Africa power and politics

The investment and business environment for gold exploration and mining in Tanzania

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Background Paper

June 2011

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Published on behalf of the Africa Power and Politics Programme (APPP) by the Overseas Development Institute, 111 Westminster Bridge Road, London SE1 7JD, UK (www.odi.org.uk).

The Background Paper series makes available detailed research findings and analysis which have contributed to Working Papers and other outputs of APPP research streams.

The Africa Power and Politics Programme is a consortium research programme funded by the UK Department for International Development (DFID) and Irish Aid for the benefit of developing countries. The views expressed in this publication are those of the author and not necessarily those of DFID, Irish Aid or the Programme as a whole.

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ACRONYMS

ABG	African Barrick Gold
AG	Attorney General
AGA	AngloGoldAshanti
APPP	Africa Power and Politics Programme
CCM	Chama cha Mapinduzi
CEO	Chief Executive Officer
CSO	Civil Society organisation
CSR	Corporate Social Responsibility
DC	District Commissioner
DRC	Democratic Republic of Congo
IBE	Investment and Business Environment
EITI	Extractive industries Transparency Initiative
FDI	Foreign Direct Investment
FMC	Foreign Mining Company
GDP	Gross Domestic Product
GEM	Gold Exploration and Mining
GOT	Government of Tanzania
ICMM	International Council on Mining and Metals
IFI	International Financial Institution
IPC	Investment Promotion Centre
KMCL	Kahama Mining Company Ltd
LEAT	Lawyers' Environmental Action Team
LVGA	Lake Victoria Gold Area
MDA	Mining Development Agreement
MEM	Ministry of Energy and Minerals
MKUKUTA	Tanzania's Poverty Reduction Strategy Paper
MOF	Ministry of Finance
NEMC	National Environmental Management Commission
NMGM	North Mara Gold Mine
OPM	Oxford Policy Management
PL	Prospecting Licence
PS	Permanent Secretary
RC	Regional Commissioner
REMA	Regional Miners' Association
REPOA	Research on Poverty Alleviation
SEIA	Social and Environmental Impact Assessment
SID	Society for International Development
STAMICO	State Mining Corporation
STAR	Stolen Assets Recovery Initiative
TADREG	Tanzania Development Research Group
TIC	Tanzania Investment Centre
TRA	Tanzania Revenue Authority
UNCTAD	United Nations Commission on Trade and Development
VAT	Value Added Tax

Part 1: The gold investment and business environment in Tanzania, 1985-2010

1.0 Introduction

Tanzania is the third largest gold producer in Africa after South Africa and Ghana. Although large-scale foreign investment is a relatively recent phenomenon, gold exploration and mining have a long history in the country. In the 1890s German prospectors discovered gold in the Lake Victoria area. Significant gold mining began in Tanganyika after the First World War (1914-18), when the British protectorate replaced *Deutsch-Ostafrika* (1919). Large-scale commercial mining took off in the 1930s only to die out by 1950. Despite low gold prices, small-scale and alluvial mining survived after large-scale mining virtually disappeared, and became an important source of official exports and revenue during the early 1990s. Multinational mining companies came to dominate gold and other mineral production during the late 1990s, in part at the expense of small-scale miners.

Despite serious shortages of human capital and inadequate economic infrastructure and regulation, Tanzania has managed to attract unprecedented amounts of foreign direct investment (FDI) during the last fifteen years. This report examines the factors that encourage FDI and local investment in gold exploration and mining.

Mineral exploration and mining were a state monopoly from 1972 until the late 1980s, when the government began to liberalise the mineral sector along with the rest of the economy. Gold and other minerals provide employment for hundreds of thousands of artisanal and small-scale miners. Since 1994, three global mining companies (Barrick, AngloGold Ashanti, and Resolute) have opened six mines with estimates reserves of over 30 million ounces of gold. Official gold exports rose in value from USD 121 million in 2000 to USD 889 million in 2007 and USD 1,076.1 million in 2009.[1]

With total investments of over USD 2.5 billion between 1997 and 2007, large-scale gold mining has been a key factor in Tanzania's recent economic growth. Yet, despite tax and other official investment incentives, the large foreign mining companies (FMCs) have received a hostile reception by the Tanzanian public at both local and national levels. Many small-scale miners have been removed by force to make way for FMCs and communities in mining areas have had their livelihoods disrupted and (allegedly) their water sources polluted by large-scale mining. National and international NGOs have campaigned against the FMCs on perceived human rights violations while political and media commentary are almost unanimous in denouncing FMCs for not paying taxes. These factors have strongly influenced the progress of large-scale gold exploration and mining in Tanzania in the last two decades.

1.1 Research questions

This paper addresses the following research questions:

1. ***How has the investment and business environment (IBE) changed in Tanzanian mining over the past twenty-five years?***

[1] Bomani Report 2008. Volume 2, Tables 3 and 4; SID 2009; UTR 2010b.

This question addresses the recent history of mining policy, legislation, taxation and regulation. Addressing this question requires a broad-brush narrative examining the IBE as *our dependent variable.*

2. ***By what formal and informal means have Tanzanian state actors and gold exploration and mining (GME) investors addressed the security of investors/investments and influenced profitability?***

Maintaining investor confidence through the mining cycle (exploration, mining, mine closure) is important for retaining current investors and attracting others, allowing the industry to take root and mature with the expectation of long-term profitability. Thus our second research question examines *the formal and informal relations between exploration and mining companies on the one hand and state actors on the other.* How do these relations influence investment decisions and profitability?

In the IBE we expect to find a range of more of less formalised relationships bringing together politicians and bureaucrats on the one hand and gold investors, managers and analysts on the other. These relationships constitute our *intermediate independent variables*. An important issue is the guarantees that the GOT offers to protect mining investors/investments. The complex regulatory and compliance requirements of modern mining put particular pressures on state technical capacity. But there is also the likelihood of widespread rent-seeking. How do rent-seeking and capacity constraints influence regulatory performance? How do we separate the two?

3. ***How has the political economy of the gold mining sector and the wider polity influenced the creation of a certain type of IBE and a certain level and pattern of investment in gold exploration and mining?***

Elements within the broad political economy constitute our *underlying independent variables*. The wider polity includes rentierism[2] in the exercise of executive power. We examine *inter alia* the nature and degree of centralisation/coordination of rent-seeking and the independence of technical policy-making cadres within the bureaucracy. We examine the extent to which these factors are constrained by the broader international context in which the large gold mining companies operate. The fate of medium- and small-scale gold mining also depends on these underlying factors. Finally, what ideological and political forces ultimately determine the fate of the gold prospecting and mining industry in Tanzania, both large- and small-scale? How determinant are local forces in a wider perspective, and how do local and extraneous factors such as the 2008 global credit crisis and trends in gold prices[3] interact?

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[2] Rentierism is the practice of identifying, capturing and distributing rents. See Kelsall 2009.

[3] Gold prices rose from USD 872 per ounce in 2008 to USD 973 in 2009 and over USSD 1,300 in 2010.

1.2 Methodology and analytical framework

This study is concerned with the profitability of gold exploration and mining (GEM) in Tanzania. The IBE partly determines whether the present mining companies are prepared to keep up the investment momentum that the industry requires if it is to grow in the current regulatory environment. The present 'big three' and other potential investors compare Tanzania with alternative investment possibilities in a context of severe financial constraints following the global credit crisis of 2008. A non-competitive IBE will undermine investment in Tanzania. Good proxy indicators of the IBE are trends in investment in exploration and mining (an upward trend suggests an improving investment environment) and plans for the future.

A good investment climate guarantees a reasonable long-term return on investment. It is frequently argued that the rapid rise in GEM investment in the last 10-12 years was the result of new, investor-friendly policies and legislation. Yet we know that Tanzania rates comparatively poorly as a destination for inward investment, however investor-friendly the formal policy environment*.* This is because of low levels of human capital, unreliable electricity supplies, poor communications infrastructure, inefficient economic regulation, and so on. Moreover, these shortcomings are in part the consequence of rent-seeking involving politicians, government officials, and private actors. Rent-seeking also compromises the regulatory environment. In such circumstances, only large FMCs are likely to risk making significant new investments.

Reasons not directly related to the IBE may also help explain investment decisions. Promising geology and recent advances in exploration technology come to mind. Also large mining companies seek to use one project to offset losses in another. These factors could help explain why large FMCs considered the new mining policy 'good enough' even if the IBE was otherwise problematic.

Our first task is to explain the rapid rise in FDI in the 1990s. How do we measure our dependent and independent variables? What indicators are available and what new indicators can be created?

Our *dependent variable* is the IBE facing FMCs. Investment trends provide a cross-check of the IBE during our review period (from liberalisation to date), and planned investments by current and potential investors may be used to assess the contemporary IBE. Both past and present decisions *not to invest* in exploration or mining are obviously more difficult to assess, but are worth looking at nevertheless. These perception-based variables and indicators can be estimated through interviews with key respondents and potential investors, supplemented with industry surveys and risk analysis predictions.[4] Since current investors have experience of working in the current business environment, it is useful to separate them from potential investors in the sector who lack such experience. This exercise will allow us to assess the strengths of the various factors that influence the investment and business environments. Our *intermediate independent variables* are the formal and informal relations between state actors (politicians, government officials) on the one hand and GEM interests on the other. These relations cover acquiring

[4] An international comparison of GEM regimes worldwide is compiled annually by the Fraser Institute in Canada. This source provides a number of indicators concerning mining regulation and allows for trend analysis. www.fraserinstitute.ca.

and retaining exploration and mining rights, regulation and taxation. *Regulatory performance* can be assessed *inter alia* in relation to the allocation and protection of prospecting and mining rights, in the tax and royalties regime, in auditing gold production and sales, and in environmental and social protection.

Taxes and royalties can be assessed in terms of levels and predictability. It is challenging to assess what tax and royalty rates strike a fair balance between revenue maximisation on the one hand and generating a reasonable profit on the other. Independent audit of gold production and costs has been a major issue, as discussed in an earlier report.[5] Finally, the state is formally responsible for protecting mining companies against possible crime and violence initiated by small-scale miners and local communities, but is also responsible for the welfare of these groups in the face of losing access to land and mining rights, and possible environmental hazards.

We argue elsewhere that the state's regulatory performance is systematically undermined by considerations of rent-seeking (private agents capturing policy and regulation) and looting (theft by state functionaries).[6] We also tried to separate out the effects of rent-seeking from technical competence and capacity. In the case of GEM, the complex regulatory requirements of modern mining put particular pressures on state technical capacity. But there is also widespread rent-scraping (petty corruption) and rent-seeking. Prospecting licences can take months or years to obtain. How do rent-seeking and capacity constraints influence regulatory performance? How do we separate the two?

Our *underlying independent variables* include rentierism and the independence of policy-makers and implementers from political manipulation. We are also concerned with extraneous factors that may affect the degree of freedom in decision-making enjoyed by rentiers and policy-makers and implementers.

Political considerations include the possibility that senior officials have been influenced in agreeing to overly generous conditions for the mining companies through political pressure or/and corrupt payments. The high potential returns to acquiring mining rights encourage corruption ('state predation'). On the other hand, the major mining companies invest such large amounts that one might expect them to be unwilling to spend too much on bribing officials.

Both the present and previous Tanzanian governments have protected the big investors' mining rights. Executive support has frequently contrasted with the generally hostile civil society, media and parliamentary commentary on the mining companies, regarding Barrick in particular.

The three sets of issues described above are key determinants of GEM profitability in Tanzanian and the likelihood that the current big investors will continue to invest, and that others, including smaller investors, will follow. Investment decisions are premised on expectations of profitability. While we will be keen to explore (past and present) stakeholder perceptions of profitability, it is also important to compare expectations with actual outcomes. This might prove difficult, since most mines are still relatively new, and

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[5] Cooksey, 2009:13.
[6] Cooksey 2009.

profitability can only be measured over the life of the mine. However, at least one major mine is reaching the end of its life, and this may prove a useful case study. The remainder of **Part 1** addresses the first research question: ***how has the IBE changed in Tanzanian gold exploration and mining over the past twenty-five years?***

Here we address the recent history of gold mining policy, legislation, taxation and regulation. What sort of IBE has this created, with what consequences? The generally accepted narrative is that the rapid growth in gold exploration and mining during the 1990s was a response to the liberalisation of the sector. As explained below, small-scale mining benefited from policy reform some years before foreign exploration and mining companies began to show a serious interest in Tanzania. We are concerned to identify both policy reforms and other possible influences on the IBE.

1.3 Liberalisation of the mining sector after 1986

Under Tanzania's socialist economic policies from 1967 to 1985, large-scale mineral exploration and mining came under direct state control. When the State Mining Corporation (STAMICO) was set up in 1972, it inherited a formal gold industry that had declined to insignificance, largely as a result of the controlled world price of gold, which was kept at USD 35/ounce until 1970. The gold price rose rapidly after it was liberalised, reaching USD 132/ounce in 1973.[7] Tanzania did not benefit from the global stimulus to gold exploration and mining resulting from liberalisation since FDI was discouraged. While STAMICO's attempts at large-scale mining failed, legal and illegal small-scale mining flourished.[8]

The GOT started to open up GEM after adopting a structural adjustment programme in 1986. To attract investment, the government set up an Investment Promotion Centre (IPC), later renamed the Tanzania Investment Centre (TIC).[9] Parliament passed a National Investment Promotion and Protection Act in 1990. The act identified petroleum exploration and mining as priority areas for foreign investors, and provided for incentives and guarantees.

The first practical effect of liberalisation was to undermine the black market in gold produced by small-scale miners. In April 1990, the Bank of Tanzania began buying gold at the world market price through commercial banks, paying miners in Tanzanian shillings at the parallel-market rate for the US dollar. As a result, legal gold exports increased in value from USD 1.1 million in 1989 to USD 40.4 million in 1992. This was over 4.5 tonnes of gold, which suggests that large amount of gold were being smuggled to Kenya in the pre-liberalisation period.[10] Official estimates of unrecorded exports of gold

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[7] Gold rose to USD198/ounce in 1975 and USD507/ounce in 1982. The 1980 gold price of USD850/ ounce is the equivalent of over USD2,400 in today's prices. But the gold price can be very volatile. It fell to a low of USD 253/ounce in 1999 and reached USD1,024/ounce in March 2008.

[8] See Richard Holloway (no date) for a personal account of a Zimbabwean miner's involvement in the Buckreef mine, discussed further below.

[9] Lange 2006:3; Cooksey 2008.

[10] The infamous Goldenberg scandal that rocked Kenya in the 1990s was based on Kenyan gold exports, though Kenya produces little gold. Though large quantities of Zairian and Tanzanian gold were leaving Kenya illegally, Goldenberg was based on fictitious exports.

totalled USD 119 million for the period 1988-91.[11] The Tanzanian shilling was floated in 2004, and the GOT discontinued the scheme in 2005.[12]

In 1994, the World Bank financed Mineral Sector Development Technical Assistance Project (USD 14.5m) introduced ‘a legal, regulatory and fiscal framework, which would provide an environment conducive to private investment in mining.’[13] This project was designed in part to build administrative capacity in the Mining Division of the Ministry of Energy and Minerals to register and monitor exploration and mining licences.

In 1997, the GOT produced a new mining policy that envisioned a private sector led (large and small-scale) prospecting and mining industry in which the state would act as facilitator, regulator and administrator. The following year, the Mining Act was passed. The Act provided generous capital write-off conditions and tax waivers consistent with a policy of encouraging investment into the sector.

Between 1998 and 2003, six major mines were commissioned, five of them entirely foreign-owned and one (Buhemba) a joint venture between the GOT and a South African company (Meremeta). Between 2002 and 2006, Tanzania exported between USD 2.55 and 2.90 billion worth of gold. The most commonly expressed view is that the liberalisation reforms introduced after 1986 were the main (or the only) cause of the subsequent increase in FDI in GEM. A typical example: ‘The economic reforms … entailed a boom in large scale mining. Foreign investors were invited to enter the country’s mining sector, and since the late 1990s, Tanzania has received large capital inflows.’[14] Below we examine the proposition that improvements in the formal investment climate brought about the FDI surge in GEM.

Before a large mining company will consider opening a new mine, an ore body has to be identified that can be mined economically.[15] Most exploration is undertaken by specialists, known as ‘junior’ exploration companies.[16] Up to 30 foreign- and locally-registered companies are involved in gold exploration in Tanzania.

After 1990, there was an explosion in gold exploration, mostly by foreign companies **(Figure 1.1)**. This was followed by the opening of the large mines located in **Figure 1.2.**

[11] Tanzania Economic Trends, Volume 5, Nos 1 and 2, 1992, Appendix 1, cited by Chachage 1995:46.

[12] The scheme was bankrupted by a scandal.

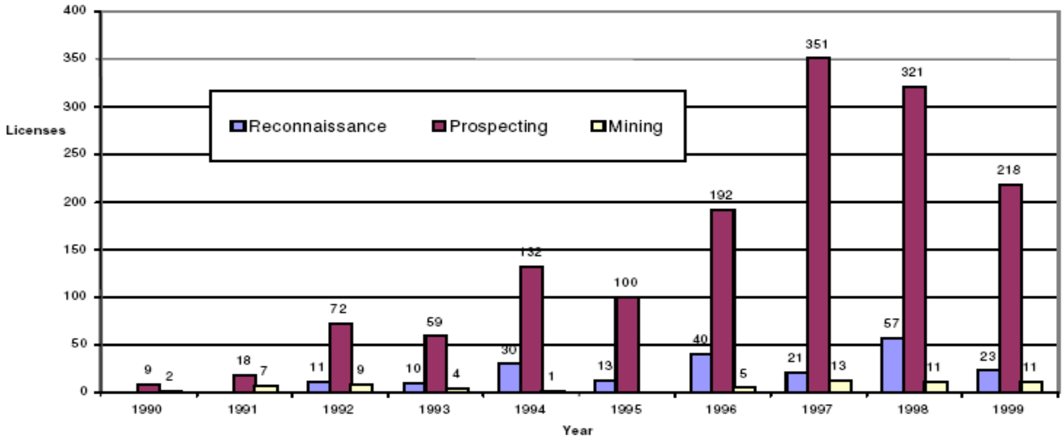
[13] See Figure 2.3.

[14] Lange 2006:3.

[15] The minimum size is usually considered to be two million ounces for a large mine. Since such deposits are rare, the big mining companies operate across the globe.

[16] There are about 1,000 juniors quoted on global stock exchanges. In addition, there are perhaps 2-3 private companies for every quoted one, so there are between 2,000-3,000 juniors worldwide (ZARI Exploration Ltd. 2009). UNCTAD, citing data from the Raw Materials Group, give a global figure of 149 major metal mining companies in 2006, 957 ‘medium-size’ companies, and 3,067 ‘juniors’ (UNCTAD 2008:109).

Figure 1.1: Number of mineral rights issued 1990-1999



Source: Ministry of Energy and Minerals[17]

The MDAs and ownership changes of the main mines are summarised in **Box 1.1.**

Box 1.1: MDAs and large mine ownership 1994-2003

A prospective gold mine is likely to go through numerous ownership changes before it starts producing gold. In **1994**, **Kahama Mining Corporation Ltd**, a subsidiary of Canadian company **Sutton Resources**, signed a **Mining Development Agreement** (MDA) with the **Ministry of Energy and Minerals** for the **Bulyanhulu** mine in **Kahama District**, with estimated gold deposits of 8.8 million ounces. Three years later (1997) Australian company **Resolute Ltd** and **Samax Resources Ltd (Britain**), signed an MDA to develop the **Golden Pride** mine in **Ngeza District** through their joint venture **Resolute Tanzania Ltd**. The mine had an estimated 2.7 million ounces of gold. In **1999**, Samax Resources and **Ashanti Goldfields (Tanzania)** Ltd signed an MDA for **Geita Gold Mine** in **Geita District**, with an estimated 12 million ounces of gold. In the same year, **Afrika Mashariki Gold Mines Ltd** signed an MDA for **North Mara** gold mine in **Tarime District** (two million ounces). In 2003, **Pangea Minerals Ltd**, a Barrick subsidiary, signed an MDA for **Tulawaka** gold mine in **Biharamulo District,** with **Northern Mining** as the minority shareholder. These mines began operating between 1998 (Golden Pride) and 2003 (North Mara and Tulawaka). Finally, **Buzwagi** (**Kahama District**) owned by **Pangea Minerals**, was signed in 2007 and started operations in 2009.

Changes of mine ownership followed take-overs and mergers. In 1999, Canadian company **Barrick**, the largest gold mining company in the world, acquired **Sutton Resources Ltd** for **$CAN 500 million**, and **Pangea Goldfields** Inc the following year. In 2003 **East African Gold Mines** sold their mine to **Placer Dome** for **USD 252 million**, (having invested **USD 90m)** and in turn Barrick acquired Placer Dome in 2006. **Anglo** and **Ashanti** merged in 2004 to form **Anglogold Ashanti**.

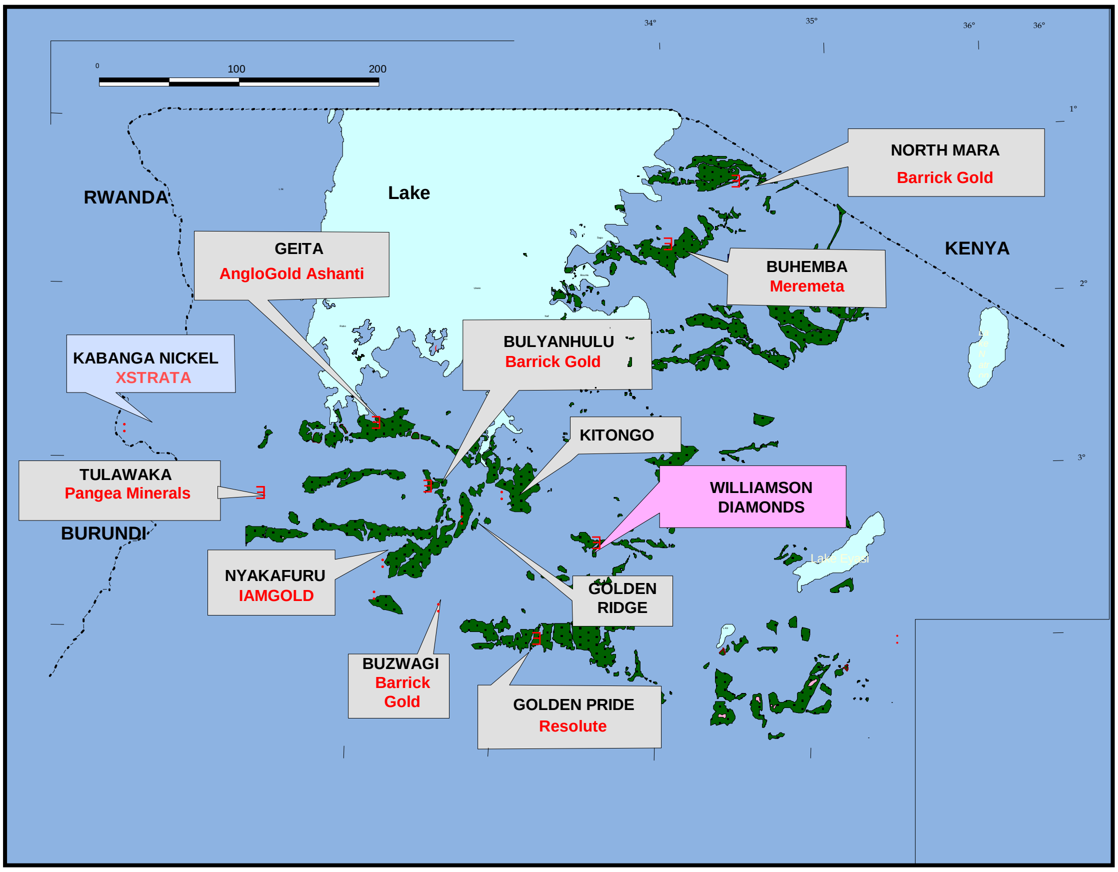
Source: Curtis and Lissu; Policy Forum (no date); Deneault et al. 2008.

It is normal in the GEM industry for properties to change hands a number of times during their development through joint ventures, sales, mergers and buy outs. For example, in 1999, Afrika Mashariki sold the North Mara mine to Placer Dome, who were eventually bought out by Barrick, and Resolute bought Ashanti's 50 percent share in Golden Pride. Barrick quickly became the main mining company in Tanzania, with three mines in operation

[17] Cited by Nyelo 2000.

and a fourth coming on stream in 2009.[18] Anglogold Ashanti (AGA) became the second largest mining interest, operating the Geita gold mine, the largest in the country.

Figure 1.2: Main gold mines of Tanzania



Source: Tanzania Chamber of Minerals and Energy

Take-overs and mergers reflect the global trend towards concentration of ownership among mineral extraction corporations. In 2005, the top 10 gold mining companies accounted for nearly half (47 percent) of global gold production. According to UNCTAD: 'In all metals, the share of the top 10 production companies increased between 1995 and 2005. This degree of concentration rose the fastest in gold mining (from 38% to 47%), followed by iron ore (from 44% to 52%), copper (from 51% to 58%) and zinc production (from 38% to 43%).[19]

Below we investigate what factors triggered the increased investment in GEM. We proceed as follows. First, we discuss the specific characteristics of Tanzania as an exploration and mining province. Second, we deal with the conventional IBE concerns (property rights, taxation, and regulation). Last, we consider other potential factors, including 'group think' and the herd instinct

[18] Barrick also held an interest in the Kabanga nickel project with Canadian company XSTRATA.
[19] UNCTAD 2007:111.

that sometimes characterise investment decisions. For the moment, we are concerned with large-scale mining.

1.3.1 Tanzanian as a GEM destination

Tanzania has long been known as a prospective province for gold and other minerals. In the 1920s, the colonial government established the Department of Geological Survey, to map the territory's mineral resources for the first time. The 1920s also witnessed the Lupa alluvial gold rush. In the 1930s, South African and British companies open mines in Lake Victoria, Mara and Musoma. By the outbreak of the Second World War (1939) mines and alluvial gold production exceeded 100,000 ounces a year. The war disrupted further exploration and mining, and by the late 1940s most of the larger mines had closed, though small and medium-mines continued to produce throughout the 1950s.

After independence in 1961 the remaining large companies closed, including Geita Gold Mine in 1966, with the loss of 2,200 jobs. The imposition of economic and trade sanctions on apartheid South Africa (1961-94) blocked further investment opportunities from that source. In 1972 the GOT set up the State Mining Corporation (STAMICO) to run the Tanzanian mining sector, signalling the virtual end of 'commercial' mining. Artisanal mining continued, while STAMICO's efforts to revive the Buckreef mine were unsuccessful.[20]

Between 1934 and 1968 gold was traded internationally at USD35/ounce, with the result that investments in GEM were seriously constrained. Partial gold price liberalisation in 1968 was followed by full liberalisation in 1975. Subsequent rapid rises in gold prices (see above) provided a major boost to GEM worldwide, but it took Tanzania a further decade and more to begin to take advantage of the new opportunities for large-scale GEM.[21] The main beneficiaries of the 1975-1990 period were small-scale mine owners and cross-border mineral smugglers. Estimates range from 500,000 to one million people involved in small-scale mining for minerals and gemstones, of which gold was by far the largest source of employment. When large mines acquired MDAs in the late 1990s, there were inevitable conflicts with small-scale miners over mining rights and compensation, discussed below.

During the post-independence period, and particularly from 1975 to 1985, Tanzania was virtually untouched by global trends in gold prospecting and mining technology, regulation and compliance. Not surprisingly, investors were keen to explore the country's potential for large-scale mining, employing the latest technologies.[22] The end of apartheid in 1994 opened the way for South African mining interests to enter the Tanzanian market. What sort of IBE did they and other foreign GEM companies encounter?

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[20] Holloway (no date).

[21] Chachage (1995) cites the World Bank (1989) argument that sub-Saharan Africa as a whole missed out on the benefits of the minerals boom of the 1970s and 1980s through lack of an 'enabling environment'. See below for a comparison between Tanzania and Ghana.

[22] Though gold has been mined since antiquity, technological improvements explain why an estimated 75% of all gold ever produced has been extracted since 1910 (Wikepedia, accesses 28/08/09).

1.3.2 GEM investment and business environment

Tanzania emerged from *ujamaa* with decimated social and economic infrastructure and an underpaid and underperforming bureaucracy at both national and local levels. In such circumstances, we would not expect a rapid improvement in the state's capacity to regulate and monitor the modern mining industry. What specific aspects of the IBE are important for GEM companies? Are there 'killer conditions'? **Table 1.2** presents a list of ten criteria. These components of the IBE are listed in approximate order of importance from an investor perspective.

Table 1.2: Main components of the IBE for GEM companies

Component	Positive	Negative
Peace & security	Peaceful, safe, low crime rate	War, crime, refugees
Rule of law	All equal, expeditious process	Arbitrary, discriminatory
Property rights	Secure, defendable	Arbitrary, allow rent seeking
Economic policy	Market based, predictable	Command-based, capricious
Licencing	Predictable, swift, transparent	Unpredictable, personalised
Tax rate	50% or less of no tax profit	75% or more of no tax profit
Tax predictability	Taxes known and centralised	Multiple, arbitrary taxes
Infrastructure	Efficient roads and electricity	Poor roads and power supply
Skilled labour	Geologists, bankers, labs	Lack of these
Support industry	Quality engineering	Lack of this

Source: Adapted from Spencer 2004

Assuming that surveys have identified numerous promising ore bodies in accessible locations, what constitutes an 'ideal' IBE from a GEM perspective, one that promises a 20 percent return on capital over the life of the mine[23] with relatively low levels of risk? Low risks are associated with peace, safety and low crime rates. The law is respected and fair, and cases are dispatched expeditiously. Property rights are clear, undisputed and easily defended in court, with international arbitration as a last resort. The economy is run on market principles and the state does not intervene capriciously or arbitrarily. The transaction costs of compliance and doing business are relatively low. Long-term finance is easily accessible and profits can be repatriated. Licencing for exploration is simple, predictable, swift, fair and transparent. Taxes are known in advance and paid to a sole tax authority.[24] Tax rules are constant and applied in a predictable and consistent manner. Support professionals, including geologists, engineers and bankers, are available locally, as are accredited laboratories for testing ore samples and gold quality. Roads, railways and power supplies are cheap and reliable. Labour, security personnel and supplies (including food and drink) should be mostly locally sourced. Supplies from abroad should be available with the minimum of delays and unnecessary costs. Corruption beyond 'speed money' should not undermine regulation, taxation, and licencing.

[23] An average large mine has a life expectancy of +/- 20 years. The life of a mine may be extended by finding additional deposits in the vicinity of the main mine.

[24] A reasonable overall tax take is 50% of pre-tax profits. Approximate tax rates for large mines calculated in September 2008 were 60% of pre-tax profits.

An unpropitious IBE is the reverse of the above. Even if known gold deposits are large enough and accessible, potential GEM investors are faced with a context of violence and crime, with insecure property rights and rule of law, arbitrary economic policies and bureaucratic behaviour, excessive and non-transparent taxation, poor communications and power infrastructure, and so on. In such contexts, the protection of property rights, licencing, and taxation will be informally negotiated and security, power and support services will be privately assured. Rent-seeking over and above 'speed money' will characterise all transactions, adding to risks, costs and insecurity.

How has Tanzania fared on the GEM criteria listed in **Table 1.2**? The first factor (peace and security) has been highly positive throughout the post-independence period. Not surprisingly, regulation and taxation issues were poorly adapted to the new market-friendly policies that the GOT was slowly adopting.

