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SIRD Bulletin

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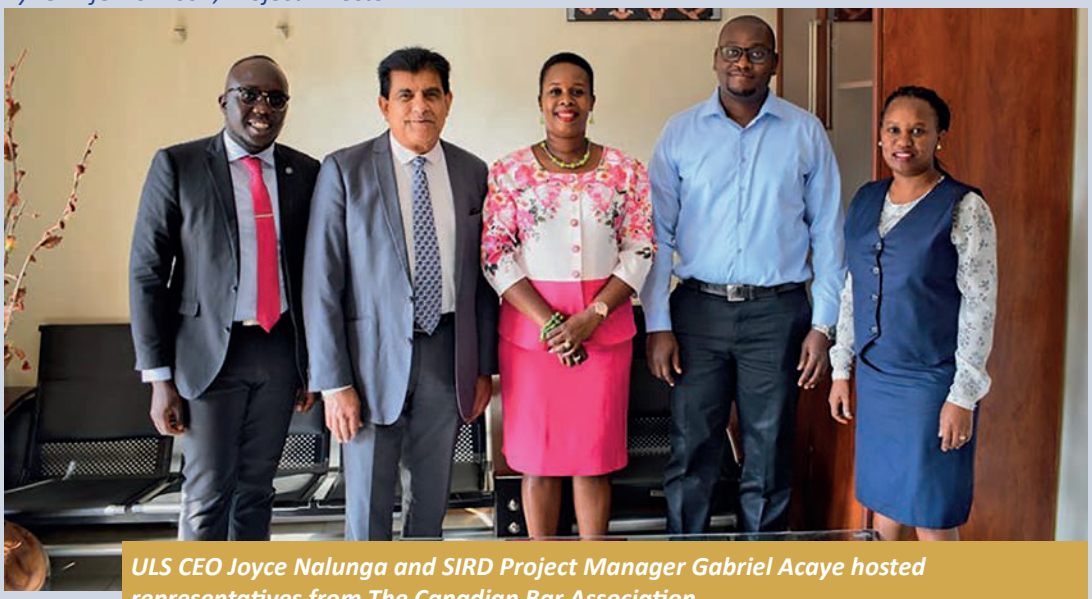
SIRD is funded by Global Affairs Canada

Foreword

By Jennifer Johnson, Project Director



ULS CEO Joyce Nalunga and SIRD Project Manager Gabriel Acaye hosted representatives from The Canadian Bar Association

The SIRD in East Africa implementing team is excited to bring to you the third edition of the SIRD in East Africa Bulletin. The Bulletin covers news of the SIRD in East Africa project and seeks to update our readers with current SIRD initiatives and activities, activity outcomes and plans for future activities. This edition explores our regional consultation efforts that look to streamline extractive industry laws from all EAC Partner States. It also captures our various conferences held over a period of four months without forgetting our legal reform efforts at the national level. Our activities at community level are also captured with relative success having been achieved working with communities in Kwale (Kenya), Geita (Tanzania) and Buliisa (Uganda).

Implemented across three East African countries, this is the first project of this scale in the region that comprehensively seeks to enhance inclusivity in the extractives sector especially that of women who have for a long time received little or none of the benefits arising from mining activities.

Now in its third year, the project has made tremendous progress with impact of project activities now being felt across the region.

The Project would like to thank Global Affairs Canada for its immense financial contribution towards making the project a reality, project implementing partners in East Africa including the East Africa Law Society, Law Society of Kenya, Tanganyika Law Society and Uganda Law Society as well as the Canadian Bar Association and Canadian technical experts for their contribution towards the success of the project.

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ULS President, Peter Kinobe speaking at the Launch of Stakeholders Consultations on the Mining and Minerals Bill, 2019 in Uganda

Technical Trainers in the extractives industry from Canada and Uganda having a Pre-training meeting

Gender Specialist Mrs. Caroline Kanyago engage participants in SIRD Policy Training in Uganda

Which Way for EAC? A Harmonised Legal Regime or Fast Tracked Common Mining Standards?

