



Assessment Report Summary

Complaint regarding MIGA's guarantee of the Bulyanhulu Gold Mine, Tanzania

1. Introduction

This assessment report summary deals with a complaint filed with the Office of the Compliance Advisor/Ombudsman in relation to the MIGA guarantee of Bulyanhulu gold mine near Kahama, Tanzania.

The complaint was filed by the Lawyers Environmental Action Team (LEAT) on behalf of the Small Scale Miners Committee of Kakola, Tanzania.

This assessment report summary is released to all parties to the complaint at the same time. This is a change in the standard procedure of the CAO, in order to ensure that the assessment is available to all those affected by it, and to ensure that, to the extent possible, the assessment report can help parties to move forward and to resolve issues where feasible and desirable. Given the confidentiality of a number of sources of information and substantiation, this document is a summary of the information in the assessment carried out by the CAO. It states the findings of the CAO on the major issues raised in the complaint. The original complaint is attached as an annex to this summary. It has been released into the public domain by the complainant.

2. The project

Bulyanhulu is an underground gold mine situated approximately 125 km southwest of Tanzania's second city, Mwanza. The site is named for the Bulyanhulu river. The 54 square kilometer property has passed through many hands in the last ten years. The area in which the property is found has been for many years an area where small scale miners have been very active.

Water for processing the ore is supplied by a buried pipeline from Smith Sound at the south of Lake Victoria. The tailings are dewatered and delivered as paste to backfill underground cavities or into a tailings dam. The paste process has significantly reduced the amount of water used in the mine and the amount of tailings produced.

In 1994 the Government of Tanzania (GOT) granted a prospecting license to Kahama Mining Corporation Limited (KHMC) a subsidiary of Sutton Resources. In June 1999 Barrick Gold obtained the property by purchasing Sutton Resources.

In July 1995 GOT decreed that all small scale miners should leave the area, but action was not taken to ensure that the land was vacated. The GOT's decree was challenged in court by the SSMC. On July 30, 1996, the GOT announced a process of clearance, and issued a final decree that the concession area be vacated by "illegal miners." The decree was challenged by the SSMC and an injunction was issued on July 31st. This was overturned on August 2, 1996 and the process went ahead. This was enforced throughout August 1996.

In 1998 Sutton Resources approached IFC for funding. In September 1998, IFC sent an environmental and social appraisal mission to the site. Barrick's acquisition of the property ended IFC's potential involvement in the project. However in 1999 Barrick approached MIGA for political risk insurance. The guarantee was put to the Board on December 21, 1999.

3. The complaint

LEAT, on behalf of the Small Scale Miners Committee, filed an extensive complaint consisting of a complaint letter and supporting documentation. The complainant allowed the CAO to share the letter with MIGA, but not with Barrick. Subsequently LEAT made the complaint letter public (Annex 1).

The CAO proposes to the complainant that to the extent that nothing in the supporting documentation breaches personal confidences, to make the supporting documentation available to the other complainants so that they may satisfy themselves that they have taken all steps to meet specific concerns. CAO awaits instruction from the complainant as to whether it may or may not disclose the supporting documentation. Both MIGA and Barrick Gold have asked if they may see the supporting documentation so that they may respond to any points directly.

Individuals within LEAT have been charged with sedition by the Government of Tanzania. Having read the charges, it is the position of the CAO that those charges are not related to LEAT's position as a complainant before this office. Without commenting on the specifics of the charges or the legal processes underway in Tanzania, the CAO urges all sides to make public any information they may have that sheds further light on the events of July-August 1996; this can help resolve the continual tension around the allegations at the core of the complaint, so that the mine and the people of Kakola and the surrounding area are able to live in peace.

As the Compliance Advisor/Ombudsman of IFC/MIGA, the mandate of this assessment is to look at issues as they relate to MIGA's involvement in the mine. To the extent that prior events may have been issues for concern at the time of due diligence, in order to process the guarantee, they are considered here. However, this assessment is that of the CAO in relation to the complaint. The CAO did not undertake a full scale inquiry, nor did it engage in the techniques of human rights investigation which would be necessary to try and prove or disprove many of the allegations repeated in the complaint, such as the exhumation of closed mine shafts, for example. One of the demands of the complainants is that an independent, impartial investigation into the events of July-August 1996 be convened.

The complaint covers events relating to the movement of small scale miners off the concession in July 1996; the transfer of the concession to Barrick Gold upon their

acquisition of Sutton resources; subsequent movement of people in 1998; MIGA's guarantee in 1999; and allegations of activities that would be considered out of compliance with the environmental and social policies of MIGA as part of the World Bank Group.

This assessment divides the complaint into three temporal periods:

- Events prior to and including 1996,
- Movements of people in 1998, and
- The due diligence process of MIGA as it prepared for the 1999 guarantee, and present day activities of the mine.

Events prior to and including 1996 in the complaint included: the failure to secure an appropriate license; the manner in which land clearance took place in July--August 1996; the legality of evictions in the process of clearance; the extent to which the operators at the time did or did not abide by Tanzanian law and rulings of the Courts relating to the clearing of the land; absence of an EIA prior to entry into and acquisition of the Bulyanhulu area and prior to evictions; absence of adequate public consultation before entering into the area; that the EIA and social development plans that were furnished to GOT and MIGA are inaccurate and incomplete; that subsequent environmental information supplied to GOT and MIGA do not note process changes that may have material impact; the forcible eviction of complainants when project sponsors took over the project area; that GOT and project sponsors failed to finance/plan resettlement; and that GOT and sponsors paid no compensation for loss of property and livelihoods.

Complaints relating to events of 1998 include similar allegations as those above relating to the manner of consultation, the process of eviction and land clearance, resettlement and compensation.

Complaints relating to MIGA's processes include: allegations that MIGA failed to carry out a thorough and competent due diligence investigation regarding the facts surrounding the project sponsor's acquisition, possession and operation of Bulyanhulu to establish the veracity of the information submitted and the soundness of conclusions drawn by project sponsors prior to making the decision to provide political risk insurance; and that MIGA failed to prepare and/or disclose to the complainants and other parties all material information pertaining to the facts and circumstances surrounding the project sponsor's acquisition, possession and operation of the project in spite of repeated requests to do so.

The complaints relating to the present day operation of the project included allegations that there is continuing use of force and or threats of the use of force to evict people in the area of the mine; interference with people in the area's right to live peaceably and to enjoy their property rights; prevention of use of agricultural land and stopping building of houses; that expropriation of land has led to the economic degradation of the area of Bulyanhulu, in particular Kakola; that there exists a deliberate strategy to undermine the functioning of Kakola as a civic and commercial center and that is having a severe impact on the surrounding communities; and that there is a failure to create employment opportunities for local people.

Beyond these three baskets of issues and allegations within the complaint the complaint also challenges the wider rationale for the World Bank Group to support these types of foreign direct investments in Tanzania.

4. The events of July 1996.

The complaint repeats allegations regarding events of late July and early August 1996 that include misconduct and murder made against government authorities and the mine. These allegations are persistent and have been repeated by news media and international non-governmental organizations.