We have evidence from the late 1980s, reported in **Box 1.2**, that at least one minerals exploration company looked at Tanzania as a possible investment option, but decided to invest in Ghana instead.

Box 1.2: An investment that didn't happen

In 1986-87, **Europa Minerals Ltd**, a private British junior exploration company, was actively looking to expand its activities in Africa through its subsidiary **Dana Exploration**. Ghana Exploration hired **Robert Rice**, a geologist with global experience, and chief consultant to **RioTinto Zinc**, the largest mining company in the world, to identify promising mining provinces. His advice was to look in detail at Ghana and Tanzania. As a result, Europa hired two consultants to look at the IBE for exploration and mining in the two countries. The South African consultant who came to Tanzania found that a **100 percent windfall tax** existed, with no criteria for its application. **Ring-fencing** was also practiced, which prevented investors from offsetting the costs of unsuccessful exploration against investments in a successful mine. Having looked at the tax and investment conditions in Ghana and Tanzania, Europa chose Ghana.

Ghana's gold production rose from **277,000** ounces in 1983 to **400,000** ounces in 1989 and **1.2 million** ounces in 1993 as a result of enhanced FDI--foreign companies have invested over USD5 billion in new gold-mining projects since 1986--and the technical and managerial expertise that comes with it. Ghana's success, according to the World Bank, was the result of a new mining code, taxation rules and a regulatory framework 'which were attractive to foreign investors.' Chachage points out that Ghana had a history of large-scale gold mining and that almost all the progress noted related to a single well-established company, **Ashanti Gold Fields**. (Ashanti was almost bankrupted in 1999 after adopting a hedging strategy devised by **Goldman Sachs**). Finally, the rapid rise in exploration and excavation activities by TNCs in Ghana since the implementation of the structural adjustment programme has displaced thousands of artisanal gold miners.

Source: Interview with B, ex Finance Director of Europa; Chachage 1995:40; New African 2001; UNCTAD 2008; Hilson and Potter, 2005.

Respondent B believes that during the late 1980s, Tanzania's performance on the criteria used to assess the IBE, with the exception of peace and security, was largely in the negative column. But this respondent also argues that performance improved significantly on most criteria from the late 1980s, though it is still generally quite poor, and back-tracking on crucial issues may be endangering the future of the sector, as discussed further below.

In the 1980s, the IFIs and donor agencies promoted economic liberalisation in Tanzania as in the rest of the world. There is a view that the response of potential investors to economic liberalisation in Africa was modest. According to Andrews:

> 'Newly liberalised investment codes have not precipitated a rush by private companies and the investments that have been made have tended to be cautiously selective both in terms of countries and commodities.'[25]

Respondents' views, corroborated by international comparisons, suggest that the Tanzanian IBE continues to pose obstacles to potential GEM investors. The big mining companies that have invested in Tanzania have the muscle to survive in a generally hostile environment. Rather than try to improve the IBE collectively, the big three (Barrick, AngloGold Ashanti and Resolute) focus on the profitability of their individual mines. Smaller companies, that might risk investing in identified ore bodies that are too small to tempt the big mining companies, continue to be discouraged by key elements of the IBE: thus the well-known 'missing middle' that characterises the Tanzanian economy.[26]

What specific changes to the IBE from the mid 1980s onwards could have contributed to the foreign investment boom in GEM? We noted above that ringfencing and a windfall gains tax constituted 'killer conditions' for at least one potential investor in the pre-boom period. These conditions were not part of the MDAs signed by the big investors after 1994.[27] So what did the MDAs contain?[28] Were they crucial in stimulating investment? **Box 1.3** summarises the main conditions.

Box 1.3: Summary of main MDA conditions

The MDAs for the major mining companies contained the following conditions. The MDAs contain 'tax stability' clauses that preclude the raising of tax or royalty rates.

Taxes:

Imported capital equipment zero rated during prospecting and up to end of first year of production. Five percent thereafter.
Fuel imports: zero rated.
Capital gains tax: none.
VAT: exemption on imports and on local supplies.
Capital write-off: offset against income in the year capital purchased.
15% additional capital write-off.
Income tax: 30% (standard rate).
PAYE (payroll tax): standard rate.

Royalty:

Three percent of sales value.

Profits repatriation: 100 percent.
Hiring foreign staff: unlimited.
Arbitration:

International arbitration in the event of investment disputes.

It is worth noting that the MDAs were not identical. For example, Golden Pride's MDA (1994) treated expatriates as 'contractors' who paid withholding tax rather than income tax

[25] Andrews 1991:50 cited by Chachage 1995:40.
[26] National Bureau of Statistics 2006.
[27] We have not established whether the two 'killer conditions' mentioned were specifically removed from the relevant policy documents and legislation, or just quietly disappeared.
[28] MDAs are state guarantees that the tax rates contained in the agreement will be maintained during the life of the mine. We discuss tax waivers and non-tax conditions below.

(PAYE), a substantial saving. (This condition was later rescinded). Lastly, the first three MDAs contained the 15% additional capital write-off clause, but subsequent MDAs didn't.

Source: Curtis and Lissu 2008; interview B

Were the tax, royalty and other investment conditions offered to the big mining companies enough to prompt the massive FDI that took place from the mid 1990s? The timeline (**Figure 2.3** below) shows that the Bulyanhulu MDA was signed in 1994, that is, *well before* the Mining Sector Policy and Mining Act--the supposed drivers of FDI--were passed. Moreover, the Golden Pride MDA was signed *after* the Mining Sector Policy but *before* the Mining Act of 1998 (**Box 1.4**). This sequencing challenges the argument that the Mining Policy and Mining Act were the triggers for massive FDI in GEM, and suggests that MDAs were more important.

Box 1.4: The 1998 Mining Act and the 1997 Financial Laws Act

The **1998 Mining Act** guaranteed 'tax stability' that prevented the government from changing tax and royalty rates for mining companies. The Act also allowed 100 per cent foreign ownership, provided guarantees against nationalisation and expropriation, and offered unrestricted repatriation of profits and capital. It pegged the royalty rate at three percent, and provided waivers in respect of import duties and tax exemptions on imported machinery, equipment and other inputs.

The **Financial Laws (Miscellaneous Amendments) Act of 1997** (Section 18) offered foreign mining companies a particularly generous investment condition, allowing them to write off all their capital (investment) costs *plus* an additional 15 percent in capital allowances for 'unredeemed capital expenditure.' If these were not claimed in a given year they could roll over to future years, meaning that the mining companies could put off the payment of company tax for a number of additional years, if not indefinitely. Where did the additional 15 percent originate? Respondent I participated in drafting the original MDAs and relates how the drafters were 'surprised' when the 15 percent additional allowances were announced. Were they offered by the government or requested by the mining companies? We come back to this issue in **Part 3**.

Source: Curtis and Lissu 2008.

We may ask whether key IBE conditions other than taxes changed during these critical few years (**Table 1.2**). General factors--peace and security, rule of law, protection of property rights--do not change rapidly in the short term and can probably be discounted. This is also true for 'less important' issues such as infrastructure, skilled labour and local supplies. Macro-economic policy had been the object of major reforms during the previous decade (from 1986) and had begun to bear fruit in terms of improved tax collection, reduced budget deficits, lower inflation and an improved balance of payments. While these developments improved the overall context for FDI there is no reason why they should contribute to a sea-change in GEM.

Licencing is the remaining key element of the IBE that concerns us. Improved licencing was a key objective of the World Bank Mineral Sector Development Technical Assistance Project. But again this project did not begin until 1994, too late to influence the first MDA of the same year. Although GEM licencing performance has become a major issue recently, it is unlikely that it influenced the big investment decisions of the 1990s.

Finally, we may consider geology as a key stimulus to GEM investment. During the late-1970s, a German company compiled a comprehensive geological map of the Lake Victoria Gold Area (LVGA).[29] The map incorporated the results of geological work undertaken on behalf of the GOT by big mining companies--including Boliden, Rio-Tinto Zinc (RTZ), Broken Hill Propriety (BHP), De Beers, and AngloAmerican--in the 1970s and 1980s. Between 1986 and 1990, foreign exploration companies confirmed the existence of promising ore bodies (some of them previously known and worked) capable of sustaining large-scale mining. By the beginning of the 1990s the geology of the area was broadly known and areas identified--some 33,000 square kilometres--of higher prospectivity in which it was reasonable to expect to find gold deposits. Whether these would be large enough and rich enough to turn into commercial mines was yet to be established.[30]

By the end of the 1980s there was a growing gap between Tanzania's known gold resources and investments by exploration companies in identifying commercial deposits.[31] Samax, a British minerals exploration company, was the first to make use of the improvements in mineral exploration technology that had been achieved during the decades when Tanzanian mining was under state control. During the early to mid-1990s, about a dozen prospective deposits were identified that could be commercially profitable for medium to large mining companies. Most of these were on or near the sites of old colonial mines and/or were being mined by artisanal miners. Exploration companies Samax and Cluff identified large deposits at Geita, and Sutton Resources at Bulyanhulu. Samax also identified Golden Pride as a promising resource. These three, of course, were to become the largest gold mines in Tanzania.

On the basis of these 'finds', it suddenly 'became fashionable to be in Tanzania', and a lot of additional exploration took place in the LVGA during the mid 1990s. Exploration and mining companies flocked to Tanzania--the new mining frontier--in large numbers. According to the Mining Journal (2008): 'Since the early 1990s, more than 50 multinational companies and over 250 local companies have acquired mineral rights.'[32]

The surge in exploration was in response to the significant finds made by the first companies to enter the scene, and the lucrative deals (buy-outs, joint ventures, and smelting fees) they subsequently made with the big mining companies. This 'exploration rush' did not, however, lead to a swath of further big mines coming on stream, and many millions of dollars were lost by GEM companies in the process.[33]

In summary, the first three MDAs provided conditions to FMCs that reflected the level of risk attached to the large investment required and the additional costs incurred as a result of the underdeveloped nature of the country's social and economic infrastructure. MDAs also provided investors with guarantees that the tax and royalty rates agreed to would remain

[29] The impetus for the USD 60 million survey came from the Minister of Energy and Minerals, Al Noor Kassum (Kassum 2007:124).
[30] Iinterviewee B.
[31] This and following paragraphs are based on an interview with respondent B, 1 December 2009.
[32] Mining Journal 2008 'Political debate', Tanzania Supplement, London, August
[33] The only exception was Buzwagi. Why no medium-size mines came on stream in the wake of the identification of exploitable deposits is a topic discussed in the next section. The possibility that 'big gold' is an oligopoly--as alluded to above--cannot be ruled out, though we know of no current research on the issue.

unchanged throughout the life of the mine. It was perhaps these conditions that convinced the mining companies that they could risk investing in an otherwise relatively unknown and therefore risky IBE. Of the IBE conditions that most interest potential GEM investors, it was taxes and other investment conditions that changed the most during the mid 1990s. Was this enough to tip the incentive? Before concluding, we may address the 'irrational choice' issue.

1.3.3 Animal spirits?[34]

Tanzania's poor rankings in the international investment and business environment (IBE) give some credence to the idea that causal factors *external to the IBE* have to be included if we want to understand investment decisions. Given the huge capital investments and risks involved in GEM, a mining boom may easily appear reckless by normal business standards. Could the relatively rapid opening up of the Tanzanian gold sector have led to an excess of 'animal spirits' or herd behaviour by big GEM companies?[35] Could the prospect of big new discoveries and new mines have triggered an investment rush that was not really justified in terms of prospectivity and the IBE? Could 'animal spirits' be associated with cheap finance and buoyant stock prices?

We argued above that there had been major improvements in mineral exploration technology during the 1970s and 1980s, so the attitude developed among exploration companies (including mining companies that also explored for minerals) that they 'wanted to have a piece of the action.'[36] The first successful investments in exploration in the LVGA led to the opening of the first big mines, as described above. The herd instinct, the 'animal spirits' described by Keynes, arguably led to the rapid expansion in exploration in the early 1990s.

There was no great increase in the price of gold during this period that could help explain the exploration boom. The gold price was USD 384 per ounce in 1990, and ranged from a high of USD 388 in 1996 to a low of 279 in 1999.[37]

That most of the exploration during the 1990s did not lead to new mines, and that explorations companies lost large amounts of money as a consequence, cannot be taken as 'proof' that animal spirits replaced sober appraisal of the IBE in driving investment decisions. This is because exploration is by its very nature a high-risk activity. The evidence for an 'irrational' explanation lies in the rapid growth of exploration, although precise figures for the boom are lacking.

With the benefit of hindsight, we now know that the rapid expansion in exploration did not lead to any big new discoveries of commercially

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[34] J. M. Keynes coined the term 'animal spirits' to describe the urge to take investment risks. The distinction between *risk* (which can be estimated statistically) and *uncertainly* (in which the potential distribution of outcomes is unknown) is attributed to the economist Frank Knight (1921).

[35] According to Nobel-prize winner Daniel Kahneman, behavioural economics starts from the premise of 'irrational choice'. '… people often make decisions based on guesses, emotion, intuition, and rules of thumb.' Moreover, 'Markets are plagued by herding behaviour and groupthink.' (Clift 2009).

[36] Interview with respondent B, 01/12/09.

[37] New African (2001) supplies evidence that from the late 1990s the price of gold was kept artificially low by the US Treasury and the Bank of England.

exploitable ore bodies, or big new mines, and even the medium-size mining sector found in other countries failed to emerge.

1.4 Summary and conclusion

In this section we have reviewed changes in the IBE facing GEM companies in Tanzania during the last quarter of a century**.** The liberalisation of minerals exploration and mining was part of the general liberalisation that took place in Tanzania after 1986. The formal IBE for GEM improved substantially during the 1990s, but still remained weak in key areas. A new Mining Policy and Mining Act were passed in the late 1990s, by which time the investment boom was already well underway. From 1994, three large mining companies signed MDAs with the Ministry of Energy and Minerals (MEM). These provided generous investment conditions, including full ownership of mineral rights, the payment of a three percent royalty and a 15 percent additional capital write-off clause that considerably lengthened the period during which investors were exempt from paying corporation tax.

We conclude that the MDAs rather than the overall IBE stimulated the boom in mining investment. However, the subsequent increased investment in exploration did not lead to any major new discoveries or large mines coming on stream. If there was an example of 'animal spirits' rather than sober calculation of risks, it was this rather than the investment decisions of the large mining companies. Since mineral exploration is by nature a high-risk activity, those involved are likely to be above average risk-takers in the first place. For such a group, the lure of finally turning a promising gold deposit into a bankable investment proved too strong to resist. Since the large mining companies were already signing MDAs, it made sense to assume that further discoveries would find ready buyers. This proved not to be the case, and the global financial crisis of 2008 put an end to the high expectations of the new century.[38]

[38] More than four out of five of the 658 mining companies polled by the Fraser Institute in 2008/09 'believe that *at least* 30 percent of exploration companies will be forced out of business in the current economic downturn.'

Part 2: Gold exploration and mining property rights in Tanzania

2.0 Introduction

Here we investigate the formal and informal institutional relations that developed between the state and foreign exploration and mining (GEM) interests during and after the Tanzanian gold investment boom of the 1990s.

Above we narrated the changes that have taken place in the investment and business environment (IBE) facing GEM in Tanzania following economic liberalisation in 1986. Our interest was to see whether the investment promotion policies designed by the World Bank and adopted by the GOT constituted the primary trigger to the huge increase in FDI in GEM that took place from 1994 onwards, when MDAs were signed for seven medium to large mines. We found that the FDI boom was already well underway by the time that the new Mining Policy and Mining Act--that confirmed the fiscal incentives to large-scale mining contained in the MDAs--were passed in 1998-99.

In fact, small-scale mining activities were the first to benefit from policy reforms during the early liberalisation period. The subsequent arrival of foreign mining companies led to sometimes violent conflicts with local small-scale miners and communities near mines that have continued to date. In this chapter, we examine the protracted struggle between small-scale (Tanzanian) and large-scale (Canadian) mining interests over mineral rights. Then we assess the *closely related* impact of the business environment on profitability.

2.1 Methodology and research question

We have adopted an analytical framework that defines the investment climate as the guarantor of investments and the business environment as the main determinant of profitability. Exogenous factors, in particular the price of gold, also influence profitability. Here we ask: ***by what formal and informal means have Tanzanian state actors and GEM investors addressed the security of investments and influenced profitability?***

We deal with two main sets of questions. First, how did the big mining companies secure and retain mining rights in the face of opposition from artisanal and small-scale miners? Second, how does one characterise mining companies' relations with small-scale miners, local communities and their representatives? We review briefly the activities of the mining companies in social development and environmental protection, otherwise known as Corporate Social Responsibility (CSR). Though incurring significant costs, CSR initiatives may help protect property rights over time.[39]

The process of securing mining rights from the mid-1990s included clearing legal and illegal small-scale miners, farmers and pastoralists from the areas allocated to FMCs, and (only sometimes) paying compensation. The eviction process involved the use of state power on behalf of foreign

[39] CSR often involves FMCs working with local governments, discussed below.

companies. More recently, FMCs have tried to handle relocation on their own, preferring not to involve the state.

There were said to be hundreds of thousands of small-scale miners on hundreds of (‘legal’ and ‘illegal’) claims during the early 1990s. Clearing many of these to make way for big gold mining companies was a highly controversial process, especially given Tanzania’s pre-1985 regime’s commitment to policies designed to benefit the poor majority.

According to Khan (2009) ‘Compared to other African countries, conflicts over mining rights have been relatively muted in Tanzania…’ This is because ‘the state owns the rights to the minerals under the ground and in theory it does not require the consent of those using the land surface…’ Those displaced by big gold mines are paid compensation for crops and buildings. ‘As long as the interests of power at the centre are aligned with local power groups, it is very difficult if not impossible for other social groups to mobilise against these allocative decisions.’[40] This chapter examines these claims.

Second, having secured mining rights, how do investors in gold mines try to maximise their profitability? Within the overall IBE we may expect to find a range of formal and informal relationships between politicians, bureaucrats, brokers, investors and managers. It is convenient (if somewhat simplistic) to begin with formal institutional arrangements[41] concerning exploration and mining licencing, taxation, and regulation and to assess departures from these as examples of *rentierism*. For example, the formal procedures for acquiring exploration licences are quite clear but are vulnerable to manipulation in the interest of private rent-seeking and official rent-scraping. Here and in other instances, departures from the laid-down procedures define the ‘informal’. What are the direct and indirect effects of informality on profitability and the future of large-scale mining? Are there cases where informal practices and relationships serve the interests of long-term profitability?

Taxes can be assessed in terms of levels and predictability. The level of taxes (including royalties) should strike a fair balance between investors’ profits and host government’s revenues, with actual levels reflecting the bargaining powers of the two sides. In practice, it is virtually impossible to say what is ‘fair.’ The issue has been muddied by heated public debate over the perceived underpayment of taxes by foreign mining companies. *Independent audit* of gold production and costs was introduced in 2004 in order to establish tax liabilities, but the process has been fraught with problems.

The above issues (taxation, regulation, corporate relations with local communities) have been the object of intense public and political debate during the review period, and we will review this debate in some detail with the objective of shedding further light on the profitability issue. **Figure 2.1** summarises the main issues dealt with in this chapter.

[40] Khan 2009:93-5.

[41] Sociology 101 teaches us that all formal institutions are arenas for informal relations, both cooperative and conflictual, to develop, and that in certain contexts the informal is determinate. We take the formal as an ideal typical starting point for investigating ‘real’ institutions. Some discourses of patrimonialism and clientelism in Africa view the informal as *ultimately determinate*. This does not necessarily invalidate our choice of the ‘formal template’ as a useful heuristic starting point (ideal type). We remain agnostic as to the role of formal institutional structures in determining outcomes rather than simply being swamped by informality.

Part 2 is based on a review of a large formal literature, websites and press reports and commentary covering the relevant period. This review led to the formulation of a series of research questions that were presented to key informants in extended, semi-structured interviews. Follow-up interviews were conducted to clarify emerging issues. Finally, we have summarised other important unpublished documents.

Mining investments are long-term and profitability has to be viewed over the 'life of the mine'. We have relied on investors' perceptions of likely short- and longer-term profitability where no objective data exist. Past and planned investments in GEM are taken as proxies for both property rights and expected profitability.

Figure 2.1: Variables in the GEM investment and business environment

Variables	Security of GEM rights	Profitability
MDAs, investment conditions	• **Procedures, costs and risks involved in acquiring & defending GEM rights.**	
Taxation		• **Tax/royalty regime in place.** • **Changes in tax regime.** • **Performance of TRA.** • **Gold auditing.** • **Ringfencing.**
Licencing & regulation	• **Exploration licencing.**	• **Exploration licencing.** • **Immigration controls.**
Compliance with social and environmental requirements	• **Relations with local communities and small-scale miners.** • **Crime and protection of property.**	• **Working conditions.** • **CSR compliance.** • **Crime and protection of property.**

Sections **2.2** to **2.6** examine the struggle over mining rights during 2004-06.

2.2 The struggle to secure mining rights

In August 1994, Sutton Resources Ltd--a Canadian mining company quoted on the New York Stock Exchange--signed a Mining Development Agreement (MDA) for the Bulyanhulu area in Kahama District, Mwanza, through its local subsidiary Kahama Mining Company Ltd (KMCL).[42] Though not a large company by global standards, Sutton was destined to play a major role in the subsequent lengthy confrontation between large- and small-scale mining interests over mining rights. The eventual resolution favouring large-scale foreign companies set the tone for the subsequent investment boom. This section describes the sources of the confrontation and its protracted

[42] See Figure 2.3. This formal version of the story is disputed (see below). Originally, the GOT had a 15 percent share in the mine.

resolution. The reader may keep track of the chronology of events by referring to **Figure 2.3** below.

2.2.1 Artisanal versus small-scale mining

For clarity of exposition and analysis it is important to distinguish between artisanal and small-scale mining, and between miners[43] and small-scale mine owners.[44] Many authors use the terms ‘artisanal’ and ‘small-scale’ interchangeably. According to Lange (2002): ‘[i]n the 1998 Mining Act, a small-scale miner “is the holder of a mineral right through a Primary Mining License issued by the Commissioner for Minerals”. Part IV of the Act ‘describes small-scale mining as mining and prospecting operations that do not involve substantial expenditure or the use of specialized technology.’[45] Thus the law contains both a legal and a commercial/technological component in its definition of ‘small-scale’ mining.

But in the literature, the term “small-scale mining” ‘covers everything from truly artisanal mining … to medium scale mines which make use of modern technology and proper disposal of chemicals.’ [46] This definition is too broad for analytical purposes. **Box 2.1** summarises the main characteristics of the two types of mining.

Box 2.1: The difference between ‘artisanal’ & ‘small-scale’ mining

Artisanal miners work in teams of up to 20 in shallow pits, without legal title. An artisanal mine processes less than 30 tonnes of mineral-bearing rock per day, produces perhaps 50 ounces of gold a year worth up to USD 20,000 and represents an investment from a few hundred to a thousand dollars. **Small-scale claim owners** are more likely than artisanal miners to have a formal title for their claim, though many may not. Claim owners receive a rent of 30-40% of earnings from the **pit ‘owner’**. The pit owner organises the miners and mine security. A small-scale mine may process 200 tonnes of rock a day, produce up to 250 ounces of gold a year worth a million USDs, represents an investment of up to USD 100,000, and employs up to 50 people. Artisanal miners exploit either alluvial deposits or sink relatively shallow pits, whereas small-scale mines may go down as far as 100-150 ft. Gold recovery rates are as low as 20 percent among artisanal miners compared to over 40 percent for small-scale mines. Both use **mercury** to capture gold, leading to long-term environmental pollution and serious health hazards. **Figure 2.2** (below) describes the division of labour in small-scale mining.

Source: Spencer 2008; Mutagwaba et al. 1997

Artisanal mining is often of the ‘gold rush’ type. On the basis of rumour or evidence, large numbers of poor young men (and some women) flock from different parts of the country into areas of alluvial or surface gold (or

[43] In English, a *miner* is understood to be the labourer who goes down the mine on behalf of the company or individual owning the mine. The distinction may be less clear in Kiswahili.

[44] Medium- and large-scale mines are easier to define. It is worth noting that the foreign investors in Tanzanian gold mining are large but not ‘super-large’ by global standards, whereas there are no ‘medium-size’ mines to date, either local or foreign-owned. The reasons for this ‘missing middle’ are an important part of our story.

[45] Dreschler 2001:65.

[46] Lange 2002:5 citing Mwaipopo et al. 2004:21.

gemstones, or other minerals) in the expectation of striking it rich.[47] Such activities are virtually impossible to control or regulate.[48]

Small-scale mining is at the lower end of the official (formally taxed and regulated—at least in theory) spectrum.[49] 'Following the 1990 policy reforms artisanal miners were encouraged to peg their claims, and organize … cooperatives and societies. As a result, there was a sharp increase of "legal" artisanal mining operations. Although most miners were operating without licences, there has been a sharp increase in licensing for small-scale mining operations.'[50]

Small-scale mining involves title or claim holders, mine owners, and miners, as summarised in **Figure 2.2**.

Figure 2.2: Division of labour in small-scale mining

Claim holders	Claim holders may be companies, individuals or associations. Individuals are often former civil servants, and may be members of regional miners' associations. Claim holders employ security guards to control theft.
Pit owners	Claim holders sub-let the mining work to so-called 'pit owners'. Pit owners organise the production and labour processes, provide machinery, participate in the work, and provide the claim holder with 30 percent of the value of production.
Mine workers	Pit owners hire drillers, blasters, sand removers, crushers and grinders and organise them in gangs under a foreman. Experts, usually with experience from formal mining, are hired when gold is actually found. The labourers are not organised and usually only receive food until gold is recovered. In 1998, only four percent of labourers had a written contract.

Source: Adapted from Lange 2002:6.

Chachage found that many claim holders in Geita (Mwanza) were retired teachers, civil servants, and parastatal employees. Most of these knew little or nothing about mining and were largely absentee landlords. The 'pit owners' paid rent to the claim owners and hired labour, which was not unionised. Many claim holders are natural resource rent seekers, pure and simple.

Lissu argues that, in the early 1990s, local miners in Bulyanhulu were investing in expansion and technological upgrading to take advantage of the assured gold market and government guarantees that their claims were

[47] Chachage (1995) suggests that the (very few) miners who have struck it rich have invested in non-mining activities or frenetic bouts of conspicuous consumption rather than in upgrading their enterprise.
[48] According to Dreschler 2001:66: 'the government is often unable to control artisanal mining because it lacks adequate operational resources to enforce existing regulations.'
[49] Dreschler (2001:65) distinguishes small-scale from artisanal mining as follows: '… in a few instances organized small-scale mining is carried out on a formal basis where operators abide by official mining and mineral marketing procedures. They keep production and sales records, which are furnished to the relevant authorities. They use appropriate technologies such as retort systems and special amalgamation ponds in gold mines, as approved by relevant authorities.' … 'Contrary to the organized small-scale miners, artisanal miners … conduct their operations on an informal basis without adhering to laws, regulations and technologies. They shift from one site to another, working on both registered and unregistered land.'
[50] Dreschler (2001:84).

secure. He provides figures suggesting that 'by 1994, some 138 mineshafts had been dug at a combined cost of over TShs 200 million (about USUSD 400,000 at the official exchange rate of that time). Productivity also jumped by almost 50 per cent. According to the [Bulyanhulu Small Scale] Miners' Committee, the equipment supplied … "helped to increase output of … ore from 60 tons per day to 85 tons, and gold output has increased from 8 kg to 13 kg a day." '[51]

2.2.2 'Legal' versus 'illegal' mining

Our next task is to distinguish between 'legal' and 'illegal' mining. These are loaded terms with more than just jurisprudential connotations and consequences. Local miners at Bulyanhulu were labelled 'illegals'--i.e. not possessing formal claims or mining licenses--by their opponents so as to justify clearing them from existing concessions without compensation. But 'legal' can also mean *politically* and *administratively recognised* even without *formal title*. Why does this matter?

At different times, the Tanzanian state has recognised and banned local mining. Since colonial times, both small- and larger-scale mining for gold and other minerals has been formally regulated by the government, which retains the 'radical title' to all land and underground minerals.[52] From 1972, large-scale exploration and mining were undertaken by the parastatal State Mining Corporation (STAMICO) while small-scale gemstone and mineral mining was declared illegal. [53]

During the period 1972-79 official hostility towards local mining could not be enforced effectively, and 'unofficial' mining became increasingly recognised as a 'fact of life'.[54] In 1979 the government removed STAMICO's mining monopoly 'and local small-scale miners could legally peg claims and work on them'.[55] But most small-scale minerals and gemstones exploration, mining and trading remained unregulated and were therefore technically illegal. Unambiguous mining rights are the precondition for security of tenure for all categories of investors.

Below we recount the story of how Sutton Resources Ltd managed to assert its claims for legal tenure over the rival claims of considerable numbers of small-scale miners. Although both sides took their rival claims to the courts, it was the exercise of political power that proved decisive, not carefully phrased judicial decisions.

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[51] Lissu 2:4,6. Canadian company Tiomins 'had become a leading supplier of mining equipment to small-scale miners in Tanzania', supplying '35 water pumps, 9 crushers and 2 compressors … to the artisanal miners.' Sutton sued Tiomins for supplying mining equipment to 'illegal' miners. Below, footnotes to 'Lissu' followed by a Chapter number (1 to 7), and a page number refer to an important unpublished source which has proved very useful in the preparation of this chapter, despite its partiality.

[52] See URT 1994:9.

[53] Chachage 2005:43; Malyamkono and Bagachwa 1990.

[54] Policy changes were dictated by the 'Tanzanian state's [in]ability to effectively police its anti-artisanal mining policies.' Lissu Ch 2, page 8.

[55] Chachage op. cit., page 54. Chachage also uses the terms 'small-scale' and 'artisanal' interchangeably.

2.2.3 Artisanal and small-scale miners' rights, 1979-95

The 1979 Mining Act removed STAMICO's mining monopoly. 'Under section 69(1), [of the Act] 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.'[56] Less than three weeks after the Act was passed, the 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.' *Inter alia,* the Notice specifically named Shinyanga Region as an area where gold prospecting and mining ' "by methods not involving substantial expenditure or the use of specialist technology" could be undertaken.' According to Lissu, 'This was the earliest and clearest *legal basis* for the artisanal miners' presence and operations in the Bulyanhulu goldfields.' [57]

After 1979, alluvial sites and shallow gold mines proliferated on both old and newly discovered sites. Lissu quotes estimates of between 500,000 and 900,000 'artisanal' miners, making mining and gemstones by far the largest source of non-farm income and 'poverty reduction' in Tanzania.[58] The Artisanal / Small-scale Miners Population Census found over 550,000 miners in the country, 40 percent of whom (222,000) were said to be involved in gold.[59]

When, in April 1990, President Ali Hassan Mwinyi declared that artisanal miners were free to mine minerals and gemstones all over the country 'the modern mining boom in Tanzania began in earnest.'[60] In May 1990, the Bank of Tanzania began buying gold from small-scale producers and middlemen at black-market rates. This initiative brought some of the unofficial gold trade into official ('legal') channels, although Chachage cites estimates that most of the gold produced continued to be smuggled out of the country.[61]

The value of official gold exports jumped from USD 1.2 million (1989) to USD 29.1 million in 1991 to USD 40.4 million in 1992.[62] This (partial) formalisation of the gold trade continued the liberalisation of external trade policy initiated by the 1984-85 'own funds' import scheme.[63] Thus, hard currency earned from smuggling natural resources bought imports of consumer and other goods that for years had been in very short supply.

