

HUMAN RIGHTS & BUSINESS: Tanzanian Perspective

By J. A. De-Mello - JUDGE

1.0 Introduction:

I am delighted to be associated with a gathering that is focused on building and, sharing knowledge on various legal human rights and, business issues, while drawing on lessons learned from around the globe and African continent in particular. The Paper is particularly focused on considering key emerging concerns about business and human rights while highlighting brief positions of some of the African regional bodies with focus on Tanzanian actors, involved, i.e. how states, corporates and the judiciary can better target their actions to improve respect for human rights in business. This presentation highlights the main business and human rights issues in the African region based on the three pillars linked with business and human rights by the UN. The pillars embrace the obligation of the state to protect human rights in business; the corporate role to respect and, responsibility of judicial and non-judicial mechanisms and businesses to provide remedy to victims.

The growing oil and, natural gas industry in some African countries has a huge potential to improve livelihoods but can be a source of conflict, human rights violations and abuses in the event that these resources are mismanaged. Some of the prevalent concerns include, transparency in revenue management, sharing of royalties with local communities, land rights, forceful evictions, inadequate compensation and re-settlement, labour rights, gender equality, tax evasion, access to information, environmental degradation and lack of consultations with communities in resource rich areas. While Political commitment holds a special place in many arenas, Regional and International obligations are far-fetched in this field. This paper, in addition to underlining general aspects of business and, human rights in general, places interest on the impact of the extractive sector, the growing oil and natural gas industry, large scale agricultural investments and the fact that in Africa the private sector and foreign investments have expanded while state controls have lessened as countries join the global and open market economy.

The paper also identifies some instances where businesses have respected human rights, implemented corporate social responsibility and, supported initiatives that, promote human rights including improving economic, social and, cultural rights for better quality of living. Examples include initiatives like companies training more citizens for employment in the oil sector, and commitments to human rights and, respect for local communities and, the environment by firms signing Code of Ethics for Businesses and corporate social responsibility. The presentation concludes with recommendations to better appreciation, respect, protection and promotion of human rights in business.

1.1 The global guidance:

UN Special Representative on Human Rights and Business, John Ruggie proposed a framework on business and human rights to the **UN Human Rights Council** in **June 2008**. The framework, rests on three pillars that are grounded in recognition of: State Obligation to Protect Human Rights, Corporate Social Responsibility to respect Human Rights and

Responsibility of Corporates, Judicial and Non-Judicial Mechanisms to provide remedy to victims. In March 2011, **Special Representative Ruggie** issued "**Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework**". The **Guiding Principles** sought to provide an authoritative global standard for preventing and addressing the risk of adverse **human rights** impacts linked to **business** activities.

Basically, the principles are associated with State duty to protect human rights to include: States must protect citizens against human rights abuses within their jurisdiction by third parties, including business enterprises taking appropriate steps to prevent, investigate, punish and, redress such abuse through effective policies, legislation, regulations and adjudication. States are urged to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction to respect human rights throughout their operations. Some of the prevalent concerns include transparency in revenue management, sharing of royalties with local communities, access to information, environmental degradation and lack of consultation with communities in oil - rich regions.

Pillar one states that;

States should set out clearly the expectation that all business enterprises domiciled in their land respect human rights throughout their operations.

Part of State Regulatory and Policy functions include:

- i. Enforcing of relevant laws and, policies that, govern the creation and, ongoing operation of business enterprises and, laws aimed at, requiring business enterprises to respect human rights and, periodically to assess the adequacy of such laws and, address gaps, if any;
- ii. Providing effective guidance to business enterprises on how to respect human rights throughout their operations and, require, business enterprises to communicate how they address their human rights impacts;
- iii. Taking additional steps to protect citizens against human rights abuses by parastatal companies that are owned or controlled by the State partially or wholly,
- iv. Promoting respect for human rights by business enterprises with which government conduct in commercial transactions.
- v. Supporting business respect for human rights in conflict affected areas.
- vi. Ensuring policy dialogue by creating awareness among governmental departments, agencies and, other State-based institutions that shape business practices

The second pillar states that;

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and, should address adverse human rights impacts with which they are involved.

The corporate responsibility to respect as set out in the UNGPs entails a three step process of:

- (i) Developing an appropriate Policy commitment to human rights and embedding it throughout the company;
- (ii) carrying out human rights due diligence and;
- (iii) providing for or cooperating in provision of remedies where abuses may occur, including operational level grievance mechanisms.

The human rights due diligence process in turn is comprised of a number of sub-steps that seek to ensure that companies methodically:

- (i) Identify and address potential and, actual human rights impacts:
- (ii) Integrating and, acting on the findings;
- (iii) Tracking progress on addressing impacts and;
- (iv) Communicating information to stakeholders.

