

Tanzania Passes a New Mining Law and Builds New Capacity for Informed Policy Debate

By Silas Olan'g

Introduction

Tanzania opened a new phase in the development of its mining sector in April with Parliament's passage of a sweeping mining law, which now awaits signing by President Jakaya Mrisho Kikwete.

While citizen groups and many members of parliament remain disappointed in aspects of the 2010 Mining Bill, the legislation represents great progress, not only in the governance of a booming industry that accounts for over three percent of Tanzania's GDP and contributed 52% of total export revenue, but also in the capacity of civil society groups and lawmakers themselves to participate with expertise and informed influence on extractive sector policy debates.

After a week of consultations with civil society, companies and other stakeholders, Parliament passed the bill on April 23. During the preceding debate, lawmakers questioned William Ngeleja, the Minister for Energy and Minerals, on the bill's prospects to benefit the Tanzanian people and foreign investors, and how it would address some of the notable challenges facing the sector. Such challenges include minimal integration with other sectors of the economy, slow development of small scale mining, weak government capacity to administer environmental issues and other parts of the mining sector, low levels of value-add for minerals and the significant lag in mining sector contributions to state revenue and GDP, when compared to the sector's steep growth and its high contribution to export revenues.

In the months leading up to the passage of the bill, Revenue Watch and our local partner Policy Forum worked to build capacity for parliamentarians, civil society and the media. We organized a phased training program on the mining sector for these groups, presented a technical review of the Bill, provided funds for joint investigations by local NGOs in collaboration with MPs.

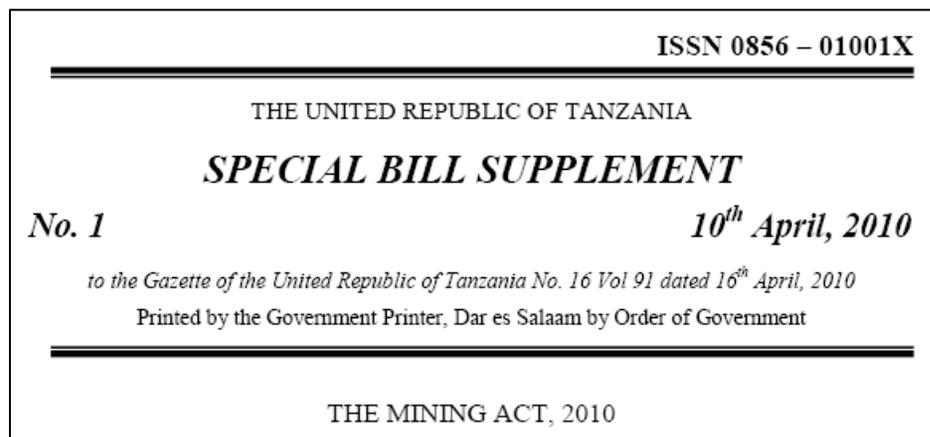
As RWI coordinator based in Dar Es Salaam, I have had the opportunity to offer support, mentoring and chances for networking to Tanzanian civil society and the members of Parliamentary Committee for Energy and Minerals. Our program has been instrumental in the success of these groups and the Parliament's energy and minerals committee as they engaged in the legislation process through a skilful and passionate and exchange of ideas.

The bill has been substantially improved since its earlier drafts thanks in great measure to the engagement of informed advocates from the parliament and civil society. What follows is a case study by Revenue Watch (RWI) documenting the evolution of the legislation, focusing the on Standing Parliamentary Energy and Minerals Committee, the MPs championing the bill, CSOs and the media.

Background

Tanzania is a country endowed with a wealth of minerals, including diamonds, gold, cobalt, copper, nickel, platinum group metals, silver and Tanzanite, a gemstone unique to Tanzania. Mining accounts for about 3.2% of Tanzania's GDP and 3.6% of its total tax revenues.¹ The mineral sector also contributed 52% of total exports, while gold represents about 90% of mineral export value.² Despite the sector's potential to fuel rapid economic growth, there is widespread concerns that minerals have not contributed enough to improvement in the lives of the poor, particularly for those living above and near the mines themselves.