President Mwinyi's and CCM's support for local miners contrasted with emerging external and internal developments in mining investment and promotion policy. Trade and exchange rate liberalisation was already

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[56] Lissu 2:8.

[57] Lissu 2:8. Citing Government Notice No. 6 of January 18, 1980. (Emphasis added).

[58] Lissu 1:2. Malyamkono and Bagachwa (1990) do not include artisanal mining in their discussion of the 'second economy' during ujamaa, which may explain their estimate (page 144) of the second economy as a percentage of official GDP of only 31 percent in 1986.

[59] No date, late 1990s, Appendix 1A. Cited by World Bank / USAID 1999. The total includes miners in diamonds and gemstones and non-precious minerals. A quarter of the miners were women.

[60] Lissu add reference.

[61] Chachage 1994:46-7 reports official estimates of unrecorded gold sales of USD 28 million in 1988 rising to USD 32 million in 1991. Production estimates were an average of 10-16 tonnes p.a. compared to BOT purchases of 3-4 tonnes.

[62] Ibid.

[63] See Gibbon 1995

underway. The 1990 National Investment Promotion and Protection Act set the scene for attracting more FDI into the country, and mentioned minerals specifically. In 1991 and 1992 the World Bank set out its proposals for developing the mining sector in Tanzania and Africa respectively. Both documents favoured attracting FDI with tax and non-tax incentives over upgrading the existing small-scale mines.[64] Consequently, the fate of local populations, miners and the environment were virtually ignored in mining sector policy prescriptions until the late 1990s.[65]

2.3 Chronology of the struggle for mining rights at Bulyanhulu, 1993-96

Chachage cites a rough estimate of about 500 gold mining sites nationwide in 1992.[66] One of the largest was Bulyanhulu (see **Figure 1.1** above). This was the site where, between 1994 and 1996, the struggle for gold mining rights was conducted.

Bulyanhulu gold deposits were discovered by local miners in 1975. Over the years, the site attracted large numbers of local miners, including many former diamond miners.[67] In 1980, STAMICO began systematic prospecting and core sampling in Bulyanhulu. In 1982-83, STAMICO and a Finnish-Tanzanian consortium undertook an economic valuation of gold reserves at Bulyanhulu. In 1989 Canadian mining company Placer Dome and Dar Tardine (Tanzania) obtained a prospecting license over the Bulyanhulu area, but the government revoked it in 1992.[68] In September 1994, Sutton Resources--another (smaller) Canadian company[69]--obtained a prospecting license through its Tanzanian subsidiary, Kahama Mining Company Ltd (KMCL). In September 1999, KMCL was awarded the Mining License for Bulyanhulu and major underground development commenced. Sutton Resources and KMCL were bought by Barrick Gold in May 1999. In 2000, the World Bank Group's Multilateral Investment Guarantee Agency (MIGA)

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[64] The 1992 WB mining strategy document contains a 'wholesale attack on small-scale or artisanal mining from an explicitly "large-scalist" perspective.' (Gibbon 1995:21). Tanzanian goldmines are characterised as dangerous and environmentally destructive, where government loses taxes through illicit gold buying. Gibbon identifies a shift in WB thinking away for a generally positive attitude towards 'informal' activities to a concern with 'formalisation.' The WB recommended that existing mine owners should simply sell their claims to foreign investors. We will see that this solution to the mining rights issue was not acceptable to Sutton Resources or the GOT.

[65] World Bank, 'Mining Sector Review for Tanzania' 1991; 1992 'Strategy for African Mining.' Not until well after the mining rights denouement did the World Bank look at small-scale mining. The World Bank/USAID report 'Mining in Tanzania' notes: 'The main interaction between international companies and artisanal miners has been a conflict over claims. Each tends to regard the other as invading their territory and threatening their livelihood.' (1999: 29).

[66] Chachage op. cit., page 57. Officially, there were 1,440 'small-scale claim holders' in 1992, including gemstones, gold and other minerals.

[67] Chachage op. cit., page 57.

[68] The GOT accused the company of engaging in gold smuggling. Placer Dome took the issue to international arbitration, and lost. Dar Tardine continued to buy gold from local mines, particularly in Geita, Mwanza Region (see Chachage op. cit., page 83).

[69] Even large gold mining companies are quite small by global corporate standards. The world's largest mining companies are ranked as follows in the Fortune Global 500 Rankings for 2008: BHP Billiton 120; Rio Tinto 134; Xstrata 320; AngloAmerican 336. Of these, only AngloAmerican is a major gold mining company.

accorded Barrick a USD 115.8 million political risk guarantee to cover the Bulyanhulu investment 'against the risks of transfer restriction, expropriation, and war and civil disturbance'.[70] The guarantee promises In April 2001, Bulyanhulu Mine entered full production.[71]

Here we summarise events between February 1993, when President Mwinyi visited Bulyanhulu, and August 1996, when local miners were forcibly evicted from the site. The following timeline **(Figure 2.3)** summarises the course of events.

Figure 2.3: Chronology of the struggle for mining rights at Bulyanhulu

1993 February	**President Mwinyi** visits miners at **Bulyanhulu** and gives them permission to mine gold as long as they sell it officially.
October	**Bulyanhulu Miners Committee** send their official application for prospecting and mining rights to the Ministry of Water, Energy and Minerals. The application is ignored.
1994 August	Bulyanhulu MDA signed by Minister of Water, Energy and Minerals **Jakaya Kikwete** with **Sutton** subsidiary **Kahama Mining Company Ltd.**
	Edson Halinga, District Commissioner for Kahama District writing to the **Minister of Water, Energy and Minerals, Jakaya Kikwete,** … says there are "over 300,000 people in the area that were now supposed to be evicted. These people are earning a living as well as contributing to the national economy."
	Halinga writes to the Minister of Water, Energy and Minerals again reminding him about the application by the small-scale miners of October 2003.
	KMCL issued prospecting licence for Bulyanhulu, provoking resistance by artisanal miners.
September	Deputy Minister of Water, Energy and Minerals **Joseph Mbwiliza** visits Bulyanhulu.
October	Letters from Bulyanhulu miners to Minister and Deputy Minister of Water, Energy and Minerals over mining rights. No reply.
1995 March	Canadian High Commissioner **Verona Edelstein** reports to Ottawa that there were 'threats to Canadian citizens and interests' in Bulyanhulu. Trouble foreseen if 'illegal' pits bulldozed.
	Minister of Home Affairs **Ernest Nyanda** and **Shinyanga Regional CCM Secretary, Stephen Mashishanga** visit Bulyanhulu.
April	Delegation of Bulyanhulu artisanal miners, community and district leaders and Kahama MP meet the Deputy Minister for Minerals and Energy, **Professor Mbwiliza** at the CCM headquarters in Dodoma.
June	**Sutton Resources/KMCL** seek court order to evict artisanal miners from Bulyanhulu. Miners file a counter-order.
July	Prime Minister **Cleopa Msuya** visits Bulyanhulu.
September	**High Court** rules in favour of the miners' application. KMCL lodge an appeal, then withdraw it.
October	Drilling results at Bulyanhulu yield a higher reserve estimate of 2.5 million ounces of gold, valued at more than USD750 million.
1996 January	**President Benjamin Mkapa** commits his government to the development of the formal mining sector. **Minister Shija** tells miners in Kakola village to prepare to leave because they were 'trespassers'.
April	**Msalala MP Bhiku Mohamed** tells Parliament that 'many' miners were killed by mob justice in Kakola village. CHC says 17 miners died.

[70] Lange 2011:245.
[71] Lissu 2:3.

May	**Sutton Resources** issues USD23 million in special warrants (stocks) to help finance the construction of the Bulyanhulu mine.
July	**MP Bhiku Mohamed Salehe**, tells National Assembly that about 200,000 artisanal miners, peasant farmers and their families were threatened with eviction in Bulyanhulu.
30 July	**Minister for Energy and Minerals Dr. William Shija**, orders small-scale miners to vacate Bulyanhulu within one month. That evening, **Regional Commissioner Major General Kiwelu** stations Field Force Unit troops in Bulyanhulu and orders all mining to cease within 12 hours.
1 August	Eviction of miners begins.
3 August	**High Court** issues an injunction for the eviction exercise to stop since the suit between the small-scale miners and KMCL was still in court. Up to 3,000 miners return to the pits they had been working.
5 August	RC ignores court injunction and evictions resume. Claims that as many as 54 small-scale miners were buried alive. Minister for Home Affairs says 11 people died during the course of the evictions through 'mob justice or natural causes.'
September	**Shinyanga RC Kiwelu** denies the allegations of killings and described those making them as 'liars and rumour-mongers.'

It took Sutton Resources two years--from August 1994 to August 1996--to enforce their formal exploration and mining rights, with the (eventual) support of the Tanzanian state.

The main protagonists in the struggle for formal mining rights in Bulyanhulu (listed in **Figure 2.4**) were Tanzanian Presidents Ali Hassan Mwinyi (1985-1995) and Benjamin Mkapa (1995-2005), senior cabinet ministers, regional and district officials, the Tanzanian police and judiciary, successive Canadian High Commissioners, Sutton Resources/KMCL senior management, the Bulyanhulu Small-scale Miners' Committee, and civil society activists in Tanzania and abroad.

Figure 2.4: Main protagonists in the struggle for mining rights, 1993-96

Protagonists	Pro small-scale miners	Pro Sutton
State House	Ali Hassan Mwinyi	Benjamin Mkapa
Political Parties	CCM, opposition parties	
Ministers of Water, Energy & Minerals	Al-Noor Kassum	Jakwaya Kikwete, William Shija
Local Politicians	Bhiku Mohamed Salehe Julius Manyambo	---
Security, police	---	RPC, RC, DC, FFU
Judiciary	High Court	Chief Justice
Diplomats	---	Canadian High Commissioners
Mine owners	Bulyanhulu Small-scale Miners' Committee	Sutton Resources
Gold traders	Local/national	---
Aid agencies	---	World Bank; MIGA
Civil society	LEAT, Amnesty International	---

In February 1993, President Mwinyi visited Bulyanhulu and gave local miners 'permission to prospect for gold on condition they sell it all to the

Government.'[72] In its 1995 election manifesto, at the height of the stand-off, CCM made no direct mention of large-scale mining, and expressed its support for continued state purchasing of minerals, including gold. The manifesto committed a CCM government to help small-scale miners ('*wananchi wachimbaji wadogo*') improve their incomes through credit, modern technology and market access. Small-scale miners should be given preference in the allocation of mining rights where new mineral deposits are discovered.[73]

In October, Bulyanhulu Miners Committee sent an official application for prospecting and mining rights to the Ministry of Water, Energy and Minerals on behalf of local claim holders, but the application was ignored. The central government was sending mixed messages to small-scale miners, suggesting a nascent conflict over mining policy between CCM / Mwinyi and pro-FDI supporters in the government.

In August 1994, nearly a year later, Sutton Resources signed a Mining Development Agreement for Bulyanhulu with the Minister of Water, Energy and Minerals Jakaya Kikwete. When exploration started shortly afterwards, tensions began to mount between Sutton and local miners, and the Deputy Minister, Professor Mbwiliza, visited the Bulyanhulu mines. What transpired during his visit is not very clear. Speaking later in the National Assembly, local MP Bhiku Mohamed, 'said the Deputy Minister "was surprised to learn that the Ministry bureaucrats in their reports to him say that there are no people … while he saw for himself that there are hundreds of thousands (sic!) of people there." According to the MP, Mbwiliza promised that he would take necessary disciplinary action against the ministry officials who had misled the government …" ' No action seems to have been taken.[74]

In April 1995, a delegation of Bulyanhulu claim holders and pit owners, and community and district leaders met Deputy Minister Mbwiliza at the CCM headquarters in Dodoma to register its disappointment with the government's failure to give them firm exploration and mining rights despite repeated requests. According to Lissu: 'During the meeting Julius Manyambo, the Member of Parliament for Kahama constituency … informed the Deputy Minister that the Bulyanhulu issue would likely bring considerable controversy politically because the ruling party was not likely to get votes from the area during that year's Presidential and Parliamentary Elections.' [75]

The representatives of the central state in Shinyanga Region and Kahama District were loath to take the side of the investor in enforcing mining rights. An official of the Canadian Department of Foreign Affairs and International Trade (DFAIT) reported in **March 1995** that the Tanzanian authorities had allowed 'about 20,000 people, not all miners, (to) live in the concession area.' '[T]he laxness of the authorities in dealing with illegal mining has emboldened the artisanal miners and aggravated the situation. … If large-

[72] Lissu 2 :7.

[73] Chama Cha Mapinduzi 1995 :27-28. On the last point: 'Katita maeneo yanayogunduliwa madini na wananchi wachimbaji wadogo wawe wa kwanza kufikiriwa katika kugawa maeneo ya kuchimba.' ('Small-scale miners should be given precedence in the allocation of mining rights in prospective areas').

[74] Speech to National Assembly, Dodoma, July 26, 1996. Cited by Lissu 3:6. Small miners' sympathisers continued to cite hugely such implausible numbers of miners and others involved in the expulsions throughout the stand-off.

[75] Lissu 3:9. At the time, Kahama constituency included Bulyanhulu.

scale prospecting were to be undertaken and some of the illegal pits bulldozed it is Sutton's view and that of the Canadian mission that there would be trouble.' [76]

In **June 1995**, the government's continued failure to move against the miners led Sutton Resources/KMCL to seek a High Court order to evict artisanal miners from Bulyanhulu.[77] In response, the local miners filed a counter-order. In September the High Court in Tabora ruled in favour of the miners' application. KMCL immediately lodged an appeal, which they subsequently withdrew. The CHC reported that Sutton's failure to find either politico-administrative or judicial leverage to assert their mining rights made it difficult for the company to raise equity on the Canadian stock exchange.[78]

In **July 1995**, a few months before the elections, Prime Minister Cleopa Msuya visited Bulyanhulu and is quoted as saying that "the government [recognized] the importance of both the small-scale and large-scale miners." He gave the miners and KMCL a two-week ultimatum "to sit together and find an amicable solution to the conflict or else the government [will] be forced to intervene and impose its own solution." The Prime Minister's call to establish 'modalities to exploit the minerals in the interests of both sides' required a compromise on the part of the Canadians that they were not prepared to make.[79]

A week before the presidential and parliamentary elections, '(the) CCM deputy campaign (manager) issued a press release saying (that) presidential candidate Mkapa would back small-scale miners at Bulyanhulu.' The Canadian High Commissioner reported to Ottawa that 'Mkapa began to speak of support to small-scale miners in terms of equipment and training.'[80]

In **December 1995**, Benjamin Mkapa won Tanzania's first modern multiparty elections with a (by Tanzanian standards) modest majority.[81] With this popular mandate, Mkapa was relatively free to push ahead with his policy agenda. Mkapa was intent on re-establishing 'donor confidence' after a number of major scandals undermined the second half of the Mwinyi regime, leading to a partial aid freeze. This he accomplished by launching a 'war' on corruption and by aggressively pursuing donor-driven liberalisation policies designed to attract foreign investment. Mkapa was seen as being 'more in

[76] Lissu 4 :2-3 citing DFAIT's Aubrey Morantz. Official correspondence between Dar es Salaam and Ottawa was obtained through a request lodged by a Canadian NGO under the country's freedom of information legislation. Lissu quotes this revealing (albeit highly censored) source *in extenso*.

[77] Lissu 4:7. Fourteen of the seventeen defendants were prominent leaders of the Miners' Committee and pit owners while the three others were Canadian-owned companies Tiomins (Tanzania) and Mill Ore Industries Ltd., and Robert Hall, a Canadian citizen, all suppliers of mining equipment.

[78] Canadian diplomacy included an attempt to link future Canadian aid to achieving closure on the mining rights stand-off (Lissu 4:5,7).

[79] Lissu 4:9. Note how the PM turns a problem created by government into a problem to be resolved by the contending parties. Inability to develop a coherent policy that is binding on all state actors and not diluted in implementation by personal or group interests is arguably one of the most serious weaknesses of the Tanzanian state.

[80] Lissu 4 :9. The CCM election manifesto is the source of the candidate's promises.

[81] Mkapa secured just under 60 percent of the popular vote. His main opponent, former Minister of Home Affairs Augustine Mrema secured over 20 percent, a feat never repeated since. These figures are thought to reflect systematic ballot rigging and electoral corruption.

tune with the changing times and more amenable to the needs and interests of foreign capital.' [82]

With more experience as a civil servant and diplomat than politician--he was a former Tanzanian High Commissioner to Canada--Mkapa was not beholden to any residual populist tendencies within the ruling party. Pressures from the Canadian diplomatic mission and the representatives of Sutton to resolve the Bulyanhulu impasse did not fall on deaf ears.

Having unsuccessfully lobbied the Mwinyi cabinet in 1994-95, the Canadians set about wooing Mkapa and senior officials, including the Minister of Finance Prof. Simon Mbilinyi, Minister of Energy and Minerals Dr. William Shija and Minister of Planning Dr Abdallah Kigoda.[83] The Canadian High Commissioner and the new Chairman of Sutton, Dr. Roman Shklanka, met the new President in April, 1996, when they portrayed the growing tensions between Sutton and the Bulyanhulu miners as requiring the GOT to protect Canadian citizens' safety, as well as, of course, Canadian commercial interests.[84]

However, the High Commissioner's subsequent claim that 'the Tanzanian Government is moving with speed and determination to provide protection to Canadian interests in the Northern mining belt' proved to be premature, as the government continued to prevaricate over supporting Sutton's bid for mining rights--which would mean removing the local miners by force if necessary--and relations between Sutton employees and local miners became increasingly tense.[85]

Sutton claimed that since Placer Dome left Bulyanhulu up to 20,000 small-scale miners had been working the site illegally. 'In order for large-scale exploration to begin, the illegal pits will have to be destroyed and serious trouble could arise.' The Canadian view was 'that the Government of Tanzania had failed to act on the Bulyanhulu miners because of the political exigencies brought on by the general elections of October 1995. There was no question of paying compensation since the miners were all 'illegals.' [86]

The Canadian High Commissioner and Sutton described local miners as 'illegals' on the grounds that they did not have title for their operations. In response, Lissu argues: 'Rather than operating illegally, the miners were encouraged at every level of government, including by then president of Tanzania who personally paid a visit to the area to encourage the miners.'[87] Sutton would have no grounds for clearing miners with legal claims, but we have seen that despite repeated lobbying, the Commissioner for Minerals had failed to accord Bulyanhulu mine owners PMLs (Primary Mining Licenses). In

[82] Lissu 4:10.
[83] Lissu 4:10.
[84] There were generally not more than four Canadians in Bulyanhulu at the time, one of whom was 'attacked' by a local miner. One version of the story is that he threw a punch at the Canadian, the CHC version is that he drew a knife.
[85] Lissu 4:4. Though the content of the exchanges between the Canadian High Commissioner and President Mkapa has been heavily censored, it is clear that she stressed the likely interest of other Canadian mining companies in investing in Tanzania, but that 'investor confidence' had been undermined by the events examined above
[86] Lissu 4:12-13. For one Canadian official 'a peaceable resolution will do much to satisfy the concerns of the international mining community, anything else will severely damage Tanzania's mining sector.' (ibid., page 14).
[87] Lissu 2:1.

turn, Lissu argues that Sutton's prospecting rights to Bulyanhulu were legally doubtful.[88]

Though the legality of the Sutton mining license was never seriously challenged, the eviction of the 'illegals' was the focus of the stand-off from June 1995 until the evictions in August 1996 *(*see **Figure 2.3** above). Although the miners' representatives seemed willing to negotiate over compensation, Sutton were not. Sinclair claimed 'that it was the Government of Tanzania that was "adamantly opposed to the idea, as it gave a semblance of authorization to an illegal activity…." ' [89]

Sutton's strategy to oust the 'illegals' through the law courts proved unsuccessful, and as 1996 progressed the company and the Canadian High Commissioner doubled their efforts to get the reluctant Tanzanian government to clear the 'illegals' from the mine, if necessary by force.

In **December 1995**, the unresolved impasse led to Sinclair's dismissal by Sutton's board of directors. He in turn asserted that "Sutton's managers have built no relationship on the ground with local personnel at the site of Bulyanhulu, a critical step in the development of any business in Africa. They have no experience building or managing an underground mine in Africa, and have attempted to manage Sutton's assets from afar." [90] Sinclair's proposal to enter into a joint venture with a bigger mining company was rejected by Sutton's board. Lissu maintains that the huge fall in Sutton's share price[91] was largely the result of negative publicity from the Bulyanhulu stand-off.

Sutton finally prevailed in the protracted stand-off with Bulyanhulu miners in early August 1996, when the Shinyanga RC ignored a court injunction ordering the evictions to stop on the grounds that the two sides still had a case *sub judice*. Word of the injunction had encouraged jubilant miners, who were already resigned to leaving, to go back to their pits. The RC's order to continue with the evictions led to violence and death, and claims that Sutton's bulldozers had buried as many as 54 miners alive.[92]

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[88] First, the GN 1984 reserving Shinyanga Region for small-scale prospectors and miners was never revoked. Second, the prospecting license granted to Sutton in September 1994 describes the contract area as 'Butobela Area, Geita District' in Mwanza Region. Bulyanhulu is in Kahama District, Shinyanga Region. Bulyanhulu is not mentioned. Third, two subsequent renewals of Sutton's prospecting license in 1997 and 1998 similarly described the contract area as Butobela, Geita District. Last, in 1996, MEM published a list of 39 prospecting licenses granted for Kahama District between 1993 and 1996, not one of which was granted in respect of Bulyanhulu, which is not even mentioned. (Lissu 3:3). These issues were raised nationally and internationally by LEAT, but have never been legally resolved.

[89] Lissu 4:16 citing a 2001 Canadian newspaper article. Before his ouster, Sinclair was at loggerheads with his board of directors, who refused to support his proposed USD3m resettlement plan for small-scale miners. Vogl sided with Sinclair (personal communication).

[90] This non-engagement with the local population contrasts to the current practices of companies such as Canada's Kabanga Nickel who approach local engagement and development issues with a seriousness that compares favourably with the efforts of mainstream development agencies (Interviewee K, 18/01/10).

[91] From USD 40.75 in March 1994 to USD 12.00 in December 1995.

[92] Lissu 1:1. Emphasis added. Amnesty International subsequently accused the GOT of the "extra-judicial execution" of over 50 miners. Barrick contends that the reports of burials were 'invented' by Mallim Kadau, chairman of the Miners' Committee, and that activist Tundu Lissu was motivated by 'political opportunism'. (Lissu is now an MP for the opposition CHADEMA party). Furthermore, both Barrick and the CHC accuse the Bulyanhulu Miners' Committee of attempting to extort money both from the small-scale miners and from Kahama (Kerr, no date). In 2001, Amnesty admitted it was "unable to substantiate the allegations of deaths."

According to Lissu: ‘In August 1996 the Tanzanian government authorities in collaboration with … Kahama Mining Corporation Ltd., (KMCL) forcibly removed *hundreds of thousands* of artisanal miners *and their families* from … Bulyanhulu ….’[93] A Canadian NGO claimed that tens, if not hundreds of thousands, of peasants were removed.’[94] ‘Removing’ what by Tanzanian standards would constitute the entire population of a large town presents an organisational and logistics challenge of gigantic proportions. No one has documented the migration and eventual relocation of this huge number of people. Had it happened, it would have provoked immediate international media interest and outrage, and prompted the involvement of human rights and humanitarian organisations. The number of miners forcibly removed must have been much nearer the 20,000 to 30,000 cited by Sutton.[95] Ultimately, however, what people think happened is more important than what ‘really’ happened.[96]

2.4 An outline political economy of Tanzanian gold mining, 1990-96

The above narrative covers the transition in Tanzanian mining policy from support for local, small-scale to foreign, large-scale gold mining. The period 1979-95 was mostly favourable to small-scale mining, which was destigmatised and partially formalised by the 1990 decision to buy gold officially at black market prices. This was a partial success in terms of reducing smuggling, but ‘by 1994 the bank’s buying procedures and the price offered could not compete with those of illegal buyers.’ An estimated 70-85 of gold continued to be smuggled out of the country. The number of private official gold buyers fell from 14 in 1989 to 6 in 1992, and increased thereafter, reaching 23 in 1995.[97] We suggest that gold smugglers formed part of the pro-small-scale mining lobby during the first half of the 1990s.

Sutton’s MDA of 1994 signalled that a policy transition was underway since the GOT’s support for small-scale mining was directly challenged by the move to give exploration and mining rights to a foreign company. The MDAs signed from 1997 onwards were arguably triggered by the GOT’s proven resolve to side with foreign GEM companies over mining rights.

Canada's *National Post* reported on the controversy in 2001 and detected no malpractice. A 2002 report by the World Bank’s Compliance Advisor concluded that no evidence to support the allegation existed.

[93] Lissu 5:12. Lissu presents circumstantial evidence suggesting that Chief Justice Nyalali was actively involved in promoting the evictions. He also cites Canadian sources suggesting that the Shinyanga Regional Police Commander carried out the RC’s order to ignore the injunction with the support of the Attorney General and the Inspector General of Police.

[94] MineWatch Canada, Kerr (no date). Emphasis added. Such loose use of terms (peasants!) is as inexcusable as the loose use of numbers. It is unfortunately the practice of many advocacy NGOs to exaggerate their case in order to advance it.

[95] The late Roger Hollow, a professional pilot, described how he flew a senior Sutton manager over the Bulyanhulu area at the time of the evacuations and observed some thousands of miners on the ground, but nowhere near the numbers claimed by civil society activists and newspapers (personal communication). Though a number of people died during the Bulyanhulu end-game, the notion that over 50 miners were buried by Sutton/GOT *on purpose* (i.e. “extrajudicial killings”) does not bear serious analysis.

[96] In turn, what people think happened reflects their predispositions and preferences. In section 4 we examine the role of ideology in shaping outcomes.

[97] TAN DISCOVERY 1997:17.

Support for small-scale mining is associated with the end of the *ujamaa* period (mid 1980s) and the regime of President Mwinyi that signalled the transition to a more 'liberal' economic policy regime. President Mwinyi is often taken to symbolise this transition from Tanzanian socialism to Tanzanian capitalism. Under Mwinyi, the Arusha Declaration was superseded by the Zanzibar Declaration that added 'businessmen' (and women – '*wafanyabiashara*') to the workers and peasants who were (supposed to) constitute the core membership and popular support of the ruling party.

CCM '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." [98]

The rationale for ruling party support for small-scale miners in a newly competitive political environment is easy to understand. For their part, small-scale mine owners and gold traders lobbied the government to continue to protect their interests. Lobbying increased during the period 1994 to 1996 in the face of growing evidence that (mostly exogenous) counter pressures were beginning to influence policy at the centre.

The stand-off over mining rights coincided with the 1995 presidential elections, which served to keep small-scale miners in the picture for a while longer than might otherwise have been the case. The unresolved struggle for supremacy is nicely captured in Prime Minister's Msuya's statement of July 2005, a few months before the elections, that "the government recognised the importance of both the small-scale and large-scale miners."

What the government lacked was the formal or informal coordination mechanism that could decisively resolve the policy dilemma. So it was resolved by the gradual tightening of state power over local interests while simply ignoring the law, under increasing external pressure. In the process, the role of the ruling party as protector of the interests of the poor was swept away by presidential power, supported by top ministers and the bureaucracy at MEM.[99] These actors pushed the World Bank's emerging policy agenda as well as the interests of Sutton and subsequent investors in large gold mines.

During 1994-96, the District Commissioner (a presidential appointee) and the local Member of Parliament lobbied the Minister and Deputy Minister of Water, Energy and Minerals on behalf of Bulyanhulu mine owners, as did the Bulyanhulu Small-Scale Miners' Committee. The small-scale mining lobby in Bulyanhulu and elsewhere represented the interests of a local 'petty bourgeois' class of mine owners and gold traders. Pit owners and their agents sold their gold to (mostly illegal) gold traders. These had a material stake in lobbying for the continuation of small-scale mining, and nothing whatsoever to gain from their removal in favour of one giant gold mine.[100] The District

[98] Lissu 2:1 quoting *Chama cha Mapinduzi Program: Policy Direction in the 1990s*, National Executive Committee, Dodoma, December 1992, paragraph 61.

[99] The decline of CCM as a key policy-making forum paralleled the end of Ujamaa and single-party rule, symbolised by Nyerere's gradual retirement from 'active politics.' See our introductory paper to the Tanzanian Business and Politics stream.

[100] Talking about Geita, Mpinga (1999) notes: 'At satellite mining towns in Tanzania, millions of shillings often change hands, skilfully wrapped as "cigarettes" in branded cartons to elude detection. They are usually sent to gold-buying agents by principals sitting miles away from the mining sites. These are the lords of the underworld in the current rush for gold.'

administration and police would also hope to obtain informal rents from continued gold smuggling, but might also anticipate formal and informal benefits from the establishment of a big mine. In any event, the local administration took orders from the political centre.

We have not seen any evidence of organised resistance to foreign domination by the mine workers themselves: miners' formal organisations were representatives of mine owners, not mine workers. Following a 1983 policy paper, the government promoted the creation of Regional Miners' Associations (REMAs). REMAs were designed to register, supervise and control small-scale mining operations. According to Chachage (1995), REMAs failed to recruit many claim holders, who considered them organs of the MEM. Subsequently, the GOT required membership of an association as a condition for accessing small loans under a USD 2.2 million component of the World Bank financed Mineral Sector Development Technical Assistance Project.[101] It is striking that the Bulyanhulu case was not taken up by mine owners more widely. Lissu (8:20) describes the Federation of Miners' Associations of Tanzania (FEMATA) as 'a rather ineffective umbrella grouping of the regional miners' associations.'

During the 1990s, many prospecting licences were taken out in promising ('prospective') mining areas for speculative purposes, particularly when the interests of big mining companies in developing a significant mine became known. In 1994, the MEM granted 132 prospecting licences, rising to 192 in 1996 and a record 351 in 1997.[102] Some small claims were bought up by bigger companies, yielding significant rents. Rather than commit to buying out (real or bogus) claim holders, Sutton, backed by the government, declared all miners 'illegals', so that expulsion rather than compensation would be the solution to the rights issue. It added nothing to Sutton's local reputation that they were successful in this zero-sum strategy, but it probably saved them a lot of money. [103]

Roughly, if Mwinyi's presidency signalled the ascendancy of a merchant capital ideology over Nyerere's African socialism, Mkapa's arrival represents the ascendancy of industrial and finance over merchant capital. As part of its formal endorsement of globalisation, President Mkapa's regime strongly supported foreign GEM companies. Mkapa embraced the view that facilitating FDI in modern mining would have major economic benefits in terms of FDI, multiplier effects on the national economy, technology and skills acquisition, tax receipts and foreign exchange earnings. To characterise the Bulyanhulu conflict as one between (large numbers of) Tanzanian miners and a Canadian mining company is to elude the essence of the conflict, which is really between the petty commodity and capitalist forms of gold mining.

[101] The loans were never disbursed. Sembony 1998

[102] See Part 1 of this report, 2009:6. We cannot say what proportion of PLs were speculative as opposed to foreign direct investment-related.

[103] According to Kerr (no date): 'In a meeting with the Tanzanian Prime Minister on June 21, 1995, the Canadian High Commissioner indicated that miners could be relocated using funds from the Canadian International Development Agency (CIDA). But, according to a CIDA spokesperson, CIDA never had a project or provided funds. To date, the Tanzanian government has compensated only 56 miners.