Under the **UN Guiding Principles**, the responsibility to respect extends to business relationships, as companies are directly linked to the human rights impacts of their business partners – their contractors, suppliers, and exploration partners to mention a few.. It is therefore, the duty of companies large and small equally, to assess and address the actions of their business partners that are supplying goods or services or participate in their operations.

Larger Multinationals like the **British Petroleum, Coca Cola** etc. with experience in addressing human rights can play a pro-active role in developing capacity and, sharing lessons learned with local sector companies and, other business partners in applying good practice in their engagement with developing countries' workers. Local companies are likely to need clear messaging, contractual requirements and enforcement, coupled with capacity building support to take on board relevant international norms.

Some human rights abuses by business enterprises amount to corporate crimes e.g. trafficking in persons, toxic waste dumping; air, land and water pollution, engaging abusive armed groups who provide security services in mine sites; handling of stolen goods; grand fraud and corruption including tax evasion.

Tackling corporate crimes – especially when they occur across borders, raises many legal, political and, practical challenges. Relevant laws may apply only within a State's territory or may have been historically designed to address individuals rather than, corporate entities. State authorities may not put adequate emphasis on the investigation and prosecution of corporate crimes because Law enforcement officials may lack the expertise and, resources to pursue this type of offence or face difficulties in collecting evidence, including from abroad. Because the corporate actors involved in crimes will often be located in multiple national jurisdictions, investigations can appear to be particularly cumbersome and discouraging.¹

The third pillar within the UNGP framework is about;

¹ *Corporate Crime: advancing investigations and prosecutions in human rights cases October 2016*
advancing investigations and prosecutions in human rights cases
October 2016

Access to remedy for victims or potential victims of human rights violations – whether by the state or companies or their business relationships. The idea behind this pillar is to counteract or make good any human rights harms that have occurred or to prevent further recurrence of harms or foreseeable harms. Remedy may include apologies, naming and shaming, restitution, rehabilitation, financial or non-financial compensation and, punitive sanctions (whether criminal or administrative, such as fines & damages), as well as the prevention of harm through, for example, injunctions or guarantees of no repetition. Remedy procedures should be impartial, protected from corruption and, free from political or other attempts to influence the outcome.²

2.0 Regional Specifics:

In 2013, the **Africa Progress Panel, led by Kofi Annan**, highlighted how “*Tax Evasion, Illicit Transfers of Wealth and Unfair Pricing Practices*” deprive Africa of funds needed for development, and urged investors to “carefully assess...[their] social and environmental impacts”. The AU’s **Africa Mining Framework** includes, steps to eliminate human rights abuses in mining, halt mining’s role in fuelling conflict {DRC, Sierra Leone}, improve its contribution to community development and, women’s empowerment, increase participatory decision-making, strengthen protections for the environment and workers’ rights, and prioritise poverty reduction in natural resource rich continent. **The African Commission on Human and Peoples’ Rights**, has a **Working Group on Extractive Industries**, and the **Network of African National Human Rights Institutions** has made Business & Human Rights a priority area³. **The Africa Union – Africa Peer Review Mechanism (APRM)** included Review of **Corporate Governance** in different countries particularly, on how governments and, corporates transforms to deliver economic and social growth, prosperity, protection and fulfilment of human rights.

Africa has the potential to attract great economic investments on the continent because it has one of the fastest growing economies in the world and, as such needs business and human rights policy frameworks that can address some of the challenges that, come with fast growing economies particularly the disregard for human rights. Recently, **African Union Policy on Business and Human Rights** was drafted in **March 2017** in reaction to the need to sanitise the business environment on the continent⁴.

Regional Economic Commissions like the **East African Community, ECOWAS** and, the **SADC** were established with economic development objective and, have evolved to include in their agenda Human Rights, Democracy and Good Governance in line with the **African Charter on Human and Peoples’ Rights** and, other relevant frameworks.

The National Human Rights Institutions in Africa have engaged with companies and, governments aiming at, entrenching human rights in their countries’ businesses and, more so on the emerging oil and, gas sector. **The African National Human Rights Institutions’**

² <https://business-humanrights.org/sites/>²

³ *Environmental Justice Organisations, Liabilities and Trade: Business & human rights in Africa: lots of talk, but little action, October 2014* (www.ejolt.org).

