Corporate social responsibility and compliance: transnational mining corporations in Tanzania

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Corporate social responsibility is an important part of the regulatory mix, encouraging compliant and beyond compliance behaviour. It is particularly important in developing countries, which may not have first world capacity to enforce their laws. For mining companies, corporate social responsibility is an important component of maintaining their ‘licence to operate’. For transnational corporations, actions taken in one jurisdiction can impact upon approvals and conditions imposed in other jurisdictions. Using case studies of mines operated by transnational corporations in Tanzania, this paper will examine the environmental and social issues that have arisen in the construction and operation of the mines and the steps that the corporations have taken to address these issues. It will also consider whether these mining companies operate to a different standard in Tanzania than they would in a developed country. Conclusions drawn in these case studies have relevance for transnational corporations operating in other developing countries – both within Africa and in other parts of the world.

I. Introduction

Corporate social responsibility (CSR), like other self-regulatory mechanisms, is a powerful incentive for compliance and beyond compliance behaviour. This is particularly important in the case of developing countries, which may have first world drafted environmental legislation, but have limited capacity to enforce this legislation. It is important in securing and continuing a miner’s ‘licence to operate’ with the support of the local community and national governments.

This paper will consider CSR in the context of mines operated by transnational corporations (TNCs) in Tanzania, namely the Bulyanhulu Mine, operated by African Barrick Gold PLC (Barrick) and the Geita Gold Mine operated by AngloGold Ashanti Limited. Looking beyond the Sustainability Reports that each company has produced, it will examine specific social and environmental issues that have taken place over the course of the development and operation of these mines which have impacted on the companies’ ‘licence to operate’ within their communities.
The aim of this analysis is to understand the incentives for TNCs operating in developing countries to comply and go beyond regulatory standards. Conclusions that derive from an analysis of these African operations may be broadly applicable and consequently be relevant to operations carried out by TNCs in all developing countries, whether they are in Brazil, Chile, Mongolia or Indonesia. Alternatively, adherence to CSR principles may merely be a sometime function of the degree to which environmental standards can be efficiently, or at least, adequately, enforced in specific jurisdictions. There is always the potential for social responsibility and sustainability to become an executive mantra and not a salient factor guiding and modifying executive decision-making. Accordingly, the paper seeks to examine whether CSR has really become an operating principle within the TNCs that are considered.

Broadly, the paper examines the four constituent elements of ‘social responsibility’ contained within the internationally accepted definition of ISO 26000, 2.18. However, as mentioned above, an essential element of CSR is self-regulation. It is a core principle of CSR and merits the following brief discussion by way of introduction to the specific case studies that follow.

Proponents of self-regulation note that it can lead to fewer complaints, lower compliance costs, as well as a reduced stream of litigation. They also note that laws can prescribe technological solutions but do little to foster fluid systems that learn, adapt to change and maximise efficiencies. Indeed, whilst acknowledging the role that command and control regulation can play in dealing with environmental degradation, much has been written about the limitations of this model as the sole tool to deal with pollution. Alm notes that shortfalls with command and control regulation include a focus on point source pollution, the time lag in drafting legislation and the cost of regulations. By definition, it is impossible to legislate requirements to go ‘beyond compliance’ yet voluntary codes can do so. Specifically in relation to the mining industry, a key issue is its social licence to operate. Prakash notes that mining industry – and it leadership – has been cognizant of the rising public hostility and has undertaken a variety of initiatives to respond to public criticism. This is arguably more important in developing countries, where the public might lack confidence in the regulatory agency which may be under-resourced and unable or unwilling to adequately enforce the legislation.

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1 This definition is “social responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour and is integrated throughout the organisation and practised in its relationships.


II. CORPORATE SOCIAL RESPONSIBILITY IN MINING: THE BACKGROUND

The notion of CSR in mining arose in the 1950s, but has really come to the fore in the past decade, along with terms such as ‘Triple Bottom Line’ and ‘People, Planet, Profits’. It is commonly accepted that social and environmental factors must now be taken into account by an organisation in addition to economic factors. Indeed, this accords with the Brundtland Commission’s definition of ‘sustainable development’.7

There are many notions of the meaning of CSR. By way of example, Overland states that principles of accountability and responsibility to external stakeholders, including the environment, and a commitment to sustainable business practices, are at the heart of the concept8 and these principles were subsequently reflected in 2010 as ISO 26000 Guidance on Social Responsibility.

Proposals for a United Nations Convention on Corporate Social Responsibility and Accountability were considered at the Rio+20 Earth Summit in June 2012. The Convention proposed member states develop national regulations, formal codes or listing rules to encourage the integration of material sustainability issues within the annual report of all listed and large private companies. Companies can opt out of the reporting regime but must explain why they did so in their annual reports.9

Whilst the proposal for a Convention was not adopted, the major outcomes statement from Rio+20, The Future We Want, included an acknowledgement of “the importance of corporate sustainability reporting, and encourage[s] companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle”.10

Specifically in the mining and minerals industry, the requirement to adhere to CSR standards and report thereon is influenced by a plethora of policy documents produced by the industry, as well as external bodies such as the World Bank and the International Finance Corporation (IFC).

