



SIRD Bulletin

Supporting Inclusive Resource Development in East Africa



Global Affairs
Canada

Affaires mondiales
Canada



page 1 **Foreword**

page 2 **SIRD Conducts Training for Lawyers Involved in Natural Resource Management across East Africa**

page 6 **SIRD Strengthens its Position as a Leader in East Africa's Extractive Industry; Creates Alliance to Advocate for Legal and Policy Reform**

page 7 **Law Societies conduct Comprehensive Review of Extractive Industry Laws**

page 8 **The SIRD in East Africa Referral Pathway: A case for More Women Involvement?**

page 9 **Uganda Fast Tracking Application to Join the Extractives Industry Transparency Initiative**

SIRD is funded by Global Affairs Canada

Foreword

By Alnoor Meghani (SIRD Field Regional Manager)



Participants pose for a group photo after the end of the 3rd Session of SIRD training of Policy Actors on best practices & standards in Natural Resource Management

The SIRD in East Africa implementing team is excited to bring to you the second 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 professional capacity development initiatives as we train legal professionals involved in extractive activities across government, civil society and the private sector. It also shades light on our regional consultations and initiatives around regional law reform as well as our work with referral pathways and tireless efforts working with local communities especially those 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 entering its third year, the project has made tremendous in-roads as fruits of tireless efforts by the project team begin to be seen. I 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.

Turn to Page 2



SIRD Conducts Training for Lawyers Involved in Natural Resource Management across East Africa



SIRD Team Meets the East Africa Legislative Assembly (EALA), Proposes Changes to the Draft EAC Mining Bill 2017



The SIRD in East Africa Referral Pathway: A case for More Women Involvement?

SIRD CONDUCTS TRAINING FOR LAWYERS INVOLVED IN NATURAL RESOURCE MANAGEMENT ACROSS EAST AFRICA

By Suzy Kimutai (LSK), Nelson Frank (TLS) and Gabriel Acaye (ULS)



1st SIRD LSK training session in progress in Nairobi, Kenya

The SIRD in East Africa project inaugurated training across the region for lawyers that are involved in policy and governance of natural resources. The carefully selected group trainees comprise of legal experts drawn from government, civil society, the private sector and other extractive industry policy making organs in East Africa.

The training is spearheaded by SIRD implementing partners; the Law Society of Kenya, the Tanganyika Law Society and the Uganda Law Society. It is divided into five modules where a module is completed in two days. Selected trainees have each signed a declaration that they will be available for all the five modules.

Facilitators in each of the sessions are sourced both from within East Africa

and from Canada as the region learns from the more advanced Canadian experience in dealing with natural resources.

The experts collaboratively selected relevant content which incorporated gender-sensitive and gender transformative content. The objective of the training was to equip a core group of lawyers with knowledge and skills in natural resource management to support inclusive and sustainable resource development in each of the three countries.

Upon completion of the training, SIRD intends to utilize the trained professionals to achieve its key strategic objective of advocating for law reform in the extractives industry in East Africa so that laws made reflect principles of transparency, gender sensitivity and accountability in the extractive industry.

By drawing trainees from the various relevant sectors, SIRD also looks to create network of individuals that will be integral focal points in advocacy and law reform initiatives across the region.

Though held separately, trainings conducted by the three implementing partners being the Law Society of Kenya, Tanganyika Law Society and Uganda Law Society follow the same model. SIRD is aware of the different legal regimes in each country and this is placed into consideration while preparing training models and acquiring relevant session facilitators.

So far SIRD has completed four of the five carefully formatted modules through four

in-house training sessions undertaken by each implementing Law Society. All trainers collaboratively developed case studies and group exercises which were created to give the trainees a thorough practical understanding of the developed training content. Each trainer drafted a set of questions relevant to his/her topic which were administered pre and post training to monitor and record the level of change in the understanding of the trainees.

This article gives a brief on these sessions including when and where they were conducted and the facilitators both from the Canadian Technical team (CTA) as well as the national extractive industry expert trainers.

Session One

The first session focused on legal, policy and regulatory frameworks in the extractive sector governance in each of the countries.



Session 1 SIRD LSK training in progress, Nairobi - Kenya

This session introduced the national extractive industry and examined governance frameworks to support inclusive resource development. It considered the relationship between different legal instruments (constitution, sector laws, regulations, contracts) and possibilities to entrench special protections, e.g. community development, gender equity, environmental protection, local content etc. It examined gender dimensions of resource development and mainstreaming gender considerations in policymaking. It also examined different types of contracts used in mining, oil & gas and critical issues in contract disclosure and monitoring.

