



LAWYERS' ENVIRONMENTAL ACTION TEAM, TANZANIA

ROBBING THE POOR TO GIVE TO THE RICH: HUMAN RIGHTS ABUSES AND IMPOVERISHMENT AT THE MIGA-BACKED BULYANHULU GOLD MINE, TANZANIA

SUBMISSION TO THE EXTRACTIVE INDUSTRIES REVIEW OF THE WORLD BANK, MAPUTO, MOZAMBIQUE, JANUARY 13-17, 2003

ROBBING THE POOR TO GIVE TO THE RICH: HUMAN RIGHTS ABUSES AND IMPOVERISHMENT AT THE MIGA-BACKED BULYANHULU GOLD MINE, TANZANIA

1. INTRODUCTION:

In August 1996 the Tanzanian government authorities in collaboration with a Canadian-owned company called Kahama Mining Corporation Ltd., (KMCL) forcibly removed hundreds of thousands of artisanal miners, peasant farmers, small traders and their families from an area called Bulyanhulu in Shinyanga Region, central-western Tanzania. The removals were the culmination of a two-year struggle pitting the miners and the company over the control of gold deposits at Bulyanhulu. Within days of the operation to remove the miners, serious allegations emerged that over 50 artisanal miners were killed after they were buried alive in mineshafts when the authorities and company officials decided to backfill the shafts. KMCL was then a wholly-owned subsidiary of Sutton Resources, based in Vancouver, Canada.

The Bulyanhulu area is a collection of many villages and minor settlements. It is located approximately 127-km southwest of lakeside city of Mwanza and about 850 kilometers northwest of Dar es Salaam. It is 45 kilometers south of Lake Victoria and 42 kilometers by road from the railhead at Isaka to the south (KMCL, 1998a). Kakola town is the area's largest settlement within the 52 square kilometers license area that now forms part of the Bulyanhulu Gold Mine. As the most populous center of the artisanal gold mining boom that began in Bulyanhulu in the 1970s, the town survived the destruction visited upon the area in July and August 1996. Eight of its satellite settlements and localities namely, Stamico, Kabale, Namba Tatu, Namba Mbili, Namba Tisa, Bariadi, Bushingwe and Mwabagikulu were razed to the ground.

In March 1999, Barrick Gold Corporation, another Canadian mining giant acquired the Bulyanhulu deposits through its acquisition of Sutton Resources and its Tanzanian subsidiary. In August 2000, the Multilateral Investment Guarantee Agency (MIGA), the World Bank Group's political risk insurance arm, announced that it had issued a guarantee totaling \$115.8 million to Societe Generale S.A. as "an agent for a syndicate of international banks" for their non-shareholder loan investment to KMCL.¹ According to the announcement, a portion of MIGA's guarantee would be reinsured by private insurers, later identified as being the Lloyd's of London and Munich Re of Germany. A few months later, MIGA's guarantee had risen to some \$172 million, making it "the largest amount issued to date for a single contract", according to a World Bank press release.² Canada's Export Development Corporation (EDC) is co-insuring the project with MIGA, with a slightly higher exposure. The MIGA and EDC guarantees will cover

¹ <http://www.miga.org/screens/projects/guarant/regions/africa.html>:

² See message from Patricia Veevers-Carter pveeverscarter@worldbank.org: 'MIGA Issues Largest Guarantee Ever for African Mining Venture', undated.

the investment against the risks of transfer restriction, expropriation, and war and civil disturbance.

Barrick Gold has since built an ultra-modern underground gold mine at Bulyanhulu, which was opened amid great fanfare by Tanzanian President Benjamin W. Mkapa in July 2001. Though vehemently denied, the allegations of the 1996 killings have persisted to this day and have become the subject of a bitter international dispute involving the Bulyanhulu communities, NGOs and governments in Tanzania, Canada, the United States and Western Europe and the World Bank Group. This submission argues that the Bulyanhulu Gold Mine is a premier example of all that is wrong with the World Bank Group's support of the corporate mining investment in Africa and elsewhere in the world.

The investment stands as a monument to the plunder of the natural resources of poor countries such as Tanzania by the multinational corporations of the rich industrial countries of the North; and the impoverishment and further marginalization of the mostly rural communities in mineral rich areas of Tanzania and elsewhere. It is a living testimony of the proposition that where multinational corporate interests are at stake, notions of rule of law, good governance and a respect for human rights take on a secondary importance to be swept aside whenever expedient. It provides the proof to the charge that the World Bank Group almost always acts against the interests of the vast majority of the poor and the marginalized groups of society. The Group cannot, therefore, live up to its poverty alleviation credentials while at the same time maintaining support for socially ruinous projects such as Bulyanhulu Gold Mine. In the paragraphs that follow below we discuss these issues at some length.

2. ASSAULT ON RULE OF LAW AND GOOD GOVERNANCE

a. THE ARTISANAL MINERS' PRESENCE WAS LEGAL, SUTTON RESOURCES/KMCL'S WAS NOT!

Since 1980 the Bulyanhulu area, as, indeed, the entire Shinyanga Region, had been legally set aside by various ministers responsible for mining as a designated area for the sole use and benefit of artisanal gold miners. Under section 69(1) of the Mining Act, 1979 then in force, the minister responsible for mining was granted wide powers to designate areas and prescribe minerals for which Tanzanian citizens were to be given priority in the allocation of mining rights. The language of the provision was such as to leave no doubt that artisanal miners were envisaged as primary beneficiaries of these rights. It read: "Where the Minister considers that it would be in the public interest to encourage prospecting and mining for minerals in any area of land by methods not involving substantial expenditure or the use of specialist technology he may ... designate that area and ... prescribe any mineral in relation to the area."

The designation and prescription had to be done by way of a notice published in the Government Gazette. Almost immediately, this provision sparked considerable legislative activity regarding the rights of artisanal miners that would continue throughout the 1980s to the mid-1990s. The Act came into force on December 31, 1979.³ Less than three weeks

³ See *The Mining Act (Date of Operation) Notice, 1979*, G.N. No. 146 of 1979.

later then Minister for Water, Energy and Minerals, Al-Noor Kassum, exercised his powers under section 69 with the promulgation of the *Mining (Designated Areas) Notice, 1980*.⁴ The Notice, among other things, designated the entire areas of Shinyanga Region for which prospecting and mining for gold “by methods not involving substantial expenditure or the use of specialist technology” was to be undertaken. This was the earliest and clearest legal basis for the artisanal miners’ presence and operations in the Bulyanhulu goldfields.

The 1980 Notice did not, however, survive the next cabinet reshuffle that brought in Jackson Makweta as Minister for Minerals in 1982. The reshuffle coincided with the first signs of corporate interest on the Bulyanhulu gold deposits. In November 1982, the Finnish-Tanzanian consortium of Outukumpu Oy and Kone Engineering and STAMICO was allocated a prospecting license over the Bulyanhulu area.⁵ Consequently, Minister Makweta revoked the 1980 Notice and replaced it by another Notice whose major significance lies in the fact that it removed Shinyanga Region from the list of designated areas.⁶

With the end, in late 1983, of minister Makweta’s tenure at the Ministry of Minerals, his replacement, Paul Bomani promulgated yet another Notice which brought Shinyanga Region back into the fold of designated areas.⁷ Thus Bulyanhulu reverted back to its former status as a site for artisanal gold mining. It would remain thus until the 1979 Act was repealed and replaced by the new Mining Act 1998. In between there were three other Section 69 Notices, with the last one promulgated by Dr. William Shija just two months before the Bulyanhulu upheavals brought on by Dr. Shija’s order for the artisanal miners to vacate the area in late July 1996.⁸ Moreover, none of these Notices in any way affected the legal status of the Bulyanhulu area as a preserve for artisanal gold miners.

This legislative history is critically important. Throughout the period preceding the 1996 removals and since, Tanzanian government authorities maintained that the Bulyanhulu artisanal miners were operating in the area contrary to the country’s laws. Sutton Resources/KMCL and the Canadian diplomats also maintained that the artisans were nothing but illegal squatters and trespassers who were illegally occupying and mining the Bulyanhulu deposits. Similar positions have been taken by MIGA and the World Bank Group as a whole and by Barrick Gold/KMCL since its takeover of the Bulyanhulu Mine. And since July 2001 when LEAT commenced the current campaign to have the removals

⁴ G.N. No. 6 of 1980 published on January 18, 1980.

⁵ See W. Mushi, “Major gold deposits discovered”, *Uhuru*, June 3, 1985; and “Kahama gold to bring (Tanzania Shillings) 350 million”, *Uhuru*, June 4, 1985.

⁶ See *Mining (Designated Areas)(Amendment) Notice, 1982*, G.N. No. 154 of 1982 published on December 17, 1982.

⁷ See *Mining (Designated Areas)(Amendment) Notice, 1983*, G.N. No. 2 of 1984, published on January 6, 1984.

⁸ See *Mining (Designated Areas)(Amendment) Notice, 1984*, G.N. No. 34 of 1984, promulgated by Minister Kassum and published on February 1, 1985; G.N. No. 230 of 1987, also promulgated by Minister Kassum on July 2, 1987 and published in the Government Gazette on July 22, 1988; and *Mining (Designated Areas)(Amendment) Notice, 1996*, G.N. No. 106 of 1996, promulgated by Minister William Shija and published on June 14, 1996.

and alleged killings thoroughly, independently and transparently investigated, these interests have repeated the same distortions that the artisanal miners were ‘illegals.’

b. THE PRESIDENTIAL IMPRIMATUR

For the Bulyanhulu artisanal miners, the most important seal of approval for their presence at Bulyanhulu came not necessarily from the legal texts written on pieces of paper, but from the political establishment. Since April 1990, the government of then President Ali Hassan Mwinyi and the ruling CCM party had endorsed the artisanal miners’ operations throughout the country. Not long afterwards, Bulyanhulu, by now the center of the artisanal mining boom in the country, played host to President Mwinyi when the latter visited Kahama District on February 19, 1993. Mzee Zephania Luzama, then Vice Chair of the Shinyanga Regional Miners Association (SHIREMA) and a prominent member of the Bulyanhulu Small-scale Miners’ Committee personally welcomed the President on behalf of the Bulyanhulu miners’ community. In a series of interviews with this author, he vividly remembered the President’s visit: “When President Mwinyi came to dedicate the Ward office building at Lunguya, I personally shook the President’s hand and presented (First Lady) Mama Sitti Mwinyi with a cow. We then told him that we still had problems with the police who were still stationed at Bulyanhulu and were harassing us. The President turned on the Kahama District Commissioner Edson Halinga and told him: ‘Governor, make sure all the policemen are removed from the mining area and the miners are free to operate in any area of Bulyanhulu and that they sell their gold to the government.’”⁹

That the Bulyanhulu artisanal miners were allowed to operate in the area by the country’s President was also acknowledged, if grudgingly, by Barrick Gold/KMCL and the Canadian diplomats based in Tanzania. In project documents submitted to MIGA, the Government of Tanzania and Canada’s Export Development Corporation, Barrick Gold/KMCL asserts that the discovery of the Bulyanhulu gold deposits in 1975 “attracted some small scale artisanal miners to the site” However, following a visit to the site by then President Ali Hassan Mwinyi in February 1993, “artisanal miners requested the right to resume artisanal mining in Bulyanhulu, which permission was granted by the President.”