Elsewhere in Africa these contradictions were resolved in favour of capitalist mining a long time ago.[104]

A final stakeholder with regard to the struggle for land rights is the population of farmers and cattle herders who live in the vicinity of mines. Claim holders' and pit owners' were organised to resist Sutton, but the interests of the indigenous population were not well articulated. Very few villagers ever received compensation in Bulyanhulu. Since the 1997 Mining Policy and 1998 Mining Act, companies planning big mines have been legally bound to pay compensation to local populations forced off their land to facilitate exploration and mining. The process of identifying who should be compensated how much may be long and complex, with the mines having an incentive to keep both the numbers and the compensation to a minimum.

The practice has been for the mining company to pay compensation through the local District Council, leading to suspicions of official rent-scraping by those compensated. **Box 2.2** describes the compensation process in Geita. The compensation process has been hotly debated. The mining companies are currently using WB standards for compensations, and are compensating for the land and what is on it. They are also using independent consultants specialising in relocation to take over this process because it was so badly done before. The ones who lose out are those who were only squatting and cannot prove they owned the land they were living on.[105]

Box 2.2: Losing land rights, obtaining (some) compensation

Mining companies planning major investments are obliged by law to undertake detailed **Social and Environmental Impact Assessments** (SEIA) as a precondition for obtaining mining licenses. They also have to present an **Environmental Management Plan** (**EMP**). **Environmental Impact Assessments** (EIA) are the subject of **Guidelines and Procedures** issued by the **National Environmental Management Council** (**NEMC**) in 1997. In the case of its **Geita Gold Mine**, **Ashanti Goldfields** drafted an **Environmental Impact Statement** (EIS) in 1999, the year it signed its MDA, based on reported consultations with residents of affected villages. The EIS consultants' report to Ashanti reads in part: 'There has not been widespread opposition to the relocation provided acceptable compensation is given for houses and crops lost by the development.' Geita Gold Mine paid over USD 5m to a government account for resettlement of 1,800 villagers from **Mtakuja ward**. According to Lange: 'It turned out that at least 857 people who were entitled for compensation never received their money. Apparently, the lists [of beneficiaries] contained fake names, while people who were actually living in the village were never registered.' The **Prevention of Corruption Bureau** investigated claims of corruption, and two GGM employees and a number of civil servants were found guilty. Lissu 'witnessed considerable anger and bitterness among those affected… Everywhere the cry is the same: Compensation … was grossly inadequate […], unfair and … unjust.' Evacuees had 'not been given alternative settlement areas.' The **District Commissioner** had told them the government had no land to resettle them 'and that they were free to go and settle wherever they want.'

Source: Lange 2002, 2011; Lissu (no date).

[104] For historical reasons, there are no artisanal mines in South Africa or Zimbabwe. Handley (2008:145) describes how, in late nineteenth century Gold Coast (later Ghana), 'the mines that eventually became Ashanti Goldfields were owned by three Fante entrepreneurs … and employed 200 men. Unable to access credit to expand the mine, they sold their concessions to an Englishman. The Asante continued to mine gold using labour intensive methods 'up to the late twentieth century'.

[105] Informant F.

The influx of large numbers of artisanal and small-scale miners may have both positive and negative consequences for local communities. While the local economy is stimulated, there are potential conflicts over access to agricultural land for exploration and mining, and fights over rival mining claims between locals and outsiders.

Some of the violence surrounding the Bulyanhulu evictions can be put down to score settling between local inhabitants and immigrant miners, as described above. It is unlikely, however, that resistance from local farmers and pastoralists could make much difference in the struggle for mining rights, if only for the fundamental reason that the state has the final say in land use and can overrule any customary claims, however legitimate.[106] It would take unprecedented levels of community solidarity, commitment and mobilisation to change this state of affairs.[107] However, reports of harassment of local people and claims of serious environmental pollution by big gold mines have contributed to their negative public image, with consequences described in **Part 3**.

2.5 Mining rights and the investment environment

Hundreds of thousands of poor, young, Tanzanian men routinely risk their lives for a subsistence wage, working in small, dangerous pits[108] whose owners pay a sizeable resource rent to the pit claim holder. An unknown but large number of such young men and their dependents had their livelihoods disrupted or ruined as a result of foreign mining companies obtaining exploration and mining rights in mineral-rich locations, starting in the early 1990s. Sutton Resources--with the eventual support of the Tanzanian state--was the first foreign company to enforce its exploration and mining rights in the face of organised local opposition.

The process was messy and long drawn out, in part because the Tanzanian state was sending different signals to the two opposing sides, reflecting the contradiction between a declining populist ideology in the ruling party and the emerging pro-liberalisation voices both at home and abroad. The Mkapa presidency ushered in the decline of the ruling party as the ‘voice of the people’ in the national policy debate, including mining policy. [109]

On the Canadian side, the inexperience and undercapitalisation of Sutton Resources, and internal conflicts resulting from the Bulyanhulu impasse, weakened Sutton’s capacity to assert their property rights over local miners. Lissu suggests that Sinclair’s refusal to take his 1995 ouster quietly led Sutton’s board to redouble their efforts to reach closure over Bulyanhulu. Failure in this could have led to their own removal, since already nearly half Sutton’s shareholders sided with Sinclair’s views of Sutton’s poor

[106] The weakness of customary title in the face of state powers to allocate land to mineral explorers and mining companies is discussed in some detail by Lange (2011).

[107] Lissu documents a case where a big mining company evicted villagers without compensation (Lissu ‘The Bigger Report’, pages 39-40).

[108] Multiple deaths are common in gold and other mines. One example: in March 2009, ‘at least 20 small-scale miners’ died in Mugusu, Geita District after the wall of the mine collapsed. There were no survivors (Masuguliko 2009).

[109] In a number of ways, President Mkapa’s relationship to his own party and previous regimes compares to those of Mrs Thatcher in the UK the previous decade.

performance. This would explain the heightened pressure to resolve the conflict in advance of Sutton's AGM at the end of July, 1996.[110]

The unprecedented efforts expended by successive Canadian High Commissioners on behalf of Sutton suggest a harmony of commercial and diplomatic interests that requires an explanation. **Box 2.3** gives further some information on Sutton Resources.

Box 2.3: Sutton Resources' human resources

Founded in 1979, Vancouver-based **Sutton Resources Ltd** was a junior mineral exploration and mining company quoted on the **New York Stock Exchange**. Most of its properties were in North America. In 1996, it held interests in Tanzania, Guyana, the USA and Canada. None of its properties were in commercial production. In May 1999, Sutton was acquired by **Barrick Gold** in a hostile takeover for nearly USD300m. **James Sinclair,** Suttons' founder and one-time Chairman, is a high-profile entrepreneur and writer on international investment issues. In 1996 Sinclair co-authored *'BOOM: Visions and Insights for Creating Wealth in the 21st Century'.* 'BOOM' is described as a 'landmark book on globalisation', promoting neo-liberalism with an ethical dimension. **Frank Vogl,** the book's co-author, is a one-time Board Director of Sutton and a former World Bank staff member. Vogl is also founder of **Vogl Communications Inc**., co-founder and board member of **Transparency International (TI)**. During the review period he advised TI in its efforts to support President Mkapa's anti-corruption strategy (1996-7) while also lobbying for Sutton. **Vogl Communications** tendered (unsuccessfully) for a contract to help popularise the privatisation of Tanzanian state corporations. While James Sinclair was said to be close to President Mkapa, both Sinclair and Vogl were friends of **Sir George Kahama**, the first Chairman of the **Tanzanian Investment Centre.** After his ouster from Sutton, Sinclair retained his interest in Tanzania through **Tanzania Royalty Exploration Corporation**, a listed Canadian company which holds 121 prospecting licences covering nearly 11,000 sq. km. of the **Lake Victoria Greenstone Belt**. Kahama's son **Joseph Kahama** is Director and President of Tanzania Royalty. His responsibilities include 'maintaining good relations with government, vendors, and the Company's various business partners in Tanzania.' Rancanelli (2008) paints a highly unflattering picture of Tanzania Royalty.

Sources: Canadian Securities Administrators www.sedar.com

AEI Speakers Bureau www.aeispeakers.com/

Tanzania Royalty Exploration Corporation www.tanzanianroyaltyexploration.com/

Mining Watch Canada www.miningwatch.ca/

Rancanelli article www.usrarecoininvestments.com/

Tougas (2008) describes the dramatic expansion of Canadian mining interests in Africa. There are more than 1,200 mining companies listed on the Toronto Stock Exchange, over a thousand of which are 'junior' exploration companies. Canadian mining investments in Africa rose from USD 233 million in 1989 USD 2.8 billion in 2001 and USD14.7 billion in 2007. In 2001, Canadian companies had operations in 24 African countries, rising to 35 by 2007, making Canada the major source of mining investment in the continent. Africa accounted for 11% of Canada's_USD 26 billion in cumulative mining assets in 2001, rising to 17% of USD 86 billion by 2007.[111]

This helps explain the Sutton phenomenon. Tougas argues that: 'This … increase [in Canadian investments] is the result of political decisions of a

[110] In September 1995, drilling results at Bulyanhulu yielded a reserve estimate of 2.49 million ounces of gold valued at more than USD750 million.

[111] Tougas 2008:1-2. Over 90% of Canadian investments were concentrated in eight countries: South Africa (26%), DR Congo (18%), Madagascar (14%), Zambia (10%), Tanzania (10%), Ghana (67%), Burkina Faso (5%) and Mauritania (3%).

government under considerable pressure from powerful mining associations, most notably the aforementioned juniors.'[112] Mining investments abroad benefit from various tax incentives and financial support.

The CHC role in promoting Sutton's interests follows from this aggressive promotional policy: 'Canadian diplomacy is very much at the service of business interests and the general extension of Canadian influence within this [mining] domain.'[113]

Sutton's 'victory' over the 'illegals' was a significant milestone in the tortuous journey towards foreign dominance of GEM in Tanzania.[114] When President Mkapa formally opened Bulyanhulu in July 2001, Randall Oliphant, Barrick Gold's President and Chief Executive Officer said, "When we came to look at Africa for mining investment, our destination of choice was Tanzania. Why? Because Tanzania has become a role model for Africa and the world in terms of creating progressive economic, investment and legal climate for mining companies." Mr. Oliphant expressed his thanks to the President and government for their crucial contributions to the mine's success.

Like Sutton from whom they bought Bulyanhulu, Barrick were investing in Africa for the first time. Perhaps learning from past mistakes, Barrick noted that 'an intensive programme of community and social development is underway, in collaboration with the local authority and specialist NGOs. Housing, health care, education, small business development, water supplies, and power provision are all part of a long-term co-operation between Kahama Mining and the local communities, with the aim of benefiting tens of thousands of people living in the region.' [115]

Since Sutton 'won' the Bulyanhulu battle, there have been no significant examples of politically motivated or coordinated attempts to prevent mining operations. Parliamentarians from mining areas have sometimes taken up the causes of communities or miners in conflict with big gold, for example, over claims of eviction without compensation or environmental pollution, but to little effect. The occasional invasion of mines by armed groups has led to loss of life and property, and in extreme cases has disrupted production. While such events reveal the weaknesses of big gold's own security systems, and the capacity of the state security forces to protect the mines, they do not constitute a serious threat to mining rights.

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[112] Tougas 2008 :3. He continues: 'since the 1990s, under the influence of industry associations, the Canadian state has implemented a comprehensive strategy to support the expansion of investments and activities abroad, … including measures targeting businesses and investors.'

[113] Tougas 2008:5. Tougas claims: 'In June 2008, the staff of the … High Commission energetically intervened in Tanzanian parliamentary affairs to ensure that the country's politicians rejected the conclusions of the Presidential Mining Sector Review Committee on revisions of the mining sector.'

[114] Since events in Bulyanhulu were thought to have influenced Sutton's share price during 2004-05, we were interested to see if the events of August influenced share prices. Sutton's share price rose 25% from 2nd to the 16th of August 2006, but stagnated or fell thereafter, and was lower in November than in August. Thanks to Adam Sneyd and Pat Wight for tracing: http://infoventure.tsx.com/TSXVenture/TSXVentureHttpController?GetPage=MarketCapDailyTradingSummary&SECURITY_ID=32675&MARKET_ID=VSE&SEC_SYM_SID=1&HC_FLAG1=&HC_FLAG2=&StartMonth=8&StartDay=2&StartYear=1996&EndMonth=11&EndDay=22&EndYear=1996&x=18&y=10

[115] Barrick 2001. The Barrick Press Release does not report what President Mkapa had to say.

The pro- and anti-FDI positions in Tanzania discussed above are not specific to the gold mining industry, although, because of the large investments and large numbers of local miners involved, these continue to be the most hotly contested. The violence and disruption resulting from the Bulyanhulu conflict confirmed public suspicions of the motives of foreign mining companies, and the perception that the costs of foreign investment outweigh the benefits, that have continued to date, fuelling public policy, parliamentary debate, and civil society activism locally and abroad.

Sutton was ill-equipped to play the role of stalking-horse for international gold mining companies that were keen to obtain secure mining rights in Tanzania. Sutton was a relatively small company, internally divided between 'doves' (Sinclair) and 'hawks' (the board of directors) on the issue of how to deal with local miners' compensation. The stand-off with local miners made it difficult for the company to raise equity capital in Canada. A better candidate to unlock mining rights for 'big gold' would have been a company with experience of mining in Africa, with plenty of money to invest in a less confrontational strategy[116] and prepared to spend time and money in community relations / local development and compensation for displaced miners. Belatedly, Barrick changed its management a few years into operations by recruiting numerous South Africans with continental experience.

Partly as a result of these two sets of factors—limited local support for FDI in mining and a take-no-prisoners approach by Sutton and the CHC—the business environment in which the main foreign actors in gold exploration and mining found themselves working after mining rights were secured at Bulyanhulu has been largely hostile to their perceived interests. Apart from President Mkapa and a few senior politicians and officials, the GOT has found it politically expedient to go along with the more critical narratives. Thus, on becoming Tanzania's fourth president in December 2005, Jakwaya Kikwete promised 'that mining contracts and laws regulating mining activities would be reviewed.'[117] This has meant reviewing tax and other incentives to the mining industry with a view to wresting a greater share of the large profits that the mining companies are thought to make.

Finally, let us re-examine Khan's argument that, as long as the interests of national and local elites in mining areas are aligned, conflicts over mining rights will be 'relatively muted', since the state retains the radical title in land and what lied underneath it.

First, Tanzania is not characterised by powerful local elites that can mobilise substantial support to challenge state power over issues related to land or other natural resource use. The most relevant 'elites' in upcountry Tanzania are the regional and district commissioners appointed by the president and the local government authorities that receive the bulk of their finances from central government.

Second, competitive politics was not of major relevance at the time, although it is probable that the December 1995 elections served to delay the resolution of the Bulyanhulu stand-off to avoid embarrassing the ruling party. Two local ruling party politicians were quite vocal in championing the interests

[116] It is clear that small-mining interests were prepared to negotiate with Sutton, with a view to receiving compensation for their investment and the value of their claims. Despite this, Sutton stuck to their zero-sum approach based on their claim that all local miners were 'illegals'.
[117] See **Timeline** below.

of 'the miners', but this took the form of lobbying ministers rather than mass mobilisation. Only after the alleged killings did the opposition use Bulyanhulu for overtly political purposes.[118]

If 'local elites' did not significantly affect outcomes, why was the allocation of mining rights to Sutton such a drawn-out and conflict-ridden process? We have tied to show that President Mwinyi's approach to liberalisation was to legitimate merchant capitalists. Artisanal mining was legalised and, in the absence of any significant external demand for mining rights, whole regions were given over to small-scale mining activities. Though seemingly favouring small-scale *miners* the greatest beneficiaries were claim owners and traders in gold, most of which continued to be smuggled to Kenya. This approach became more and more anachronistic as external and internal actors increasingly promoted financial and industrial interests rather than merchant capitalists'. It was left to President Mkapa to override the vestigial populism inherent in President Mwinyi's policies by coming down strongly in favour of FDI-driven mining rights over those of small-scale and artisanal miners, the position taken in the World Bank's mining policy of 1992.

However, the apparent improvement in the GEM investment climate (securing legal mining rights) may have had the unintended consequence of subsequently undermining the business environment and thus the long-term profitability of large-scale mining. Formal recognition of mining rights is a necessary but not a sufficient condition for long-term profitability. We address this issue below.

2.6 Capacity or corruption?

Our factual narrative is consistent with two broad interpretations of the functioning of Tanzanian state institutions. There is plenty of evidence of poorly functioning policy making and implementation in the Bulyanhulu case. The 'public management' approach argues that formal institutions at all levels are weak because they are under-resourced and run by under-qualified and under-motivated personnel. Consequently, policy making and implementation are weak and uncoordinated. A governance approach would argue that personal interest, patronage and corruption rather than consideration of the public interest drive decision-making and that there are inadequate checks and balances to sanction compromised policy–makers and implementers.

We believe the operational capacity and governance interpretations are not incompatible and that both have explanatory power. If we adopt a governance perspective, we may ask what personalised or collective motives could lead Tanzania's political elite from a 'Mwinyi' to a 'Mkapa' policy. The popular explanation is corruption. Sutton accused the Miners' Association of demanding bribes, but we have no independent evidence of this. A number of senior Tanzanians have been appointed to GEM company boards of directors, but this does not constitute corruption. Sutton made it their

[118] In November 1996 the opposition UDP party, which enjoyed significant support in Mwanza Region, set up an investigation into Bulyanhulu and used its critical findings as part of their campaign against CCM in the by-election in Magu (Shinyanga) that UDP Chairman John Cheyo won quite comfortably in early 1997. Mkapa played into Cheyo's hands before the by-election by denying 'the allegations of deaths at Bulyanhulu and ordered the arrest and prosecution of any person found talking about the alleged burials.' Cheyo duly challenged Mkapa to have him arrested (Lissu 6:9).

business to be close to top decision-makers but it is highly unlikely that they resorted to bribery, or that bribes were solicited.[119] We present evidence of dubious dealings between mining companies and the Tanzanian state in **Part 3** below.

[119] Both Sinclair and Vogl were well-known for their commitment to transparent and virtuous business.

Part 3: The gold exploration and mining business environment

3.0 Introduction

Part 2 described the rise and fall of artisanal and small-scale mining in Tanzania during the period 1990 to 1995 and the 'victory' of big gold in the struggle for mining rights in Bulyanhulu (1994-96). Here we turn our attention to the determinants of profitability for large-scale mines during the last fifteen years (1995-2010).

3.1 The GEM business environment

In our introduction, we proposed that our *intermediate independent variables* should consist of the formal and informal relations between state actors (politicians, government officials) and GEM. These relations cover acquiring and retaining exploration and mining rights, regulation and taxation. The preceding review of the process of acquiring gold mining rights leads us to the second part of our research question: ***by what formal and informal means have Tanzanian state actors and GEM investors influenced profitability?***

This question encompasses the policy, legal, and regulatory performance of state institutions. *Regulatory performance* can be assessed *inter alia* in relation to the tax and royalties regime, in auditing gold production and sales, and in environmental protection and social development.

Table 3.1 profiles the large mining companies that came to dominate the Tanzanian gold sector after 1995.

Table 3.1: Profile of major gold mines in Tanzania

Name	District, Region	Owner	Opened	Invest-ment (USDm)	Reserves million (ounces)	Production capacity (ounces)	Life of mine (years)
Bulyanhulu Gold Mine	Kahama, Shinyanga	Barrick Gold	2001	610	13.2	330,000	30
Geita Gold Mine	Geita, Mwanza	AngloGold Ashanti	2000	450	16.95	560,000	20
North Mara Gold Mine	Tarime, Mara	Afrika Mashariki Barrick Gold	2002	252	3.8	267,000	12
Golden Pride Mine	Ngeza, Tabora	Resolute	1998	370	2.47	180,000	12
Tulawaka	Biharamulu, Kagera	Pangea, Barrick Gold	2005	50	0.565	120,000	5
Buzwagi	Kahama, Shinyanga	Barrick Gold	2009	400	2.4	225,000	10

Source: Various

The main foreign investors during this period are Canadian (Barrick, four mines), South African/Ghanaian (AnglogoldAshanti ;AGA], one mine) and

Australian (Resolute, one mine). AGA owns the Geita Gold Mine in Mwanza Region, and Resolute owns Golden Pride in Nzega District, Tabora Region. **Box 3.1** describes Barrick Gold.

Box 3.1: On Barrick Gold

Barrick Gold, the biggest gold mining company in the world, was founded in 1983 by **Peter Munk**, a Hungarian who settled in Canada in 1944. Prior to the 2008 global financial crisis, Barrick was worth **USD38 billion**, with 30 mines on five continents 'in such far-flung places as **Australia, Tanzania, Chile and Papua New Guinea**.' Barrick grew by acquiring other companies, first in Canada and after 1994 in the United States and Chile. In 1999, Barrick bought Canadian company **Sutton Resources**, owner of the **Bulyanhulu** mine, for **USD280m**, and in 2006 it bought **Placer Dome**, another Canadian company, for **USD10 billion**. On March 31, 2009 Barrick had the gold industry's highest credit rating, a cash balance of **USD2.1 billion**, **USD1.5 billion** in undrawn credit, and net debt of **USD2.9 billion**. In 2003, it cost Barrick **USD174** to produce an ounce of gold, but this had **more than doubled** by 2008. Costs reached USD482/ounce in the final three months of 2008, reflecting increases in the cost of inputs such as fuel and tyres.

In Tanzania Barrick operates **Bulyanhulu** in Kahama District, (Shinyanga Region), **Tulawaka** in Biharamulo District (Kagera Region), and **North Mara** in Tarime District, (Mara Region). The North Mara mine consists of three open-pit deposits. The company is developing a fourth mine at **Buzwagi,** also in Kahama District. Barrick's four mines produced over 700,000 ounces of gold in 2010.

In January 2009, the **Norwegian Pension Fund** sold its CUSD229 million worth of shares in Barrick as a result of unresolved environmental concerns over the **Porgera** mine in Papua New Guinea.

In March 2010, Barrick listed a new company, **African Barrick Gold**, in an initial public offering on the **London Stock Exchange**. ABG's assets are Barrick's Tanzanian mines. Barrick retained **74 per cent** ownership of the London company and sold the rest for **£581 million**. Some observers saw the move as a way of separating the underperforming Tanzanian assets from the parent company. According to the **Economist Intelligence Unit**, some observers think 'the company has become too big and needs to refocus. There are also reports that some in the company feel that its assets are undervalued and that spinning off the Tanzanian assets, which some North American investors feel are too risky, will partly solve this problem. ... Barrick may also be hoping to exploit a market where large gold mining companies are currently trading at a premium because of their scarcity and an extended period of high global gold prices.'

Deneault et al. document in great detail what they term Canadian oil and mining companies' (including Barrick) "looting, corruption and criminality in Africa", citing examples from Tanzania, DRC, Mali, Ghana, and elsewhere. Barrick is suing the book's publisher in a $6-million defamation case scheduled to begin in September 2011.

Source: Economist 2008. 'Jolly gold giant', London, 19 April; Bernard Simon 2008. 'Jamie Sokalsky: CFO who found the Midas touch', *Financial Times*, London, 25 March; Barry Sergeant 2009. 'The pain of looking for gold'*, African,* Dar es Salaam, 16 May; *Barrick News*, Issue 3, 2009; Mining Watch Canada 2009; Economist Intelligence Unit 2010; Deneault et al. 2008; Hooper 2011.

These and many smaller companies also invested in exploration, particularly in the LVGA. If the struggle for mining rights is associated with Sutton Resources, the struggle for mining *rents* during the last 10-15 years is largely associated with these three companies, Barrick in particular.

The quality of the business environment influences the level of profitability. Measuring this influence is, however, problematic, for reasons discussed in section 1 above.[120] There are three possible sets of indicators of profitability: published economic and business data, the perceptions and opinions of key players, and revealed preferences, including investment decisions by current investors (which are likely to reflect current levels of expected profitability). By triangulating these three sources we hope to be able to draw some plausible conclusions on the ways in which the business environment influences profitability.

Below we proceed as follows. First, we examine some aspects of taxation. The common view is that mining companies pay too few taxes and are tax avoiders.[121] We do not enter this debate, but try to draw some concrete conclusions using the approach proposed above. We then look at the important issue of regulating GEM. Although in the previous section we chose to focus on the key issue of mining rights, exploration licencing also has a strong property rights dimension. Below we examine the relationship between issuing exploration rights and down-stream investment in mining. We then review environmental and social issues from the perspective of profitability.

3.2 Taxation

Taxation has a major impact on large-scale gold mining incentives and profitability, and is the main issue that has divided the GOT and big gold during the last decade. While the price of gold is the main global determinant of GEM profitability, the number and level of taxes are the main drivers of profits in a given jurisdiction. Here we examine this issue in the Tanzanian context.

It would be quite tedious and not very enlightening to review individual taxes and changes in tax rates and conditions facing mining companies over time. Such an exercise would tell us little about profitability, since what matters is the aggregate impact of taxation on mining profitability and incentives over the life of the mine. This, of course, cannot be known until the end of the mine, which may be after 10-20 years of operation, or more. To date, we only have one large mine reaching the end of its life--Resolute's Golden Pride--summarised in **Box 3.2**.

Box 3.2: Resolute's 12-year profit and loss account

The **MDA** for **Resolute Tanzania's Golden Pride** mine in **Nzega**, **Tabora Region** was signed in 1997, and the mine was opened in **November 1998**. Golden Pride was initially a joint venture between **Resolute Ltd,** [Australia], **Samax Resources Ltd,** [Britain], **Resolute Tanzania Ltd** and **Mabangu Ltd**. Golden Pride had estimated gold reserves of **2.7 million ounces**. Resolute invested **USD 48 million** in developing the mine. In 1998, **Ashanti Goldfields** acquired Samax, who owned 50 percent of Golden Pride. The following year, Resolute bought Ashanti's 50 percent share. By 2002, the company had produced some **650,000 ounces** of gold worth approximately **USD 180 million**. The mine produced **44 tonnes** of gold between 1998 and 2008. In February 2008, Resolute purchased **Iamgold's**

[120] One major constraint is the difficulty of measuring short-run profitability for individual mines, discussed above.

[121] According to Lange (2002:38) citing Andrews (1998): 'Comparative research on mining in developing countries has shown that the bargaining power of government and the foreign investor is often imbalanced, resulting in "tax leniency." ' This may be true, but we see no way of addressing the question empirically. Tanzania offers tax breaks to mining companies as incentives. When do incentives end and 'tax leniency' begin? See the following discussion for a more relevant point.

34% equity stake in the **Nyakafuru JV**, giving the company 100% of the main **Nyakafuru Reefs** resource.

But Golden Pride has not proved as profitable an investment as originally hoped. As of October 2009, no dividends had been paid to **shareholders.** A combination of external and internal factors more than offset the boost to income through gold price increases. (1) Although many costs are incurred in USDs, the more than 50 percent **depreciation of the Australian dollar** had a serious impact on financial returns. (2) It also proved more expensive to mine the (quite low-grade: 1-2.5 grams per tonne) ore body than had been expected, costing up to **USD700** to produce an ounce of gold. (Costs were USD449 an ounce in 2008). (3) High **security costs** and risks also reduced profitability: of a total of 35 expatriate staff, 15 (one third) are security officers. Despite the high security, in April 2009 armed robbers led by a former mine security guard stole 3,500 ounces of gold worth more than **Sh 4 billion** from the mine. Lastly, (4) Resolute have experienced major protracted **disputes with TRA** over delayed and contested VAT repayments and fuel taxes, totalling well over USD20 million USDs (and counting, given accumulating interest and legal payments). Resolute's view is that TRA's reasons for refusing to repay VAT payments are frivolous and arbitrary. A decision made by one official may be reversed by his successor. Arbitrators and law courts are considered biased. Resolute were a major beneficiary of the 15% additional development capital allowanced discussed in the text. Without this tax break, Golden Pride would have been an even more disappointing investment.

Source: www.resolute-ltd.com.au.; interview D

Despite promising finds as recent as 2007, Resolute--the third largest gold mining operation in Tanzania--failed to find additional deposits that could be mined economically, and are planning to close Golden Pride in the next 1-2 years.[122] They will probably not have made a significant profit. Their major complaint has been with TRA, whose officials are widely accused of extortion, arbitrariness in tax assessments, technical incompetence, and sloth. There is a possibility of seeking international arbitration to settle outstanding tax cases. In 2008, a top Resolute official lobbied the President over the tax issue, and the Minister of Energy and Minerals is quoted as saying: "let the law take its course" on the same issue. Resolute consider the government 'unhelpful and untrustworthy.'[123]

3.2.1 Unredeemed capital expenditure

The Resolute/Golden Pride story suggests that tax issues are a key dimension of GEM profitability.[124] A very important tax issue affecting profitability relates to deductions for capital development expenditure. It is normal for capital investments to be written off against income for purposes of tax calculations. It is exceptionally generous to grant *additional* deductions over and above total capital outlays, but this is what the first three big gold mines obtained in the Financial Laws (Miscellaneous Amendments) passed in the National Assembly on 26th August, 1997.[125] The fifteen percent additional

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[122] When it was announced three years ago (2006) that Golden Pride was going to close, Prime Minister Edward Lowassa called Resolute 'a bunch of thieves'.

[123] Interviewee D.

[124] Exploration companies also have major problems with the TRA, including the requirement to pay profits tax in advance of making any profits.

[125] Part III, Section 18 of the Amendment reads: '(1) For the purposes of deduction of development capital expenditure in ascertaining the income of a person derived from mining operations, an additional capital allowance of fifteen per centum per annum shall be applied to the balance of unredeemed qualifying capital expenditure forming part of any deficit brought forward and allowable as a deduction for such person at the commencement of each year of income.'

‘capital allowance’ could be carried forward to subsequent years, thus putting back the date by which mining companies would begin paying corporation tax.

This is by far the most significant and controversial tax break enjoyed by the foreign mining companies (FMCs). Interviews with key players show that the 15 percent additional deductions *were not discussed* by the teams[126] negotiating MDAs with individual companies, and did not feature in the MDAs that were eventually signed: they were enacted by parliament.[127] They therefore came as a serious shock to key members of these teams on the Tanzanian side, who suspected each other of behind-the-scenes manipulations leading to the 1997 Financial Laws.[128]

The 15 percent ‘bonus’ was enjoyed by Resolute, Afrika Mashariki, Barrick and AGA. There are conflicting stories concerning the origins of these allowances. One interviewee claimed that the main objective of the protracted tax negotiations was to obtain a tax regime comparable to that in Australia, but that the 15 percent had never been requested, and that investment would have taken place without the additional benefits.[129] A second version of the story is that the additional allowances was the brainchild of the GOT’s external advisor and was designed ‘to compensate/substitute for a tax position which was normal in “competing African jurisdictions,” and would act as a further incentive to FDI. This is also the official version of the story. Commissioner for Minerals Peter Kafumu said that “this clause was put in the contracts as incentive to attract investors through advice from World Bank [sic].” [130] This version is endorsed by one of our FMC informants, with the rider that his company lobbied actively for the additional allowances.[131]

The additional allowances certainly saved the first mining companies a lot of money. According to one estimate, Barrick/KMCL (Bulyanhulu) may have benefited from the additional allowances for as much as USD 30 million a year, or USD 150 million over the period 1997 to 2001, when it was revoked

[126] On the Tanzanian side, the negotiations were carried out by representatives from the Ministry of Energy and Minerals (Mines Department), TRA, the MoF, the Attorney General and the Bank of Tanzania. Interviewee I, 11/12/09

[127] We have not found evidence that the 15 percent allowances issue was picked up by parliament or civil society at the time. Some senior officials who should have known about it, did not, and by the time they did, the first three big mines had already saved a lot of money.