The gap between the sector's financial success and its uncertain benefit to citizens' lives has made the national role of mining highly controversial. For over a decade, many Tanzanians have believed the sector disproportionately benefits foreign mining companies. This climate of distrust has only been exacerbated by the fact that the mining contracts and development agreements have been withheld from public scrutiny, and by the government's recent failure to enforce environmental law despite environmental hazards around the North Mara Gold Mine³ in the Tarime district.



The government conducted an in-depth review of mining contracts in 2006, to assess why revenue from mining activities was so small. As a result, contracts were re-negotiated, companies were agreed to pay US \$200,000 annually to local authorities, in addition to a 3 per cent royalty to the central government on the value of exports. Another important milestone was the formation in 2007 of the Presidential Mining Review Committee, known as "Bomani Commission." Some of the commission's recommendations informed new mining policy of 2009 and newly-passed 2010 law.

Mining Act 2010: Enactment Process

During the last quarter of 2009 the energy and minerals ministry outlined initial areas to be considered by the new law, as well as a schedule of amendments of the Mining Act of 1998. The ministry used this information in consultations with key

¹ Macdonald, Catherine and Alan Roe. Tanzania Country Case Study. The challenge of mineral wealth: using resource endowments to foster sustainable development. International Council of on Mining & Metals, July 2007.

² United Republic of Tanzania, 2007

³ North Mara is among the four Gold Mines owned by Africa Barrick Gold in Tanzania. In May 2009, poisonous effluents leaked from the tailing dam flowing to the residential areas, polluting sources of water for domestic and livestock use, causing serious health problems. This has been well documented by an NCA study IPM Report 2009, Norwegian University of Life Science. <http://www.miningwatch.ca/sites/miningwatch.ca/files/FinalTanzania.pdf>

stakeholders, within the government circles, at companies, in the Parliamentary Committee on Energy and Minerals and a limited number of civil society organizations⁴(CSOs).

Revenue Watch had already organized two previous workshops on mining policy framework, in close collaboration with our local partner Policy Forum, a network of more than 90 CSOs. These 2008 training introduced participants to the concept of the minerals "value chain" as a policy framework included MPs, parliamentary staff, civil society and members of the media. The training process continued in October 2009 with an RWI capacity building workshop on the legal and economic framework of the mining industry. At the end of that session, CSOs and the media issued a statement appealing to the government to ensure broad-based consultation and transparency in the Mining Act review process. Policy Forum disseminated the statement widely, and it was featured prominently in the national media and on the website www.policyforum.or.tz.

Last December, the Ministry of Energy and Minerals conducted its first stakeholders' consultation workshop in Arusha, the tourist city in northern Tanzania and the only place in the world where Tanzanite (colour gemstone is mined. Though the ministry brought 130 participants to this workshop, only two CSO representatives based in Dar es Salaam were invited, with a very short notice⁵. Though participants expected substantive discussion of the proposed new act, the workshop largely focused on the proposals for implementing the Mining Policy of 2009, and on proposed changes to the fiscal regime set by the Income Tax Act. Because CSO members in Dar es Salaam were unable go to Arusha on such short notice, civil society delegated HAKI MADINI, an Arusha-based NGO, to attend the meeting and report on the discussions.



In January 2010, Revenue Watch Institute conducted another capacity building workshop,. Unlike the previous ones, this training focused on analysis of the proposed legal and fiscal regime changes, in particular their potential to address the key policy challenges outlined above. Amani Mustapha of Haki Madini who represented CSOs in the December consultation also reported on the stakeholders' consultation in Arusha. The process was complicated by the fact that new updates on the proposed changes had been released to the Parliamentary committee and shared with workshop organizers only two days prior.

Suspicion and concern arose over the possibility that the government would rush the bill to the final legislative session in April 2010. Civil society and media representatives, along with MP Hon. Dr. Zainab Gama issued a detailed statement pointing out possible omissions in the proposals that required government attention, and calling for broad-based public consultation. Faith Based Organizations (Interfaith Committee) with support of Norwegian Church Aid also endorsed the statement, along with other CSOs. Among the biggest concerns in the statement were the stringent confidentiality provisions proposed, which would

⁴ Only two CSOs, HAKI MADINI and Tanzania Gender Network (TGNP) attended the consultative workshop.