The CAO has no power or mandate to investigate allegations made against the state of Tanzania. The events of 1996 took place at a time when the World Bank Group had no interest in the operations and more than three years before MIGA offered a guarantee. However, in so much as the allegations provided, at the very least, a reputational risk to MIGA in its decision to offer a guarantee, the CAO was interested to establish the activities of MIGA and MIGA's client, Barrick Gold, to satisfy themselves as to the basis for the allegations as they carried out their due diligence.

The allegations made and repeated by LEAT in its complaint to the CAO are not new. However, LEAT asserts that it has new evidence, namely a video which, it states, is a contemporaneous record of bodies being exhumed from small scale miners' pits. These pits were allegedly plugged and filled in as a result of the closing of the land by the concession holders, Sutton Resources, in the one-month period following July 30, 1996 after the GOT announced that the land should be vacated.

The CAO cannot be sure that the video shows that which LEAT maintains it shows. The location, date, timing and detail cannot be verified. Therefore it is unclear that the video shows small scale miners suffocated as a result of the clearing of the land in the days following the July 30, announcement. Further, the CAO found witnesses and other contemporaneous documentation that would refute the version of events that LEAT contends the video supports. During the field mission to Bulyanhulu small scale miners introduced to the CAO team who knew of the video were sure of the location where the events were filmed and took the CAO team to the spot. However, they could not be sure that the miners shown being dragged from mine shafts had been killed as a result of that land clearance and were unable to support the version of events that LEAT alleged the video revealed.

LEAT alleges that the small scale miners had title to the mineral resources in the area of the Bulyanhulu mine and that these resources had been promised to the small scale miners committee over years by successive individuals in political office in Tanzania.

It is clear to the CAO that the project (concession) area was most probably promised at different times and by different people both to the Small Scale Miners Committee and to mining companies. However, there had been an ongoing legal process in Tanzania over Sutton Resources' tenure and the rights of small scale miners. This process was widely known in the area. It seems clear that when the final announcement was made in Kakola by the government representative on July 30, that the concession area be vacated and "illegal miners" be evicted, many small scale miners had done so already. Presumably, the miners understood what was to happen, and moved on to other areas where small scale mining was viable.

In addition to disputing the right of Sutton Resources to exploit the concession, LEAT alleges that the manner in which the land was cleared on July 30 and following days resulted in 52 unnamed individuals being buried alive in the pits that they worked. They also assert that the manner in which the land was cleared led to between 20,000 and 600,000 people being moved off the land in a period of days.

While the area was historically one of small scale mining, the number of miners and dependents living there fluctuated over time. In the gold rush of the early 1990s, there are accounts of hundreds of thousands of people living in the area. Aid and development organizations refer to numbers in the hundreds of thousands in the early 1990s. As the miners exhausted the seams of gold that could be reached by their small scale mining—up to 10 meters below the surface—miners and their dependents moved away. With the introduction of water pumping equipment into the area, mining again increased as pits could now descend to 60 meters. However, both as a result of exhausting supply and with the knowledge that eventually the area would be sealed off for the Kahama Mining Corporation, and that small scale miners would be moved off the land, there were probably only a few thousand people on the land by the time the July 30 decision to move ahead with the land clearance was made. The mine asserts that there were probably only a few hundred. In Amnesty International's report to the Tanzanian government on Bulyanhulu, they assert that there were perhaps 2,000 people affected by the decree delivering the eviction order. The CAO concludes therefore that some people were still working in Bulyanhulu on July 29 and that they left for other mining areas after loading their wooden piles, pumps and other equipment onto trucks. The CAO is confident that the number is somewhere between 200 and 2,000 people.

The extent to which pits were active in the summer of 1996 can be substantiated by aerial photography which shows many pits filled in and abandoned. There is no sign from contemporaneous photographs that there are hundreds or even tens of thousands of people on the land at this time. This presumably can be verified by satellite images if they are available for the area at this time.

The Small Scale Miners Committee has provided to the CAO a list of pit owners and has stated that each pit employed up to 70 people and their dependents, so approximately 300 people were associated with each pit. However, the list of pit owners is not dated and as noted above, many pits can be seen to not be in use at the time. The Committee itself agreed that not all pits listed were active at the time of the land clearance. Furthermore, survey data from Sutton Resources, and estimates by Tanzanian officials in Kahama would also seem to indicate that there were far fewer than the hundreds of thousands stated in the complaint. Local people in Kakola also confirmed that many people had left before the land was cleared in August 1996.

The numbers game has become a compelling part of the alleged story of Bulyanhulu; figures from studies of the area have been embellished and exaggerated over the years. Staff of Sutton Resources have photos showing remaining small scale miners leaving the Bulyanhulu area following the July 30 announcement. The picture painted by the complainant of movements of thousands of people, if not tens of thousands, in caravans in the space of just a few days, would have attracted attention of central government and international agencies in the area. Yet no one can substantiate such a large internal displacement. It would have been akin to refugee movements in the Great Lakes just one or two year's earlier.

Assessment Report - Bulyanhulu

On July 30, 1996, following contested court cases, GOT minister of energy and mines ordered that all illegal miners on the Bulyanhulu property should stop mining by sunrise the next morning (July 31), that they should move their mining equipment by August 7 and that by August 30 they should have vacated the property. The CAO has no mandate to opine on the validity of this decree.

This decree was announced in the town of Kakola and throughout the area by government officials, to ensure that people were aware of the decision. People also reported that they learned of the news from radio broadcasts. This decree, confirmed in its detail by many people in Kakola, does not state that pits will be plugged and filled in on July 31 or August 1, 1996. Documentation from the mine shows that the plugging and filling in of mine shafts did not begin until the land was clear – on August 7. Receipts for men working the only earth mover involved in the clearance show the number of pits filled per day. It has been alleged by LEAT and its international allies that the absence of any other documentation from the mine shows that the information has been lost or destroyed. It is alleged that mine shafts were filled in immediately following the decree, and that the operation was rapid, trapping miners underground as they did not have enough time to vacate.

The CAO, after reviewing the versions of the SSMC, LEAT, speaking with local people, mine staff, eyewitnesses, consulting police reports, and reviewing documentation provided by Barrick Gold, has concluded that the filling in of mine shafts took place some days after the decree, that it was a deliberative process and that only one earth mover was used. Therefore, the process was only as speedy as the constraint of one earth mover would allow. There is no corroborating evidence to support the statements of some members of SSMC on the way in which the pits were filled in. There are however, many pieces of evidence and testimony in the area to refute SSMC's allegations.

Small scale mining is a dangerous occupation the world over. Up to the vacation of the land, there is no doubt that many miners died over the years due to fumes and mine collapses. The complainants do not deny this and note that they would often notify officials of collapses and deaths. In some cases bodies of those killed underground could not be recovered.

The system of small scale mining was one where a pit owner paid for the use of a water pump (after their introduction in the area in 1995) and then paid 20% of their earnings to the SSMC, which then distributed the money to the ward. Opinions on how benign the activities of the SSMC were differ. For some members of the SSMC, and those now involved in protest against the mine and leading demands for compensation for loss of earnings, loss of access to resources and for disruption, the SSMC operated as a union, albeit one with exclusive rights to organize in the area. For others, the SSMC is likened to a racket using coercive methods to extort funds from pit owners. The CAO heard both characterizations from locals in the area. The amount of gold smuggled over the border into neighboring Kenya cannot be accurately assessed by the CAO, but it seems clear that significant amounts were. That the SSMC knew of this, if not actively organized it, seems not to be in doubt. This is significant in dealing later with claims that the mine is "stealing" Tanzania's wealth through foreign direct investment.