[128] The committees preparing the MDA’s were advised on legal issues by representatives of the Attorney General’s Chambers and on fiscal and financial issues by the Ministry of Finance. One informant suggested that Andrew Chenge, the AG throughout the 1995-2005 Mkapa presidency, and Daniel Yona, Minister of Finance during Mkapa’s first term, were instrumental in slipping the 15% clause into the Financial Laws (Miscellaneous Amendments) without anybody noticing. But on whose initiative, and for what consideration?

[129] (Interview N, 08/03/10). Waiving import duties was the major concern, since most capital inputs had to be imported

[130] Curtis and Lissu 2008 :28.

[131] Interviewee P, 12/03/10). ‘As SAMAX was the prime mover in Tanzania the 15% was something that we with Resolute our partner really negotiated over about 18 months to have the fiscal terms fixed.’ This statement suggests that parallel negotiations were taking place, since, as stated above, the 15% came as a shock to Tanzanians negotiating MDAs. The protracted negotiations over the inclusion of the 15% additional allowances reflected the fact that MEM had no authority over tax issues and the MOF did not appreciate the difference between mining and other businesses in terms of costs, risks and the long lead time prior to production.

(though its cumulative benefits were still enjoyed).[132] In 2007, Barrick broke ranks and paid an advance of USD 7 million on future corporate taxes, a move that did not go down very well in the Chamber of Minerals and Energy, where the issue had not been formally discussed.[133]

3.2.2 TRA's performance

The tax regime in place is as effective as its administration. Criticisms of TRA's performance were widespread among respondents. It was argued that TRA officials ignore the tax conditions contained in different MDAs.[134] TRA also routinely ignore responses and challenges to tax assessments. Disputes drag on for months and years, with mining companies receiving only oral replies. One respondent described receiving 'ridiculous' assessments.[135] The process of taking disputes to the Tax Revenue Appeals Board, the Tax Tribunal, and finally the Appeal Court is lengthy and unpredictable (the latter can take 'years' to make a decision). A favourable decision by the Appeals Board may be reversed by the Tax Tribunal if TRA appeals. Evidence abounds of TRA employees using their authority to make illegal demands (extortion) whose successful challenge would cost too much and take too long and are therefore acceded to.[136]

The slow processing of tax claims means in effect that the mining companies give large, tax free loans to TRA.[137] Widespread corruption in TRA has also been flagged as a problem by less self-interested parties than gold mining companies.[138]

Taxes that mining companies were exempted from in their MDAs, including VAT and fuel tax, were later changed to taxes to pay and then claim reimbursement. Much of the mining companies' frustration relates to the slow or non-repayment of these taxes, VAT in particular, which may cost them

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[132] Curtis and Lissu say the allowances were removed by the Finance Act of 2001 only to be reintroduced in 2002 'after mining companies protested.'

[133] As a rule, the major mining companies have not acted collectively to advance 'common' interests. The Chamber represents too many stakeholders to be very effective, and the FMCs tend to negotiate individually. Nevertheless, the Chamber has consistently lobbied the GOT on tax and other issues that affect the profitability of the larger GEM interests, as discussed below.

[134] MDAs are not recognised by TRA because they are not the subject of parliamentary scrutiny, unlike tax rates, which are.

[135] Interview D.

[136] Meeting of British Business Group; British High Commissioner's Residence, 9 October 2008.

[137] This problem is not of recent origin. Writing in 2002, Phillips et al. observed: 'Chief among the problems was poor administration of a VAT drawback scheme applicable to items that, by law, are exempt from duty during the initial construction phase of a mine. TRA had failed to credit or reimburse several millions of dollars in VAT refunds, tying up the capital needed for construction and occasioning high interest charges.' (Phillips et al. 2002:5).

[138] '… TRA officers … have discretion over important decisions … related to the determination of tax liabilities (assessments), selection of audits, litigation, … Many administrative procedures, including … reporting tax revenues, could be more transparent. Firms report that over-assessment of tax liabilities is common, followed by 'negotiations' between the tax officer(s). This is compounded by a general lack of specific sector expertise within the TRA. … *With the exception of the larger enterprises*, taxpayers continue to experience … claims for bribes…' (Foreign Investment Advisory Service 2006: 101-2). (Emphasis added). Cited by Policy Forum 2009.

many millions of dollars.[139] A major source of conflict is TRA's insistence that VAT exemptions are for imported inputs, but cannot be enjoyed by mining subcontractors.[140] It is not so much the number of taxes or levels of taxation that worry the major mining companies but rather the arbitrary administration of tax laws.[141]

The likely impact on the GEM IBE of the proposed changes in the tax regime following the Bomani Report (2008) and 2010 legislation are discussed in **Part 4** below.

3.2.3 Audit

As public companies Barrick, AGA and other FMCs are required by law to audit and publish their financial records. Their accounts are audited *inter alia* by reputed international auditors and the FMCs saw no reason why they should submit to additional external audit, as required by the GOT. Thus they never recognised Alex Stewart--the US company hired to perform the audit--and refused to provide some of the financial records requested. Alex Stewart is profiled in **Box 3.3**.

The Alex Stewart audit eventually cost the Treasury over USD 70 million, with zero direct benefits in terms of revealing tax evasion or fraud by the large mining companies.[142]

Box 3.3: Alex Stewart Assayers

In 2003, the **BOT** hired **Alex Stewart (Assayers),** (**ASA**) a US company, to audit gold production and export. The company received a fee of 1.9 percent of the marketed value of the audited gold exports (the gold royalty), leaving 1.1 percent of the 3% royalty for the BOT. Alex Stewart also enjoyed tax free status granted by the **Minister of Finance, Basil Mramba.** The royalties were worth USD 0.75m a month. For its first two-year contract the company netted USD 18m tax free (TShs 23 billion) and a total of USD 31m between 2003 and 2006. In late 2006, Alex Stewart presented an audit report to the BOT but the report was never endorsed by BOT, made public, or its recommendations acted upon. The report claimed that the mining companies overstated their liabilities by over USD 500 million leading the country to lose revenues of USD 133 million. It also claimed that, because the mining companies could not supply original paperwork going back 14 years to justify their capital and operating costs, they were fraudulent; and that the companies' auditors were party to the fraud. Alex Stewart's Chairman **Dr Enrique Segura** is quoted as saying that 'Tanzania could get 30 times more revenue from the mining companies in income tax than it has hitherto been doing.' Mining interests discounted these claims on the grounds that Alex Stewart had no experience of auditing FMCs, had no understanding of metallurgical accounting and its limitations, called for original documentation beyond the Tanzanian statutory time limitation, and disregarded the work of better resourced and more experienced international auditors. Moreover, the audited companies had never been presented with the draft audit for their responses, as is normal practice. Lobbying to renew the ASA contract towards the end of President Mkapa's time in office was thwarted. At the

[139] One respondent claimed that the Treasury has to budget for VAT repayments but that the amount voted is nowhere near enough to pay legitimate claims, leading to inevitable delays.
[140] It is common practice to subcontract the actual mining to specialist companies.
[141] The Fraser Institute's index for the taxation regime includes personal, corporate, payroll, capital and other taxes, and the complexity of tax compliance. By this measure, only 6 percent of respondents for the 2008/09 Fraser report considered that taxation in Tanzania was a strong deterrent or prohibitive to investment in exploration, placing Tanzania a quite respectable 38th out of 71 mining jurisdictions listed (53rd percentile) (Fraser Institute 2009:33,70).
[142] Given the widespread antipathy towards the FMCs, it is likely that any hard evidence of tax fraud would have resulted in prosecution, but there have been none to date.

time of writing, Mr Mramba and others are facing criminal charges in relation to the Alex Stewart contract. Godwin N Hizza, a witness in the trial, said that President Mkapa 'allowed' the BOT to expedite the process of hiring ASA in the absence of a formal tender process.
Sources: Kisaka 2006; Lyimo 2006. SID 2009.

3.2.4 Royalties

The gold royalty is charged at three percent on pre-profit gold sales. Critics have charged that the royalty is 'too low to provide a fair share of income to Tanzanians', citing countries where royalties are higher.[143] Those who find the three percent royalty reasonable argue that Tanzania is an emerging gold producing 'province' with little institutional or infrastructural services on offer to justify a higher rate. Higher royalties would have the effect of reducing the attractiveness of low quality ore bodies to potential investors.

3.2.5 Taxation of small-scale mining

Small-scale mines, both legal and illegal, produce an estimated 15 tons (480,000 ounces) of gold a year from mines in Tanzania, the equivalent of a large commercial mine.[144] Small-scale gold trading is still mostly illegal. A 1995–6 World Bank-funded study indicated that about 70–85 per cent of gold produced by small-scale miners were smuggled out of the country.[145] According to Dreschler: 'In 1998 … more than five tonnes of gold worth USD45 million were smuggled out of the country through black market dealings.'

According to the MEM, licensed gold dealers bought just 427 kg of the 6,000 kg of gold produced by artisanal miners in 1998, compared to only 232 kg in 1997.[146] There are some 40 legal and illegal gold buyers in and around India Street in Dar es Salaam, the largest of which are said to buy some 100 kilograms of gold a week. The First Bank of the Middle East operates a buying centre and refinery in Mwanza which is rumoured to operate at the level of many hundreds of kilograms of gold a week.[147]

Very little tax is paid by the small-scale mining sector beyond the licence fees of companies with Primary Mining Licences (PML) and fuel tax on those few companies that use pumps and/or generators. The tax loss is difficult to estimate. However, if this was a single open pit mining company, the total tax loss would be of the order of USD 25 million a year under the 2006 tax regime, or some *USD 500 million* over the 20 years of market

[143] Curtis and Lissu 2008:20. The authors cite diamond mining royalties of 10% in Botswana in support of their case. Not cited are South African royalties on unrefined gold (3 percent), and refined gold (1.5 percent). The Ghanaian gold royalty rate (minimum 3%) is pegged to the price of gold. What matters, however, is the combined impact of taxes and royalties.
[144] Ministry of Energy and Minerals presentation to the British Business Group, 9 October 2008. This estimate may be too low by a factor of 3-5. However UNCTAD (2007:91) provide an estimate for 2005 of five tonnes of gold produced by artisanal miners, using data from the Raw Materials Group.
[145] Dreschler 2001:81. In 1996, an estimated 90-95 percent of the gold from the Lake Zone and northern Tanzania was going to Nairobi (Philips et al. 2001:3).
[146] 'Financial analysts estimate the value of gold smuggled out of the country annually amounts to USD200 million.' Dreschler 2001:73. This seems on the high side.
[147] Adapted and updated from Cooksey 2008:16.

liberalisation.[148] According to Mwanyika, the formal Tanzanian mining sector paid USD 428 million in statutory taxes and other contributions between 1997 and 2007.[149]

3.3 GEM licencing and regulation

To understand the IBE one must understand the relationship between exploration and mining. The level of exploration in Tanzania reflects the level of interest in gold mining, which in turn reflects the current and expected price of gold, the cost and availability of capital, and the IBE. In other words, mining drives exploration. Once the big mining companies have taken an investment decision, they look for additional deposits in the vicinity of their existing mines in order to supplement their throughput of ore and to extend the life of the mine. They do this on their own or, more commonly, in a JV with another exploration/mining company.

In **section 3.2** we argued that Sutton's 'victory' over small-scale mining interests in Bulyanhulu in 1996 prompted an explosion in gold exploration. **Table 3.2** shows that a veritable frenzy of exploration and mining licencing took place in the new century, peaking around 2005.

Table 3.2: Prospecting and mining licences issues 2000-2007

	2000	2001	2002	2003	2004	2005	2006	2007	Total
Reconnaissance licences	6	8	16	34	57	105	48	155	429
Prospecting licences	199	186	225	263	515	782	198	607	2975
Mining licences	19	47	16	17	30	57	19	28	233
Primary mining licences	0	562	701	550	1688	666	628	1933	6728
Dealers licence	34	62	149	105	101	67	170	305	993

Source: SID 2009 citing Ministry of Energy and Minerals 2008[150]

[148] That is, from 1986 to 2006. Results of a model developed by the Chamber of Mines (2006). This is a conservative estimate.

[149] Mwanyika 2008. This source gives the mining companies' contributions to the Tanzania economy during 1997-2007 as follows (US$):

	Total Contribution	Total Mineral Value
Procurement within Tanzania	741,606,592	17.0
Statutory taxes & other contributions	428,532,496	10.0
Salaries	394,581,476	9.0
Corporate social investment	35,630,018	1.0
Training of Tanzanian employees	20,939,099	0.5
Infrastructure development	15,560,485	0.5
Total	1,637,120,436	38.0

[150] Note: These figures are for all minerals, of which gold is the most important. Many licences are renewals of existing licences rather than licences for new areas.

The 2008 financial crisis put an end to the exploration bubble. More than eighty percent of mining executives polled by the Fraser Institute in 2009 believed that the financial crisis and its aftermath will force *at least* 30 percent of mineral exploration companies in Tanzania out of business.[151]

Most exploration is undertaken by relatively small ('junior') companies, who plan to sell on their more promising finds to mining companies or enter into joint ventures with (mostly) foreign partners. The amount of exploration is determined largely by the expected profitability of current large-scale mining and the regulatory performance of the Mining Division (MD) in the MEM. The main determinants of profitability of large-scale mining companies are the world price of gold (currently favourable) and the tax take from mining operations. Current (2011) uncertainties concerning the effects of the new mining legislation (see below) and the effects of the ongoing global credit crisis have led the big global mining companies to put further investment on hold, with knock-on effects on exploration.

The combined effect of the above factors has been a dramatic reduction in investments in gold exploration around existing mines and in areas where there are currently no major mines. This means that the momentum in investment will fall and the size of the sector shrink unless there are major changes for the better in the short- to medium-term.

3.3.1 Performance of the Mining Division

'Everybody is on the take.'[152]

The performance of the MD in issuing Prospecting Licences (PLs) and Mining Licences (MLs) is said by industry insiders to have declined in recent years as rent-seeking opportunities have risen. It may take 1-2 years to acquire the former, compared to *a day* in the most efficient jurisdictions.

Informants argued that systemic rent scraping in the MD has compromised efficient exploration for exploitable gold resources.[153] One source noted that 'employees of the mining department demand bribes in order to issue mining or prospecting licences.' Officials in the MD also own mineral rights.[154] It is quite common for a company to request a licence for a particular location, only to be told subsequently that it had 'already been allocated' to someone else.[155] Another insider ploy is to leak information concerning claim applications so that areas surrounding a new claim are immediately snapped up by speculators. In this way, free riders benefit from the investments of serious GEM companies.[156] Tarimo (2009) cites 'anecdotal

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[151] Fraser Institute 2009:55. Eighty percent of all respondents believe at least a third of the world's exploration companies will be forced out of business.

[152] Interviewee A.

[153] Interviewee A, various dates.

[154] Curtis and Lissu (2008:35) citing www.business-anti-corruption.com.

[155] According to the Fraser Institute report for 2007/08, page 28: 'There is blatant bribery in Tanzania where best efforts are thwarted by officials back-dating licence applications.' This is a quote from the Vice President of an exploration company.

[156] An 'experiment' by a mining explorer demonstrated this effect in practice when his company applied for an exploration licence more or less at random. Almost immediately, all the adjacent blocks were allocated. (Interviewee A).

evidence of well-connected speculators being allowed to hold on to their rights, notwithstanding that they do not fulfil their exploration expenditure requirements...'[157]

PLs are time-bound and come with obligations to invest minimum amounts in exploration. Delays in awarding PLs reduce the effective period during which investments are to take place. PLs are supposed to be revoked if their owners fail to invest in exploration within a certain time. Half the claim is supposed to be returned to the MD after a three year exploration period. This does not happen to insiders: it is common for claims to remain 'sterilised' for protracted periods while no fees are paid or exploration undertaken. An investor has to reapply for the part of an exploration area returned after it expires, but collusion at the national and zonal levels results in reallocation of PLs and the loss of capital invested by GEM companies. Lastly, since different licences are allocated by different offices (in Dar es Salaam, Dodoma and Zonal Mining Offices) it is quite common for an exploration company in the course of exploration to come across small-scale miners with valid PMLs within the area covered by the exploration licence.

These and other regulatory obstacles placed in the way of foreign exploration companies help explain why there are only about 30 junior explorers in Tanzania instead of 200 or more and why there are no medium-sized gold mines when there should be up to 200.[158]

A small number of big players own most of the prospecting rights in the LVGA. One of these is Tanzania Royalty Exploration Corporation, a listed Canadian company which holds 121 prospecting licences covering nearly 11,000 sq. km. of the Lake Victoria Greenstone Belt.[159] Other major licence holders are companies owned by the Rupia[160] family and businessman Reginald Mengi.

Senior politicians, government officials and businessmen and women are involved in GEM speculation.[161] While most speculation leads nowhere, some deals are very lucrative.[162] Middlemen introduce potential investors to the owners of promising PLs, which may be bought or used as the basis for a JV.[163] Interviews and anecdotal evidence suggest that top officials are involved in rent-seeking networks. Ministerial politicking meant that the post of Commissioner for Minerals remained unfilled for two years after Gray Mwakalukwa was moved in November 2004. 'The commissioner [Mwakalukwa] was one of those thought to be seriously bedevilled by

[157] Tarimo 2009.
[158] Spencer 2009.
[159] See **Part 2** above. Joseph Kahama, son of George Kahama is Director and President of Tanzania Royalty. James Sinclair, formerly of Sutton Resources, is the principal shareholder.
[160] Paul Rupia is a retired First Secretary and businessman whose family hails from Shinyanga and has been involved in mining for many years.
[161] Wilson Mutagwaba, a mining engineer, was quoted as saying: "not many people know that 70 per cent of licences are in the hands of locals. The problem ... is that most of their owners are hawkers and middlemen waiting to sell them for a quick buck." Sebastian 2008.
[162] For example, Barrick bought the mining rights of Buzwagi from Madaba Minerals Ltd, who receive a retainer until mining begins, after which Madaba will receive a percentage of gold sales (Business and Politics interview I).
[163] Interviewee A showed me a cell phone message recently received from someone offering his brokerage services, saying he was 'well connected' with the MEM.

perpetual corruption involving the operation of both the big and small mining companies in the country.'[164]

In these and other ways the MD's GEM regulatory role has been captured by individual, political and business interests, with negative consequences for the pace and sustainability of GEM development.[165] Interviewees stressed that this regulatory capture did not discourage the bigger mining companies, who are preoccupied with the profitability of individual mines, and for whom this type of rent-seeking adds to costs, but is not ruinous. However, regulatory capture is a substantial disincentive to 'junior explorers' and smaller mining companies working with limited financial backing and narrow margins. This, along with the sterilising effect described above, helps explain why, to date, no medium-sized investor has opened a gold mine. **Box 3.4** describes a small investment that failed to take off through inadequacies in the MD's licencing role.

Box 3.4: A small investment that didn't materialise

In 2001-03, **Mineral Processors (T) Ltd** (MPT), a small exploration company, put together a project to recover gold from small miners' waste (dumps) at **Matinje**, 25 kms from Resolute's **Golden Pride** mine in Tabora Region. MPT applied for a mining licence in July 2002 for an area covering 54 ha. There were apparently no conflicting mineral rights. However, two years earlier (November 2000), **Resolute** had applied for a PL for an area of 15,000 ha that included MPT's 54 ha. The **Commissioner of Minerals** issued Resolute a letter of offer for the 15,000 ha on 31 July 2002, eight days after PMTs application for a ML. MTP did not learn about the licencing overlap until March 2003, prior to which 'we were positively encouraged to proceed with the project by the Ministry.' The Commissioner of Minerals advised MPT to 'talk to Resolute' to resolve the problem, that they had themselves created. During the delays, three commercial rivals—Resolute, the **National Development Corporation** and an Italian company—moved into the area to purchase Primary Mining Licence rights for mining or rights to the waste, and the small miners abandoned their agreement with MPT's partner in the project **AfriTan**. Resolute's conditions to allow MPT to proceed would have cost MPT at least USD 200,000 and MPT finally abandoned the project in November 2003, with losses of **USD180,000**. Challenging the waste contracts was rejected on the grounds that this would effectively tie up the project in the 'interminable Tanzanian legal system for years'. This story points to incompetence within the Ministry for failing to point out to MPT the interest of Resolute in the project area. The high transaction costs incurred in negotiating the (ultimately unsuccessful) project were the consequence of the MD's inefficiency and lack of transparency. It is also possible that corruption was involved as a means of wresting the project from MPT at a time when gold prices were rising. To our knowledge, the dumps have not been reprocessed to date.

Source: Personal files as owner of 10 percent of MPT's shares.

The above narrative suggests that both inefficiency[166] and corruption combine to undermine the performance of the MD. The efficiency and transparency of exploration and mining licensing are poor and have not improved, despite the availability of the latest software and a World Bank

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[164] Citizen Reporter 2006. President Kikwete replaced Mwakalukwa by Dr Peter Kafumu in September 2006. Kafumu is said to be more sympathetic to the cause of FMCs than his predecessor, but fell out of favour with successive Ministers of Energy and Minerals (Msabaha and Karamagi).

[165] Tarimo (2009) links the capture of the MD to the slow development of the sector after the 'flurry of new mining projects' in the late 1990s.

[166] Interviewee L characterised the MEM's senior technical officers as 'generally incompetent.'

project to address capacity constraints.[167] Furthermore, 'few senior officials have any sympathy for or understanding of large-scale mining.'[168] To be fair, it is hardly surprising that the MD lacked the capacity to deal with the flood of new business that the exploration boom generated.[169] The complexity of MDAs and the lack of official policy and fiscal guidelines 'makes administration (as well as revenue collection) all the more tasking and complex.'[170] Nevertheless, the failure of the MD to rise to the challenges posed by the requirements of modern GEM regulation suggests that informality and patronage have effectively neutralised GOT and donor 'capacity building' efforts. We ask why the ruling party and government have allowed this to happen in **Part 4**.

3.4 Social and environmental costs

A major issue with implications for profitability is the conflictual relationship between FMCs and artisanal/small-scale mining described in the previous section. In addition, the environmental and social impact of large-scale mining on local populations of farmers and pastoralists is contentious. Mines may cause high levels of dust pollution and toxic seepages from dams retaining waste materials, with potential dangers for human and animal life. Other divisive issues are the forced removal of local people from around mines and the payment of compensation.

Violent conflicts between big foreign and small Tanzanian miners did not end with the resolution of the Bulyanhulu standoff in August 1996. Hardly a month after the Bulyanhulu evictions, 'many thousands' of artisanals were said to have been driven off the Lusu deposit in Nzega District to make room for Samax Resources, a Canadian 'junior'. Thirteen years later: 'Hundreds of villagers evacuated from Lusu gold mine in … 1996 … asked President Jakaya Kikwete to help them get their compensation which amounts to Shs 74 billion. The villagers have threatened to set ablaze the gold mine that is operated by Tanzania Resolute Ltd.' More than 1,600 people were said to be affected.[171]

In August 2001, clashes erupted at Nyamongo gold mine between villagers and the police, after hundreds of small-scale miners protested against their eviction from the area that would become North Mara Gold Mine (NMGM).[172] There have been several major robberies of gold from the major mines using firearms and carried out with the likely direct or indirect

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[167] The USD 50m Sustainable Management of Mineral Resources Project (SMMRP). Cynics believe that the Minerals Division actively resisted the introduction of a transparent claims registration system (Alex Stewart offered one, as did an Australian mining company). A senior MEM official who was suspended on suspicion of orchestrating the theft of funds from an earlier WB project designed to increase MEM's regulatory capacity was subsequently promoted to a post in State House (Interviewee D).

[168] Interviewee A.

[169] Commissioner for Minerals Dr Peter Kafumu argued in 2007 that: "We were novices in this industry and too many companies came at once. We were overwhelmed. We still need double the capacity we have now. This sector is a big challenge to us because it has grown too fast." Quoted by Curtis and Lissu 2008:34.

[170] Policy Forum (no date, 2008?). This source points out that the first three MDA were signed between 1992 and 1997, before the Mining Sector Policy (1997) and Mining Act (1998).

[171] Mugini 2009.

[172] According to Lissu, an estimated 10,000 artisanal miners, peasant farmers and their families were forcibly evicted to make way for the mine (Saunders 2008).

involvement of security staff. Barrick Mining is reported to have told the *Bomani Committee* (discussed in **Part 4** below) that its turnover of security staff is some 80 percent a year. **Box 3.5** relates examples of mine invasions and vandalism and alleged pollution-related deaths in North Mara.

Box 3.5: Confrontations and leakages at North Mara

Conflicts between **Barrick's North Mara Gold Mine** (NMGM) and the local population are chronic. In **November 2008**, NMGM management complained about the frequent theft of fuel and 'gold sand' and other 'crime related cases'. The 'huge waste' of time and money undermined gold production and community development efforts. In **December 2008,** villagers (the numbers are disputed) raided the mine, armed with bows, arrows and pangas.. **Field Force Unit** troops were brought in from **Tarime** and **Musoma** to disperse the invaders, who torched heavy machinery, causing losses of between USD 7 and 16 million. One person died. Barrick suspended production. In **June 2009**, villagers accused NMGM of polluting a local river, resulting in the deaths of about 20 people (later 30) and 150 (later 200) cattle. Activists **FemAct** and **LHRC**, and the **Christian Council of Tanzania** (**CCT)**, called for the NMGM to be closed pending investigations into the alleged deaths. NMGM spokesperson said: " … that these claims … are ludicrous and void of any legitimacy." Barrick 'admitted that water containing acid is leaking from the mine, citing theft of liners that prevent leakage from the tailing dams as the source of the problem.' Despite 24 hour police surveillance, the polythene pond liner was regularly stolen, leading to seepages. In **October** 2009, President Kikwete said he 'would ask the minister [for Energy and Minerals] to allocate new prospecting areas to artisan miners from the villages surrounding NMGM. He said this was part of government efforts to find lasting solutions for problems communities surrounding the mine faced.' In the same month, the **Dow Jones Sustainability World Index** ranked Barrick as a 'top performer in **CSR** worldwide for the second consecutive year.' In November, the Canadian **Globe and Mail** reported that Barrick were planning to sell the NMGM, leading to civil society demands that they should not be allowed to do so before the environmental and social issues had been resolved. Barrick denied they intended to close the mine. In **December**, an NMGM spokesman estimated that 200-300 illegal miners from the 13 villages in the area, grouped in 3-5 men gangs, trespassed on the mine every day. These gangs took ore to extract gold with mercury. He said that NMGM had lost up to USD 25m of property and gold ore to this 'vandalism'. He said: "The efforts to stave off these small-scale miners by force have worsened the friction. …" A PR officer 'said the investor had poured a huge amount of money into security in a bid to curb losses incurred through … endemic smuggling and vandalism.' "...this is impacting on its profits and compromising all efforts to support local community development projects." The police were accused of aiding thieves and vandals. Weeks earlier 'police shot dead seven youths who had allegedly trespassed into the mine, sparking a public outcry over "excessive use of force".' At **Buzwagi**, Barrick have resorted to employing traditional militia, or 'sungusungu', to guard the mine perimeters in an attempt to reduce theft.

Sources: Mugini 2008; ThisDay Reporter 2008. Mgamba 2010; Lissu (no date); Agencies 2009; Our Reporter 2009. ThisDay Reporter 2009 ; Mugini 2009; Citizen Reporter 2009; Guardian Reporter 2009; Mwita 2009: Hooper 2011.

We discussed compensation in **Part 2** above. The eviction of farmers from mining areas is invariably contentious. According to Lissu: 'Those evicted have not been adequately compensated or properly resettled. As a consequence, local economies and livelihoods have been destroyed and communities have been impoverished.'[173] In the case of North Mara: "Compensation packages being paid by Barrick are less than the market value. Locals know their rights; that's why they're rejecting the packages." For

[173] Lissu, 'The Bigger Picture', page 3.

their part, North Mara claim that the compensation packages paid are "always in line with the government evaluator's valuations", and sometimes more.[174]

The mining companies believe that addressing these local conflicts will establish their legitimacy among the local population, reducing the costs of policing their property and replacing machinery destroyed by rioters and arsonists. To avoid confrontations with villagers, NMGM built over 150 houses for villagers who agreed to vacate the mine area, spending nearly TShs 3.5 billion on relocating families. Barrick also invested in health facilities, schools, and scholarships, and planned to upgrade artisanal to small-scale mining.[175] Between 1997 and 2007, the major mining companies spent nearly USD 36 million on corporate social investment.[176]

Mining companies are under increasing pressure to promote local development, either directly or indirectly through local councils[177] or sub-contractors, including NGOs. According to the Tanzania Chamber of Minerals and Energy, between 1999 and 2004, the 'mining sector' spent USD 2 million on education projects, USD 2.4 million on health projects, and USD 7.6 million on water projects.[178] Despite the rise of Corporate Social Responsibility, opinions are divided as to whether mining companies should or should not get involved in service provision. For example: "We are not operating as charitable organisations but business enterprises that … should post profit to shareholders." [179] On the other hand, 'the fostering of strong community relationships and partnerships is critical if the local social and economic impacts of the mines are to be deepened further. … It is difficult for a mining company working in isolation to achieve success in this area … .'[180]

Globally, mining companies have come under severe criticism for passing on the costs of environmental protection and pollution control to local populations and national treasuries.[181] It remains to be seen whether the poor record of international mining companies in this respect will be repeated in Tanzania. Grounds for relative optimism are that Tanzania's gold mines are not located in densely populated or extremely vulnerable areas, for example, in mountainous regions, close to major watersheds, rivers or marine environments.[182]

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174 Agencies 2009. The big mines now use WB standards for compensation for relocation which are higher than the Tanzanian standards (Informant P).
175 Mapalala 2009.
176 Mwanyika 2008.
177 Mining companies now pay USD 200,000 a year to district councils in the areas where they operate. These (by local standards substantial) funds may or may not be put to good use.
178 Tanzania Chamber of Minerals and Energy 2005. The water 'projects' included linking villagers to pipelines bring water to the mines. Total 'corporate social investments' were over USD 36 million between 1998 and 2008.
179 Spencer quoted in Cooksey 2008:14.
180 ICMM 207:9
181 Diamond 2006:452-468. If North American mining companies had to finance the environmental costs of their operations, there would be no mining. For some time, 'hardrock', including gold mining, has been a low profit activity. Diamond (2006:459) shows that USD1,000 invested in 1979 in the steel industry would be worth USD 2,220 in 2000, and in gold only USD 590, a net loss irrespective of inflation. An 'average mutual fund' would be worth USD 9,320. Not surprisingly, mining companies have skimped on environmental costs.
182 Diamond (2006) describes the disastrous environmental consequences of pollution from gold mining in North America, Indonesia and Papua New Guinea.

Mining companies incur a range of 'compliance costs' to meet international safety, environmental, accounting and SCR standards. These standards are set by international stock exchanges and industry umbrella organisations such as the International Council on Mining and Metals (ICMM).[183] There are also national codes and standards promulgated by mining authorities in individual countries. Compliance costs and penalties for non-compliance are not known.