Topics covered included, *inter alia*, **gender sensitive policy making and contract disclosure and monitoring. All topics had in them an international perspective for the trainees to best appreciate practice and experience elsewhere especially in Canada.**

Session Two

The second training session focused on community engagement and development.

Facilitators of this session focused on how to go about engaging community members when undertaking community consultation & development. Participants were guided on ways to ensure interests of these members are protected and the criteria of choosing individuals who ought to represent these people's interests. It was accentuated that there is no point in capturing people's views and opinions while undertaking community engagement, if one is not going to take them into consideration, such was deemed, disrespectful. Deliberate training for women was emphasized so as to ensure space is opened up for them to be community leaders and to have women at the table as well.



A facilitator making his presentation during the SIRD ULS 2nd training session, Kampala – Uganda.

Topics included, *inter alia*, **community consultations and engagement in Canada and at the East Africa level, aspects of corporate social responsibility, revenue and benefit sharing, local content and community women empowerment.**

Session Three



TLS SIRD 3rd training session for advocates involved in Extractive Industry activities in progress, Dar es Salaam – Tanzania.

This session examined the relationship between land rights and land acquisition, as well as the resulting impacts on land rights and associated concepts of appropriate compensation. It also considered the nature of communal and individual land rights in this context, and what compensation and resettlement are appropriate when such land rights are impacted.

Topics covered included, **land acquisition, resettlement and compensation (communal and individual land rights) as well as dispute resolution mechanisms**

Session Four



4th advocates training session in progress, Nairobi – Kenya.

Session Four focused on resource extraction impacts on the environment and examined the legal and policy frameworks governing environmental management and protection from the national, regional and international perspectives. It explored monitoring and enforcement mechanisms, best practices for environmental impact assessments and strategies for addressing health and safety risks faced by communities and employees affected by extractive industry operations.

Topics covered included, *unpacking regulatory frameworks for environmental management*

and protection both at national and international level, health and safety concerns in natural resource extraction as well as gender considerations in the workplace.

Briefs from Each Law Society

Law Society of Kenya



The select LSK trainees with session 4 trainers and SIRD Field Manager Mr. Alnoor Meghani and LSK CEO Mercy Wambua.

In Kenya, all sessions were held at the Ole Sereni Hotel in Nairobi. A total of twenty-six (26) Advocates drawn from government, civil society and private sector have registered for this training and each participating advocate who attends all ten days will

receive two Continuing Professional Development (CPD) points. In Kenya, there were ten government lawyers, six members from civil society and eight private practice lawyers.

Tanganyika Law Society

The inaugural advocates training session for the Tanganyika Law Society took place on the 8th and 9th of March 2019 at the Sea Shells Hotel in Dar es Salaam and the second session on “*Community Engagement and Developments*” was held from the 28th to the 29th of March 2019 at the same venue.

The third session took Place on the 13th and 14th of June 2019 at the Double Tree Hotel by Hilton Hotel, Dar es Salaam and a few days later (June 18th and 19th) the Fourth Session was held.

In Tanzania, there were seven government lawyers including a Member of Parliament who is also a member on Parliament’s Standing Committee on Land, Natural Resources and Tourism, as well as eight members from civil society and five private practice lawyers.



TLS Manager of Programmes Stephen Msechu opening the 3rd TLS advocates training session in Dar es Salaam.

Uganda Law Society

The Uganda Law Society undertook similar trainings with the all four sessions taking at the Golden Tulip with the first one on February 28 and March 1st, the second session on March 13 & 14 with the third one on June 6 and & 7 and the fourth one on June 10 and 11.

In Uganda, there were five government lawyers which included a Member of Parliament who is also a member of the Natural Resources Committee, five members from civil society and 10 private practice lawyers who have been involved in the extractive industry



Trainees in ULS SIRD training

SIRD Team Meets the East Africa Legislative Assembly (EALA), Proposes Changes to the Draft EAC Mining Bill 2017, Moots an MOU with the Assembly

By David Sigano, SIRD Project Manager, EALS

East Africa has in the recent past emerged as one of the most significant new frontiers in mineral resource development in Africa. Large discoveries of oil and gas, coal, rare earths, niobium deposits among others have clearly put the region on the global mining map.

For these resources to be effectively exploited, East Africa requires proper laws, policies and frameworks. Sadly, the region lacks these frameworks. This is despite significant progress at the national level.