The picture built up through interviews with the leadership of the SSMC and with other local people, as well as with the mine and personnel at the site in 1996 and before, is that the SSMC was well organized – and certainly their response in 1996 to move for an

injunction to stop the order to clear the land would seem to indicate that. The news was not unexpected. This sits at odds with the portrayals of chaos that ensued with the final demand to leave the land as issued on July 30.

The issue of compensation paid to small scale miners at the time of the order to vacate the land in 1996 is one between the GOT and the small scale miners and falls within the GOT's exclusive jurisdiction. At the time the mine was not a project of the World Bank group and while best practice in resettlement may have been voluntary, no World Bank Guidelines could be held to apply.

The complaint alleges that 52 people were killed in the process of land clearance, trapped alive in their pits by the mine and local administration staff as they plugged and filled the mine shafts. This is an allegation of premeditated murder. There cannot be a more serious allegation. The CAO has asked for a list of the names of the 52 people who were killed in the first days of August 1996 as stated in the complaint. Neither LEAT, nor the SSMC have been able to supply the list of names. Amnesty International has recognized that the evidence for the deaths of 52 people relies on accounts supplied by people in the SSMC who were not present in the area at the time. They too suggest that a list of the names of those killed is a necessary place to begin any proper investigation within Tanzania. The CAO is left to reflect that if a list cannot be produced by local people, the local administration, or the SSMC that is the complainant in this case, this casts doubt on the veracity of the allegations that these people died as a result of the filling in of mine shafts in early August 1996.

The CAO team met with local people who stated that their relatives were among the 52 killed. Yet their neighbors took pains to tell the CAO team that these relatives were alive and well or in one case had died in a mine accident prior to August 1996. In other cases, the Tanzanian press has found people alive in other parts of the country, who it is alleged died at this time.

The complainant and international organizations have asked that there be an independent inquiry into the events to establish if there was a crime committed and human rights abuses took place. The Tanzanian government has on successive occasions made clear it does not think there is a case for such an investigation.

The complainant has argued that the video provided the substantiation necessary for such an inquiry to be held. The CAO, without a list of victims, with a video that cannot be verified as showing what it is alleged to show, and with so much contradictory evidence as to what happened on the days concerned, much of it coming from local people themselves, does not find that the case has been made for the CAO to recommend an independent inquiry. The decision rests with the Tanzanian government.

Amnesty International has been the most auspicious of the voices calling for an independent inquiry. However, the CAO notes that Amnesty International, never having investigated the allegations itself, and never having been to the site or meeting with local people, eyewitnesses, the company or others, has distanced itself from its original reproduction of the allegations as fact in the 1997 Annual Report. It now repeats the allegations as allegations and calls for an independent inquiry to discover the truth. The CAO after reviewing the material that is available has not found that there is a compelling case for an inquiry.

5. The events of 1998

In 1998, a round of resettlement took place that IFC noted in its back to office report, prepared by the team sent to carry out a pre-appraisal visit. This resettlement, as with that of 1996, was not carried out in accordance with the World Bank Group's involuntary resettlement policy, but at this time, there was no World Bank Group interest in the project. It is unclear the extent to which problematic past resettlements were considered by MIGA and guidance was given on how these resettlements may be revisited or aspects of the involuntary resettlement practice introduced by the project sponsor at the time of the guarantee. MIGA may have suggested that the project sponsor track those people who were resettled to ensure that they are no worse off after resettlement, even though the resettlement took place prior to MIGA's engagement. But this was not the case, and the mine was unaware of the details of the involuntary resettlement policy as implemented by IFC at the time of the CAO's field mission.

The CAO found families living in poor conditions who were resettled in 1998 to outside the mine's perimeter, but still on the concession. They assert that as they live on the concession they are unclear about what they may and may not do on the land. LEAT asserted that the mine was refusing to allow people to grow crops and that therefore these people were falling into greater poverty. The CAO did not find evidence of a coordinated policy or opposition by the mine to people living on the concession growing crops, but did find that there was insecurity within these families as they expected to be moved again in the near future and therefore were disinclined to plant and cultivate. There is clearly room for greater communication by the mine with these families still living on the concession and clarity on what they may and may do on this land and on their future status. The CAO raised these issues with the mine at the time of the field mission. This is the sort of issue that the CAO realistically expects MIGA to pick up in its supervision of Category A guarantees, but in this case it did not.

6. MIGA's process of due diligence

In September, 1998, an environmental and social appraisal mission from the IFC went to Bulyanhulu in response to a request from Sutton Resources for IFC financing. The project was provisionally assigned Category A. The mission also included investment personnel.

An Environmental Impact Assessment had been prepared for the mine by Norecol Dames & Moore in compliance with the GOT's regulations. The IFC team considered the EIA to comply with what was required by GOT. However, if it were to meet with World Bank Group requirements in operation at that time by IFC, the IFC team noted that a number of additional elements would be required and that measures in response to some issues would have to be upgraded. Specifically the IFC team noted that the upgrade of the road was not covered in the EIS; the water pipeline to be constructed from Smith Sound to the mine needed to be more thoroughly explored; and the issues of resettlement and compensation related to the pipeline, the tailings dam area and the mine, would all have to be dealt with; and that the EIS did not address the past issues of land clearance.

The IFC team noted in detail the remedies that would be required to bring the project into compliance with IFC policies and notes the reputational issues in the 1996 alleged

incidents. The IFC recommended an addendum to the EIA be prepared detailing what would be required along the themes outlined above.

With the acquisition of Sutton Resources by Barrick, IFC financing was no longer necessary. In July 1999 Barrick approached MIGA for insurance. MIGA approached IFC for background and was told that the IFC was no longer involved in the project. The CAO understands that conversations between the relevant personnel in MIGA and IFC took place informally and that MIGA staff were aware of the contents of the IFC report at the conclusion of its appraisal mission. However, beyond this, the CAO has been unable to find any correspondence from MIGA to Barrick Gold or to ascertain from MIGA or Barrick staff that the issues raised in the IFC back-to-office report had been acted on by MIGA. Notwithstanding that the project design may have changed from IFC- Sutton, to MIGA-Barrick and that Barrick may independently have taken care of many of the issues, the IFC back-to-office report itemized issues of concern to IFC, including around resettlement and past events.

MIGA has assured the CAO that it was comfortable with Barrick's assurances on these matters. The CAO has no reason to doubt Barrick in this matter. At issue however is whether MIGA sought to or felt it should seek independent verification of critical issues surrounding the viability of a Category A project for guarantee. The purpose and intent of environmental and social due diligence in the World Bank Group is to provide that independent verification, precisely so that the Group is not left to "trust" the sponsor.