One of the main incentives for an industry wide approach to sustainability issues was the Johannesburg Summit in 2002 (Rio+10). The minerals industry was expected to participate in this Summit and report on “the sector’s evolving understanding of sustainable development; the practical outcomes of its commitment to improved social and environmental performance; and on strategies to increase the sector’s contribution to sustainable development at community, national and international levels”.11 In 1998, the chief executive officers of 10 global mining and metals companies met in London. Prior to this meeting, there had been no

7 The World Commission on Environment and Development, Our Common Future (Oxford University Press, 1987) 43. This definition is “sustainable development is that meets the needs of the present without compromising the ability of future generations to meet their own needs”.
international forum for the mining companies to discuss these issues. This was the beginning of a forum, which eventually led to the Global Mining Initiative. Generic problems identified were major challenges around access to land and resources and the industry’s social licence to operate.

The Global Mining Initiative consisted of three linked components related to improving the industry’s performance and developing a sustainable development model that would provide global leadership for the mining and metals industry. They were:

1. An independent process of analysis and consultation on the key issues facing the mining sector – the Mining, Minerals and Sustainable Development (MMSD) project.

2. A global conference on mining, metals and sustainable development which was held in Toronto in May 2002 – Resourcing the Future.

3. An industry association that could focus on sustainable development in the mining, metals and minerals industry and provide a global voice for the industry on these issues – the International Council on Mining and Metals (ICMM).

Of specific relevance for this paper is the ICMM, which has now become a self-regulatory body for member companies, designed to recognise leadership in sustainable development initiatives. The ICMM has adopted the Brundtland Commission’s definition of sustainable development and notes that in the mining and minerals sector, this means, “that investments should be financially profitable, technically appropriate, environmentally sound and socially responsible”.

The ICMM developed 10 sustainable development principles and their members are required to report their performance against the ICMM guidelines, in accordance with the Global Reporting Initiative (GRI) guidelines. In developing these guidelines, the ICMM had recourse to a wide range of resources including the Rio Declaration, the GRI, the Global Compact, OEDC Guidelines on Multinational Enterprises, World Bank Operational Guidelines, OECD Convention on Combating Bribery, ILO Conventions 98, 169, 176 and the Voluntary Principles on Security and Human Rights.

Given the wide-ranging resources used to formulate the ICMM guidelines, the Minerals Council of Australia notes that “they represent the global industry’s commitment to manage social, health, safety, environmental and economic issues in order to deliver sustainable shareholder values; and to both improve its performance in managing these issues and to publicly report industry’s progress in doing so”. However Vogel quite rightly points out that “although some voluntary business codes have clearly had a discernible impact, their overall importance as a mechanism of global business regulation remains unclear”.

In May 2008 and March 2010, the ICMM and the GRI have launched sustainability reporting guidance for the mining and minerals sector. The 2010 document, entitled *RG & MMSS*
Sustainability Reporting Guidelines & Mining and Metals Sector Supplement, consists of sector-specific guidance incorporating the GRI G3 Guidelines. It requires issues such as indigenous rights, resettlement, closure planning and materials stewardship to be covered in the sustainability reports. GRI G4 Guidelines were released in May 2013 and the requirements to report against G4 will come into effect for ICMM members’ sustainability reports for the year ended 31 December 2015.

The following sections will examine CSR in the context of mining in Tanzania. It will consider the history of two major mines, from their initial operation by junior miners through to the operation by TNCs, with a view to determining the role that CSR has played in achieving compliance and beyond compliance behaviour.

III. Case Studies from Tanzania

Mining in Tanzania is relevant to consider in terms of CSR for a number of reasons. It may provide evidence to test whether transnationals adhere to different standards in the developing world. It has a population of approximately 42 million in 2010, an annual per capita income of US$561 and an estimated 36% of the population are living below the poverty line (2002 estimate). Although one of the poorest countries in the world, it is resource rich and therefore it has a significant economic need to exploit its resources. In terms of social issues, Tanzanian government statistics indicate that in 2007-08, 5.8% of the population is HIV positive. Both mines need to deal with some similar issues, in particular with artisanal miners operating within the mining tenement. (Artisanal mining refers to mining by individuals, groups, families or cooperatives with minimal or no mechanisation, operating without a formal mining tenement).

Related to the issue of corporate responsibility is the overarching role of the World Bank, and specifically of the World Bank's many environmental management policies which were largely developed under the reign of a previous Chairman, Dr James Wolfensohn. These policies are clearly not domestic laws that must be obeyed, however they certainly constitute a commercial reality since not even TNC mining companies wish to antagonize the World Bank. When implemented, World Bank inspired prudential standards in environmental management often result in specific behaviours which can genuinely be categorized as ‘beyond compliance’ in the context of the applicable domestic legislation.

Tanzania has sophisticated mining legislation, including regulations controlling the environmental impacts of mining. This legislation was produced as part of a package of economic reforms and restructuring undertaken by the government from the mid-1980s to the

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18 United Republic of Tanzania, n 16 above, 35.
19 Thomas Hentschel, Felix Hruschka and Michael Priester, Artisanal and Small-Scale Mining (IIEP Publications, 2003) 5.
20 The Mining Act 1998 (Tanzinia) and the Mining (Environmental Management and Protection) Regulations 1999 (Tanzania) which have been issued pursuant to the Mining Act 1998.
1990s. Whilst the Tanzanian government can take part of the credit for these reforms, even more significant is the role of the World Bank. By using tied grants to achieve environmental and social outcomes, the World Bank is able to exert the type of influence normally associated with domestic governments. In September 1990, the World Bank published a Mining Sector Review for Tanzania. This review set the tone for the Mineral Sector Development Strategy, which commenced in June 1993.\(^{21}\) The principal objective of the project was:

[T]o encourage and expand private investment in mining and other mineral based industries of Tanzania through sector policy and institutional reform. The project would introduce a legal, regulatory and fiscal framework, which would provide a uniform, competitive and stable environment conducive to private investment in mining. The environmental management, mine safety and the mine workers’ health would be improved through institutional strengthening and capacity building measures supported under the project. In addition, the project would help improve the productivity, income and social conditions of small-scale subsistence miners mostly operating in Tanzania’s poverty-stricken rural areas.\(^{22}\)

This project involved engaging consultants from Trans-Border Investment Ltd, a British investment firm based in London to review existing laws and regulations and suggest amendments/changes thereto. These reviews culminated in the enactment of the *Mining Act 1998*,\(^{23}\) and the establishment of a mineral titles registration and information system.

