what the new situation entails.

In March 2006, the mine was acquired by IAMGOLD (IAMGOLD, 2007a; IAMGOLD, 2007b). In October the same year, three small scale miners who mined within the concession were “arrested” by security guards and handed over to the police who locked them up. According to the Guardian, no one was able to pay bail for the two and fellow artisan miners then “raided and overpowered police at Nyarugusu Police Post in a bid to free their colleagues” (Kasumuni, 2006). During the same month, security guards started filling in artisanal miners’ pits. In one of the pits, the guards heard screams from trapped miners. The guards contacted the Mines Officer in Geita District who “directed the immediate excavation of the pits”. The two victims, both locals from Nyarugusu ward, were brought to Geita Hospital for treatment (Kasumuni, 2006).

In February 2007, the conflict escalated as a lorry carrying a bulldozer meant to fill in artisanal miners’ pits entered the village area. Enraged small scale miners put the lorry and bulldozer ablaze (Kigwangallah, 2007a; Masuguliko, 2007). The Commissioner for mining, Dalali Kafumu, visited the area soon after the incident and attempted to appease the small scale miners by telling them that they would be assigned special areas. According to IPPmedia, villagers did not believe him, and said that they had been cheated by the same government on a number of occasions (Kigwangallah, 2007a).

Habari Leo, a Swahili newspaper that reported on the visit, emphasized that the small scale miners had “brought their complaints to the ministry and other leaders, including government leaders many times, but that they had got no response” (“*wamepeleka malalamiko yao mara nyingi wizarani na kwa viongozi wengine pia wa serikali, lakini suala lao halijashughulikiwa*”). The journalist also warned the government that it should “remember that it is hard to lead a person who has already lost hope” (“*Ikumbukwe kwamba ni vigumu kumwongoza mtu aliyekata tama*”) (Azaria, 2007). The Geita District Administrative Secretary called the conflict “a time bomb waiting to explode”, and added: “We cannot force the villagers out. This is their ancestral land and a responsible government could never dare to do that” (Kigwangallah, 2007a).

This case illustrates the lack of coordination between the Commissioner of Mining and local authorities. Local authorities claim not to have been informed, and the commissioner should have understood that a concession of this size would affect many people who are living in the area.

4.8 Common sources of conflict

The conflicts presented above can be categorized into four types:

- Illegal mining (Mererani, Mahenge and Kahama)
- Re-locations and unfair compensations (Geita and Bulyanhulu)
- Disputed claims (Tarime, Mererani)
- Pastoralists’ rights to land (Lendanai)

The conflicts fit well with Kulindwa et al's argument that the root causes of mining conflicts in Tanzania are lack of planning and co-ordination at the national level (including poor maps) as well as misconception among local people with regard to both land ownership and legal rights over mining (Kulindwa et al., 2003:91-92). To this I will add that politicians are said to have made unrealistic promises to small scale miners (a minister in the case of Mahenge, the president in the case of Kahama).

Phillips et al. have noted that it is common in large concessions "to find many claims legally licensed to small-scale miners" (Phillips et al., 2001:77). The Mineral Policy of 1997 promotes partnership and joint ventures between investors and small scale miners. The government envisaged that such partnerships could promote transfer of technology and optimize mineral resource exploitation. Unfortunately, the policy is said to have been misused in some places where government officials allegedly have pressured small scale miners "to accept and sign vague agreements with large scale miners" and to have been threatened by the government with the revocation of their title deeds if they did not abide by the directive." As a result, many small scale miners, like the ones in Tarime, feel that they have been swindled out of their property, but they don't have the resources to employ the legal system to fight their case (Kulindwa et al., 2003).

Tanzanian claimholders are typically merchants and the "rural bourgeoisie, village leaders, some syndicates of small-scale miners, some Asian and Greek businessmen, employees of the official mining sector and urban party and state bureaucrats" (Chachage, 1993). In some areas, claim holders are former supervisors of mining companies (Mwaipopo et al., 2004:63). Common for this group is that they have the necessary contacts and knowledge to register claims at local offices and at the Ministry. This is a section of society who feel confident with, and have access to, the state bureaucracy.