By David Sigano, EALS

SIRD community champions session on referral pathway in Geita,Tanzania

The East African region is one of Africa's regional economic blocs that has for years now been grappling with the question of harmonization of its mining policy and legal regime to better manage its vast mineral wealth. This arises from increasing recognition by EAC Partner States of the potential of natural resources to boost poverty reduction and promote intra-regional trade and development.

Indeed, this need for cooperation in the management of mineral resources and other natural resources is contained in the Community's constitutive document, the Treaty for the Establishment of the East African Community, Article 114 (1) (b) and Article 114 (2). Article 114 (2) (c) provides that; with regard to management of the mineral resources sector, EAC Partner States agree:

(i) to promote joint exploration, efficient exploitation and sustainable utilisation of shared mineral resources;

(ii) to pursue the creation of an enabling environment for investment in the mining sector;

(iii) to promote the establishment of databases, information exchange networks and the sharing of experiences in the management and development of the mineral sector using electronic mail, internet and other means for the interactive dissemination of mineral information;

(iv) to harmonise mining regulations to ensure environmentally friendly and sound mining practices;

(v) to adopt common policies to ensure joint fossil exploration and exploitation along the coast and rift valley; and

(vi) to establish a regional seismological network whose primary objective is to monitor seismicity and advice on mitigation measures.

The provisions of these Articles comprehensively articulate the call for harmonization of regional mining regimes clearly requiring smooth implementation of such harmonized systems. While not much can be said to have been achieved in terms of harmonization both at regional and national levels, EAC Partner States have initiated a number of processes aimed at creating harmony in the extractive industry.

They include:

a) Creation of a Protocol on Environment and Natural Resources under which they have also adopted joint Environmental Impact Assessment Guidelines for Shared Ecosystems. Article 18 of this Protocol requires EAC Partner States to harmonise mining regimes. Under this Article Partner States are required to:

- *develop and harmonize their policies and laws for the exploitation of mineral resources;*
- *develop common measures for ensuring that mineral resources are exploited in an environmentally sound manner;*
- *develop strategies and programmes for the restoration and rehabilitation of mines and quarries;*
- *cooperate on research and exchange of data and information related to mineral resources;*
- *develop strategies on sustainable production, value addition and marketing of minerals and their products;*
- *establish effective measures to regulate mineral resources trading;*
- *take appropriate measures to prevent, reduce and control pollution resulting from the exploration and exploitation of mineral resources.*

b) **Adoption of the EAC Industrialization Policy.**

This policy is aimed at promoting regional industries that use the region's natural resources to provide linkages among industries through diversification, specialization and complementary policies.

c) The East African Community Development Strategy 2011/2012 – 2015/2016

This strategy articulated the desire by East African States to harmonize their mineral laws and policies. Under the development strategy, the EAC Terrestrial Ecosystems Working Group was created. The Working Group has a Committee on Environment and Natural Resources which is spearheading the legal and policy harmonization process for the Community. Areas under which the harmonization is intended include:

- *access to and ownership of land;*
- *access to and ownership of minerals;*
- *mineral royalties;*
- *procedures for EIAs and monitoring of environmental plans;*
- *benefits for communities during and after mining; review and rationalization of artisanal and small-scale mining;*
- *value addition to minerals;*
- *the role of communities, local authorities, central governments and mining companies;*
- *marketing of minerals; and*
- *employment and human resources development.*

d) Mapping out of mining policies and laws of the Partner States in order to facilitate their harmonization. The East Africa Mineral Inventory is out.

e) EAC team created to undertake feasibility study on the means of adding value to the exploitation of mineral deposits.

f) Baseline Survey conducted in EAC Partner States to gather baseline information and country mineralization reports.

g) EAC Mining Bill, 2017

This Bill was introduced into the East African Legislative Assembly as an attempt to harmonize some of the existing mineral and natural resource exploitation systems. Passage and assent of the Bill has not yet taken place.

According to the EAC, an analysis of mineral regulations and preparation of draft regulatory framework is ongoing. Harmonisation of the different Partner States policies will be conducted as a follow up to these efforts.