⁴ au.int/web/en/pressreleases/20170321/validation-workshop-african-union-policy-business-and-human-rights and <https://business-humanrights.org/en/african-union-draft-policy-framework-on-business-human-rights>

Association supported individual **NHRIs** in capacity building. Some **NGOs** across Africa have organised themselves around business and human rights area and citizens have raised their voices demanding for accountability and, worst scenario was the killing of demonstrators demanding for their rights in the **Marikana case**. **On 16 August 2012**, the **South African Police Service** publicly opened fire on a crowd of striking mine workers at **Marikana**, some 100 k/m Northwest of Johannesburg in the North West Province. The protesting mineworkers were demanding a wage increase at the Lonmin Platinum Mine.

The East African Community:

Recent years have brought a boom in investment to the Eastern Africa region, fuelled largely by new oil, gas and other mineral findings, and demands for bio-fuels and other agricultural products. There is potential for these investments to help fulfil economic and, social rights by contributing to improvements in health, education and, standards of living. But in many cases, these investments advance with disregard for the rights of the people most directly affected. In Uganda, since work on a refinery, exploration and other steps to exploit the country's oil have begun in earnest, human rights related complaints increased about the industry's local impacts in 2012-14, compared to the previous three years.⁵

There is no doubt, for example, that **International Trade and Foreign Investments** have had, significant negative impact on environmental rights in the **East Africa Region**. The degradation of the environment caused by mining in Tanzania and, other parts of East Africa is a case in point. Other human rights issues on which trade and investment have a significant impact is the right to health, land rights, displacement of communities, violence against local residents, workers' rights, child labour, poverty reduction, greater transparency, community participation and, women's rights. Factors that relate to women rights include women's limited access to decision making, resources, information, education and training, sexual harassment and adhering to gender equality principles.⁶

2.1 The Case of Tanzania:

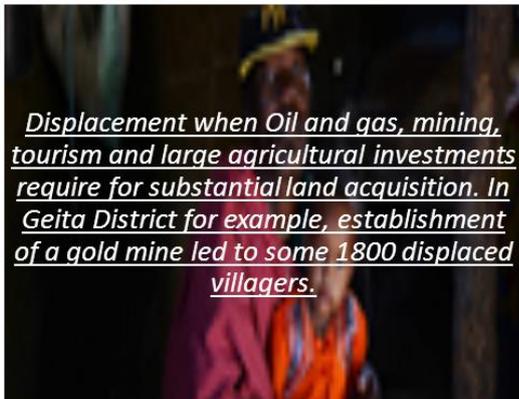
In summary, what is on the agenda in Tanzania in relation to human rights and business could include:

⁵ *International Peace Information Service, Action Aid, Business, Human Rights and Uganda Oil.*

⁶ Professor John C Mubangizi Deputy Vice - Chancellor and Head of the College of Law and Management Studies University of KwaZulu -Natal, South Africa. Globalization and Human Rights in Africa: Implications for Trade and Investment, (<http://sites.uom.ac.mu/wtochair/Conference%20Proceedings/44.pdf>)

Displace

Comment fem11:



Tanzania does not have a specific law governing corporate accountability. Nevertheless, like many rapid developing African nations, has found that rising investment in the country having a direct bearing on the socio-economic conditions in which ordinary Tanzanians live and work, including how they are governed⁷. In the Transparency Index of 2016 Tanzania is ranked 116 out of 176 countries on corruption perception just slightly better than 2015 when the country ranked 117. Corruption has a negative impact on human rights and business because it is normally the ordinary citizens as service and goods recipients, who pay the price.

A report outlining findings from a **2015 Legal and Human Rights Centre (LHRC) study on Human Rights and Business in Tanzania**, highlighted a number of familiar business and human rights phenomena in the Tanzanian context. These included challenges regarding compliance with international and national labour standards, incidents of unlawful land grabbing, denial of access to land, corporate tax evasion and, rise in corporate tax exemptions, failure to consult community members during the conduct of Environmental Impact Assessments and, a lack of gender parity in work, amongst others. The **LHRC** concluded that, whilst some minor improvements in corporate accountability have been made in some places, with several companies now trying to contribute to community development initiatives, the status of corporate accountability to communities surrounding company operations remains wanting.

⁷ Gabriella Wass, Anna Bulzomi & Lisa van Besouw *Business & Human Rights in Tanzania: what's on the agenda*, March 2015. (https://issuu.com/ipisresearch/docs/20150331_ipisinsights_tanzania)

Small-scale mining has been going on in Tanzania for over a hundred years, and to date, Tanzania is a mining country with both small and increasingly large-scale operations. Tanzania is Africa's fourth biggest gold producer but also has a wide range of other mineral resources. There is potential for Tanzania's diversified mining sector to contribute as much as US\$2.5 billion in fiscal revenues in the coming years. The country is the only Tanzanite producer in the world and, rich mineral endowment has long been considered a potential source of growth and poverty reduction. It is now considered one of Africa's most mineral-rich countries, with a rich mineral endowment including diamond, uranium, iron ore, nickel, copper, cobalt, and silver. Numerous varieties of gemstones are also extracted: ruby, garnets, topaz, and emeralds.