In the Geita area, many indigenous people feel marginalized, not only because of international investors, but because the local claim holders tend to be immigrants who originally moved into the area to work for foreign companies in the colonial area. When the mineral production stopped up, these immigrants turned to farming, but they were quick to secure claims when the government later opened up for small scale mining. The original occupants of the land feel that the minerals should have been under their control, and they accuse both small scale miners, companies as well as the authorities of denying them their rights (Kulindwa et al., 2003:92-93).

It should be noted that large scale land conflicts are not related to mining operations only, but to commercial farms as well. In 1979, a European was offered close to 400,000 acres of land in a pastoralist area in Northern Tanzania. The property was fenced and the owner made considerable investments. After public uproar, the property was nationalized four years later and the owner declared non grata. In another case, the investor won a court case against the government when the latter cancelled the investor's title after public protest. This case, which started in 1991, is still pending. In many land conflicts related to commercial farms, the local communities have either not been consulted, or they have simply not understood the law and the actual size of the areas in question (Tenga, ND:7-8). Corruption – both among the officials who grant concessions and among local leaders who accept the terms - is probably also a factor behind the many conflicts.

5. Government initiatives to reduce conflicts

This chapter looks at the initiatives that have been taken by the government of Tanzania to reduce conflicts related to mining. Opposition politicians from Chadema, CUF and other parties regularly raise issues concerning mining in Parliament (Daily News, 2007b) (Daily News, 2007a). Also MPs representing the ruling party CCM has voiced concern. In April 2007 a female MP argued that mining firms around Lake Victoria “harass villagers”. The Minister for Energy and Minerals and his Deputy both insisted that this did not happen, but said that government ministers would accompany worried MPs “for an on the spot verification of the claims” (Lipili, 2007). The MP representing Msalala in Kahama district, however, is reported to have “called upon villagers living close to the Bulyanhulu Gold Mine to stop complaining and instead use wisely opportunities offered by the mining company for economic development”, like training in poultry keeping (Guardian, 2007b).

The first part of this chapter looks at the attempts to increase the revenue from mining after massive public critique of large scale mining’s low contribution to the government coffer. The second part of the chapter presents recent government initiatives to support small scale miners as well as a laudable cooperation project taking place at the Mwadui/Williamson diamond mine.

5.1 Negotiations with mining companies to increase revenue

The debate on mining in Tanzania has in recent years been dominated by a public “outcry” which holds that the government of Tanzania has given the country’s mineral resources away to foreigners almost for free. The low royalty on gold (three percent), has been of special concern.

In August 2006, President Kikwete informed that his cabinet had started reviewing all mining contracts. It was emphasized that this was not to scare off investors – but to ensure both investors and Tanzanians benefit equally from the industry (Bandawe, 2006). A year later, on May 8, 2007, the State House issued a statement where they informed that successful negotiations to review mining contracts had been carried through with the owners of the following mines: Bulyanhulu, Tulawaka, North Mara, and Golden Pride. Negotiations with Geita Gold Mine were said to be in their final stage. The statement said that the purpose of the negotiations was “to make the sector boost government revenue”, and that the government and investors had agreed “to scrap some incentives and the 15 per cent additional allowance on unredeemed qualifying capital expenditure” (Guardian, 2007d).

When an opposition politician from CUF, Hamad Rashid Mohammed, requested the government to allow members of the National Assembly to read the mining contracts, he was told by the Minister for Energy and Minerals Nazir Karamagi that this was not possible, and that “the details of the contracts will remain confidential because each mining firm entered into agreement with government on separate terms” (Daily News, 2007a).

A few weeks later, in July, an MP belonging to another opposition party, Chadema, criticized the Minister for Energy and Minerals, Nazir Karamagi, for having signed a new contract with Barrick in London. He asked the minister to explain “why he signed the agreement alone before even the negotiation team had come out with recommendations on how the laws regulating mining activities in Tanzania could be revised for the good of the nation”, and that the way the contract signing was done, outside Tanzania, was likely to encourage corruption. According to the news source, “there was no immediate official reaction to the MP’s remarks” (Kisembo, 2007).

5.2 Attempts to plug “loopholes”

In addition to negotiations, the GoT has started the planning of a comprehensive government program “to plug the loopholes in the mining sector”. According to IPPmedia, “There have been reports of the government losing billions of shillings to rampant tax evasion, under-declaration of export consignments, and improper conduct by unscrupulous investors in the mining sector” (Guardian, 2007c). The programme will involve the Finance Ministry, Tanzania Revenue Authority (TRA), Energy and Minerals ministry and others. In an attempt to “spread out the social and economic benefits accruing from mining operations to local communities”, the State House statement also informed that national mining policy of 1997 is also being reshaped (Guardian, 2007d).