Many EAC observers have noted that since 2012, regional efforts on harmonization in the extractives industry appear to have gone into a lull. Nothing much seems to have happened especially with adoption and approval of some of the studies and reports especially at the Sectoral Council, Council of Ministers or even the Heads of State Summit levels. This points to a question of commitment by EAC's high level leadership to harmonize systems, laws and policies especially those governing the extractives sector.

Some EAC Partner States, notably the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda have also recently enacted new laws to govern the extractives sector. This overhaul of the legal and administrative regimes throws into jeopardy efforts and studies already conducted towards harmonization. In addition, increasing sovereignty where EAC Partner States believe they have superior laws to EAC laws is cause for concern as it makes it difficult to adopt harmonized systems.

But why are there delays and little commitment when it comes to harmonization in the extractive industry?

For over a year and a half now, the East Africa Law Society through the Supporting Inclusive Resource Development project has been undertaking advocacy around harmonization of regional laws and policies to ensure more inclusivity of East Africans especially of women and other vulnerable groups impacted by extractive industry activities. This has been through support for the passage of the East African Community Mining Bill 2017 and support for the adoption of an EAC Mining Policy. These efforts have so far borne little fruit as the Bill is still pending in the House and there is little commitment from the Secretariat on enactment of a common regional Policy.

SIRD helping Communities on how to refer extractive industry related matters/conflicts

For the Bill, the key challenge to its passage has been its draftsmanship which has been thought by commentators to be inferior to similar laws and the lingering idea that Partner States have superior mining laws.

As for a common policy, the extractives sector is considered throughout the EAC as a "sensitive" area and countries are not willing to give up sovereignty on natural resources within their borders.

So what makes harmonization of regional laws so difficult?

A number of factors have been identified that hinder the harmonization of EAC legal regimes:

Tanganyika Law Society 5th advocates training session on natural resource management, Dar es Salaam Tanzania.

1. Structural challenges

EAC has two levels of law making, the Secretariat through the Council of Ministers and Heads of State Summit that makes and approves Protocols which have the force of law and the East African Legislative Assembly which makes regional laws. While the two work together, there's a disconnect on how they operate and some Bills passed by EALA that provide for urgent needs of EAC citizens have remained un-assented by EAC Heads of State. This makes such Bills useless as they have no force of law. The lack of sufficient consultation between the Legislative Assembly and the Secretariat means the laws made by the arm with more support of national governments (Protocols) are more utilized than those passed through EALA. A better working relationship between the two arms would lead to better results.

2. Slow uptake of regional laws

While EALA churns out laws ever so often, it is becoming increasingly difficult for Partner States to harmonise their own laws to conform to those enacted at the regional level. This makes application of regional laws impossible. The slow conformity to regional laws is caused by several factors including Partner States being at different levels of development and therefore requiring/not requiring certain laws, the idea that some national laws as superior to EAC laws and the fear of giving up sovereignty by some Partner States.

3. The resource factor

The East African Community is making attempts to integrate on many fronts and all these fronts require but financial and technical resources. The region is currently facing funding challenges and therefore it has been difficult to place resources focused specifically on monitoring harmonization of regional laws. Some attempts at harmonization have been cut short by lack of resources.

What should East African States do?

Several options are available for EAC Partner States, one of the easier routes is adoption of model laws/policies. This model has been applied quite successfully within the SADC system and the ECOWAS system. Model laws are not compulsory and Partner States would adopt them progressively when they feel ready. A timeline within which a Partner State should be ready to adopt should also be laid out to ensure states conform within a certain period.

SIRD East Africa and Partners Successfully Conclude Kenya's Second National Oil, Gas and Mining Conference, *"Jukwaa la Madini, Mafuta na Gesi"*

By Suzy Kimutai, LSK

The Second *Jukwaa La Madini, Mafuta na Gesi* (National Conference on Mining, Oil and Gas 2019) was held between the 24th and 26th September 2019 at Safari Park Hotel in Nairobi, Kenya. The Conference which was jointly convened and funded by the SIRD in East Africa project brought together more than 200 community members from 11 counties, as well as representatives of community based organizations, civil society organizations, faith based organizations, national and county government officials, mining, oil and gas companies, media, regional experts, academic, research institutions, professional bodies and members of the public.