The legislative and political developments reviewed above make it crystal clear that with the exception of the period from December 18, 1982 to October 12, 1983 when Shinyanga Region was removed from the list of designated areas, the artisanal miners operated at Bulyanhulu in accordance with the laws of Tanzania. Moreover, with the exception of that brief period, any allocation of prospecting or mining rights by methods “... involving substantial expenditure or the use of specialist technology” in the area would clearly have been illegal. This, we argue, would have been the case had Sutton Resources/KMCL been granted any prospecting or mining rights in the area. The company never was allocated any such rights.

⁹ The interviews were conducted at Kakola on April 24, 2001; September 3, 2001; and March 13, 14 and 15, 2002.

c. SUTTON RESOURCES/KMCL WAS NEVER ALLOCATED ANY RIGHTS IN BULYANHULU

Section 31 of the Mining Act, 1979 had required that any allocation of a mining concession must first properly describe the area in respect of which the allocation was made. On August 5th 1994 the Government of Tanzania entered into an agreement with Sutton Resources/KMCL. Although a press release issued by the Ministry of Water, Energy and Minerals stated that that agreement was “...with regard to gold deposits in Bulyanhulu area Kahama District”, the prospecting licence issued to Sutton Resources/KMCL and signed by the then Minister for Water, Energy and Minerals, Hon. Jakaya Kikwete, described the area as “...Butobela Area, Geita District...”. That licence - known as PL #216 of 1994) does not even mention the Bulyanhulu area at all.

Sutton Resources/KMCL’s prospecting licence was twice renewed by the current Commissioner for Minerals, Mr. Gray Mwakalukwa on July 24th 1997 and again on October 6th 1998. These two subsequent renewals also described the area of the licence as Butobela Area in Geita District. In addition, a 1996 publication of the Ministry of Energy and Minerals that published a list of all prospecting licences granted to various mining companies, between the years 1993 to 1996, shows that the licence granted to Sutton Resources/KMCL was in respect of Butobela Area, Geita District. That list is also important for another reason, for it shows that no other licence was ever issued to Sutton Resources/KMCL during the period in question.

So on the basis of available evidence, and in the absence of any evidence to the contrary, it is clear that Sutton Resources/KMCL had no right whatsoever to claim ownership and access to the mineral rights of Bulyanhulu. Their presence from 1994 through the 1996 forced evictions to their 1999 takeover by Barrick Gold was, therefore, utterly illegal. It follows that any interest that Barrick Gold may have acquired with regard to the Bulyanhulu area is also vitiated with illegality. That includes its current licence to operate the Mine because that licence is based on Sutton Resources/KMCL’s prospecting licence.

d. ILLEGAL ENTRY INTO AND OCCUPATION OF THE BULYANHULU AREA

Assuming, without accepting, that Sutton Resource/KMCL had a licence over Bulyanhulu area, Section 48 of the Mining Act, 1979 then in force, had required owners of prospecting or mining licences to obtain a prior written consent from the landholders in areas over which the licences were issued. In other words, Sutton Resources/KMCL should have obtained a prior written consent of the Bulyanhulu landholders and property owners before setting foot in the Bulyanhulu area. This, they did not do. Instead, in late July and early August 1996, assisted by the security forces of the Government of Tanzania the company illegally and forcibly evicted or caused to be forcibly evicted hundreds of thousands of artisanal miners, peasants farmers and other property owners, old men, women and children.

e. VIOLATION OF PROPERTY RIGHTS OF THE BULYANHULU VILLAGERS

The Bulyanhulu lands were held under the customary rights of occupancy that are not only legally recognized but also protected as “property” under the Tanzanian land law and the country’s Constitution (Article 24). Indeed, under section 81 of the Mining Act, 1979 then in force, Sutton Resources/KMCL were liable to pay “fair and reasonable” compensation to the Bulyanhulu land owners upon their taking control of the Bulyanhulu area. We now know from the former executives of Sutton Resources, that the company’s Board of Directors refused to approve the compensation package that former Chairman James Sinclair had proposed for the Bulyanhulu artisanal miners, peasant farmers and other property holders¹⁰. This, too, was in violation of the Tanzania’s laws and the country’s Constitution.

f. VIOLATION AND DISREGARD OF THE DECISIONS OF TANZANIAN COURTS

In spite of the company’s want of any right with regard to the Bulyanhulu deposits, on June 20th 1995 Sutton Resources/KMCL instituted legal proceedings against representatives of the Bulyanhulu artisanal miners in the High Court of Tanzania at Tabora. The company requested the High Court to issue eviction orders against the miners. The miners objected, in their defense, to being removed without due process and without compensation. On September 29, 1995, the High Court agreed with the miners’ objection that the proceedings involved matters of constitutional rights that could only be decided by a special three-judge panel of the High Court of Tanzania. The High Court therefore issued an order of temporary injunction prohibiting Sutton Resources/KMCL from interfering with the miners’ rights until the special panel of the Court had been constituted to decide on the merits of the case.

Regardless of that lawful order of the High Court, on July 30, 1996 Sutton Resources/KMCL, with the assistance of the security forces of the Government of Tanzania, commenced the illegal and forcible evictions of the Bulyanhulu people. That was the first instance of the violation of the lawful orders of the High Court. With the illegal evictions in full swing, the representatives of the artisanal miners rushed to the High Court and asked the Court to intervene as a matter of urgency. And so on August 2, 1996 the High Court of Tanzania issued yet another order, this time prohibiting Sutton Resources/KMCL and the Attorney General as the representative of the Government of Tanzania from proceeding with the illegal evictions.

There is ample eye-witness testimony to the effect that the Government and company’s officials supervising the evictions ignored the order of the High Court and proceeded with the illegal evictions. Newspapers of the period have also quoted Lt. Gen. Tumainiel Kiwelu, who supervised the evictions as saying that he was not an employee of the High

¹⁰ In an article published by a Canadian newspaper, *National Post*, Michael Kenyon, former President of Sutton Resources is quoted as saying that Sinclair’s \$3 Million programme to pay for the relocation of the Bulyanhulu people did not pass Sutton’s Board’s “taste test.” See B. Hutchinson, “Barrick’s African tribulations”, *National Post*, December 29, 2001.

Court and therefore could not be bound by the Court's orders. There is, in addition, documentary evidence in the form of internal correspondence between Sutton Resources/KMCL executives that suggest that the decision to ignore the High Court order was reached deliberately and not in the heat of the moment.

That evidence also suggests that the decision was reached at the highest levels of the Tanzanian Government and the police force. For instance, in a July, 1997 memo to her superiors at the Department of Foreign Affairs and International Trade (DFAIT) in Ottawa, the then Canadian High Commissioner to Tanzania, Ms. Verona Edelstein (herself a powerful behind-the-scenes force for the evictions of the Bulyanhulu miners) intimated that the evictions and subsequent filling of the mining shafts were carried out "by Sutton Resources of Vancouver under the supervision of the Shinyanga Regional Commissioner (under the direction of President Mkapa)...."

In addition, in a memo to the Company's President, Michael Kenyon and the Chairman, Roman Shklanka, dated August 6, 1996 – only 4 days after the High Court order was issued– Jim Hylands, who was Sutton Resources/KMCL's Exploration Manager at Bulyanhulu, related how the Shinyanga Regional Police Commander was told that he had his orders to continue with the evictions from the Attorney General, the Inspector General of Police and the Shinyanga Regional Commissioner as well as from the Director (of Criminal Investigation) of the Police Force, Mr. Kauga. According to Hylands memo these orders "had not been changed" even after the High Court had ordered that the evictions be stopped. Indeed, the memo makes clear that "the IGP told 'our' RPC (Shinyanga Regional Police Commander, David Mnubi) that the police ...are to remove the miners by whatever means required; and...that there is to be no more discussion of this operation- he had his orders to carry them out -and ignore any orders noise he hears from the High Court (in Tabora)". Thus the police were to remove the miners by "whatever means required" and pay no heed to the decisions of the High Court of Tanzania in Tabora.

Contemptuous disregard of the Tanzanian courts and the rule of law continued even after the evictions were effected in 1996 and became even more noticeable once Barrick Gold Corporation took over and began to build the current mine. Records of the High Court of Tanzania show that in August 1998, 16 villagers - described in the court record " peasants engaged in subsistence farming and cattle rearing in Kakola village, Bulyanhulu area in Kahama District" - filed a law suit in the High Court of Tanzania. The villagers alleged that KMCL had "decided to evict the plaintiffs from their village and grazing lands covering some 10,000 acres." The villagers complained that the company wanted to dump tailings waste in their village "which is a violation of their right to health (sic!) and unpolluted environment." That same month, 3 villagers commenced a similar suit in the same Court by on behalf of 41 other families. The second suit complained that KMCL had grossly underpaid the complainants (an average of less than \$100 per family) as compensation for all their property including houses, agricultural crops and as disturbance allowance before they were evicted. According to documents submitted by Barrick Gold/KMCL, the total compensation paid by the company amounted to slightly over \$4000!

On June 29, 1998, the High Court dismissed the two cases on the grounds that it lacked jurisdiction as the cases raised questions of constitutional rights and freedoms. Aggrieved by this decision, the villagers appealed to the Court of Appeal of Tanzania, the country's highest court and hearings were set for May 22, June 30, November 27 and December 14, 2000. However, 10 days before the start of the hearings in the Court of Appeal of Tanzania, at the behest of Barrick Gold/KMCL that had now taken control of KMCL, the then Kahama District Commissioner, Ms. Hawa Mchopa, issued a 12 hour notice requiring the villagers to vacate their settlements and farmlands. The following morning on May 13, 2000, armed police, district officials and employees of Barrick Gold/KMCL, descended on the village and the villagers' houses were razed to the ground and boreholes and food crops destroyed. The villagers were then loaded into the vehicles supplied by the company and driven out some miles away where they were dumped in the bushes without any shelter. They remain there to this day. This too was illegal and amounted to contemptuous disregard of the due process as the matter was (and still is) *sub judice*.