The World Bank has been involved specifically in the Bulyanhulu mine by providing funding and political risk insurance. The case study of this mine also illustrates the investigative role that it can play and hence its ability to influence and verify CSR. It is an essential part of the self regulatory mix, along with the role of NGOs and public opinion generally.

\textbf{A Bulyanhulu Mine}

The Bulyanhulu Gold Mine is an underground mine located within the Victorian Greenstone Belt in Northern Tanzania, about 50 km south of Lake Victoria and 3 degrees south of the equator. The mine has an elevation of 1,200 metres above sea level.

The mine is now owned and operated by African Barrick Gold plc. The Kahama Mining Corporation Limited was granted mining rights to Bulyanhulu in September 1994. Construction of the mine commenced in 1999 and it was commissioned in March 2001. It is the largest underground gold mine in Tanzania. As at 31 December 2011, the operation had 2,448 employees and 405 contractors on site. In 2011, gold production totalled 262,034 oz.\(^{24}\)

One of the significant social issues associated with mining in Tanzania is the displacement, or, in the case of the Geita mine, the co-existence of, artisanal miners and small-scale miners.

\(^{21}\) Approximate costs of the project were US$14.5 million, of which approximately US$13.1 million was financed by the International Development Association (World Bank). The balanced was financed by the Tanzanian government.


\(^{23}\) *The Mining Act 1998 (Tanzania)* s105.

These miners often use unsafe methods of tunnelling, mining and indeed processing (often with the use of mercury). The United Nations Environment Program notes that:

Artisan mining has been a major source of income, increasing the wealth of rural populations. … [However] inadequate regulation and enforcement in the artisan mining sector has, however, led to serious environmental problems and risks to humans. Toxic chemicals [especially mercury] are sometimes used in the extraction of minerals, such as gold, which end up in the rivers. Toxins bioaccumulate in fish and wildlife, which are sources of food for the same communities. Other environmental problems include deforestation, soil erosion, silting of rivers, landslides and mining accidents. It is estimated that the rate of occurrence of fatal accidents in small mining activities is six times higher than it is in larger operations.

In 1998, the then owner of the mine, Sutton Resources (a ‘junior’ miner, also a Canadian company) approached the IFC, a World Bank agency, for funding, and in September 1998 the IFC sent an environmental and social appraisal mission to the site. In April 1999, Barrick acquired Sutton Resources, and with this acquisition its subsidiary, KMCL. Barrick’s acquisition ended IFC’s potential involvement in the project, as IFC financing was no longer necessary. This process is mentioned for two reasons. First, access to IFC financing is clearly more important for junior miners than for TNCs and second, even in the case of junior miners, one of the first steps undertaken by the IFC is to conduct an environmental and social impact study as a necessary complement to their financial analysis of the project.

In July 1999 Barrick sought political risk insurance from the Multilateral Investment Guarantee Agency (MIGA), also a World Bank agency. In August 2000 MIGA announced that it had issued a guarantee against political risks totalling US$115.8 million to Societe Generale SA as ‘an agent for a syndicate of international banks’ for their loan to KMCL. A further guarantee of US$56 million was also issued to Barrick. (This funding, totaling US$172 million was the largest guarantee that MIGA had made at this time. Canada’s Export Development Corporation (EDC) co-insured the project with MIGA. The MIGA and EDC guarantees cover the investment against the risks of transfer restriction, expropriation and war and civil disturbance.

The Office of the Compliance Advisor Ombudsman (CAO) is an independent body established by the World Bank that is charged with auditing compliance with environmental and social policies on IFC and MIGA guaranteed projects and attempts to mediate disputes between

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26 Indeed, two major disasters have occurred in Tanzania – one in June 2002 when at least 32 miners died of suffocation in northern Tanzania after an air compressor failure in a tanzanite mine. Another occurred in April 1998 where about 100 miners died after torrential rains flooded 14 mineshafts in Mererani: Trade Union Congress, Risk (Issue No 60, 2002) <http://www.tuc.org.uk/h_and_s/tuc-5141-f0.cfm>.


28 The role of the TNC’s national government in essentially co-guaranteeing an entire mining project in another country, is an increasing phenomenon. The Australian government provided a similar guarantee in respect of the Lihir Gold mine in Papua New Guinea.

companies, governments and civil society organisations. On 11 February 2002, the Lawyers Environmental Action Team (LEAT) filed a complaint with CAO on behalf of the Small Scale Miners Committee of Kakola, Tanzania in relation to the Bulyanhulu mine. In summary, this complaint related to some environmental, but mainly social concerns in three periods viz. the displacement of people prior to and including 1996,\(^{30}\) the displacement of people in 1998,\(^{31}\) and the due diligence process undertaken by MIGA as it prepared the 1999/2000 guarantee.