In addition, the past few years have seen significant increases in exploration for gas and oil along the coast, with recent discoveries of off-shore gas reserves in deep-water off the coast bordering Mozambique in the south-east⁸. Governance systems and, the Gas industry faces challenges in addressing accountability and, transparency particularly on the benefits to the local communities which resulted into ugly demonstrations by citizens in Mtwara region a few years back. Civil society mobilization around extractives in Tanzania has to date been not very vibrant. They are mainly concentrated on the mining sector, e.g. through Haki-Madini and, other efforts concerning human rights and governance in relation to mining for instance through **Women Miners Association**. Tanzania is part of the global standards for the good governance of oil, gas and, mineral resources known as EITI compliant obligations. The human rights impact related to the increasing number of mining concessions include mainly adverse impacts on land rights and, small scale miners. Community members consistently reported dissatisfaction with compensation for land acquisition, the lack of security of land tenure, and the multiple impacts of resettlement.

In 2016, Tanzania is in the group of countries with low development and ranked 151 out of 188 in the **UN Human Development Index**. As a new extractive sector producer, the country is expecting extractive industries to become an important growth driver but, not without human rights challenges. One of them is anticipated revenue which could be short-lived and, may not sustain the right to high standards of living for Tanzanians - both present and, future generations. For a country with prevalent poverty, gender inequalities, high youth unemployment, high illiteracy levels, poor infrastructure and, inadequate provision of health and, education services, eager citizens may seem impatient in relation to the years it will take before they realise their development expectations. Aspirations embodied in human rights and, **Vision 2025** on good governance, will change the culture of accountability. At the same time, the **Five Year Development Plan** emphasizes the critical importance of good governance and, rule of law in the process of creating wealth, sharing benefits and ensuring Tanzanians are empowered with the capacity to make their leaders and public servants accountable.⁹

⁸ *Institute for Human Rights and Business (IHRB), Human Rights in Tanzania's Extractive Sector: Exploring the Terrain, December 2016, Published by IHRB.*

⁹ *Dr. Razack Lokina & Prof. Anthony Leiman, Who runs the extractives Managing natural resources for sustainable growth and human development in Tanzania - the case of extractive industry, 2014.*

Challenges:

The Tanzanian mining sector has made some improvements in terms of tax contributions from the [formal mining] sector-in the form of mining royalties, PAYE, withholding tax, etc. but perception remains that industrial mining in Tanzania has not sufficiently played a role in poverty-alleviation, particularly in the rural areas where mining occurs. **The Revised Tanzania's Mining Act** was passed in 2010 with new provisions around local content, beneficiation, and increased participation of Tanzanians.¹⁰ But for the mining sector to benefit the local population issues of human rights and, good governance must be addressed by including educating and awareness creation to the public on the law, human rights and, the effects of mining on the environment, child labour, relationship between small miners and big miners, land acquisition and, ensuing displacements and, how the law related to other laws like, land laws etc.

Specifically, the employment impact of mining is not adequate in reducing rural poverty as expected by communities. There are public debates about whether the State receives a 'fair share' from its extractive deals and, how revenues are being used to the benefit of citizens. This signals that, in parallel with the increasing optimism and, aspirations for the economic potential of a rapid developing extractive sector, there are also concerns related to the risks of adverse economic, social and, environmental impacts of the sector. Handled well, extractive resources can have a unifying potential, by contributing to economic growth and, prosperity and, supporting the social contract that, binds societies together. Mishandled, resource extraction can increase inequality, entrench divisions between different groups, with potential to fuel conflicts and widen the gap between government and people.

In one area, situated South of the country, coconut and cashew trees were cut down to make way for a gas pipeline¹¹. While compensation was provided for up to 10 meters of land taken from each side of the pipeline, including crops affected, villagers complained that, there was no prior consultation with no resettlement plans on the basis that, there was to be no physical displacement of villagers. The lack of a resettlement plan would indicate that there was no prior consultative planning made for alternative livelihoods for economic displacement situations. The villagers stated that, compensation for affected crops should have taken into account the period taken to raise the trees to maturity and, not just the face value of the trees once they were finally producing - noting it takes up to 3 years onwards from planting to harvesting (for hybrid seeds) and, up to 5 years and, above for ordinary or local seeds for the

¹⁰ *Institute for Human Rights and Business (IHRB), Human Rights in Tanzania's Extractive Sector: Exploring the Terrain, December 2016. Published by IHRB. (www.ihrb.org)*

¹¹ *Ibid*

trees to mature. Further, some villagers alleged that, while they are compensated only for 10 meters from either side of the pipeline, in practice more land is affected or becomes unsuitable for cultivation, but was not considered for compensated.