The Conference was guided by the theme ***"Just and Fair Share of Benefits from the Extractives Sector"*** which spoke towards the obligation of stakeholders to ensure that host communities are adequately compensated and supported to ensure their social and economic development, keeping in mind the potentially disruptive nature of extractive industries.

The Conference recognized that though Kenya is endowed with more than one hundred types of extractive resources and the extractives sector contributes more than KShs. 70 billion to the economy, communities residing in areas where the extractive industry activities are undertaken have not benefited from the same as expected.

The Conference noted that plausible progress has been made in addressing the concerns raised during the first Jukwaa La Madini, Mafuta na Gesi held in 2018, but more remains to be done.

With the support of the highly experienced Canadian technical experts as well as experts drawn from across Kenya and the contribution of the more than two hundred delegates present, the following key areas were examined over the course of the three days and resolutions made in each area. They include:

Oil,Gas & Mining Conference held in Kenya

1. Benefit Sharing and Management

The conference noted the importance of benefit sharing; a concept enshrined in Article 69 (1) (h) of the Constitution of Kenya. This Article requires the state to *"utilize the environment and natural resources for the benefit of the people of Kenya"*. This is also recognized in Kenya's Mining Act (2016). Section 183 of this Act requires holders of mineral rights to pay royalties at a rate prescribed by the Cabinet Secretary, and that the community where the mining operation occur are entitled to ten percent of such royalties.

A point of concern noted by the Conference was the continued lack of framework for disbursement of the royalties to the county governments and the communities.

The Conference was informed that the Ministry of Petroleum and Mining is yet to finalize Guidelines required for the development and implementation of Community Development Agreements signed between large scale operators and communities, as required by Article 47 of the Mining Act 2016. This is unnecessarily denying communities the benefits that are to be specified in the Agreements. These guidelines will also enable communities to access information to enable them competently compute the one percent that the company is meant to spend on Community Development Agreements. The Conference also noted the urgent need for the development of local content regulations.

To ensure proper benefit sharing and resource management, the conference made the following calls:

- *A call on the Ministry of Petroleum and Mining to speedily finalize the requisite guidelines to ensure that communities can promptly benefit from the extraction of natural resources in their areas.*
- *A call on Parliament to finalize and enact the Sovereign Wealth Fund Bill 2019 and the Kenya National Mining Institute Bill 2019 to facilitate proper usage extractive resources revenue so as to benefit current and future generations.*
- *A call for the Ministry of Petroleum and Mining to finalize and implement the Gender Strategy and Action Plan for the Mining Sector; the Draft Community Development Agreement Guidelines; the Draft Model Community Development Agreement; the Draft Mining (Local Equity) Regulations; and the Strategic Plan (2018 – 2022) for the mining sector.*
- *A call on the Ministry of Petroleum and Mining as well as the companies involved in natural resources extraction to publicize information on amounts paid through royalties and spent through Community Development Agreements as well as actions undertaken under Local Content commitments as per the law.*
- *A request to the Cabinet Secretary for Petroleum and Mining to urgently gazette the Community Development Agreement Committees.*

2. Land Acquisition, Compensation, Resettlement and Community Land

Land has been the bane of many community conflicts in mining areas in Kenya. Quite often, community members have not been adequately compensated when their land is earmarked for extractives operations. There are numerous instances where the government and investors gain consent from compensate people who do not belong to the affected communities. As a result, there are grievances surrounding the compensation of community members in Kwale, Kitui, Turkana and Elgeyo Marakwet counties.

To ensure equity and fairness in land acquisition, compensation and resettlement, the Conference made the following calls:

- *A call to the National Land Commission and the Ministry of Lands and Physical Planning to fast track the development of the Compensation, Relocation and Resettlement Framework.*
- *A call upon the Ministry of Lands and Physical Planning to fast track the process of adjudicating and registering community land to confer rights of access, ownership and control to the communities.*
- *A call upon the Ministry of Mining and Petroleum to comply with Section 119 of the Mining Act 2016 by publicizing all mineral agreements, including the ones made with Tullow Oil Inc and Base Titanium Limited.*

3. Environmental and Social Impacts of Exploiting Natural Resources

For a long time, it has been noted that the social and cultural impacts of exploitation of extractive industry resources are not adequately assessed and addressed. The existing regulations that provide for public participation in the impact assessments are not being enforced.