⁵ Lawyers Environmental Action Team (LEAT) and Tanzania Gender Network Program (TGNP)

likely limit disclosures hence undermine Tanzania's progress implementing the Extractive Industries Transparency Initiative. Omissions on environmental management and local economic development were also cited.

Tabling the Bill: Certificate of Urgency

On April 13, the Committee for Energy and Minerals confirmed with RWI that the energy and minerals minister would present the bill under a certificate of urgency on April 16 and that the public hearing was scheduled for the following day. Mindful of the pressure from the CSOs through media and the time limitation, the public hearing was shortly rescheduled to April 18 to allow more time for preparation and participation, but the bill was not yet publicly available. Although it is legally permissible for the ministry to table a bill under a certificate of urgency with the consent of the President, this practice is increasingly subject to criticism as it limits the opportunity for public consultation and debate. Under normal procedures a bill is read for the first time without debate, allowing the responsible committee ample time to consult with the public and analyse the bill prior to debate in the subsequent session (second reading). But the certificate of urgency compresses this process into a single session. With controversies around this particular bill a certificate of urgency would naturally provoke further public controversy. But despite calls by civil society to use the standard procedure, the minister invoked the certificate of urgency and compressed the review and approval process to less than 10 days.

Mobilization for Engagement

With coordination support from Revenue Watch, Policy Forum convened a group of leading CSOs participating in the RWI capacity building program including the prominent Interfaith Committee, one of the most credible voices on mining in Tanzania. In spite of the limited time available, the group mobilized fast and came up with a two-pronged engagement strategy:

Strategy 1: Raising public awareness.

The first objective was to build public pressure on the Government by increasing awareness, mainly through media.

- Agenda Participation, one of the beneficiaries of our capacity building program, co-developed and posted 40 TV announcements, shown from March 8 to April 10, appealing for effective public engagement in the debate while upholding normal approval process for the bill. The organization also posted a TV ad, calling for vigilance by legislators in debating the bill. This was a positive and very powerful message to the legislators. Two hotline numbers for mobile phones were dedicated to collecting views from the general public. More than two dozen public comments were collected over two days and passed on to parliament during the public hearing.

THE CITIZEN

"It's the content that counts"



MPs unhappy as govt prepares to table Bill

By Faraja Jube and Florence Mugarula, Dodoma

Members of Parliament have shown negative signs towards approving the new Mining Bill expected to be tabled in the House today or tomorrow.

Several MPs yesterday joined civil society organisations and small-scale miners to fault the Bill, saying it was not friendly to the development of the sector as it sidelined local companies.

(excerpt – The Citizen – 19 April, 2010)

- On 13th April, Policy Forum and other civil society issued a press release on the bill. It is worth stressing that the process for drafting this statement began with a joint civil society initiative during the January 2010 RWI workshop.
- On 14th April, Legal and Human Rights Centre (LHRC) organized a press conference highlighting the flaws in the process for the bill, including the questionable use of the certificate of urgency. This event was followed by a TV dialogue on the famous program “PAMBANUA” (literally “Analyse”). Three of the four guest speakers were alumni of the RWI capacity building program. For various reasons, Ministry officials did not turn up for the debate.
- On April 15th, RWI's coordinator updated the Interfaith Committee on the state of the bill and opportunities for engagement. The Interfaith Committee consists of the General Secretaries of Christian Council of Tanzania (CCT), Tanzania Episcopal Conference (TEC) and Tanzania Islamic Council (BAKWATA), and is supported by Norwegian Church Aid in Tanzania (NCA) and co-opting professionals in its meeting.

Strategy 2: Engaging with the contents of the bill

The second strategy aimed to improve the contents of the bill, in collaboration with parliament. This was particularly challenging because the draft bill was not disseminated to the public until April 14, only a few days before the public hearing. This strategy was underpinned by a formal request by the Energy and Minerals Committee to RWI for a technical analysis and opinion on the Bill.

