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SEBASTIAN PASCHAL SANGA

The Role of Poor Governance in the Tanzanite-Al Qaeda Link Controversy, and Policy Options for Tanzania Enabling it to Escape from 'Curses' in the Mining Industry

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Abstract

Tanzania has continued to struggle to address poverty issues with a host of political, social and economic challenges since gaining its independence in 1961. To achieve this objective, the country has had to overcome resource use challenges requiring dexterity and intelligence in terms of governance. The extent of the resource curse is great, now, especially with regard to the gemstones and Tanzanite. The mining sector has experienced large-scale 'curses' since independence. The fourth phase President, Jakaya Kikwete, who took over leadership in December 2005, came to office at the time when the resource curse was a real issue. He has been trying to put the house in order, which includes making a review of mining contracts, but the exercise seems to be arduous, being partly due to the complex nature of corruption and abuses of power.

This paper intends to take a look at examples of the resource curse. Many of the 'curses' discussed refer to the mining industry from 1985 to 2006. This, however, does not mean that there was no resource 'curse' from the 1960s to the 1980s. The resource curse was there, but was controllable to a large degree - and causes were, in the main, poorly implemented policies, which came via a wieldy bureaucracy; and they were also due, in part, to the failures of the socialist system (existing in the 1970s). The largest part of this paper refers to curses on the Tanzanite gemstone (constituting almost 75 percent of this Policy Paper (PP)). Tanzanite has been 'hot news' of late concerning the Al Qaeda link controversy. However, Tanzanite is not the only 'cursed' resource in Tanzania - for gold is 'cursed', too. Issues discussed include the deepening of vested interests and, also, a laxity when it comes to collecting revenues; there have also been dubious contracts that the government had signed with investors under confidential arrangements.

A lack of integrity and abuses of power continue to hit the process of governance building hard, especially in the context of key decision- and contract-making processes. The overseeing role of Parliament - keeping an eye on the activities of the executive and holding them accountable on behalf of the citizen - is open to ridicule, which is in part due to the existing political environment. Propagating democratic governance would seem to be an uneasy task, as powerful and self-interested economic actors gain control over the executive department, to their own advantage, meaning that there are then enormous losses for the entire society. Powerful "oligarchs" buy off politicians and bureaucrats, to make them 'twist' laws, budgets, projects, and policy and regulatory environments to favor their own interests. Experts say that the majority of parliamentarians, especially from the ruling party, are often no more than 'a rubber stamp', approving defective executive's plans. Political stability, which Tanzania has had since independence, misleads external partners as regards the realities of democracy and the degree of correct resource governance.

This paper thus gives some clues as to why Tanzania, with its numerous resources, 'is poorer'. The paper contains a series of evidence-based poor governance cases to illustrate the degree of the problem and causes, giving insightful details into how different groups manipulate the system for their own individual gains.

One of the most undeniable facts is that unless holistic integrity building is honestly implemented, the resource curse will continue to damage Tanzania's economy. It is hoped that this paper, if it does not give a comprehensive solution to this problem, may provide a starting point if one wishes to seek out feasible options to address a resource curse that continues to damage Tanzania's reputation. It will also serve to complement existing policy recommendations on ending the resource curse in Tanzania, and elsewhere. An agenda for change is part of this paper, giving a road map towards the installation of good governance systems. In the final section, the paper will provide a set of policy alternatives and strategies that can be made use of so as to reverse the situation. As part of the paper's wider scope, experiences regarding the managing of resources by other countries have also been taken on board.

The study gives some answers to at least five questions. These are: Why is there a crisis in the Tanzanite industry? How and why has Tanzanite been linked to the Al Qaeda Group? Is it the Al Qaeda link that is 'cursing' Tanzanite, or is it just a syndicate of dealers (e.g. a Mafia group)? To what extent does poor governance as regards handling Foreign Direct Investment (FDI) contribute to the 'curse' of Tanzanite,

alongside other minerals? Lastly, what might policy options be to address the problem as a whole?

The central hypothesis of this policy study is that “Poor Governance is the central cause of the Resource Curse.” It is hoped that the idea of fighting poor governance in the managing of resources - while ensuring that natural resources are well-managed so as to benefit the public - will reflect Tanzania’s commitment to the implementation of anti-poverty initiatives, including Millennium Development Goals (MDGs).

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The views contained inside remain solely those of the author who may be contacted at sanga@policy.hu.

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Contents

CHAPTER 1	4
1.1 Introduction.....	4
1.2 The Treasures of Tanzania	4
1.3 The Concept of the Resource Curse.....	5
1.4 A Description of Tanzanite	6
CHAPTER 2	9
2.1 The Al Qaeda Connection Controversy.....	9
2.2 The Origin of the Troubles.....	10
2.3 Problems Afflicting the Sector	14
2.4 Background to the Problem.....	15
2.4.1 A Deepening Brawl.....	19
2.4.2 AFGEM and the Share Ownership Controversy	20
2.4.3 AFGEM Linked to the Tanzanite-Al Qaeda Story.....	24
2.4.4 Abuses of Market Powers by AFGEM.....	25
CHAPTER 3	30
3.1 A Deeper look at the Tanzanite Industry	30
3.2 Production	30
3.3 Markets.....	32
3.4 Exports	33
3.5 Looting and routing.....	34
CHAPTER 4	37
4.1 Past Attempts to Do Away With the Curse.....	37
4.2 Tax Reform Initiatives.....	37
4.3 Formation of an Advisory Board and Probe Committees	37
4.4 EPZ Initiatives.....	38
4.5 The Tucson-Tanzanite Protocol	39
CHAPTER 5	41
5.1 A Low Level of Contributions to the Economy in Spite of the Increased Investment	41
5.2 Economic Indicators	42
CHAPTER 6	45
6.1 An Evidence-based scenario relating to poor governance.....	45
6.2 The Problem Summarized.....	53
CHAPTER 7	55

7.1 Attending to the Resource Curse in Tanzania.....	55
7.2 A Need to Review Investment Policies and Regulations.....	55
7.3 Adopting Protocols and Internationally Acceptable Standards With Regard to FDI.....	62
7.4 A Need to Have and Have Strengthened a National Governance and Integrity System	63
7.4.1 Past Anti-corruption Initiatives.....	63
7.4.2 Reasons for the PCB's Failure	64
7.4.3 Reasons for the Failures of the Presidential Commission.....	65
7.4.4 New Anti-corruption Strategies by the Fourth-phase Government	66
CHAPTER 8	68
8.1 A Proposed and Coherent National Integrity System.....	68
CHAPTER 9	73
9.1 Lessons Learned from Botswana's Experience	73
CHAPTER 10	77
10.1 An Agenda for Change	77
10.2 A Fear of Vested Interests.....	78
10.3 Proposed Steps.....	79
Conclusion.....	80
References	81

CHAPTER 1

1.1 Introduction

The purpose of this paper is to look at the so-called 'resource curse' in Tanzania, see the nature of the problem and to provide a set of pro-poor policies that might address the dilemma in on-going efforts to deal with the problems facing the Tanzanite sector and the mining industry as a whole.

Tanzania is wallowing in poverty, despite her abundant resources, especially minerals. It is over 40 years now since the country gained her independence from Britain, but it is harvesting little from investors in spite of her 20-plus years exercising an open market policy in the mining sector. For the sector, and the Tanzanite gemstone in particular, seems to be 'cursed'. A while ago, it was alleged to be providing sustenance to the Al Qaeda terrorist group...

This policy paper will introduce and discuss the nature and causes of the resource "curse" in Tanzania, focusing on the mining sector, and Tanzanite in particular. It raises arguments and gives both facts and examples of "resource curse" elements, having an emphasis on Tanzanite, the rare gemstone - which has had a major role to play in the country's history. The problem affects society in different ways, and there are stakeholders who have different roles to play within the context of the problem, including Tanzania's government, importing countries, miners, both small and big companies, middlemen who link up miners with retail sellers, etc...

1.2 The Treasures of Tanzania

Tanzania takes its name from the old colonial territory of Tanganyika and the islands of Zanzibar. It is home to around 37 million people. In terms of resource abundance, Tanzania ranks highly in Africa. From Africa's Lake Tanganyika to its highest peak, Mount Kilimanjaro, Tanzania is an undiscovered country, a land of wide-open spaces and wildlife, of palm-fringed islands and turquoise seas, of a warm and hospitable people... Tanzania also lays claim to the continent's best wildlife viewing. It

has fascinating national parks, conservation areas and game reserves, which include the famous Serengeti and Ngorongoro Crater, covering nearly a quarter of the country; and it is home to an estimated twenty percent of Africa's largest mammals; and it has also been blessed with having vast natural resources, most of which are untapped and could be used to transform Tanzania into one of Africa's major production and distribution centers. Tanzania is also one of the most promising gemstone frontiers, with more than 50 varieties of gemstones having been identified to date¹. Significantly, it is also the world's only source of Tanzanite. Besides Tanzanite, diamonds and gold, Tanzania can boast of having classified rubies, nickel, marble, phosphates, lead, iron ore, soda ash, coal and kaolin. In addition to these, reports by petroleum dealers have revealed the presence of oil reserves too. In terms of gold production, Tanzania is located third in Africa, after South Africa and Ghana.

Yet it is also one of the poorest countries on earth. Why is Tanzania poor? And is it *really* poor? This and other similar questions dwell in the minds of anti-poverty experts, who seek answers to establish the nature and causes of Tanzanian poverty. Over 18 million of its people, almost 50 percent of the total population, are close to the verge of starvation. Tanzania has, generally, had an experience of poor revenue collection, especially when compared to other countries that possess natural resources - pointing to 'the paradox of plenty'. The UN Human Development report puts Tanzania among its poorest member states. When it comes to minerals and the Tanzanite gemstone (in particular, for the latter is only available in Tanzania), Tanzania is rich – yet its current state could mean that it has on its hands a 'poisoned gift'.

First of all, though, this research paper needs to highlight the concept of the resource curse.

1.3 The Concept of the Resource Curse

Some neoclassical economists argue that natural resource abundance increases the risk of civil strife by producing weak states via a set of developmental pathologies known collectively as a 'resource curse'. In general, there are different forms of

¹ Tanzania's opportunities for mineral resource development, Third Edition 1998: Ministry of Energy and Minerals

resource curse. They include resource abundance, which can be seen in the way a specific resource tends to contribute to economic stagnation in the long term via a number of crowding-out effects, that is, by shifting resources away from other sectors of the economy that have positive growth opportunities. In so doing, economic distortions set in and slow the maturing of non-resource tradable sectors, harm their competitiveness, and thereby inhibit several kinds of economic diversification.

The second form comes via an over-reliance on exports of minimally processed natural resources, which can make a country vulnerable to declining terms of trade and the highly volatile nature of international commodities markets.² For Tanzania, which does *not* have any stakes in mining firms, the resource curse comes in the form of neglect shown by the government with regard to its collecting revenue; and, also, poor governance in decision-making with regard to actually handling the sector. This has resulted in large-scale corruption and 'lenient behavior', which create loopholes for small and large-scale smuggling.

The Socio-economic and environmental consequences of policy failures are reflected in a variety of ways, which are specified later, in more detail.

1.4 A Description of Tanzanite

Tanzanite is mined in the village of Merelani, in the northern part of Tanzania, near Mount Kilimanjaro. In US markets, Tanzanite is a top-selling gemstone. It is a purple-brown crystal which, when superheated, turns into a beautiful, blue gem; and displays different colours - blue, purple, and bronze - when viewed from different directions. According to local legend, lightning struck in the vicinity of the Merelani hills, and set the surrounding grasslands on fire. When the Maasai herders returned to the area with their livestock, magical blue stones had appeared on the ground. A Portuguese geologist, named DeSouza, travelled to this area in the 1960s and found this blue stone. He, in time, brought it to the attention of a marketing company, Tiffany & Co. When heated to 600 degrees Celsius, Tanzanite undergoes an incredible

² (This is based on the International Council on Mining and Metals — "the resource curse is overstated" at www.icmm.com/newsdetail).

metamorphosis, resulting in the creation of a vibrant blue/violet trichroic gemstone. The stone is traditionally called Zoisite, though this name was rejected by Henry Platt, the then president of the New York-based Tiffany and Company, for two reasons: that Zoisite does not reflect the host, which is Tanzania, the only country that produces it; and that the word Zoisite sounds like 'suicide,' which was not good for marketing purposes. Early in 1969 the gem was introduced onto the market, by the aforementioned company, for commercial purposes. The Maasai are also said to believe that Tanzanite is the stone of birth because of its blue colour, and they used to give it to their wives to have their first children - and this was the only way Tanzanite had been used until when Tiffany and Company began marketing it! Tanzanite was initially scattered in alluvial plains near the surface, but now it is found in deep mines...

A good quality Tanzanite is second only to diamonds, but it is estimated to be 1000 times rarer than a diamond. Now, Tanzanite is one of the newest and most popular stones in the mining industry, being a jewel with many colours, varieties and variations. In Merelani, over 45,000 people earn their incomes from Tanzanite. There are over 530 brokers. About 14, 000 people were, until 2003, licensed to conduct mining operations in the village. The actual population of the village is not known, but reports say that it is among the most populated places in Tanzania. Rough Tanzanite sells at US\$700 to US\$800 per gramme on secondary markets, but, in Arusha, Tanzanite sells at between US\$40 and US\$400 a carat at a wholesale level, depending on the cut, color and overall quality of the stone and prevailing market conditions (see Business Times, May 31, 2002 - or at Tucsonshowguide.com/stories/tanzanite.cfm). Its economic importance is not just for Tanzanians alone - it is also important for foreign countries, like India, where its processing has created jobs for over 250,000 people. Mike Nunn, an AFGEM Chief Executive (see below) once said that evidence from retailers, cutters and traders indicates that Tanzanite turns over between US\$150 million to US\$300 million a year wholesale - although others put estimates at over US\$500 million in the United States alone. The amount of Tanzanite entering other countries - like India, the Republic of South Africa, Kenya, Germany, Thailand, Israel - is undervalued in most cases.

Table 1: Tanzanite: Production, Value and Royalties from 1996 to 2005

SEBASTIAN PASCHAL SANGA: THE ROLE OF POOR GOVERNANCE IN THE TANZANITE-AL QAEDA
LINK CONTROVERSY, AND POLICY OPTIONS FOR TANZANIA ENABLING IT TO ESCAPE FROM 'CURSES' IN
THE MINING INDUSTRY

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
LSM Kg	5.8			81.25	46.51	106.36	920.99	404.78	229.99	293
Value in US\$m	0.00013			0.31	1.09	1.76	4.68	5.61	6.30	
SSM kg	*1167.4	7960.72	1239	5418	5469.4 9	10273	5539	4087	3651	
Value in US\$m	5.98	4.94	5.19	8.95		11.97	12.58	7.52	17.81	
Weight	*1173.2	7960.72	1239	5228	5516	5473	6461	4490	3880	2000 0
Total value, \$m	5.89	4.94	5.19	11.45	16.23	15.93	17.34	13	24	40
Royalty in Tshsm						13.8	419.9	376.6	802.7	2,03 1

Source: Merelani Controlled Area (Report by J. Nayopa: 2006)

LSM kg: Large-scale Mining, kilogram

SSM kg: Small-scale Mining, Kilogram

* Needs verification

Table 2: Other data relating to official Tanzanite Exports for the year 2001

Country	Weight	Weight	Value (\$)	Value (\$)	Total valued (\$)
	Rough (gram)	Cut & polished (Carat)	Rough	Cut & polished	
India	4,572,926.93	7,973.55	7,248,652.31	110,126.51	7,358,778.82
US	145,073.84	47,350.11	714,259.09	3,242,594.98	3,956,854.07
South Africa	36,082.51	2,865.88	1,980,787.52	315,248.51	2,296,036.03
Germany	96,507.25	2,642.30	304,963.16	258,662.50	563,625.66
Thailand	85,604.56	4,580.24	159,305.10	259,361.85	418,666.95
Israel	15,897.40	1,224.30	158,976.85	86,903.00	245,879.85
Other	498,897.51	44,418.00	596,869.97	489,405.05	1,086,275.02
Total	5,450,990	111,054.38	11,163,814.00	4,762,302.40	15,926,116.40

Source: Ministry of Energy and Minerals

CHAPTER 2

2.1 The Al Qaeda Connection Controversy

Apart from causing hatred among miners, wreaking havoc among politicians, bringing suffering to the people and causing major unrest among the local population, the gemstone has now become associated with this 'curse', namely that it was allegedly being made use of by the notorious Al Qaeda network. In November 2001, the New York-based Wall Street Journal (WSJ) carried a negative story regarding the gemstone. The story came under the headline, "Much-smuggled gem (Tanzanite) aids Al Qaeda" with the sub-headline, "The gem is being bought and sold by militants near the mine."³ It said that the stone travels a long way from the dusty plains to US jewelry stores, and it passes through many hands on the journey - some of which belonged to active supporters of Osama Bin Laden. The authors, Robert Block and Daniel Pearl, from South Africa and the US respectively, said that trading takes place inside the mosque in the village of Merelani, where dealers are also taught about the importance of avenging the arrogance of America and of defending Afghanistan from US oppression; after prayers, the mosque becomes an open-air gem dealing area - where Sheikh Omari and other mosque leaders trade Tanzanite with small-scale miners. The story did not end there - it additionally explained that parts of the gemstone's sales had been used by Osama to bomb the USA embassies in Dar es Salaam and Nairobi, and also the World Trade Centre (WTC) and Pentagon in the USA. Then, a death lawsuit was filed by the wife of Cantor Fitzgerald, a New York police officer and father of a New York firefighter, against Tanzanite dealers. It was filed in the Federal Court in Manhattan on February 14, 2002. There was an injunction to ban New York dealer STS jewellers Inc. from selling Tanzanite, and it made the company donate past Tanzanite proceeds to September 11 relief funds; the suit also sought \$1 billion in compensation from several other defendants, including the Tanzania Mineral Dealers Association (TAMIDA) - for it was alleged that TAMIDA knew that their Tanzanite sales supported Al Qaeda's terrorism, and the suit wanted the court make TAMIDA pay money to the September 11 victims. TAMIDA won the case in the end, though.