In this regard, the Conference called upon the Ministry of Petroleum and Mining and the National Environmental Management Authority to partner with non-state actors to expand the Environmental Impact Assessment framework to include other important aspects including Climate Change, Gender, Social and Cultural impacts. Further, the framework should provide for regular monitoring of companies on adherence to the Environment and Social Impact Assessments.

4. Artisanal and Small Scale Mining

A majority of mining activities in Kenya are undertaken by Artisanal and Small Scale Miners. ASM activities remain largely informal and lack the technical and financial support to enable them scale up their operations. Were this available, artisanal and small scale miners would improve their living standards move out of the crippling poverty they find themselves in.

During the 2018 Extractives Conference, the Ministry of Petroleum and Mining committed to have the Artisanal and Small Scale Miners Committees gazetted within two months. That is however yet to be done. Through the Conference the Cabinet Secretary was urged to fulfill that particular promise, and also facilitate the completion of the development of the Artisanal and Small scale Miners Strategy.

The Conference also called upon the Cabinet Secretary for Petroleum and Mining to consultatively work with communities to demarcate and allocate mining areas for artisanal and small scale miners to end the persistent disputes with large scale operators.

Participants in Oil,Gas & Mining Conference pose for a group photo

5. Women and Youth Involvement in the Extractives Sector

It is a fairly agreed on concept in Kenya that women and youth experience the consequences of extractives projects in a more pronounced way than men yet they do not equitably enjoy the potential benefits. This was one of the topics discussed by the conference with the following recommendations being made:

- *That the Ministry of Petroleum and Mining ensures that women and youth occupy positions in leadership of extractives structures.*
- *That the Ministry of Petroleum and Mining in liaison with National Gender and Equality Commission to enforce frameworks that protect women from sexual exploitation and gender based violence in the extractives sector.*
- *That the Ministry of Lands and Physical Planning and the National Land Commission ensure that women rights to land and property is recognized, promoted and protected.*

Mr. Alnoor Meghani, SIRD Field Regional Manager at the 2019 Jukwaa la Madini, Mafuta na Gesi

Overally the Conference was a huge success and a step in the right direction towards ensuring that the Kenya moves in an inclusive manner when it comes to extractive industry activities.

We thank the SIRD technical team that participated in the conference including Ms. Camille Vezina, Mr. Yuk Sing Cheng and Dr. Collins Odote. We also thank Global Affairs Canada through the Canada High Commission in Kenya that was represented by Mrs. Hellen Oriaro and Mr. David Mwagiro.

Gazettement of Committees Set to Ensure Mining Benefits Locals

By Samuel Ngei, Deputy Programmes Officer — Extractives (Transparency International - Kenya) and David Sigano, EALS SIRD Project Manager

Kenya has a rich mining sector. With the amount of titanium in Kwale county, Oil in Turkana, Niobium at Mrima Hill and other minerals including gemstones, the country has huge deposits of natural resources to fund a significant portion of the national budget.

While Kwale has the largest commercial mining, residents are still deep in poverty. That is because it has become the norm in Kenya to prioritise private benefits over public good.

The Mining Act of 2016 provides for the establishment of Community Development Agreements (CDAs). With the CDAs, the companies are obliged to support community development initiatives.

This was a great idea. The CDA regulations were enacted in 2017 to guide on the composition, role, and structure of the CDA committees to manage funds. Recently gazetted, the Committees are set to revolutionize how companies relate with affected communities with more benefits set to flow directly to Wanjiku.

Transparency International Kenya, the Supporting Inclusive Resource Development Project (SIRD) (a regional project implemented by four law societies in East Africa) and other partners have been working to bring together all the stakeholders in Kwale to deliberate on the best approach for enhancing inclusivity especially of women and other vulnerable groups in the mining value chain.