Finally, the IFC's back-to-office report cannot qualify as "due diligence" and IFC made clear to MIGA its status. MIGA has asserted to the CAO that it based its work on IFC's and yet it does not seem to have taken the issues in the IFC note into account. The CAO therefore strongly suggests that the practice of IFC carrying out due diligence or IFC work product being used as a proxy for MIGA's due diligence be formalized and is understood by all sides.

7. The present day – allegations of intimidation, interference and undermining of community.

The CAO was unable to find any basis for the allegations of present day intimidation, interference or undermining of the community by the mine. Clearly the development dynamics around an investment of this type and character in an area devoid of other economic opportunities and social services are difficult and the challenges severe. The mine is however stepping up its work in partnership with the community and other NGO partners and with the government in the region.

Kakola, located outside the main gates of the mine, is a community that is suffering the trends of communities in mining areas. The relative wealth of the town is changing from the days of small-scale mining activity, and a development plan and vision for the community should be something developed by community leaders with the partnership of the mine and local authorities. Stopping the spread of HIV/AIDS and other sexually transmitted diseases, and tackling the problems that result from alcohol and violence is the responsibility of all, but the CAO found that the mine was more than aware of its role and responsibility and considered that its programs and partnerships were important. The challenge for all, and especially for the World Bank Group, is how to harness the

Barrick investment in the area to bring in investment in other aspects of economic development and social services, to improve the lives of those people in the district around the mine.

8. Conclusions

The CAO is concerned at the informal arrangements that exist between IFC and MIGA regarding due diligence. It is clear that as sister organizations within the World Bank Group, collaboration should be encouraged. However, when IFC performs the consultants' role in carrying out MIGA's due diligence, it should be covered by an agreement that waives it of responsibility if its recommendations are not acted upon.

The CAO is also concerned that MIGA did not carry out a more thorough review of the project following IFC's pre-appraisal visit. Simply reviewing documents without a site visit, especially with changes in the project and with a gap in time between IFC's and MIGA's reviews, is inadequate. In this case MIGA has been well served by a mine and a project sponsor that appear to be committed to best practice. It is for this reason and not as the result of the supervision or due diligence by MIGA that the mine is performing to environmental and social standards that are in line with those expected of an investment of the World Bank Group.

To date no environment or social specialist on contract to MIGA has visited Bulyanhulu. Moreover, in conversations with the mine management and staff there was an expression of interest in other examples of best practice in social development, areas where the World Bank Group positions itself as a leader. MIGA should examine its capacity and willingness to support its clients to replicate and develop best practices and to act as a source of information and support where clients are inclined to do so.

The CAO does not believe that the project merits a compliance audit and was impressed with the way in which the mine was developing its social and environmental capacity. The questions of revenue management and distribution and the disparities between an investment of the size of Bulyanhulu in one of the poorest regions of Tanzania, and how maximum benefits can be captured for local people is a perennial one for IFC and MIGA. Once again, there would seem to be room for more coordinated approaches on this issue between MIGA and the World Bank and other agencies active in Tanzania. Without guidance from MIGA, Barrick Gold has established meaningful partnerships with international aid and development organizations to reinforce its social development activities and these should be supported and their development impact monitored.

The CAO does not believe that it can play any further useful role in this case. The CAO respectfully urges the complainants and their international counterparts to assess carefully the way in which they use information and the emphasis they place on substantiation. Advocacy on behalf of local people who may lack the means to make their voices heard to government and international authorities has been a tried and tested method of forcing change. International advocacy NGOs in the environment, development and human rights fields have a proud record of propelling the World Bank Group towards more rigorous approaches to environment and social assessment among other policy initiatives. Similarly, human rights NGOs play an important role in acting as a global conscience and have brought about changes in attitudes in the private sector, including in resource extraction industries. But the CAO believes there is a responsibility that goes with this role.

Making allegations that cannot be substantiated and repeating allegations that one knows not to be true may be considered legitimate tactics in a campaign or struggle. Nevertheless, there is a price that is paid. The price is that the accuracy, strength of argument and eventually the legitimacy of NGOs involved in such work will be challenged. The risk is that the currency of civil society pressure is debased. This is bad for the role of civil society, bad for the reform of the World Bank Group that many actors seek, and ultimately bad for the people in whose name the allegations are made, for they are at the end of the day manipulated and even more voiceless. Who will listen to them now?

To repeat an allegation that one knows not to be true, especially an allegation of murder, has consequences. It has consequences on the business reputation and trading ability of a private enterprise and on the individuals concerned. There may be legal consequences to such actions. The CAO is distressed that some NGOs have felt that they may act with impunity in this case. In fact the CAO believes there is no impunity. The consequence is a backlash against the “non-accountability” of NGOs. This is dangerous territory as there are still many interests that would wish to challenge the role of civil society in the development process.

The Lawyers Environmental Action Team (LEAT) has an important history in bringing public interest law in the field of environment to East Africa. However, in this case, the CAO has been concerned that LEAT has seemed to feel free to pick and choose the ethics codes from which it has worked. First, in the process of an Ombudsman the relationship between the Ombudsman and the complainant is privileged and can only develop with trust. The CAO at times felt that this trust was absent and concluded that the complaint before the CAO was one of a scattershot of approaches mainly oriented around maximum publicity for individuals within LEAT and their domestic agendas. The rash of press stories which LEAT acknowledged it coordinated, hampered the work of the CAO. Furthermore, admissions by LEAT of their desire to incite hostilities around the mine for maximum advantage led the CAO to be concerned for the safety of individuals working on this case, outside the CAO Team. A file before the CAO is not a fee earning enterprise and the CAO was saddened to learn that LEAT has been asking for payment from local people for their services in campaigning. The CAO covers all costs of assessments and is grateful to LEAT for arranging some of the logistics of the field mission, the costs of which were met by the CAO.

Annex 1 : Complaint



LAWYERS' ENVIRONMENTAL ACTION TEAM
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We Lawyers' Environmental Action Team ("LEAT") lodge a complaint concerning the Bulyanhulu Gold Mine project. This complaint is made on our own behalf and on behalf of our clients, communities of former small-scale miners and landholders of the Bulyanhulu area organized under the Bulyanhulu Small-Scale Gold Miners' Committee ("the Bulyanhulu complainants"). LEAT is a public interest environmental law organization that has been working with and on behalf of the Bulyanhulu complainants. A letter conferring upon LEAT the authority to represent the Bulyanhulu complainants in this complaint is annexed hereto and marked "A" to form part of the complaint.

LEAT and the Bulyanhulu complainants can be contacted through the following addresses, telephone and fax numbers and e-mail:

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The basis of the complaint is as follows:

Project Description

1. The Bulyanhulu Gold Mine in Bulyanhulu area of Kahama District, Shinyanga Region is a large-scale underground gold mine that also produces silver and copper.
2. The Multilateral Investment Guarantee Agency ("MIGA") is involved with the project through the provision of a political risk guarantee in the sum of United States Dollars 172 million approved in August 2000.
3. The project sponsor is Kahama Mining Corporation Limited of Dar es Salaam, Tanzania, which is a wholly-owned subsidiary of Barrick Gold Corporation of Toronto, Canada ("the project sponsors").

