

Submission to the United Nations Human Rights Council

Universal Periodic Review Session: Tanzania

March 2011

In resolution 8/7¹ of 18 June 2008 extending the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), the UN Human Rights Council welcomed the SRSG's proposed policy framework for business and human rights based on three overarching principles: the State duty to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises, the corporate responsibility to respect all human rights, and the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms.

As a means of encouraging constructive dialogue on private sector-related issues in the Human Rights Council Universal Periodic Review (UPR) process, this submission by the Institute for Human Rights and Business (IHRB) addresses aspects of the government of Tanzania's record of protecting against human rights abuses committed by or involving business. The submission offers recommendations for consideration by the Tanzanian government and members of the Human Rights Council. IHRB welcomes feedback on this submission.

Summary of submission:

Part I addresses the context of Tanzania and relevant regulatory and policy provisions relating to business and human rights.

Part II describes a select number of key ongoing issues of relevance concerning business and human rights in Tanzania.

Part III makes recommendations in particular areas of concern for follow-up action.

Part I: The context of Tanzania and relevant regulatory and policy provisions on aspects of business and human rights

The government of the United Republic of Tanzania is a party to most major international human rights instruments, though it has not ratified the UN Convention against Torture or the

¹ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

A country profile report by the ILO published in 2010² notes that Tanzania has made notable progress in improving the social and economic context for decent work. However, serious challenges remain. For example, according to the ILO report, the overwhelming majority of Tanzanian workers (approximately 90 per cent) remain in vulnerable and informal employment. There also continue to be significant disparities in the earnings of men and women, and between urban and rural areas. The report points out that the Government has put in place a new legislative framework as well as institutions and policies to deal with wage issues, especially in the private sector and with respect to minimum wages, although the informal sector and the rural agricultural sector are still outside the purview of these actions.

Although Tanzania has ratified all eight ILO core conventions, reports by the International Trade Union Confederation (ITUC) indicate that many excessive restrictions on trade unions apply, including government retaining control over many trade union activities. For example, while the right to collective bargaining is recognised, all collective agreements must be submitted to the Industrial Court for approval and may be refused if they do not conform to the government's economic policy. The list of services where strikes are prohibited is extensive, and covers almost 50% of all services. Labour rights restrictions appear to be greatest in the semi-autonomous region of Zanzibar.³

Part II: Notable issues relating to business and human rights in Tanzania

Tourism

There have been reports of evictions of Maasai herder communities in Northern Tanzania to clear areas for safari or tourism concessions for foreign private companies. Civil society organisations have also reported on alleged violence by Tanzanian security forces against Maasai villagers during evictions.⁴ UN treaty bodies have expressed concern that the government does not recognise the existence of indigenous peoples and minorities and have noted reports that the establishment of game reserves and other projects has had a negative impact on indigenous communities. They have called on the government to adopt legislation protecting “cultural heritage and traditional way of life” and to consult indigenous communities before granting licenses for projects on “‘ancestral’ or disputed lands”.⁵

Biofuels

Recent years have seen the development of biofuels in Africa, with international investors showing increasing interest in Tanzania, where agriculture provides employment for almost 80%

² http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_124584.pdf

³ ITUC, CSI, IGB, *2010 Annual Survey of Violations of Trade Union Rights* (report on Tanzania.)

⁴ See for example Survival International, “Maasai evicted and imprisoned to make way for safari hunting concession”, 20 August 2009; see also Alex Renton, “Tourism is a Curse to Us”, *The Observer*, 6 September 2009.