3. SERIOUS HUMAN RIGHTS ABUSES

A. ALLEGATIONS OF KILLINGS

Since August 1996, the Bulyanhulu Gold Mine has faced persistent allegations of mass killings and wrongdoing that occurred in the cause of the evictions. The press reports of the period indicate that about 52 artisanal miners were allegedly killed after they were trapped in mine shafts, when Sutton Resources/KMCL and government officials decided to fill the mineshafts beginning August 7, 1996. Other reports indicate that about 10 other persons were killed in various localities of the Bulyanhulu area. With regard to LEAT's own investigations we have established the following:

- i. We have been able to compile a list of 54 persons who are alleged to have died in the cause of the 1996 evictions. The list has been compiled from sworn testimony of eyewitnesses and the families of the dead miners, from newspapers reports, and from report of the investigations carried out by the United Democratic Party, an opposition party whose commission of inquiry investigated the allegations between November 1996 and January 1997.
- ii. We have obtained pictorial evidence that shows that there were numerous deaths in Bulyanhulu. We have obtained the sworn statements of the persons who took or directed that the said pictorial evidence be taken and these persons have vouched for the veracity of the pictorial evidence in question.
- iii. We have obtained previously undisclosed videotapes taken by police investigators as well as KMCL officials. The videotapes also prove without doubt that previously undisclosed deaths occurred in the course of or in connection with the 1996 evictions and subsequent filling of the mineshafts. We have in this connection, obtained sworn testimony of the persons who participated in rescue and/or recovery operations including the recovery of

dead bodies in some of the mineshafts that is depicted in the videotapes and these persons have testified as to the veracity of the events depicted in the said video tapes.

- iv. We have obtained 25 sworn testimonies/affidavits of eyewitnesses family members of the victims and survivors, regarding the allegations of the killings. In addition, we have written and audio or video taped numerous other witnesses. Efforts to have these witnesses swear their testimony on oath have been hampered by police threats and intimidation of the witnesses as well as repression against our members. These efforts nevertheless continue to this day.
- v. We have obtained hundreds of previously undisclosed documentary evidence in the form of Government reports, official correspondence and Court records, Sutton Resources/KMCL and Barrick Gold/KMCL records and internal memoranda and declassified documents of the Canadian Government and its diplomatic mission in Tanzania and the World Bank Group. This documentary evidence offers ample proof as to the matters averred in this submission.

B. ALLEGATIONS WERE NOT PROPERLY INVESTIGATED

The governments of Tanzania and Canada, the companies involved and now the World Bank Group have vehemently denied that there were any deaths during the removals, which they have termed as entirely peaceful and orderly. However, under pressure to respond to the revelations made by LEAT, the government of Tanzania has recently admitted that there were indeed some deaths during the removals. Thus, for example, a press statement released by the Minister for Home Affairs Hon. Mohamed Seif Khatib on September 17, 2001 states that about 11 people died in the course of the evictions. However, Minister Khatib attributed those deaths to mob justice or natural causes. Moreover, there is ample evidence that the allegations have never been seriously investigated in accordance with the laws of Tanzania or in accordance with the internationally accepted norms and standards for the investigation of allegations of this nature.

- i. Under the Inquest Act, 1980, the 11 deaths that the Minister for Home Affairs now admits occurred at Bulyanhulu during the course of the evictions should have been the subject of an official inquest in the Coroner's Court, to determine the manner and the cause of the deaths and whether any criminal acts were involved. This was never done. The Minister's statement is, therefore, based on no evidence whatever. This is especially important given sworn testimonies from eye-witnesses who have stated that the deaths were caused by police violence.
- ii. Under the same Act, the Minister responsible for legal affairs, was obliged, upon receipt of information or reports of the allegations of the deaths of that many people, to constitute a Coroner's Court to investigate that information or

those allegations. That too was never done, even though the press reports even named the dead persons and published photographs of the dead bodies.

- iii. The United Nations Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the United Nations Economic and Social Council Resolution No. 1989/65 of May 24, 1989, require the member states to carry out “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions including cases where complaints by relatives and all other reliable reports that suggests unnatural deaths in the above circumstances.” In addition, the principles require governments to “pursue investigations through an independent commission of inquiry or similar procedures” in cases in which “the established investigative procedures are inadequate because of lack of ... impartiality, because of the importance of the matter or because of the apparent presence of a pattern of abuse, and in cases where there are complaints from the families of the victim(s) about these inadequacies or any substantial reasons.” With regard to the Bulyanhulu allegations, since August 1996 there have been persistent calls for the formation of an independent commission of inquiry to investigate these allegations from the families of the dead miners, from political parties and from prominent individuals and local and international civil society organizations. To this day, no such independent commission of inquiry has been established. On the contrary, the Government of Tanzania has not only rejected such calls but has also targeted local individuals and organizations that have made those calls for particularly harsh and repressive measures intended to intimidate and silence them.

We are aware of the claims by the Government of Tanzania, Barrick Gold Corp and now the World Bank Group that these allegations were thoroughly investigated and found to be mere fabrications. Such claims are devoid of any merit for the following reasons:

- i. The investigations were carried out by institutions whose impartiality was anything but guaranteed. For example, since the Tanzanian police force was itself implicated in the allegations of the killings its investigations and conclusions have to be treated with extreme caution and skepticism. Equally skeptical are the results of any investigation that may have been carried out by the World Bank Group or Barrick Gold Corporation or its affiliates on account of their multi-million dollar financial interest in the Bulyanhulu Goldmine. Indeed, a recent report by the Compliance Advisor/Ombudsman (CAO) for MIGA and the International Finance Corporation (IFC) has concluded that neither IFC, that had originally shown interest in funding the construction of the Bulyanhulu Gold Mine, nor MIGA that ultimately provided millions of dollars in political risk insurance, carried out any due diligence investigation prior to awarding the said insurance. If these institutions could not carry out a fairly straightforward due diligence investigation, how can their

pronouncements on much more complicated human rights investigation be taken seriously?

- ii. The alleged investigations leave a lot to be desired. Firstly, the police and the institutions that claim to have investigated the allegations of deaths never interviewed any of the families of the dead miners. Secondly, the police refused to order the digging up or exhumation of the pits in which dozens of the miners were allegedly buried. Thirdly, there were and there still are credible allegations that have remained unanswered to this day that the police prevented rescue and recovery operations even in cases where the rescuers had located the trapped miners, some of whom were still alive.
- iii. There is considerable evidence that suggests police cover-up of serious criminal wrongdoing during the evictions and subsequent filling of the shafts. For instance, the police and senior government officials were presented with pictorial evidence of some 13 dead miners who were allegedly killed during the evictions. Furthermore, a recently obtained police and company video tapes, show the police, company and government officials viewing dead bodies some of which were recovered from mineshafts. However, none of these evidence nor the existence of the video tapes was ever made public until very recently when these facts were revealed by LEAT. As recently as December 2001, senior police officers from Police Headquarters were alleged to have tried to threaten or bribe the families of the victims to recant their testimonies. That failing they resorted to bribing impostors who have posed before the mass media as the alleged dead miners.
- iv. None of the institutions that claim to have thoroughly investigated the allegations of the killings have ever issued a public report of their investigations. In any case, those investigations were contrary to the substantive and procedural laws governing investigations pertaining to sudden or unnatural deaths as referred to above. Therefore, the claims of these institutions are hardly worthy of serious consideration.

C. THE CAO INVESTIGATION

In late August of 2001 LEAT approached the CAO with a view to lodging a complaint against MIGA's support of the Bulyanhulu Gold Mine. LEAT wanted the CAO to investigate the widespread allegations of human rights abuses including alleged killings of the artisanal miners as well as other breaches of MIGA social and environmental safeguard policies and due diligence procedures and provisions of the MIGA Convention. However, the CAO made it very clear that the issue of the killings was outside its mandate. An independent investigation of the allegations of killings has been and remains one of LEAT's and the Bulyanhulu community's key demands. It, therefore, took months of agonized discussions and wide-ranging consultations with the community representatives and our international counterparts to ultimately decide to drop the allegations of killings in order to present a complaint to the CAO.

The complaint was finally lodged on January 15, 2002. It did not contain a single reference to the allegations of killings. In late March 2002, a CAO investigative team visited Tanzania to commence its investigation of the complaint. In public meetings with hundreds of Bulyanhulu villagers and affected persons, the team also insisted that they were not in Bulyanhulu to investigate the allegations. This was in response to the villagers' testimonies that almost invariably touched on the alleged killings. As result of the CAO's insistence, and believing in good faith that the CAO would not deal with the allegations of the killings, neither LEAT nor the affected persons submitted the evidence that we have submitted to this gathering.

The CAO appears to have had other ideas. After months of waiting, the CAO finally produced what it described as an "assessment report summary" of their investigations. The sole reason given for not producing a full report was "the confidentiality of ... sources of information and substantiation"! The result is that the report does not provide a single piece of evidence in support of its various conclusions. However, in what can only be described as bad faith and lack of integrity and independence on the part of the CAO, the latter introduced the issue of the allegations of killings that it had expressly forbidden LEAT and the Bulyanhulu affected persons from raising and submitting evidence on. Worse still, the CAO abused our faith in it to conclude that we had failed to produce any evidence on the allegations of killings. It even concocted fictitious "facts" to back up its dubious conclusions. For example, whereas the complaint did not make any reference to the killings, the CAO asserted that the complaint "repeats allegations regarding events of late July and early August 1996 that include misconduct and murder made against government authorities and the mine." (p. 4) More specifically, "LEAT alleges that the manner in which the land was cleared on July 30 and following days resulted in 52 unnamed individuals being buried alive in the pits that they worked." (p. 5) And at page 7 we find the following: "The complaint alleges that 52 people were killed in the process of land clearance, trapped alive in their pits by the mine and local administration staff as they plugged and filled the mine shafts...."

The CAO also mischaracterized LEAT evidence. Whereas, for example, the complaint had introduced videotapes as evidence "of the eviction of the Bulyanhulu complainants and the destruction of their settlements and immovable property", the CAO misrepresents LEAT's clear and unambiguous statement regarding the said videotapes. Thus we read: "LEAT asserts that it has new evidence, namely a video which, it states, is a contemporaneous record of bodies being exhumed from small scale miners' pits." Having creating this straw man, the CAO proceeds to set him on fire: "The CAO cannot be sure that the video shows that which LEAT maintains t shows. The location, date, timing and detail cannot be verified. Therefore, it is not clear that the video shows small scale miners suffocated as a result of the clearing of the land in the days following the July 30 announcement. Further, the CAO found witnesses and other contemporaneous documentation that would refute the version of events that LEAT contends the video supports. During the field mission to Bulyanhulu small scale miners introduced to the CAO team who knew of the video were sure of the location where the events were filmed and took the CAO to the spot. However, they could not be sure that the miners shown

being dragged from mine shafts had been killed as a result of that land clearance and were unable to support the version of events that LEAT alleged the video revealed.”