The Treaty establishing the East African Community supports the promotion of sustainable utilization and management of the natural resources of the community. Article 114(2)(c)(iv) of the Treaty in particular specifically calls for the harmonization of mining regulations to ensure environmentally friendly and sound mining practices.

In March 2016, the heads of state of the EAC Partner States adopted EAC Vision 2050. One of the key pillars of the Vision is Environment and Natural



SIRD team and some of the Members of the Committee on Agriculture, Tourism and Natural Resources of EALA

Resources. The document stipulates that during the period of Vision 2050, it will be important that the Africa Mining Vision (AMV) is domesticated in member states thus harmonizing the policy, legal and regulatory environment. It is therefore clear that harmonization of legal regimes has been identified as a strategic imperative within EAC, EAC Vision 2050 and the African Union (AU) as it helps deepen regional integration.

It is on this understanding that the EAC Mining Bill, 2017 was created. Discussions on the Bill

Continues on Page 6

commenced in the third Assembly of the East African Legislative Assembly (EALA 3, 2012-2017). The Assembly's Committee on Agriculture, Tourism and Natural Resources with technical support from the International Institute for Sustainable Development (IISD) and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) first conducted discussions on a possible regional law to guide mining and extractive activities in the region and came up with the first draft.

The Bill which among others seeks provide a harmonized legal framework in the mining sector of the EAC Partner States in accordance with the African Mining Vision was read for the first time (First Reading) in an EALA sitting in Kampala, Uganda in 2017 and it sailed through.

Since that time however, progress on the Bill seems to have stalled with the Assembly not making any significant pronouncements on its status.

SIRD in East Africa considering the important role the Bill will play in the regional extractive industry outlook has been undertaking advocacy around the Bill and has met with numerous stakeholders ranging from officials of the EAC, CSOs focusing on extractive activities, women groups among others in attempts to drum up support for the Bill. One such undertaking was a recent courtesy call to the regional Assembly in Arusha, Tanzania.

The SIRD team led by project manager for SIRD EALS, David Sigano held a sitting with the Committee on Agriculture, Tourism and Natural Resources of the Assembly that is handling the Bill. The meeting followed other concerted efforts and written input on the Bill submitted to the Assembly by SIRD.

The Chairperson of the Committee, Hon. Mathias Kassamba from Uganda congratulated the important role SIRD has played especially in terms of input to the Bill, leveraging on its wide array of technical experts. He emphasized on the role of civil society and related stakeholders in

ensuring that the region gets good law especially one that will guide extractive activities considering recent mineral discoveries. He welcomed SIRD for further work and cooperation with the Committee and Assembly generally.

The SIRD team then presented its findings on the Bill, underscoring the strengths and perceived weaknesses of the draft law and its ability to effectively govern extractive industry activities in the region.

Members of the Committee noted with concern the continued false narrative that each EAC Partner State has enacted its own mining laws and there is no need for a regional law. The narrative, they noted, was undermining the Bill as it led to lack of requisite good will.

The Committee and SIRD agreed to work together with SIRD providing technical assistance to achieve a unified mining law in the region. A major achievement from the meeting was the agreement to enter into a Memorandum of Understanding that will formalize SIRD's relationship with the Assembly.

SIRD Strengthens its Position as a Leader in East Africa's Extractive Industry; Creates Alliance to Advocate for Legal and Policy Reform

By David Sigano, SIRD Project Manager, EALS

Strategic alliances have been found to be an effective tool when it comes to advocacy and promotion of causes especially those of a transnational nature. Regional initiatives like the SIRD project work best when handled jointly with stakeholders from different jurisdictions. Indeed, SIRD as a project is imple-mented by Partners from the three East African countries of Kenya, Uganda and Tanzania.

At the regional level the East Africa Law Society spearheads SIRD activities. Under this docket, EALS looks to change the narrative when it comes to the legal and policy framework governing extractive activities in the region. This activity involves numerous stakeholders ranging from officials at the East African Community

Secretariat, the East African Legislative Assembly, national government officials, private sector players (mining companies and investors), NGOs and CSOs working in the extractive industry, women groups, small scale/artisanal miners among others.

EALS in its efforts realized that to influence all these players would be a tall order and has gone

This alliance is known as the East Africa Civil Society Alliance on Natural Resources and is made up of:

- i. The East Africa Law Society (SIRD)
- ii. Oxfam International
- iii. Kenya Natural Resources Alliance (KeNRA) – Kenya
- iv. The Africa Freedom of Information Centre (AFIC) - Uganda
- v. Haki Madini – Tanzania

Currently the Alliance is advocating and lobbying for the adoption of the EAC Mining Bill 2017 in the different EAC Partner States.