As was seen in communities surrounding mining areas, communities around extractive operations in affected parts of Tanzania, expressed fear of potential adverse impacts of gas extraction on the environment, including disappearance of aquatic and terrestrial species. They linked this to chemicals used in the gas extraction and, installation at sea and, on land surface, contracting health problems connected to the companies' use of toxic chemicals in the extraction as well as from air pollution.

Protests in 2013 against unclear benefit sharing arrangements that, would accompany the construction of a **532km gas pipeline to Dar es Salaam** turned violent. Instead of using a rights based approach resolving the conflict through discussions and, meaningful participation of the community, the Government used heavy police and, military patrols, while at the same time putting an unofficial moratorium on the exercise of Civil and Political Rights, such as holding of political rallies or capacity building projects by **CSOs**. The **Prime Minister** then, stated that, law enforcers must take action and members of the public were not to get close to the mining sites facilities¹².

Other Sectors:

The paper has put emphasis on extractives but human rights issues in the business sector are found in all the sectors including fisheries & tourism where a lot of violations is taking place. Illegal fishing has affected environmental rights and the rights of consumers when poison is used to increased production. Fishing Export business with no controls has plundered the country's fishing reserves. Tourism has resulted into forced evictions to give room to expansion of tourist attractions and big hotels. Hunting blocks and poaching of wild animals have resulted into plundering of natural resources of the country. Pastoralists' activities in reserved areas have affected water sources and the right to water.

Tanzania Legal and Policy Framework:

The current **1977 Constitution of the United Republic of Tanzania** does not provide a sufficiently detailed or robust bill of rights. Dialogue on a proposed new Constitution, provides the opportunity to strengthen human rights protections.

¹² Ibid

However, the existing Constitution (supra) covers the following matters: •

- **Chapter 1:** declares the **Fundamental Principles of State Policy and the Fundamental Rights and Duties** of the country's citizens. The **Bill of Rights** is contained in **Chapter 1 of the Constitution**, which includes a number of internationally recognized human rights as set out in the **Universal Declaration of Human Rights (UDHR)**. Nonetheless, countries that, sign and, ratify International Human Rights Conventions, accept the obligation of protecting those rights – whether or not they are included in their Constitutions.
- **Chapters 2-5:** cover the three branches of State Authority: the **Executive**, the **Legislature** and the **Judiciary** and the distribution of powers and functions among them.
- **Chapter 6:** Establishes and, sets out the powers and, functions the country's **National Human Rights Institution, the Commission for Human Rights and Good Governance (CHRAGG)**
- **Articles 25 to 28** of the Tanzanian Constitution imposes duties on every individual to respect the rights of others and, society.
- **Article 29** covers the right of “Every Person in the United Republic has the Right to enjoy Fundamental Human Rights and to enjoy the benefits accruing from the fulfillment by every person of this duty to society, as stipulated under **Articles 12 to 28**”.
- **Article 30** of the Constitution limits the application of these rights subject to law.
- **The Mining Act No. 14 of 2010** has an objective to regulate all aspects of the mining life-cycle on mainland Tanzania, including prospecting, mining, and the dealing in minerals. It implements the vision of the Government of Tanzania to have a strong, vibrant, well-organized private sector with a large and, small scale mining industry that is conducted in a safe and environmentally-sound manner.
- **Rights Over Land Under the Mining Act**, mineral rights holders cannot exercise their rights (including to enter onto land covered) “except with thorough consultation with the relevant **Local Government Authority**, including the **Village Council**, and thereafter, the written consent of the lawful occupier”

- **Mineral Licensing** -maintains an open mineral rights registry, both in hard copies and, digital database known as **Mining Cadastral Information Management System (MCIMS)** aligned with the **Mining Act 2010.209**.The information in **MCIMS** is publicly available.
- The Act commits the Government to building the capacities of Tanzanians to fully participate in the natural gas value chain through skills development, transfer of technology and, applied research. While the Policy only came into force in 2014,²³⁴ the power of local content provisions, whether through enforcement or the message it sends can be a powerful driver of local procurement. For the construction of the Mtwara Port, 70% of the sum a gas operator invested were spent with local businesses creating 400 jobs.²³⁵
- Promotion of Corporate Social Responsibility Policy aims to improve corporate social responsibility (CSR) practices in order to benefit communities that, are situated near business facilities. The is obliged to ensure that all investors and, contractors in the country are guided by contractual obligations while undertaking CSR plans preferably through local government authorities and community-based organizations. However, the CRC and, the implementing laws fail to provide the mechanism for to define what constitutes a credible CRC action plan.
- Mainstreaming **Gender Equality** is a commitment made by the Government to ensure gender parity and, equality is integrated in all the sectors.
- **HIV/AIDS Awareness:** Majority of Tanzanians with HIV/AIDS are aged 15 and, older.” The Government commits to facilitate education on HIV/AIDS to stakeholders in all sectors including commerce, construction, mining and gas, agriculture etc.
- Access to finance is known as a major barrier to greater women’s involvement in mining and, other major and productive business sector, because of inheritance and, customary marriage laws, which preclude them from having rights to land as collateral for bank loans. Culture, Traditions and Stereotyping are still holding back women in breaking the glass ceiling.
- Scaling up Local Participation in the mining and other sectors is essential and the government has formulated laws and policies and provides relevant education, training and skills to Tanzanians to ensure participation.