Not content with misrepresentation of the contents of the complaint, the CAO goes to invent non-existent facts. With regard to allegations of the 52 deaths, for instance, we read that “the CAO has asked for a list of the names of the 52 people who were killed in the first days of August 1996 as stated in the complaint. Neither LEAT, nor the (Small Scale Miners’ Committee) have been able to supply the list of names.... The CAO is left to reflect that if a list cannot be produced by local people, the local administration, or the (Small Scale Miners’ Committee) that is the complainant in this case, this casts doubt on the veracity of the allegations that these people died as a result of the filling in of mine shafts in early August 1996.” It was, however, not necessary for the CAO to ask since LEAT had already given the list to it in the supporting documentation submitted in compliance with the Operational Guidelines for submitting complaints. In fact there is not single shred of evidence to support the claim that the CAO ever asked for the list. Indeed, the passages in the CAO summary report regarding the allegations are similar in major respects to arguments raised by both MIGA and Barrick Gold/KMCL in their correspondence with LEAT and others, thus suggesting that the CAO plagiarized from the two institutions.

On December 2, 2002 LEAT wrote to the CAO requesting it to retract these and other statements and conclusions that we deemed were “outside the scope of the investigation, and ... inaccurate, misleading and unfair.” We professed our belief that it would not serve the concerned parties’ interests if the CAO’s legacy in the Bulyanhulu matter were to be “poisoned by the inaccuracies, factual errors, unsupported claims and unsubstantiated conclusions” that had unfortunately characterized its summary report. Rather than respond to this reasonable request, the CAO has sought to justify its fortuitous conclusions by arguing that since the issue of the killings was the focus of the press and the international NGO community in contact with LEAT, “silence by the CAO ... would have been misinterpreted.”

The issue, however, is not that the CAO should have remained silent in the face of overwhelming demands for its comment. The issue is, on the contrary, that if the CAO did not feel it could remain silent on the matter for fear of being “misinterpreted”, it could – and should – have invited all those making the allegations of killings to submit their evidence on the subject. Rather than do this, the CAO did the opposite. It did not only discourage the complainants from raising the subject, thereby preventing them offering any evidence, but also made deliberately false statements and attributed them to the complainants. And rather than making amends when challenged and presented with the facts, the CAO fudged and feigned wounded innocence. This is indicative of bad faith and lack of integrity on the part of the CAO. For these reasons, therefore, we submit that the conclusions by the CAO regarding the allegations of killings should not be taken as definitive findings of fact regarding these serious allegations.

To conclude on this subject, that MIGA should have supported this project at all is indicative of its utter insensitivity to the rights and interests of the poor and the

marginalized communities. It is indicative of its callous disregard for legality and good governance not only in the poor countries such as Tanzania but also of its own mandate. This is all the more so since Article 12(d) of the MIGA Convention requires that in guaranteeing an investment, MIGA shall satisfy itself as to the “compliance of the investment with the host country’s laws and regulations.” That CAO showed unwillingness to investigate the allegations, first by disclaiming a mandate and later by commenting on the lack of evidence and blaming the complainants for it, is indicative of its lack of integrity and an inability to investigate the conduct of the institution that is the *raison d`etre* of the CAO’s existence or the former’s corporate clients.

4. UNDERMINING NATIONAL ECONOMY

The Bulyanhulu Gold Mine is not only an affront to rule of law, good governance and internationally-accepted human rights norms that we have analyzed above, it is also an economic white elephant with little, if any, benefits for the local communities and for the national economy. To understand this question we must first paraphrase our submission with a discussion of the role that artisanal mining – that is now shrinking under the pressure of the Bank-supported penetration by foreign investors - has historically played in Tanzanian economic life.

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

Although artisanal mining has been a prominent feature of Tanzanian mining since the earliest days of colonial rule, it really began to take off in a substantial way in the early 1970s when the Bulyanhulu gold deposits were discovered. The deep economic crisis of the 1980s drove many poor and unemployed people into artisanal mining during this period. However, it was government policies during this period that provided the biggest boost to artisanal mining in the country. Beginning in the early 1980s the Government of Tanzania as we have seen, not only recognized artisanal mining, it began to earmark large areas of the country for artisanal mining operations. The Government also began to encourage foreign suppliers of mining equipment to do business with artisanal miners. It is no wonder, therefore, when Sutton Resources/ KMCL began their legal proceedings against the artisanal miners of Bulyanhulu in 1995, they also sued two Canadian-owned companies and one of their Canadian directors because they were suppliers of mining equipment to the Bulyanhulu artisanal miners.

In April 1990, the then President Mwinyi declared that artisanal miners were free to operate all over country and the modern gold boom in Tanzania began in earnest. The artisanal miners population in the country soured. Various studies have for example

estimated that at its height in the mid-1990s artisanal mining had directly employed between 500,000 and 900,000 (Chachage, 1995a; Chachage, 1995b; Phillips *et al*, 2001; MMSD Southern Africa, 2002). In addition, secondary economic activities associated with it generated an estimated 3 jobs for every single one directly employed in mining. Thus, according to the most recent of these studies,¹¹ the sector accounted for about 46% of the total middle-income jobs in 1995. The basic income in mining towns was about 6 times above what rural men could earn doing farm labour. “Moreover”, the researchers observed, “the money coming from artisanal mining appears to be staying local, greatly enhancing cash flow in isolated rural areas.” And while “splurging” after a rich find is commonplace, “not all of the income is going into the proverbial ‘wine women and song.’ Miners are building up capital to move up into a career ladder into brokering and dealing some are investing in more stable business such as shops, restaurants and guesthouses.” The researchers’ conclusion was unequivocal: “No other sector or other job-creation programme has injected (more) dispersed incomes into the rural areas, stimulated (greater) cash flow and reduced rural poverty and on such a (larger) scale.”

a. **DESTRUCTION OF PEOPLE’S LIVELIHOODS AND IMPOVERISHMENT OF COMMUNITIES**

Bulyanhulu was the jewel in the crown of artisanal gold boom in Tanzania. It was by far the richest gold deposit in the country and may be in Africa outside South Africa and Ghana. It is for this reason that the Bulyanhulu Gold deposits attracted hundreds of thousands of people. According to project documents submitted by Barrick Gold/KMCL to MIGA, the Government of Tanzania and Canada’s Export Development Corporation, the discovery of the Bulyanhulu gold deposits in 1975 “attracted some small scale artisanal miners to the site” However, following a visit to the site by then President Ali Hassan Mwinyi in February 1993, “artisanal miners requested the right to resume artisanal mining in Bulyanhulu, (which) permission was granted by the President.” As a result, according to these documents, that same year there was “a massive influx in which some 30, 000 to 400,000 artisanal miners, associated entrepreneurs and ‘opportunists’ arrived.”¹² Elsewhere in these documents, Barrick Gold/KMCL have repeated the same figures, stating that, although no records were kept of the number of artisanal miners, “estimates range from 30,000 to 400,000.”¹³

Barrick Gold/KMCL’s high estimates of the Bulyanhulu populations during this period find broad support in other estimates given independently of the company’s studies both before and after the events of August 1996. For example, just before the removals were orders in July 1996, the late Bhiku Mohamed Salehe, then the Member of Parliament for

¹¹ The USAID-sponsored joint study entitled *Tanzania’s Precious Minerals Boom: Issues in Mining and Marketing, African Economic Policy Discussion Paper No. 68, March 2000*. The study was undertaken by researchers from the International Business Initiative and Harvard University’s John F. Kennedy School of Government both of the United States; and TanDiscovery (a Dar es Salaam-based consulting firm), a government-owned parastatal State Mining Corporation (STAMICO), Ministry of Energy and Minerals and the Economic and Social Research Foundation (ESRF), a reputable research institution also based in Dar es Salaam.

¹² Barrick Gold & KMCL, *Social Development Plan for Bulyanhulu Gold Mine Tanzania:1999:4 &21*

¹³ Ibid p. 20

Bulyanhulu and the outlying areas, told a session of the Tanzanian Parliament in Dodoma that about 200,000 artisanal miners, peasant farmers and their families were threatened with evictions in Bulyanhulu.¹⁴ Two years earlier then District Commissioner for Kahama had protested the apparent granting of prospecting rights over the Bulyanhulu deposits to the Canadian company to then Minister for Water, Energy and Minerals Jakaya Kikwete. In the District Commissioner's opinion, the grant would result in the eviction of over three hundred thousand people in the area who were "earning a living as well as contributing to the national economy."¹⁵

The police force that was a major participant in the evictions has likewise provided high estimates of the people who were removed from the Bulyanhulu mines that fateful August. Following the forced removals, the Inspector General of Police issued a press release denying the allegations of killings but admitting that about 200,000 Bulyanhulu residents had been removed from the area in the course of about one week.¹⁶ Extant press reports that broke the news of the killings also estimated the artisanal population that had just been dispersed from the area at between 200,000 and 300,000.¹⁷ These statistics make the Bulyanhulu evictions by far the biggest involuntary population displacement in peacetime Tanzania since *Operesheni Vijiji*.¹⁸

Barrick Gold has come to realize the historical significance of these numbers. No wonder the company does not want critics to make any reference to its own project documents anymore. It now accuses civil society organizations that have referred to them of "misleading people into thinking that the number of people who ... were evicted from (the Bulyanhulu) concession was 200,000"! Without first expressly disowning its project documents, the company now claims that unspecified "contemporaneous documents"

¹⁴ See *Speech by Hon. Bhiku Mohamed Salehe, MP, (now deceased) to the National Assembly, Dodoma, July 26, 1996.*

¹⁵ See *Letter Ref. K.30/1 Vol. III/54* from Edson M. Halinga, District Commissioner, Kahama, to Hon. Jakaya M. Kikwete, Minister for Water, Energy and Minerals, dated September 5, 1994, re "Small-scale Miners at Bulyanhulu, Kahama."

¹⁶ See *Madaai ya Maaafa Katika Mashimo ya Dhahabu Machimbo ya Bulyankulu Mkoani Shinyanga* (i.e., "Allegations of Killings in Gold Shafts at Bulyankulu Mines, Shinyanga Region" – auth.), Press Release, August 21, 1996.

¹⁷ See M. Islam and M. Rweyemamu, "Utata watawala maafa ya Kahama: waliokufa machimboni wahofiwa kufikia 52: Picha za maiti zapelekwa Dodoma: wadaiwa kufunikwa na magreda" (i.e. "Uncertainty reigns over the Kahama Killings: The number of those dead in the mines feared to reach 52: Photos of the dead sent to Dodoma: They were allegedly buried by graders" – auth.), *Mtanzania*, Tuesday, August 13, 1996; N. Kicheere, "Wachimbaji walihamishwa Bulyanhulu kihuni" (i.e. "Miners were rudely evicted from Bulyanhulu" – auth.), *Majira*, Wednesday, October 11, 1996; N. Kicheere, "Polisi waliua watu Bulyanhulu" (i.e. "Police killed people at Bulyanhulu" – auth.), *Majira*, Saturday, October 12, 1996.