Endogenous compliance costs include social and economic impact assessments (SEIA) that companies are obliged by law to undertake prior to opening a mine. By law, these are commissioned by the National Environment Management Council (NEMC) and may overlap with or duplicate assessments undertaken by the investor. One of our informants claimed that this procedure was essentially a 'racket'. NEMC maintain a roster of local companies and individuals who undertake SEIA for a fee. This procedure is vulnerable to rent-scraping.[184]

Finally, both governments and companies in extractive industries (oil, gas and minerals) are under growing international pressures to meet strict standards of financial transparency and accountability. Tanzania is a signatory of the Extractive Industries Transparency Initiative (EITI), as are Barrick and other large mining companies.[185] The practical consequences of the EITI are so far unclear.

Though we cannot quantify the aggregate impact, we conclude that policing mines against theft and violence, implementing CSR programmes, compliance with international and national standards, and mitigating the environmental impact of mining activities, increase the cost of gold mining significantly. A marginal mine could easily prove unprofitable if these costs proved prohibitive.[186] There is little evidence that anti-mining sentiments have been countered by corporate spending on community outreach and development initiatives.

3.5 The business environment and GEM profitability

We have tried to show how rent-scraping and inefficiency in the TRA and MEM have undermine profitability and the progress of large-scale mining. Because of the risks and costs involved, the medium- and small-scale commercial mining sector has failed to develop along with large-scale mining. According to one source:

> "No new large gold mines are planned … in the next five years … The gold mining sector should have a pyramid structure, capped by a handful of large mines, then underlain by tens of medium and hundreds of small scale formal mining operations. Tanzania only has large mines. The reason for this is that these are the only operations that can be

[183] In 2008 Barrick's Tanzanian mines attained cyanide code accreditation In 2009, Barrick were pursuing compliance with Gold Security Standards (Taylor 2009).
[184] Interviewee L. The assessments may be poorly done or may raise spurious 'problems.'
[185] EITI receives support under the WB USD 50 million credit for the mineral sector (ThisDay Reporter 2009).
[186] The gold industry view is that Barrick would gladly offload NMGM if they could find a buyer.

economically developed due to the difficulty and high cost of doing business in the country." [187]

Our examination of taxation and regulation suggests that the Tanzanian business environment has a negative impact on FMC profitability. This in turn influences reinvestment plans of existing mines and the likelihood of new companies entering the market. Some multimillion dollar investments in exploration and buying into promising projects at different stages in the development of a mine may eventually have to be written off.[188] **Box 3.6** describes the case of IAMGOLD.

Box 3.6: A much bigger investment that didn't turn into a mine

IAMGOLD, a medium-sized Canadian mining company, invested USD 20 million in their **Buckreef** and **Kitongo** projects in the LVGA between 2006-08, but pulled out when they decided that gold reserves (1.9 million ounces) were less than the minimum required for a viable mine, that is, one producing at least 100,000 ounces of gold a year. Total investments in exploration were rumoured to be over USD 100 million. The decision to pull out was influenced by a number of factors, including 'greater opportunities in West Africa'[189] and 'a deteriorating political climate'. According to IAMGOLD, although 'the lack of support companies receive from local authorities to keep their tenements free from illegal mining activity is frustrating', Tanzania is 'no different from other countries' in this respect.

IAMGOLD believe that 'The uncertainty surrounding proposed changes to the Mining Act is making investors a little nervous', and that 'Changes relating to tax in the 2009 budget have made it more expensive to do business.' However, they did not consider the tax changes 'prohibitive.' In general, the 'Government is notoriously slow and inefficient, politicians use us as political footballs, [and] community sentiment is anti-mining.' Despite this, 'if you have a good enough resource you can develop a project.' When IAMGOLD failed to find a buyer or a JV partner to share further investment risks, it returned its shares to the GOT, which held a 20 percent share in the company.

Source: Interviews B and C, October 2009.

The losses incurred in exploration by IAMGOLD are large, but lesser losses are routine. For example, Mans Mining lost USD 13 million in explorations around Lupa, an old mining area, and Graftan lost USD 25 million in explorations that did not result in a mine.[190]

The business environment for GEM companies was given a strong boost by the generous tax and non-tax incentives the GOT gave to the FMCs. Interviewees expressed different views on the GOT's reasons for giving these incentives. One senior official said the incentives reflected the government's inability to provide basic social and economic infrastructure, or efficient regulation, which meant large additional costs for the FMCs in terms of road construction and power supply, security, skilled labour, services and provisions. As and when the GOT improved its performance, so this argument goes, the quantum of incentives required to attract further investment would decline *pro rata*.

[187] Keeler (2009:6) quoting Brent Barber of SRK Consulting.

[188] The 'evaluation process' preceding an investment decision consists of the following stages: reconnaissance; geological exploration; sampling/drilling; project evaluation; feasibility study. The final investment decision depends on the rate of return required by the investor (Hochreiter 2006:98-101).

[189] Interviewee G (08/12/09) also told us his company was examining investment opportunities in Senegal, Guinea, and Mali.

[190] Interviewee B.

A cynical interpretation of the generous incentives was that they constituted a lure to FMCs that could be removed once large investments had been made and the FMCs could not easily pull out without incurring huge losses. This was a political calculus and had nothing to do with increasing the GOT's regulatory or public good provision performance.

The GOT has not been successful in 'putting in place a strong institutional mechanism – building capacity to administer, regulate and facilitate [the] development of the industry' as envisaged in the 1997 Minerals Policy.[191] As we have seen, the Mining Division did not radically improve its performance when the big investment boom in exploration and mining occurred in the mid- to late-1990s. On interviewee maintained that the MD was simply swamped by the additional workload following the rapid increase in interest in exploration and mining during this period.[192] Yet, external pressures to make the process of obtaining exploration rights more transparent were actively resisted by the bureaucracy, since more transparency would make rent-seeking more difficult.

Nor did the GOT improve the infrastructure required to support the mining industry.[193] Poor roads, railways and power supply continue to compromise potential investments, including the huge Kabanga nickel project in Kagera, a joint venture between Barrick and its fellow Canadian company XSTRATA.[194]

The Fraser Institute of Canada compiles an annual report on the quality of mining jurisdictions worldwide based on the views of exploration and mining companies. **Table 3.3** charts Tanzania's performance over a five-year period, during which the number of mining jurisdictions assessed rose from 64 to 71.

Table 3.3: Mineral investment rankings for Tanzania 2004/05-2008/09

	Score /100				
Index	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**
Policy potential index	55.6	41.3	41.3	35.0	41.8
Rank	31/64	41/64	43/65	49/68	48/71
Percentile	***48th***	***63rd***	***66th***	***72nd***	***68th***
Mineral potential index	54.0	50.0	68.0	71.0	78.0
Rank	16/64	36/64	22/65	25/68	22/71
Percentile	***25th***	***56th***	***34th***	***37th***	***31st***
Best practice potential index	81.0	95.0	76.0	89.0	96.0
Rank	35/64	23/64	44/65	35/68	8/71
Percentile	***55th***	***36th***	***68th***	***51st***	***11th***

Source: Adapted from Fraser Institute, various years.
Low percentile score means good performance.

[191] Mwanyika 2008, slide 6.
[192] Interviewee D, 08/12/09.
[193] See for example Keeler 2009: 'The government has not provided the infrastructure necessary to support mining activities.'
[194] Interview K, 18/01/10. The total investment to date is USD 200 million. Since the nickel concentrate will have to be processed in Canada (a 20,000+ mile journey) the project will depend on Tanzania investing promptly in a planned railway line. Grid power will also have to be supplied. Neutral observers see little chance of Kabanga becoming a mine any time soon.

The ‘policy potential index’ is a composite measure of the effects of state performance on exploration decisions.[195] Tanzania has moved from the 48th percentile in 2004/05 to the 68th in 2008/09, suggesting a significant (-42%) fall in state performance in recent years compared to other mining jurisdictions.[196]

The current mineral potential index measures ‘whether or not a jurisdiction’s mineral potential under the current policy environment encourages or discourages exploration.’[197] The overall policy environment in Tanzania does not seem to be a major obstacle to investors. This metric also shows a deteriorating trend, albeit less steep (-24%) that in the policy potential index.

Finally, the ‘best practice’ index ranks different mining jurisdictions on their potential assuming best practices on the part of the regulatory authority. The trend suggests that Tanzania would be a very competitive mining investment destination were regulatory quality to improve, though it is difficult to interpret the large change in percentile ranking (+80%) between 2007/08 and 2008/09.[198]

Table 3.4 summarises Tanzania’s comparative performance in attracting mining investments according to the Fraser Institute’s latest report.

Table 3.4: Factors influencing mineral investment in Tanzania

Potential determinant of investment (percent)	Encourages/ not a deterrent	Mild deterrent	Strong deterrent/ wouldn’t invest	Percentile
Policy/mining potential	96	4	0	68
Mineral potential	79	17	4	31
Land claims	74	22	4	25
Wilderness areas/parks	73	19	8	23
Environmental regulations	73	24	4	28
Uncertainty/regulation	69	22	5	31
Taxation regime	62	32	6	53
Labour regulations	58	33	10	80
Political stability	57	29	14	80

[195] ‘The policy potential index … measures the effects on exploration of government policies including uncertainty concerning the administration, interpretation, and enforcement of existing regulations; environmental regulations; regulatory duplication and inconsistencies; taxation; uncertainty concerning native land claims and protected areas; infrastructure; socioeconomic agreements; political stability; labor issues; geological database; and security.’ (Fraser Institute 2009:10).

[196] The bottom 10 countries on the index are: Venezuela, Ecuador, Guatemala, Honduras, India, Bolivia, Zimbabwe, Kyrgyzstan, Democratic Republic of the Congo, and Indonesia.

[197] Fraser Institute 2009.

[198] The huge improvement in perceived potential may be related to the global financial crisis that has had a negative impact on investment forecasts. ‘Over 90 percent of respondents believe the exploration and development activities of *exploration* companies will be curtailed, with 57 percent saying the activity will decline “a great deal” ’ (Fraser Institute 2009:54, emphasis in the original). But why the differential impact on perceptions, making Tanzania such a (relatively) ‘desirable’ location?

Regulatory duplication	53	39	8	59
Community development	48	39	13	68
Geological database	47	40	14	76
Physical security	47	36	17	75
Infrastructure	37	45	18	69
Labour/skills	30	57	13	92
Total (averages)	60	31	9	57

Source: adapted from Fraser Institute 2009.
Note: Low percentiles denote good performance.

Tanzania scores well as regards the 'policy/mining potential',[199] with very few respondents agreeing that policy or regulatory issues undermined investment potential. Yet Tanzania ranks in the sixty-eighth percentile (lowest third) on this measure, meaning that the average formal investment framework is *even more* pro-investment than in Tanzania.

The main concerns of respondents concerning Tanzania as a mining investment destination are lack of infrastructure and poor security, followed by inadequate geological database, including 'ease of access to information', and political stability. In its 2006 report, the Fraser Institute ranked Tanzania in the 65th percentile for the latter variable, suggesting that there is a rising concern with political issues among investors in recent years.

Assuming no land-use restrictions and 'best practice' performance, Tanzania ranks 8th in global mining potential, and is the first African country in the list.[200]

The overall message from the Fraser Institute reports is that mining companies do not consider legal and regulatory institutions and formal tax levels prohibitive in Tanzania, but that these factors are generally significantly more pro-investment in the majority of global mining jurisdictions.

3.6 Rent-seeking in GEM

We may summarise the main forms of rent-seeking with consequences for GEM profitability using the definitions of Williams et al. (**Figure 3.1**).

Figure 3.1: Main forms of rent seeking in Tanzanian GEM, with examples

	Frequency	Impact	Outcome	Cost
Private predation **- private agents stealing from each other**				
A company bribes officials to obtain a PL that another company applied for first, and other manipulation of licencing procedures	Common	Speculation sterilises claims that should be invested in by prospectors	Discourages rule-based investment in prospecting. Medium to small mines are not opened	High in terms of capital investments foregone
Internal theft of gold, fuel, money, irregular tendering by employees	Common	Unlevel playing field favours the corrupt	Reduced profitability	Bearable by large companies; a disincentive for smaller companies
External theft of gold,	Common	Poor relations	Increased	Bearable by large

199 Which is a composite index of the elements in the list.
200 DRC is the second, ranking 19th (Fraser Institute 2009).

equipment, etcetera		with local communities	spending on security	companies
State predation **- the theft of private resources by public officials for personal gain**				
TRA extortion	Common	Ties up large amounts of company finance	Reduced profitability	Company specific (may be significant)
Environmental certification	Common	Marginal	Marginal, except for smaller players	Marginal, except for smaller players
Work permits approval and renewal	Common	Adds to transaction costs	Increased risks of doing business	Significant for smaller players
LG rent-scraping Example: Compensation	Ad hoc	Aggrieved communities	Continued conflict with FMCs	Transfers to public officials
Example: Misuse of local revenue	Common	LG spending below potential	Social & economic services foregone	Cost to investor with no return
Looting **- the theft of public resources by public officials for personal gain**				
Bogus tenders Example: Alex Stewart	One-off	Reduces effective royalty	Adds to public suspicion of FMCs	Loss of USD70 m in revenues
Unviable state-led mining projects Example: Meremeta	Rare	Misallocation of resources	Huge opportunity costs	Loss of USD 130m+ from BOT
Rent-seeking **- the capture and avoidance of public regulatory power by private interests**				
Conditions to investors overly generous, state-secured property rights, suggesting bribery	Unknown	FMC profitability rises	Large losses to the Treasury	Large rents to senior players, FMCs
Transfer pricing	Possible in computing investment costs	Unknown	Reduces taxable income	Increases profitability
Tax evasion, smuggling	Common in the artisanal/small-scale sector. Tax evasion allegations against FMCs	Tax income foregone to Treasury	Services not provided	Revenue losses circa USD 25m p.a.

3.6.1 Private predation

We discussed private predation in relation to the MD allocation and renewal of exploration licences. The ‘theft’ involved is mediated by the MD and the resultant rents divided between the two sides. It is not possible to quantify the rents generated by this process, but it is probable that the effect on the extent and efficiency of gold exploration (and thus mining down the line) is high, and therefore highly damaging from a GEM perspective. We have argued that the ‘missing middle’ of small- to medium-sized, capital-intensive mines is in part the result of this type of predation, both through ‘sterilisation’ of potential mining areas and through the increased risks involved in accessing and retaining mining rights.

Another common practice is the predation of employees on their own company through corrupt tendering and procurement, with a negative impact on profitability. For smaller contracts tender manipulation is quite easy and probably a frequent occurrence, but large-scale theft is not unknown. For example, in October 2010, Barrick announced that it had uncovered a 'criminal fuel theft syndicate' that had infiltrated the mining department, and proceeded to sack about 60 employees, 'more than 40 percent of the mine's workforce.' The consequent disruption led to a reduction in estimates for the year's output, and an 8 percent slump in the group's share value.[201]

3.6.2 State predation

State predation includes widespread rent-scraping, as discussed above. An assessment of official rent-scraping by Barrick's General Manager is worth quoting:

> "Barrick strongly discourages its employees from making expediting payments and we will continue to work hard towards eliminating them, the reality is that we operate in a challenging environment and bureaucrats and other government officials sometimes demand direct or indirect payments, whether in cash, presents or lavish entertainment to do their job. ... in countries where resistance [to demand for bribes] is futile and important business interests are at stake, there may be no choice but to raise issues with the top most authorities to ensure ethics and code (sic) prevail." [202]

Other forms of state predation are rent scraping in the Immigration Department, the NEMC, and in local government. The Immigration Department (ID) in the Ministry of Home Affairs presents two hazards to FMCs: first, that ID personnel attempt to extract bribes from foreign employees for first time permits or subsequent renewals; and second, that business rivals or JV partners may persuade the ID to withdraw or refuse to renew residence permits. It has been quite common for FMC expatriates to be questioned by immigration officials, arrested, detained, and even deported. One of our interviewees considered risks associated with immigration a major disincentive to small investors.[203]

3.6.3 Looting

Looting--the theft of public resources by public officials for personal gain--takes a number of forms. We have already examined Alex Stewart (**Box 3.3** above). **Box 3.7** describes the rise and fall of Meremeta Ltd.

Box 3.7: Meremeta Ltd

Meremeta Ltd was a 50-50 joint venture between the Tanzanian **Ministry of Defence** and a **South African** company **Triennex** (formerly **Executive Outcomes**). Registered in 1998, Meremeta bought gold from small-scale miners, beginning in Geita. In 2003, Meremeta began mining at **Buhemba Gold Mines,** with financial backing from the Bank of Tanzania. Government contingent liabilities relating to Meremeta were highlighted in the **2002 Public**

[201] Citizen reporter and agencies 2010.
[202] Toroka 2009 quoting Barrick's Deo Mwanyika discussing Barrick's code of ethics.
[203] Interviewee L.

Expenditure Review (PER). A non-profit company, Meremeta was designed to generate income from gold exports that could finance military procurement outside the budget while also generating public revenue. According to the **PER**, the Ministry of Defence incurred debts of **USD 130 million** for military equipment procured on the strength of Meremeta's anticipated cash flow. The joint venture collapsed when revenues from gold sales did not materialise and Meremeta was wound up. As a result of the collapse of Meremeta, the government has incurred large contingent liabilities and foregone considerable potential revenue. In July 2006, BOT audited accounts revealed payments of **USD 118.4 million** to an unknown account in **Nedbank Ltd** of South Africa and USD 13.7m to TANGOLD, a company set up to take over Meremeta's liabilities. Meremeta's initial gold buying initiative in Geita was designed to 'save small scale miners from the ruthless middlemen who currently make huge profits through unfair underpayment … and through gold smuggling…' Meremeta was 'making arrangements to bring in better small scale technologies as well as more efficient and environmentally sound and safe gold extraction processes.'
Source: Ministry of Defence 1998; Cooksey 2005; Policy Forum 2009

3.6.4 Rent-seeking

FMC critics believe that rent-seeking--the capture of public regulatory power by private interests--is the major cause of the skewed relationship they observe with national government and tax authorities. The alternative explanation is that mining companies exert unfair pressures on poor country governments in negotiating advantageous mining terms. Did the mining companies use their bargaining strengths and experience to unfair advantage in negotiating agreements with the GOT, or did they pay bribes? Or both?

We have shown that the companies in the front line negotiating both mining rights and MDAs were relatively small companies: Sutton Resources, Resolute, SAMAX. The big companies—AngloGold Ashanti, Barrick—came into the picture only after the basic tax/royalties and other MDA conditions had been agreed upon.[204] Whatever their bargaining advantages, the main initial players were not very big players, capable of dictating terms to the government as a result of their financial and market muscle.

A second possibility is that the FMCs *bribed* their way to advantageous investment conditions and subsequent profits. The secrecy surrounding MDAs lends credence to this view.[205] In August 2007, an opposition MP attempted to get parliament to investigate 'the motive behind the decision by the Minister of Energy and Minerals, Nazir Karamagi, to sign the Buzwagi [MDA with Barrick] at a time when the government had declared it would not sign any new agreements' while a government review was underway.[206]

There is no firm evidence that grand corruption helps explain the generous terms of the MDAs and other conditions for FMC investors. Curtis and Lissu claim that 'journalists and activists' reporting 'on corruption and mining have been the subject of pressure', including death threats, police

[204] To allay criticism of tax evasion, Barrick broke ranks with the other mining companies and volunteered an 'advance' on company taxes of USD 7 million. Barrick requested that the payment be legitimated by the GOT *post hoc* as a condition for further payments. To date, we believe this has not been done.

[205] Curtis and Lissu 2008:33. All but the Geita MDA (October 2007) have been leaked to the press and widely commented on.

[206] Curtis and Lissu 2008:33. The MP, Zitto Kabwe, was suspended for accusing Karamagi of lying to parliament over the removal of the 15% capital allowances discussed in the text. Karamagi signed the Buzwagi MDA in a London hotel. He was forced to resign in 2008 in connection with the infamous Richmond affair.

raiding offices and homes, arrests, detentions and charges of sedition.[207] However, there is no conclusive evidence of grand corruption.[208]

3.6.5 Transfer pricing

Transfer pricing—the manipulation of prices between a company and its branches or subsidiaries to transfer income from one location/tax jurisdiction to another—is widely practised by multinational corporations as a means of avoiding taxes.[209] In Tanzania, the practice was common from the 1970s onwards as foreign companies looked for ways to repatriate their profits in a context of tight foreign exchange controls.[210]

The scope for transfer pricing by FMCs in Tanzania is relatively narrow. They cannot manipulate the price of gold[211] and are consequently limited to overpricing capital investments and recurrent inputs, including fuel, spares and other recurrent cost items. The scope for transfer pricing in relation to these costs is in turn limited by the fact that most procurement of goods and services is from third parties, not the parent company. In addition, inflating capital costs would reduce profits and therefore the ability to pay dividends to shareholders and bonuses to senior managers. If shown to be true and carried out as a systemic policy, a FMC would suffer serious reputational damage, with the possibility of criminal charges and suspension from stock exchanges, as well as the likelihood of subsequent difficulties dealing with other countries' tax authorities and obtaining permits for new projects. In addition, too many people over too long would have to collude and keep quiet. Finally, capital expenditure is audited by the company's internal auditors, senior managers, the TRA, the shareholders' auditors (with international reputations to uphold) and the companies' Stock Exchange regulators, making the practice of transfer pricing more difficult.[212] Given the large number of shareholders and the supervision of international auditors and Stock Exchange regulators, the practical possibility of a FMC illicitly enriching its shareholders by passing on cash that is not allowed is virtually zero.

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[207] Curtis and Lissu 2008, ibid. In 2001, Rugemeleza Nshala, president of LEAT, and Augustine Mrema, chairman of the Tanzanian Labour Party(TLP) were arrested and charged with sedition over the Bulyanhulu case (Lange 2011:246).

[208] Chapter Two of the first draft of Curtis and Lissu (March 2008), was entitled 'Democracy and Corruption', the second draft became 'Democracy and Transparency' and the text edited appropriately to remove unsubstantiated accusations of corruption. The heading 'tax evasion' become 'alleged tax evasion.' They cite the discredited Alex Stewart report as their major source of information on tax evasion.

[209] Baker 2005; Norwegian Government Commission 2009. Baker makes the link between transfer pricing and the use of tax havens to cheat global tax authorities. The World Bank's Stolen Assets Recovery Initiative (STAR) estimates the cross-border flow of proceeds from criminal activities, corruption and tax evasion at between USD1 trillion and USD1.6 trillion per year.

[210] LeVan Hall 1979. Another form of transfer pricing is to structure the balance sheet of a company to minimise tax, for example through manipulating debt and equity financing of operations in high and low tax jurisdictions (Commission on Capital Flight 2009:69). As interest rates have been low, it is likely that most of the mining activities

[211] It is highly unlikely that FMCs are involved in *smuggling* gold, for reasons discussed in Cooksey 2008:13.

[212] These points are taken from Cooksey 2008.

The Alex Stewart report claims that the major mining companies 'overstated their liabilities by over USD 500 million, leading to revenues losses worth over USD 130 million.' These losses were not considered transfer pricing.[213]

We conclude that FMCs are not very well placed to practice transfer pricing, and that there is insufficient evidence to demonstrate that large rents are accruing to FMCs through this practice.

3.7 Civil society, the media and the IBE in Tanzania

CSOs in Tanzania, led by LEAT, and internationally, particularly in Canada and Norway, have been pro-actively involved in monitoring and publicising developments in the Tanzanian mining industry since the 1990s. International NGOs have financed much of the investigation of FMCs activities in Tanzania. Canadian NGOs have monitored and criticised Barrick for its global environmental and human rights record. One was responsible for obliging the Canadian government to release official documents covering the period of the stand-off between Sutton and local miners in Bulyanhulu (1994-96), discussed in **Part 2** of this report. Church and civil society activism in Norway led the Norwegian Pension Fund to divest its substantial shares in Barrick, though not for reasons related to the company's Tanzanian operations.

Lead by lawyer Tundu Lissu, LEAT is one of the most outspoken and pro-active advocacy NGOs in Tanzania. LEAT has both exposed FMC malpractices (Barrick in particular) and defended the cause of small-scale miners in courts of law. Though LEAT did not create the generalised public hostility towards the FMCs, it has helped to keep the issue topical.[214]

A review of local print media coverage lists 129 articles and editorials on gold industry issues published in English in Tanzania during 2009.[215] The breakdown of topics covered is listed in **Table 3.5.**

Table 3.5: Content analysis of press reports on mining in Tanzania, 2009

Issue:	N=	Percent
General Tanzanian gold mining industry issues	27	21
Other gold mining and other mineral companies	25	19
Barrick, including North Mara	20	16
Mining policy, legislation	17	13
Critical commentary/editorials/NGOs	16	12
AngloGold, Tulawaka, Buzwagi, Resolute, IAMGOLD	11	9
Artisanal and small-scale mining	7	5

[213] Curtis and Lissu 2008:24. The mines 'audited' were Geita, Bulyanhulu, North Mara and Golden Pride. Geita is said to have exaggerated its losses by 'early charging' of the 15% capital allowance and by improper calculation of the tax allowance base.

[214] In a 'breakfast debate' hosted by HakiElimu in December 2007, Tundu Lissu suggested that Tanzania had been doing very well before foreign investment came into the mining sector. The notion that Tanzania would be 'better off' with small-scale miners and without FMCs was applauded by the audience, which consisted mostly of NGO officials.

[215] As compiled and collated by Happiness Marandu for TADREG. The six newspapers monitored were the Guardian, This Day, the Citizen, the Daily News, and the African (Dar es Salaam) and the East African (Nairobi). A few articles were gleaned from other local and international sources.

Meremeta, Alex Stewart	6	5
Total	129	100

Source: tadreg archives

Not surprisingly, the most mentioned FMC is Barrick, and the most mentioned mine the troubled North Mara Gold Mine. One newspaper editor claimed that his paper had lost revenue through the withdrawal of government advertising, and journalists investigating corruption in the mining sector have been the victims of attempted bribery and death threats.[216]

Editorials and op-eds during this period were invariably highly critical of government mining policy, the low levels of taxes paid by mining companies, and allegations of harassment and environmental pollution. The following headlines give a sense of the overall tone of the press commentary during the year 2009: [217]

How to assure public it isn't being ripped off.
Do Tanzanians know the truth on mining?
The human cost of gold.
North Mara Gold Mine, a curse, not a blessing.
Background to mass poisoning of North Mara villages.
Extant mining regime stinks to high heaven.
Mining still clouded by lack of transparency, good governance.
Where did the nation go wrong in mining sector?
Mining firms falsify output figures-ESAMI researchers.
Unfair mining policy depriving Tanzania revenue.
Shivji: Current investors plunder our resources.
MNF: Stop handing mineral riches to foreigners.
Mining: How not to dig Tanzania into a hole.

Many of the more critical articles on a wide range of issues--including taxation, pollution and conflicts at mines--are said by FMC insiders to lack objectivity or an understanding of the basic technical issues involved. While a number of articles showed signs of having been sponsored by mining companies as PR exercises, the apparent bias in media coverage has not been strongly challenged by the FMC, either individually or collectively. Greater efforts to counter this bias more recently may be a case of too little, too late, but the ideological stakes have always been heavily weighted against the FMCs, as discussed further in **Part 4**.

How has civil society activism and media coverage influenced the GEM business environment? Respondents in the GEM community were dismayed at the lack of informed debate concerning GEM issues and exasperated at the negative and (in their view) biased media attention they have received. Why focus so much on taxes and royalties while ignoring GEM companies' multiple contributions to the economy in terms of investment, exports, foreign exchange earnings and local procurement? Why did LEAT spend its time campaigning against the FMCs rather than Meremeta and Alex Stewart, or labour conditions and mercury contamination in small-scale mining?

[216] Curtis and Lissu 2008 :33-4. The journalist who investigated the Buzwagi contract, Mbaraka Islam of ThisDay, received a death threat on his mobile phone.
[217] Gold Press 2009.

One junior explorer thought it self-evident that negative media coverage and the activities of civil society organisations in Tanzania and abroad have had a significant negative impact on gold exploration and mining companies' future prospects. The sustained anti-FMC advocacy of international and national civil society organisations and the negative media coverage and commentary that went with it served to worsen their already poor public image and create the conditions for anti-FMC politics, discussed in **Part 4** below.

3.8 Conclusion

Our second research question is: b***y what formal and informal means have Tanzanian state actors and GEM investors influenced profitability?***

The main formal institutions discussed above are government departments, in particular the Mining Division in the MEM, and the TRA, which is a semi-autonomous revenue agency, and the GEM companies. The main foreign exploration companies are 'juniors' from Canada, Australia and the U.K. operating in Tanzania alone or in joint ventures with Tanzanian partners. Their numbers have fallen since the exploration boom of the 1990s came to an end and as a result of the global financial crisis beginning in 2008. Those contacted considered the business environment to be stacked against them. In particular, they criticised the slowness of the MD in processing prospecting and mining licences and systematic rent-seeking among MD officials that added considerably to the risk and cost of doing business.[218]

FMCs are interested in the profitability of individual mines, and deal with the Tanzanian tax and regulatory authorities on a mine-by-mine basis. The expected closure of Resolute's Golden Pride mine in 2011 will reduce the FMC mining presence to two companies: Barrick and AGA. No major or medium-sized mines are currently planned.

The inefficient licencing system has undermined exploration and helped frustrate the emergence of small- to medium-size mines. The global financial crisis put paid to the exploration boom in dramatic fashion, causing many juniors to suspend or close down their operations.

Thus a combination of exogenous and endogenous factors combined to undermine GEM profitability and put in question the future of large-scale gold mining in Tanzania.

What informal processes can we identify that influence GEM profitability? It is difficult to see how a bribing strategy could help address the malfunctioning of the TRA and the MD and other formal state agencies.[219] In a context where past and present MD officials and private, mostly Tanzanian, citizens and companies are involved in collusive manipulation of GEM regulation, informal interventions can only amount to damage limitation exercises. Paying bribes in a decentralised and competitive rent-seeking set-

[218] 'Juniors' also complain about run-ins with TRA over tax assessments.
[219] The fact that GEM companies have numerous tax cases in court suggests that they are not prepared to negotiate over large tax demands, though we have seen that small extortions are preferred to litigation or not getting the service.

up can become a self-defeating strategy.[220] A respondent said it is possible to survive in the current regulatory framework without bribing,[221] but you need good contacts and information, you need to know how to play the system, and whatever you do to defend your interests, profitability is likely to suffer.[222] All this carries high transaction costs. Naïve, inexperienced players are unlikely to survive for very long.

The CME formally lobbies the government on behalf of exploration and mining companies. Bigger companies sometimes take their problems as far as State House, although it is more common to lobby the Commissioner for Minerals.[223] The Chamber presents GEM issues to government commissions of enquiry,[224] and places occasional advertisements in the press countering civil society or officials claims against them and providing information on GEM's tax payments and positive contributions to the national economy. It is apparent, however, that neither individually or collectively do GEM companies dedicate a lot of effort to countering the negative image created by NGOs and the media.

At the outset we proposed three sets of indicators of profitability: published economic and business data, the perceptions and opinions of key players, and revealed preferences, including investment decisions by current investors (which are likely to reflect current levels of expected profitability). Triangulating these three suggests an imminent crisis of profitability among GEM investors. While the price of gold has reached unprecedented levels in recent years,[225] costs of production have also risen rapidly as a result of rising oil prices, with a knock-on effect on other inputs such as tyres. **Box 3.2** above suggests that a commercial mine is not inevitably profitable *over the life of the mine*, even in a relatively promising investment climate. The perceptions and opinions of key players concerning trends in minerals policy, taxation and the regulatory environment point to a growing crisis in GEM confidence. The global credit crunch has compounded this potential crisis and put on hold future exploration and mining investments. In **Part 4** we examine the political economy of these dramatic trends.