- Government provides guidance in the contracts in relation to Local Content in Model Production Sharing Agreements for an agreement that states that, the company shall give a deliberate preference to the employment of Tanzanian workers,
- Promotion of Broadly Shared Values of Transparency, Accountability and Good Governance is essential e.g., publishing of oil revenues and expenditure records,

Child Labour:

Child Labour is still an issue associated with poverty and, the tendency of parents who shift with children from one community to another to mineral rushes also resulting in children being abandoned by parents or guardians. Many children still perform labour in different sectors hence denying them their right to education, among others, while exposing them to insecurity and unhealthy environments. With millions working, Child labour remains to be common in the country. In 2013, the US Department of Labour reported that 25 % of children aged 5 to 14 are working for gain in various spheres. The percentage corresponds to 3.1 million children in Agriculture, Mining and other related activities. It is even observed to be more common to girl child than boys, mostly employed as domestic servants with little or no pay at all. Tanzania is party to Convention on the Rights of the Child in 1991, the African Charter on the Rights and Welfare of the Child in 2003 and domesticated the Convention by enacting the Law of Child Act 2009.

Environment:

The Government has the duty to create an enabling environment for citizens to take part in natural resources management and protection with citizens embracing that duty. The United Republic Constitution enjoins the Tanzanian citizens to participate in the management of the country's natural resources. **Environmental Impact Assessments (EIA)** is a mandatory process used to identify and, assess major potential environmental impacts of proposed projects, evaluate alternatives and design appropriate mitigation, management and monitoring measures.

- The **Access to Information Act of 2015** restricts access to information from private bodies only if they are of significant public interest in relation to protection of human rights, environment, public health and safety, exposure of corruption or illegal actions. This is a valid ground for seeking information from private bodies.
- Land & Re-settlement Policies and, Laws contain challenges that related to various aspects like implications of customary land ownership, meaning of land not including

minerals and, oil etc. Challenges are also associated with complaints around compensation and, resettlements.

Community Participation/Engagement, Information & Transparency:

The URT Constitution explicitly provides that, every person has the right to seek, receive, and disseminate information and, that every person has the right to be informed of important events and, activities. Further, the Constitution explicitly provides that “[e]very citizen has the right and, freedom to participate fully in the process leading to the decision on matters affecting, him and, has the freedom, to freely and, peaceably assemble, associate and, cooperate with other persons.”

The Constitution also protects a person’s right to work, entitlement to “just remuneration” for work performed and, explicitly provides that, every person has a right to own property. Further, no person can be deprived of his property, for any reason, without “fair and, adequate” compensation including land that is owned under customary law.

The Constitution provides several types of protections for community participation and, access to information. Several of the company representatives companies recognize that, some challenges exist with respect to community engagement. Companies are working with the communities to address such issues including by supporting economic empowerment programs for the community, mindful of the fact that, prosperity and, the good public image of the companies has a direct link with the quality of livelihoods and, good relationships with the neighboring community. Where challenges do occur, they seek to address them jointly.

The Extractive Sector Policy and Legal Frameworks on a whole, takes into consideration sustainable development considerations and, awareness of the need to address the environmental and, social impacts of the sector, but not human rights specifically. The sectoral laws do not make explicit reference to human rights issues. A strengthened Constitution and, more explicit consideration of human rights in extractive sector legislation would give a more explicit mandate to government agencies and a far clearer signal to extractive companies that this is a priority for the country.