In relation to the IFC’s involvement, the CAO found that an environmental impact assessment had been prepared for the mine by Norecol Dames & Moore in compliance with the Government of Tanzania’s regulations and that it did in fact comply with these regulations. However, the IFC team noted at the time of review that there were a number of areas where the EIA didn’t satisfy IFC/ World Bank requirements. Accordingly, it stated that a number of additional elements would be required and that measures in response to some issues would have to be upgraded.\(^{32}\) The IFC recommended an addendum to the EIA be prepared. This was not completed since IFC’s involvement with the project ceased.

When MIGA became involved with the project, informal discussions were held between staff of IFC and MIGA. MIGA also reviewed IFC’s back-to-office report on the mine, which itemized issues of concern to IFC. MIGA sought assurances from Barrick about issues of resettlement and past events, and felt comfortable with Barrick’s assurances on these matters.\(^{33}\) Whilst the CAO did not find that the complaints had been made out, it was critical of MIGA, noting:

> The CAO is concerned that MIGA did not carry out a more thorough review of the project following IFC’s pre-appraisal visit. Simply reviewing documents without a site visit, especially with changes in the project and with a gap in time between IFC’s and MIGA’s reviews, is inadequate. … To date no environmental or social specialist on contract to MIGA has visited Bulyanhulu.\(^{34}\)

In the course of its report, CAO concluded that since Barrick’s involvement the mine operation had satisfied World Bank requirements in terms of its environmental and social standards and that the company, without oversight by MIGA, had established meaningful relationships with international aid and development organizations.\(^{35}\) MIGA has confirmed to the author that MIGA has been monitoring this project, including a site visit in 2003. However, in accordance with MIGA's Disclosure Policy, the monitoring reports submitted to MIGA are not made public and do not form part of the compliance assessments, which are made public.

\(^{30}\) This was the time of the first Government of Tanzanian ordered resettlements of small scale miners from the area now leased to KMCL. These families were resettled to villages in the Kahama region.

\(^{31}\) A further round of resettlements took place in 1998. These families were moved to outside the mine’s perimeter, but still within the mining lease.

\(^{32}\) Specifically, the upgrade of the road was not covered in the EIS; the water pipeline to be constructed from Smith Sound to the mine needed to be more thoroughly explored; and the issues of resettlement and compensation relating to the pipeline, the tailings dam area and the mine, would all have to be dealt with; and that the EIS did not address the past issues of land clearance.: Office of the Compliance Advisor/ Ombudsman, Assessment Report Summary Complaint regarding MIGA’s guarantee of the Bulyanhulu Gold Mine, Tanzania (2002) 8.

\(^{33}\) Office of the Compliance Advisor/ Ombudsman, above n 31, 9.

\(^{34}\) Ibid, 10.

\(^{35}\) Ibid, 10.
In 2001, the MIGA due diligence report drew a rather stark contrast between the behaviour of the Barrick group on a variety of grounds and the behaviour of the previous mine owners. It stated:

Prior to KMCL’s [Barrick’s] and MIGA’s involvement in the project, artisanal miners on the site commonly worked in violation of safe mining standards, digging shafts too close together and constructing unsafe scaffolding that regularly led to the mines collapse and the death of miners. Asphyxiation due to lack of ventilation underground also led to deaths. In addition, the project site faced many social and environmental problems, including, for example, child labour, deforestation, mercury contamination and poisoning, and lawlessness.

The report continued, describing the turnaround as significant, and that all mining was now being conducted in accordance with international environmental and social standards. These laudatory comments should be read in the light of CAO’s statement that at this time, MIGA had not even performed a site visit and that their entire assessment had been conducted on the documents.

A contrary view of the operations of the mine is advanced by one of the main Tanzanian-based NGOs, LEAT. Mr Tundu Lissu, then one of the principal lawyers with LEAT and now a member of the Tanzanian Parliament for the opposition Chadema Party, has written extensively about mining in Tanzania and about the Bulyanhulu Mine in particular. Whilst LEAT has some concerns about environmental operations of the mine – for example that the EIA wasn’t done in accordance with World Bank standards - most of LEAT’s concerns relate to social issues/alleged human rights abuses concerning the removal of indigenous miners from the site at the time when the mine was operated by Sutton Resources. One of the allegations by LEAT, MiningWatch Canada and other NGOs was that as many as 52 people were buried alive in 1996 in their mine shafts when they refused to leave the mine site.

These allegations were followed by a, surprisingly belated NGO ‘fact-finding’ mission to Tanzania on 23-31 March 2002 which, despite being impressed by “the intensity and seriousness in the telling of the

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36 This conclusion that small scale gold miners using mercury in the gold extraction process in northern Tanzania has caused contamination of the environment and risks to human health was supported by a study of Peter van Straaten, “Human exposure to mercury due to small scale gold mining in northern Tanzania”, (2000) 259 (1-3) *The Science of The Total Environment* 45-53. Van Straaten tested for human exposure to mercury in populations in and around small scale gold mining camps in the Shinyanga, Kahama and Bukombe Districts of northern Tanzania, by means of human hair and urine surveys in 1997. He found that 36% of the gold miners working with amalgam exceeded the World Health Organisation guideline concentration of 50 µg Hg/g creatinine.