¹⁸ *Operesheni Vijiji* was a name given to a massive collectivization program intended to reorder and reorganize the socio-economic and political and administrative landscape of rural Tanzania. Begun by the British colonial state in the 1930s, it was to assume – under the post-colonial ideology of *Ujamaa* – harshly authoritarian military-style dimensions, leading to the forced removals of millions of rural dwellers into new Ujamaa Villages. Its socio-economic and political legacy, characterized by economic disintegration, incessant land tenure conflicts and political powerlessness, has continued to be felt to this day. See Scott (1998) for an incisive analysis of this program; and Tanzania (1994) for the crisis in land tenure that it engendered.

show “there were fewer than approximately 15,000 people on the site at the time of the events in question.”¹⁹ Jumping into the fray to perhaps help Barrick Gold/KMCL out of the fix created by the company’s own statistics, the CAO has recently speculated that the number of those evicted is even lower, ranging between 200 to 2000!

But whatever the correct figure of the population that was displaced from Bulyanhulu, the socio-economic impacts of the removals could not be hidden. In a surprisingly frank examination of these impacts, Barrick Gold/KMCL has candidly admitted that whereas “... it is believed that before the closure of small-scale mines, the average income in the ... area was the highest in the Shinyanga region ... these have fallen since the closure of small-scale mining.” In addition, the company states, “the closure of small-scale mining had a major negative effect on economic activity, population and social development, which has been felt beyond the immediate mining area.”

Elsewhere in its documents, Barrick Gold/KMCL has drawn similar conclusions on the socio-economic conditions subsequent to the evictions: “The closure of illegal small-scale mining activities and related works at Bulyanhulu had an extensive impact on the socio-economic aspects of local people’s lives. The mine was a source of income to a majority of people ... and made life different for many. (These) economic (activities) stopped after the closure.”²⁰ Yet another report makes the same conclusion that “after cessation of artisanal mining at Bulyanhulu in August 1996, the income of the majority of people declined significantly, the populations in Kakola and other villages in the Ward of Bugarama decreased, and services either decreased or disappeared.”²¹

b. MINIMAL GOVERNMENT REVENUE

Regarding its contribution to government revenue, there is ample evidence that the Bulyanhulu Gold Mine will contribute only marginally to government revenue. Whereas mineral production at the Mine has risen and will continue to rise, as have foreign exchange earnings from gold exports, government revenue may indeed have fallen in both relative and absolute terms. For example, whereas - according to MIGA - the Tanzanian Government will receive US\$75 million in taxes, royalties and other charges during the estimated 15-year life span of the mine²², Barrick Gold paid Canadian dollars 500 million (US\$280million) to acquire the Bulyanhulu area from Sutton Resources in 1999. The latter company, as we have shown herein, itself acquired Bulyanhulu for free, never paying a penny to the thousands of artisanal miners and other property owners whose property it took by the force of arms. Barrick Gold has itself stated on numerous occasions that it expects to rake in upwards of US\$3 billion in revenue during the lifetime

¹⁹ See letter by Vince Borg, Barrick Gold’s spokesman, published in the letters section of the Canadian newspaper *National Post*, January 26, 2002, responding to an earlier letter jointly written by the Council of Canadians and MiningWatch Canada that had cited police reports of 200,000 evictees. See “Tanzanian Mines”, *National Post*, Letters to the Editor, January 19, 2002.

²⁰ *Ibid.*, paragraph 5-1.

²¹ *Ibid.*, Vol. 1, Paragraph E-6.

²² According to the MIGA statement, the project will also procure some \$10 million in local goods and services per year.

of the Bulyanhulu Gold Mine. These figures seem to vindicate former Canadian High Commissioner Edelstein's statement, in a July 1997 memo, that "the Bulyanhulu mine ... will be very profitable for the Canadian company/stockholders."

By comparison, statistics from the Ministry of Water, Energy and Minerals show that government revenue was much higher at the height of the artisanal gold boom in the early 1990s brought on by government policy shift in 1990. For example, whereas in 1989 – a year before the policy change – gold accounted for slightly over \$1 million or about six per cent of the total mineral exports. Within months of the policy change in April 1990, gold exports rose to about \$14 million or about 52 per cent of the total mineral exports. By 1991, gold exports had risen to over \$29 million or nearly 66 per cent of the total; whereas in 1992 gold fetched over \$40 million or over three quarters of the total. (Tanzania, 1993; Chachage, 1995a; Chachage, 1995b). That is to say, within a period of hardly three years the official gold exports had increased nearly 40 times!²³

Other independent observers have, in fact, given even higher figures for Tanzania's foreign exchange earnings from gold exports during the same period. For example, in its most recent survey of Sub-Saharan Africa, the Taylor and Francis Group of Great Britain, publishers of the annual *Regional Surveys of the World* assert that official gold exports earned \$26.25m in 1990. Exports rose sharply in early 1991, as reforms to the official buying mechanism began to take effect, with a value of \$35 million in 1991, \$44.3 million in 1992 and \$55 million in 1993.²⁴

As the contribution of the artisanal miners to the national economy continued to grow, so did official recognition of the sector and its chief players, i.e. the artisanal miners. Thus in 1992 the ruling Chama cha Mapinduzi (CCM) party promised in its program for the 1990s that "small-scale miners shall be encouraged and supported with proper tools and markets for their products. ... Furthermore, steps that have already been taken to enable the small-scale miners to sell gold and diamonds to the central bank shall be maintained for their benefits to the nation have become much clearer."²⁵

CCM would acknowledge this fact again six years later in 1998 when it concluded, in a critical self-assessment, that the growth of the mining sector in the early 1990s "came about as a result of the Government's ... decision, through the Bank of Tanzania and its agents – the National Bank of Commerce and the Cooperative (and Rural Development) Bank, to start buying precious minerals from small-scale miners in April 1990."²⁶

c. THE LIE ABOUT JOB CREATION

²³ This does not even take into account smuggling which - according to Chachage (ibid., 254) – continued to be a major problem, because the Bank of Tanzania was only able to purchase an average of around 3 tons a year out of the estimated 10 to 16 tons of gold that were being produced annually. About 80% of gemstones were also being exported unofficially every year during that period.

²⁴ Taylor and Francis Group, *Regional Surveys of the World: Africa South of Sahara*, Europa Publications, 2001:1041-1042.

²⁵ See *Chama cha Mapinduzi Program: Policy Direction in the 1990s*, National Executive Committee, Dodoma, December 1992, paragraph 61.

²⁶ Chama cha Mapinduzi: An Assessment of Twenty Years of CCM (1977 – 1997), National Executive Committee, Dodoma, February 1998, paragraph 102.

MIGA has sought to justify its subsidy to Barrick Gold/KMCL's Bulyanhulu venture by arguing that the guarantee "taps the potential of the underdeveloped mining sector, helping Tanzania to diversify its economy and offering solid developmental benefits for the country's 33 million residents" (ibid.) These "developmental benefits" are allegedly in the form of jobs too. MIGA had estimated that Barrick Gold/KMCL would have created more than 1,000 new jobs to operate the Mine facilities. But when the Mine was officially inaugurated in July 2001, the final figure was downwardly revised to some 900 jobs.²⁷ This means that MIGA would have spent an average of over \$190,000 per every single job created at Bulyanhulu!²⁸

What is more, Barrick Gold/KMCL's jobs are out of reach of the local communities whose livelihoods and jobs were destroyed in the first place. According to the *Social Development Plan* prepared by Barrick, "low levels of skills and literacy possessed by the local population will restrict their ability to realise employment opportunities offered by the mining development and will also reduce their ability to seize entrepreneurial opportunities."²⁹ And although we also learn elsewhere that the Bulyanhulu mine will "indirectly provide jobs to thousands of suppliers and other businesses around",³⁰ these claims have to be treated with some skepticism. As one Member of Parliament from the Lake Zone has recently argued, corporate mining operations "... employ very few local people; they build their own infrastructures, and develop their own supply chains connected to their home countries."³¹ KMCL has, for instance, bragged about their "buy local" policy in their project documents. The company is, however, importing almost all supplies, including food, from outside the mine area, the district and even outside the region and the country. So any "multiplier effect" in terms of indirect job-creation opportunities accrues outside the immediate areas that have borne the brunt of its operations.

Under agreement with the government, according to the MIGA report, Barrick Gold/KMCL was required to prepare and carry out an effective training and employment program for its Tanzanian employees in each phase and at all levels of operation. Barrick Gold/KMCL has indeed, boasted that it has spent millions of dollars to train its

²⁷ See, Advertiser's Supplement, "Rais Benjamin William Mkapa Kufungua Rasmi Mgoji wa Dhahabu wa Chini ya Ardhi Bulyanhulu" (i.e. "President Benjamin William Mkapa to Officially Commission the Underground Bulyanhulu Gold Mine", *Mtanzania*, Tuesday, July 17, 2001; "Rais Benjamin Mkapa Kufungua Mgoji Mkubwa wa Chini ya Ardhi", (i.e. "President Benjamin Mkapa to Commission in the Country's Major Underground Mine", *Nipashe*, Tuesday, July 17, 2001; "Celebration as His Excellency President Benjamin Mkapa official inaugurates Tanzania's largest underground gold mine", *The Guardian*, Tuesday, July 17, 2001.

²⁸ MIGA's global average is, indeed, far higher at \$1.175 million per job created, according to FoE et al. who have in fact called for its disbanding for promoting "risky business", failing the poor and harming the environment (ibid., 6, 19).

²⁹ See SDP at page 36.

³⁰ See editorial titled "Mining activities: What is wrong?", *The Guardian*, Thursday, July 19, 2001.

³¹ Anthony Diallo, MP for Mwanza Rural, quoted in See L. Mwakalebela and T. Kaguo, 'MPs differ on mining taxes', *Business Times*, Friday 18, 2000.

Tanzanian workforce in South Africa and elsewhere. It has also boasted that it pays some of the highest salaries in Tanzania, that a Barrick Gold/KMCL job is one of the most coveted, etc., etc. These aspects of the “solid developmental benefits” have to be taken for what they really are: public relations propaganda! What the company has not cared to tell is that from the very earliest days of the Mine’s operations, Barrick Gold/KMCL has faced a dissatisfied and rebellious workforce at Bulyanhulu. According to press reports, hardly five days after the Mine was officially commissioned, close to two thirds of the 26 qualified engineers quit the Mine citing “low wages, discrimination and mistreatment of local professionals.”³²

The reports had it that the local engineers, all university graduates, had undergone internship training in South Africa but upon returning they were deployed as manual workers at a monthly salary of \$245. In contrast, “artisans from (Great) Britain, Canada, Australia and South Africa with lower qualifications earn \$4,400 per month, besides better housing.”³³ More recent reports and company documents indicate that the situation has become so tense that the Bulyanhulu workforce has in fact downed tools on more than one occasion in protest against company policies that the workers describe as exploitative, anti-union, discriminatory and downright racist.