The three percent royalty rate for gold, has “triggered a national outcry” in the country for years (Tarimo, 2007a). The public opinion’s feeling that their nation is being robbed was further strengthened in February 2007 when the Public Accounts Committee (PAC) presented the committee’s 2006 report to the National Assembly. The chairman of the committee, John Cheyo, is reported to have said that the government had lost almost USD 1.045 billion, an amount equal to a quarter of the government budget for that financial year. Cheyo identified the following as contributing to the government’s inability to collect sufficient revenue from the mining sector:

“The problems include the mining law which allows the depreciation of capital investment cost in the first years of mining. It also allows 15% additional depreciation allowance on unredeemed investment and high operational costs” (Shekighenda, 2007).

Cheyo also said that the committee had found that the system of keeping records in various ministries was poor and that embezzlement was a problem (ibid.). In a recent initiative, the GoT has asked New Zealand to provide them with specialists on minerals to train local experts as part of their development assistance (Guardian, 2007a).

5.3 Support to small scale miners

Since small scale miners have lost many of their most productive areas to investors, small scale miners’ organizations as well as politicians have argued that the government needs to do more to secure the livelihoods of artisanal and small scale miners. A National Policy for Artisanal Small Scale Miners has been promulgated, but not yet implemented (Andrew, 2007).

In an effort to reduce conflicts between investors and small scale miners, the government has recently initiated public awareness campaigns. In collaboration with SIDO, the Ministry has sent experts to mining areas to educate residents about boundaries of licenses issued in their areas, as well as their and responsibilities (Lipili, 2007). This initiative is positive, but taken the number of people affected by mining, and the Ministry’s limited staff and resources, it is doubtful that the information campaign can make a real difference.

In 2007 the government set up a task force to document all mining sites in the country. According to the plan, plots that are dormant, or whose licenses have expired, will be passed on to artisan miners – giving priority to village governments and savings and credit cooperative societies. The commissioner for minerals, Dr. Dallaly Kafumu, when informing about the plans, referred to the conflict between artisanal miners and Buckreef/IAMGOLD Ltd in particular (Masuguliko, 2007).

Through the Global Mercury Project (GMP), ten thousand small scale miners will receive training on entrepreneurs’ skills. The training is organized by the Ministry of Energy and Minerals, in

collaboration with the UN Industrial Development Organisation (UNIDO), United Nations Development Programme (UNDP) and Tan-Discovery (Kigwangallah, 2007b).

5.4 Cooperation between Mwadui/Williamson and small scale miners

When liberalizing mining and inviting investors, the GoT had a strategy of “promoting partnership between local small-scale miners and large-scale investors to facilitate technology transfer and optimize mineral resources exploitation” (Tesha, 2000). This strategy has been followed up to a very limited degree. In retrospect, the perception that large scale companies would voluntarily enter such partnerships was perhaps a bit naïve. With a few exceptions,¹² the only cooperation that has taken place between formal small-scale miners and mining companies is the selling of claims from the former to the latter, a process that the Ministry admits has resulted in “one-sided exploration agreements, which favour the larger mining company” (Tesha, 2000:12).

A recent attempt at harmonizing relations between large and small scale miners have been initiated by De Beers in cooperation with the GoT, represented by both central and local authorities. Local government leaders of nine surrounding villages have been engaged in the project. The project, named The Mwadui Community Diamond Partnership (MCDP), has two main goals. First, development of ASM diamond mining by transforming “the diamond mining and trading business in organized and profitable small scale mining enterprises that operate within the provisions of the mining legislation and that are environmentally acceptable”. Second, the project aims to contribute to the development of alternative livelihood activities through organising villages in production groups, providing microfinance and training. Some of the mine buildings are planned to be converted for the benefit of the community.

The project management has consulted a range of stake holders, organizations and donors, including the World Bank Tanzania office, the banks’ Sustainable Community Development section. If successful, the pilot project is meant to be replicated in other African countries where artisanal mining is widespread.

The perhaps most interesting and laudable initiative at the side of the mining companies is their willingness to let small scale miners mine within their concessions – in areas that the companies themselves do not find useful. Since the current legislation does not allow small scale miners to operate within large scale mining companies’ leases, the project has submitted a proposal to the government to have the legislation amended (Mutagwaba et al., 2007).