³ Wall Street Journal November 16, 2001

2.2 *The Origin of the Troubles*

EL HAGE: The controversy started during a terrorism trial relating to some business done in the mid-1990s with a Kenyan named Mohamed Ali Oudeh. Ali Oudeh, who traded in gems and other consumer products, referred to Tanzanite in court when he was testifying in a case against Wadih El Hage. Also, the recent reference to the Tanzanite-Al Qaeda connection can also be traced to the 1998 trial of Wadih El Hage, a Lebanese-born resident of Arlington, near Dallas. Prosecution authorities described him as Bin Laden's personal secretary. El Hage was sentenced to life imprisonment after being convicted of conspiracy in the 1998 bombings of the US embassies in Kenya and Tanzania. Reports indicate that El Hage had once travelled to Europe and the United States in the mid-1990s, trying to sell Tanzanite. Professional Jeweller Magazine (PJM) says El Hage had trouble making ends meet while living in Kenya and tried to enter the Tanzanite business, but he failed (www.professionaljeweller.com/archives/articles/2002). Court transcripts and interviews with Ali Oudeh, who was called up as a witness for the defence, affirm that El Hage had a lack of capital. His attempts to sell Tanzanite in Europe and the US were, according to investigations by the FBI, dismal.⁴ Indeed, he had to borrow 70 British pounds just to complete his trip! Joshua L. Dratel, El Hage's attorney, says there is no evidence to show that Mr. El Hage could have received money as payment for Tanzanite that would then be used/transferred for terrorism or illegal activity purposes. Court decisions and findings by the FBI and CIA, from February 2002, meant that the US State Department finally agreed to clear things up, and it was agreed that there had *not* been a Tanzanite-Al Qaeda connection or ties with the events of Sept. 11. Bombings of the Tanzania and Kenya US embassies took place on August 7, 1998. Over 4000 people were injured, and 257 were killed in simultaneous car bomb explosions at the United States embassies in the East African capital cities of Dar es Salaam, Tanzania and Nairobi, Kenya. The attacks, linked to local members of the Al Qaeda terrorist network headed by Osama bin Laden, brought bin Laden and Al Qaeda to international attention for the first time, and resulted in the U.S. Federal Bureau of Investigation placing bin Laden on its 'Ten Most Wanted list.'

⁴ WIKIPEDIA Encyclopedia (<http://en.wikipedia.org/wiki/1998>).

HARUN FAZUL: It is true that Al Qaeda has had some success in recruiting East Africans for guerrilla operations with trans-national objectives. These operations have primarily been to attack U.S. interests. According to the Terrorism Mirror Nov. 2003, the leader of Al Qaeda in East Africa, Harun Fazul (or Fazul Abdullah Mohammed), a native of the Comoro Island with dual citizenship in Kenya, is a 'registered' terrorist. Fazul was a ringleader in the 1998 East African embassy bombings and other attacks in the region; and he has been a member of Al Qaeda since the early '90s. Literature says that Fazul has been lying low for some time, somewhere in East Africa. Well educated and with technologically abilities, he is also apparently a 'hip' character, so can easily move among secular types.⁵ It is alleged that Fazul used to team-up with local people when seeking to bomb places/carry out terrorism activities in the region.

KHALFAN GHAILANI: A Tanzanian held in connection with the US embassy bombing in Nairobi and Dar Es Salaam, Mr. Ahmed Khalfan Ghailani, has apologized to the victims of the 1998 attack (see: allafrica.com/stories/2007036260549.html). Mr. Ghailani, along with his Uzbek wife, was arrested in Pakistan in July 2004 and was handed over to the US at the beginning of 2005. He took an Uzbek wife in Pakistan or Afghanistan and has got children. Many Uzbek separatists have moved into Pakistan - and the woman is thought to be from this group. There are no more details about the wife, but Ghailani was one of the detainees transferred in September from secret CIA prisons abroad to the Guantanamo Bay prison camp in Cuba. The press and the BBC in particular have reported that the transcript of the closed-door hearing in March 2007 indicates that Mr. Ghailani has admitted delivering the explosives used to blow up the US embassy in Tanzania in 1998 (see: news.bbc.co.uk/2/hi/Africa/3938267.stm).

Born between 1970 and 1974 on the Tanzanian Island of Zanzibar, Ghailani is said to have bought the truck that carried the bomb that was used in the Dar es Salaam US embassy attack, in which 11 people died and several others were seriously injured. However, Ghailani said he did not know about the attack beforehand and apologized to the US government and the victims' families. According to the US transcript, Mr. Ghailani admitted visiting an Al Qaeda training camp in Afghanistan after being indicted in 1998. In May 2003, the FBI placed Ghailani on a list of seven people suspected of concocting a fresh Al Qaeda plot, and increased the bounty on his head to \$5m. Yet Ghailani denies being a member of Al Qaeda. Wikipedia reports that Ghailani had served as a tabligh, a Muslim traveling preacher, and probably visited Pakistan in this capacity. Quoting convicted fellow embassy bombing conspirators, Mohammed Sadiq Odeh and Khalfan Khamis Mohamed, Wikipedia says that after joining Al Qaeda,

⁵ Terrorism Mirror, Nov. 2003

Ghailani became an explosives expert and was given the job of obtaining bomb components in Dar es Salaam. Up to now, there has been no mention of Ghailani's being connected with the Tanzanite trade, but with diamonds. Soon after the capture of Ghailani and others with him, the Boston Globe, quoting a United Nations source, said that Ghailani was one of several Al Qaeda personnel who had been in Liberia around 2001, handling conflict diamonds under the protection of the then-dictator Charles Taylor (Boston Globe, 4 August 2004: Liberia's Taylor gave aid to Al Qaeda, UN probe finds, also see http://wikipedia.org/wiki/Ahmed_Khalfan_Ghailani).

MDIIR SULEIMAN: More work is needed to establish the fact of a direct link between Al Qaeda and the Tanzanite industry – and this brings us to Mr. Mudiir Omar Suleman. From the Taqwa mosque at Mererani, its leader, Mudiir Omar Suleiman, was said to be a main character linking up with Osama's group in the village. Until June 2002, Taqwa had seven Imams and there were about 270 male believers (while the number of women was not established during this investigation). At Mererani, the AMYC was established in 1998. AMYC and the Taqwa Mosque are institutions promoting the welfare of Muslims, and it was established that Omar is a Ansar Sunna Muslim. He used to head the Ansar Muslim Youth Centre (AMYC). He was born in 1974 and had a religious primary and secondary education. He has a university education in religion, which took him to the Uganda Islamic University. He completed his studies in 1996. His profession is preaching. Before joining the AMYC, he was employed by the Alharamin Islamic Foundation (AIF), where he worked from 1999 to 2001. When the article linking Tanzanite with Al Qaeda was published, Omar was also head of an English Medium and Nursery Centre, one owned by the AMYC. While Mererani dwellers are Maasai, Omar himself is not - he is from the Nyaturu tribe, from the Singida Region of central Tanzania. His parents had settled in the village of Mererani several years before. He refutes the Al Qaeda-Tanzanite link report, and has said he has never met Robert Block or the late Daniel Pearl, the authors of the WSJ story on the Tanzanite-Al Qaeda link. As to why he was alleged to be linked with Al Qaeda he had this to say: "I cannot say exactly why. It could be because of our faith. We believe that the Taleban are faithful people and that they follow Holy teachings. It is possible that it was due to our religious clothes and our lifestyle, which makes us look like Talebans (...) It is possible, also, that the writer wanted to win an award from the US government for unveiling members of Al Qaeda. I additionally think that the one idea behind this might be to paralyze the Tanzanite industry, under the directives of some competitors in the

industry, investors who dislike small traders..." Omar had initially written a letter to the WSJ, refuting the allegations made against him; and he then tried to get legal assistance so as to sue the publication - but did not manage to.

While it needs thorough reasoning and data to establish whether there was some possibility of an Al Qaeda-Tanzanite link, it is clear that Kenya and Tanzania - as is the case with other East African countries - have been prone to attacks by Al Qaeda in recent years.

HOTEL BOMBERS IN MOMBASSA: In November 2002, Al Qaeda conducted a hotel bombing in Mombassa, Kenya, where more than a dozen people were killed at the Israeli-owned 'Paradise' Hotel. Minutes before the hotel bombing was an unsuccessful attempt to shoot down an Israeli airliner with a shoulder-held, surface-to-air missile. Of special interest are two Mombassa-born Kenyans, Ahmad Salim Swedan and Salah Ali Salah Nabhan, who had both been indicted in the U.S. for having had leading roles in the 1998 bombing; and they were suspected of having planned the 2002 attacks. Nabhan is now believed to be living in Mogadishu. Kenyan security officials claim that Al Qaeda is active in the country only through infiltrators from Somalia, the 'stateless' country.

ALLEGATIONS OVER INVESTMENTS: According to an article, Tanzania: Al Qaeda's East Africa Beachhead by Power and Interest, News Draft Report (<http://www.pinr.bios.php>), Erich Marquardt, the author (who is identified as being a private sector expert on militant Islam, and who made an investigative trip to Tanzania) explained that there has been growing concern that extremists' influences from Sudan and Saudi Arabia have been imported in Tanzania, and that these are serving to dangerously radicalize indigenous religious beliefs and their sense of moderation. Most attention has been focused on Zanzibar, both on account of its great Islamic population and the fact that the semi-autonomous province has not (relatively-speaking) enjoyed the same rate of economic growth and social development as has been evident on the Tanzania mainland. At least two Al Qaeda operatives have been identified as originating from the island - Khalfan Khamis Muhammad, one of those convicted in connection with the 1998 U.S. embassy bombings in Nairobi and Dar es Salaam, and Qaed Sanyan al-Harithi, a suspected East African point man for bin Laden, who was killed in Yemen in 2001 by a Central Intelligence Agency (CIA) drone. Fingers have been pointed at Oilcom (a Saudi-based petroleum company), The African Muslim Agency (a Kuwaiti organization engaged in the construction of mosques, schools and hospitals) and the CIFA Development Group (a joint Tanzanian-Saudi investment venture established in 1995).⁶ For example, the International

⁶ Al Qaeda's East Africa Beachhead by Power and Interest, News Draft Report (<http://www.pinr.bios.php>),

Millennium Declaration Development Goals Zanzibar Report, of 18 March 2002, quotes one regional commentator as saying that the activities of Oilcom, a Saudi company, mean that at least US\$1 million is moved each year into Tanzania, nothing of which is taxed. The author suspected that at least some of this money was going towards arms purchases as well as being used in the bribing of corrupt members of the ruling Chama Cha Mapinduzi (CCM), i.e. to turn a blind eye to imported Wahabist proselytizing. There have been an exacerbating of British and American concerns in the last few years via a spate of violent incidents that have included armed takeovers of moderate mosques in Dar es Salaam as well as the 2002 firebombing of a tourist bar in Stone Town, Zanzibar.

A TANZANITE-AL QAEDA LINK RULED OUT: Despite these speculative reports, analysts and researchers along with the FBI and CIA have now come to the conclusion that the Tanzanite industry has had no connection with the Al Qaeda group, and this after intensive investigations involving different groups had occurred. The exercise ended up by convening the Tanzania Summit meeting in February 9, 2002, in the USA, which Tanzania's and the United States' governments attended as well as other industry figures. The deliberations of the summit reads: "While it is now confirmed that there is no evidence to support allegations of an on-going connection between trade in Tanzanite and smuggling to support terrorism, we abhor the mere possibility of such a link and believe that recently published allegations warrant action to restore confidence in Tanzanite." Unfortunately there was no major analysis to establish the cause of the allegations, i.e. which could have been used to come up with some form of 'counter-action'. If the linking of Tanzanite with Al Qaeda was a concocted story, who might the agenda behind this be? Is this all part of the 'resource curse'?

We shall now take a look at the sector itself, and its problems.

2.3 Problems Afflicting the Sector

There are multiple perspectives on the Tanzanite 'curse'. There are many actors playing specific roles here (so often contradictory and clashing), within a crisis situation that has seen poor governance and corruption (for decades), the deaths of miners, denial of government revenues, etc. At the centre of the saga are, in the main, small and large mining firms and middlemen; and then exporters, processors and governments (of countries getting the exports): India, United States, Kenya, Germany,

Thailand, Israel, Japan, and other European and Asian countries. Of course, they also include international donors. Locally, it is the government/politicians and related institutions who have their roles, each with a vested interest in the sector; and, of course, miners, mining industry officials and other involved persons come into conflict, too - as such parties strive to defend their interests...

2.4 Background to the Problem

In 1971, under the first president, the late Julius Nyerere, Tanzania had a nationalization program, whereby private investors and foreign firms were driven out of Merelani. The government gave the mine to its own parastatal, Tanzania Gemstones Industries Limited (TGI), which was under the National Development Corporation (NDC). Then, in 1973, TGI was put under the State Mining Corporation (STAMICO). The mine was under the auspices of TGI up to 1987. A report by the Arusha Small Miners' Association (AREMA) said that the essence of the crisis at Merelani, from Graphatan to AFGEM, indicates that at different times the company did try to obtain foreign partners, though in vain. One foreign partner did come (though later on), a Ray Ferguson – but he was repatriated, in 1982, for security reasons - six months after he had begun mining operations at Merelani.

THE ROLE OF THE BUREAUCRACY: When the government's TGI was operating at Merelani, illegal mining was rampant, involving different players and large-scale smuggling. Much of the smuggled Tanzanite was exported to Kenya. TGI was weak both financially and technically; and it failed to have any control over either smugglers or illegal mining. Smuggling increased because illegal miners and buyers were afraid of selling their Tanzanite nearby, in the town of Moshi, where TGI had its offices, because miners and buyers had no licenses, and it was difficult to get them (bureaucracy was one of the factors causing this difficulty). The other factor that saw Tanzanite going to Kenya was the lack of commodities or foreign currency in Tanzania; so miners sold their gems in Kenya, from where they could then return with cheap commodities. The selling of Tanzanite in Kenya greatly helped dealers, especially foreigners, to obtain foreign currencies and to transfer them abroad (for in those days it was illegal in Tanzania to hold or transfer foreign currency).

PRIVATE SECTOR INVOLVEMENT: In 1985, when Tanzania's ex-president Ali Hassan Mwinyi took over from Nyerere, the government decided that Merelani should be divided into segments, and that private companies would be allowed to own 'plots', of which there were four. Plot A went to Kilimanjaro Limited, B to Building Utilities, C to Tsavo Mining Inc., and D to the Arusha Small Miners' Association (AREMA). AREMA decided to form its own company, AREMA Enterprises Limited, to oversee the divisions and to locate the areas its members. Things, however, were not so easy for AREMA. In 1994, conflicts erupted between AREMA and its members simply because their leaders formed a dubious joint venture with another firm, the TUCKMAN Company, without consulting members. To solve this problem, AREMA's plot was divided among individuals. Unfortunately, the 'small miners' had no capital and policy was not clear regarding how to 'empower' them in this regard. In 1992, the small miners then wanted a certain investor, Mr. Misha Fainzilber, to reduce his area (B) so as to increase plot D,⁷ and decided to take over his plot. Invasions occurred again in 1995, when Building Utilities lost its ownership of the plot, and it decided to sue the government for taking the plot. In the same year, the company changed its mind and decided to make a compromise out of court. Its area was reduced, in 1996, so that the remaining portion could be allocated to small miners. For security reasons, the license to a plot belonging to Tsavo Mining Inc. was revoked, and TGI took it back.

A LEAD INVESTOR GETS A LOAN: Given its inherent weakness in terms of capital and know-how, TGI started to look for partners to invest in its plot. In 1989, they managed to organize a joint venture investment with a UK firm, SAMAX, and African Gems Limited from Kenya. On March 8, 1991, the three partners decided to form a joint company, and named it Graphtan Limited. Graphtan got a licence (No.8/92) on August 4, 1992, to mine Tanzanite and graphite. Yet African Gems Limited was removed from having share ownership, and its shares were bought by SAMAX. After the sale, SAMAX owned 90 percent and TGI, the government part, had 10 percent of shares. At some time in 1992, Graphtan Limited applied for a mining license, for a period of 25 years, to exploit all minerals at Merelani. So as to increase operations, the company at different times acquired loans from three financial Institutions - the African

⁷ Seminar report for the Parliamentary Committee for the Tanzanite sector April 5/2002 submitted by the Ministry of Energy and Minerals

Development Bank (ADB) (about US\$4,483,000), the Preferential Trade Area (PTA) (about US\$1,785,000) and Tanganyika Development Finance Limited (TDFL) (about ECUs 835,860).

INVESTOR FAILS TO REPAY THE LOAN: Despite having secured loans, the company did not boost its investments, so failed to repay the loans, which prompted creditors to place Graphtan under receivership in mid-1998. An international auditing firm, KPMG, which is in the network of the DENVERGOLD GROUP of Canada, was contracted to collect the debt. KPMG began looking for investors and it announced the sale of the Graphtan block and the assets. An advert - "An Investment Opportunity – A Graphite/Tanzanite Mine in Tanzania" - was placed in international journals, namely the Mining Journal of August 1998 and the Engineering Mining Journal of September 1998, both from England. The advert, however, did not appear in any local media in Tanzania. The transparency aspect was being ignored. This marked the beginning of the on-going, major conflicts between Tanzanian gem dealers and the new investor in plot C. The end of submissions for bids to buy the mine was fixed for October 15, 1998. The process of inviting investors missed one of the most important elements of good governance: transparency in handling such transactions. This is, in part, because the government had its own stake in the company – it was holding them on behalf of the public; yet this denied the rights of local dealers and other stakeholders to participate, while Members of Parliament could not monitor the transaction processes.

FIRST CONTROVERSY: A few weeks after the announcement, Merelani Mining Limited (MML) was formed by KPGM officials, and Graphtan's assets were taken over by the new firm – and this was the second dubious deal. A meeting was held in Nairobi, on June 30, 1999, to look into the case. At this meeting, there was another company from South Africa, African Gem Resources Limited (AFGEM). Major contracts were signed in this particular meeting that involved banks (creditors) and MML (above). AFGEM was a third party to the agreement. AFGEM was a guarantor of the transaction, and MML had the role of controlling all assets and also Graphtan's license and plot. KPMG officials and liquidators became investors in MML.⁸ Registration details indicate that the company changed its name three times in eight months, which pointed

⁸ Memorandum from the Association of MML, endorsed on October 21, 1998

to a contentious deal (it was registered as Mererani Mining Limited on October 22, 1998; then on November 10, 1999 the company was re-registered as Mirerani Mining Limited; then it changed itself, on January 21, 1999, into Mererani Mining Limited again; and, finally, it was, on June 24, 1999, Merelani Mining Limited).