In comparison to these fictitious benefits, Barrick Gold/KMCL’s project documents and other sources have estimated that prior to the 1996 evictions, there probably were about 20,000 people directly employed in small-scale mining activities. Many thousands more were employed in auxiliary activities associated with artisanal mining. Together with dependents, the total population came to the hundreds of thousands we discussed earlier. This population created an economic boom for the area. As Barrick’s project documents readily admit, as a result of the artisanal mining operations, “the lives of the majority of the people in Kakola and the whole of Bugarama Ward became closely linked to mining activities at Bulyanhulu.” Such was the boom that “significant sums of money spent in local villages, various markets and businesses also greatly stimulated the development of a local cash economy. There has been a significant decline in such benefits since the departure of the artisanal miners.”³⁴

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

³² See, F. Rwambali, “17 Engineers Quit Tanzania’s Giant Kahama Mines”, *The East African*, Friday August 23, 2001.

³³ Ibid.

³⁴ See EIS Vol. 1 paragraph E-6.

closure of small-scale mines, the average income in the study area was the highest in the Shinyanga region. These have fallen since the closure of small-scale mining.”³⁵

d. FICTITIOUS SOCIAL SERVICES

Barrick Gold has repeatedly boasted of supplying potable water to thousands of villagers in Bulyanhulu who live along the pipeline it has constructed to take water for the Mine’s needs from Lake Victoria. The company has also bragged about medical facilities it has made available to the Bulyanhulu communities. The reality is, however, much more complex and unflattering. Regarding the provision of potable water, for instance, it does not take a visitor from another planet to realize that Kakola township, with an estimated population of 12,000, and which is the closest settlement to the Mine complex is yet to see a drop of water supplied by the company. This is also the case with Stamico, another community of about 3,000 just across the river to the north of the Mine complex and Nyakagwe, another settlement about 5000 to the west of the Mine. With the exception of the eight settlements that were destroyed during the 1996 removals, the three communities were the hardest hit by the 1996 events and subsequent construction of the current Mine. Had Barrick Gold/KMCL been keen on solving Bulyanhulu community’s real needs, one would have reasonably expected the company to start with these three settlements closest to its Mine Complex.

With regard to medical services, these are almost inaccessible to the Bulyanhulu villagers. The medical center is inside the Mine complex and villagers have to go through rigorous security hurdles and numerous checkpoints before they are allowed through. Villagers have also complained that the costs of the medical care provided by the company is almost beyond the means of the community whose economy the company admits to have destroyed.

It is clear, on the basis of the foregoing analysis, that the Bulyanhulu Gold Mine has undermined the real national economic interests of Tanzania. It has also sabotaged the national poverty alleviation goals in that rather than leading to an improvement in the social and economic conditions of the Bulyanhulu communities and the nation as a whole, it has in fact intensified poverty and socio-economic malaise of the area and the country as a whole. That MIGA should provide millions of dollars in political risk guarantees to such socially harmful and politically risky investment seems beyond comprehension. That the Agency should have overlooked or ignored the unambiguous mandate granted it under Article 12(d) of MIGA Convention that “in guaranteeing an investment, the Agency shall satisfy itself as to the economic soundness of the investment and its contribution to the development of the host country”, is scandalous and unacceptable.

5. THE WORLD BANK GROUP’S RESPONSIBILITY

The World Bank Group shares a major responsibility for the abuses and socio-economic upheavals and dislocations that have characterized Tanzania’s mining industry in recent years. Apart from financially supporting individual projects such as the Bulyanhulu Gold

³⁵ Ibid., Vol. 3, Paragraph 8-2.

Mine, the Bank, more than any other outside institution, is responsible for creating the ideological, political and legal atmosphere under which these abuses become inevitable and are rationalized. We shall explain in some detail.

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

A major pillar of the liberalization package that the Bank pushed was the opening of the Africa's mineral resources to foreign investors. In a 1989 prognosis that Sub-Saharan Africa was moving away "from crisis to sustainable growth", the Bank argued that large-scale investment in precious minerals was necessary if any meaningful development of the sector was to take place (World Bank, 1989). Blaming past policies it had helped create and sustain, the Bank observed that past experience in mining in Africa had been marked by stagnation and loss of markets, caused by low levels of private investment. Investors were, according to the Bank, scared away by government restrictions and controls, cumbersome regulatory procedures, punitive taxation arrangements and unstable macro-economic performance.

As a result, the Bank declared, Sub-Saharan Africa had missed the benefits of the boom in the prices of precious minerals in the 1970s and 1980s. There was now a need to create an "enabling environment" for the mining industry, if the 1990s were not to be another "lost decade" for African countries! This "enabling environment" would usher in a new type of partnership between foreign mining companies that have the capital and the know-how, and the cash-strapped African governments. (ibid., 122) The Bank advised African governments to rethink their roles and their policies for the mining sector. It was not necessary for governments to take a significant stake in mining ventures, as "taking a minority interest ... is sufficient for governments to keep abreast of mine developments and protect national interests." (ibid.) All that was required of governments was to create an enabling environment by reforming foreign exchange regimes, taxation policies, and provisions relating to repatriation of profits and the regulatory and institutional framework. The ever-generous Western donor community was allotted the role of financing specialized advisory services to help African governments negotiate "technically sound and fair mining agreements." (ibid.)

The Bank's 1992 "Strategy for African Mining" technical paper went even further and specifically advised African governments against using mining as a potential source of employment creation. Investors in the sector "should not be obliged to use or be offered incentives to use employment-increasing techniques." Rather, tax revenue from mining

should be invested in employment-creation initiatives in other sectors of the economy. (World Bank, 1992:28)

With regard to Tanzania, the Bank's "intellectual leadership" of the country's mineral policy-making began from very early on. In September 1990 the Bank published a *Mining Sector Review* for Tanzania.³⁶ This Review and the 1992 Strategy paper set the tone for the Mineral Sector Development Strategy for Tanzania, prepared a few years later. The Strategy would set as the order of the day, the subsequent review of the country's regulatory and fiscal framework for the mining sector. As part of this review, a Bank consultant was hired to carry out "an extensive analysis of the Tanzanian small-scale mining sector and ... provide a proposed plan of action towards the end of the year (1997)." According to Canadian diplomats who closely followed these developments on behalf of Canadian mining interests such as Sutton Resources/KMCL, the Bank would also finance the British and Tanzanian consultants who drafted the new Mining Act enacted into law in 1998.³⁷ The British consultants were Transborder Investment Advisory Services Ltd., an investment firm based in the City of London.³⁸

The new legislation that came out of these processes makes it far easier for foreign investors to gain access to and control of Tanzania's mineral resources; and to operate the mining ventures. It streamlines decision-making processes regarding the allocation of mineral concessions by concentrating considerable powers in the hands of government bureaucrats. However, it offers investors significant protections against bureaucratic red tape by imposing significant limitations of time within which the bureaucrats are required to act on applications for mining concessions. It further shields the investors from local or national scrutiny by divesting local and national institutions of powers to deal with disputes between the government and the investors. It also seeks to shield investors from having their operations challenged in courts of law by local communities by giving the Commissioner of Minerals powers to decide on disputes between the investors and local communities. Although it provides for mandatory requirements for preparation of environmental impacts assessment (EIA) and environmental management plans (EMPs) for almost all mining undertakings, there are significant loopholes.

The reforms in the mining sector brought on by the new legislation have been augmented and complemented by further reforms in the regulatory regime for foreign investment generally. That regulatory and fiscal regime, created "to provide for more favourable conditions for investors",³⁹ offers investors extraordinarily generous incentives. These are in the form of tax reliefs and guarantees of unconditional transfer of capital and profits. There are, in addition, protections against expropriation, nationalization or compulsory

³⁶ Sector Review #9007 published on September 19, 1990.

³⁷ See memo dated April 14, 1997, from High Commissioner Edelstein to the Department of Foreign Affairs and International Trade (DFAIT), Ottawa.

³⁸ This is confirmed by then Canadian High Commissioner to Tanzania, Verona Edelstein, in a fax message to Michael Kenyon, then President of Sutton Resources of Vancouver Canada dated October 18, 1996. Sutton Resources had acquired the Bulyanhulu concession that August and High Commissioner Edelstein wrote to thank Kenyon for his "very kind words to Ministers Axworthy and Eggleton for the Canadian High Commission's and my own support for Sutton's efforts here in Tanzania."

³⁹ Preamble to the National Investment Act, 1997, No. 27 of 1997.

acquisition. The regulatory regime has also removed from statute book all restrictions on entry and ownership of the mineral resources so that investors are now legally able to have complete ownership of the mining ventures in the country.

As far as fiscal framework is concerned, taxation laws enacted in the early 1970s were amended to remove liability of investors to pay income taxes, customs and excise duties and sales taxes.⁴⁰ The new law also amended the Immigration Act, 1995 to remove restrictions on employment of non-citizens. Thus mining investors are now entitled to an unlimited number of foreign employees. All other investors have to make do with an initial automatic immigration quota of up to five persons during the start up period of their ventures, which quota may be raised under certain circumstances.

Reflecting these reforms, *The Guardian* claims in a 2001 article that “a new Mining Act in 1998 opened the sector up for foreign investment and that policy is now bearing fruit, with Tanzania attracting investors even when gold prices have fallen to around 18-month lows.” The paper cites figures that show that the government has issued over 300 licenses to mining companies while investment in gold exploration since 1998 is estimated at \$870 million.⁴¹ According to the authoritative British daily, *Financial Times*, there has been more than \$700m of foreign direct investment in the mining sector since 1997, despite price fluctuations on world markets of the main attraction, gold.⁴²

Whereas exploration in Africa has previously tended to focus in particular on South Africa and Ghana, the year 1998 saw Tanzania attracting the most exploration expenditure in Africa.⁴³ According to a South African-based business magazine, Tanzania has been the major focus of Africa’s gold exploration and development over the past five years, with up to 15 per cent of the continent’s exploration expenditure spent in the country.⁴⁴ Consequently, the country has become Africa’s third largest gold producer after South Africa and Ghana.⁴⁵

The mining sector grew at an average of 15.8 per cent during the four years ending 1999, compared with a growth rate of 11.7 per cent in 1995.⁴⁶ In 1999 alone, the industry grew by over 27 per cent, up from the previous year’s 17 per cent, mostly in the gold sector (Taylor and Francis Group, 2001:1156). By 2003, when the three new gold mines of Geita Gold Project, Nzega’s Golden Pride and Bulyanhulu Gold Mine are fully operational, the country’s gold production will rise to 1.4 million ounces a year.⁴⁷ Output

⁴⁰ See Financial Laws (Miscellaneous Amendments) Act, 1997, No. 26 of 1997.

⁴¹ See Guardian Reporter, “Tanzanian investment in gold, minerals pays off”, *The Guardian*, Saturday, April 7, 2001.

⁴² See A. Goldman, ‘Raising the gold standards’, *Financial Times*, Monday, July 24, 2000.