Background to the Complaint

- a. The Bulyanhulu complainants formerly lived and worked for gain as small-scale miners, small traders, peasant farmers and livestock keepers in an area called Bulyanhulu in Kahama District, Shinyanga Region in central western Tanzania. However, in September 1994, the project sponsors laid a claim over the Bulyanhulu area on the basis of a license granted by the Government of Tanzania on August 5, 1994, a copy of which is annexed hereto and marked "B" to form part of this complaint.
- b. Relying on this license, the project sponsors caused the Canadian High Commission in Tanzania to put diplomatic pressure on the Tanzanian Government to evict the Bulyanhulu complainants. (The Complainants shall refer to documents obtained from the Canadian Department of Foreign Affairs

- and International Trade (DFAIT) under the Canadian Access to Information Act and collectively marked "C" in support of this contention.)
- c. The project sponsors also commenced judicial proceedings against the Bulyanhulu complainants in the High Court of Tanzania to have the Bulyanhulu complainants evicted by judicial orders. (Copies of the ruling and order of the High Court of Tanzania in these proceedings is annexed hereto and marked "D" to form part of this complaint.)
 - d. Following adverse ruling by the High Court of Tanzania, the project sponsors first appealed to the Court of Appeal of Tanzania (Tanzania's highest appellate court) but later withdrew the appeal and reverted to using diplomatic and administrative pressure to evict the Bulyanhulu complainants. (Copies of an application by the project sponsors' lawyers to the court of Appeal of Tanzania and the corresponding order of the Chief Justice are annexed hereto and collectively marked "E" to form part of this complaint.) The Bulyanhulu complainants shall also make reference to contemporaneous press reports copies of which are annexed hereto and collectively marked "F" to form part of this complaint.
 - e. On July 30, 1996, the Tanzanian Government issued orders that the Bulyanhulu complainants should vacate their lands, settlements and property within 24 hours. Paramilitary police units and demolition equipment belonging to the project sponsors and operated by their employees were then stationed in the Bulyanhulu complainants' villages and settlements. The next day the eviction of the Bulyanhulu complainants and the destruction of their settlements and immovable property began and went on for much of August 1996. (See Annexes "C" and "F", and copies of videotapes taken by the project sponsors and the Tanzanian police annexed hereto and collectively marked "G" to form part of this complaint.)
 - f. In so doing, the project sponsors and the Government of Tanzania went contrary to the order of the High Court of Tanzania attached hereto and marked "D". The Bulyanhulu complainants shall also refer to official statements of the Tanzanian Government relating to the matters in question annexed hereto and marked "H" to form part of this complaint. The Bulyanhulu complainants shall, in addition refer to project documents prepared by and/or for the project sponsors and submitted to MIGA which are collectively marked "I" in support of this complaint.
 - g. The Bulyanhulu complainants were, thus, forced to leave the area and currently live in Kakola Village, Kahama Town, Mwabomba and Kezeria mining areas, all in Kahama District. Those who have remained in the Bulyanhulu area of which Kakola village is part have continued to live in fear of forcible and uncompensated eviction as correspondence between the project sponsors and the Government of Tanzania, and court documents all of which are marked "J" to form part of this complaint show.

The Complaint

4. The Bulyanhulu complainants have been, are being and/or are likely to be affected by social and environmental impacts of the project in the following ways:

Forced Evictions and Displacement When Project Sponsor Took Control of the Mine Site

- a. We believe that potentially hundreds of thousands of the Bulyanhulu complainants were forcibly evicted and displaced from the Bulyanhulu area when the project sponsors illegally and irregularly entered into the Bulyanhulu complainants' lands, settlements and mining areas with the help of the security forces of the Government of Tanzania.
- b. We believe that the project sponsors and the Government of Tanzania failed or neglected to plan, finance and implement any resettlement or relocation plan and to provide alternative lands or settlements or alternative sources of livelihoods for the Bulyanhulu complainants.
- c. We believe that the project sponsors and the Government of Tanzania failed and/or refused to pay any or adequate, fair, just and prompt compensation for loss of agricultural and grazing lands; destruction of settlements including residential and commercial property; expropriation of mineral rights and investment in mining equipment, machinery and mining shafts; and loss of income generated through employment in small-scale mining operations.

Ongoing Threats of Eviction and Displacement

- d. We believe that the project sponsors and the Government of Tanzania have continued to use force or threats of use of force to evict and displace additional numbers of the Bulyanhulu complainants.
- e. We believe that the project sponsor and the Government of Tanzania have continued to violate and/or otherwise interfere with the peaceful enjoyment of the property rights of the remaining Bulyanhulu complainants such as by preventing the Bulyanhulu complainants from productively using their agricultural and grazing lands; and prohibiting them from building residential and commercial houses in their existing lands and settlements.
- f. We believe that the project sponsors and the Government of Tanzania have failed and/or neglected to pay any or adequate, fair, just and prompt compensation for the violation of, and/or interference with, the peaceful enjoyment of the property rights by the Bulyanhulu.

Negative Impacts on the Economy of the Bulyanhulu Area

- g. We believe that the project sponsors destroyed the local economy of the Bulyanhulu area and even beyond, depopulated the Bulyanhulu area and the impoverished the Bulyanhulu complainants as a result of expropriation

- of agricultural and grazing lands; destruction of residential and commercial property and settlements; expropriation of investment in mining shafts, machinery and equipment and loss of employment opportunities;
- h. We believe that the project sponsors failed to provide comparable or better settlements; comparable or better sources of livelihoods in the form of economic activities and employment opportunities for the remaining Bulyanhulu complainants;
 - i. We believe that the project sponsors' investment does not help the national poverty alleviation efforts by its failure to contribute significantly and fairly to government revenue in the form of taxes, royalties and other charges.
 - j. We believe that having destroyed employment opportunities that were available prior to their acquisition of the Bulyanhulu area, the project sponsors have failed to create any significant or comparable employment opportunities thereby undermining the national poverty alleviation goals.

Project Sponsors' Failure to Observe Laws of Tanzania in Their Takeover of the Bulyanhulu Mine Site

- k. We believe that the project sponsors failed and/or neglected to secure a license that correctly and properly described the area of their concession;
- l. We believe that the project sponsors and the Government of Tanzania failed and/or neglected to follow proper procedures to extinguish and/or interfere with the property rights of the Bulyanhulu complainants;
- m. We believe that having decided to take the Bulyanhulu complainants to the Tanzanian courts, the project sponsors then failed and/or neglected to abide by the lawful orders and decisions of the Tanzanian courts;
- n. We believe that the project sponsors also committed acts or failed and/or neglected to commit acts complained of in paragraphs a-f as stated.

Environmental and Social Impacts Assessments Inaccurate and Inadequate

- o. We believe that the project sponsors failed and/or neglected to carry out any environmental impacts assessment studies and processes prior to their entry into and acquisition of the Bulyanhulu area and prior to the eviction and displacement of the Bulyanhulu complainants;
- p. We believe that the project sponsors failed and/or neglected to carry out adequate and meaningful consultations with the Bulyanhulu complainants prior to their entry into and acquisition of the Bulyanhulu area;
- q. We believe that the project sponsors commissioned, financed, published and submitted to MIGA, the Government of Tanzania and the general public environmental impacts statements, environmental management plan and social development plan that were materially inaccurate; and

contained erroneous, false and misleading information and conclusions concerning their acquisition, possession and operation of the Bulyanhulu Gold Mine.