The project is an important step in the right direction and appears to be the first serious attempt at fulfilling the Mineral Policy’s guideline that small and large scale miners should work together. However, considering the fact that the estimated number of artisanal miners in the area is 10,000, it is unlikely that the project will be able to involve all small scale miners and/or end all conflicts in the area.

¹² In Geita, Tembo mine cooperates with a formal small-scale miner in mining, ore processing and marketing Tesha, A., L. 2000. Cooperation between small-scale and large-scale mining. Paper presented at the 'Growth and diversification in mineral economies Regional Workshop for mineral economies in Africa', Cape Town, 7-9 November.

6. Consultation and conciliation mechanisms

This chapter first presents conflict resolution as it is envisaged in the land laws and the Mining Act. It then describes a couple of informal solutions to mining conflicts, before referring to the recent attempts at harmonizing the Mining Act and the land laws as suggested in the 2001 Position Paper on the legal framework for the development of the mining industry (see section 3.4 of this report).

6.1 Conflict resolution according to the land laws

Experts on Tanzanian law, Issa Shivji and Liz Willy, both agree that the land acts are weak on providing mechanisms for settling disputes, and that there is little reason to believe that resolution of disputes will become fairer or speedier (Palmer, 1999:4). The Land Act says that the following laws can be applied by courts in determining disputes about land:

- The constitution
- The act itself
- Customary laws

According to the land laws, land dispute resolution systems are to be independent of all levels of government and are to “settle disputes swiftly and fairly (s. 3 (1) (a)). (Wily, 2003). 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 (s.61) (Wily, 2003:52).

There are, however, provisions in the Village Land Act which restricts villages’ control over village land. Geir Sundet explains the provisions of the Land Act in the following way:

In cases where the village is in dispute with bordering villages or other landholders, the Minister shall appoint a ‘mediator’ to work with the conflicting parties to find a “compromise” (s.7(2)(a)). Where the mediator is unable to find a compromise, the Minister shall appoint an ‘inquiry’ under section 18 of the Land Act (s.7(2)(b)). According to the Land Act, a judge of the High Court, selected on the advice of the Chief Justice, shall hold the inquiry. The inquiry shall be held as a judicial inquiry, shall be open to the public and, perhaps most importantly, the report of the inquiry shall be published. The Minister is required to accept the recommendation of the inquiry, “unless there are overriding reasons of public interest to the contrary” (s. 7 (5)). (Sundet, 2005).

Villages have little or no power to object to losing land to mining companies if the government sees this as being in the national interest. According to the sections below, village land can be transferred to general land:

4 (1) Where the President is minded to transfer any area of village land to general land or reserved land for public interest, he may direct the Minister to proceed in accordance with the provisions of this section.

(2) For the purpose of subsection (1), public interest shall include investments of national interest.

(quoted in Sundet, 2005)

If such transfer takes place, the Village Council is obliged to inform villagers who have a certificate of customary right or a derivative right, but they are not obliged to inform people that “only” have customary land rights, without a certificate (Sundet, 2005:8). In terms of compensation, the act

provides an improvement compared to earlier. Under the new law, village land can not 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 ...” (s. 4(8)). (Sundet, 2005:8).

The Ministry of Lands, Housing and Human Settlement Development lists a number of problems that result from lack of funding:

- a near freeze on topographical mapping and land use planning services;
 - a stagnant cadastral survey system;
 - incomplete village boundary surveys;
 - a run down land administration infrastructure;
 - the spread of irregular settlements; and poorly facilitated law enforcement institutions
- (Ministry of Lands, 2006:27).

From the Ministry’s list, it is clear that a proper implementation of the land laws is unrealistic in the near future.

6.2 Conflict resolution according to the Mining Act

In the 1979 Mining Act, the only dispute resolution mechanism was vested in the minister of mines (Butler, 2004:69). In the 1998 Act on the other hand, there is a provision in the Development Agreement, Section 10, for disputes to be settled by international arbitration, i.e. the International Convention for the Settlement of Investment Disputes, ICSID (Butler, 2004:73). So far, no mining conflicts in Tanzania have been brought before the ICSID.