SECOND CONTROVERSY: Technically, the transfer of shares and assets from Graphtan to AFGEM not only did away with the openness factor - it also ignored legal procedures, bearing in mind that the government had shares in the firm. The firm's movements were not overseen by competent and authorized bodies, the Privatization Sector Reform Commission (PSRC) or the Loans Advances and Realization Trust (LART); for the PSRC is responsible for the privatizing of government assets, while LART was formed by the government⁹ to handle non-performing assets in the form of debts and issues involving debt recovery - so the deal, i.e. the government's approval of the transfer of Graphtan assets, had been handled in an unnecessarily quick manner (which led to suspicions of corruption). The former Minister for Minerals and Energy, Dr Abdallah Kigoda, is reported to have approved the share transfer on July 1, 1999, just one day after an endorsement of sales agreements had been signed in Nairobi. The approval was made with major speed therefore - it was endorsed just one day after in Nairobi. The license was issued on the same day, without consulting the PSRC to determine the government's shares - indeed, it was not known *who* actually owned the government shares in the new firm. Both SAMAX and the Minister for Energy and Minerals had used loopholes existing in the Mining Act of 1998... Under this Act, a mineral rights holder is free to transfer his property to a third party. Of course, ministerial consent is required only where interest is shown in a special mining license, though the consent cannot be unreasonably denied. For under the currently existing Mining Act, the Minister has discretionary powers - which allows for dubious deals (See Mining Legislation - Basic Principles, presented on 16 October 2003 by MNR & Advocates).

THIRD CONTROVERSY: The worse part of the process was the liquidation of Graphtan - and it is not clear whether SAMAX was really bankrupt, or whether it was

⁹ AREMA report to the probe committee to establish reasons behind the crises at Merelani

just a hoax. Suspicions are that SAMAX, which had 90 percent of shares in the liquidated firm, had merely pretended to be bankrupt. Up until March 21st, 2002, SAMAX was still operating in other areas of Tanzania ("<http://www.denvergold.org/members/samax.htm>"). The company went into the Tabora region of north-western Tanzania to develop the Golden Pride Project in the Nzega greenstone belt, where it discovered and owned 50 percent of the Golden Pride deposit. (This deposit was among the largest gold mines in Tanzania.) Early in 1998, SAMAX Gold Inc. announced the discovery of the Kukuluma and Matandani deposits, north-east of the Geita deposits. It appears, also, that SAMAX had started its hunt for gold perhaps in the mid- or early 1990s; and it is possible that this occurred immediately after having obtained bank loans. Generally, the takeover of block C by AFGEM/MML did not go down well with the public because the transaction was not, in great part, handled in a transparent way.

2.4.1 A Deepening Brawl

Poor governance in relation to the transfer of Graphtan shares to AFGEM continued to wreak havoc in the sector. The Tanzanite-Al Qaeda link controversy can be traced or connected to the on-going conflicts between AFGEM and the small miners. Lacking blessings from the public and some MPs, AFGEM, which had operations at block C (containing two thirds of the Tanzanite stock), was seen to have acquired the block in an incorrect way. The company was thus surrounded by unfriendly miners, though not by unfriendly government executive officials.

On April 15, 2001 a home-made petrol bomb was thrown into AFGEM's processing plant. No one was hurt. Two weeks later, on April 28, 2001, an artisanal miner was shot dead in an incident where small-scale miners were throwing stones into AFGEM's property. According to the small miners, it was AFGEM security that opened fire, yet the company denies this. Following major conflicts between AFGEM and other miners, in July 2001 its manager, Joel Kimble, wrote a letter to the Arusha Regional Commissioner saying that a group of people, dealers and politicians, were sabotaging AFGEM's activities to try to make them leave the country (*Daily Mirror*, weekly 2001/01/08). His claim was supported by East African newspapers, which carried a story alleging that an Indian businessman from Jaipur (where there are several Tanzanite cutting and polishing plants) had invested US\$250,000 into lobbying

Members of Parliament to vote for the removal of AFGEM, and which would pay journalists to write inflammatory articles, reward small-scale miners for invading the company's property and procure small arms and petrol bombs (*mining weekly* 2001). Such allegations brought a new dimension to the way the conflict was being perceived by dealers and other observers.

On April 20, 2001, a group of claim-holders and Tanzanite dealers filed a case against AFGEM with the Supreme Court of Tanzania. The case challenged the company's mining license, tax record, attitudes toward small-scale competitors and its alleged moves to monopolize the Tanzanite market in the world; the case also challenged the former Minister of Energy and Minerals for granting a special license to AFGEM to mine block C. However, the case was dismissed by the Supreme Court in August 2001, on technical grounds. The Chief Justice said that allegations by the petitioners, such as the killings and beatings of small miners – said to have been carried by AFGEM officials - were a criminal matter rather than a constitutional one and would require a different type of lawsuit; and suing a minister in person was not appropriate because the minister was a government employee.¹⁰ Since then, the government would appear to have failed to solve the conflict - though small miners continue to blame the state for failing to abide by its *own* regulations.

2.4.2 AFGEM and the Share Ownership Controversy

AFGEM started operations in 2001, after investing US\$17 million in the industry. Shareholders are not clearly defined, for the provided list is difficult to understand - but it does include the Industrial Development Corporation (IDC) of South Africa and the African Development Bank (ADB). In other documents, a list of shareholders shows that approximately 36 percent of the shares are held by management; while the IDC held 23 percent by way of a pooling agreement. The remainder - 41 percent - goes to institutional shareholders and private individuals. The Tanzanian shareholders are not clearly stated, either; though persons appearing as directors are Henry Nyiti, Ambassador Ami Mpungwe, Laurent Masha and Sadock Magai. Henry Nyiti, an Arusha-based local businessman, had charged AFGEM in court with 'forging' his

¹⁰ (Benefits Streams from Mining in Tanzania: Case studies from Geita and Mererani. Bergen: Chr. Michelsen Institute (CMI) 2006. Web: www.cmi.no/publications/pulication.cfm).

signature in order to facilitate concealment from the registrar of companies, which case has not yet been solved.

One of the above, Ambassador Ami Mpungwe, a retired Tanzanian Ambassador to South Africa (after having spent 25 years in the diplomatic service) decided to come back to Tanzania; and the reasons for his retirement are not clearly known - but he has been a board member with several South African firms that have invested in Tanzania. Mpungwe was once awarded the Order of Good Hope by SA President Thabo Mbeki for his key role in the South Africa-Tanzania relationship. As far as AFGEM is concerned, Mpungwe's position is high-up - he has been involved in AFGEM's management and community relations, and actively led the company's development in Tanzania. He has been chairman of the company's Tanzania subsidiary for several years. It is not known how many shares he had in the company, although the *Business Day* publication (South Africa) once reported that Mpungwe had sold his shares in the Tanzanite mine, to AFGEM, for 19 million Rand.¹¹ The number of shares he had was not clearly stated either, but other records indicate that he had 15 percent. It is also unclear when he actually acquired those shares, in part because records of his position in AFGEM have always identified him as a non-executive director – though this is a contradiction in terms, for he was one of the shareholders.

And there are also Laurent Masha and Sadock Magai, both of whom are Tanzanian lawyers. They have a law firm called IMMM - Ishengoma, Masha, Mujuluzi & Magai (advocates). One of the contradicting issues here is that, like Ambassador Mpungwe, Masha and Magai are also referred to as being non-executive directors. Based on records, Masha's share amount is not known, yet Magai had 25 percent of shares in the AFGEM on behalf of Tanzanians.¹² If the amount here excludes Mpungwe's shares, the number of shares held by Tanzanians would add up to 40 percent. Yet neither Mpungwe nor Sadock were on record as being executive directors of the company, which fact explains in part how complicated the issue is and the way personalities are strategically taken on board to defend the interests of investors.

¹¹ ([www. Bday.co.za/content/direct/](http://www.Bday.co.za/content/direct/)).

¹² A Profile of AFGEM-Tanzania Non-executive Directors & Particulars of MML directors at the time of the Annual Return, 14 April 2001

PENETRATION STRATEGIES: The mobilization of political and diplomatic support, including from donor agencies, is one of the strategies used by some investors – and a common characteristic is that persons will find a well-placed, local middleman who will champion their crusade. They have a tendency to appoint directors from among retired government officials, political cadres and outstanding professionals (like lawyers, mainly for defence purposes), which ensures that dealings will be quick - and in their favor - in connection with public institutions, tax exemption claims, tenders and contracts.

THE PROBE TEAM REPORT: The report by the Probe Team on reasons for the endless crisis in the Tanzanite industry makes some interesting observations. Magai had been holding shares in AFGEM in the form of a Trust; and interviewed lawyers, including from the Lawyers' Environmental Action Team (LEAT), say that Magai seemed to be holding shares on behalf of persons whose names, given their positions, cannot be disclosed. Such 'concealed' persons could well be prominent ministers, or perhaps the prime minister or the president! Yet it is difficult to uncover names as the involved persons may appoint relatives or friends to 'stand in' for their interests/shares – which fact will complicate the task of junior officers or ministers when dealing with investors. For example, the former Prime Minister, Frederick Sumaye, had once differed with his Minister of Energy and Minerals, Edgar Majogo about AFGEM. Majogo had threatened to take stern measures against AFGEM - including revoking its license - on the grounds that the company was in breach of fair competition rules, following its (AFGEM's) decision to brand Tanzanite; the minister also claimed that the company was involved in concocting the story that had linked Tanzanite with Al Qaeda. Yet in one of his public meetings, Sumaye defended the company.¹³ (See: *Majira* newspaper of March 1, 2002 and March 8, 2002).

VESTED INTERESTS: So-called 'big shots' may have vested interests in AFGEM. One of the committee members assigned to look into the crisis at Mererani, Ealiachim Simpasa, had, in April 2002, told Parliament that at every stage of probing into the dealings of top persons in the Cabinet vested interests endeavored to complicate

¹³ See: *Majira* newspaper of March 1, 2002 and March 8, 2002).

things. This means that government shares could indeed have been taken over by individuals, perhaps top government officials. For example, AFGEM was quoted by *Business Day* on 23rd June 2004 as saying that it (AFGEM) had a majority stake in the world's largest Tanzanite mine, at Merelani in Tanzania, where it operates in partnership with the Tanzanian government¹⁴. This implies that it had shares in the mine, which the government did not want to have revealed. The point is that, in May 2004, AFGEM sold the mine to a group called Tanzanite One, which at the time had a 22.8 percent stake in the mine. Tanzanite One is a subsidiary of JABE, a British/Australian company specializing in mining. With a new owner, though, it now becomes difficult to trace the government's shares any more. Billions of shillings might have ended up in the pockets of individuals via this deal. Unfortunately, President Benjamin Mkapa and his Prime Minister, Sumaye, who were in power at the time of this saga, had never implemented recommendations arrived at by the probe committee after investigating issues – indeed, the government never made the report public! The report by the Committee's Robert Mboma had raised queries over dubious deals in the sector - and proposed remedy measures. Mkapa vowed that his government would stick by the principles of "Transparency and Truthfulness," though in terms of handling Foreign Direct Investment (FDI) - in the mining sector in particular - the opposite appears to be true.

INTEGRITY IN JEOPARDY: A lack of transparency of procedure in relation to the transfer of Graphtan Mining Company shares - from SAMAX/the government to MML/AFGEM - has continued to threaten the integrity of Tanzania's government. It has also deepened the enmity between the government, AFGEM and local investors (especially small-scale miners). Efforts to make the government more responsible in its dealings have failed, as dealers in the sector are divided, each having their own vested interests. This has created room for stakeholders to frame their own survival strategies, which could well have included certain notoriety, like a concocting of an article on the Tanzanite-Al Qaeda controversy - in which AFGEM appears (in a big way) among accused institutions (as indicated in the next section).

¹⁴ (Business Day, 23 June 2004- www.bday.co.za/bday/content/direct).

2.4.3 AFGEM Linked to the Tanzanite-Al Qaeda Story

There have been serious allegations that a story linking Tanzanite with Al Qaeda was a *fabricated* one, i.e. having been cooked up by AFGEM so that it could displace locals and middlemen in the Tanzanite sector. The former Tanzanian Minister for Energy and Minerals, Edgar Maokola Majogo, condemned AFGEM for allegedly producing press reports linking Tanzanite with terrorism. "We have written evidence that you (AFGEM) invited the Wall Street Journal reporter Robert Block to Arusha, and then to the Tanzanite mining site at Merelani."¹⁵ Majogo said that AFGEM was responsible for initiating the Wall Street Journal trip to Tanzania, and in some way AFGEM was a beneficiary of the WSJ's unsubstantiated allegations that the Tanzanite trade was linked to terrorism. (Majogo was determined to find a solution to the Tanzanite crisis - though could not do so as the former President, Benjamin Mkapa, posted him to another ministry.)

AFGEM SPEAKS: Evidence indicates that AFGEM did know in advance that Robert Block had plans to publish a story that Tanzanite produced and sold by small miners was linked with the Al Qaeda group. The company admitted that in August 2001 AFGEM's Johannesburg office was contacted by the Wall Street Journal (WSJ), via Mr. Robert Block, an American (WSJ) correspondent based in South Africa. According to a press release of February 28, 2002 (responding to Minister Majogo), Block had informed AFGEM of his intention to write an article about alleged links between Tanzanite and Al Qaeda. AFGEM said that it considered Block's suggestion with deep concern; and it provided Block with a standard press pack containing information about AFGEM. The statement read "We made every effort to dissuade Block from pursuing the article, recognizing that the WSJ had significant coverage in the United States - and that negative publicity, particularly relating to terrorism, would have a big and lasting, damaging effect on the industry."¹⁶ An opportunity to dissuade Block presented itself when, in October 2001, Block requested a visit to AFGEM's mine block C, at Merelani (according to Joanne Herbstein, the then company's Corporate Communications & Investment Relations officer). Block visited Merelani, and then wrote and published the

¹⁵ *Colored Stone*, March/April 2002. Or <http://www.tucsonshowguide.com/>.

¹⁶ AFGEM responds to allegations relating to WSJ: AFGEM press release, 2 Feb 2002

defamatory article... Local dealers in the sector say that as AFGEM had invited Block over, people could not say in advance – to either the government or others - what kind of story was being pursued. It was obvious that they had participated in events, though. Also, as Block was a reporter from South Africa, the home of AFGEM, it would have been easy to collude and publish the manipulative article. It is on this basis that local businesspersons say that AFGEM was involved in concocting the ‘new item’ as part of a plan to displace other (non-global) dealers in Tanzanite – i.e. it was one aspect of the company’s marketing strategy.

2.4.4 Abuses of Market Powers by AFGEM

AFGEM knew, in advance, not only opportunities existing in the Tanzanite industry but also the weaknesses of local businesses and Tanzania’s government; this had included failures to modernize or regulate the sector – which fact benefitted a company with global aspirations, for it the capital and technology; and it could easily displace local and middle dealers.

Table 3: The Current Distribution of Mining Plots at Merelani

Plot	Area	Owners	Type of License
A extension	1.8 sq. km.	Kilimanjaro Mines Limited	Prospecting License
A	0.8 sq. km.	Kilimanjaro Mines Limited	Gemstone Mining License
B	1.3 sq. km.	Small miners 178	Primary Mining License
C	2.3 sq. km.	Tanzanite One/formerly AFGEM	Special Mining License
D-1	1.81 sq. km.	Small Miners 331	Primary Mining License
D-2	0.04 sq. km.	Osoit Pusu Limited	Gemstone mining License
D-3	0.003 sq. km.	Gem & Rock Venture Limited	Gemstone mining License
D-extension-1	0.59 sq. km.	J.S. Magezi & Sons	Gemstone Mining License
D-extension-2	0.40 sq. km.	Paradiso Minerals Limited	Gemstone Mining

			License
D-extension-3	0.28 sq. km.	Gem & Rock Ventures	Gemstone Mining License
D-extension-4	0.19 sq. km.	Tanzanite Africa Limited	Gemstone Mining License

Source: Merelani Controlled Area (J. Nayopa Report: 2006)

SMALL-SCALE DISPLACEMENT PLAN IN FULL SWING: In 2000, before production had actually been started, AFGEM started the process of branding their Tanzanite under the name “The Tanzanite Foundation.” According to the company, the brand name would give a guarantee to the socially-aware consumer of the origin, mining methods and export channels of their purchase (AFGEM 2001). Small-scale miners and dealers were thus angry to read statements like (1) “The Tanzanite Foundation will be the primary authority for Tanzanite globally and central to the strategic marketing of branded Tanzanite” and (2) “Only the Tanzanite Foundation can offer a Declaration of Practice which accompanies every Tanzanite gem, which assures the owner that the stone has made the full journey, from mine to market, with complete integrity and strict adherence to political, social and environmental ethics.” (advertisement in a gem magazine, 2001). This was typical as regards a skewing of the market by giant firms, leading to market failures for weak economies, like Tanzania’s, where local investors would be unable to compete and where there would be a form of victimization of local dealers (See table 3 for other local investors).

BRANDING: A De-Beers-type strategy, termed vertical integration, was being implemented by AFGEM to displace small dealers. Vertical integration has been an important strategy via which to meet competition and even displace middlemen in the diamond sector used by De-Beers – and AFGEM had now adopted this for the Tanzanite sector.¹⁷ In the report by the Mboma Probe Committee on the causes of the Tanzanite crisis, one of the former AFGEM bosses was quoted as saying that the branding procedure would enable the company to monopolize and control the price of Tanzanite - which was contrary to Fair Competition Act No. 4, of 1994 (which Act

¹⁷ Unlocking the Brand power of De-Beers: Professional Jeweller Magazine archives July 2000

forbids any individual, be it a person or a company, from creating a trade monopoly). The committee also challenged the emblem being used to control the trade with the fact that it was not registered in Tanzania, but in South Africa. AFGEM was making use of a “Tanzanite Foundation” brand name, announcing it as *the* Global Authority on Tanzanite. Up to now, AFGEM has continued to intensify its marketing strategy pertaining to the gem, which goes hand in hand with this branding strategy. So the company is ‘sensitizing’ dealers abroad to trading in *its* brand, a situation which seeks to convince persons to abandon the practice of selling Tanzanite that has been directly exported by *other* dealers, small miners or middlemen.¹⁸

SUPPLY CONTROL: Writing for This Day (January 24, 2006), from the USA, Rwehabuta Barongo said that the supply of Tanzanite for the exhibition at the Tucson Gemstone Show, being organized by the American Gem Trade Association (AGTA), was continuing to decline chiefly due to the tactics of Tanzanite One to control supply. Tanzanite One had taken over the AFGEM plot and its properties and had selected companies called Sight Holders. The Sight Holder’s list is made up of six companies, members of the Tanzanite Foundation, which created a separate grading scale for Tanzanite and the list provides foundation certificates that are only available to *its* members. Under the strategy, Tanzanite will have the Tanzanite Foundation seal. If the stone does not have this emblem, it may be deemed to be fake in the eyes of the Tanzanite Foundation, and it is therefore not graded according to industry standards and ‘has not followed’ ethical procedures on its way to the market. Thus, Tanzanite One and the Tanzanite Foundation are trying to manipulate the market and, in effect, are attempting to form a monopoly in the Tanzanite business. Barongo says that Tanzanite One, at the exhibition, was trying to de-associate itself from the Foundation, however, via specific tactics, in order to gain public support. A De-Beers model – as in the diamond industry - is now being approached. Tanzanite One has already selected Sight Holders who shy away from selling non-Tanzanite One brands.