- r. We believe that having later decided to make material changes to the design and the implementation of the project, the project sponsors failed to prepare, publish and/or submit to MIGA, the Government of Tanzania and the general public any additional environmental impacts assessment statements and/or environmental management plans concerning any material changes to the design and/or implementation of the project that might have significant environmental impacts to the Bulyanhulu complainants.

Non-Disclosure of Material Information

- s. We believe that the project sponsors failed to prepare for, and/or disclose to, MIGA, the Government of Tanzania and the general public all material information as to the facts and circumstances pertaining to the acquisition, possession and operation of the Bulyanhulu Gold Mine including all acts and omissions enumerated in the foregoing paragraphs.
- t. We believe that the project sponsors failed to disclose in environmental impacts statements, environmental management plan and social development plan submitted to MIGA, the Government of Tanzania and the general public the existence of the very serious allegations of human rights atrocities implicating the project sponsors and the Government of Tanzania as regards the manner of the project sponsor's acquisition, possession and operation of the project.
- u. We believe that the project sponsors failed and/or neglected to disclose and/or to acknowledge in environmental impacts statements, environmental management plan and social development plan the existence of any reports or information concerning any investigations of the allegations of human rights abuses against the Bulyanhulu complainants that may have established the innocence of the project sponsors and the Government of Tanzania.
- v. We believe that the project sponsors failed to and/or neglected to disclose to MIGA, the Government of Tanzania and the general public additional environmental impacts statements and/or environmental management plans, if any, concerning any material changes to the design and/or implementation of the project that might have significant environmental impacts to the Bulyanhulu complainants.

MIGA's Inadequate Due Diligence Investigations

- w. We believe that MIGA failed to carry out a thorough and competent due diligence investigation pertaining to the facts and circumstances surrounding the project sponsor's acquisition, possession and operation of the Bulyanhulu Gold Mine in order to establish the veracity of the

information submitted and soundness of the conclusions drawn by the project sponsors prior to making the decision to provide political risk guarantee for the project.

MIGA's Violation of its Information Disclosure Policies

- x. We believe that MIGA failed to prepare and/or disclose to the complainants and other interested parties all material information pertaining to the facts and circumstances surrounding the project sponsor's acquisition, possession and operation of the project in spite of repeated requests from the complainants and other interested parties to do so.

Actions Taken by Complainants

- 5. The following actions have been taken by us to try to resolve these issues:
 - a. We have twice written to His Excellency Benjamin William Mkapa, President of the United Republic of Tanzania on both occasions requesting him and his government to address themselves to these matters and to right any or all of the wrongs that may have been committed against the Bulyanhulu communities; as well as to see to it that any violations of the laws of Tanzania are thoroughly investigated and where, necessary and appropriate, punished in accordance with the laws of Tanzania. Copies of the letters are annexed hereto and collectively marked "K" to form part of this complaint.
 - b. We have twice written to the Director of Criminal Investigations Department in the Tanzanian Police Force detailing some of the wrongs enumerated herein and requesting him to see to it that these wrongs are thoroughly investigated and, where necessary and appropriate, punished in accordance with the laws of Tanzania. We shall collectively refer to this correspondence as "L" in support of this complaint.
 - c. We have twice written to MIGA and once to Canada's Export Development Corporation ("EDC") requesting the two institutions to address these issues and to see to it that any/or all wrongs enumerated herein are thoroughly and independently investigated and, where necessary and appropriate, any wrongs righted in accordance with MIGA policies and the regulations governing the EDC. These correspondence is annexed hereto and collectively marked "M" to form part of this complaint.
 - d. We have also written to the project sponsor requesting to be supplied with copies of relevant reports and the evidence in the project sponsor's possession. See letter to the project sponsors annexed hereto and marked "N" to form part of this complaint.
 - e. We have met and held discussions pertaining to these issues with officials from MIGA, the World Bank and the EDC; the project sponsors; and with elected and/or appointed officials of the Governments of Tanzania, Canada, the United States, Great Britain and the Netherlands.

Actions Taken by Project Sponsor, MIGA and Government of Tanzania

6. The following actions have been taken the Project Sponsor, MIGA and the Government of Tanzania in response to the actions of the complainants:

Project Sponsor

- a. The Project Sponsor has responded by denying all allegations of wrongdoing on its part.
- b. The Project Sponsor has taken steps to level all the areas where alleged human rights abuses took place in what appears to be attempts to destroy any evidence of any wrongdoing on its part.
- c. The Project Sponsor has furnished false and/or misleading information as to independent investigations and conclusions therefrom concerning allegations of human rights abuses. We shall refer to correspondence from the project sponsors concerning these matters which is attached hereto and collectively marked "O" to form part of this complaint.

MIGA

- d. MIGA has also responded by vigorously defending the Project Sponsor's actions and conduct and denied all allegations of any wrongdoing on its and Project Sponsor's part.
- e. MIGA has furnished false and/or misleading information as to independent investigations and the conclusions therefrom concerning allegations of human rights abuses. We shall refer to correspondence and project documents from MIGA which is attached hereto and collectively marked "P" to form part of this complaint.

Government of Tanzania

- f. The Government of Tanzania has responded by denying all allegations concerning its own and Project Sponsor's conduct in the acquisition, possession and operation of the Bulyanhulu Gold Mine.
- g. The Government of Tanzania has responded by furnishing false, misleading and contradictory information concerning its investigation of the allegations of human rights abuses. We shall refer to official statements from the Government of Tanzania which are annexed hereto and marked "Q" to form part of this complaint.
- h. The Government of Tanzania has also taken steps to harass, intimidate and/or threaten the complainants and any other person or persons who have tried to investigate or question the facts and circumstances surrounding the Project Sponsor's acquisition, possession and operation of the Bulyanhulu mine site. The Government actions have included police

raids and searches of LEAT offices and the homes of LEAT officers; arrests and detention of LEAT officers and other critics of the Government's handling of the Bulyanhulu evictions and allegations of human rights abuses; and threats to commence criminal prosecutions against the complainants and other persons attempting to investigate and/or question the Government's handling of the evictions and allegations of human rights allegations. We shall refer to contemporaneous press reports which are collectively marked "R" in support of this complaint.