40 The group was comprised of Paula Butler, representing MiningWatch Canada, Steve Herz from Friends of the Earth, US, Stephen Kerr a student newspaper editor, Kathleen Mahoney, Professor of law, University of Calgary and Chairperson of the Board of Directors of the Montreal-based Rights and Democracy, Mattias Ylstra, video producer. The group was accompanied by LEAT’s Vincent Shauri and Tundu Lissu.
stores of the alleged evictions, violence and brutality of the police and mining officials …"41
was unable to verify any of the alleged facts. It is noteworthy in their response that despite
newspaper utterances on the topic by many NGOs, the one NGO group that actually visited the
mine felt unable to use the words ‘killing’, ‘killed’ or ‘murder’ in their actual report.

As has been noted, these allegations were investigated by the CAO, which also conducted a
field trip to the mine site. The CAO noted that “there is no compelling evidence to support the
version of events alleged by LEAT” and went on to state that. … “the repetition of unsubstantiated allegations was not serving the best interests of local people living close to the
mine”.42

As part of the World Bank Group’s Extractive Industries Review in 2003, submissions were
again taken from LEAT and other ‘witnesses’ to the alleged atrocities.43 Rather than make
findings on these specific allegations, the African Consultation Workshop, which is part of the
Extractive Industries Review, drew some general conclusions on lessons for the World Bank
Group in relation to large-scale mining projects.44

B Geita Gold Mine

The Geita Gold Mine is Tanzania’s largest gold mine and the largest gold producer in Africa,
outside of South Africa. Gold production in 2012 totalled 531,000 oz.45 Unlike the Bulyanhulu
Mine, it is an open pit mine. It is in a more environmentally sensitive area of Tanzania, being
located 20 kilometres from the southern shore of Lake Victoria, next to the Nyamalembo River
which drains into Lake Victoria. The Lake borders on Uganda, Kenya and Tanzania. The
mine employs 1618 employees and 1960 contractors.46 The mine is located about 4 kilometres
west of Geita township in the Mwanza region of north-western Tanzania. The population of
the town has increased from 30,000 in 1999 to nearly 120,000 in 2002 (the date of the last
population census in Tanzania).

The mine was developed by the Ghanaian company, Ashanti Goldfields Co Ltd and produced
its first gold in June, 2000. In April 2000 Ashanti signed an agreement to sell 50 percent of
Geita to South African-based AngloGold, the world’s largest gold producer. This agreement
was finalised in December 2000.47 The parties entered into a joint venture agreement which
governed the joint operation of the Geita project.48 AngloGold subsequently merged with
Ashanti, effective from 26 April 2004.49 The new entity is called AngloGold Ashanti Limited.

41 MiningWatch Canada, above n 38.
42 Office of the Compliance Advisor/ Ombudsman, above n 31. It should be noted that this Report also
recommended that MIGA strengthen its due diligence and supervision procedure to ensure that it has
independent sources of information on the progress of investments where it holds a guarantee. It suggests that
“more effort be made to ensure that local people benefit from such a sizeable foreign direct investment”.
43 Lawyers’ Environmental Action Team, Robbing the Poor to Give to the Rich: Human Rights Abuses and
Impoverishment at the MGA-backed Bulyanhulu Gold Mine, Tanzania, Submission to the Extractive Industries
44 World Bank, above n 26, 59-60.
46 AngloGold Ashanti, above n 45, 1.
2000).
In terms of obtaining environmental approvals, the EIS was submitted for approval in January 1999, prior to the Mining Act 1998 becoming operational. A South African company undertook the EIS, and all relevant local authorities and agencies were consulted. Since the mine is located in the Lake Victoria Basin catchment area and inland drainage system, it is a particularly sensitive project. In addition, a river, which cuts across the old Geita tailings dam, contains background levels of cyanide, close to the upper limits permitted by the regulations. (The mine was previously worked from 1930-1963). As a result, discharge of any hazardous chemicals including cyanide into the river was not permitted. (Any discharge of cyanide in the river leading to Lake Victoria would, of course, attract worldwide attention and consternation in the same way as it did with the Esmeralda mine in Romania. Lake Victoria is, inter alia, the source of the multi-million dollar Nile perch fishery.) Both the engineering design of the mine and the environmental management plan (EMP) took account of the topography, geology and distance of the mine perimeter from the lake (26 km). Monitoring of groundwater around the tailings dam and the processing plant was a critical aspect of the EMP, and necessitated the sinking of monitoring boreholes.50

The licensing authority approved the EMP, once it was satisfied by the Plan’s efficacy in protecting and management the environment, including the biodiversity of the Lake Victoria Basin. The mine operators have established a monitoring system at Geita Mine, which includes boreholes around the tailings dam and a decant facility. Initially samples were collected and analysed every two weeks, but this is now done on a monthly basis. Two Inspectors of Mines based at Geita carry out supervision for the Ministry of Energy and Minerals. They monitor mining activities, inspect and enforce the environmental management and protection regulations, and occupational health and safety regulations.51

Another significant feature of the mining lease is that it includes part of the Geita Forest Reserve, an area of approximately 100 square kilometres. The forestry was established (to provide timber) by the Germans and British who had conducted underground mining on the site from about 1930-1963. It is government policy to keep the forest intact, and settlements are not permitted in the forest. However it is under extreme pressure from organized, illegal logging, charcoal-making activities52 and illegal clearing for cattle grazing.53 The area of Forest Reserve which falls within the lease is regularly patrolled by the mine’s security guards in conjunction with forest officers to stop this activity. The company reports that during 2006, activities in the portion of the reserve managed by the mine were reduced to a minimum, making this, according to the company, the only part of the reserve where the forest is thriving.54

Geita’s response both illustrates a TNC playing a role in environmental/social issues beyond the mining tenement, and the reliance of the Tanzanian government on the assistance of TNCs in dealing with domestic issues.

