



INSTITUTIONAL GAPS IN TANZANIA'S ENVIRONMENTAL REGULATIONS

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Historically, Tanzania has primarily had an agrarian based economy, with the mining sector growing in significance more recently. The National Bureau of Statistics stated mining contributed 15.3% in the first quarter of 2020 due to reforms introduced by the government.¹ The main mineral commodities that had an impact on growth were gold and silver production. Reforms introduced by government included revoking licenses of corporate mining entities to enable small scale miners take up concessions in the Northwestern part of Tanzania.

The expansion in mining operations, whether small or large-scale, are inherently disruptive to the environment producing enormous quantities of waste that can have deleterious impacts for decades. Artisanal and small-scale mining (ASM) plays a vital role in mining employment and sustaining livelihoods in Tanzania. For example, ASM employs more than 1,000,000 Tanzanians.²

Despite its economic relevance, ASM is associated with the most adverse impacts on the environment as well as health and safety risks. ASM activities largely depend on the use of rudimentary technology that leads to environmental degradation. For instance, soil and water pollution, is closely associated with leakage/unhealthy discharge of mining chemicals including mercury.³ Large-scale mines also have an environmental impact; from open-cast mining (whereby extraction takes place close to the surface across wide areas), to the dumping of toxic waste in river bodies, Acid Mine Drainage, polluting the air, and long-term health impacts on mineworkers and mine communities. This makes it absolutely essential to have a regulatory framework that ensures public participation in environmental regulation.

In response to environmental degradation, and a call to protect human health and biodiversity, Tanzania has ratified several International Agreements such as the Minamata Convention on Mercury, 2013 and enacted several pieces of legislations and their subsequent regulations. These include the Environmental Management Act, 2004, the Mining Act, 2010 and the Mining Safety, Occupational Health and Environmental Protection Regulations Act, 2010.

Notwithstanding the laws in place and the existence of enforcement machinery such as Local Government Authorities, the Mining Commission, and the National Environment Management Council (NEMC), there is less environmental standards compliance in ASM. It has been noted that the lack of compliance is as a result of unharmonized legal and institutional framework mandated to regulate ASM operations.⁴ In addition, the institutional framework that governs the Mining Sector in its entirety is not suitable for ASM thus emphasizing the need for sustainable innovations that respond to the specific needs of ASM.

Additionally, weaknesses of the governing institutional framework extend to data collection and management. To date, the government of Tanzania does not have good estimates on the number





of small-scale miners in the country. For instance, the gold-rich district of Geita alone, where I have conducted fieldwork extensively, is approximated to have more than 150,000 small-scale miners, most of whom are not legally registered and do not own miners' license. Since there is no record of most of the miners, they remain invisible to the district authorities, government departments and relevant ministries.

The Mining Act, 2010, *inter alia*, exempts small-scale miners from conducting Environmental Impact Assessment (EIA). The Act provides that an application for Primary Mining License (a license for ASM) be supported with Environmental Protection Plan (EPP). Contrary to EIA, EPPs are too narrow in scope, less environmentally sensitive and the process to their preparation is less participatory to a broader audience. For instance, there is inadequate participation of local communities who would otherwise be affected by mining operations. This limits the space for the community to hold ASM accountable for environmental degradation.

Surprisingly, the Environmental Management Act of 2004 has no express provision for EPPs. The omission of EPPs in the Environmental Management Act, 2004 provides room for the Ministry responsible for minerals to regulate compliance of environmental standards in ASM. However, the core objective of the Ministry of Minerals is promotion of investment in the mining sector. The Ministry and its associated authorities such as the Mining Commission are less environmental sensitive.

Moreover, since EPPs are provided by the Ministry of Minerals and Mining Commission they are supposed to be publicly accessible. However, the right to access them is hardly exercisable since the law is silent on who exactly has the duty to get them into the public domain. The Mining Act, 2010 strives to promote sound environmental management principles such as public participation and the precautionary principle.⁵ Both principles are reflected with a requirement to conduct and be issued with the EIA certificate pursuant to the Environmental Management Act, 2004, before lodging an application for the Special Mining License and/or Mining License as per the Mining Act, 2010.⁶

Yet even though local communities are consulted in preparation of EIA reports, community participation is of no effect if the community is denied access to remedies when their inputs are disregarded or if mitigation measures in the EIA report are of no value to their environment.

The Environmental Management Act establishes the environmental Appeals Tribunal,⁷ and vested with it the jurisdiction to preside over appeals against issuance of the EIA certificates.⁸ To date, seventeen years from its enactment, the tribunal is nowhere to be found. Again, the mining and/or environmental laws do to provide for a specific forum to which one/communities may object EPPs.

The absence of the Environmental Appeals Tribunal has denied the public its rights to a process of regulating the environmental impacts of the mining sector. Since the Tribunal has not been established yet, this has technically closed off the possibility of appeals from the Tribunal to be laid before courts, especially the High Court.⁹

The growth of the mining sector in Tanzania has emphasized the urgency to create an accountability mechanism that is inclusive, accessible and functional. The institutional gap for an inclu-





sive process to address environmental concerns, and the connected human rights issues, arising out of mining operations, is alarming. This emphasizes the need for advocacy and campaigns to take up this institutional gap in Tanzania. It also emphasizes the potential strategic value of a regional mechanism that can be accessible and responsive to environmental concerns of communities.

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- 6 Section 41 and 50 of the Mining Act, 2010, respectively.
- 7 Section 204 of the Environmental Management Act, 2004.
- 8 Section 206, supra.
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