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[220] Asked how corruption compared in Nigeria and Tanzania, a British businessman told me that: "In Nigeria you pay a big bribe to one person but in Tanzania you pay lots of little bribes to lots of different people." (December 2009).

[221] What is a bribe? The updated data-base of all exploration licences is supposed to be publicly available for USD 100 on a monthly basis. When it is not publicly available it can still be obtained informally for USD 100. Does this constitute a bribe?

[222] Risks increase with asymmetric access to information, as we saw in **Box 4.1**. Exploration is inherently risky, so an additional risk or two are not necessarily going to prevent the 'junior' from striking it rich (hope springs eternal).

[223] Individual companies and the Chamber also lobby the Minister of Energy and Minerals, donor agencies and the Bank of Tanzania, in the GEM view to little avail.

[224] Including the Bomani Commission which, according to industry sources, did not go out of its way to obtain GEM inputs for its report.

[225] The price of gold on the London Bullion Market rose from USD 282 per troy ounce on 2nd January 2000 to USD 1,213 on 2 December 2009, falling back to 1,097 on 26 March 2010, and is currently (November 2010) over USD 1,300/ounce. See http://www.lbma.org.uk/?area=stats&page=gold/2009dailygold accessed on 29 March 2010.

Part 4: The politics of gold mining

4.0 Introduction and methodology

This report examines the determinants of profitability for large-scale gold exploration and mining companies in Tanzania. We began by examining the determinants of investment decisions: what attracted foreign gold exploration and mining companies to Tanzania? In Part 1 we examined developments in policy, legislation and regulation as possible explanations for the rapid growth of investment in gold-related FDI during the 1990s. We concluded that individually negotiated Mining Development Agreements were more important in driving initial investments than formal laws and regulations, which came later. The exploration boom during the second half of the 1990s did not lead to the discovery of any major new deposits, at the cost of hundreds of millions of dollars.

Part 2 described the process through which FMCs established and maintained property rights in gold mines during the same period. We concluded that Sutton Resources' 'victory' in the protracted standoff with artisanal and small-scale miners over mining rights in Bulyanhulu paved the way for large-scale gold mining in the Lake Victoria area, leaving a residue of bitterness and hostility that has continued to plague relation between large and small scale miners to date.

In **Part 3** we looked at the formal and informal relations between exploration and mining companies on the one hand and state actors on the other to determine how these relations influenced investment decisions and profitability. Our main conclusion was that the manner in which the Tanzanian state has taxed and regulated the sector, including the allocation of exploration and mining rights, has served to undermine the confidence of exploration and mining companies in the long-term profitability of their activities, leaving a 'missing middle' of middle size companies and the strong likelihood of a long-term decline in investments by existing and prospective new exploration and mining companies. The global financial crisis from 2008 served to further darken this already gloomy scenario.

In **Part 4** we examine the underlying political factors that determine the long-term viability of large-scale gold mining in Tanzania. These factors constitute our *underlying explanatory variables*. Stated formally, we are trying to establish how Tanzania's political economy has influenced the type of IBE and level and pattern of investment in gold exploration and mining. In this context, we will consider *inter alia* the independence of the bureaucracy and the degree of centralisation and coordination of rent-seeking practices in the gold sector. We will also look for clues concerning the origins of the contemporary political discourses surrounding gold mining in Tanzanian history. Thus our final research question is: ***how has the political economy of the gold mining sector and the wider polity influenced the IBE and the level and pattern of investment in gold exploration and mining?***

Below we proceed as follows. In **4.1** we summarise the evolution of political discourses and initiatives concerning gold mining issues during the last decade, citing government, mining company, business associations, civil society, and media sources. **4.2** investigates how civil society, the media, academic and public opinion influenced the political discourse. **4.3** examines whether different types of rent-seeking relating to the gold sector and discussed in the previous section are coordinated or uncoordinated, and the nature of the interaction between political and bureaucratic spheres. Drawing on our preliminary discussion of the background to economic reform, **4.4** attempts to explain the apparent contradictions between official policy and practice identified in **4.1**. **4.5** presents a comparative perspective and **4.6** concludes.

4.1 The politics of gold mining 2000-2010

Some of the main political milestones are summarised in **Figure 4.1** below.

Figure 4.1: Politics of gold mining timeline 2000-2010

2000	
August	**AngloGold CEO Bobby Godsell** praises the Tanzanian Government … for creating "a policy, tax and regulatory environment attractive to mining investors" at the official opening of the Geita Gold Mine.
2001	
March	**MIGA's Compliance Advisor Ombudsman** (CAO) visits Bulyanhulu to investigate human rights abuse accusations including the alleged deaths of artisanal miners in 1996. CAO criticises LEAT and their 'international allies' for presenting the Bulyanhulu allegations without adequate evidence and expresses 'concern' about the treatment of relocated people.
June	15% additional capital allowances removed in the 2001 Financial Law, though it continues for companies with existing MDAs.
August	Clashes erupt at **Nyamongo** gold mine between villagers and the police, after hundreds of small-scale miners protested against their eviction from the area that would become **North Mara Gold Mine** (NMGM).
2002	
May	Large government contingent liabilities relating to the **Meremeta** (JV between the Tanzanian army and a South African company) flagged in the **Public Expenditure Review.**
June	15% additional capital allowances reintroduced in the 2002 Financial Law.
2003	
	BOT hires US company **Alex Stewart (Assayers),** (**ASA**) to audit gold production and export.
2004	
	Committee set up to Review the Mining Policy of 1997 headed by the **PS** in the **MEM Jonas Kipokola.**
June	New Income Tax law allows mining companies to continue enjoying the 15% additional capital allowances by retaining Section 145 of the 1973 Income Tax law.
December	The report of the Kipokola Committee advises the GOT to buy shares in mining companies, undertake JVs through STAMICO and the NDC and to invest in exploration and infrastructure.
2005	
	Basil Mramba, Minister of Finance says the incoming government will need to address the issue of revising conditions for the mining industry, since, "As a government we are facing a lot of criticism, especially in parliament."
August	**CCM** election manifesto commits to 'strengthen cooperation between the Government and the private sector in creating conducive investment climate to attract investors to establish new mines' and 'To improve relations

	between large miners and small-scale miners.'
December	**Jakwaya Kikwete** becomes Tanzania's fourth president, 'promising that mining contracts and laws regulating mining activities would be reviewed.'
2006	
May	President Kikwete appoints the **Masha committee** to review 'MDAs and the fiscal regime for the mineral sector.'
September	The **Masha report** argues that: 'Although the major gold mines have been operating in Tanzania for over five years now and the gold price … has recorded a steady rise over time, none of the gold mining companies have declared taxable income.' Recommends abolition of the 15% additional capital allowances for existing mines. Ring fencing also recommended.
October	Barrick pay USD 7 million in advance voluntary payment of corporate tax.
December	Speaking at the conference *Natural Resources and African Economic Development: Canada's Role in the 21st Century* in Calgary**, Prime Minister Edward Lowassa** 'challenged developed countries to hold national and multinational mining companies accountable so that they become more sensitive and responsive to the concerns of the local communities.' The Tanzania **Chamber of Minerals and Energy** says the statement might 'scare away investors.'
	Parliamentary Public Accounts Committee Chairman **John Cheyo '**shocked' by mining companies' continued declaration of losses despite gold prices rising from USD280/ounce in 2002 to USD640 in 2006. **Lawyers' Environment Action Team** (LEAT) urges the government to cancel all mining contracts. **Tundu Lissu** says 'mining contracts have not benefited Tanzania, despite exploitation of the country's wealth.' (Edwin 2006).
2007	
February	Minister of Energy and Minerals **Nazir Karamagi** signs contract with Barrick in a London hotel for the development of the **Buzwagi** mine.
May	**President Kikwete** addresses a 'huge' crowd in Kalangalala in **Geita town**. He says: "those foreign mining firms which won't be ready to honour the agreements reached on how to share revenue with the government will have to go. We shall kick them out of this country. … the government is not going to stand by watching its natural resources plundered and … agreements reached with the mining consortiums broken at will." During the same tour of Mwanza Region, the President is quoted as saying: "They have been robbing us during the past decade, taking up to 97 per cent of all the earnings from the mineral resources… We have been getting only 3 percent of the total revenues generated from this industry." (Curtis and Lissu 2008:27).
June	Minister for Energy and Minerals **Nazir Karamagi** said "the government has been trying to avoid frustrating prospective mining firms wishing to invest their money in the country." **Dr Peter Kafumu,** Commissioner of Minerals said that raising the royalty beyond three percent would scare prospective investors.' (Tarimo 2007).
August	Opposition MP **Zitto Kabwe** suspended from Parliament until January 2008 for 'humiliating' minister Karamagi, whom he accused of lying to parliament over the secret signing of the Buzwagi contract with Barrick in February.
November	At a CCM annual conference in Dodoma, **President Kikwete** questions the rationale for the 15 percent additional capital allowances enjoyed by major mining companies, allowing them to put off indefinitely the payment of 30% corporation tax. (Sunday Citizen 04/11)
November	**President Kikwete** appoints former Attorney General **Mark Bomani** Chairman of the **Mining Sector Review Committee** to look into mining contracts and taxation issues. Zitto Kabwe is a member of the committee. **Barrick Tanzania** strongly refute reports that the company constructed a 'multi-billion shilling' house for a senior official in the Prevention of Corruption Bureau (PCB) in order to stop PCB revealing the company's corruption scandals. (Sunday Citizen 11/11).
2008	
	"When I look back at what happened then and what is on the ground in

February	Tanzania I feel so warm in my heart that my sweat and toil has (sic) been rewarded. Indeed, rewarded so handsomely." President Kikwete to the XII Mining Indaba Cape Town. Kikwete was Deputy Minister of Energy and Minerals (1988-90) and Minister (1990-94).
April	**President Kikwete** tells visiting **Norwegian Prime Minister Jens Stoltenberg**: "We are trying to clear up the mess in our mining industry" and urges Norway not to divest its investments in Barrick (Philemon 2008).
May	**Bomani Committee's Report** presented to the President. Minister of Finance **Mustafa Mkulo** tells the **Bloomberg** news agency "We can increase revenue from mining companies by 10 times if they all pay taxes".
October	**Parliamentary Committee for Energy and Minerals** endorses the Bomani Committee's report.
November	Former Ministers **Basil Mramba** and **Daniel Yona** charged with abuse of office and loss of 12bn/- in connection with the Alex Stewart contract.
December	Statement attributed to **Gareth Taylor,** Vice President of Barrick, Africa Region, that the company was 'considering pulling out of Tanzania' prompts Barrick spokesman **Vince Borg** to rejoin: "We have no such intentions." However, Barrick must "carefully examine its operations that are subjected to high cost, operating challenges and intensive capital requirements." (Guardian 06/12/08).
December	Barrick's **North Mara** mine is invaded by villagers, destroying property worth USD16m (later revised to USD7m) and resulting in one death. Mining operations are suspended.
2009	
February	**Norwegian Pension Fund** sells shares in Barrick over environmental concerns in Papua New Guinea.
April	**Tanzania Chamber of Minerals and Energy** warns government not to increase mining taxes as this would deter further investment.
June	Abolition of fuel levy and fuel excise duty exemptions and VAT special relief for mining companies.
June	The **Tanzania Chamber of Minerals and Energy** warns: "The timing and manner in which these regressive measures have been instituted is too costly to be borne by any industry or sector." The investment and operational challenges that justified the tax exemptions are still relevant.
November	Tanzania joins the **Extractive Industries Transparency Initiative** (EITI)
December	Trial opens of **Basil Mramba, Daniel Yona and Gray Mgonja** over their role in the Alex Stewart contract.
December	Three-day meeting of mining stakeholders in Arusha to discuss draft mining legislation. **PS in MEM David Jairo,** says the global financial crisis "threatens to … wipe out the hard-won socio-economic gains by the sector in the last decade." (Ubwani 2009).
December	Former President Benjamin Mkapa defends his mining policy. "Six big gold mines are in operation. Where would we be without them?" he asked. (Mutarubukwa 2009).
2010	
January	**President Kikwete** cuts the ribbon at **Masengwa Secondary School** near **Kahama**, a school Barrick renovated at his request at a cost of $213,000.
February	Exploration Committee of the TCME 'strongly recommends' the removal of 17 proposed changes in the Draft Mining Bill.
March	**Barrick** lists a new company, **African Barrick Gold,** on the **London Stock Exchange**. ABG's assets are Barrick's Tanzanian mines.
23 April	The **Mining Act 2010** passed by parliament. In presenting the Bill, the Minister of Energy and Minerals **William Ngeleja** states that "Tanzania will be built through the pursuit of the policy of socialism and self reliance." The Act is well received by the media and poorly received by the mining industry.
April	Commenting on the new Mining Bill, Barrick GM **Deo Mwanyika** says: "In terms of large scale mines, the Bill has brought in fundamental changes which will be … carefully scrutinised by would-be investors. Clearly the changes are likely to impact the sector negatively from a growth point of view

	because investors are likely to look for other destinations with less stringent rules." 'The public shouldn't be surprised if projects like Kabanga and Mchuchuma … do not take off as a result of the … Bill.' (Luhwago and Machira 2010).

The relations between the state and big gold have increasingly been plagued by controversy during the past decade. AGA opened Geita Gold Mine in 2000. Barrick started producing gold in Bulyanhulu and North Mara in 2001 and 2002 respectively, followed by Tulawaka in 2005. High-level GOT advocacy for the FMCs declined steeply during the second Mkapa government (2000-2005). While reaffirming its support for small-scale miners, the CCM election manifesto of 2005 added the need to increase mining's contribution to GDP.[226]

As the mines came into production, both CCM and opposition MPs began to voice popular concerns over the benefits of large-scale mining. As one move to ward off growing political and civil society criticism of his government's mining policy, President Mkapa appointed Dr Jonas Kipokola, the PS in MEM, to review the sector (2005). The relatively mild Kipokola report advised the GOT to buy shares in mining companies, undertake JVs through STAMICO and the NDC and to invest in exploration and infrastructure, but not to undertake mining itself.[227] But the report was not published or acted upon prior to the 2005 elections.

After the 2005 elections, presidential and ministerial statements on the FMCs became increasingly critical (see **Figure 3.2**). In addition to the negative publicity surrounding big gold's treatment of artisanal and small-scale miners, and accusation that the MDAs were too generous to the mining companies, NGOs and the press began to accuse them of tax evasion and other irregularities such as smuggling unprocessed gold.

To address growing criticism of mining policy by his own and opposition MPs, and by civil society, President Kikwete adopted an increasingly anti-FMC stance. In May 2006, he appointed the Deputy Minister of MEM, Laurence Masha, to head an enquiry into the mining industry. The Masha report (September 2006) was more critical than Kipokola's, citing the Alex Stewart report (see **Part 3**) as 'proof' that the big mining companies were defrauding the government of hundreds of millions of dollars in taxes.[228] More convincingly, Masha pointed out that the FMCs were still enjoying the 15 percent capital allowances granted in 1998, thus delaying the payment of corporation taxes.[229] The report of the Masha commission was never made public, though its contents were eventually leaked to the media.[230]

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[226] '… mchango wake [sekta ya madini] katika Pato la Taifa ni mdogo.' CCM 2005:40. The manifesto also prioritises: attracting more foreign investment, facilitating access to credit for small miners, improving relations between big and small miners ('kuboresha mahusiano kati ya wachimbaji wakubwa na wadogo') and government equity in mining activities.

[227] Interview M, January 2010. The ill-fated Meremeta initiative proved the wisdom of this latter recommendation.

[228] Thisday reporter 2007.

[229] In November 2007, Kikwete claimed that the 15% allowances could not be removed since the clause was included in the MDAs and protected by the Investment Act of 1997. This does not appear to be the case. The 1997 Act refers to 1973 and 1976 tax legislation or 'any written law for the time being in force', but the 15% allowances were not granted until mid 1998. See Datoo, Sunday Citizen 2007.

[230] Thisday reporter 2007.

To allay further criticisms, in November 2007 President Kikwete commissioned a Mining Sector Review Committee under former Attorney General Mark Bomani.[231] According to the Guardian: ‘The government decision to review the current Mining Act and mining Policy are in response to a public outcry and reservations from different stakeholders including parliamentarians and academics that the 1998 Mining Act had many loopholes and did not benefit local people.' [232] The Committee’s recommendations were to form the basis for the new Mining Bill, that was postponed a number of times and finally passed by Parliament in May 2010.

There was only one technician on the Bomani Committee,[233] all the other members were politicians, including two from opposition parties, senior civil servants and an official from the Dar es Salaam Stock Exchange. A number of our interviewees from the mining sector complained that the Commission did little to engage with the mining industry during its deliberations, and the main thrust of the report was to cancel tax exemptions, increase existing taxes and change the basis for calculating royalties. The report also recommended the introduction of ‘ring-fencing’, so that losses incurred by a company in exploration and drilling in one prospective mining location cannot be offset against income from a profitable mine. The Committee repeated the Kipokola’s recommendation that the GOT should take an equity stake in new FMC mines through STAMICO or the NDC.

The PWC tax expert on the Committee was concerned that the cumulative effect of the tax and other recommendations would be to undermine Tanzania’s attractiveness to potential mining investors, and he did not therefore endorse the report. His main point was that the Committee had dealt with taxes and royalties on an individual basis, with no attempt to understand their aggregate impact on mining profitability, and therefore on future investments. He also questioned the relevance of basing taxes and royalties on rates applicable in other mining jurisdictions.[234]

In October 2008, the findings of the Bomani Committee were endorsed by the Parliamentary Committee for Energy and Minerals,[235] with a few suggested changes.[236] Of note is the Committee’s endorsement of the recommendation to amend the 2004 Income Tax Law that allowed FMCs to continue enjoying the 15% additional capital allowances.

A bill was drafted after the Energy and Minerals Committee endorsed the Bomani Report and eventually[237] presented to the Committee for Energy and Minerals before going to Parliament in April 2010. An interviewee claimed

[231] The earlier Kipokola and Masha initiatives were criticised for being handled by the MEM, who were said to have ‘messed up the contracts’ (i.e. the MDAs) in the first place (Datoo 2007).

[232] Mgamba 2007; The Guardian 2009, 12 August.

[233] PricewaterhouseCoopers‘ tax specialist David Tarimo.

[234] Interview H, 10/12/09; Thisday reporter 21/052008. In all, the tax expert provided 26 critical comments on the Committee’s report.

[235] Interviewee R pointed out (09/06/12) that, since the Bomani Committee was appointed by the President, it would have been logical for the report to have gone first to the President before being referred to the parliamentary committee.

[236] One change proposed was to raise the threshold for future MDAs from USD 200 million to USD 600 million (URT 2008:9).

[237] The Bill was expected to go to parliament in May 2009. Thisday (16/05/09) reported that consultations between the government, mining companies and the Chamber of Mines were the cause of the delay.

that the mining industry could have 'lived with' the Bill based on the Bomani report, but that 'populists' in the Committee introduced further changes that were integrated into the final draft of the bill.[238]

The foreign mining community saw the Act as a continuation of measures serving to erode the fiscal incentives they had obtained from the GOT when they began their investments.[239] A major issue of concern for the FMCs in the new Act was the empowerment of the Minister of Energy and Minerals to enter into negotiations with an investor to obtain an equity stake in any venture at any time. Informally, this has been described as 'a licence for corruption'. Investors also queried the decision to limit new MDAs to projects of over USD 100m--thus discouraging medium-size investors and perpetuating the 'missing middle' in the mining industry--and the proposed review of MDAs every five years, which served to undermine the predictability of the tax regime over the life of the mine.

Other conditions in the Act that the FMCs say will discourage further investment in gold exploration and mining are:

- Although the royalty stays at three percent, it will increase as it is calculated on gross rather than net value;
- Limiting the number of prospecting licences (to 20) and the size of exploration areas (to 2000 sq kms) will introduce uncertainties for existing claim holders, limit the likelihood of finding new deposits and discourage further exploration;[240]
- Mining companies should not be obliged to procure goods and services in Tanzania against their business interests;
- FMCs should not be forced to list on the Dar es Salaam stock exchange;
- Ring-fencing adds to the already investor unfriendly fiscal regime.

Barrick, the largest gold mining company in Tanzania (and the world), considered the 2010 Mining Act the source of additional 'insecurity and unpredictability in the investment regime / climate' as a result of 'ministerial discretionary powers to make or interfere with commercial decisions', the negative impact on 'governance and transparency and room for abuse of power', all with 'negative impacts on [the] ability of investors to finance projects – security of tenure and profitability.' [241]

Sustained lobbying by the Tanzanian Chamber of Minerals and Energy (TCME) and individual mining companies during the drafting of the 2010 Act did little to influence its eventual content.[242] The view of gold exploration and

[238] Interviewee R (09/06/10) claims that a minister and an influential former minister tried to convince the Prime Minister to go back to the President to seek a new mandate after the Committee had introduced significant changes to the Bill, including the clause to review MDAs every five years. This he failed to do. The President subsequently endorsed the Bill passed by Parliament in May 2010.

[239] In 2009, the government abolished the fuel levy and fuel excise duty exemptions and removed VAT special relief for mining operations, confining it to exploration and prospecting. The following is Barrick's position as summarised by Mwanyika 2010.

[240] Barrick are said to have reduced their exploration budget by 90%.

[241] Mwanyika 2010.

[242] At the 2009 annual dinner of the Chamber of Minerals and Energy, Chairman Ami Mpungwe told the Minister of Energy and Minerals William Ngeleja that "This long policy

mining industry insiders was that as a result of the Act Tanzania could no longer expect to attract significant investments in exploration and mining from existing or new sources. On the contrary, the Act is likely to accelerate the exodus of exploration and mining companies in Tanzania.

In a press release, the TCME stated that the new Mining Act 'carries fundamental weaknesses and concerns that are bound to hold back the growth and development of a sustainable and competitive mining industry in Tanzania.' The Bill 'fails to appreciate' that to 'become the preferred destination for mineral exploration and investment' Tanzania needs to become 'significantly competitive vis-à-vis other countries.' Fiscal and regulatory issues (not dealt with in the Act) are the object of 'further speculation and uncertainties ... further eroding investor confidence.' How the Act is interpreted and enforced will make a difference at the margin, but is unlikely to change this gloomy conclusion. [243]

CSOs also lobbied strenuously around the 2010 Act and produced a list of thirteen weaknesses and recommendations for changes.[244] Their critique agreed with Barrick's (above) as regards the discretionary powers accorded to the Minister and Commissioner on issues of state participation in mining, dispute resolution, and renegotiating MDAs.[245] CSOs question the institutional capacity of the MEM to administer aspects of the Mining Act, an important issue not mentioned by Barrick. Otherwise, CSOs are keen to tighten the regulatory knot around the mining companies.

Neither the mining industry nor the CSO lobbying seems to have had much effect on the eventual legislation that the *bunge* passed in April 2010. Post hoc commentary also failed to influence the President's endorsement of the Act. Pro-FMC advocacy now focuses on warning the GOT not to enforce the law too zealously, for fear of further knock-on effects on investment in a global economy still recovering from the 2008-09 credit crisis.

Finally, multilateral and bilateral donors have lobbied the government on mining issues. Throughout the period of our review, the World Bank has been an important actor, championing the liberalisation agenda and providing project finance to improve the capacity of the MEM to manage modern mining. Senior Bank and government officials regularly meet to discuss policy and practical issues. We have seen that bilateral donor representatives do the same, lobbying on behalf of their own nationals with investments in the mining sector. What difference does any of this make?

Interviews give some insights. It is routine for senior officials, from the President downwards, to express concern with the (invariably critical) points raised by donors, with promises of action. This invariably involves delegation to subordinates, and usually nothing much happens thereafter. Below, we look into why this should be so.

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review and consultations are risking to making (sic) our country an unstable and unpredictable investment environment for [the] mining industry." (Alipo 2009)

[243] TCME, 29/04/10. The Act confines gemstone mining to Tanzanians, which will 'deny the sub-sector of meaningful investment, job creation, formalization, transparency, modernization, growth and … contribution to government revenue.'

[244] 'Civil Society Position on the Mining Act 2010', mimeo.

[245] Both FMCs and CSOs suspect that discretionary powers will encourage corruption, but with different beneficiaries! The same applies to the following sentence.

4.2 Civil society, the media, academics and public opinion

Have civil society and media coverage of gold mining issues, and academic discourse influenced public opinion? **3.7** above examined the role of civil society and the media in relation to the IBE facing FMCs. We demonstrated that external and Tanzanian civil society has played a prominent, pro-active role in the politics of gold from the outset of the conflict between Sutton and local miners in 1994. Civil society activism has been spearheaded by the Lawyers Environmental Action Team (LEAT). LEAT's view on the foreign domination of Tanzanian gold mining is that:

> 'An industry that violently destroys livelihoods, impoverishes communities, abuses rights and pollutes the environment while leaving little or no benefits to affected communities and the country it operates from undermines its long term viability.'[246]

Financed by international advocacy NGOs,[247] LEAT's objective seems to be the ouster of FMCs rather than the reform of their operations.

LEAT occupies an ambiguous position in the politics of Tanzanian gold mining in that it is both a strong critic of government support for the mining industry while at the same time articulating the majority view on the evils of the FMC presence in Tanzania. Thus, while suffering from occasional harassment by state security and police, LEAT maintains close relations within the 'system'. Its consistent campaigning in Tanzania and internationally (in Canada and Norway in particular) has: received wide media coverage, (perhaps) helped prompt the Norwegian Pension Fund to divest its Barrick shares, and forced the World Bank to investigate the Bulyanhulu deaths, as described in **part 3** above.

Two of Tanzania's media houses are owned by businessmen with investments and contracting interests in large-scale gold mining. IPP's Reginald Mengi owns a number of PLs in the Lake Victoria area, while Rostam Aziz, owner of the New Habari Corporation, is a major sub-contractor to mining companies through Caspian Ltd. We might expect their newspapers to be less critical of FMCs than other papers. The Guardian (owned by Mengi) offers a rare pro-FMC opinion:

> 'Tanzania has attracted 2.5 billion US dollars FDI to the mining sector...[*u]nfortunately*, Tanzanians believe that … they are robbed of their wealth ... the advent of foreign investors … has been greeted *unfairly* by the mass media calling them names like 'thieves and robbers'...there is a growing sign of anti-foreign investment in Tanzania.' [248]

Nevertheless, most of the commentary on FMCs in IPI and New Habari publications is critical. The other major media house, Mwananchi Corporation

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[246] Lissu 2008 : 93.

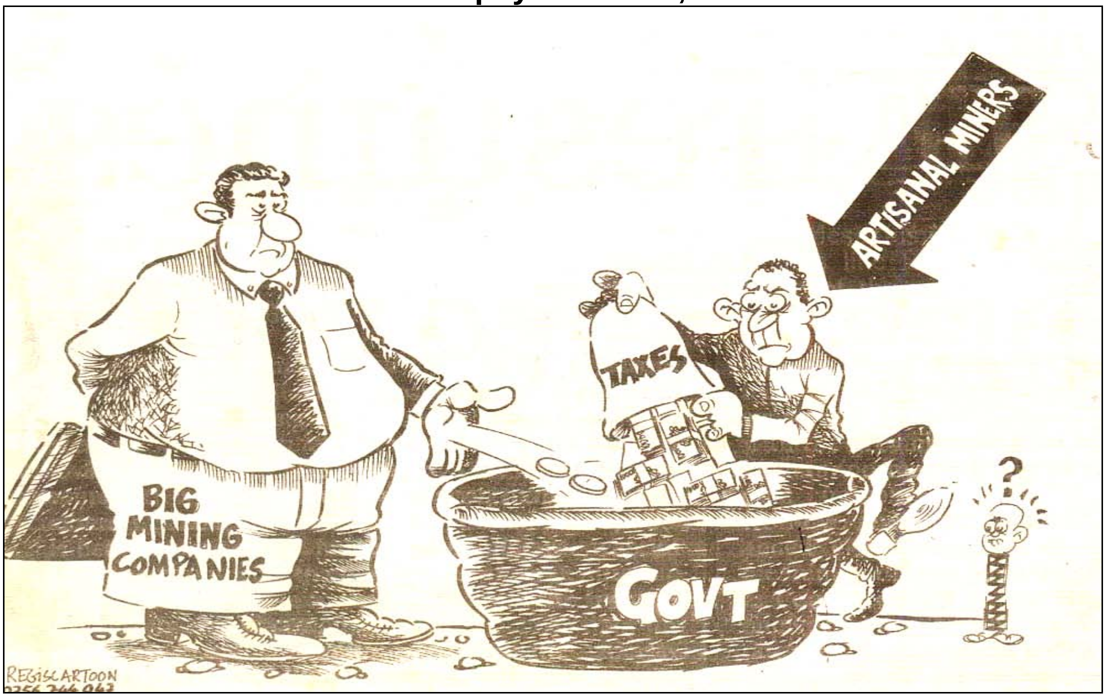
[247] Including Christian Aid (U.K.) and Norwegian Church Aid. LEAT also works closely with other advocacy NGOs, including the Tax Justice Network Africa, ActionAid, Southern African Resource Watch, the Revenue Watch Institute and a number of Canadian NGOs mentioned in **section 2**.

[248] Bituro Kazeri, Guardian, 19th April 2009, emphasis added.

(Nation Media Group), and the state-owned Daily and Sunday News have been generally hostile to the FMCs in their reporting and editorial comments.[249]

Academic researchers in Tanzania have largely lacked objectivity and have routinely portrayed a David and Goliath struggle in which Goliath wins and Tanzanian interests are trampled underfoot by a bunch of avaricious 'sharks and Shylocks'[250] who "are coming just to take away our resources and leave us with nothing", mediated by a small group of Tanzanian politicians and bureaucrats.[251] Most of the critical commentary has come from social scientists, including the late sociologist Professor Seith Chachage and lawyers Professor Issa Shivji and Tundu Lissu himself. One searches in vain for a Tanzanian economist who has applied the tools of his trade to the mining sector in a spirit of disinterested, objective enquiry.[252] Few researchers and commentators seem to have taken the trouble to try to understand the basics of modern gold exploration and mining.[253]

Artisanal miners pay the taxes, not the FMCs



Source: The African 2008.

[249] ET Media and Arts Review 2007:26-7.

[250] We give Shivji (2007) the benefit of the doubt over the intention of the allusion to Shylock--the avaricious Merchant of Venice--who shares his ethnic origins with the founders of both Sutton (Sinclair) and Barrick (Munk), as well as Vogl and Edelstein… Shylock bore such insults 'with a patient shrug, for sufferance is the badge of all our kind' (William Shakespeare, Merchant of Venice, Shylock to Antonio).

[251] African 03/12/09.

[252] Haji Semboja of the Economic Research Bureau is quoted as defending the level of mineral royalties charged in Tanzania, and advocating local private sector rather than state participation in mine ownership (Kanyabwoya 2009).

[253] External media coverage and academic research on FMCs have been more balanced, while civil society coverage has been overwhelmingly critical, on both community/small-scale miners' rights issues and on the distribution of benefits from modern mining.