Some of the Alliance's other notable initiatives

on to create a strategic alliance with players in the industry that have similar focus. The players are drawn from the three East African countries in which the SIRD project is being implemented as well as from the international arena for experience sharing.

include efforts at signing a MOU with the East African Legislative Assembly (EALA). The Alliance is currently providing technical support to the Assembly in

coming up with good international standard laws to govern the extractives industry in East Africa.

The long-term vision of the Alliance is to support the adoption of an EAC policy on extractive activities in line with the EAC vision 2050 and the Africa Mining Vision. The Alliance also looks to raise awareness of extractive activities across East Africa and to support causes especially those spearheaded by women.

Law Societies conduct Comprehensive Review of Extractive Industry Laws

By Suzy Kimutai (LSK), Nelson Frank (TLS) and Gabriel Acaye (ULS)

A key focus area of the SIRD in East Africa project is policy and legal reform to reflect principles of transparency, good governance and accountability of the extractive industry sector in East Africa. Achievement of this objective requires a critical review of the existing legal frameworks governing the sector. This activity has successfully been undertaken in the three East African countries in which the SIRD project is being implemented in East Africa, being Kenya, Uganda and Tanzania with the completion of extractive industry law reviews.

The law reviews from all countries identified some common themes including cultural issues which prevent women from benefiting from the extractive industry. It also noted that all the three countries are signatory to a number of international, continental and regional conventions and also constitutional protections which ought to govern the extractive industry. Despite the existence of proper legal frameworks, the reviews identified areas where legal reform, be it in form of legislative, regulatory or policy changes is necessary for communities and women in particular to benefit.

Some of the identified areas include for instance a major gap in Kenya's EIA process where there is complete nonexistence of a gender social impact assessment which involves the analysis, monitoring and managing of social consequences of natural resources projects. In Uganda on the other hand, the legal framework for both oil, gas and the wider mining sector is silent on a more rigorous definition of what constitutes "community consultations and engagement." With the lack of such definition, there is no requirement or set guidelines on who and how the community is to be engaged and this also means, there is an even greater impact on women's voices as there are no requirements in terms of gender considerations.

In Tanzania, the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 23 of 2015 establishes a number of oversight regulatory organs. Among these is the envisaged Tanzania Extractive Industry Transparency and Accountability Committee. The Committee is to be comprised of 15 members and is to be an independent government entity with oversight on promoting and ensuring transparency and accountability in the industry. The appointing authority is required to have regard to gender balance in the make-up of the Committee. However, unlike specific provisions in other Acts where there are to be specific number of women, this provision is vague and does not ensure effective participation by women in this Committee. After the law review report has been finalized, this could be an area of law reform to be undertaken by TLS.

The reports in all the three law societies have been revised after the validation meetings, and the Project in collaboration with other civil society organizations will work with law societies to determine areas or particular policy/regulation(s) or legislation that should be pursued to enhance gender considerations in the legal framework governing the extractive industry. In this respect, the project will also utilize the advocates who have been trained in policy development (see section) to advance these project objectives.



Ms Asmahaney Saad during the ULS law review validation meeting. Ms Saad undertook the comprehensive review of Ugandan Laws on extractive activities.

The SIRD in East Africa Referral Pathway: A case for More Women Involvement?

By Alnoor Meghani (SIRD Project Field Manager)



A referral pathway session in progress in Kwale, Kenya

One of the intermediate outcomes of the SIRD project is to increase community participation, particularly women to advance and protect their rights related to the extractive industries.

This short article will review how the project is seeking to achieve this intermediate outcome.

A key activity under this outcome is the identification of key community champions (Paralegals, faith based leaders, school leaders, Medical officers, police, CSOs, NGOs, retired civil servants etc.) and inform them of law society services (on referral pathway).

What is the referral pathway?

In our personal lives what happens when we have an issue or want to find out more information? Initially, a student may go to the teacher or headmistress, a neighbor may consult another neighbor. We may go to the Imam or the Reverend in our community. In some instances, we could go to the friendly police officer or the county commissioner or deputy commissioner and if there is legal tinge, we may even go to the paralegal or a community member who has legal knowledge.

If the person is unable to respond or resolve the matter, we may go to a higher level e.g. a neighbor could take us to the paralegal, etc.

This hierarchy of information gathering, or dispute resolution is called a Referral Pathway or a pathway through which key community champions channel issues, complaints and grievances brought to them by the community members (and more particularly women).

How is that important to the Project?