CONQUERING DISTRIBUTORS: Sight Holders are selected from the world’s leading gemstone houses and jewellery manufacturers. They are chosen for their focus on Tanzanite, their ability to make a long-term commitment, for distribution capabilities,

¹⁸ Tanzanite Foundation: www.tanzanitefoundation.com

their understanding of the need for vertical integration and operational standards of integrity. These six appointed Sight Holders are: Colorjewels (web: www.dyach.com), with offices in New York, Hong Kong, Thailand, Jaipur and Tanzania (Arusha); K. L. Tambi & Co. which is a jeweller based in Jaipur, India, who has been in business for more than three decades; and Rare Multicolor Gems, with offices stretching from Jaipur, India to the USA, Europe, Hong Kong and Bangkok. Also included are the New York-based STS Jewels, which is one of the world's largest manufacturers and distributors of Tanzanite jewellery; and Tanzanite International, a member of the Diamonds International family of stores. The Tanzanite Company (TTC), an international supplier of loose and set polished Tanzanite, has also joined the group, which company is located in the United Kingdom and South Africa. These firms have been inscribed and certified by the Tanzanite Foundation. The Tanzanite Foundation certificate assures TTC'S customers and end-consumers alike that *its* Tanzanite is authentic and has been accurately quality-graded and has made the route from the mine to market ethically. In so doing, Tanzanite One has replicated De-Beer's strategy to control the market with its products.¹⁹ Like Tanzanite One, De-Beers has an agent Sight Holder, which is a company on the [Diamond Trading Company](#) (DTC), and it has a list of authorized bulk purchasers of rough [diamonds](#). DTC is controlled by the [De-Beers Group](#), the single largest producer and purveyor of rough diamonds in the world.

NO SOLUTION FOR SMALL MINERS: TAMIDA complains that the strategy of AFGEM, now Tanzanite One, to establish a Tanzanite brand for their company and advertise, worldwide, that it is the *only* producer of 'true Tanzanite' is against the national and global policy of trade liberalization (Colored Stone publication May/June 2003). Unfortunately, the current environment in Tanzania has failed to address this problem, and this has created conflicts in the sector. The government appears to have been taking it lightly. So weak bargaining and weak regulatory capacities on the part of Tanzania has resulted in an abuse of market powers by AFGEM. A lack of political will to take stern measures to regulate and create fair and transparent systems in the production and marketing of the gemstone is partly to blame - and this has been taken

¹⁹ (www.tanzaniteone.com or <http://www.tanzaniteone.com/tanzaniteone-sightholders.aspMining>)

on board in the list of policy interventions this paper suggests. The then Minister for Energy and Minerals, Al-Noor Kassum, declared the region a designated area for small Tanzanite mining operations under Section 69 of the Mining Act. The section is still in force. Residents in the village and small miners, in particular, explain that the Merelani area has been legally set aside for small-scale Tanzanite miners since January 1980, though the government had not been willing to push this fact.

Yet there are also positive roles that are being played by AFGEM, now Tanzanite One. They include job creation, whereby hundreds of local people have been employed; the company also pays taxes to the government and funds various community development projects as part of its corporate responsibilities - funded projects being, for example, a community centre, repairs to and installation of electricity supplies for the village, the provision of water, and the construction of buildings for primary and secondary schools.

Conflicts between AFGEM/Tanzanite One and small miners are not the only problem here, though - so the next section overviews the whole sector, and especially looks at how small miners operate and examines their role in smuggling processes.

CHAPTER 3

3.1 A Deeper look at the Tanzanite Industry

Apart from conflicts arising between AFGEM and small dealers, the Tanzanite sector is also poorly organized - from production, to the market structure, to its loose-exit channels that encourage large-scale plundering.

3.2 Production

POORLY-ORGANIZED PRODUCTION: The Tanzanite sector is poorly organized. There are over six major companies along with a group of over 600 small miners who control plot B. Except for Tanzanite One and a few firms, dealers in other firms comprise artisanal miners and jobless people from all parts of the country and from all walks of life, some of whom are not Tanzania residents.²⁰ Mining operations are organized haphazardly, with various classes of people playing different roles in Tanzanite mining - there is a plot owner for each plot or pit; and there are people called detectors, traditional geologists, who assist the plot owner. The geologist has an essential role in detecting Tanzanite-bearing rocks and directs a pit's route as the digging process proceeds below the earth.

SNAKE BOYS: The geologist is assisted by young boys, called "snake boys," whose role is also to penetrate rocks and 'pave the way' for others to penetrate or advance along tunnels by the side of rock that is rich in Tanzanite. The role of snake boys begins immediately after explosives have blown the rocks away. Snake boys also slither into pits and tunnels to dig and collect sand, which is extracted from the pits and which is then meticulously examined to see whether it contains gemstones or not. According to the folk vocabulary of Merelani, geologists, helpers, and snake boys are jointly known as "Appolos", Appolos usually being shabby, distraught-looking people. Snake boys are in most cases regarded as child labour. For example, a recent film with the headline "Gem Slaves: Tanzanite's Child Labor, September 2006," which was

²⁰ Merelani Controlled Area: Report by J Nayopa 2006.

shown recently via the UN in New York, says that child labour is a major problem at Mererani. The film has the message that, although the Tanzanite Industry is worth US\$300 million a year, the town's residents live in desperate poverty - with children having the heaviest load. Every day, many risk their lives in mine shafts for barely one meal a day. Despite efforts to curb this practice, the author says, a global thirst for Tanzanite continues to drive these children underground (<http://www.irinnews.org/film>). There were similar stories from the past. In 2003, Adrian Stuijt, identifying herself as a retired medical journalist from South Africa, linked informal mining dealers in Tanzanite with child labour.²¹ Under the headline "Blood-Tanzanite gems," the article blamed small miners for using child slaves in their operations at Merelani.

TAKE AWAY GROUP: There is another group which is popular at Merelani - the "take-away boys." While the former group sticks to one plot and works with special plot owners to earn their daily bread, "take-aways", are a group of young men who are "born free" souls and hence do not wish to work for anybody. They live by gambling, from sun-up to sun-down. The "take-aways" are usually behind the violence that is always erupting at the settlement. In 2000, for example, a group of "take-aways" attacked a group of Appolos with the intention of stealing their Tanzanite. The same year, "take-aways" from among Sonjo tribesmen were engaged in incidents of this nature, in which about nine people were killed, and 32 people were injured. Yet the 'hooligans' were later overpowered - at least 570 Sonjos surrendered to the settlement's police post. Apart from deaths arising from physical violence, hundreds of people die from accidents in the mines.

A poorly-organized system continues to place small dealers at risk. Over 200 people have died since 1996 due to various accidents occurring at Merelani: heavy rainfalls, falling rocks, suffocation when in a mine... On April 9, 1998, a heavy downpour killed about 77 Appolos when pits were flooded with water. For Appolos are ready to take risks, as they go as deep as 400 metres underground to look for Tanzanite. Of great significance is the fact that there is no 'formal employment' in relation to the Tanzanite industry, especially when it comes to small miners; a plot owner will mobilize the services of Appolos to begin a Tanzanite hunt, who will immediately start excavating and tunneling in search of it; and the plot owner provides them with food and water during this preliminary work - yet owing to the poor

²¹ <http://www.thetruthseeker.co.uk/article.asp>

equipment used, it may take several months or a year before any such pit becomes productive; while the work is always cumbersome, dangerous and costly.

SITUATION ANALYSIS: The precious minerals' sector in Tanzania was largely, during the first three decades of independence (as from the earliest days of colonial rule), dominated by artisanal miners. These miners carried out mining operations that were entirely self-financed, by using simple techniques and tools. Artisanal mining is particularly labour-intensive; and it gives employment and incomes to large numbers of people who are generally uneducated, poor, itinerant, and who live in remote areas where no opportunities exist for formal employment. Artisanal mining is not supported by the system - and is viewed with suspicion or outright hostility by the government, the international community, the bigger companies, as well as by local financial institutions. The latter almost invariably tend to favor large-scale, capital- and resource-intensive mining as carried out by powerful and well-connected multinational corporations. There have been some promises made by the government to support small miners, however - yet it has not managed to live up to such promises. Small miners cannot improve the ways they operate; they work in isolation, having no plans to cooperate; while many of them fail even to legalize their operations.

3.3 Markets

MIDDLEMEN: In Merelani, there is a middle and high-class group of persons – “brokers” - who do not engage in the production or digging of gemstones; they are interested in *buying* the gems. In remote mining sites there are the Maasai and Luo, who make up over 85 percent of high- and middle-level dealers. Apart from the Maasai and Luo, though, there is a small group of middlemen who have no capital, yet who provide links between buyers and sellers. J. Nayopa, Zonal Mining Officer, says in his report entitled “Merelani, Controlled Area, 2006” that there are over 520 brokers buying Tanzanite at the village; thus, it is extremely difficult to register the amount of Tanzanite persons mine, sell and take away from the village. Many of the gemstones' major buyers are Kenyans, belonging to the aforementioned two ethnic groups, the Luo and the Maasai (who, since colonialists drew the crude boundary lines between Tanzania and Kenya, have happily been living on both sides of the border).

MARKET LEVELS: Unlike gold, the Tanzanite market is complicated, indeed uncontrollable, making the more organized and capital-bearing Kenya (Nairobi) the prime market for mineral dealing. There are two to four marketing 'levels' in the Tanzanite marketing chain, up to the point of export. The first point of sale is at the mine, where mineworkers sell their minerals to either the plot holder or a mine broker. The second point is in the village, although some plot holders/mine brokers sell to long-distance brokers, who will then take the minerals to one of the regional export markets. The third notable point of sale may be a branch office; and the fourth is actual export to a foreign buyer. Participants throughout the chain integrate themselves whenever they can. Mine workers, of course, love to sell to a foreign buyer *directly* - and vice versa - though with most sales, time and travel costs make it more economical to go via the chain. Reports from the Central Bank of Kenya indicate that re-exports from this country make up one of the biggest income-earning activities.²² Within Kenyan exports for 2004, 25 percent came from re-exports, the largest percentage of re-export-earning wealth for the country (with this being followed by tea, at 16 percent). The Kenyan government does not disclose information about specific items that are re-exported, although, during this study it was identified that minerals smuggled from Tanzania form the largest portion of such re-exports.

3.4 Exports

SMUGGLING AND JOB CREATION ABROAD: In 2001, a total of 4.57 tons of raw Tanzanite was shipped to India, which was about 83 percent of exported Tanzanite in total. Tanzanite processing has created 250,000 jobs in Jaipur, India. In June 2003, the Tanzanian government introduced legislation banning the export of unprocessed Tanzanite, which move was seen as a serious problem for the city of Jaipur, as one-third of its annual gem exports come from Tanzanite. In order to make this operative, plans were drawn up for Merelani to be a controlled area and made into an Export Processing Zone (EPZ) for Tanzanite. Yet the government is now reluctant to implement the decision - people with vested interests are trying to discourage the move. A mafia-like and syndicated trading arrangement now shrouds the Tanzanite industry, therefore - a development which threatens the gemstone's local market, and which places government revenue in jeopardy.

²² Kenya Central Bank Statistical Report 2005

A group of master dealers exists, most of whom are foreigners who travel to Arusha to buy gemstones; and no license is required, just capital. The dealers meet with Tanzanite sellers via the facilitation of registered Arusha and Nairobi offices. Interviewed stakeholders say sellers and buyers pay 5 percent of sales proceeds to office bearers. In Nairobi, gemstone offices are always congested, and prices are always able to be manipulated. It is difficult to see what race dealers are, except via their skin color. In spite of their long journeys to Nairobi and their physical toil, at the end of the day Tanzanian dealers remain poorer; it is the group of master dealers who benefit from the miners' work. Interviewed dealers say that buyers normally take 75 percent of any Tanzanite sale price, while local miners are left with 25 percent of the transaction. The price of Tanzanite might be 800 US dollars or 1102.50 per carat, in the US, but in Tanzania the price is as low as 200 per carat. The Tanzanite industry operates in an exploitative manner, therefore - in both Tanzania and Kenya. In Nairobi and Arusha, middlemen are united, which is why they are in a good position to play cat-and-mouse games with small miners. The actual connection with miners is not clear, but there are miners, working for companies or as individuals, as middlemen, whose interest is just to sell Tanzanite within Tanzania and via a group of exporters. TAMIDA admits that their members' decision to offer space to illegal dealers from abroad is unethical. The industry thus allows for the presence of unscrupulous brokers who can undermine the value of Tanzanite; they prefer to purchase raw Tanzanite, and tend to discourage any local processing of the stone.²³

3.5 Looting and routing

LOOTING: Official statistics indicate that, in 2000, Tanzania registered exports of Tanzanite amounting to only US\$12 million – although the actual value of the gemstone reaching the world market was over US\$150 million. More than US\$138 million worth of Tanzanite crossed borders unnoticed that year, therefore. The United States Ministry of Commerce the same year stated that it spent about US\$328 million on Tanzanite purchases, though statistics on exported Tanzanite from Tanzania

²³ The Guardian, July 19, 2006).

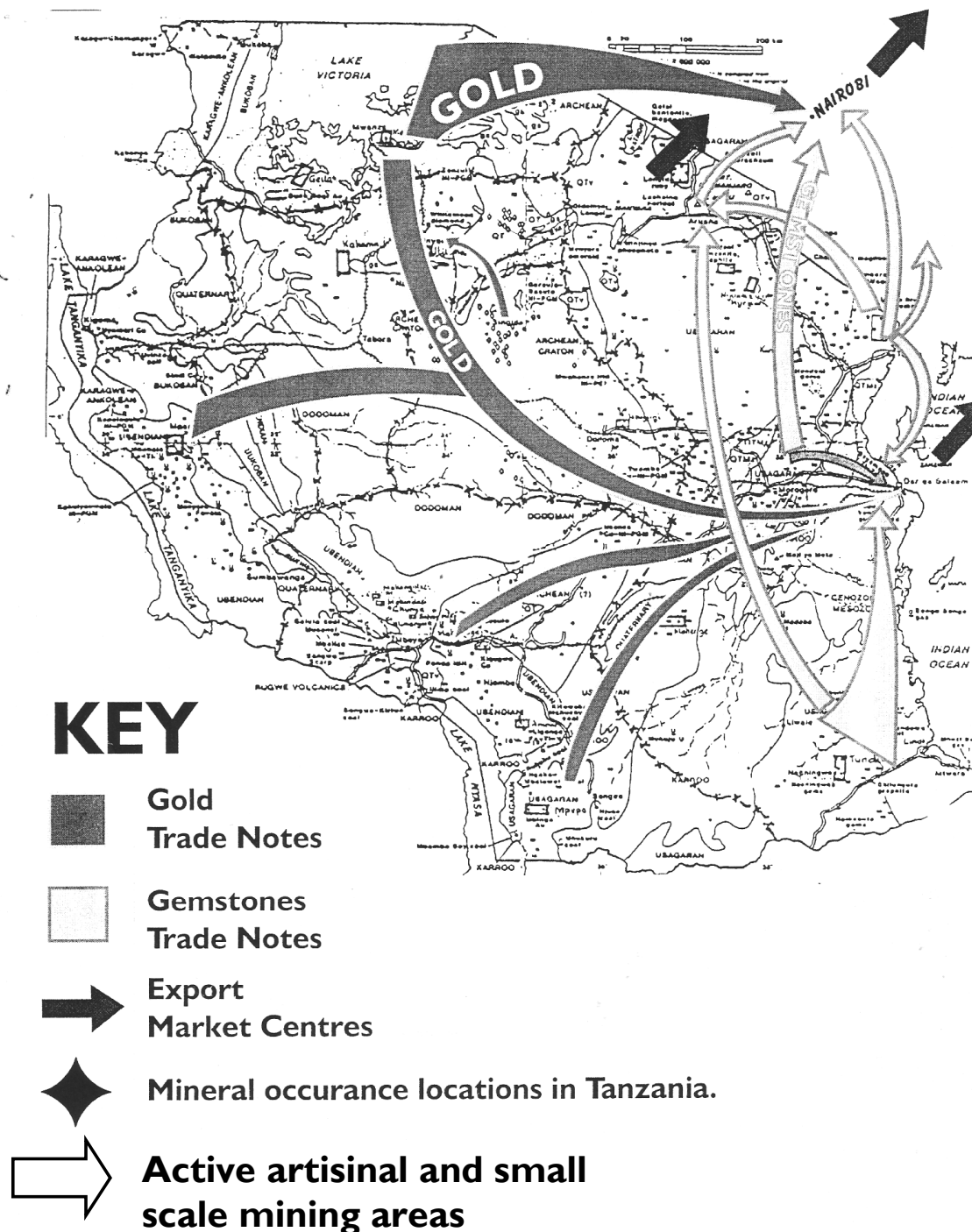
begged to differ. The US retail market for Tanzanite and Tanzanite jewellery is reported to be worth around US\$ 500 million a year²⁴ - yet Tanzania captures only a fraction of this, merely US\$16 million. Other studies indicate that Tanzanite sales in the United States alone are said to be worth more than US\$400 million a year, which means nobody knows exactly how much Tanzanite is being smuggled out or sold in other ways. It is not easy to establish the actual rate of looting, however, as the US is not the only importer of the gemstone, for it goes to India and several other locations.