7. The names of the contact persons at MIGA are:
 - a. Mr. Gerald T. West
 - b. Mr. Marcus Williams
 - c. Ms. Moina Varkie

8. The following are details of MIGA policies, guidelines or procedures that we believe have not been complied with:
 - a. Involuntary Resettlement: In order for this project to proceed, hundreds of thousands of people had to be relocated. This was done forcibly and without any resettlement plan. Involuntary resettlement is continuing without any resettlement plan.
 - b. Environmental Assessment Policy: The Environmental impact assessment processes were carried out after the forced relocation and displacement of the Bulyanhulu complainants and thereby failed to take account of their concerns and interests.
 - c. Public Consultation: Public consultations were done after the Bulyanhulu complainants had been forcibly evicted and were, therefore, of no meaning to the Bulyanhulu complainants. The consultations were also limited to government functionaries and departments with no or minimal participation by local and national NGOs.
 - d. Social Safeguard Policy: No social safeguards were taken to deal with the social and economic impacts of the forced relocation of the Bulyanhulu complainants nor have any safeguards been taken to mitigate the continuing negative social and economic impacts the project is having on neighboring communities.
 - e. Information Disclosure Policy: MIGA has consistently declined requests to disclose to the public any information or documents it may have collected in its due diligence investigation and that it relied upon in making its decision to approve the political risk guarantee for the project.
 - f. Article 12(d) of MIGA's Convention that states that "in guaranteeing an investment, the Agency shall satisfy itself as to the economic soundness of the investment and its contribution to the development of the host country.
 - g. Article 12(d) of the MIGA Convention also states that in guaranteeing an investment, the Agency shall satisfy itself as to the "compliance of the investment with the host country's laws and regulations.

9. We would like to see this complaint resolved in the following way:
 - a. Full, fair and just compensation should be paid to all Bulyanhulu complainants who were involuntarily resettled without any resettlement plan.
 - b. Full, fair and just compensation should be paid to all Bulyanhulu complainants whose agricultural and grazing lands were expropriated; residential and commercial property and settlements destroyed; investment in mining shafts, machinery and equipment confiscated; and employment opportunities lost.
 - c. Full, fair and just compensation should be paid to all remaining Bulyanhulu complainants whose property rights continue to be violated and/or interfered with by the actions of the project sponsors. In the alternative, the project sponsors should desist from any continuing or future acts that violate or otherwise interfere with the enjoyment by the Bulyanhulu complainants of their property rights.
 - d. The CAO should review MIGA's actual process of due diligence investigation, in order to assess whether MIGA properly investigated the foregoing issues, and whether it took the steps necessary to ensure that this project complied with MIGA policies before it approved the political risk guarantee for the Bulyanhulu Gold Mine.
 - e. The CAO should review the environmental and social impacts information the project sponsors has submitted to MIGA, and compare it with the information contained in this complaint in order to establish the adequacy and the veracity of the environmental and social impacts information and the soundness of the conclusions drawn in the environmental information submitted to MIGA and the Government of Tanzania.
 - f. The CAO should investigate the ongoing threats of eviction and displacement, and the negative social and economic impacts the Bulyanhulu mine project is having on neighboring communities.
 - g. The CAO should assess whether MIGA has complied with its safeguard policies, particularly its policy on involuntary resettlement, and should assess whether or how MIGA's financing of this project advances its poverty alleviation goals.
 - h. The CAO should review MIGA's compliance with its information disclosure policies in responding to requests for information regarding this project and should direct MIGA to fully disclose all documentation save for that protected by the confidentiality clauses to allow for full public participation in the process of resolving this complaint.
 - i. The CAO should lend its voice for calls for establishment of an independent commission of inquiry agreeable to the Bulyanhulu complainants as well as to the project sponsors and the Government of Tanzania to independently, transparently and thoroughly inquire into the facts and circumstances pertaining to the acquisition, possession and operation of the project and, where necessary and appropriate, make recommendations for the resolution of this complaint.

- j. The CAO should investigate whether MIGA performed proper due diligence prior to its approval of the guarantee with respect to the economic and social benefits accruing to local communities in the Bulyanhulu area and to the Tanzanian national in terms of employment opportunities; and revenue from taxes, royalties and other charges. In addition the CAO should investigate whether MIGA considered in its due diligence investigations any viable alternatives to the project that might have had greater or comparable social and economic benefits but lesser negative impacts.

We are mindful of the fact that Barrick Gold Corporation, the current parent company of the project sponsors, and MIGA did not become directly involved with this project until the spring of 1999 when most of the events complained of had already taken place. We believe, however, that there is a direct relationship between the events of the pre-1999 period and the current mining operations undertaken by the project sponsors at the Bulyanhulu area. There is a direct relationship because those events were a precondition for the development of the project sponsors' current mining operations. The project would not have moved forward without having first to address the issue of the hundreds of thousands of people who were living and working in the disputed area.

We believe that this direct relationship exists regardless of the amount of time that passed between the events complained of on the one hand, and Barrick's and MIGA's involvement in the project on the other hand. This direct relationship also exists regardless of the ownership structure of the project sponsors for the reason that the current owners of the project and MIGA have benefited, are benefiting and will benefit financially from the pre-1999 events complained of. Indeed, we are aware that changes in the ownership structure have not changed the legal personality or identity of the project sponsors.

We, therefore, believe that the circumstances surrounding the pre-1999 events fall within any reasonable definition of the "scope" of the project. Therefore, these events fall within the scope of the due diligence that should have been conducted by both the project sponsors and MIGA. It is our hope that the CAO will share our belief that MIGA's due diligence requirements during project preparation must apply to events that precede its involvement in a given project if those events are directly relevant to the project's development. It is imperative that the World Bank Group not send the message that possible improprieties in project preparation are acceptable provided they occur prior to MIGA's direct involvement or under the ownership of an entity other than the immediate project sponsor.

10. We have had contact with the following other persons in attempting to resolve these issues:
 - a. Mr. James Wolfensohn, President of MIGA and the World Bank Group.
 - b. Mr. Motomichi Ikawa, Executive Vice President of MIGA.

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- c. Mr. Patrick J. Garver, Executive Vice President and General Counsel, Barrick Gold Corporation.
 - d. Mr. Pieter Stek, Executive Director of the World Bank representing the Netherlands.
 - e. Mr. David Herscovitch of the Export Development Corporation of Canada.
 - f. Ms. Jennifer Rosebrugh of the Department of Foreign Affairs and International Trade of the Government of Canada.
 - g. Mr. Paul Stothart of the Office of the Minister for International Trade of the Government of Canada.
 - h. Mr. Jeffrey McLaren of the Canadian High Commission in Tanzania.
 - i. Hon. Alexa McDonough, Leader of the National Democratic Party in the Canadian House of Commons.
 - j. Hon. Lincoln Clifford, Member of Parliament in the Canadian House of Commons.
 - k. Hon. Pierre Paquette, Member of Parliament in the Canadian House of Commons.
 - l. Mr. William Price of the Department for International Development of the Government of the United Kingdom.
 - m. Hon. Cynthia McKinney of the House of Representatives in the Congress of the United States.
 - n. Mr. Hein Copper of the International Financial Institutions Division of the Ministry of Foreign Affairs of the Government of the Netherlands.
11. Any other relevant facts to support this complaint are as follows:
- a. Records of the High Court and the Court of Appeal of Tanzania as regards the judicial proceedings commenced by, and/or involving, the project sponsors and some of the Bulyanhulu complainants prior and subsequent to the project sponsor's acquisition and possession of the Bulyanhulu Gold Mine.
 - b. Official correspondence between the Bulyanhulu complainants, Tanzanian Government officials and the project sponsors prior to and subsequent to project sponsors' acquisition and possession of the Bulyanhulu Gold Mine.
 - c. Newspaper accounts pertaining to the facts and circumstances surrounding the project sponsors' acquisition, possession and operation of the Bulyanhulu Gold Mine and particularly in respect of the Bulyanhulu complainants' grievances.
 - d. Project documents and environmental information in the form of environmental impacts statements, environmental management plan and social development plan commissioned by, prepared for and published by the project sponsors and submitted to MIGA and the Government of Tanzania.
 - e. Memoranda prepared for and published by the project sponsors as regards the acquisition, possession and operation of the Bulyanhulu Gold Mine.