⁴³ Mihayo, ‘Tanzania’s mining success a “Pyrrhic Victory”’, op. cit.

⁴⁴ D. Games, ‘A new dawn’, *Business in Africa*, October 2000, p. 44-47

⁴⁵ See Guardian Reporter, ‘Tanzanian investment in gold, minerals pays off’, op. cit.

⁴⁶ Mihayo, ‘Tanzania’s mining success a “Pyrrhic Victory”’, op. cit.

⁴⁷ Ibid. The Golden Pride mine entered production in 1999 and was joined by the Geita mine in June 2000 and Bulyanhulu in May 2001. Total gold output was forecast to reach 250,000 ounces in 2000, rising to 1m by the end of 2001 and 2m by 2003. According to

at Geita – which started production in June 2000 - is projected at 500,000 ounces per year when in full capacity. Operated by Ghana's Ashanti Goldfields and South Africa's AngloGold, Geita is reputedly Africa's second largest gold mine.⁴⁸

On the other, the June 2000 projections from the Ministry of Energy and Minerals show Tanzania's annual gold output reaching 40 tons by 2002 (Taylor and Francis Group, op. cit.)⁴⁹ Output from the Geita and Bulyanhulu mines and the one under construction in Tarime district would alone account for about 29.3 tons of the gold production.⁵⁰ These figures are far higher than – but consistent with – the earlier predictions that gold production would triple from five to fifteen tons a year over the next five years – and, possibly, considerably more.⁵¹

Such has been the rush for gold in Tanzania that there has been a dramatic surge in prospecting and mining licenses issued by the government, which totaled 351 in 1997, up from 9 in 1990 (Tanzania, 2001:5). These dropped from the 1997 high to around 321 in 1998 (see Tanzania, 1999:35). Mine development spending, however, soared from US\$ 50 million in 1998 to a whopping US\$ 400 million in the next two years, with President Mkapa telling the Swedish Business Council in August 1999 that the investment in the sector would reach well over US\$ 600 million by 2002.⁵² Tying together all these statistics, it has been estimated that the FDI in the Tanzanian mining sector has totaled well over \$2 billion since 1997.

Export earnings from minerals appear to have also risen apace with increases in investment in exploration and mine development. Although statistics for export earnings from minerals vary widely depending on their sources, they nevertheless consistently show dramatic increases in export earnings. For instance, according to the latest survey of *Africa South of the Sahara* conducted by the London-based Taylor and Francis Group's Europa Publications Ltd., mineral exports earned US\$103 million in 1998, compared with earnings of \$27 million in 1990. This is an increase of over 380 per cent in eight years. Exports of gold alone rose seven-fold from \$7.6 million in the year ending 30 April 1999 to \$53.4 million in the year ending 30 April 2000, according to Bank of Tanzania figures, as exports commenced from the Golden Pride mine at Nzega (Taylor and Francis Group, op. cit.)

Other figures for the year 1999 have showed that mineral exports fetched \$80.4 million,

the *Financial Times*' Antony Goldman, two dozen other projects are in the pipeline, reflecting the interest Tanzania is provoking among some of the industry's main players in South Africa, Canada and Australia after a generation of decay and decline (See 'Raising the gold standards, op. cit.)

48. Guardian Reporter, 'Tanzanian investment in gold, minerals pays off', op. cit.

49. See also I. Kyaruzi, 'Golden Pride, Geita, and Afrika Mashariki mines investment reaches USD 870 million', *Business Times*, Friday, April 13, 2001.

50. See C. Mabula, 'Investors set to spend over 400bn/- in gold exploration', *Daily News*, August 16, 1999.

51. Mihayo, 'Tanzania's mining success a "Pyrrhic Victory"?' , op. cit.

52. See *The Guardian*, Wednesday, September 1, 1999, Turner, "another time, another gold rush", op. cit.

up from \$22.6 million in 1998, according to the *Business in Africa* magazine.⁵³ Similarly, recent reports from the state-owned *Daily News* quoted the President of the Tanzania Chamber of Mines as telling a parliamentary seminar, that the country's export earnings from minerals in 2000 increased to US\$184.86 million from US\$22.57 million in 1998. According to the report, gold accounted for the lion's share of the earnings, registering a dramatic increase from US\$3.33 million to US\$120.41 million in the two consecutive years.⁵⁴ Projections for 2002 predict that mineral exports will rise to US\$400 million of which US\$326 million will come from gold, over 240% increase from this year's total of US\$134 million (Tanzania, 2001:5-6). These developments have increased the contribution of the mining sector to total GDP from 1.4 per cent in 1995, to 2.1 per cent in 1999.⁵⁵ The Tanzanian government aims for it to contribute 10 per cent of the Gross Domestic Product by 2025.⁵⁶

Thus, to paraphrase a leading watcher of Tanzania's mining industry, with more money spent on non-ferrous minerals exploration than in any other African country, the first three commercial gold mines starting operations since November 1998, and the prospect of another two to five projects coming on-stream over the next few years, Tanzania has undoubtedly been the flavour of the past five years in African mining circles....⁵⁷ The key question is, however, whether these dramatic developments have made a difference in the lives of millions of Tanzanians who live in poverty and squalor. We have already shown what these transformations have meant to the Bulyanhulu community. Unfortunately, however, Bulyanhulu was not an aberration. Rather it was the most egregious example of a general and sinister pattern that has emerged in Tanzania's mining sector in the past decade.

6. THE BULYANHULU PRECEDENT

In many ways Bulyanhulu created a precedent that has since been, and continue to be, replicated elsewhere in the mineral-rich areas of Tanzania. For example, according to the USAID-sponsored study cited above, about 30,000 artisanal miners were removed in 1998 and 1999 when the construction of the first two modern gold mines began at Nzega and Geita in central and north-western Tanzania respectively. (Phillips et al., 2001:8) In addition to this, newspapers have continued to report "a yet unresolved conflict between a South African gemstone mining firm ... in Mererani, Arusha and small-scale miners."⁵⁸

53. Games, 'A new dawn', (op. cit.)

54 See M. Kitururu, 'State sees new mining drive as panacea', *The Daily News*, Tuesday, April 3, 2001; Guardian Reporter, 'Tanzanian investment in gold, minerals pays off', *The Guardian*, Saturday, April 7, 2001.

55. Mihayo, 'Tanzania's mining success a "Pyrrhic Victory"?' , op. cit.

56. Guardian Reporter, 'Tanzanian investment in gold, minerals pays off', op. cit.

57. Turner, 'Another time, another gold rush', op. cit.

58 See, for instance, "Mining activities: What is wrong?" *The Guardian*, Thursday, July 19, 2001.

Like Bulyanhulu in the mid-1990s, Mererani's population of small-scale miners runs in the hundreds of thousands who eke a precarious living through gemstone mining.

The press has also reported a serious conflict in Tarime District of northern Tanzania. In August 2001, according to reports, over 10,000 villagers from the Nyamongo area of that district invaded and reoccupied gold workings where an Australian-owned company was planning to build an industrial mine. The villagers took that action in protest for non-payment of compensation after they were forced out of the area to make room for the Australian investors in the mid-1990s.⁵⁹ A few weeks after the reoccupation, heavily armed paramilitary units moved into the area and kicked the villagers out again. Their compensation claims have, however, not been resolved to this day. The Australian-owned Afrika Mashariki Gold Mines Ltd., has now constructed a modern gold mine at Nyamongo.

And closer to Bulyanhulu, there were reports – during the same period - of another conflict pitting over 50,000 small-scale miners in Mwabomba area in the newly created Bukombe District and a British mining company called Twigg Gold Exploration Ltd.⁶⁰ The latter had apparently been awarded a prospecting license by the government over the area whose deposits the artisanal miners claim to have discovered. The miners were apparently ordered to vacate the area by August 15, 2001 but they have been resisting the attempts to displace them. But, as one newspaper bluntly put it, the “Sword of Damocles” hangs over these miners too.⁶¹ If recent history is any guide, these conflicts are likely to be resolved in the same violent way as Bulyanhulu was.

7. CONCLUSION: AGENDA FOR CHANGE

In an otherwise candid examination of its four decades of involvement in Tanzania's economic policy, the World Bank's OED claims that wherever the Bank has put its focus in Tanzania, “the outcomes have improved.” That its assistance for the country “has improved in relevance and in the process has allegedly helped to generate substantial institutional development.”⁶² It seems obvious from the foregoing analysis that whatever “improvement in outcomes” or “relevance” the OED has in mind, it is certainly not in the sphere of human rights and social responsibility of the corporate mining sector. There does not appear to be any improvement in the country's economic “outcomes” either, for the Bank itself admits that after almost four decades of its Tanzania strategy “... the best available estimates suggest that per capita income today is certainly no higher than it was four decades ago” (ibid.)

⁵⁹ See, “Tarime villagers invade gold mine”, *The Guardian*, Friday, July 27, 2001; G. Marato, “Residents invade gold mine”, *Nipashe*, Friday, August 27, 2001.

⁶⁰ A. Nyahore, “Kahama gold miners resist removal”, *Nipashe*, Wednesday, August 1, 2001; “Small miners say ‘no’ to government order”, *The Guardian*, Wednesday, August 1, 2001.

⁶¹ See B. Mapalala, “Sword of Damocles hangs over Mwabomba small miners”, *The Guardian*, Saturday, October 27, 2001.

⁶² OED's Director General's Memorandum to the Executive Directors and the President, September 13, 2000, in World Bank, 2000, ibid.

Indeed, in many respects as we have seen with the country's mining sector, the Bank's strategy while helping the already rich foreign investors to get richer has undermined any possibilities for poverty alleviation that artisanal mining represented. It has also undermined any chances for building a national economy that meets the real needs of the vast majority of the poor. Incredibly, the World Bank has continued to push for even deeper 'reforms.' According to the country impact review prepared by the Operations Evaluation Group of the Bank's International Finance Corporation (IFC), "Tanzania has been difficult for private investors. It is getting better, but many investors still describe it as hostile, particularly toward foreign investors."⁶³ It is against this perceived hostility to foreign investors that the Bank Group has sought to tie the Tanzanian government's hands even tighter. It has accomplished this through the use of political risk insurance to investors via its private investment guarantee arm, MIGA. In this regard, the government of Tanzania dares not re-examine its iniquitous deal with Barrick Gold/KMCL for fear of punitive reprisals from the Bank Group and the donor community that nowadays increasingly coordinate their approach to developing countries.