Paula Butler notes that the 1998 Mining Act “represents a shift to a ‘rules-based’ system of management of the mining sector in which the discretionary latitude of the minister and national interest-based interpretations of the Mining Act is much reduced” (Butler, 2004:73). The 1998 Act, therefore, is a great improvement seen from the perspective of investors. For conflicts that involve local people on the other hand, the law still says that disputes are to be solved by the Commissioner of Minerals (Tesha, 2000:12). As mentioned earlier, small scale miners and farmers do often *not* trust that the Commissioner will solve a conflict in an unbiased way.

6.3 Informal conflict resolution

In some areas, an informal form of conflict resolution has been developed to regulate the relationship between formal small scale miners and farmers when title deeds are located on farms. As compensation, the owner of the farm gets 10% of the minerals extracted. This form of partnership is said to be preferred to official compensation since land officials use rates which are outdated and far too low. Both farmers and claim title holders also find the legal system to be expensive and time consuming since the courts are located far from the mines. (Kulindwa et al., 2003:92). It is interesting that according to this source, formal small scale miners grant people with customary rights *more* benefits/compensations than the law requires large companies do.

In Mererani, where AFGEM/Tanzanite One has been in violent conflicts with formal small scale Tanzanite miners, a former small scale miner now “gone big”, Mr. Mezenge, has found a workable solution to the same conflict. Mezenge confirms that small scale miners have traditionally followed demarcations at the surface, while they have been free to follow the reef underground. In his view, small scale miners can practice their “traditional” mining policy within blocks B and D, but they should not mine into other blocks. Up to now, he has only been in conflict with one small scale miner. The case was settled with the local mining officer as mediator. The mining officer called both parties with their associates for a meeting where the issue was discussed at length. The success of the mediation appears to be a result of the comparatively low level of conflict, but also, perhaps,

the fact that both parties had a shared cultural competence in this form of “traditional” conflict resolving (Lange, 2006).

6.4 Recent initiatives

There is at the moment a process of harmonizing the Mining Act and the land laws as suggested in the 2001 Position Paper on the legal framework for the development of the mining industry (see section 3.4 of this report). The main suggestion is to decentralize administration of land from the national/ministry level to the district and village level. Mining is still supposed to be allowed on village land, but villages are supposed to get full compensation.¹³ As mentioned under section 2.6., this initiative presupposes an amendment of the law, since at the moment, local authorities are prohibited from allocating land.

The way the system works now, it is the Minister of Lands who appoints mediators in village boundaries disputes. It is also the Ministry that approves the certificate of title for the village land and the map of village boundaries. As part of the Property and Business Formalisation Programme, it has been suggested that these issues should be decentralised to local authorities, but this has not yet been decided (Clark et al., 2007:13).

¹³ Personal communication, Ministry of Land, 15.05.07.

7. Conclusion

Tanzania's mineral policy, which was formulated in 1997, and the Mining Act, written in 1998 but effective from 1999, offer investors attractive conditions. In terms of revenue, companies pay three percent royalties and no corporate taxes until they have recouped their initial investment. In the period 2000-2005, more than 1,500 prospecting licenses and 82 mining licenses were issued in the country (TIC, 2006). The company Kilimanjaro Mining, which has specialized in identifying licenses with an economical potential, emphasizes the role artisanal miners have in identifying new mining areas:

Artisanal small scale workings are a very important starting point. Around the world almost all current large scale gold mines began by locating the artisan workings and then expanding exploration from them as center. Examples within Tanzania are Buyanhulu, Geita, North Mara, Golden Ridge, Buckreef, Golden Pride, Buzwagi and Nyakafuru gold mines. Licenses that have artisan workings will be given first priority for acquisition (Kilimanjaro Mining, 2007).

This strategy is an important factor behind the many mining conflicts in Tanzania. Some mining companies are granted areas as big as 150 km² for reconnaissance and prospecting licenses. In such areas, it is common to find many claims legally licensed to small-scale miners (Phillips et al., 2001:73). In all or most of the areas where large scale mines have been established, artisanal miners have made a living, and some claim that their rights to the mineral resources are protected by customary rights to land, the constitution and/or the International Declaration of Human Rights. Small scale miners may be indigenous of the mining area, but in many cases they are immigrants who have arrived in the area anything from one to 50-60 years ago. In some areas there are conflicts between the indigenous population and the immigrants that have come for mining, but this study has focused on conflicts between mining companies and small scale miners.