In April 2005, approximately 7,000 artisanal miners invaded the Geita lease area after word spread that a large nugget of gold had been found by artisanal miners. The majority of the

51 OECD, above n 50, 18.
52 Logs are felled, set alight and then buried, to produce charcoal, which is then used as a fuel for cooking.
53 Graham McIlveen, HSE Manager 2002-04, Geita Gold Mine (personal communication, 4 June 2007).
miners left of their own accord after appeals from management to vacate the lease area. Police removed those who resisted. Another 2,500 artisanal miners invaded the lease area in early 2006, and would not move until police from Geita town and staff from the Mine Inspector’s Department intervened.

The Tanzanian government requested Geita to assist with the management of artisanal mining and the mine is now the site of a pilot project. The company has, in conjunction with the UK’s Department for International Development, run workshops in 2005 and 2006 for artisanal miners with a view to providing more information on topics like access to small business loans, technology, safe working conditions and better mining techniques. In 2006 around 5,000 miners participated in the workshops. The management at Geita is also working with local government officials and community representatives to identify property which is appropriate to small scale mining and to promote registration by operators in terms of relevant legislation.

Like the Bulyanhulu mine, the Geita Mine has been involved in many social and economic initiatives in the local area. As part of its tender for catering services, the Geita management included, as a precondition for all applicants, the initiation of a project which would contribute to the welfare of the local communities in the area. The Nyakabale Community Agroforestry Project was born from this initiative, and is jointly funded by the Geita mine and All Terrain Services, the camp management contractors who were the successful tenderers for the job. The project relies on the demand for local produce from the catering contractor, which also provides Nyakabale with the requisite technical expertise and day-to-day management. Funding comes from Geita and the mine is also responsible for the co-ordination with the village government.

Vegetables produced by the project are also sold to Mchauru village. An agronomist employed by the project also provides local farmers with advice and training in sustainable development practices and business management skills. According to the company, they have managed to establish a co-operative environment which assists local farmers and which provides a centralized market for their produce.

In 2000, the Geita mine, along with African Mining Services and Meremeta Limited co-sponsored a baseline cross-sectional HIV prevalence survey. The African Medical and Research Foundation (AMREF) performed the survey in collaboration with the National Institute of Medical Research, Mwanza and the London School of Hygiene and Tropical Medicine.

56 AngloGold Ashanti, above n 54.
58 See further *Business Partners for Development* (2002), which details KMCL’s initiative for social development, both to develop a housing scheme for mine employees and to assist the communities surrounding the mine in the areas of health, education, water supply and micro-enterprise development. This has involved KMCL providing technical know-how, financial support and capacity building for local communities, government and NGOs to participate in the process. Ms Aida Kiangi, Manager, Social Responsibility, KMCL has stated that “the ultimate aim is for government, communities and NGOs to take over. However, to get things started, KMCL has had to adopt a role that is closer to that of an NGO”: Email from Aida Kiangi to author, 2 March 2004.
59 AngloGold Ashanti, above n 46.
60 The survey measured the prevalence of HIV, other STIs and associated risk factors in 412 subjects, representing 4 groups: (1) 104 male national mineworkers representing 12% of the workforce at the time of the survey; (2) male community members; (3) female community members; (4) female food and recreational facility workers. The survey confirmed the pre-existence of a local HIV epidemic in the community: 19% of men, 16% of women and 39% of high risk women were HIV+. Men working at the mines surveyed had a comparatively lower HIV prevalence of 4%. Both the community members and mine workers demonstrated
Without intervention and as a result of the high rates of other sexually transmitted diseases and reported high-risk sexual behaviour among mineworkers, Geita estimated that it would observe a rapid escalation in the mineworker HIV prevalence up to 20-40% within the life of the mine. Although an explicit financial assessment of the impact of this potential HIV prevalence was not conducted, the potential financial impact of this increase is a significant threat to Geita’s continued profitability. Hence there were financial, as well as altruistic, reasons for the company to be involved with this project.

Partnering with the AMREF, the program instituted HIV/STI awareness workshops, trained 60 community health workers and established a HIV information centre. As well as participating in the program, an AMREF Project Officer monitors the project on the monthly basis, reporting to the mine manager and the District Medical Officer. Biannual Local Steering Committee meetings are convened by Geita mine with partners in the program and relevant District medical staff. It is also anticipated that every three years externally performed audits conducted by internationally recognized experts will evaluate program effectiveness. An illustration of the emphasis placed on HIV-Aids initiatives is that one of the key performance indicators of the Managing Director of AngloGold relates to the reduction in the spread of Aids.

In 2001, AngloGold received the Sustainability Leader award in the precious metals sector of the Dow Jones Sustainability World Indexes. AngloGold achieved the highest total score of any of the companies included in the precious metals sector. This rating was based upon AngloGold’s high level of performance across the three dimensions of corporate sustainability: economic, social and environmental.

One of the main incentives for environmental compliance has been the decision to seek, and then obtaining, ISO14001 certification, and the consequential compliance auditing. Geita was the first mine in Tanzania to achieve such certification, in mid-2001. AngloGold notes that “in spite of sometimes weak and/or poorly implemented environmental legislation in developing countries, AngloGold has committed to complying with internationally accepted environmental standards” (AngloGold, 2004c). One compulsory target for certification is to meet all legal compliance requirements. ISO14001 requires independent auditing of the environmental management system – in Geita’s case this was initially done at 6 monthly, and later 8 monthly intervals. There is a requirement for a 3 yearly recertification, and this was achieved in 2004.