- On 15th April, RWI received the copy of the bill from the Energy and Minerals Committee and circulated it to civil society. RWI legal analysts acted quickly to review the document and develop a technical opinion.
- On 17th April, the mineral and energy committee published a public notice in newspapers inviting the general public to attend a hearing the following day. By then, a team of more than 20 CSOs and small-scale miners had gathered in Dodoma to analyse the bill and develop a common position for present at the hearing. Policy Forum, Haki Madini, the Interfaith Committee, ForDIA, representing Publish What You Pay Tanzania, the Legal and Human Rights Centre and representatives of small scale miners and large scale mining workers attended the meeting. In the lead up to the public hearing, four separate analyses of the bill were undertaken by Agenda Participation 2000, Legal and Human Rights Centre and Haki Madini and Revenue Watch Institute. RWI's exhaustive technical analysis was shared with CSOs and

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Business & Finance

Civil society joins Wassira to oppose Mining Bill

By DAILY NEWS Reporter, 20th April 2010 @ 12:00, Total Comments: 0, Hits: 572

THE civil society yesterday joined Agriculture, Food Security and Co-operatives Minister, Steven Wasira in criticizing the 2010 Mining Bill as flawed, saying it does not encourage transparency in the industry.

Policy Forum which groups together several civil society organisations, said in a statement that the Bill classifies much of the information including mining companies' books of accounts and their payments to government.

"The bill is also vague with regards to transparency in the tendering process. Because Tanzania is a candidate country to be included in the Extractive Industries Transparency Initiative (EITI), the new law should have included a specific reference to this," Policy Forum said in its statement today.

The CSO umbrella organisation which monitors government policy said the country made it clear that it is committed to transparency in the mining sector, when it applied to join the EITI and the new Mining Act should indicate such an obligation.

Policy Forum was among stakeholders which submitted a detailed analysis of the new Mining Bill of 2010 to the Parliamentary Energy and Minerals Committee at a public hearing held last weekend in Dodoma.

"In a nutshell and according to our scrutiny, the new bill does not go far enough to meet the recommendations of the presidential Bomani Mining Sector Review Commission that reviewed the mining sector two years ago," Policy Forum argued.

Other weakness pointed out by the Forum include, excessive powers given to Minister for Energy and Minerals and Commissioner of Minerals by the Bill over a proposed Minerals Advisory Board.

(Excerpt – Daily News – 29 April 2010)

also submitted to the Energy and Minerals Committee. At a working session in Dodoma, the four analyses were compared and consolidated into one submission. In the process, RWI also facilitated informal sharing of information and dialogue between civil society and the committee, helping to lay the foundations for an ongoing constructive forum for these critical stakeholders.

- On Sunday April 18, the Energy and Mineral Committee's public hearing to place at the Parliament. Minister for Energy and Minerals Mr. William Ngeleja introduced six key features of the bill:
 - Government and public participation in mining projects where the government would acquire free carried interest in mining projects
 - Special Mining Licence and Mineral Development Agreements and the period and extent of fiscal stabilization
 - Restrictions on dealer licensing for uranium mining
 - Decentralized licensing authorities (zonal mines officers),
 - Establishment of a Mineral Advisory Board,
 - Changes in royalty rates and base for all minerals, at varying percentages.

CSOs emerged as the most organized stakeholder group. They submitted a united statement to the committee, which was presented by Amani Mustapha of Haki Madini with contributions from several others⁶.

Civil Society: Concerns and Achievements

Though a number of issues of concern about the bill emerged, were identified prioritized:

- The draft bill granted excessive powers to the Minister and the Commissioner for Minerals to enter into Mineral Development Agreements (MDAs) on behalf of the government and to determine the level of free carried interest without setting a minimum threshold. Decisions about the level of ownership that the State will have in particular mines can have huge consequences for the broader economy, hence, beyond the mandate of individual minister. Civil society objected to this arrangement on the grounds that the provisions neither stated the legislative role in ratifying the MDAs nor the procedures for reviewing the MDA and sanctions thereof in case of default. Moreover, the wording of the provision did not reinforce responsibility and accountability on the part of the minister responsible. The CSOs marshalled multiple past examples where excessive concentration of power with the Minister and Commissioner led to the signing of disputed contracts now widely regarded as too favourable to foreign investors. Civil society therefore recommended the introduction of an inter-ministerial negotiation team and the establishment of a mining authority. It further made the Commissioner the sole regulator and arbitrator in disputes; CSOs proposed formation of a competent Mining Tribunal equivalent to sectors like land, labour and commercial. These recommendations were warmly welcomed by the committee though could not be fully incorporated into the final law. The Government warned that these are strategic policy issues that need time and resources to implement.