⁵ Concluding observations of the Human Rights Committee, CCPR/C/TZA/CO/4, 6 August 2009: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/440/87/PDF/G0944087.pdf?OpenElement>

of the country's workforce. While biofuels could provide a new source of agricultural income and development for rural areas, research points to problems such as deforestation, overuse of water, infringements on local communities' access to land and livelihoods, lack of awareness of rights (e.g. in relation to land), inadequate valuation of land and displacement of food production.⁶ One recent study underscores the need for the government to ensure transparency of negotiations and foreign investment agreements to develop biofuels, "meaningful participation" of local communities in these projects, a living wage for Tanzanians hired to work on biofuel plantations, and a consideration of how biofuels development could affect the availability of land for food production.⁷

Concession Contracts

Tanzania is a country rich in minerals, including gold, uranium and gemstones. It is the third largest producer of gold in Africa. Transnational mining companies, particularly those mining gold and diamonds, have an important presence in the country. Artisanal and small-scale mining (ASM) is also widespread; the government has estimated that over one million people work in ASM.⁸ Although mining is considered a "key growth sector" of the Tanzanian economy,⁹ the extraction of minerals – especially gold – has been associated with negative impacts on the environment and the human rights of communities near extractive operations. In addition, the relationship between ASM and large-scale mining (LSM) operations of international corporations has been marked by tensions and, in some cases, confrontation and violence. The government has estimated that LSM has displaced about 40,000 small-scale miners in the decade following the passage of the Mining Act of 1998,¹⁰ though others have put forward much higher estimates.¹¹

There is widespread concern that the country's investment, tax and royalty policies in relation to large-scale mining have led to multinational corporations (MNCs) profiting from natural resource extraction at the expense of Tanzanians.¹² Civil society organisations and the UN have called attention to potential and actual negative impacts associated with LSM, including the human rights implications of environmental damage.¹³ While pointing to good practices underway in

⁶ Emmanuel Sulle and Fred Nelson, "Biofuels, Land Access and Rural Livelihoods in Tanzania", International Institute for Environment and Development, 2009, p. 4.

⁷ Center for Human Rights and Global Justice, "Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment", New York: New York School of Law, 2010, pp. 34-5.

⁸ Okechukwu Ibeanu, Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Addendum, "Mission to the United Republic of Tanzania", A/HRC/9/22/Add.2, 18 August 2008 (hereafter, "Ibeanu, Report of the Special Rapporteur, 2008.")

⁹ World Bank, "Tanzania: Country Brief", 10 September 2010, accessed 9 March 2011.

¹⁰ Nicholas Bariyo and Robb M. Stewart, "High Prices Draw More Gold Diggers", *Wall Street Journal*, 3 December 2009.

¹¹ See for example Mark Curtis and Tundu Lissu, "A Golden Opportunity: How Tanzania is Failing to Benefit from Gold Mining", Christian Council of Tanzania, National Council of Muslims in Tanzania and Tanzania Episcopal Conference, March 2008.

¹² See for example Curtis and Lissu, 2008. Barrick Gold rejected the report's assertion that gold mining companies were stripping Tanzania of its wealth: <http://198.170.85.29/Barrick-Gold-response-re-Golden-Opportunity-report-18-Nov-2008.pdf>

¹³ See for example Åsgeir R. Almås, Charles Kweyunga and Mkabwa LK Manoko, "Investigation of Trace Metal Concentrations in Soil, Sediments and Waters in the Vicinity of 'Geita Gold Mine' and 'North Mara Mine' in North West Tanzania", Norwegian University of Life Sciences, November 2009. In its response to the study, Barrick Gold, which operates North Mara Mine, said it had repaired the damage caused by an "environmental incident" in 2009 and that it was remediating the land; the

Tanzania in relation to both ASM and LSM, a UN representative has also expressed concern with an apparent lack of government oversight of LSM, underscoring questions about multinational corporations' "transparency and accountability".¹⁴ In this context, Tanzania has been urged by the UN and civil society organisations to join the Extractive Industries Transparency Initiative (EITI), which sets a global standard for transparency on the part of both companies and governments in the disclosure and management of extractive revenues.¹⁵

In April 2010, the government passed new mining legislation (The Mining Act 2010, replacing the Mining Act of 1998). The new law aims, among other things, at addressing concerns that mining does not sufficiently benefit the country. It raises the royalty rate on gold and metallic minerals from 3 per cent to 4 per cent, and requires that the government hold a stake in future mining projects. It also prohibits foreign companies from mining gemstones in the future, and calls on the government to set aside areas for small-scale miners to prevent conflict between them and large mining companies.¹⁶ Mining companies criticised the law, saying it would hurt investment.