In many rural areas there may already be an existing referral pathway that may meet on a regular basis and usually around protection issues. Therefore, first it is important to identify whether a community has such a pathway and then to identify champions who are able and willing to undergo training and commit to undertaking the role as champions and agreeable to assist other members of the community.

Then it is important to identify the level of knowledge of these community champions in terms of existing laws, regulations, experience in dealing with these matters. Lastly, based on the level of knowledge of the particular pathway, give training on key components impacting the community.

What has the SIRD project done about it?

Starting in November 2018 until January 2019, the SIRD project and the law societies have held meet-ings in the project areas: Kwale (Kenya), Geita (Tanzania) and Bulissa (Uganda) to determine the existence and functionality of these pathways and then the level of knowledge of these community champions. Participants were drawn from government officials from both national and county levels, Elders, police officers, teachers, religious leaders, youth leaders as well as CBO and NGO representatives.

If it was found that such pathway existed

and is functional, the project would entrench itself as part of this mechanism by introducing and informing participants of the legal services that would be available from the law societies for members of the community, primarily women needing legal assistance. SIRD PMs and pro bono trained lawyers, outreach sub contracted CBOs/ Paralegals, local authorities and women’s groups would then create a pathway together with the relevant offices (police, hospitals, schools, social services) where persons affected by the operations of the extractives industries can seek and

receive legal and/or other assistance and support.

In all three project areas, it was determined that referral systems are in existence and functional. These meetings identified knowledge gaps on areas such as mining laws, policies and regulations; differentiating between criminal and civil cases. The participants understood the project objectives and were interested to see changes happening in their areas. The participants were also willing to undergo training and committed to undertaking the role as champion for the project.

What next?



Referral pathway session in Geita, Tanzania

Based on A comprehensive report will be produced by the Project Manager/Gender Equality Advisor which will capture gender issues/ ideas to inform efficient training; the number of champions identified and sensitized during the forum alongside their roles; number of champions who will have committed to take up the responsibility and those who will be invited to participate in PLE training. All information regarding the participants will be gender disaggregated and any recommendations from the deliberations will be included in the report.

Uganda Fast Tracking Application to Join the Extractives Industry Transparency Initiative (EITI)

By Gabriel Acaye (Project Manager – ULS)

Uganda is in the process of fast tracking its application to join EITI. The Ugandan cabinet in January agreed to give the government the go-ahead to apply to join the Extractive Industries Transparency Initiative (EITI). The decision is part of the country's ongoing efforts to strengthen accountability in the management of its natural resources and attract investors to develop its oil, gas and mining reserves.

The Extractive Industries Transparency Initiative aims to set and promote global standard of open and accountable management of oil, gas and mineral resources. 51 countries are members of the initiative. African countries that are signatory to the EITI are Tanzania, Democratic Republic of Congo, Ghana, Nigeria, Ethiopia, Central African Republic, Malawi, Zambia, Mozambique, Madagascar, Seychelles and Congo Brazzaville.

Government's implementation of EITI recommendation is currently buttressed by multi-stakeholder participation comprising of representatives from government, private sector and civil society.

The representatives are made up of representatives from Ministry of Finance, Ministry of Energy, Ministry of Justice and Constitutional Affairs, Ministry of Water and Environment, Ministry of Lands and Ministry of Works.

The Government agencies represented include; National Planning Authority, Uganda Revenue



A diagrammatic representation of how EITI works

Authority, National Environmental Management Authority, Petroleum Authority of Uganda, National Oil Company and Bank of Uganda.

Civil society, extractive companies, donor agencies and other international agencies are also represented including SIRD.

On the 18-19th June the Multi stakeholder group (MSG) received an invitation to attend the 2019 EITI Global Conference which was hosted by the Government of France at the OECD Conference Centre in Paris. At this conference, the MSG was able to network and meet with a number of officials from the EITI secretariat and learn best practices. The MSG has also held benchmarking visits to Ghana and Zambia to enable them get guidance on how to expedite the process of joining the EITI.

Currently, the MSG is preparing submissions and application to join the EITI and hopes to submit these to the international secretariat before the end of the financial year 2019/2020.



SIRD Bulletin

Supporting Inclusive Resource Development in East Africa



Global Affairs
Canada

Affaires mondiales
Canada



Chief Editor: Alnoor Meghani

Editors: David Sigano and Jennifer Johnson

Contributors

Suzy Kimutai (LSK), Nelson Frank (TLS), Gabriel Acaye (ULS), Alnoor Meghani (CBA) and David Sigano (EALS)