Externally-funded research, journalism and advocacy have been motivated by both pro- and anti-FMC interests. The report 'Golden Opportunities' by Curtis and Lissu was followed by 'Breaking the Curse', which reviewed tax-evasion by MNCs in Ghana, Tanzania, Sierra Leone, Zambia, Malawi, South Africa and the Democratic Republic of Congo (DRC).[254] Curtis and Lissu (First Edition) identify three main problems with the large-scale mining industry: it pays 'minuscule' taxes; 'it is subject to minimal governmental and democratic scrutiny and has the associated problem of corruption', and 'people in the gold mining areas are not benefiting and many are being made poorer.'[255]

On the pro-FMC side, the International Council on Mining and Metals (ICMM) produced a 'life of the mine' analysis modelling the FMCs contribution to the Tanzanian treasury and economy over the next decade and more. This was part of a larger study which produced a similarly upbeat report covering Tanzania, Chile, Ghana and Peru. In October 2009, ICMM warned that changing mining legislation could 'jeopardize future investments' required 'to keep the sector afloat.'[256] ICMM warned against 'seeking more short-term revenue from existing levels of production.'[257] In 2009, the World Gold Council produced 'The Golden Building Block', with a similar upbeat message for the future of gold mining in Tanzania, based on the ICMM study's findings.[258] Lastly, PricewaterhouseCoopers undertook a global study of mining company tax payments and projections.[259]

These external efforts were complemented by occasional statements by the TCME. Most of the latter have been reactive, responding to critical reports and what the Chamber considers misinformed press coverage.

The anti-FMC discourse has the following main characteristics. First, it assumes all FMCs are risk-free and hugely profitable.[260] Second, Tanzania has unlimited mineral wealth that will attract investors under almost any regulatory regime. Third, through guile or corruption (or both) FMCs have negotiated unfair conditions with the GOT. Fourth, they are continuously looking for (legal and illegal) ways to reduce their costs and increase their income and profits, unconstrained by business or industry standards or ethics. Fifth, the (modest) benefits Tanzania receives from mining are exclusively or

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[254] See Part 3 for references.

[255] Curtis and Lissu 2008:7. In the second (revised) edition 'minuscule' is replaced by 'very low' and 'not benefiting' by 'barely benefiting.' The revised edition thanks Richard Murphy of Tax Research LLP for 'checking tax terms' but his actual contribution to the report was to tone down its inflammatory language and edit the constant references to corruption for which no evidence is produced.

[256] Upton 2009. The Tanzanian study was undertaken by Oxford Policy Management (OPM). In May 2009, the report was presented to a group of Tanzanian government officials.

[257] International Council on Mining and Minerals 2009:6. The report criticises the Bomani Report recommendations on the grounds that they 'are presented as separate and independent ideas…: it is largely left to the reader to join them together.'

[258] World Gold Council 2009.

[259] PricewaterhouseCoopers 2009. The report found that corporate tax accounted for nearly half (48%) of total taxes paid by 14 large mining companies worldwide. This figure is relevant for our discussion of non-payment of corporation tax by the first FMCs in Tanzania.

[260] For example: '… any company mining gold will never mine for losses it will always have to get unimaginable profits because gold is wealth and is money , real money. No gold company makes losses because everything has been calculated, tested and evaluated to the last gram.' Ngahemera 2009.

largely taxes and royalties. Sixth, the discourse is most often highly emotional and categorical in tone, leaving no room for nuance, counterfactuality or debate.[261] Consequently, seventh, extreme and uninformed opinions are common.[262]

Not surprisingly, the anti-FMC discourses of civil society, the media and the academic community are reflected in public opinion. A 2007 survey of 5,000 adult Tanzanians in ten regions found that *96 percent* of respondents offering opinions believed that FMCs should pay more taxes.[263] That these views are shared across classes, by most politicians in the ruling and opposition parties, by academics, religious leaders and civil society activists, highlights the essentially nationalist nature of the discourse, discussed further below.

Given the underlying assumptions and depth of feeling of the anti-FMC camp, there is little room for constructive debate with pro-FMC elements. In such a context, attempts by the Chamber, individual mining companies or others to counter their opponents 'negative propaganda'[264] or FMCs' contribution to the national economy are likely to bear little fruit. The REPOA survey cited above found that 'foreigners' were considered the least trustworthy out of a list of 18 groups of people presented to respondents.[265] Mistrust and enmity limit the space for constructive criticism and dialogue.

4.3 Rent-seeking coordination

In **Part 3** we examined in detail the various forms of rent-seeking that characterise the gold mining industry. We gave examples of private and state predation, looting and rent-seeking proper. Here we ask: Is there evidence that rent-seeking in the sector is coordinated by the incumbents of state power or their agents? Those initiating coordination efforts may have different motives or agendas. Coordination by a group around the president may be designed to assure funding for the ruling party and to buy off potential political opponents or critics (centralised coordination). Centralised coordination may also have a developmental rationale, to assure that (in this case) mining and support activities are carried out by key *and competent* allies.[266] Rents earned may be shared with the ruling group / party for election and other purposes as well as for personal gain.

We return to the examples of TRA, Meremeta and Alex Stewart, the main examples of rent-seeking we have encountered during this study. We

[261] For example, an editorial in Thisday (date missing) describes the alleged non-payment of taxes by Kahama gold mine as 'typical white man's mischief.'
[262] For example, the three percent royalty on gold production is regularly presented as: 'We get three percent, they pocket 97 percent!' This view has been expressed *inter alia* by President Kikwete and one of our interviewees, a senior personality in an opposition party. Shivji is quoted as repeating the '97%-3%' critique, concluding: "If this is not rape, what is it?" (African 03/12/09). See also Minister of Finance Mustafa Mkulo's whimsical statement that revenues could be increased *ten times* if mining companies paid all their taxes (Timeline May 2008).
[263] REPOA 2007. Half the respondents said they did not know enough about the issue to offer an opinion.
[264] The Tanzania Chamber of Minerals and Energy's describe the Curtis and Lissu report as 'negative propaganda' as opposed to 'constructive criticism.' (Citizen, 26/03/08).
[265] Three-fifths (60%) of respondents considered foreigners untrustworthy; only 5 percent considered them 'very trustworthy' (REPOA 2007: 76).
[266] A non-developmental rationale would channel opportunities to incompetent allies.

will consider TRA as a locus of predation, and Alex Stewart and Meremeta as examples of looting by state officials.

One last prefatory remark: centralisation is limited by practical considerations. A leader aspiring to concentrate all major rents in his own hands has to delegate the details to trusted family and friends. The latter then become major rent beneficiaries in their own right, and may abuse the trust put in them *inter alia* through keeping key information from the principal. This is a classical principal-agent dilemma, which also applies when the rent-seeking has 'developmental' aspects, as defined above.[267]

4.3.1 State predation

Private agents stealing from each other is not a significant object of central coordination,[268] but we might expect some forms of state predation to be coordinated at a higher level. We have identified TRA as a source of systemic rent-scraping, with large amounts of money tied up in tax disputes and litigation with FMCs.[269] TRA is a semi-autonomous body collecting taxes on behalf of the government. Though TRA salaries and working conditions are better than in government, TRA front-line staff continue to practice extortion.[270]

It is possible that TRA predation has higher-level linkages, but it is also possible that (most?) predation is decentralised and uncoordinated.[271] It should be in the interests of the ruling coalition to sanction rent-scraping in TRA in order to reduce unpredictability and transaction costs and increase the level of tax compliance. The same argument can be made for rent-scraping in the allocation of exploration and mining licences within MEM, which also appears *not* to be coordinated at a higher level.[272]

In both cases (TRA and MEM) the consequences of uncoordinated official rent-scraping are extremely costly from the point of view of GEM companies and the growth of the modern mining industry. GEM lobbyists regularly point out these grave business-constraining consequences of state predation to top officials--the Tanzanian President, the Prime Minister, the Minister of Energy and Minerals, and the Commissioner for Minerals--who express concern and promise to look into the issue. Thereafter nothing (usually) happens to resolve the problem, reflecting the breakdown of the principal-agent chain. This demonstrates the radical *de*centralisation of rent-

[267] Examples include Ivory Coast and Kenya. In the first, President Houphouet-Boigny delegated rent collection to his minister of finance Konan Bédié, who is said to have thrown a party to celebrate becoming a dollar billionaire. President Daniel arap Moi had a similar relationship with Nicholas Biwott and his own sons. Malaysia under Mahathir has some interesting parallels.

[268] The Mining Division is the locus for some of this kind of rent-seeking, but any coordination is likely to be internal and *ad hoc*. The effect is generally to award rents to local interests at the expense of outsiders, and is in this sense business-constraining.

[269] We have cited evidence that mining companies often accede to small-scale extortions to avoid larger costs.

[270] We assume that respondents are not making up their horror stories about the TRA. Fjeldstad has written extensively about corruption among TRA officials.

[271] We refer to taxes related to mining activities. It is believed that some taxes remitted to TRA 'disappear' en route to the treasury. Are there higher level payoffs?

[272] We have investigated the protracted replacement of the Commissioner for Minerals Gray Mwakalukwa by Peter Kafumu. There appears to have been no tug-of-war between senior officials over his replacement: bureaucratic sloth was the main explanation.

seeking within the Tanzanian state apparatus. In **section 4.4** we try to explain this finding.

4.3.2 Looting

Meremeta and Alex Stewart are examples of looting, as outlined in **Part 3**.[273] Meremeta evolved from a project with a reasonable development rationale (formalising small-scale gold sales) to a private '*mradi'* in which a few top officials manipulated the political/security dimension of the deal to harvest largely personal rents. After the collapse of the gold buying initiative, Meremeta went into commercial mining in Buhemba. But the move was not justified on commercial grounds, and the mine was closed within a short period, with losses of over USD 100m. The creation of Tangold allowed the looting to continue after the closure of Meremeta. 'Coordination' involved BOT and Treasury officials, the military, the AG and the Minister of MEM. Another shell company—Deep Green Finance Ltd—was set up to 'dish out kickbacks … resulting from the winding up of … Meremeta and Tangold.' [274]

The fact that the Alex Stewart audit contract failed to outlive President Mkapa suggests a 'transition effect' from the third to the fourth presidency.[275] The subsequent prosecution of Ministers Mramba and Yona over the contract (see **Figure 2.3**)[276] reinforces the view that *temporary alliances* rather than long-term informal or institutional relationships underpin corrupt deals like ASA.[277]

[273] Though Meremeta may contain elements of rent-seeking through the involvement of the South African JV partner Triennex, a spin-off of Executive Outcomes which was a South African arms and mercenary supplied company with links to the apartheid SADF.

[274] Deep Green was established and subsequently wound up by IMMA Advocates with three South African directors and shareholders posing to be 'subsidiaries' of Nedbank of South Africa. One of IMMA's founding partners is Laurence Masha, Minister of Home Affairs, who claimed that his company "was instructed by the government to register and finally wind up its [Deep Green's] business." . (Guardian on Sunday Team 2009).

[275] Mramba tried—and failed—to renew the ASA contract in 2005. Another example of the 'transition effect' is the dubious privatisation of Kiwira coal mine, involving President Mkapa and Daniel Yona. The mine was renationalised in 2009 to pave the way for a large Chinese investment in mining and power generation.

[276] Yona reported to the President on behalf of the ASA planners. Evidence presented at the trial showed that AG Andrew Chenge was also involved in the negotiations (Kapama 2009). A TRA witness said the Treasury PS Gray Mgonja (also on trial) had approached the TRA for an opinion on whether ASA was entitled to tax exemption. TRA said no, but the exemption was granted (Kapama 2009).

[277] Would ASA have survived longer had it produced a less critical report on FMC tax evasion? Probably not. After the critical audit report was leaked (it was never officially endorsed) one mining company official said ASA was "justifying its presence in the country by painting a gloomy picture regarding investors in the gold mining industry." (Citizen Reporters 2005). On Alex Stewart: see http://allafrica.com/stories/200909180592.html.

Box 4.1: Principal-agent dilemmas in Meremeta

Meremeta Ltd was set up after discussions between Presidents Mkapa and Mandela (see **Part 3**) during Mkapa's second term. South African experts were to help the Tanzanian army purchase gold from artisanal and small-scale miners and eliminate smuggling. The involvement of Tanzania's top military brass in the Meremeta JV made it difficult for top MEM officials to know what was going on in a sector which was theoretically their administrative responsibility.

Meremeta went from gold purchasing to mining on its own account but the project became a mine for illicit payments rather than gold. One narrative suggests that Meremeta was *highjacked* by senior government officials who turned it into a (much?) larger rent-seeking opportunity with a minor political dimension. In this interpretation, Mkapa was no longer a key player as his 'agents' (the army, ministers, BoT governor, high bureaucrats) fed him with anodyne information about Meremeta's activities, and Mkapa was appalled when he learned how much the country had borrowed for the company's abortive mining venture (commercial borrowing was the subject of IMF debt-relief conditions). TANGOLD was set up to take over Meremeta's assets and debts, resulting in more dubious transfers during 2005. The apparent involvement of party and President allowed the rent-seekers to use Meremeta as a source of personal rents. The popular assumption is that about 80 percent of rents involving the ruling party are actually realised privately.

We conclude that looting in the GEM sector is effectively decentralised, in part at least through principal-agent effects.

Source: Policy Forum 2009; Interviews

Meremeta, TANGOLD and Alex Stewart consumed public resources in excess of USD 200 million and are 'state constraining' in Khan's meaning of the term. TRA rent-scraping is 'private sector constraining' in that it introduces additional costs and uncertainties to the FMCs. Small-scale / artisanal mining largely evades the tax net and is therefore state-constraining too.

4.3.3 Rent-seeking

We define rent-seeking as the capture and avoidance of public regulatory power by private interests. We have already discounted the notion that FMCs made large payments for the opportunity of investing in Tanzania. Despite their size and financial resources, FMCs have not in any sense 'captured' the Tanzanian state.[278] The nearest we have come to an example of state 'capture' relates to the 15 percent additional capital allowances, though we have no evidence that this involved a bribing strategy.

In sum, there is little evidence of high-level coordination of rent-seeking in the GEM sector. The examples we have looked at have been of rents that were either state- or private sector-constraining in their impact. There is no evidence that 'developmental' goals motivated rent-seekers and their agents.

The combined effect of rent-seeking of the different types examined has been disastrous for the future of gold exploration and mining in Tanzania. Further tax claims on FMCs' income in the last two years have compounded the effects of the global crisis on GEM prospects. Rent-seeking practices have worsened the state-constraining effects of public policy by draining mining taxes and state finances to private pockets and creating significant negative externalities for the entire industry.

[278] State capture takes place when 'a relatively small share of firms [manages] to capture public officials at various levels … to extract concentrated rents and to purchase individualised provision … of under-provided public goods.' (Hellman, Jones and Kaufmann 2000).

This conclusion is in line with the thesis that certain forms of rent-seeking serve to undermine private sector development through their negative impact on the IBC. It is not in line with the widely held view that GEM companies hold the government to ransom through guile, dishonesty or corruption. Time will show whether the industry's own prediction of a depressed GEM presence in Tanzania for the foreseeable future, or whether the GOT's expectation that FMCs will carry on regardless of the effects of taxation and regulatory policies, comes to pass.

4.3.4 Bureaucratic independence

The above discussion helps us assess the independence of the bureaucracy in relation to GEM issues. Are policymakers and decision-making in GEM overridden by personal and political considerations? We have seen that Meremeta bypassed the MEM because it involved the TPDF top brass. The ASA contract was also initiated outside the MEM, and ignored 'expert' advice.[279] Without going into details, we observe, first, that most senior officials are easily intimidated by their political bosses; second, that they may well owe their jobs to the same political boss anyway; and third, that the benefits of the independence of the technocracy presuppose technical competence, efficiency and integrity. Numerous respondents claimed that MEM officials are deficient on all three measures, and are largely motivated by personal agendas and/or those of their political bosses.

Above we concluded that technical assistance programmes designed to increase MEM capacity to deal with a rapid increase in its client base have been largely unsuccessful. Given these constraints, it is not independence that the bureaucracy requires, but accountability to a responsible political superior. Unfortunately, the political superior lacks the capacity or the will to play a more developmental role (leadership, supervision, rewards and sanctions). This process of institutional failure may be cumulative.

4.4 Contradictions in Tanzanian mining policy and practice

Tanzania mining policy has changed dramatically since independence. When President Nyerere failed to develop the sector through state-ownership and management, he decided it was preferable to leave the minerals underground for future generations to exploit.[280] President Mwinyi (1985-1995) began the liberalisation process, initially favouring formalisation of artisanal and small-scale gold mining and trade. President Mkapa (1995-2005) was a forceful advocate of FDI-based development of the minerals sector. During President Kikwete's first five years in power, the government has renationalised Kiwira coal mine, and passed a new Mining Law that foresees partial state ownership of future gold mines and reserves gemstone mining for Tanzanian nationals. Despite the negative impact of the 2008

[279] Thisday Reporter 13/11/09.

[280] Interviewee R told the following story. When Jakwaya Kikwete became Deputy Minister of Energy and Minerals in 1988, Nyerere told him that Tanzania had tried and failed to develop the country through an agricultural strategy. He thus urged Kikwete to do all he could to attract foreign investment into the minerals sector as an alternative strategy. Kikwete claims to have used his time in the MEM and the Ministry of Foreign Affairs (under Mkapa) as an indefatigable seeker for potential GEM investors.

financial crisis on the global mining industry, the GOT has continued to tighten the tax net around the FMCs.

The last decade and a half established Tanzania as an important destination for FDI in gold exploration and mining, but the above factors as well as FMCs' experience of (as they describe it) increasingly arbitrary taxation and poor management of mining rights now threaten to undermine profitability and the future of the gold exploration and mining industry in Tanzania. A promising IBE has turned sour rather quickly. Within a decade, the formal policy of providing incentives to potential GEM investors has turned into taxation and regulatory practices that threaten to undermine the entire strategy. What endogenous factors explain this dramatic turn-around in the investment and business environment? We look for possible explanatory factors in Tanzanian history, ideology and politics.

4.4.1 History

In our background paper to this study we argued that: 'the ideological and political effects of colonial and post-colonial race relations in Tanzania strongly influence the nature and content of the investment and business environments. The broad overlap between ownership of capital, economic class and racial origin … has had political repercussions throughout the history of Tanzania…' [281] This history has strong ideological and political consequences.

4.4.2 Ideology

We consider ideology to be an important *independent explanatory variable*. North sees ideology as 'the cement of social stability which makes an economic system viable.' … 'Without an explicit theory of ideology … we cannot explain the enormous investment that every society makes in legitimacy.' [282]

Here we argue that Tanzania's legitimating ideology *fails* to make the economic system viable; from this perspective it is dysfunctional. The relevant ideological forms are (African/Tanzanian) socialism (*Ujamaa*), capitalism, nationalism, populism and racism. Ujamaa, nationalism and populism are interwoven in such a complex web of meaning as to frustrate straightforward analysis. To illustrate the point, the MEM prefaced his introduction of the new Mining Act (April 23, 2010) with the argument that "Tanzania will be built through the pursuit of the policy of socialism and self reliance" (see **Figure 3.2**). The allusion here is not so much to state ownership (Tanzania will not nationalise foreign-owned mines under the new Mining Act) as to Tanzanian-African as opposed to non-Tanzanian, non-African ownership. Both national and racial subtexts are implicit in the reference to Tanzanian socialism.

The weight of history makes it difficult for most Tanzanians, including high-level politicians and bureaucrats, to ally themselves enthusiastically with a liberal-capitalist development ideology.

The empirical confusion between different '-isms' helps us interpret the frequent claim that since the end of ujamaa the ruling CCM party lacks a

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[281] Cooksey, 'Tanzanian investment and business environments', draft, September 2009. See below for a comparative perspective.
[282] North 1981 quoted by Hedlund and Lundahl (1989:15).

guiding ideology.[283] Traces of the ‘hidden’ elements of nationalism and race contained in the ideology of socialism and self-reliance remain even after the component of socialism-as-state-ownership has been excised.

History and ideology also help us understand the lack of trust that Tanzanians exhibit in regard to foreigners, including investors, documented above. Many Tanzanians, including the educated elite, continue to view Europe and the United States as the source of (much/most of) Africa’s/Tanzania’s problems, from the slave trade and colonialism to date.

Last, ideology, like religious belief, is something people *know* and get emotional about, albeit to varying degrees. Implicit knowledge and strong feelings inhibit rational thought and the ability to compromise on substantive issues. Consequently, it should not inform policy- or decision-making, or research. If the strong feelings elicited by the FMC presence in Tanzania are shared across classes and interest groups, they are likely to have significant effects on the course of events. In such a context, rational decision-making is unlikely to survive for long, and collective actions can be taken that serve to kill the unwanted goose, no matter how big the golden egg she promises to lay.

4.4.3 Politics

Here we consider emergent characteristics of the Tanzanian political process and the effect of the conflict between ‘big gold’ and small-scale miners on public opinion.

We have argued that there is no effective central coordination of rent-seeking in GEM, or more generally. This reflects a decline of the centrality of the ruling party in Tanzanian politics, and the trend towards personalised rather than agenda-based decision-making.[284] In a competitive environment, the political process is more concerned with staying in power than advancing a national vision or development agenda. Competition within CCM has been of an increasingly personalised--not so much an ideological (*ujamaa* versus capitalism)--form, with competing factions employing rival *rentier* strategies. These in turn reflect the rise of business-political networks that fuel *politically motivated* rent-seeking and aspirations towards state capture.[285]

In the absence of a strong ideological commitment or a ‘development(al) vision’, the current leadership has adopted a nationalist/populist position on mining issues, and more generally. Top politicians and bureaucrats largely share the civil society view of FMCs as presented locally by LEAT and endorsed by a number of INGOs concerned with mining, human rights and environmental issues. The ruling elite also share the dominant view that the FMCs should pay more taxes if ‘Tanzania’ is to benefit fairly from the exploitation of its natural resources.

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[283] An early example of this claim: the late CCM Secretary General Horace Kolimba claimed that ‘since … 1992 to date, CCM is yet to have a new and exciting vision for the public… Without a new vision and a sense of direction, the party is likely to remain dormant.’ Cited by Mmuya 1998:18.

[284] One of our interviewees referred disparagingly to CCM as a party of people who wear green shirts and stab each other in the back (or words to that effect). Mukandala in Mukandala and Othman (1994, Chapter 3) notes the rise of ‘personal issues’ in campaigning for the 1990 elections, including ‘unofficial campaigning’ relying on ‘one’s personal networks to mobilize votes’, reflecting an ‘increase in premium on winning … at all costs.’ (Page 62).

[285] Cooksey and Kelsall 2011.

The political process has local and national components. We have reviewed the 'local' component in our discussion of the impact of FMCs on artisanal and small-scale mining and on communities around mines. These local conflicts have not become mass movements with their own leaders and agendas, but they have arguably influenced national politics by confirming the critics' position and highlighting the worst aspects of large-scale gold mining.

The protracted struggle for mining rights and the subsequent marginalisation of small-scale mining activities discussed in **Part 2** of this report have helped to politicise the relationship between GEM companies and the Tanzanian state. A regime with populist/nationalist tendencies may easily capitulate to political and civil society criticisms of the FMCs and the perceived role of the Tanzanian state in defending foreign interests against large numbers of poor Tanzanians. The argument that corruption explains the role of the state in defending foreign interests is unsatisfactory, since the state has *not* protected these interests against rent-seeking by officials and tax collectors, or against the move (sanctioned by the President) to revise mining taxation and regulation 'in the national interest'.[286] Politics—driven by ideology—pre-empt the possibility of state actors adopting a rational rent-seeking approach (in Khan's sense) to modern gold mining.

The above discussion allows us to address the apparent enigma: why has the Tanzanian state not done more to facilitate the establishment and consolidation of foreign exploration and mining companies in the country, as policy commitments led one to expect? Why have tax extortion and corruption in issuing exploration licences not been sanctioned at the highest level even though they seriously undermine the investment and business climate?

Historically, Tanzanians, like most Africans, retain a memory, now mostly a folk memory, of the worst excesses of colonialism. *It does not matter* that colonialism also brought literacy, formal healthcare and the notion of modern statehood. It is the prospect of entrusting part of 'our' national heritage to untrustworthy 'foreigners', mostly from former British white colonies (Canada and Australia), and from South Africa and Zimbabwe, that sticks in the collective throat. Without WB and other donor pressure to introduce pro-market reforms from the mid-eighties onwards, none of this would have happened.

In the case we have examined, ideology prevents the 'cement … which makes an economic system viable' from setting. Most Tanzanians' perceptions of FMCs are informed by an historically-derived ideology consisting of elements of race and nation. These widely shared perceptions ultimately drive government policy, not a belief in the virtues of competitive and open markets.[287]

4.5 A comparative perspective

A brief comparative review reveals that Tanzania is not unique in Africa in having major difficulties assimilating the presence of FMCs. In Zambia, for example, 'Economic nationalism has been on the rise … , fuelled by the

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[286] This argument is explicit in Curtis and Lissu (first edition) but has been largely removed from the revised edition.

[287] We have interviewed a number of Tanzanians who strongly reject this majority view. They are hugely frustrated by current developments, as are the majority of our interviewees from mining companies.

unpopular privatisation of the mines and populist politicians. This makes outright outside ownership of strategic sectors … deeply unpopular.'[288] Campbell observes that: 'In response to the disappointing results in terms of local benefits resulting from mining activities, recent calls for the revision of fiscal, legal and environmental frameworks and mining contracts in countries as different as Zambia, Tanzania, Guinea, and the DRC, illustrate the need to respond to new demands for the social regulation of private sector development…'[289] Lastly, the Economist lists Tanzania, Zambia, Indonesia, Bolivia, Ecuador, Chile and Peru as countries were 'Governments [are] intent on reworking [mining] contracts or imposing new taxes' in a context of soaring metal prices (in 2007). Mining companies argue that countries that gain a reputation for 'moving the goalposts' will find it difficult to attract new investment when times are tougher, but 'if that were really true, they would have left many of the countries concerned long ago.' [290]

4.5.1 Gold: a resource curse?

To constitute a serious resource curse, the Tanzanian gold industry: (1) would have to constitute a significant proportion of GDP; (2) profits should be a large proportion of sales, making control of the resource highly desirable to the ruling elite; (3) manufacturing exports are undermined by the appreciation of the national currency as a result of large gold exports; (4) it drives out other employment and investment by subsidising un- or underemployment and out-bidding other sectors for scarce human resources.[291]

None of these conditions hold in Tanzania. Gold mining constitutes only about three percent of GDP. Compared to oil, gold profits are a small proportion of sales, since extracting tiny amounts of the mineral from huge amounts of hardrock is a very expensive exercise. Economists in the WB have argued that the Tanzanian currency was significantly overvalued for some time during the early years of this century, which had a dampening effect on agricultural incentives and exports.[292] But the country has not suffered from a serious 'Dutch Disease'. On the fourth point, while human resources are in relatively short supply, no one has suggested that the mining industry is out-bidding other sectors.

4.5.2 Aid: a resource curse?

The role of aid in Tanzania's post-colonial economic and political trajectories has not been a topic of much empirical analysis in recent years. Has aid undermined the Tanzanian gold industry? How would one prove such a claim? There is no direct evidence of such a relationship, and one can only speculate. The main arguments are as follows.

First, the IFIs pressured the Tanzanian government to adopt structural adjustment policies in the mid 1980s against strong resistance by Nyerere and his ruling party. Since the decline of Socialism and Self Reliance, virtually all policy initiatives have been of external provenance. The end of the Nyerere era and one-party rule saw the rapid replacement of the dominant party as the

[288] Brown 2009:2.
[289] Campbell (2006:250)
[290] Economist print edition, October 2007.
[291] Summarised from TCME 2010, Attachment 1.
[292] Mitchell and Baffes 2002.

locus of policy-making by a powerful executive (president, key ministers), top state functionaries, military and security personnel. The external interlocutors for this group were the IFIs, bilateral and other donors.

The elite group and their supporters were sceptical of external reforms that undermined their interests in the status quo and were ideologically unacceptable for those with fond memories of the Nyerere years. Nearly two decades of donor-driven reform have achieved little, suggesting successful internal resistance to the logic of the market economy and 'good governance' practices.

We may speculate that resistance to donor-driven mining policy is an example of this general resistance to external reform agendas. For example, MEM officials resisted the introduction of a transparent, electronic licencing system which would make it difficult to manipulate the allocation and renewal of exploration permits. At a higher level, the policy of FDI-driven GEM development meets the same type of resistance as the liberalisation agenda in general.

Second, in recent years aid transfers, including debt relief, have grown considerably. Cooksey (2010) quotes comparative evidence that aid may have a net negative effect on governance, economic growth and poverty reduction prospects.[293] A growing literature suggests that when aid exceeds effective absorptive capacity, the negative consequences outweigh the positive. Undermining bureaucratic service delivery capacity is one negative consequence.[294] Another is the notion that excessive aid substitutes for taxes. But we have seen that the GOT is highly concerned to *increase* taxes raised from the FMCs, which seems to undermine this argument.

The precise impact of foreign aid on Tanzania's development trajectory has not been a topic for much academic research. It would be instructive to investigate the relationships between different forms of aid, policy formulation, implementation and state capacity. We can only say with confidence that: (1) foreign aid was the source of the liberalisation policies that replaced Tanzanian socialism; (2) liberalisation-related policies have been implemented in a patchy and inconsistent manner, with numerous reversals; and (3) in the particular case of gold, foreign aid has not served to increase state capacity to better manage the sector.

4.6 Conclusions

The state's control of mining rights may have facilitate their acquisition by big gold, as argued by Khan, but the relations between the political centre and the FMCs have nevertheless been problematic throughout our review period, and particularly during the last decade. State functionaries directly involved in collecting taxes, issuing licences and so on created rents for themselves and their private associates, with little or no overall coordination.

We could imagine a scenario in which top state actors use their control of mining rights to attempt to extract large protection rents from big gold, while keeping rent-scraping at tolerable levels. This is far from what has happened. In practice, key rentiers within the Tanzanian state succeeded in extracting significant rents through a bogus external audit (ASA) and an ill-fated JV with

[293] Cooksey 2010.

[294] See Cooksey 2010 for details. Cooksey suggests that aid dependency is contributing to the emasculation of the state, which could have the direst consequences imaginable.

dubious partners (Meremeta). Neither of these ventures had a saving grace in terms of allocating opportunities for rent capture to a competent company or agency. In both cases it appears that the head of state was informed--at least in part--of what was going on, but did not play a coordination role in any meaningful sense. We speculate that, if there was a pay-off for the ruling party to contend the 2005 elections, it was likely to have been a relatively small proportion of the total rents created.

The overall effects of rent-scraping and state plunder have been highly negative for the Tanzanian state (revenues lost) and GEM companies (unpredictable and costly business environment, insecure property rights). But counterproductive and unimpeded state- and business-constraining rent-seeking by state officials at different levels is only a part of the story. In the final section we have tried to go beneath the surface to examine the deeper politics of mining and the source of the widespread anti-FMC ideology described in the text.

We conclude that Tanzania's state is not driven by a strong political centre with a developmental rationale and coordination powers over rent creation and allocation. Rather, politics is a matter of loose and rival informal coalitions competing for control of the state apparatus through opportunistic rent-seeking and state plunder. Foreign and local businesses are constrained by the hostile IBE that such a system engenders. Hostility to external business interests is compounded by mistrust and hostility with deep historical origins. Large gold mining companies have been particularly vulnerable to the combined forces of ideology and politics because they are perceived to ruin the livelihoods of thousands of poor people by taking away their ancestral land and sucking the minerals from beneath it, like a tick sucks blood from its host.[295]

It remains for us to reflect on the tragedy-in-the-making that the story related above entails. For if politics and ideology succeed in undermining the future growth and diversification of gold exploration and mining then Tanzania may well be heading for a condition of permanent underdevelopment.

[295] The tick ('*kupe*' in Kiswahili) image was used during the socialist era 'to depict capitalists ... living on the blood ... of others.' Mukandala 1994:56.

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