There was growing pressure in late 1999 for the government to take action against Indian gem traders who were purchasing gemstones directly from mineral brokers and miners via subleased offices in Arusha. It is believed that most of their minerals were either smuggled out of the country - or were considerably undervalued. Official gemstone exports going directly from Tanzania to India were valued at less than US\$4 million in 1998 (Ministry of Energy and Minerals, 1999). In the same year, exports of cut Tanzanite Jaipur, India were valued at US \$27.53 million (Government of India, 1999). The gap here stems partly from the fact that Jaipur gets most of its supply through Nairobi, and partly from the greater values that are added via cutting. Gem industry reports in India show that about one third of gem-cutters in Jaipur now work *only* with Tanzanite. Much gem cutting in Jaipur is done in tiny, family-run workshops, using simple tools - which contrasts with the other major gem centers of Asia, such as Bangkok and Hong Kong, where a major investment is required to be able to operate a modern lapidary.²⁵

²⁴ The Guardian, July 2006

²⁵ Gemstone market study in Tanzania: ESRF

MINERAL MARKETS ROUTES IN TANZANIA



Source: ESRF Research Paper

CHAPTER 4

4.1 Past Attempts to Do Away With the Curse

Different agendas have been drawn up and discussed at different levels in an attempt to get rid of the “curse” in the Tanzanite industry - yet most were only either partially implemented or not at all; they have included research to establish causes of the “curse”, where recommendations relating to fiscal and tax administration etc. were made. Other ideas were to have Tanzanite’s Advisory Board and Probe Committees look into the situation, to establish an EPZ for Tanzanite so as to stop exports of the raw gem, or to get endorsement of the Tanzanite protocol to restore confidence in the Tanzanite trade. Such moves are examined in more detail below.

4.2 Tax Reform Initiatives

The United States Agency for International Development (USAID) funded one study, whose draft was published in October 1999. The Economic and Social Research Foundation (ESRF), International Business Initiatives (IBI) and Harvard Institute for International Development collaborated to carry out the research - and they recommended that fiscal measures are applied. The study came up with several fiscal alternative regimes by which dealers would be able to comply with tax requirements; also, they came up with a set of policies which they said would reduce incentives to smuggle minerals and which would enhance tax compliance. Proposals were ways of reducing the multiplicity of taxes/fees/charges and the elimination of bureaucracy in the tax administration system. The recommendations appear to be pending.

4.3 Formation of an Advisory Board and Probe Committees

The government also formed an advisory board and put together more than two probe committees. With the forming of an advisory body - the Tanzanite Board, comprising government and non-government stakeholders in the industry – there was a mandate to oversee the mining, trade and exporting of Tanzanite, to promote a form of value-adding for Tanzanite within Tanzania, and to develop a Tanzanite certification

system (like that pertaining to the Kimberley Process). While between 2000 and 2003 three committees were formed to look into things and put forward options to address the problem. These bodies were chaired by different chairpersons - Godfrey Mang'anya, Mr. Muhogo and Robert Mboma. Mboma's committee was formed immediately after the Tanzanite-Al Qaeda controversy erupted, and its activities were to establish the causes of the crisis in the sector and to recommend options.

Regarding the battles over plots – e.g. plot C (belonging to AFGEM) and B (small miners) - the committees said that part of Block B had been taken away and added to AFGEM's plot C. Efforts by the committee to gain access to files and area maps were unsuccessful after the Ministry of Energy and Minerals refused to make information available (explaining that the files had been lost). According to the probe team, indeed, over 100 files are apparently 'missing' at the Ministry of Energy and Minerals - which thus makes it difficult to obtain data that indicates plot borders at Merelani.

In the committee reports, options to end the conflicts were put forward. They included suggestions that foreign investors, and AFGEM in particular, should terminate their involvement in gemstones, and only local dealers would be allowed to engage in gemstone mining. They also suggested that AFGEM should stop branding the gemstone, for this went against fair competition rules. They also raised queries over the transfer of Graphtan's shares to MML/AFGEM, the registration of AFGEM Tanzania, MML and the Tanzanite Foundation. Not only did the proposed measures fail to be implemented, however - the probe team reports were not communicated to the general public by the last government.

4.4 EPZ Initiatives

On February 2, 2002 the government's cabinet approved a plan to establish Export Processing Zones (EPZ) in selected parts of Tanzania. In the EPZ special initiatives and privileges would be given to investors. The approved plan anticipated the inclusion of the Tanzanite industry in the EPZ scheme, as a priority; and there was a strategy to make sure that all dealers sold *processed* Tanzanite and that gemstone-selling shows would be held in Arusha, northern Tanzania - instead of, as in the current system,

outside the country (in South Africa or the USA, chiefly). Neither the EPZ nor the local exhibition ideas have become operative, however.

4.5 The Tucson-Tanzanite Protocol

Immediately after the United States stopped selling Tanzanite following the Al Qaeda link controversy, Tanzania's government initiated measures to clear the allegations. The Tanzanite Summit (involving the governments of Tanzania and the United States, along with other dealers in the industry) was held on February 8, 2002 in Tucson, Arizona, in the US.²⁶ The so-called Tucson Tanzanite Protocol to restore confidence in Tanzanite was endorsed with a list of measures to be deployed by Tanzania. The measures were for Tanzania to safeguard Tanzanite by licensing those who mined it at source and those who traded within Tanzania, and to make what is currently the sole Tanzanite deposit a controlled access area in order to ensure the integrity of legitimate sources of Tanzanite, to thus gain the economic benefits of internal trade. Additionally, all countries and persons involved in the trade, via a shared approach, were urged to improve transparency and accountability in the supply chain, thereby providing the greatest possible amount of protection of a legitimate stream of commerce.

Specific tasks to be executed by Tanzania and other stakeholders were as follows:

- To come-up with a detailed 'market chain analysis' in relation to Tanzanite so as to determine what improvements might need to be made to prevent possible abuses in the manner in which the product is brought to market.
- To encourage cooperation among governments/industry and to strengthen and maintain a system of oversight, control and law enforcement relating to the movement of Tanzanite from mines to the point of first export, in order to protect trade legitimacy.
- To create a system of warranties, in cooperation with the government of Tanzania, in writing, for use by first exporters and all those 'downstream' in the business chain - which would state that Tanzanite bought, sold, cut, polished, set or otherwise traded has come from legitimate sources.

²⁶ See: The Tucson Tanzanite Protocols 2002.

- To implement the Tanzanian government's new plan to establish Export Processing EPZs, anticipating the inclusion of the Tanzanite industry in the scheme, as a priority.
- To ensure that subsequent traders only accept, after the first export, Tanzanite that is accompanied by the appropriate written warranties.
- To make sure that sellers of Tanzanite or jewelry containing Tanzanite get the appropriate written warranty from their supplier.

These measures have not been implemented by Tanzania's government as yet. But Tanzanite One anticipated events, so began promoting its own 'ethical' mining practice. To this end, the company launched a multi-million program to promote Tanzanite in foreign markets – though this, as seen above, has been seen as a way of monopolizing the market and crowding out smaller production outfits. Indeed, experts do feel that Tanzanite One may endeavour to 'criminalize' Tanzanite products emanating from other dealers. Yet the government, which should have implemented the Tucson Protocol, has opted to keep quiet... And there could be several reasons for this silence, including a lack of political will and (secret) vested interests by politicians, shareholders, traders and from other countries. It also indicates the degree of poor governance and sector corruption, for it is not just the Tucson protocol that has stalled, but also other committee recommendations. Activists say the reasons are many, perhaps that 'probe teams' were really formed just to fool the public. There are lots of people with vested interests in this industry; for example, among the countries involved, Kenya and India are the largest beneficiaries, though they were not featured in the meeting to endorse the Tucson Tanzanite Protocol; then there is South Africa, the United Kingdom, other European countries, Asia and Australia – and the number of countries with specific interests has now recently increased after the AFGEM sale.

We will now take taking a look at the mining industry as a whole (see next section).

CHAPTER 5

5.1 A Low Level of Contributions to the Economy in Spite of the Increased Investment

The role of minerals in Tanzania's economy has dwindled notably compared to in the 1950s. The contribution of mining to GDP was reportedly as high as 10 percent in this decade and, together with agriculture, provided the bulk of government tax and foreign exchange earnings. The coming of independence brought with it political and economic uncertainty, though, for the large foreign investor community; and such uncertainty, coupled with the continuing low gold price of US\$35 dollars per ounce, led to the closure of most mines in the country. In the mid-1960s a command economy was established and caused the further withdrawal of foreign investors from mining in Tanzania. As a result, the contribution of the mining sector to GDP fell to less than 1 percent. During this phase (in the 1970s and 1980s) the mining industry stagnated due to a lack of investment capital, technology and management, so that the mining sector's presence was no longer felt in the economy.²⁷

This situation has, of course, now been changed. The major policy, fiscal and regulatory landmarks that have attracted more mining firms to Tanzania are the Mineral Sector Policy of 1997, which has set specific objectives and challenges aiming at revamping the mining industry, the enactment of the Financial Laws Miscellaneous Amendments Act 1997 (providing for an improved fiscal package for the Mining sector) and the Mining Act of 1998, which addresses the most important issues of concern to the mining investor community; and then there is the Value Added Tax Act of 1997, designed to provide special relief for registered mining activities.

Reform 'results' are that there is now an increased number of prospecting licenses - to over 2,000, from around 10 in 1990! From 1998 to 2006, at least six new, modern, large-scale gold mines and a Tanzanite One mine have been invested in, which is a record for the mining sector. A number of multinational companies - such as Resolute

²⁷ Tanzania Chamber of Minerals and Energy: Newsletter 2006.

Mining Limited, AngloGoldAshanti, the Barrick Gold Corporation, Falconbridge, Tanzanite One, Gallery Gold, a revamped Williamson Diamonds, Goldstream and others - are exploring and developing mines throughout the country. The gold mines - the Golden Pride Mine in Nzega, owned by Resolute (T) Limited; the Geita Gold Mine, owned by AngloGoldAshanti; the Bulyanhulu gold mine in Kahama; the Tulawaka mine in Biharamulo, north Mara; that of the Barrick Gold Corporation; and the Buhemba Gold Mine - currently in operation have a combined annual production capacity of 1.75 million ounces of gold, worth over US\$700 million. Total investment in these gold, Tanzanite and diamond mining projects has amounted to around US\$1.3 billion. The value of total mineral exports from the new ventures in the year 2005 was US\$692.8 million - compared to US\$16.1 million in 1997, with gold alone going up from US\$13.1 million in 1999 to US\$639.2 million in 2005. In 2005, Tanzania was said to be Africa's third largest gold producer, behind South Africa and Ghana. Unfortunately this increase does not reflect much in terms of GDP and social-economic indicators.

5.2 Economic Indicators

The paradox here is that in spite of the fact that mining is the fastest growing sector it represents approximately 3.2 percent of the country's GDP. The sector grew by 15.7 percent in 2005 - compared with 15.4 percent in 2004, thereby contributing 3.5 percent and 3.2 percent to the GDP respectively. Despite its recent growth, though, its effects in reducing the country's 'poverty' have been minimal. Reports by researchers suggest that mining could have been 'a savior' for Tanzania. An "Assessment of the mining sector: the Perspective of Tanzania" by Professor Raphael Mwalyosi confirms that, for Tanzania, the contribution of the sector to the economy is clearly at a minimum.

Table 4A: Contribution of the Mining Sector as a Percentage of GDP (1990 as base year)

Year	GDP %
1988	0.8
1989	1.8
1990	0.9
1991	1

1992	1.12
1993	1.12
1994	1.3
1995	1.38
1996	1.5
1997	1.7
1998	1.9
1999	2
2000	2.4
2001	2.5
2002	2.8
2003	2.89
2004	3.12
2005	3.36

Source: Compiled by the researcher

Table 4B: Mineral Production Composition, by Major Types

Gold	90.68
Silver	0.33
Copper	1.49
Diamonds	6.40
Tanzanite	1.10
Total	100

Source: For tables 4A & B, the Economic Research Bureau, University of Dar Es Salaam

Table 4C: Exports of Tanzanite 2000-2006

Year	2000	2001	2002	2003	2004	2005	2006
Volume in grams	5.5m	5.4m	6.4m	4.5m	3.9m	1.3m	3.4m
Value in \$million	16.2	15.9	17.3	13.1	24.2	34	43.6

Source: Daily News May 10, 2007

Many social indicators in Tanzania are comparable with or are better than those of countries having the same income levels. There are indications of there being a high degree of deprivation with regard to health standards, food security and education attainment. Infant and under-five mortality rates are, respectively, 86 and 133 per 1000; while life expectancy is around 49. Malnutrition affects 44 percent of children - and access to safe water stands at around 50 percent.

There is another argument involved here, too: that Tanzania has numerous resources, and it does not know which should be prioritized... The Country's Strategy Paper (CSP), the working document emanating from Tanzania-European Union (EU) cooperation, does not refer to minerals as being a priority resource that can be used for the Tanzania's poverty eradication program – so it seems that this sector does not connect up with the rest of the economy, so there is no major multiplier effect here. Up until now, revenue from mining in Tanzania has not been earmarked for any specific purposes, e.g. the construction of roads (as in the case of other countries, like Botswana). In Tanzania, around 95 percent of the national fund used to construct new roads comes from donors, while the remaining 5 percent is provided by the government. The total amount of bilateral/multilateral aid to Tanzania in 2003 (US\$1699 million) was 47 times higher than what the government earned in mining revenue (OECD 2005:231). Persons do argue that mining companies' investment in infrastructure is simply for their own benefit – e.g. they repair roads leading to mines only. Economic connections between mining and the rest of the economy, including via the government budget, are thus limited; and tax/royalty incentives have so far resulted in limited tax revenues - although it is true that increased export earnings have been generated.

CHAPTER 6

6.1 An Evidence-based scenario relating to poor governance

There are several examples of cases in which one can see poor governance at work in the mining sector.

Smuggling with Impunity

In 1991, for example, about US\$36,000 worth of gold was seized at Dar es Salaam International Airport (DIA). The case was handled by the then Minister of Home Affairs, Augustino Lyatonga Mrema, who is now the Chairman of the opposition, Tanzania Labour Party (TLP). He arrested the culprits and announced publicly that the gold's owners were 'big shots' in the government. No sooner had he finished announcing this than an order came from above, directing him to release the culprits, unconditionally and with immediate effect. When people asked him who these 'big shots' were, Mrema said his boss had the answer... The then President Ally Hassan Mwinyi explained that the concerned persons involved in the scandal were not necessarily ministers, meaning that they could have been other criminal types – though he didn't say who they were. It was established later that persons in the government were at logger-heads with each other after this arrest, which situation had forced Mrema to release the culprits.

Tanzania has well-organized forms of mineral smuggling, involving companies, traders and/or government officials, who undertake such activities with seeming impunity it would seem. Precise data on the amount of minerals being smuggled is difficult to establish, but the Ministry of Energy and Minerals was quoted as saying in the 1990s that gold worth over US\$50,000 was being smuggled out on a daily basis from Tanzania, equivalent to about US\$18 billion a year.

Below is a list of more examples of poor governance.

Mysterious Projects

CASE No I - PRESIDENT LAUNCHES QUESTIONABLE PROJECT: The drive to get some addition of value in relation to minerals saw former President Benjamin Mkapa inaugurate the Mwananchi Gold Company Ltd, a multibillion-shilling investment. The project was expected to begin processing gold in 2005. Shareholders are the Bank of Tanzania, which owns 20 percent, the National Development Corporation (NDC), with 15 percent, the Mwananchi Trust Company, with 45 percent (owned by the ruling party CCM), and an Italian investor having 20 percent. However, two issues have been questioned regarding this project: the involvement of the Bank of Tanzania, and the mysterious CCM Trust Company Limited (where members, including guarantors, were not aware of the deal). The BoT, which has been financing the project, lacks a regulatory mandate; and Members of Parliament handling government ventures were not consulted about anything. Efforts by MPs to query the legality of the BoT's and CCM's involvement in the project did not produce tangible results. Nazir Karamagi, the Minister for Industry, Trade and Marketing during 2006/2007 Parliamentary sessions defended the government - he said it was not the business of parliament to know who actually owns the company. The question was: why did the President - who was also chairman of the ruling CCM - decide to launch a mysterious project in the name of the party, where MPs and CCM guarantors did not know about it?

CASE No II - GOVERNOR HEADS QUESTIONABLE PROJECT: This concerns the Buhemba Gold Mining (BGM), located in the Mara region of northern Tanzania. This is another mysterious project, one instigated in 2002. Ownership of the project has always remained confidential. The Member of Parliament for the constituency, Nimrod Mkono, has been pressing the government to make known the project's ownership structure, but in vain. Now, the company has wound-up its operations.²⁸ The Governor of the Bank of Tanzania, David Balali, was on the company's Board of Trustees. Initially, the mine was under the joint ownership of the National Defence Force (JWT) and a company from South Africa, on which the government has not been able to provide adequate information. The joint company had been named Meremeta; and it

²⁸ Tanzania Daima publication, December 4, 2006; and This Day of August 16, 2006.

was set up to finance military procurement outside the scope of the budget, though collapsed - leaving the ministry with a US\$130m debt.²⁹

CASE No III - STATE FIRM DOES NOT HAVE LEGALITY: Tansort, a London-based Tanzania Diamond Sorting Office and Marketing Centre, which is jointly run by the Tanzania government and De-Beers of South Africa, is said to be involved in a mysterious project, too. Tansort's sales have never been remitted to Tanzania's Treasury since it was set up in 1966. The Parliamentary Standing Committee has recently established that Tansort, as an entity, has no legal basis in law at worst - or stands on a shaky legal foundation at best. The centre was set up (by De-Beers and the government) to sort, cut and market diamonds produced by Mwadui-based Williamson Diamond Limited, in which the Tanzania government has a 25 stake and where 75 percent is owned by De-Beers. In July 2006, the Ministry of Energy and Minerals investigated the issue, yet came up with no answers – but it did refer to another story related to the new diamond business venture. This was about a plan by the Williamson Diamond Company Limited (WDC) to construct a new processing plant at Mwadui, which, it was claimed, would 'quadruple earnings' for Tanzania (*Business Times* March 10-16/2006, July 14-20, 2006). The Parliamentary Public Accounts Committee (PAC) had auditing queries about Tansort's financial reports and figures - Tshs25, 339, 813, 796 and US\$1, 321, 884.94 (raised in previous years) and Tshs10, 260, 754, 860 and US\$379, 983.55 during 2002. The queries actually related to diamond sorting fees and the gathering of royalties. The committee also found that US\$2.5 billion, accruing from the sorting of diamonds, had not been remitted to the Treasury – though this amount had been deposited in the account of the Diamond Trading Company (DTC), a subsidiary of De-Beers. It was then realized that the company had not shown any profits ever, so the government had not received any dividends or corporate taxes for decades. In addition, the committee found that Tansort (as said) does not, in fact, legally exist. The government has failed to explain how it was created. Both Williamson Diamonds and DTC have refused to surrender documents to the committee.³⁰ The Ministry of Energy and Minerals has admitted that Tansort is indeed a mysterious project, even though the government had stakes in it.