Steps Taken:

Tanzania has taken a deliberate and bold move by becoming the first African country to join the **Extractive Industries Transparency Initiative (EITI)** in 2009. In joining the **EITI**, Tanzania displays commitment adhering to International Human Rights Standards. It is also critical in promoting sustainable development and, poverty eradication in the country¹³. Tanzania has also adopted the **Natural Resource Charter** and, is undertaking a benchmarking exercise. Tanzania is a member of the **Voluntary Principles on Security and Human Rights**, a multi-stakeholder initiative, designed to guide companies, public and

¹³ TEITI Annual Report 2015 (<https://eiti.org>)

private security in maintaining the safety and security of their operations within, an operating framework that, encourages respect for human rights¹⁴. With an intention of making the Government business more open to its citizens, Tanzania' became a member **Open Government Partnership Initiative in 2011** as an opportunity to reinforce an approach of openness, transparency and accountability.

Corporate Responsibility to Respect Human Rights

The policy on **CSR** states that, the Government will encourage companies to involve local communities in setting priorities of community development projects and, socio-economic aspects during the lifespan of their projects. In addition to extractives, Tanzania is receiving **Foreign Direct Investments**, expansion of agri-business that, will draw the agriculture sector closer to the global market and, private investment. The challenge is that, corporates are not achieving deliberate actions that, will support the population which is the source of their profit in the form of economic prosperity, environmental quality and social justice¹⁵. It is observed that **CSR** agenda, is overwhelmingly shaped by actors from the north (often **FDI** home countries). It emerged in the globalization discussion of 1990s, fuelled by reports of environmental, labour and human rights abuses within operation and, supply chains of large, high profile **MNCs**, usually based in the north but, often operating in or sourcing from the south. The **CSR** agenda is mainly focused on large enterprises and, is driven by NGOs, investors and regulatory authorities and rarely by through participation of communities affected. The practice does not look at small - and medium -sized enterprises (**SMEs**), either as suppliers to large companies or beneficiaries of **CSR** initiatives.

Context Analysis on Tanzania Mining Sector:

Tanzania is a country endowed with substantial reserves of mineral resources, including:

- (i) Metallic Minerals Group (gold, iron ore, nickel, copper, cobalt and silver),
- (ii) Gemstone Groups (diamond, tanzanite, ruby, garnets),
- (iii) Industrial Minerals Group (limestone, soda ash, gypsum, salt and' phosphate),
- (iv) Energy-Generating minerals (coal and uranium) and
- (v) Construction Minerals (gravel, sand and dimension stones).

Tanzania is Africa's fourth leading Gold producer, after Ghana, South Africa and, Mali with several major and, junior companies producing and, exploring for gold, mostly in North-Western Tanzania, south of Lake Victoria, in an area informally known as the Lake Victoria Gold Belt Mining in Tanzania in the modern era dates back over one hundred years, first

¹⁴ <http://www.voluntaryprinciples.org> (2013 Annual Report based on the U.N. Guiding Principles on Business and Human Rights)

¹⁵ University of Ansterdamm, Nyankweli, E. M. (2012). *Foreign direct investment and poverty alleviation in Tanzania: a case of Bulyanhulu and Geita Gold Mines Limited in Kahama and Geita districts* (<https://pure.uva.nl>)

under **German Colonial Rule**; during the First World War a number of military engagements took place there. Shortly after, achieving independence from the **British, in 1961**, Tanzania veered left, leading to the nationalization of most private sector industries which, in turn resulted in the inevitable mass exodus of foreign investment and private capital and the consequent decline in economic activity in all sectors, including mining.

In the just ended Parliamentary session this July, three days were added to enable members discussed and pass two new Mining legislations and under Certificate of urgency. This is a result of two Presidential Committees which were formed to look into exports of sand by Mining Companies on the pretext of unavailability of processing factories to unfold other minerals out of the gravel. The laws and which the President assented on the 5th of July 2017 are;

The Natural Wealth & Resources Contracts (Review & Re-Negotiation of Un-consumables Terms) Act 2017 and, The Natural Resources (Permanent Sovereignty) Act 2017.

The Governance Issues:

One Overall and overwhelming objective of the **Natural Gas Policy** is ensuring that all Tanzanians benefit from the resource. The Policy has 17 specific objectives that range from investing the proceeds wisely, through to environment sustainability, transparency and, accountability. The breadth of these issues means that, the responsibility for them falls across many government ministries and regulatory agencies.

Gender Equality:

The Tanzanian government gives priority to foreign investors through provision of favorable conditions and, security through provision of tax incentives. Artisanal miners are regarded as informal and, illegal while small scale miners are 'legally recognized'. Production in **ASM** is erratic, un quantifiable and, considered not to add value to the overall sector. Worse still, the financial institutions find it difficult to lend money to ASM due to their informality, migratory nature and, lack of collaterals. Despite claiming to be gender neutral, policies and, programs affects women and, men differently actually, serving to exacerbate gender inequalities. The government does not have development strategies for women ASM despite having mining policy that talk and touch on women.