An on going LSK SIRD community based legal training programme in Ukunda,Kenya

The meetings have seen the formation of Kwale Mining Alliance Working Groups that are composed of government officials, civil society organisations, affected communities and mining companies.

Among the agenda items of the Kwale Mining Alliance Working Group are royalties and CDAs. These were further discussed during the National Mining Conference in 2019.

The CDA funds will help in development of schools, health facilities, transport systems and water projects, depending on the community's priorities.

The projects should be as outlined in the CDA document. Thus, with Committees in place, there will be agreements and ease of planning and agreeing on projects to meet community needs.

Stakeholders in the mining sector need to further work together and come up with sustainable solutions to the challenges facing communities in the mining areas.

Multinational investors in the mining sector will only earn a social license by complying with the regulations that directly affect the rights of Wanjiku.

Increased Support to Uganda's Extractive Industry Activities as SIRD Launches consultations with Key Stakeholders on the Minerals Bill, 2019

By Gabriel Acaye, ULS

The government of Uganda through the Ministry of Energy and Mineral Development is in the process of developing a new Mineral and Mining law which aims at strengthening the mining sector in Uganda. Indeed, a Bill has already been developed and SIRD and other partners throughout Uganda have been given an opportunity to have their say in what should be covered by the proposed law.

As part of the consultations, the ULS through the Supporting Inclusive Resource Development project organized a high level stakeholder consultation made up of representatives from government, technical experts in matters mining, representatives from development agencies, the private sector, civil society, media, research community, artisanal and small scale miners and those involved in policy making processes in Uganda.

The consultations were officially opened by the State Minister for Minerals, Hon. Peter Lokeris. Hon. Lokeris in his opening remarks noted that he was pleased to join in the launch of consultations on the Mining and Minerals Bill, 2019 as derived from the Mining Policy of 2018. "The Draft Bill which was developed in consultation with the Ministry of Justice and Constitutional Affairs is a working document and we look forward to your input to enrich the Bill in order to address the challenges that the sector now faces" he stated.

He further noted that the Ministry seeks to create a conducive environment for equitable and beneficial exploitation of energy and minerals resources, promote employment, value addition, and local content and generally help the country attain the strategic goal of middle income status. "The government has noticed that we are ignoring a very important sector which will develop this country" he stated noting that for years Uganda has failed to take concrete action to develop the mining sector despite rapid progress in the petroleum sector.

Uganda national launch of stakeholders consultations on the Mining and Minerals Bill, 2019 ongoing in Kampala.

He concluded by thanking ULS SIRD and ACODE "for the great efforts in augmenting government's efforts in organizing this conference here, to improve the governance of the mining sector in Uganda." He recognized the role of CSOs in the development of the sector, and called on them to support government in the consultative process. He wished everyone "very productive engagements" and declared the workshop open.

His presentation was followed by a presentation on "Exposition of the Draft Mining and Minerals Bill, 2019"by Mr. Vincent Kedi, Principal Mining Engineer & Coordinator for Legal and Regulatory Reforms, MEMD who gave a genesis of the Bill and proceeded to state the key salient features of the Bill and noted that the Bill has 22 parts. The presentation was followed by plenary discussions. Concrete ideas were generated on how to improve the Mining and Minerals Bill 2019 before it can be presented to cabinet for approval and later to Parliament for legislation.

The last session during the launch focused on group discussions. The groups included; civil society, mining companies, Uganda Law Society, and small scale and artisanal miners. The groups dissected the bill as much as was possible and came up with key issues. A representative of each group submitted these issues in a reporting and plenary session.