²⁹ Brian Cooksey: Policy exchange paper www.policyexchange.org.uk.

³⁰ The Guardian, 2004/08/07; and Ministry Budget Speech, Financial year 2004/2005

The committee set up to look into the project was formed from within the then sitting PAC, in 2003 (This Day, Feb 22, 2007), to look into country's diamonds trade; and the report was drafted a year later. The report was tabled in the August House of August 2004. Yet for reasons that remain obscure, it was never discussed by other legislators - and ended-up being shelved. One major concern is about the sale of government shares in WDC. The government had a 50 percent stake in the project, but sold 25 percent of them to De-Beers without keeping to the proper channels. The sale was endorsed on October 19, 2004, two months after a report by the PAC Committee 'went missing'. The worst part of this affair is that shares were sold at 'peanut prices'. Media reports say that it was sold for only US\$180,452. Unfortunately, the Presidentially-formed Parastatal Sector Reform Commission (PSRC) had failed to produce receipts on the sale, leading to allegations that millions of dollars could have been pocketed by certain persons at the Executive level of the then third-phase government of President Benjamin William Mkapa.

Exports of Mineral-Rich Black Soil

Exports of black soil to Japan, purportedly for scrutiny abroad - to determine whether it contained particles of gold - raises more questions than answers. Companies have for several years been shipping black soil from Tanzania to Japan, yet do not give proper feedback relating to their activities. So people doubt the rationale of the exercise, as it appears to be more costly to ship containers of such soil to Japan than to make machines available in the country to detect the mineral contents of the said soil on the spot. However, nobody seems to be concerned with such vague arrangements, save for a few activists who vainly try to alert the authorities to the national losses involved. This could thus appear to be an 'advanced form' of smuggling.

Dubious Contracts

The mining sector in Tanzania has recently come under intense scrutiny, and there are signs that government officials are beginning to yield to public pressure to take a fresh look at mining contracts. The new government, which came to office in December 2005, has publicly acknowledged that major mining companies have been 'fiddling' figures to avoid paying the required duties and royalties. The Deputy Minister for

Energy and Minerals, Lawrence Masha, disclosed in Parliament that a recent audit report by government-appointed assayers had noted that reports presented by large-scale gold mining firms on their operations were not accurate. Masha said that investigations by the assayers were still going on. MPS pressed the government for more action on mining contracts, with legislators demanding better profit-sharing arrangements and better accountability for the communities where the mines are located. Contracts were not known about by people - nor to Parliament. The Tanzanian government has “tax stability” agreements with investors, under which the government will not upwardly revise taxes or royalties payable to it during mining operations and the ‘project’s full life’. Alex Stewart, a US company, has been contracted to audit the mining companies – and the company is paid 64 percent of what the government gets in royalties from minerals. TENSES OK? The payment is huge, therefore – so takes away even the tiniest revenues that *are* generated. Media reports have recently said that one of the bosses of this company is a son of the former Minister of Finance, Basil Mramba (the person who handled the contract and granted tax relief to this company), though he has denied allegations of corruption.

Human Rights Violations, Corruption and Abuses of Power

THE CASE OF THE VILLAGE OF KAKOLA: In 1996, the government made a decision to remove people from the village of Kakola, in the Kahama District, to allow the Kahama Mining Corporation Limited (KMCL) to enter the area. Villagers were served injunctions to leave their settlement, yet they demanded compensation first and sought a court injunction in the Tabora High Court. They won. Despite the court order, though, the government sent in policemen, on July 31, 1996, to evict them by force. Over 4,000 people were evicted – and were left homeless; while others were alleged to have been killed. The case for compensation has been going on in Dar es Salaam, and one of the defendants, Maalimu Kadau, said in an interview during this study that prolonged rulings in the case had drained away their money, and that others had died without being paid a thing.

THE CASE OF THE VILLAGE OF MTAKUJA: Apart from human rights violations, there have also been notable incidences of fraud in connection with compensation too. With the re-opening of the Geita Gold Mine in 1996, the village of Mtakuja had to be relocated. The company claims to have paid out compensation money, though it was

the government and the District Council who had to effect payments. It turned out that at least 857 entitled people never got any money (Allafrica.com 2001, Knight 2001). Instead of making payments to genuine persons, the list contained fake names; and some people were said have been fooled into signing for money that they had never received. (An elderly man was supposed to have been given Tshs 20,000,000 (US\$18 348). The payments government officer had the money ready in Tshs 500 notes; and when the old man spent a long time counting the money at the counter, they told him that he was wasting their time and ordered him to sign and then move on; he did so, and later realized that he had been paid only 5,000,000 - so he had lost Tshs 15,000,000.) The Prevention of Corruption Bureau (PCB) investigated the case in 2002. Two Geita Gold Mine (GGM) employees and a number of civil servants were found guilty. In February 2004, it was decided that the government should give Tshs 600 million (US\$550458) to those who had not been properly compensated.³¹

Corruption and the harassment of villagers are also involved here. The PCB has been tailing at least five top leaders, both past and present, on allegations they were getting payments from a gold mine that has since sold its operations to another gold conglomerate. The gold mine is said to have routinely 'dished out' monthly allowances to public leaders - including a former regional commissioner, a regional and a district police commander and the current district commissioner of the region (*This Day*, February 28, 2006). Such officials are alleged to have been on the payroll of the gold mine and were given monthly cash handouts of at least Tshs 1,000,000 each; while government leaders were receiving routine payments from the gold mine to facilitate operations such as the illegal eviction of villagers from their homes without compensation (as required by law). Given that mining activities may well need to move local communities from their lands, many MPs have demanded that compensation should include express provisions for *actual* resettlement costs. Such demands, although accepted by the government as being reasonable, were, however, not included in the final Bill which went into law. Human rights abuses are thus rampant in this regard, too.

³¹ See Chr. Michelsen Institute or at www.cmi.no/publications.

THE BULYANHULU SAGA: In August 1996, Tanzanian authorities evicted a community of small-scale miners from their homes and worksites at the Bulyanhulu gold fields to allow a Canadian mining company, Sutton Resources, take them over. Since then, there have been persistent allegations that as many as 52 people had been buried alive when the company filled in small-scale mining shafts; and that the evictions were brutal and swift, violating economic and social rights, and they caused enormous economic and social hardship. No compensation was paid to people – the estimated 30,000 to 400,000 persons who were moved from the area. The mine was taken over by the Canadian-owned Barrick Gold Corporation three years later. Observers, including Amnesty International, have been calling for an independent inquiry into the events of August 1996, though these calls have gone unheeded, and there has never been any comprehensive, independent investigation into the allegations.³²

The TML Daily, Internet edition, a daily online newspaper from the Community Party of Canada (No III of June 11, 2002), says that in Kahama, Tanzania, in 1997, an estimated 50 small miners were buried alive by bulldozers, ones operated by Sutton Resources of Canada (now owned by Barrick Gold) and the state mining company, backed by paramilitary forces (an event that was chronicled in Amnesty International's annual report of that year).³³ Ten miners were also said to have been killed by the police on the surface of the mine site during the eviction. The United States House of Representatives on August 23, 2001 wrote a letter to the World Bank Group, MIGA, in particular warning it against giving finances to the Barrick Gold Corporation or its subsidiary, Kahama Mining Corporation Limited (KMCL) for Tanzania's Bulyanhulu Gold Mine. MIGA had guaranteed the project in August 2000. A Member of Congress, Cynthia McKinney, says in a letter (copied for Barrick) that evidence indeed suggests that KMCL employees and Tanzania's police were involved in major human rights abuses in the course of evicting miners. An ad hoc group of North American and European non-governmental organizations - which had followed the Bulyanhulu story closely - decided to send a small team to Tanzania. The international fact-finding mission to Bulyanhulu, of March 23 to 31, 2002, came to the unanimous conclusion

³² <http://www.foe.org/camps/intl/institutions/bulyanhulu.html>

³³ <http://www.cpcml.ca/tmld.2002>.

that an independent, impartial, transparent and comprehensive inquiry into the allegations of uncompensated mass evictions of miners and mine owners, and also the killing of miners at Bulyanhulu during the summer of 1996, is warranted, desirable and urgent. Despite this, however, the government has not made any steps forward.

Mine Brokers

The 1998 Mining Act makes it far easier for foreign investors to gain access to and take control of Tanzania's mineral resources. Under this Act, for example, holders of mineral rights are entitled to exclusive rights of ownership of mining operations and uncovered minerals and to have the power to dispose of said minerals. In addition, the Act gives investors, both local and foreign, the right to assign, or otherwise transfer, mineral rights or a portion of them to other persons. Using this 'loophole', some companies have become brokers - and they reap millions out of just evicting villagers and selling their plots, without compensating anyone. A case in point here is Tanzania Royalty Exploration (TRE). TRE has been in Tanzania since 1989, and in April 2001 it acquired shares in Tanzania American International Development Corporation Limited (Tanzam). Tanzam had 51 licences to look for minerals in the Lake Zone. The Tulawaka mine used to be one of their projects in Tanzania. The company is one of the largest individual license holders in Tanzania, having 140 mineral licenses covering more than 11,570 square kilometers in and around the Lake Victoria Greenstone Belt.

34

NOTABLE LOSSES DUE TO BROKERS: Figures suggest that the Tanzanian economy lost US\$782.12 million, net, in these six years as a result of policy and legal reforms under which foreign mining interests gained control of mineral resources. The loss might indeed be a much higher if figures relating to the over \$1 billion of export earnings from between 1998 and 2002, as provided by Tan Discovery, are proved to be correct. Evidence indicates that mining 'investors' have made hundreds of millions of dollars out of precious minerals, even when they have not made any meaningful investments in developing mineral deposits - they have done this merely by exercising their rights under both the 1979 Act and the 1998 Act, respectively, via which one can

³⁴ Visit the Tan Range website: www.tanrange.com.

assign or transfer mineral rights to other foreign investors. A study by LEAT says that Samax Gold Inc. of Vancouver, Canada – whose Tanzanian subsidiary, Samax Resources, did not pay a penny in compensation to thousands of local small-scale miners who were violently ejected from the Lusu gold deposits in the Nzega District in September 1996 - later sold their Lusu deposits to Ashanti Goldfields for US\$213 million, in a deal struck on September 1, 1998. Ashanti Goldfields sold the area for an unspecified sum of money to Australia's Resolute Mining Ltd – and the latter spent US\$45 million building the Golden Pride Mine (Industry magazine).

Environmental Impact Assessment

This is ignored in most cases. An Environment Impact Assessment (EIA) is one issue that needs to be dealt with in relation to any resource “curse”. In a study on the performance of EIA in Tanzania, Mwalyosi and Hughes (1998) found a series of weaknesses. Although EIA is sometimes perceived to impede development, there is need for Tanzanians to adopt EIA in a national context. The study indicated that EIA had been initiated too late in the project cycle to be able to influence project design, so that there could be no integration between the two, i.e. a project and the EIA. Compliance issues are often unclear - and the quality of EIA is often not of a good standard.

6.2 The Problem Summarized

Talking about the resource curse in its wider perspective, the problem for Tanzania is more complicated than external partners might expect. Causes can be summed up in three areas:

- In first place, it is international actors (investors and donors) who have come across the internally corrupt system and the weak institutional set-up; also, there is a weak civil society, weak opposition parties (partly due to constitutional flaws), a controlled media and pathetic regulatory and administrative systems.
- Secondly, there is no means of establishing integrity, which does away with transparency when managing resources and decision-making processes; and there is a resistance by executives and minority elites to reforming the system.
- Finally, there is the question of political patronage, which hinders the democratization process not only when it comes to managing resources but also when one seeks to carry out political reforms that could then accommodate a

much-needed multi-party system. It prevents any democratic transformation or real political reform, including within the ruling *Chama Cha Mapinduzi* (CCM) itself.

By taking advantage of political stability, some dishonest persons 'at the top' still reap financial rewards in the form of exemptions and other 'deals'. The worst part of this is that the country's executive is powerful, so can control MPs (i.e. who may otherwise wish to challenge executive orders); so ministers are not accountable to MPs. Major reforms are thus resisted... The plunder of local resources in the name of investment promotion, incentives provision, competitiveness compliance and/or global economic governance is greatly distorted and misused, therefore.

Having now been accepted by external partners, including the home countries of giant mining companies, Tanzania is now greatly favored in terms of Overseas Development Assistance (ODA). ODA - as is the case with debt relief - is used as pain-killer, and it helps do away with political instability by making it easy for the multinationals to grab resources in collaboration with local tycoons. Instead of paying due taxes, mining companies make petty contributions in the name of Corporate Social Responsibility (CSR).

The fourth-phase government under President Jakaya Kikwete had initially (in 2005) declared its commitment to reviewing mining contracts and tax rates, but this commitment has now disappeared. Recent statements by his subordinates, including the Energy and Minerals minister and the Commissioner, indicate that the chances of raising mining royalties are slim. In addition, the anti-resource curse crusade seems to have become politicized and, also, dramatized.

In the following, more details are given about the policy and regulatory weaknesses which have led to poor governance in the mining industry. To start with, lists three areas requiring immediate changes have been noted.

CHAPTER 7

7.1 Attending to the Resource Curse in Tanzania

For the purpose of designing a set of policy options to deal with the resource curse in Tanzania and to address corruption, there are three proposed policy interventions:

- A need for Review Policies and Regulations (RPR), which affect the Tanzanite industry, the mining sector and investments in general.
- A need to Adopt Protocols and Internationally Acceptable Standards (APIAS) that will help to handle/monitor Foreign Direct Investments (FDI) in the most equitable and effective way.
- A need to build an effective National Governance and Integrity System (NGIS)

7.2 A Need to Review Investment Policies and Regulations

Alternative measures to reverse the resource curse might include amending specific regulations and policy governing the mining sector. They would include the Tanzania Investment Act, 1997, Financial Laws (Miscellaneous Amendments) Act, 1997, and The Mining Act, 1998 – which three the Lawyers' Environmental Action Team call the 'unholy trinity'. Of course, the Mining Policy of 1998 should also be subject to scrutiny.

Overhaul of the Operating Environment

The first new piece of legislation was the *Tanzania Investment Act, 1997*. The Act was enacted in order "to provide for more favorable conditions for investors," and it was done with extraordinary generosity. Investors are, for example, given very generous 'incentives', which are defined by the Act as "tax relief and concessional tax rates which may be accessed by an investor under the Income Tax Act, 1973, the Customs Tariff Act, 1976 and the Sales Tax Act, 1976 or any other law for the time being in force." The said tax relief and concessional tax rates "shall not be amended or modified to the detriment of the investors enjoying those benefits". In other words, the government cannot, under any circumstances, raise any taxes, royalties or charges currently payable by an investor, or impose new taxes/other fiscal rules, or lift any waiver or immunity from taxes that investors may enjoy at any given time. A regional comparison

of tax regimes shows that the main taxes and fiscal incentives applicable to the mining sector in Tanzania are generally comparable with those in other natural resource-rich African countries. Yet the problems in Tanzania are rooted in the existence of multiple types of “nuisance” tax (a large number of minor taxes and licensing fees) and the complex design of taxes coupled with a cumbersome and bureaucratic tax administration. These problems have placed Tanzania in an unfavorable position from the perspective of mining investors. The fiscal depreciation allowance for the mining sector in Tanzania, Zimbabwe, and South Africa is relatively generous - all of these countries allow for a 100 percent depreciation allowance; while others seem to be more conservative. Except for Ghana, all countries allow corporate losses to be carried forward indefinitely. Only South Africa and Tanzania impose local corporate income taxes. All countries of the region have a withholding tax on the distribution of dividends as well as distribution of branch profits. On investment incentives for the mining sector in the region, all countries in the region provide fiscal incentives to get investment in the mining sector. The depreciation allowance in Botswana is less generous; the mining capital expenditure allowance has a linear depreciation over the life-time of a mine, and a full deduction is allowed only when it comes to the costs of purchasing prospecting information. On the fiscal regime from a regional perspective we can see that the major taxes and incentives applied to the mining sector in Tanzania are comparable to, if not more generous than, other countries (Professor Semboja: Research Bureau University of Dar Es salaam), (Lissu T, In God We Trust: The Political Economy of Law, Human Rights and Environment in Tanzania’s Mining Industry, 14 December 2001).

Investment Act, 1997

The Tanzania Investment Act of 1997 fiscal package needs to be reviewed and amended to reflect realities on the ground. This will include the ability of government agencies to oversee the mining sector. Issues needing review include a fiscal package that is too generous to investors, especially seeing that Tanzania gets no share from most projects – so that revenue from royalties and other taxes is the only source of income from the mining sector (though this is not collected in correct ways).

Financial Laws

The most important piece of fiscal legislation which protects foreign investors in the mining sector from tax payment is the *Financial Laws (Miscellaneous Amendments) Act* of 1997. Experts, including LEAT, say the provision has implemented almost all of the conditions that the World Bank had demanded of African governments in both its 1989 prognosis and the 1992 Strategy for African Mining technical paper. This was done by way of wide-ranging amendments of taxation laws enacted in the early 1970s to remove or significantly reduce the tax liability of investors in the mining sector.

The Mining Act 1998

The Mining Act of 1998 has to be amended with a view to making sure that exclusive rights to the ownership of mining sites bring about expected results. It needs to ensure that an ability to dispose of ownership or transfer mineral rights is made use of without detrimental loss of government earnings. This should curb on-going waves whereby some firms are no longer actual investors, but are land brokers.

Observing Human Rights

The new Mining Policy of 1998 should include rights of individuals to possess their traditional lands. The policy should give special treatment to the people who own plots of land that have minerals. The objective should be to encourage such persons to participate in the industry by using their plots to secure loans or to form joint ventures with incoming investors - though they will need guidance. This will serve to deal with ongoing eviction concerns and encourage compensation payments should there be relocations.