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Dated this 14 day of January, 2002

Signed:

Annex 2



LAWYERS' ENVIRONMENTAL ACTION TEAM
(LEAT)

*Mazingira House, Mazingira Street, Mikocheni Area,
P. O. Box 12605, Dar es Salaam, Tanzania.
Tel/Fax: 255 22 2780859
E-mail: leat@mwiga.com
Website: <http://www.leat.or.tz>*

February 11, 2002

TO: Compliance Advisor/Ombudsman
2121 Pennsylvania Avenue, NW
Room F5K-292
Washington DC 20433
USA
Fax: 202-522-7400
E-mail: cao-compliance@ifc.org

RE: SUPPLEMENTARY INFORMATION ON COMPLAINT
AGAINST BULYANHULU GOLDMINE

Pursuant to the complaint lodged on January 15, 2002, LEAT and the Bulyanhulu complainants hereby submit the following supplementary information in support of the claim that the project sponsors failed to observe the laws of Tanzania thereby violating the provisions of Article 12(d) of the MIGA Convention that requires MIGA to satisfy itself as to the project's "compliance of the investment with the host country's laws and regulations."

1. Excerpts from Tanzania's Mining Act, 1979, Act No. 17 of 1979 under which the purported prospecting license over the Bulyanhulu area was issued to the project sponsors. The complainants would respectfully draw the attention of the CAO to the following provisions of the Act that are most relevant to the complaint and which were not complied with by the project sponsors:
 - a. Section 31(1)(c) that required any prospecting license issued under the Act to "include a description and plan of the area of land over which it (was) granted...." It is presumed that "a description and plan of the area"

- referred to here was required to be a correct description and plan of the area concerned and that a prospecting license that did not correctly describe the area of land, or provided the wrong plan thereof could not be said to be a valid license for the purposes of this section.
- b. Section 31(2)(b) that imposed an obligation to project sponsors to append in prospecting licenses "... particulars of the licensee's proposals for the employment and training of citizens of Tanzania."
 - c. Section 48 that imposed significant "restrictions on exercise of rights" upon holders of mining rights with regard to the rights of land-holders whose lands were covered by the license. These restrictions precluded the project sponsors from entering into the Bulyanhulu area without a prior written consent of the Bulyanhulu complainants.
 - d. Section 81(1) which related to "compensation for disturbance of rights", etc. The section read: "Where, in the course of reconnaissance, prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the registered holder of the Mining Right or the holder of the prospecting right or claim ... is liable to pay to the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests ... of the lawful occupier in the property concerned."
2. Copies of the various Regulations promulgated under section 69 of the Mining Act, 1979 that conferred powers upon the Minister responsible for mining to set aside mining areas for the sole prospecting and mining by native artisanal miners. Under section 69(1), "where the Minister considers that it would be in the public interest to encourage prospecting and mining for minerals in any area of land by methods not involving substantial expenditure or the use of specialist technology he may ... designate that area and ... prescribe any mineral in relation to the area." The designation and prescription had to be done by way of a notice published in the Government Gazette. It had the effect of precluding any area so designated from being allocated for large-scale prospecting or mining operations by entities such as the project sponsors.
- a. Mining (Designated Areas) Notice, 1980 promulgated by then Minister for Water, Energy and Minerals, Al-Noor Kassum, and published in the Government Gazette of January 18, 1980 as Government Notice No. 6 of 1980. The Notice, among other things, designated the entire areas of Shinyanga, Mwanza, Mara, Singida, Tabora, Mbeya and Rukwa Regions for which prospecting and mining for gold "by methods not involving substantial expenditure or the use of specialist technology" was to be undertaken.

- b. Mining (Designated Areas)(Amendment) Notice, 1982 promulgated by then Minister for Water, Energy and Minerals, Jackson Makweta, and published in the Government Gazette of December 17, 1982 as Government Notice No. 154 of 1982. The Notice removed Shinyanga and Mwanza regions – by far the most important artisanal gold-mining areas – from the category of designated areas established by the 1980 Notice.
- c. Mining (Designated Areas)(Amendment) Notice, 1983, promulgated by then Minister for Minerals, Paul Bomani, and published in the Government Gazette of January 6, 1984 as Government Notice No. 2 of 1984. This Notice not only brought Shinyanga and Mwanza regions back into the fold of “designated areas”, but also added Iringa, Kagera and Kigoma regions.
- d. Mining (Designated Areas)(Amendment) Notice, 1984, promulgated by then Minister Al-Noor Kassum and published on February 1, 1985 as Government Notice No. 34 of 1984. This Notice amended G.N. No. 2 of 1984 so that the 417sq. km. Rwamagaza area; 1035sq. km. Geita area; 2500sq. km. Musoma area; 2403sq. km. Iramba-Sekenke area; and 605sq. km. North and East Mara area were all removed from the designated areas prescribed for gold mining. The Bulyanhulu area remained unaffected by these amendments with the result it continued to be a designated area for “prospecting and mining (for gold) by methods not involving substantial expenditure or the use of specialist technology.”
- e. Mining (Designated Areas) Notice, 1987, published on July 22, 1988 as Government Notice No. 230 of 1987. Although this Notice revoked the 1983 Notice, the only significant change it made was that Kigoma region, a designated area under the latter, was removed from the category while Morogoro Region was added into the list of designated areas. Shinyanga and Mwanza Regions and – consequently – the Bulyanhulu area remained a designated area.
- f. Mining (Designated Areas)(Amendment) Notice, 1996 promulgated by then Minister for Energy and Minerals, William Shija and published on June 14, 1996 as Government Notice No. 106 of 1996. Though not expressly provided for, this Notice was clearly intended to amend the 1985 Notice by restoring a considerable portion of the North and East Mara areas to their previous status of “designated areas.” Again, the Bulyanhulu area remained a designated area for purposes of section 69.

This legislative history makes it clear that the only period Bulyanhulu could legally have been allocated to entities such as the project sponsors and for large-scale mining operations was the period from December 18, 1982 to October 12, 1983 when Shinyanga and Mwanza Regions were not designated areas. The only reasonable conclusion to be drawn from this analysis is, therefore, that the purported prospecting license issued to KMCL over the Bulyanhulu area was

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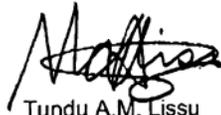
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granted in contravention of section 69 of Tanzania's Mining Act, 1979 and the subsidiary legislation made under it. MIGA was required – in the course of its due diligence investigations - to satisfy itself as to the compliance by the project sponsors with these provisions of the Tanzanian law, in accordance with its own safeguard policies. It is our belief that MIGA neglected and/or failed to discharge this duty.

Dated this 11 day of February, 2002

Signed:



Tundu A.M. Lissu
(For the Complainants)