⁶ See Annex 2.

- The bill suggested that the term of Special Mining Licence and Mineral Development Agreements (MDAs) would be determined by the life of the ore deposit as stated in the initial feasibility study. Civil society is concerned that without a specific term after which licence holders must renew the licence, effective fiscal planning will be especially difficult, and the government could be locked into bad long term contracts. Although the bill suggested reviews every five years, it did not spell out the mechanisms for review or the circumstances that could result in the consideration of possible revisions to MDAs. While the government acknowledged the weaknesses and promised to rectify them through government regulation, it was argued that mines rarely last more than 20 years; the argument that is barely defeated by experience.
- Civil Society raised concerns about provisions limiting the disclosure of information. In fact, the bill designates nearly all information on mining operations as confidential. Civil society believed that these provisions would undermine both the spirit of transparency and the implementation of the EITI in Tanzania. Combined with the unchecked powers of the minister, the lack of disclosure could promote engender and sustain industry corruption. Despite these sound arguments by civil society, the proposed clauses (Section 25 and 100) on confidentiality were not amended, on the grounds that the government plans to make a specific law governing EITI matters.
- The bill lacked provisions for small-scale miners and gemstone mining. CSOs called it “the beginning of the end” for small scale miners, pointing to the missing links between the 2009 Mining Policy and the new bill. The bill omitted Primary Prospecting License making it unlawful for locals to search and explore for minerals; the argument advanced by the government is that small scale miners do both exploration and mining simultaneously. It further proposes that Primary Mining License is given for initial 5 eligible for another 5 year renewal. In the end, the relevant concerns were fully incorporated in the law while granting gemstones mining an exclusive right of nationals. This was one unqualified victory for the CSO community.
- Another achievement worth noting is the government's commitment to establish a Mineral Development Fund (Sovereign Wealth Fund), in an effort to address the finite nature of mineral resources. The fund would be used to support strategic public investments in areas such as infrastructure, to promote small scale miners, as well as education and skills development, among other steps. This agenda, pushed hard by MP champions such as Hon. Zitto Kabwe, won huge support from CSOs even though it was their main area of focus.
- The coordinated and active engagement of civil society in the review of the bill received considerable coverage by the national press, who devoted ample time and space to the criticisms of the bill.

Legislators’ Engagement

Legislators had two opportunities to engage in the process, in committee and in overall parliamentary sessions. Committee sessions included three days of internal meetings to analyse different views collected during the public hearing and form the committee’s opinion. Two extra long days of diligent committee work above what was anticipated were more than justified by

the complexity and sensitivity of the bill. Champion MPs from outside the committee also devoted a significant amount of their time to working directly with the committee.

In its final submission to Parliament, the committee endorsed most of the clauses in the bill (with amendments), while raising the following emerging and outstanding issues:

- Prioritizing the establishment of a Mining Authority,
- The establishment of Mineral Development Fund for the support of small and artisanal miners, among other purposes
- The need to adopt a tendering process and the use of "model agreements," to minimize chances of manipulation in negotiations,
- The establishment of system for operationalizing mine closure bonds,
- The establishment of an independent tribunal to settle disputes, in order to rectify the current anomaly where the commissioner for minerals is responsible for dispute settlement while also being the licensing authority, a clear conflict of interest.

THE CITIZEN

"It's the content that counts"

Mining Bill passed in hot debate

Parliament yesterday passed the new mining Bill following heated debate during which the MPs gave a rough time to the top government executives.

Prime Minister Mizengo Pinda, the Attorney General, Mr Frederick Werema, and the minister for Energy and Minerals, Mr William Ngeleja, had to endure two-and-a-half hours of candid contributions by the lawmakers, especially during the committee stage to go over the Bill.

Kigoma North MP Zitto Kabwe, Mr Andrew Chenge of Bariadi West, Speaker Samuel Sitta, Nominated MP Ismail Jussa, and Bumbuli MP William Shelukindo were among those who kept the front bench on its toes, constantly seeking clarifications on a number of issues.