The Environmental Manager for AngloGold’s African operations, Ms Cathy Reichardt, has acknowledged that sizeable communities had to be relocated to make way for the Geita mine,

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62 World Economic Forum, above n 61, 6. It is interesting to note that in a disclaimer to the report, the World Economic Forum (an NGO based in Geneva, Switzerland) notes that the Global Health Initiative Private Sector Case example “is based on a self-reporting model. Although the GHI makes reasonable efforts to ensure the accuracy of the statements, this report should not be viewed as an external audit of the program described”, 8.
63 Noleen McNamarra, Interview with Ian Livingstone-Blevins, General Manager, Underground Operations, AngloCoal Australia Pty Ltd (Brisbane, 14 September 2007).
64 Noleen McNamarra, Interview with Graham McIlveen, HSE Manager 2002-04, Geita Gold Mine (Brisbane, 4 June 2007).
stating “throughout mine life we need to undertake ongoing socio-cultural monitoring to determine whether the social impacts of involuntary resettlement have been adequately addressed, and if not, to identify and implement appropriate mitigative measures.\(^{65}\)

The whole experience of managing large open cut mines in Africa is relatively new, and this is especially the case for the Tanzanian regulators. The rehabilitation program was a self-imposed commitment in the Geita environmental impact statement, rather than a specific environmental condition imposed by the Tanzanian government. In the absence of specific Tanzanian standards, rehabilitation is conducted according to Australian methodologies and standards, utilizing indigenous vegetation. Plants are sourced from local nurseries established under the Agro-forestry venture which was set up by the mine.

Other third party verification was provided by Fr Francis Killenga, Development Co-ordinator with the Catholic diocese of Geita, in his paper prepared for the Seminar, “Perspectives for the economic development of Tanzania in the Context of Global Economy” in Frankfurt, Germany on 30 November 2002. Fr Killenga looked at the positive and negative effects of the gold mining industry in the Geita district. It examined the economic, environmental and social effects of the Geita Gold Mine and was generally positive.\(^{66}\) His most telling criticism, however, related to the issue of corruption. After discussing the contribution made to several local schools by the Mining Company, Killenga notes:

>[A]fter our thorough study, the donation for the above mentioned projects from GGM [Geita Gold Mine] was not exhaustively used for these projects. Because not much of these projects can really be seen. Local fundis (sic) were engaged to do the construction or renovation, thus a lot of money was left for individual projects (corruption).

The positive effect here is that there is the expansion of school facilities for increased number of children.

And the negative effect here is that the money provided by GGM for the projects which pass through the District Council is not fully utilized for the intended projects, instead it assisted to promote individual projects of those who receive the money from GGM. Strategies for curb this negative effect by the Government is not seen. The people cannot do anything about the corruption because they are not informed of the money, neither the projects.\(^{67}\)

It is significant to note that in 2001, the Tanzanian government formed a four-man task force to investigate a corruption scandal involving government officials suspected to have pocketed millions of Tanzania shillings in compensation earmarked for some 900 people relocated from the mine site.\(^{68}\) The taskforce was led by the then Mwanza regional head of the Prevention of Corruption Bureau (PCB), Mr Stephen Mashishanga. (The Prevention of Corruption Bureau is “a semi-autonomous institution which is entrusted to combat corruption in Tanzania mainland. It is a department under the supervision of the President’s office”.\(^{69}\) No report has


\(^{66}\) AngloGold, above n 65, 5.

\(^{67}\) AngloGold, *Gold Mining and Marketing, above n 65, 1.

\(^{68}\) Joseph Mwamunyange, “Tanzania to Probe Gold Scam”, *The East African* (Nairobi), 23 April 2001, (online).

even been tendered arising out of this investigation and the PCB has not responded to any of the author’s many attempts seeking follow up on the matter.)

Geita Gold paid out a total of US$5.06 million in relocation compensation, but landowners were either claiming that they received less compensation than was due, or did not receive compensation. The chief executive officer of Geita Gold, Mr Harry Michael, stated:

We noticed that in the case of 461 entries that claim underpayment, the correct amount was paid by Ashanti into the government-controlled bank account, but did not reach the rightful person. It is our understanding that fictitious names have been added to the claims and that some committee members\(^{70}\) were charging Tsh100,000 (US$120) to prepare bogus claims.\(^{71}\)

**IV. CONCLUSIONS**

**A Findings**

CSR for mines operating in Tanzania evidences three often interlinked facets. First, the administrative and regulatory apparatus of the Tanzanian government, second the prudential oversight of project underwriters and financiers, and third, the aggregate activity of international and local NGOs.

In relation to the first element, Tanzania became the beneficiary of a variety of ‘Rolls Royce’ model of environmental regulation, imported from English, Canadian and Australian sources. This is not to say, of course, that anything less than a Rolls Royce model should be tolerable in a developing country merely because it is developing per se. Rather, high-end models, to be effective in the field, require high-end maintenance and this, in turn, must place the emphasis on the supply of highly qualified environmental managers. To have one without the other, as is the case in Tanzania, is perhaps to put the ‘cart before the horse’, but in reality there seems little alternative. As indicated in this paper, the number of government environmental inspectors and regulators is very limited indeed and staffing numbers would be considered inadequate in a developed country.