The following were the key issues raised at the launch of the consultations;

- *The Draft Bill is Important & Urgent: The Bill is useful for improving governance of the country's mining sector, which seems to have been neglected due to the hype in the oil and gas sector and limited implementation of the 2003 Mining Act.*
- *The Minister has been given too much power: Participants were concerned that the draft Bill grants the minister, instead of an institutional structure too much powers which can be abused. Ironically, this concern had been raised during consultations on the Mining and Minerals Policy of 2018 since the process started in 2014 but the drafters retained it.*

- *The draft Bill is work in progress: The draft bill has been released for the first time during this consultative meeting. It was drafted by the Ministry of Justice and Constitutional Affairs working with MEMD, and is being subjected to consultations before presentation to Parliament. Four regional consultation meetings are planned according to the timeline communicated. Accordingly, the draft bill is not written in stone and will likely change as more consultations are held. Thereafter, a revised version will be presented to cabinet, approved and submitted to Parliament where legislative consultations will also ensue.*
- *Alignment with Oil and Gas Rules: The government seeks to align the Mining Bill to relevant provisions in the oil and gas rules, especially on government participation, local content, and environmental cushions, in mining sector. But it is important not to consider the mining sector a secondary sector to the petroleum sector because it has equal importance.*
- *EITI – make provisions for and subject the sector to EITI: Uganda has progressed in joining the EITI since January 2019, a commitment that was made in the 2008 National Oil and Gas Policy. It is important that the Bill reflects and provides for the country's commitment to promote transparency and accountability in the mining sector by making provisions that subject the sector to EITI processes. This would be consistent with global requirements on traceability and clearing reputation on conflict minerals.*
- *Institutional processes vs. ministerial discretion: the draft bill grants the Minister a lot of discretionary and administrative powers and responsibilities. This may lead to abuse of power/office. Instead, institutional structures should be given more roles and responsibilities on licensing, renewals, approvals, than a single political office.*
- *Is the Local Citizen relegated in the Mining Sector? Much content seems to target small scale and artisanal miners (SSAMs) and local citizens. The law should make provisions on government support to local SSAMs, through government loans, grants, provision of mining equipment, funding, tax holidays, material, and technical, to citizen mining investors. This will promote local content, national participation, and reduce feelings of marginalization by citizens as 'big-actor' foreign investors bring capital, technology, and skills that wipe out citizens while repatriating profits, eroding benefits from the sector.*
- *Environmental Cautions and Cushions: Critical ecosystems, conservation areas, should be strongly protected. The law should ban importation of unsafe chemicals like mercury, strongly restrict mining in protected/sensitive areas, demand restoration of damaged environment, and other environmental concerns. ESIAs should be the basis for preventing, stopping, or reversing destructive mining activities in a protected area.*
- *Security agencies: the creation of a separate security structure to enforce mining rules may create grounds for abuse of office, corruption, and violation of the rights of SSAMs. This may also provide justifications for the militarisation of the mining sector.*
- *Benchmarking what? The law should not copy-paste practices that squeeze local miners and SSAMs. Instead, provisions should be made that Government shall help citizen investors avoid losing their monies. Exploration for SSAMs is expensive and they need information that can reduce or help avoid some of those costs.*
- *Too many licenses, increasing bureaucracy: the proposed law should reduce bureaucratic procedures and demands instead of increasing them. The draft provides for too many licenses and requirements, yet these approval processes have no one-stop centre. Some investors undertake several related processes and it might need too many licenses for the same process: transportation, smelting, refining and processing, exportation, and more!*
- *Sensitive Land Issues: mining companies may acquire too much land, including through fraudulent processes, and disenfranchise land-dependent communities. The provision that land acquired for mining becomes State land is unconstitutional, violates landowners' land rights, and threatens sources of livelihood. Land should not change ownership, but remain a property of the landowner, or the owner may stake it as equity in the business.*
- *Ambiguities & Constitutionality: there are several ambiguities in the draft Bill that need to be addressed, clarified, for instance "building substances" vs. "building materials". Some of the provisions on building materials may contradict Art. 244 of the constitution.*
- *Copy-paste of previous law: The 2003 law seems to have lacked implementation. The new Bill, instead of proposing to reform, modify, or amend the existing law, simply transplants much of the content from the existing law.*
- *Revenues and Royalties sharing: local governments and central government may continue to disagree on the percentages of revenues to be shared between central, local governments, communities and land owners. For instance, the proposal from Karamoja, on sharing of royalties and revenues, is this: Central Government, 60%; District, 20%; Sub-County, 12% and Landowner, 8% - because land in Karamoja is communally owned.*

Overally the launch was successfully and ULS through the SIRD project will continue popularizing and gathering the views of Ugandans on the proposed Bill. This will make it more inclusive and friendly especially to continually marginalized and neglected groups like women.