The MPs, among other things, took issue with the inadequate compensation paid to villagers, whose land is acquired for mining and also called for more transparency in operations in the industry.

(excerpt – the Citizen – 24 April, 2010)

The Media

The media played a crucial role informing the public throughout the bill review and debate. Several outlets reported on civil society's commentary and constructive input during the process, and the heated debate in Parliament as the bill was approved.

Civil society joins Wassira to oppose Mining Bill

THE civil society yesterday joined Agriculture, Food Security and Co-operatives Minister, Steven Wasira in criticizing the 2010 Mining Bill as flawed, saying it does not encourage transparency in the industry. Policy Forum which groups together several civil society organizations

Author: By DAILY NEWS Reporter; Date: 20th April 2010 @ 12:00, Comments: 0, Total hits: 571

Mining Bill finally tabled in Parliament

THE Mining Bill 2010 was finally tabled in Parliament today after an intense tug of war between the ministry, mining and mineral Parliamentary committee and stakeholders to have the Mining Act that protects local miners. The Bill, tabled in the House today under certificate of urgency

Author: From DAILY NEWS Reporter in Dodoma, Date: 22nd April 2010 @ 12:00, Comments: 0, Total hits: 165

MPs unhappy as govt prepares to table Bill

The Citizen Daily - Faraja Jube - Florence Mugarula - 19 Apr 2010

According to Mr Wassira the new law must openly state how Tanzania will benefit ... had come up with the Bill in a bid to improve the mining law of 1998. ...

Tanzania increases royalties in new mining law

Reuters - Helen Nyambura-Mwaura - William Hardy - 5 days ago

By Fumbuka Ng'wanakilala DAR ES SALAAM, April 24 (Reuters) - Tanzania's parliament has passed a new mining law that increases the rate of royalty paid on ...

Lessons Learned

The legislative process leading up to the passage of the new Mining Bill offers a number of lessons for future debates and effective engagement by parliamentarians and civil society:

- *Understand the political context and dynamics.*
A review of the mining sector review is among the top priorities of President Kikwete's administration and the ruling party Chama Cha Mapinduzi (CCM) as defined in its current election manifesto. Because 2010 is an election year, there was considerable pressure from the majority party to have the bill approved by the June session. This pressure provided both opportunities and dangers. The main opportunity was in legislators' eagerness to protect the public interest and thereby maintain voter trust, hence they had their ears open for citizen concerns. At the same time, the election context led to in a rush to get the bill passed, undermining voices that could otherwise have been heard and forcing MPs and civil society into a rushed review, analysis and debate. This also deepened a divide in the public discourse, with the Executive seemingly siding with mining investors while legislators—without regard to political affiliation—proved themselves open to the concerns of CSOs and small-scale miners.
- *Capacity matters.*
Increased legislator and CSO capacity was essential in this process. The level of debate improved in quantity and quality, and MPs and CSOs able to elaborate and refine their thinking on the mining sector, and engage in an open and transparent debate. This was a sea-change from previous policy debates, where MPs were predominantly guided by party directives and their personal agendas and civil society input was reduced to the generalization that investors are the root of all evil. RWI and Policy Forum's trainings played a key role in enhancing the capacity of the CSOs and legislators to address technical issues with a fairer and more objective understanding of the industry.
- *A mix of tools and approaches works better.*
Civil society organizations applied a mix of "hard and soft" techniques to invigorate the debate. These included pressure through media campaigns, content analysis and presentation of results at the public hearing and, as importantly, informal engagement with key legislators, individually or in groups (such as opposition members and mining constituencies). The media efforts ahead of the bill cultivated greater attention and interest from media outlets in developing and sustaining the public discourse.

Way Forward

RWI is organizing a session for the civil society groups involved in the debate to evaluate and learn from their coordinated engagement, assess what has been achieved, which tactics worked well and what could have been done differently, and to

agree on follow-up actions. We also will advocate for a shared strategy to monitor the implementation of the new law when it comes into effect.

It continues to be a privilege to collaborate with our Tanzanian partners, workshop participants and parliamentary allies, and Revenue Watch offers sincere congratulations to all those involved in the debate so far, for working together to set a new national expectation for the policy and lawmaking process in the mining sector.