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

8. RECOMMENDATIONS ON POLICY REFORM

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

An agenda for reform must of necessity put a respect for human rights and the meeting of local and national needs at the center of economic policy-making in the mining sector. Indeed this is a call for justice for communities and individuals that have suffered gross human rights abuses and destruction of livelihoods as a result of forced relocation and

⁶³ See OED Director General's "Memorandum to the Executive Directors and the President", *Tanzania Country Assistance Evaluation*, Operations Evaluation Department (OED), World Bank, September 13, 2000. According to the IFC review, there are five principal obstacles to private sector development: (1) slow pace of privatization, (2) delays in financial sector reform, (3) weak infrastructure and human resources, (4) social and governmental ambivalence toward private sector development, and (5) aid dependence (op. cit.)

expropriation. As we have seen these forced relocations have gone unmitigated and uncompensated and even the corporate investors themselves acknowledge that the consequences have been disastrous.

An agenda for reform must also address itself to the environmental sustainability of large-scale mining operations as compared to small-scale artisanal activities. Given the vast amounts of natural resources required to run large-scale operations; given the vast waste of various kinds and varying toxicity that large-scale operations generate; given the grossly inadequate environmental and waste management plans and programmes that exist; given the growing toll on human life and the environment that these operations may be responsible for causing, it is high time the environmental impacts of corporate mining activities were addressed in a sustained manner.

An agenda for reform must finally address the political decision-making structures and processes as regards the mining sector. Structures and processes that are characterized by secrecy and subterfuge; that rely more on coercion and the use of force rather on negotiation, consensus-building and compromise, are too costly and must go. This is a call for democratizing decision-making processes in respect of the allocation of natural resources that provide livelihoods for the vast majority of the poor and the marginalized.

9. RECOMMENDATIONS ON REFORM OF CAO

Our experience with the complaint investigation and dispute resolution mechanism established for MIGA and IFC, i.e. the CAO, suggests that this mechanism is neither sufficiently independent of the two institutions nor transparent in its practices. That the CAO draws its funding directly from the two institutions and shares the same office premises is also not insignificant as it creates a reasonable perception of bias in favour of MIGA/IFC because it is seen as being part and parcel of the two institutions it is mandated to investigate. It is, perhaps as a result of the above, that the CAO is seen as not being accountable to the complainants and other stakeholders apart from MIGA/IFC to whose Presidents they report to on results of their investigations.

Bearing the above in mind we recommend a major reform of the complaint investigation and resolution mechanism for MIGA/IFC that will enhance the independence, transparency and accountability of the CAO. A structure similar to the Independent Inspection Panel for the International Bank for Reconstruction and Development (IBRD) and the International Development Agency (IDA), that has proven its independence from the IBRD/IDA on numerous occasions would be preferable to the current structure of the CAO.

10. RECOMMENDATIONS ON BULYANHULU

With regard to the Bulyanhulu Gold Mine, we can do no better than repeat our demands of the past years. Since nothing has been done towards alleviating or righting the wrongs done to that community, those demands remain as valid today as they were two years when we commenced our campaign for justice:

1. Establishment of an independent international commission of inquiry to independently, transparently and thoroughly inquire into the facts and circumstances pertaining to the allegations of human rights abuses including the killings and violations of MIGA's Convention and social and environmental safeguard policies and due diligence procedures; and, where necessary and appropriate, make recommendations for redress. This commission is even more important now than ever before in view of the CAO's failure to investigate the complaint submitted to it by LEAT and the Bulyanhulu communities.
2. An international panel of experts has been formed to undertake a thorough and unhindered exhumation of all the mine pits that are known or alleged to contain the bodies of the dead miners.
3. Proper and dignified burials befitting of human beings have been carried out without let or hindrance.
4. Reparations and full, fair and adequate compensation is paid to the families and relatives of all those who were killed or maimed; and to all those who lost property and whose sources of livelihoods were destroyed without recompense.
5. Full, fair and just compensation should be paid to all people, currently or formerly residing at Bulyanhulu, who were involuntarily resettled without any resettlement plan or full, fair and just compensation.
6. Full, fair and just compensation should be paid to all people, currently or formerly, residing at Bulyanhulu, whose agricultural and grazing lands were expropriated; residential and commercial property and settlements destroyed; investment in mining shafts, machinery and equipment confiscated; and employment opportunities lost.
7. Full, fair and just compensation should be paid to all remaining Bulyanhulu residents whose property rights continue to be violated and/or interfered with by the actions of Barrick Gold/KMCL. In the alternative, the company should desist from any continuing or future acts that violate or otherwise interfere with the enjoyment by the Bulyanhulu residents of their property rights.

In the light of the refusal by Barrick Gold/KMCL and the Government of Tanzania to even consider these demands; in view of the recent finding by the CAO that MIGA did not carry out any due diligence investigation prior to approving millions of dollars in political risk guarantees for the Bulyanhulu Mine; in view of the evidence presented herein and the company's own admissions that the Bulyanhulu investment is inconsistent with MIGA's and the Bank Group's poverty alleviation mandates; and in view of the violations of the MIGA Convention examined herein, we would like conclude by reiterating our demand addressed to MIGA President James Wolfensohn on August 23, 2001: That MIGA should "suspend, with immediate effect, the political risk cover that it issued (in 2000) until the (above) actions have been taken."

We are mindful of the fact that Barrick Gold Corp., the current parent company of KMCL, and MIGA did not become directly involved with this project until the spring of 1999 when most of the events complained of had already taken place. We believe, however, that there is a direct relationship between the events of the pre-1999 period and the current mining operations undertaken by Barrick Gold/KMCL at the Bulyanhulu area. There is a direct relationship because those events were a precondition for the development of the current mining operations. The project would not have moved forward without having first to address the issue of the hundreds of thousands of people who were living and working in the disputed area.

We believe that this direct relationship exists regardless of the amount of time that passed between the events complained of on the one hand, and Barrick Gold's and MIGA's involvement in the project on the other hand. This direct relationship also exists regardless of the ownership structure of KMCL for the reason that the current owners of the project and MIGA have benefited, are benefiting and will benefit financially from the pre-1999 events complained of. Indeed, we are aware that changes in the ownership structure from Sutton Resources to Barrick Gold have not changed the legal personality or identity of KMCL.

We, therefore, believe that the circumstances surrounding the pre-1999 events fall within any reasonable definition of the "scope" of the project. It is imperative, as we argued in our Complaint to the CAO, that the World Bank Group "not send the message that possible improprieties in project preparation are acceptable provided they occur prior to MIGA's (or the Bank Group's) direct involvement or under the ownership of an entity other than the immediate project sponsor." This is more the case in situations such as this one, where there are allegations of very serious allegations of human rights abuses including extra-judicial killings.

REFERENCES

- Barrick Gold Corporation and KMCL (1999) *Social Development Plan for Bulyanhulu Gold Mine, Republic of Tanzania*, August 1999.
- CCM (1992) *Chama cha Mapinduzi Programme: Policy Directions in the 1990s*, National Executive Committee, Dodoma, December, 1992.
- CCM (1998) *Chama cha Mapinduzi: Assessment of the Twenty Years of CCM, 1977-1997*, National Executive Committee of CCM, February 1998.
- Chachage, C.S.L. (1995a) "Mining and Environmental Issues Under SAPs in Tanzania: Examples From Three Case Studies", in M.S.D. Bagachwa and F. Limbu, *Policy Reform and the Environment in Tanzania*, Dar es Salaam, Dar es Salaam University Press.
- Chachage, C.S.L. (1995b) "The Meek shall Inherit the Earth But Not the Mining Rights: The Mining Industry and Accumulation in Tanzania", in P. Gibbon (Ed.), *Liberalised Development in Tanzania*, SIAS, Uppsala.
- FoE, Urgewald and CRBM (2001) *Risky Business: How the World Bank's Insurance Arm Fails the Poor and Harms the Environment*, Washington DC, July 2001.

- George, S. and Sabelli, F. (1994) *Faith and Credit: The World Bank's Secular Empire*, London/New York, Penguin Books.
- Halifax Initiative (2001) *Reckless Lending, Volume II: How Canada's Export Development Corporation Puts People and the Environment at Risk*, NGO Working Group on the Export Development Corporation, Ottawa, May 2001.
- Hildyard, N. (1999) *Snouts in the Trough: Export Credit Agencies, Corporate Welfare and Policy Incoherence*, Briefing 14, The CornerHouse, June 1999.
- Jourdan, P. (1990) *The Mineral Industry in Tanzania*, Harare, Institute of Mining Research, University of Zimbabwe (mimeo.);
- Khamsini, R.O. (1971) 'The Gold Miners and the Mine Workers on the Lupa Gold Field, 1922-1963', *MA Dissertation*, History Department, University of Dar es Salaam (mimeo.); Kimambo, RH (1984) *Mining and Mineral Prospecting in Tanzania*, Arusha, East Africa Publications;
- KMCL (1998a) *Environmental Impact Statement, Bulyanhulu Gold Project, Tanzania, Vol. 1*: Prepared for Kahama Mining Corporation Ltd., by Norecol, Dames & Moore of Vancouver, Canada, May 1998.
- KMCL (1998b) *Environmental Impact Statement, Bulyanhulu Gold Project, Tanzania, Vol. 3*: Prepared for Kahama Mining Corporation Ltd., by Norecol, Dames & Moore of Vancouver, Canada, May 1998.
- Lemelle, S. (1986) 'Capital, State and Labour: A History of the Gold Mining Industry in Colonial Tanganyika, 1890-1942', *PhD Thesis*, University of California, Los Angeles.
- Maurer, C. and R. Bhandari (2000) *The Climate of Export Credit Agencies*, WRI Climate Notes, Washington DC, WRI, May 2000.
- Oates, F. (1934) "Gold in the Lupa Field", *Engineering and Mining Journal*, Vol. 135, No. 2.
- Reid, E. (1938) *Tanganyika Without Prejudice: A Balanced Critical Review of the Territory and her People*, London, East African Newspaper Publishers.
- Roberts, A.D. (1986) "The Gold Boom of the 1930s in Eastern Africa", *Journal of Royal African Society*, Vol. 85, No. 341.
- Tanzania, U.R. (1996), *Minerals Found in Tanzania*, Dar es Salaam, Ministry of Water, Energy and Minerals.
- Tanzania, U.R. (1998) *The National Assembly: Parliamentary Debates: Official Record (Hansard) of the Eleventh Meeting, Sixth Session – 23rd April 1998*, Dodoma, Department of Official Parliamentary Record.
- Tanzania, U.R. (1999) *The Speech of the Minister for Energy and Minerals, Hon. Dr. Abdallah Omari Kigoda (MP.), Submitting Budget Estimates for the Ministry of Energy and Minerals for the Year 1999/2000 to the National Assembly*, Dar es Salaam, Government Printer.
- Tanzania, U.R. (2001) *Turning Idle Mineral Wealth into a Weapon Against Poverty: Address by the President of the United Republic of Tanzania, His Excellency Benjamin William Mkapa, at the 111st Annual General Meeting of the*
- Taylor and Francis Group (2001) *Regional Surveys of the World: Africa South of the Sahara 2001, 30th Edition*, London, Europa Publications Ltd.

This document was created with Win2PDF available at <http://www.daneprairie.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.