Integrating Women in the Extractive Sector in Tanzania: TLS SIRD National Advisory Committee Reviews Tanzania's Policy and Legislative Framework

By Nelson Frank, TLS

Women involved in extractive industry activities in Tanzania face numerous systematic structural and cultural barriers to growth within the sector. These barriers range from sexual harassment to discrimination in employment opportunities, denial of land rights and exclusion from consultation and decision making. To address this issue TLS SIRD has undertaken various initiatives that will ensure that discrimination and inequality is eliminated and women have equitable access to benefits arising from extractive industry activities.

One of those initiatives is the commissioning of a policy and legislative framework review to identify priority areas of the Tanzanian legal framework that require review and amendment. To kick-start this process the TLS SIRD National Advisory Committee met in Dar es Salaam to look and recommend the most urgent laws for review.

The meeting made up of extractive industry experts discussed among others the need to conduct mapping so as to produce relevant and current data on status of women employment in the extractive sector.

The Committee further noted that there is an overlap between different categories of persons mentioned in the laws and that this could lead to one individual benefiting twice. For example, the Local Government Finance Act states that 10% of the total income should be distributed to women, 4% to young persons and 4% and 2% to persons with disabilities. Based on this, a woman who also falls in the young person's category may benefit twice. This can be solved by stipulating clearly on the age range.

Additionally the Committee noted with concern that the new changes to the Mining Act 2010 have dropped the number of women required on the Advisory Committee from 1/3 of membership to 1 member being a woman. The same has been applied to membership of the Mining Commission.

SIRD in the remotest part of Tanga,Tanzania meeting women groups and persons affected by mining activities

At the conclusion of discussions, the Committee recommended that all instruments in the extractive sector and their respective regulations should entail explicit sections that require gender inclusion and the specific percentage of women within each decision-making body that will be established should be clearly stipulated. It further suggested that laws should not use the phrase 'at least' to describe the number of women to be included. Instead, a specific number should be stipulated and that gender balance should be 50/50.

Additional recommendations by the Committee included that there should be should be gender balance in local government committees and that women should be fully included in the decision-making process. Where the principal legislation is silent, by-laws should cater for the gap.

It was the Committee's further recommendation that advocacy be conducted for abolition of discriminative cultural beliefs and practices that hinder involvement of women in the extractive sector. Further that the focus should not just be on large scale mining but women should also be encouraged to engage in artisanal mining as there are more opportunities for women in this area. Through National Economic Empowerment Council (NEEC), it should be ensured that there are adequate mechanisms to build capacity of women to participate in the mining sector.

Having looked at the legal regime, the following laws were strongly recommended for review:

i. *The Land Acquisition Act to include Re-settlement.*
ii. *The Mining Act of 2017 to explicitly provide for a certain number of women to be part of the Commission.*
iii. *The Local Content Regulations of 2017 to specify the tendering process which should take into account gender balance.*
iv. *The Tanzania Extractive Industries (Transparency and Accountability) Act 2015 should stipulate the number of women on the TEITI Committee.*
v. *The Petroleum Act; all established bodies should specify and take into account gender parity.*

vi. *The Oil and Gas Revenues Management Act 2015, to consider the ratio of women in the bodies created under the Act.*

vii. *The Written Laws Miscellaneous Amendment Act 2017 to make Corporate Social Responsibility planning and implementation more women centered by removing government interference in mineral rights implementation.*

viii. *Local Government Finance Act to include women participation. To review local government authorities' laws on revenue management especially on service levy mechanisms.*

TLS SIRD will continue to provide support and undertake advocacy to ensure the laws are reviewed and women can fully enjoy benefits from the resources found in plenty in the United Republic of Tanzania.

SIRD Bulletin

Supporting Inclusive Resource Development in East Africa

THE CANADIAN BAR ASSOCIATION

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