A number of international companies are currently involved in uranium prospection and exploration in Tanzania, and production is reportedly set to begin in 2011.¹⁷ Given the impacts associated with other forms of mining in the country, the prospect of uranium mining has raised important questions, including how the government would assure that mining companies do not benefit at the expense of the Tanzanian people, how the industry would be properly monitored, and who would be charged with remedying contamination after mines closed.¹⁸

The promotion of foreign direct investment will need to be balanced with a commitment to protect the human rights of all citizens, and human rights should be integral to the government's discussions and engagement with investors.

company also expressed "serious concerns" with the study (www.reports-and-materials.org/Barrick-Gold-response-re-alleged-water-contamination-in-Tanzania-15-Dec-2009.pdf). AngloGold Ashanti, which operates Geita Gold Mine, said its own commissioned study had found "no substantive causes for concern" but it intended to carry out further investigations (<http://www.reports-and-materials.org/AngloGold-Ashanti-response-re-alleged-water-contamination-in-Tanzania-2-Dec-2009.doc>). See also Ibeanu, Report of the Special Rapporteur, 2008.

¹⁴ Ibeanu, Report of the Special Rapporteur, 2008.

¹⁵ www.eiti.org. Transparency around revenues from minerals extraction is called for not only by civil society organisations but also by certain industry organisations. See, for example, the International Council on Mining and Metals, "Minerals Taxation Regimes: A Review of Issues and Challenges in Their Design and Application", February 2009, which urges the mining industry and others to "emphasise that not only the revenue streams but also the underlying fiscal terms are made public" (p. 63).

¹⁶ The Mining Act 2010, Tanzania, available at www.parliament.go.tz/Polis/PAMS/Docs/14-2010.pdf

¹⁷ <http://www.wise-uranium.org/upafr.html>

¹⁸ Shaaban Fundi, "Tanzania: Take Care that Uranium Mining Turns into Blessing, Not Curse", *Daily Nation*, 20 October 2010.

Part III: Recommendations

The following recommendations are made to the government of the United Republic of Tanzania in relation to the above concerns:

- Consider the development of a national CSR strategy and/or Business and Human Rights Policy framework which would clearly set out government expectations regarding implementation of the UN endorsed Protect, Respect, Remedy framework as well as other basic expectations of companies operating domestically and internationally including information about local partners with whom business can collaborate to foster a human rights based environment.
- Consider joining the Extractive Industries Transparency Initiative (EITI) to work towards ensuring better transparency and accountability in relation to minerals extraction.
- Consider making public the contracts signed with multinational mining companies, in the interests of improving transparency and accountability of the mining industry.
- Future negotiations concerning concession contracts should prioritise economic development, poverty reduction and human rights-based approaches, including steps to ensure the implementation of human rights due diligence processes by companies awarded contracts.
- Follow the recommendations of the UN Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, particularly with regard to the need for better monitoring of LSM and ensuring good relations between large-scale mining companies and local communities.
- Ensure transparency of negotiations and investment agreements for biofuels development and work with foreign investors to ensure the protection of human rights and the environment as well as local community benefit from biofuels investment.¹⁹
- Proactively establish appropriate safeguards to prevent negative environmental and human rights impacts from uranium mining and to ensure benefits accrue to Tanzanians.
- Prioritise concerns raised by the UN Human Rights Treaty Bodies²⁰ regarding the persistence of child labour, and consider their recommendation of adopting a unified law to protect the rights of children.

¹⁹ Center for Human Rights and Global Justice, “Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment”, New York: New York School of Law, 2010, pp. 34-5.

²⁰ Concluding observations of the Human Rights Committee, CCPR/C/TZA/CO/4, 6 August 2009: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/440/87/PDF/G0944087.pdf?OpenElement>