As this study has shown, there have been seven recorded conflicts related to mining companies in the country, six of them taking place over the last seven years. As the table below demonstrates, the majority of the large mines in the country have experienced conflicts with small scale miners and/or local communities. Of the "five big", North Mara, Golden Pride, Bulyanhulu, Buhemba and Geita Gold Mine, three have been involved in serious conflicts.

There are a number of reasons for this. First, the system for granting concessions is highly centralized, giving the commissioner for mining and the Minister responsible for mining immense power. Land for mining is allocated through the Land Bank, operated by the Investment Centre, and may include both rangeland used by pastoralists, and village land. According to the Mining Act, land holders are supposed to give their written consent before a mining company can establish itself. The same act however, says that if such consent is withheld "unreasonably", this provision in the act "shall be dispensed with" (URT 1998, s. 96). The Commissioner does not appear to consult local authorities in a satisfactory way before granting concessions over vast areas of land. Due to poor and outdated maps, there have been cases where concessions cover more than ten villages, whose inhabitants are greatly affected by the mines. Second, once a concession has been granted, 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" (URT 1998 s. 96). This has led to bitterness and frustration, and poorer livelihoods in some communities.

Table 2. Major mining companies and actual and potential conflicts¹⁴

Mine	Present owner	Place	Mineral mined	Production started	Estimated closure	Conflict/cooperation
Geita Gold Mine	AngloGold	Geita	Gold	2000	2018	Relocations, compensation lost in corruption
Golden Pride	Resolute	Nzega	Gold	1998	2011	-
Kahama Gold	Barrick	Bulyanhulu, Kahama	Gold	2001	2037	Small scale miners allegedly buried alive, relocated people live under poor conditions
North Mara Mine	Afrika Mashariki	Nyabigena, Tarime	Gold	2002	2016	Village leaders allegedly pressured to sell SSM's claims
Buhemba Gold Mine	Meremeta	Musoma	Gold	2003	2013	-
Tulawaka Gold Mine	Pangea/Barrick (70%) and Miniere du Nord	Biharamulo	Gold	2005	2010	-
Buckreef	IAMGOLD (since 2006)	Rwamagaza	Gold	Exploration since 2006		Concession covers 13 villages – not allowed to plant perennial crops. Illegal mining.
TanzaniteOne		Arusha	Tanzanite			Small scale miners enter company's concession. 11 small scale miners shot in 2002.
Mwadui Diamond Mine (Williamson)	De Beers (75%) GoT (25%)*	Shinyanga	Diamond	1994 (1940)		Project where SSM's are given areas within the concession
Kabanga Nickel Project	Kabanga (Barrick and Xstrata)	Ngara, Kagera	Nickel	Expected 2011		Relocations planned. ¹⁵

Last but not least, there are constant rumors of alleged corruption among senior officials both in local authorities and in the Ministry of Energy and Minerals (Bradburn-Ruster, 2003:3). In the case of Geita Gold Mine, the Prevention of Corruption Bureau found two mine employees and a number of civil servants guilty in embezzling money that was meant for compensation people that had to be relocated.

¹⁴ Compiled from Tanzania Investment Centre's brochure (TIC. ND. Tanzania investors guide. And other sources. Khamis, D., 2005. Budget 2005/2006. Budget Forum, <http://www.esrftz.org/BUDGET/CORU>.

¹⁵ Source: Mwamunyange, J., 2007. Tanzania: Dar to do environmental study on Kabanga nickel project. 7 August, East African (Nairobi). <http://allafrica.com/stories/200708070932.html>.

Since colonial times, there has been no private ownership of land in Tanzania. Individuals, clans and villages have use rights to land, but ownership is vested in the President. People with land rights (customary or formal) are supposed to be compensated for the investment they have done on the land, but this has proved extremely problematic. First, the official rates are far too low. Second, there have been cases where civil servants have embezzled the compensation money. Third, many people do not know the law. Above all, ownership and tenure of land is in itself extremely ambiguous, since the land laws respect customary land tenure and village ownership of land – but neither is surveyed or registered, and villagers lack knowledge about the laws. The mining act only presupposes consent from people who have registered their land tenure. Since there are only four zonal offices for land registration in the whole country, it is too cumbersome and expensive for ordinary people to travel long distances to formalize their land rights. And when conflicts do arise, villagers often find the court system too inaccessible and expensive. Corruption is a major problem in the court system and probably in the land registration procedures as well.