The Empowerment of NSAs

Although not directly linked to mining, NSAs can play a positive role in monitoring operations. The empowerment of non-state actors (NSAs) should be part and parcel of campaigns to address the sector's problems. Some of the revenues gained from the mining sector should be invested in human development and in NSA capacity-building. Civil society in Tanzania is still weak and disorganized, and persons are not able to monitor resource mismanagement issues or take government officials to task. So NSAs should be strengthened and involved in decision- making.

Easy Access to Information

Gaining access to information is a near-impossibility in Tanzania. Although the Constitution contains favorable language pertaining to the right of access to information, the National Security Act and the Tanzania Newspapers Act do not support such a right of access. The creation and sharing of documents is considered seditious at times. Public officials cannot release information unless they do so with special permission. The media's ability to monitor government activities has been hurt by a condition arrived at via the sudden growth of the industry, which has gone hand in hand with insufficient knowledge and facilities; for disclosure of information on what mining firms are paying and how revenue is spent is very important.

Giving More Powers to Anti-Corruption Bodies

The Prevention of Corruption Bureau (PCB) has to be given powers by amending its Act Cap 329, which prevents the agency from carrying out its obligations; and it also needs capacity building. Attempts to end corruption, since 1995, have included steps taken via the Presidential Commission of Inquiry Against Corruption that requires all political leaders to declare their assets, where public servants who are supposed to be corrupt will be fired, and where the PCB is strengthened. A Cabinet position - Minister of State for Governance in the President's office - was also created for 1995-2005, where such a minister was given, among others, responsibility for fighting corruption. These initiatives have not, however, produced the expected results.

Anti-corruption laws in Tanzania are governed by the Prevention of Corruption Act Cap 329. The law's hitch (for it was poorly designed) is that the establishment of the PCB has sections that make the fight against corruption difficult. Section 19 of the Act, for instance, provides, inter alia, that prosecution of a public officer charged with corruption is only effective after receiving the written consent of the Director of Public Prosecutions (DPP). This might not easily happen, or written consent may be difficult to acquire (etc.). The PCB, as an agency, is assigned to investigate acts of corruption, and thereafter to submit investigations and evidence gathered to the DPP for a decision as regards whether or not to prosecute suspects – which 'timidity' makes people refer to the PCB a 'toothless' agency (especially when it may expose wrongdoing in the higher echelons of government). The Leadership Code of Ethics,

Amendment Act 2001, allows or compels leaders to declare their wealth and state how they obtained it - yet this same code does not compel leaders when they leave office to declare their wealth to make a before-and-after comparison possible; so there is a need for revision on this score.

An Independent and Fair Judiciary System

The judicial system should be free and fair and beyond corruption. According to the PCB study on the Incidences and Effects of Corruption in the Judiciary for 2005, courts are notorious in terms of corruption. As regards the prevalence of corruption in the judiciary, 96.5 percent of the total number of persons interviewed in four regions of Tanzania said that corruption is 'rampant' in the country's judiciary. Even at the filing stage, court clerks ask people for bribes – and failure to give a bribe may have negative consequences. At the hearing stage, court corruption may manifest itself via delays in setting hearing dates, vague or contradictory orders, unnecessary adjustments in 'hearing' dates, magistrates' or judges absconding on specified dates, hidden or misplaced files and/or court proceedings going unrecorded. With the verdict stage, the study revealed that corruption manifests itself via partiality being shown on technical grounds, partiality via vague interpretations of the law and via delays in passing sentence. Poor remuneration of judicial personnel is one reason for such corruption – for a resident magistrate's (as of 2003) salary here, according to the study, is no more than Tshs 100,000 (equivalent to about US\$100), without benefits (see PCB Report on the Judiciary and Incidence of Corruption 2005). Past experience shows that it is difficult to win a case in court, including ones related to mining issues. (One case in point here is the case involving Small Miners and AFGEM, which was thrown out on technical grounds, without consideration of its main cause.)

Integrating EITI Programs

Tanzania needs to get Extractive Industries Transparency Initiative (EITI) membership. EITI is a coalition of governments, companies, civil society groups, investors and international organizations; and it supports improved governance in resource-rich countries via the full publication and verification of any company payments and government revenues obtained from resources like mining. By implementing EITI programs, it will be possible for people to get to know what the government receives and what mining companies' pay – and this is a critical first step

towards holding decision-makers responsible for revenues and for the openness of contracts being signed (www.eitiolso.no).

Minimizing Donor Dependence

So as to avoid the over-influence of donors in the mining sector, Tanzania needs to avoid having any outside dependencies that might affect the shaping of policies imposed as conditions via which one obtains a loan. This does not mean that donors are useless - the argument is that the relevancy of policies needs to be looked at. In 1997, Tanzania adopted a new National Mining Policy (NMP). According to the Law Reform Commission, the NMP was adopted with the guidance of and fiscal support from the World Bank - where its sole objective was to place the mining sector in the hands of international capital. According to the Bank, the NMP was to eliminate the risk of possible interest being shown by the government in the future as regards having an expanded role in mining. The NMP accomplished this by restricting the role of the government and by divesting the subsidiaries owned and operated by the State Mining Corporation (STAMICO) to the private sector. According to Canadian diplomats who closely followed these developments on behalf of Canadian mining interests, the Bank financed the British and Tanzanian consultants who drafted the new Mining Act enacted into law in 1998. The British consultants hired by the Bank for this purpose worked for Transborder Investment Advisory Services Ltd., an investment firm from the City of London. (A conducive environment for whose benefit: LEAT).

Discretionary Powers vested in the Minister

Discretionary powers given to the minerals' minister should be checked, for abuses may occur here. Current rules and policies governing the sector create room for a minister to abuse his powers. He is, of course, 'above' Parliament. The minerals' minister is given wide discretionary powers to enter into 'development agreements' with investors in relation to the financing of mining operations under a special mining license. Such agreements may "contain provisions binding the United Republic of Tanzania, which will guarantee the fiscal stability of a long-term mining project with regard to the range and applicable rates of royalties, taxes, duties, fees and other fiscal imposts and the manner in which liability in respect thereof is calculated". The Act lays down the amount of royalty on the net back value of minerals, and the government

receives 5 percent in the case of diamonds and 3 percent in the case of other minerals from foreign investors; and, via section 87 of the Mining Act, the minister is obliged to defer payment of even this meagre amount upon application by the investor that “the cash operating margin” of his operations has fallen below zero.

Further shielding foreign investors from local or national scrutiny is the fact that the powers of local and national institutions to deal with possible disputes between the government and investors are taken away; and by giving the Commissioner of Minerals powers to decide upon disputes between investors and local communities investors are protected from having their operations challenged in courts of law by local communities. Although the Act does provide for mandatory requirements – e.g. an environmental impact assessment (EIA) and environmental management plans (EMPs) for almost all mining undertakings - there are significant loopholes. For example, the minister may exempt, in terms of section 64(2), an applicant from needing a gemstone mining license from the mandatory requirements to commission and produce an EIA or EMP.

In addition, the minister may enter into a development agreement (which is not inconsistent with the Mining Act 1998) for the purpose of granting a prospecting or mining license in order to define terms and conditions to be included in the license. An agreement should be made with the lawful occupiers of land and their written consent should be obtained if mining or a prospecting operation requiring a special mining license or the financing of any mining operations are to occur. The agreement guarantees the fiscal stability of any long-term mining project, therefore – which, again, may well tempt a minister to abuse his powers if there are no controls.

Re-organizing the Industry

Based on the fact that the mining sector is not well organized, especially as regards small miners, it then follows that it should be regulated. Helping small miners in terms of affordable technology and capital is essential; in addition, the government should also provide services to dealers, including the creation of a centre where they can get information on, among other things, markets and prices – for reliable markets for gemstones are needed. Good governance should also ensure that handling the mining sector includes doing away with ‘red-tape’ and reducing nuisance taxes (which

increases production costs). Government official capacity-building so as to monitor the industry is a prerequisite in Tanzania, too - which should go hand in hand with other strategies to increase transparency and accountability. Tanzania should implement the Tucson Tanzanite Protocol – and have one 'brand' of Tanzanite, which will require the processing of Tanzanite within the country.

7.3 Adopting Protocols and Internationally Acceptable Standards With Regard to FDI

Following on from a comparative study called “African Mining Codes Questioned”, GRAMA, the group of researchers who did the research, came to useful conclusions with regard to the managing of Foreign Direct Investment (FDI) in mining. To address the problem of tax evasion and market power abuses, Protocols and Internationally Acceptable Standards (APIA) are to be recommended as one aspect of handling FDI. Below, is a list of proposed measures for the government:

- Adopting a protocol on the conduct of business based on the Draft Fundamental Human Rights Principles for Business Enterprises. These principles were drawn up by the United Nations Commission on the Promotion of Human Rights – and they should be strengthened further by the addition of an independent monitoring body, and there also need to be rules of enforcement.
- Implementation of the Organization of Economic and Development's Guidelines for Multinational Enterprises while ensuring that the designated National Contact Points are given greater prominence; powers for monitoring and enforcement need to be delineated also. A company's willingness to implement OECD guidelines could become a condition of eligibility for all northern government guarantees and export credits.
- Holding dialogues with countries that are home to mining companies that operate in Tanzania, so that such countries agree to develop guidelines pertaining to corporate social responsibility. These would make reference to established indices of corporate social responsibility, such as those laid out in the OECD's Guidelines for Multinational Enterprises. For these to be effective, there needs to be put in place mechanisms to ensure the monitoring and enforcement of such guidelines.

- Making sure that stock exchanges in the countries where mining companies are registered possess corporate social responsibility disclosure requirements modelled on corporate governance guidelines. As part of their listing requirements, companies would be required to disclose, in their annual reports, their approach to corporate social responsibility - and to explain away any discrepancies. Any form of public support should be based on a company's capacity to demonstrate its strict adherence to corporate social responsibilities.
- Discussions need to take place with the country of origin of mining companies operating in Tanzania to ensure compliance with acceptable standards. Such practices are now being implemented in several countries - and are recommended under the 1998 European Union guidelines for European enterprises operating in developing countries.

Ultimately, however, responsibility for defining, monitoring and enforcing standards must rest with Tanzania - and to attain successful results, there is a need to have effective, honest governance.

7.4 A Need to Have and Have Strengthened a National Governance and Integrity System

Corruption has undermined democracy, weakened the performance of public institutions and has hindered the optimal use of resources in Tanzania – so needs to be dealt with; but to get an understanding of things as they exist, while seeing previous measures taken to deal with it - and why they failed - is a first step.

7.4.1 Past Anti-corruption Initiatives

Many anti-corruption strategies have failed in Tanzania partly because they have been too narrowly focused or were not grounded in reality/lacked practicability. Strategies included the setting-up the Prevention of Corruption Bureau (PCB) in 1991 and the formation of the Public Leadership Code of Ethics in 1995 - to curb improprieties at higher levels of public service; while in 1996 the government established the Permanent Commission of Integrity (Ombudsman) to oversee abuses of power by government officials and its agencies. This was followed by the formation of the Commission for Human Rights and Good Governance in 2001.

These were initiatives taken by retired President Benjamin Mkapa, who came to power in 1995. In January 1996, he established the Presidential Commission of Inquiry Against Corruption, commonly referred to as the *Warioba Commission*. The Commission produced one of the most respected and commended analyses of corruption; and its report concluded that there was much evidence of corruption - and it classified the evil into two categories, namely 'petty' and 'grand' corruption. It was that report which led the president to appoint a good governance minister, who is responsible for, among other things, monitoring overall strategy and the implementation of anti-corruption measures. He also prepared and adopted the Natural Anti-Corruption Strategy for Tanzania, focusing on the need for transparency and accountability in government. It was also due to the Warioba report that the president was prompted to establish the Prevention of Corruption Bureau (PCB), a unit that investigates and prosecutes corruption, with the approval of the Director of Public Prosecution (DPP). The government did not end its work there, though – for one other reform measure was the launching of the National Framework on Good Governance (NFGG), in December 1999, with its emphasis on Accountability, Transparency and Integrity (ATIP).

7.4.2 Reasons for the PCB's Failure

Despite the above measures, reports of corruption continue to unfold in the news media on a daily basis, thereby demonstrating that corruption is not exclusively, or even primarily, a problem emanating from one, single institution. The PCB lists about nine causes of corruption in Tanzania, three of which refer to poor governance. They include (i) a legal and administrative/political framework that provides an atmosphere conducive to the existence of corruption, (ii) a lack of transparency or accountability in the executing of decisions and (iii) a lack of political will. According to the PCB, grand corruption involves high-level leaders and public servants seeking greater wealth accumulation; and such persons make use of a variety of tactics attain their corrupt ends - about which the PCB had this to say:

- Leaders who are supposed to make important national decisions are bribed for them to make a decision that is in the interests of the briber. They are offered chairmanships and directorships of boards of parastals without taking into account professional knowledge, ability or the national interest – in this way,

executive decisions relating to the allocation of “hunting blocks” or allocations of plots in areas not permitted by law are skewed to benefit specific persons.

- Chief executive officers receive bribes in order to breach tendering rules and regulations, to make various tax exemptions and to conclude construction contracts with private companies without due regard being given to the national interest; and they themselves obtain specific positions.
- Politicians bribe members of executive committees within political parties - or voters during elections - to vote for them or their own candidates.
- MPs offer bribes to voters so that they elect them, make fake claims in their parliamentary activities logbooks, give bribes to reporters so that they publish good stories about their activities and demand gifts of private/parastatal companies when they go to visit them.?

7.4.3 Reasons for the Failures of the Presidential Commission

The Report on the State of Corruption in Tanzania (PUBD.121996.001 COR) coming from the Presidential Commission of Inquiry Against Corruption has similar observations regarding corruption in Tanzania. The commission also uncovered ‘petty’ and ‘grand’ corruption - where grand corruption involves high-level officials and public servants, who pay no heed to anti-corruption strategies; so the group enjoys immunity from the top. As to how they actually manipulate the system, the commission says that leaders who are supposed to make important national decisions are bribed by businessmen to get decisions in their own interests; and there are cases pointing to the involvement of ex-ambassadors and retired government officials in the world of business - including retired government intelligence officers who work as directors for private firms, some of which are mining firms. Showing how top leaders may well be the ‘stumbling block’ here, the commission had this to say: *“It has become evident that the greatest source of corruption in the country is neither the poor economy nor low salaries, although these too have played their part... The greatest source is the lackadaisical leadership overseeing the implementation of the established norms. The absence of clear guidelines on the accountability of leaders in their respective positions - be it in political leadership or senior administrative or management positions - is part of the weakness.”*

7.4.4 *New Anti-corruption Strategies by the Fourth-phase Government*

Coming into office in 2005, the new government of President Jakaya Kikwete has also come-up with measures to try to organize the country. These include an intention to re-negotiate mining contracts with major companies, whose aims would be to amend controversial clauses in mining contracts, especially those that give tax and fee-exemptions to investors. The Prevention of Corruption Bureau (PCB) has now been re-named the Prevention and Combating of Corruption Bureau (PCCB), with extra-powers of course, including ones allowing them to seize assets should this be required. Furthermore, reports from the Controller and Auditor General (CAG) are now being discussed in Parliament. From the experts' point of view, this is a good start – they do admit, however, that the road will be a hard one; for reform is merely pending or is incomplete in many cases, for example:

- The new anti-corruption bureau is still controlled by the state, which means the body lacks autonomy, including having powers to deal with 'grand'/political corruption.
- Section 19 of the PCB Act, declaring that prosecuting a public officer charged with corruption is only effective with the written consent of the Director of Public Prosecutions (DPP), has not been amended.
- The New PCB Act has neglected international conventions against corruption - like the African Union Convention of 2003 and the SADC Protocol Against Corruption Convention of 2002.
- Major contracts remain secret after refusal by the Ministry of State for Good Governance in the president's office to reveal them to respective parliamentary committees or make them available to the general public.
- The Information Act still restricts the media and the public.
- Political corruption has not been attended to in the recent piecemeal reform program coming from the fourth-phase government.

Elections do not fare much better in Tanzania. Corruption was especially rampant during the 2005 campaign, when the ruling *Chama Cha Mapinduzi (CCM)* reportedly distributed cash, mobile phones and other 'rewards'/incentives to voters. Also disturbing is when state power incumbents use political corruption to help keep the ruling party in power (see Global Integrity Report (2006) for Tanzania); worse still,

though, is that whoever assumes office then has to fit in with a system that keeps the corruption ball rolling (see Corruption Forum on the state of Corruption in Tanzania).

Political corruption, in which public resources are diverted for purposes of patronage and cronyism, cannot be addressed directly without involving a holistic approach - otherwise, it will be difficult to find technical solutions or to see any lasting impact in relation to the issue. In Tanzania, political corruption not only leads to a misallocation of resources - it also de-rails the means via which decisions are made. As regards external interests, the private sector and others with vested interests can, as seen, 'bend' laws, etc., no doubt making direct use of politicians and bureaucrats. And it is the executive - those who rule the country - who are most responsible; and anti-corruption efforts may fail as the executive group wishes to live in two worlds - of the public and private sectors, i.e. they make use of the public sector to handle their own private interests (as we have seen occur on innumerable occasions with the Tanzanite industry). Anti-corruption reforms in Tanzania have been overlooking those at the top by focusing more on lesser law-breakers. The placing of the PCB in the president's office - instead of making it responsible to Parliament - makes it impossible for the agency to fight bigger corruption, especially involving the executive. Despite advances made by the public and MPs to make the PCB an autonomous body, the government is not willing to do this - and not carry out more sweeping reform generally - and this policy paper wishes to see the creating of a nationally-coherent 'integrity system' as a holistic measure to curb poor governance and promote national integrity across both public and private institutions.

Basic concepts and foundations of an integrity system have to be clearly understood. It is equally important that resulting solutions be grounded in reality and practicality. More than this, solutions must relate to other parts of the system overall. The goal should be to establish a National Integrity System to make corruption a high-risk and low-return undertaking. Indeed, the system proposed here should be designed to prevent corruption from occurring *in the first place* rather than relying on issuing penalties *after* it has taken place.