Women and Land: Tanzania's **Land Act no. 4 of 1999**, Village Land Act No. 5, and The Land Disputes Court Act No. 2 of 2002 Cap. 216, all expressly states that women shall have equal rights to obtain and use land. The legal framework for land rights also provides for women's representation in governing bodies: the Village Land Act (supra) provides that three of the seven members sitting to adjudicate land disputes must have women and a quorum requires at least three. Section 4 and 11 of Cap. 216 is evident. However, despite this, women hold only an estimated 20% of the land registered in Tanzania and the percentage of women holding primary rights to use and control land under customary law is likely far lower. Sadly, women in Tanzania as it is in many other African countries are the majority producers from this same land. They however don't enjoy the proceeds of their toil as their male counterparts do, basically for unequal distribution of wealth arising out of male dominance culture, tradition and, stereo-typing.

Challenges Facing Women in Mining Sector in Tanzania:

Women miners face exclusion in the male dominated mining sector due to legal-policy practices and, capacity challenges. Coupled with many such shortfalls, small scale women miners have had little opportunities to benefit from upstream and, downstream linkages. This has been a limitation in women miners' progression and, rise into key positions in all public and, private institutions working around mining. Extension services under the Ministry of Energy and Minerals has been ineffective in addressing this gap due to limited financial allocation and, absence of expertise within the regulatory bodies. No major efforts have been put in strengthening small-scale women miners' engagement in mineral trading, processing and, value addition. The element of fair trade in mineral trade remains a dream unless we empower women miners to engage throughout mineral sector value chain. The pattern and trend reflects similarly the same in all other business sectors, Agriculture, Fishing, Industries, Tourism and Transportation just to highlight a few.

Strategies:

Haki-Madini through Gender and, Mining Program has deployed some efforts that aim at empowering women miners in Tanzania through;

Strengthening women miners' leadership and, advocacy skills building, support capacity, strengthening of women organizations and networks in order to be able to address women interests in mining sector. Capacity building to women miners in order to advance their capacities on mining policies and, laws as well as organizational development skills, Support women miners' engagement with key stakeholders in the sector including the National Assembly, Ministry of Energy and Minerals, financial institutions and technical institutions. Host a National Women miners Platform as a space for women to share experiences and, lessons learnt as a way of building a common voice, create visibility and, show cause in solidarity with other struggles.

Remedy Seeking: Formal and Non-Formal:

In Tanzania, the Judiciary is a third, independent branch of the Government, respecting the Constitutional principles of Separation of Powers. The Constitution provides for an independent judiciary, and respect for the principles of the rule of law, human rights and good governance. The High Court (mainland Tanzania) has established sub Registries in different zones of the country and has specialised divisions i.e., the High Court of Tanzania - Commercial Division, the Labour division and the Land division. There are specialized tribunals, which form part of the judicial structure that include District Land and Housing Tribunal, the Commission for Mediation and Arbitration.

In addition there are other, non-judicial mechanisms to resolve grievances in the business sector including the **Commission for Human Rights and Good Governance (CHRAGG)** which is an independent government department that functions as the national focal point institution for the promotion and protection of human rights and good governance practices. According to the Constitution and the Commission's founding legislation, CHRAGG has a broad mandate and wide ranging functions, which include:

- Human Rights, Protection and Promotion

- Dealing with matters of Administrative Justice, Mal-Administration and Good Governance.

CHRAGG is well positioned to contribute to the protection and promotion of human rights in Tanzania in the business sector while building on awareness creation and public education and inquiries into human rights violations in the business sector. There are numerous examples of investigations and settlement negotiations that CHRAGG has carried out.

Government Ministries including government offices from village to the regional level have grievance handling mechanisms that provide avenues to hear both sides and advise accordingly. Such offices maintain publicly available client service charters which help in handling citizen complaints.

The National Environmental Management Council has some powers of enforcement and adjudication. Some companies have adhered to local agreements with Trade Unions and the UN-General Principles that call upon companies to set up operational level grievance mechanisms to make it possible for grievances from workers, individuals and communities to be addressed early and remediated directly.

Conclusion:

All stakeholders in Tanzania's business sector - the Tanzanian Government, investors, local governments, civil society organisations and the public in general are highly encouraged and urged to explore the terrain of human rights in Tanzania's business sector. This paper serves as a tool to better understanding about to the gaps that exist and use the stakeholder-specific recommendations to effectively prioritize and, advocate to close these gaps, providing a solid basis for the further expansion of Tanzania's business sector in line with sustainable development.

Thank you for listening.

Joaquine Antoinette De – Mello (Judge)

August, 2017 - Port Harcourt Nigeria.