As early as 2001, the Law Reform Commission warned that the Mining Act needed to be reviewed and harmonized with other acts, the land acts in particular. This is now being looked into, but the government has waited too long, risking many new mining conflicts. It should be noted that both politicians and civil servants have reacted strongly against the mining laws. One of the District Administrative Secretaries in the Geita area called the situation a “time bomb waiting to explode”. Recent initiatives to formalize land tenure will hopefully help reduce conflicts in the future, but they will not be of much help in areas where mining companies have already secured concessions and started mining.

The Mining Policy envisages the co-existence of large and small scale mining, and a partnership/collaboration between the two:

In areas where large-scale mines are operating, the companies are urged by the Government to continue working on their own in partnership with artisanal miners and the community, to the extent possible and practical, specially in cases where such artisanal miners have released land for large scale mining operations (Tesha, 2000:12).

Contrary to this, collaboration between large and small scale miners has by and large meant that the latter sell their claim titles to the former, often at a low price. Some, when realizing what their claims are worth, initiate court cases to get their claim titles back (Lange 2006). The government also envisioned that international mining companies would engage with their host communities and have sincere wish to contribute to their development and wellbeing:

The companies are urged to integrate fully into the local community in which the mine is located as a virtual engine for improving rural life with the incorporation of water, education, and health services, as well as providing guidance and support to foster economic diversification initiatives (Tesha, 2000:13).

In retrospect, this appears to have been a naïve vision. It may be that Tanzanian leaders, which at the time had thirty years experience with donors, simply did not understand that investors have a substantially different agenda. Mining companies react strongly against what they see as endless claims by their host communities (Lange 2006). In their view, they contribute to the development of the country through revenue, and most of them do not see it as their responsibility to develop the local communities.

In recent years, mining has been one of the most debated issues in Tanzania. The government has sought to respond to the massive critique of mining companies' favorable terms by initiating negotiations with some of the larger companies (Tarimo, 2007b). Further, in an effort to reduce the number of conflicts between small scale miners and mining companies, the government of Tanzania is in the process of surveying all mining areas. The Mining Act gives the commissioner the power "to decide all disputes between persons engaged in prospecting or mining operations, either among themselves, or in relation to themselves and third parties". With the immense social and economic inequalities between local people and international mining companies, this model for conflict resolution is clearly biased towards mining companies. The land laws on the other hand, say that land dispute resolutions are to be independent of all levels of government.

Since 2001, the government has been aware that the Mining Act and the land laws are incompatible and that they need to be harmonized. This is now finally being looked into, but there is the danger that amendments of the laws will take a long time. Due to incomplete village boundary surveys and poor land administration infrastructure, the land acts themselves – even in areas where mining is not a complicating factor - have not been implemented, seven years after they were passed. With a legacy of extremely ambiguous land tenure and a mining policy and mining laws that favor large scale mining over small scale mining and local communities in the name of national development, there does not appear to be much room for optimism when it comes to reducing mining related conflicts.

However, some laudable initiatives have been taken to improve the relations. The Mwadui/Williamson diamond mine has initiated a project where small scale miners are allowed on the concession under certain conditions. Geita Gold Mine, Kahama mining and others have started projects where local communities get help to start production of food supplies for the mines. For people who have been relocated due to the mines, such initiatives can help them secure a better livelihood. For small scale miners on the other hand, this may not be an option that they are willing to embrace, either because they don't have suitable land, or because the income from farming would be too small compared to what they used to earn from mining. For this group, the only acceptable solution would be that the government followed up their promise of setting aside mining areas earmarked for small scale miners. To avoid new conflicts with local communities, however, this exercise will need to take place after the planned land surveying has taken place – a process which up to now has proved extremely problematic.

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SUMMARY

Tanzania is a relatively new mining country, and mining has become a hotly debated issue in the country. There is a feeling among both local people and human rights advocacy groups that the government has betrayed ordinary people. This empirical study looks at Tanzanian land and mining legislations, recent mining conflicts, and the existing consultation and conciliations mechanisms which can be used to attenuate these conflicts. The study argues that since there was poor coordination between the lawmakers when new land and mining laws were put in place, the legislations disagree on central issues like conflict resolution. Conceptual differences between local people and investors on how land and mining rights are to be perceived, also contribute to considerate conflict in the country.

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