CHAPTER 8

8.1 A Proposed and Coherent National Integrity System

Integrity means adherence to a set of moral or ethical principles. An integrity system, therefore, is a political and administrative arrangement that encourages good governance. A country's national integrity comprises all government and non-government institutions, laws and practices that can, when functioning properly, minimize levels of corruption and the mismanagement of resources. A national integrity system, promoted by an assortment of institutions, should be effective in its anti-corruption drive – and it must take on board key 'pillars'. In the case of Tanzania, pillars to be included in the integrity building agenda could include the following:

The Legislature

The current situation, where the ruling Chama Cha Mapinduzi (CCM) holds a dominant majority in Parliament, and with the exercising of its discipline and solidarity well established, there is little chance for the legislature to take the executive to account. There is evidence that CCM MPs normally meet separately to make their 'own stand' if there is to be a major debate in the assembly, a tendency which affects decisions made in the House. The Prime Minister, who is the government business leader in Parliament, is very powerful in influencing any motion - and in so doing, affects the effectiveness of MPs when they seek to take ministers to task.

Measures and reforms might include an opening-up to new voices in Parliament and local governments, and the strengthening of opposition parties. Independent candidates should be allowed to stand, initially for local government elections, to see a strengthening of parliamentary committees - and where they can gain access to all government documents, including contracts, prior to signing them – relating to potentially corrupt bodes. An area that needs special attention is the 'oversight' one - to keep an eye on the executive, so holding the executive to account on behalf of the

citizen; and it is important to have a mechanism which checks political corruption, especially during elections.

The Executive

The executive, operating via the president and cabinet, dominates national policy and decision-making processes. A strong executive can override legislatures' mandates to exercise control and oversight – and this needs to be overhauled. What needs to be looked at are the discretionary powers of the executive and the corresponding opportunities to abuse one's powers. Constitutional immunity granted to the president should be subject to discussion and scrutiny. Strengthening and formalizing the rules controlling ministerial and presidential powers so as to safeguard the independence of the judiciary and the civil service is also a prerequisite in this proposed reform. Also to be included is the reviewing and enforcing of appropriate conflict-of-interest regulations. Transparency mechanisms that lift the immunity that executives and high public officials enjoy by reason of their office should be integrated equally into a reform of enforcement measures. It is important, too, to review the current Constitution, which gives too much immunity to the President of Tanzania, especially immunity from criminal and civil proceedings (Act no. 15, of 1984). Article 46 (1) of the Constitution says that 'During the President's tenure of office, in accordance with this Constitution, it shall be prohibited to institute or continue in court any criminal proceedings whatsoever against him.' The same Article, in part 2, says that 'During the President's tenure of office, in accordance with this Constitution, no civil proceedings against him shall be instituted in court in respect of anything done or not done, or purporting to have been done or not done, by him in a personal capacity as an ordinary citizen whether before or after assuming the office of President.' Furthermore, reforms should be made to address the laws on Ethics for Public Leaders - as the currently existing code, according to the Commission Report referring to the State of Corruption in Tanzania, have the following deficiencies:

- a) It does not specify all the ethical standards that should be adhered to
- b) It involves the President in the evolving of ethical standards
- c) It provides for a very lengthy process of inquiry into indictments
- d) It provides a loophole via which one might conceal illegal income by differentiating between declared and non-declared assets
- e) It does not give explicit powers to the Ethics Commissioner

- f) It does not specify the penalties to be imposed on those who breach the ethics code.

It is also proposed that presidential appointees should be reduced if related to 'sensitive' posts – e.g. with the Controller and Auditor General (CAG), the Prevention of Corruption Bureau (PCB) and, of course, Regional and District Commissioners.

The Judiciary

The judiciary's leadership must become a key aspect of the coalition for change and should make the necessary changes to their *own* practices. For this to be done, the judiciary should be free from executive influence and abstain from corruption.

The Controller and Auditor General

The Auditor General's office in Tanzania has been very active of recent in producing reports on time - and its role is commendable. The report is now being discussed in Parliament and by other government bodies - though the report must be given widespread publicity, and the government should act to implement the recommendations given therein.

Ombudsman

One is in place in Tanzania, but what is needed is that administrative accountability is introduced here. He should operate independently of the government, and have a high level of public trust and a good profile; and he should be constantly looking into and reviewing declarations of income and assets made by senior officials. While all information must be made available to the public.

Watchdog Agencies

It is proposed that office-holders in the anti-corruption bureau should be appointed in such a way that the independence of the country's rulers is ensured; and prosecution law should be such that the bureau can take any culprit to task (otherwise it risks becoming a force of repression in its own right). The PCB has failed to a great extent largely because of its lack of independence, and this denial of powers has prevented it from being able to charge persons with felonies. Civil penalties, a black-listing of corrupt firms, extradition arrangements and other legal provisions – ones which enable

the profits of the corrupt to be seized and forfeited, both inside and outside the country - would all be powerful disincentives to potential wrong-doers. It is important to create 'room' for independent investigators in such a manner that they perform their professional duties transparently and in an independent fashion - and enforce the rule of law. Assets declarations by all office holders and elected persons need to be incorporated into such anti-corruption laws. The PCB should also be involved in monitoring the lifestyles of public decision-makers and public service officials.

Public Service

Existing public service ethics need to be reviewed and enforced. The government must ensure that salaries of civil servants and political leaders are suitable in that they reflect the responsibilities of their posts and are comparable with those in the private sector.

The Media

The legal and administrative environment should provide for a free press. Press reform should be aided by several measures, such as with there being freedom of information – all persons, including journalists, must easily have access to government or private sector information. A repeal or revision of anti-defamation laws and insult laws is needed to ensure that these cannot be used to threaten or fetter the press. Ending press and media censorship, raising the professional standards of journalism and ending government discrimination (such as controlled access to newsprint, advertising) against certain media should also be on the reform agenda. And journalism associations possessing anti-corruption programs should be supported. There should also be a form of training on how to actually do good reporting. There could be the establishment of a specialized publication dealing with the “resource curse” looking at poor governance and educating the public on such issues. There needs to be an empowerment of journalists and journalism.

Civil Society

Civil society should be able to be a part of policy-making. It should have freedom of speech, while capacity-building and coalitions within itself are required. People might initiate public awareness campaigns to look at abnormalities in the mining industry, to develop anti-resource curse strategies and organize meetings with decision-makers in

the government and with donors. There should also be organized public consultation workshops to seek citizens' consensus with regard to approaches that need to be taken to address problems.

The Private Sector

Anti-corruption initiatives must be promoted in the private sector, too, and could include corporate good-governance programs. The private sector, as with civil society, has a role to play in monitoring the implementation of the National Anti-corruption Strategy and Action Plans (NACSAP). Mining companies should refrain from corrupt practices and from giving bribes – and should direct funds towards community-based development projects, pay their taxes and always pay compensation to relocated people.

International Actors

Outside pressure may be helpful in encouraging internal debate and building coalitions for reform in Tanzania. As regards loans coming from international financial institutions, many need to 'force' the release of information that has previously been kept secret by officials - so the resource 'curse' should be dealt with and desired conditions arrived at before loans/grants are again offered to outsiders. For MIGA, it is important that mining companies seeking guarantees publish what they pay to the government (taxes, fees, royalties, and other payments). MIGA also needs to have access to production-sharing agreements and other contracts vital to the tracking of revenue streams. Importers of Tanzanite, which include countries like USA, India, Kenya and South Africa, should be ready to cooperate with Tanzania to deal with illegal Tanzanite dealers; for there should be a proper scrutiny of businessmen and traders. Vested interests had by international actors need to be monitored, especially when it comes to FDI, where moves made *beforehand* - and *not after* a deal has been made - are more important.

CHAPTER 9

9.1 Lessons Learned from Botswana's Experience

Botswana is a typical example of a country that has abundant natural resources. Although it is commonly accepted that resource-rich countries may fail to increase growth potentials, this has not been the case with Botswana - for Botswana has experienced the most remarkable economic performance in the sub-Saharan region. From being one of the world's poorest countries when it gained independence in 1966, with a per capita income of less than \$100, Botswana today has a per capita income that exceeds \$3,500. Diamond revenues, channeled via the lucrative partnership between the Botswana government and diamond giant De-Beers, known as Debswana, has transformed the country from one with only 6km of asphalted roads at the time of independence to a country with some 6,000km of asphalted roads today. Health facilities, education, clean water and electricity are available to over 90 percent of the population; and literacy rates, which stood at 50 percent in the early 1970s, are over 80 percent today. Mining accounted for a massive 35 percent of GDP and over 80 percent of exports in 2005.

In 2004/05, Botswana's economy grew by a healthy 8.3 percent, largely due to strong performances in diamond mining (the average real GDP over the past decade has been between 4 and 8 percent). Yet the sector only provides for 3 percent of formal employment. The government, on the other hand, which has richly benefited from diamond revenues (that make up over 60 percent of its revenue), provides 39 percent of all formal employment in Botswana.³⁵ Botswana's 'crucial moment' came in 1995, when Setse Khama won elections – for the future of Botswana depended on decisions made by Khama and his administration. Unlike other African leaders, Khama adopted pro-market policies over a wide front. His new government promised low and stable taxes to mining companies, liberalized trade, increased personal freedom, and kept marginal income tax rates low so as to deter tax evasion and corruption. In addition, Khama preserved the Kgotlas (The Kgotlas were indigenous institutions—19th

³⁵ Article published in the Business in Africa Magazine, June 2006

century chiefs held town meetings, with their people; these gave all adult males an opportunity to criticize and advise the chief) and many elements of customary law (see Michael Clement, Center for Global Development: How did Botswana Avoid the Resource Curse?). The policies initiated by Khama, and continued thereafter, provided a stable environment and showed hospitality to Foreign Direct Investment (FDI). The country had a functioning democracy, encouraged freedom of thought and expression and is a racially tolerant society. The reason Botswana has nevertheless achieved such growth to date seems to be that it has sound institutions and good governance – and with regard to how Botswana has been successful in developing a solid institutional structure, IMF working paper WP/06/138 says that this is partly due to the private property area that Botswana modeled from its pre-colonial political institutions, to the 'limited' British colonialism, the strong political leadership had since independence and the elite's desire to reinforce institutions.

Table 5: Governance Research Indicator Country Snapshot (GRICS), 2002

	B	L	SA	N	SW	SS	LIC	MEC	HIC
Voice and Accountability	0.7	0.53	0.66	0.75	0.28	0.42	0.38	0.57	0.82
Government effectiveness	0.78	0.57	0.69	0.52	0.64	0.45	0.40	0.59	0.82
Quality of regulations	0.66	0.40	0.48	0.59	0.36	0.30	0.27	0.42	0.77
Rule of Law	0.72	0.44	0.59	0.66	0.50	0.38	0.34	0.51	0.85
Control of Corruption	0.62	0.39	0.47	0.51	0.36	0.29	0.25	0.39	0.76

Source: IMF Working Paper June 2006

B=Botswana; L=Lesotho; SA=South Africa; N =Namibia; SW=Swaziland; SS=Sub Sahara; LIC=Low Income Countries; HIC=High Income Countries

According to the Governance Research Indicator Country Snapshot (GRICS) database as developed by Kaufmann, Kraay, and Mastruzzi (2003), Botswana enjoys relatively good governance by regional and global standards. The GRICS indices cover six dimensions of governance: Voice and accountability, political stability, government effectiveness, regulatory quality, the rule of law and control of corruption.³⁶ Four aspects of governance seem to be particularly important in connection with natural resource management.

First, voice and accountability, measured via the political process, and also civil liberties and political rights – which indicate an ability to discipline those in authority when it comes to resource extraction issues. Botswana has done particularly well in this aspect of governance. International observers praised as free and fair the 2004 national elections; and this is quite different to the prevailing situation in Tanzania, where any ability to discipline the authorities as regards resource extraction is almost non-existent. Secondly, it refers to government effectiveness in Botswana, as measured by the quality of public services and the competence of civil servants. Botswana's use of mineral revenue has kept an eye on an implicit self-disciplining rule - the sustainable budget index – and any mineral revenue is supposed to finance investment expenditure defined as development expenditure and ensure spending on education and health - this is contrast with Tanzania, where all mineral revenues go into the general budget.

Thirdly, natural resource development must involve a long-term relationship with all private parties, while market-friendly policies like price controls and excessive regulatory burdens are undesirable here. Normally, contracts related to natural resources commonly run for more than 10 years. The term for diamond-mining leases in Botswana is 25 years. The quality of Botswana's regulations is generally acceptable. In the mining sector, the government of Botswana holds 50 percent of shares in Debswana, the largest diamond company in the country; and the Ministry of Minerals and Water Resources has direct responsibility for natural resource regulation and management generally. In Tanzania, the government has opted *not* to hold shares in mining projects, though it has provided many incentives under the fiscal stability

³⁶ IMF working paper; WP/06/138 June 2006

package and via special agreements that the Minerals' ministers arrive at with mining companies. Thus, the government there does not hold shares in mining firms, and fails to collect taxes; while there is the fact, too, that local investors lack the capital to be able to take advantage of potential business.

Finally, anti-corruption policies are essential to a fair and transparent distribution of resource benefits. In Botswana, corruption in the public sector is not a serious problem. The budgetary and procurement process is relatively transparent. An independent anti-corruption authority - the Directorate of Corruption and Economic Crimes, established in 1994 - has the authority to report corruption cases directly to the president. The Constitution also makes the Attorney-general independent of the government. This anti-corruption framework is conducive to successful resource management in Botswana. (Did Botswana Escape the Resource Curse? (IMF Working Paper: WP/06/138 June 2006). In Tanzania, however, the anti-corruption body lacks authority.

If Tanzania wants to replicate Botswana's experience, therefore, the starting point should be to bring into effect good governance policies.

CHAPTER 10

10.1 An Agenda for Change

This policy paper intends to point the way to good governance and an ending of the “resource curse” in Tanzania. It has taken a look at program reforms, how government works and is organized, existing rules, institutional building and more. What one has to do is to launch an agenda for change, however. One way to begin this is via the establishing of two bodies, namely (A) a Mining Review Independent Committee and (B) a National Integrity Working Group, which will bring together all stakeholders within government (the executive, public officials, anti-corruption bodies, the judiciary, parliamentary committees etc.) along with coalition partners from outside government (from civil society and the private sector, religious leaders, professional bodies, and international actors).

Committee A should concentrate on two areas:

- Review Policies and Regulations (RPR), things which affect the Tanzanite industry, the mining sector and investments in general.
- Review Protocols and Internationally Acceptable Standards (APIAS), to help handle and monitor Foreign Direct Investments (FDI) in the most equitable and effective way.

while Committee B should concentrate on:-

- Developing strategies for building up an effective National Governance and Integrity System (NGIS)

These groups could:

- Agree that poor governance is an important issue, and seek to win the support of all major political groupings so that work towards commonly-agreed objectives can begin; also, take a look at the existing framework and identify areas needing reform so as to develop an overall plan that has in it short-term, medium- and long-term goals (including a public awareness-raising program), which assigns responsibilities for follow-up action, and which reports back to the working group.

- Publicize the establishment of the working group and its overall plan - and solicit inputs from the wider public. Continue by seeking endorsement of the plan from the political leadership.
- Hold regular meetings and give appropriate publicity to its work, paying particular attention to achieving public confidence. Decisions that have to be made during meetings will require a time framework as well as clear, effective and responsible implementation and monitoring/evaluation schedules
- Post the national action plan onto a website and generate local media interest in covering progress made along with success stories – and there should be no self-pitying as regards failures made.
- As reform programs involve a range of actors, the government needs to appoint an influential minister so that there is a political figure who is clearly responsible and who is well placed to keep an eye on the variety of issues being discussed.
- Work to generate both top-down and bottom-up pressure related to corruption and its workings, both within and outside the public sector.
- Ensure that all involved parties appreciate that the task is long-term; and while there may be some quick victories (as the problem is big) we propose that the time framework should not be shortened. When the strategy has been fully developed, the government should be ready to implement it, with goodwill. But it should be borne in mind that results will be gradual, so reviews will have to take place periodically until good governance has been arrived at.

10.2 A Fear of Vested Interests

The task will then be how to overcome vested interests. It appears that there are two groups - one favoring policy change and the other resisting not only these changes but also holistic/integrity reform in general. Resistance might come from corrupt foreign mining firms and their respective diplomatic officials, from middlemen in the mining sector, smugglers, some figures in the executive/persons at the top of the government set-up and in the ruling party, retired government officials with vested interests in mining firms, stakeholders from the private sector, and others with vested interests (particularly those seeking a way in for multinationals). It might also include think-tanks, whose livelihood depends on envelopes from corruption. Such persons are powerful and have resources, and they can influence the system, deciding who should be minister or

even a future President. While the group favoring reform is made up of the public at large, MPs, local investors, Civil Society, Diplomatic officials who propagate real democracy and good governance, International NGOs and academicians. So these are the two forces. As to who might win will depend on which side the President stands – for it the President wishes to opt for true reform, he will have to overcome three forces: pressure from his own ruling party and some private sector elites in, from syndicates sent in by external partners and, finally, from mining companies.

10.3 Proposed Steps

For the government: It should initiate public consultation workshops to seek a consensus with citizens on the most feasible approach to be taken to address the resource curse. It should encourage the participation of non-state actors (NSAs) in decision- and policy-making. Consensus meetings should be organized to draft strategy and the steps to be followed.

For mining companies: They should seek to avoid corruption or the paying of bribes, and pay for community-based development projects, their taxes and compensation to any relocated people. They should be prepared for positive changes...

For NSAs: Non-state actors should initiate public awareness campaigns to look at abnormalities existing in the mining industry, develop anti-resource curse strategies, have consultations with the government and have meetings with government decision-makers and donors. NSAs will be the entities that create a pressure for change. Yet they must be careful in relation to NGOs and think-tanks (which work as a form of public relation for donors and for irresponsible government officials).

International actors: They should facilitate any positive moves made having the goal of good and open governance, and will have to accept that they have responsibilities in the country, which is the price they will have to pay for the opportunities they have to make profits there.

Conclusion

This study has come to the conclusion that poor governance in the Tanzanite and in the mining sector at large has exposed the resource to large scale curses, including the Al-Qaeda link controversy, mismanagement and organised resource sabotage by unscrupulous dealers taking advantage of the weak system. Poor governance has created room for an endless crisis in the sector and has created a lucrative environment for vandalism by untraceable dealers who are prone to dealing with illegal traders like the network of unscrupulous investors, mafia, smugglers and the like. Whilst it is proposed to overhaul the National Integrity System, here emphasis has been placed on tackling political corruption, especially within the executive department. Agenda for change should be the entry point in looking for ways to address the resource curse and to initiate holistic integrity reform. All stakeholders should be taken on board as interested parties.

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