Secondly, as indicated earlier, the necessity for a large mining company to achieve underwriting of the sovereign risk involved in the undertaking, necessarily involves international bodies such as IFC and MIGA. Both these agencies of the World Bank require the applicant mining company to pay due diligence to a range of environmental and social issues stipulated in the various policies and plans of the World Bank. As a matter of practical reality, adherence to these due diligence items by the applicant corporation must be considered an imperative. Overall project financing or underwriting will often depend upon compliance.\(^{72}\) The important point to note here, however is that compliance with the prudential standards of

\(^{70}\) The Committee comprised of the district land officer, the regional valuer, the kitongoji (ward) chairman, ten cell leaders, the village executive officer and the village chairman.

\(^{71}\) Mwamunyange, above n 67.

\(^{72}\) It should however be noted that Zalcberg, in discussing World Bank funded projects in the Democratic Republic of Congo, cautions that the World Bank Inspection Panel has its limitations regarding enforcing a coherent environmental approach for all World Bank projects. See further Jacqui Zalcberg, ‘The World Bank Inspection Panel: A Tool for Ensuring the World Bank’s Compliance with International Law?’ (2012) 8(2) Macquarie Journal of International and Comparative Environmental Law 75, 93.
international institutions is discretionary in the sense that the corporation can either elect to comply, or elect not to comply with the World Bank requirements, and suffer the commercial consequences. In either case a compliance response is not a function of any formal state based regulatory apparatus.

Thirdly, particularly in the case of the Bulyanhulu mine, and before the acquisition of the mine by Barrick, a number of NGOs sought to focus international media attention on what they alleged to be a mass murder committed by the then mine owner. The media, of course, is an essential arm of any NGO. Although the Internet is one part of a global information system, issues tend to develop a constituency when they are exposed in the print or electronic media. In the end result, the participating NGOs, ranging from MiningWatch Canada and Friends of the Earth to LEAT successfully, it seems at times, managed to focus this attention. At the end of the day, however, little if any evidence was able to be found to support their more serious allegations and indeed in this era of instant communication and the internet, it is difficult to imagine that the deaths of 52 miners anywhere in the world would go unreported, and fail to prompt an NGO site visit for a period of six years. It is doubtful in the case of the Bulyanhulu mine, that any NGOs who were involved, and who continue to be involved in the mine played any responsible role. The broader issue at this point may well be the question of oversight of the NGOs themselves. No conclusions can be reached on this point in this paper though the question must remain open and is intrinsically important.

The Geita mine contrasts with the Bulyanhulu mine in a number of specific operational terms. It is around twice the size of the Bulyanhulu mine, it is an open cut operation, which is demonstrably a safer form of mining than underground mining, and it is closer to an area of significant environmental value. Having said that, in terms of environmental compliance, there is one significant element that is absent in the case of the Geita mine. This is the absence of a specific World Bank oversight through the MIGA underwriting protocols.

Beyond the legislative requirements, the Geita mine appears to have instituted an environmental and social management system going well beyond the specific legislative requirements. They have acquired ISO14000 certification and re-certification. This is one of the highest levels of international environmental certification, as it requires independent, international auditing on a regular basis. There is no readily apparent reason why the company has attempted to achieve this level of certification beyond a high value being placed on its international corporate reputation. The Bulyanhulu mine has not achieved this level of certification. To a very large extent this level of certification effectively replaces the oversight of MIGA or the IFC. The Geita mine has managed to maintain a relatively co-operative relationship with international NGOs. They have also instituted a range of local initiatives which appear to have effectively incorporated local issues and aspirations into the overall operating framework of the mine. This, admittedly, is to some extent government policy, but there does appear to be an earnest and genuine attempt to institute a broader framework. The incorporation of HIV-Aids reduction targets into the key performance indicators of the CEO may well be unique among mining companies.

73 LEAT and Lissu continue to be active critics of Barrick, alleging in 2005 that Barrick’s security operatives at the North Mara mine have employed ‘naked violence’ by shooting 6 villagers who illegally entered the mine site. It is argued that the killings are part of a strategy to silence mine critics. These issues have now been taken up by Canadian NGO Corpwatch. See Corpwatch, Barrick’s Dirty Secrets: An Alternative Annual Report (2007) 5.<http://protestbarrick.net/ downloads/barrick_report.pdf>.
After examining the Geita operation in detail, it is difficult to find any area of its operations (with the possible exception of mine safety which needs improvement) that differ in any particular from a level of high standard compliance, and beyond compliance, which would otherwise be applicable in a developed country. In fact the level of community involvement, their commitment to training artisanal miners, and their specific policy of sourcing produce from the local community, could be taken as an example of how to conduct an integrated operation in a socially sensitive manner. The mine won the President’s Award for Environmental Excellence in 2004.

\[ \text{Conclusions} \]

In conclusion, it is clear that whilst developed environmental standards exist in Tanzania, the issue remains one of enforcement, due to the relative lack of expertise at the local level of sufficient quality to be able to oversight company activity. Yet the evidence presented in this paper suggests that the TNCs discussed in the case studies are complying with first world environmental standards. The companies have also demonstrated a significant commitment and investment to address social issues at the mine site and in adjacent local communities. A concern with these issues accords with the principles of CSR. One of the reasons TNCs take such steps is to maintain their international reputation, integrity and hence their ‘licence to operate’. With the concentration of media attention, ‘licence to operate’ has an international scope. What a company does in one country may affect whether they obtain a licence in another jurisdiction. In this way, CSR acts as a powerful impetus to achieve economic and social sustainability beyond the traditional command and control mechanisms.