

TANZANIA: HUMAN RIGHTS ADVOCACY AND THE BULYANHULU GOLD MINE

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BACKGROUND

The Bulyanhulu area of Kahama District in central-western Tanzania is located approximately 850 kilometers northwest of Dar es Salaam, Tanzania's capital, and about 45 km south of Lake Victoria. It is the site of the Bulyanhulu Gold Mine, which started production in April 2001.

Bulyanhulu is one of the largest and richest gold mines in the world. It is owned and operated by Kahama Mining Corporation, a wholly-owned subsidiary of Barrick Gold Corporation based in Canada. A consortium of commercial banks based in the United States, Canada, Great Britain, Germany, Switzerland, and South Africa financed its construction, which cost \$280 million. The World Bank private sector insurance arm, the Multilateral Investment Guarantee Agency (MIGA), and the Canadian government's Export Development Corporation (EDC) provided, between them, \$345 million in political risk guarantees for the commercial banks and the operator of the mine.

The Bulyanhulu Gold Mine has a controversial and complex history. Gold was discovered in the area by artisanal miners in 1975. However, minimal corporate interest meant that artisanal mining became predominant throughout the 1980s, and especially in the early 1990s, when the government of Tanzania opened the doors for artisanal gold miners to operate much more freely.

By this time, however, corporations were becoming more interested in the potential of the Tanzanian mining sector, particularly in the Bulyanhulu deposits. In August 1994, Sutton Resources, another Canadian company that was later bought by Barrick, started to claim rights over the Bulyanhulu deposits. Through its wholly owned subsidiary, KMC, Sutton Resources began legal proceedings against the artisanal miners in the High Court of Tanzania in June 1995. The company described the artisanal miners as illegal squatters who deserved nothing but eviction, and asked the Court to evict and permanently restrain the miners from the Bulyanhulu workings.

The legal proceedings went against the Canadian company. Meanwhile, the government of Tanzania came under intense pressure from the Canadian diplomatic mission, and in late July 1996, the government ordered the artisanal miners to vacate the area. The following day, paramilitary security forces of the government moved against the miners' communities and commenced forcible evictions. A High Court ordered the government and the company to stop the removals, but even this did not save the artisanals from eviction and the destruction of their settlements.

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Within days, serious allegations of a massacre of artisanal miners hit the press. The miners were allegedly trapped inside the mineshafts when the company and administration officials decided to bulldoze the shafts to make them inoperable by miners who continued to sneak in at night. These allegations were vehemently denied by the government, the companies, the World Bank/MIGA, and the Canadian authorities, but have dogged the Bulyanhulu Gold Mine ever since.

The Lawyers' Environmental Action Team (LEAT) is leading a growing coalition of NGOs and activists from around the world in demanding an independent international commission of inquiry to investigate the affair. LEAT has also called for justice for the Bulyanhulu communities whose settlements and livelihoods were destroyed without compensation; for legal measures to be taken to bring the perpetrators of these events to account; and for the government of Tanzania to renegotiate the agreement with Barrick Gold Corporation with a view to making sure the government and Bulyanhulu communities obtain a fairer share of the wealth accruing from the mineral resources of this area.

BULYANHULU AS A CASE STUDY

The Bulyanhulu campaign as a case study for environmental advocacy is probably unique because of its history. It thus presented opportunities and challenges that are equally unique. For example, the forced removals and allegations of a massacre occurred in 1996, and over three years had already passed when LEAT started its investigation in 1999. Time lapse had taken its toll, public memory often being very short. Most of the affected communities and potential witnesses had moved off to other areas or died or could otherwise not be reached. Ownership of the mining concession had changed hands. All these factors presented considerable challenges in designing a research, documentation, and advocacy agenda.

There were, however, numerous opportunities that attracted public interest in the events at Bulyanhulu. Several large-scale mines had opened or were under construction in areas near Bulyanhulu. These investments were being hailed in political, media, and intellectual circles as cure for the country's economic ills. By far the most important investment in the sector, Bulyanhulu was being touted as the jewel in the crown of the Tanzanian mining industry.

At the same time, it was becoming increasingly clear that the processes of opening up the mineral resources sector to foreign direct investment was causing social and economic upheavals and raising considerable human rights concerns. Mass evictions of whole communities, relocation or resettlement problems, and state orchestrated violence against communities unwilling to move – often with little or no compensation – were widely reported in the media. These concerns often found their way into political debates in Parliament. These factors presented a wonderful opportunity to raise issues with Bulyanhulu. Bulyanhulu also had the distinction of having been the site of the

largest peacetime population removal in the country's history. In short, Bulyanhulu was a story that needed to be told.

LEAT's campaign is unprecedented in Tanzanian history. No other project has been put to such scrutiny before. No other NGO in Tanzania has ever taken up the cause of a maligned and marginalized community and made it an international *cause celebre*. No other organization in the country has ever taken on such a powerful array of forces and interests as those ranged against LEAT. This advocacy has, on the other hand, brought the organization face to face with its greatest challenge yet. Its offices and the homes of its officers have been raided and searched by the police. Evidence has been seized. LEAT's leaders have been charged with criminal sedition. LEAT has even endured a slanderous campaign designed to discredit the organization and its leaders. And, its long-term funders have terminated funding for its activities.

“NO INVESTIGATION, NO RIGHT TO SPEAK”: THE POWER OF RESEARCH AND INFORMATION-GATHERING

The Bulyanhulu campaign forcefully drove home the need for NGOs to be thoroughly informed about all aspects of the subject of their advocacy campaign and to be able to defend their position in any setting or forum. The documentation must be thoroughly accurate; no position, however seemingly trivial, should be left undefended or unsupported by facts and figures; no slander or attack, personal or otherwise, justified or malicious, should go unanswered; no argument from your adversary should go unchallenged. You have at all times to be on top of your subject, to have a total command of all facts, issues, evidence, and documents, from all sides of the debate.

All these matters came to the fore in designing the Bulyanhulu campaign. Because the key events had already occurred, it was necessary to reconstruct the social, economic, legal, and political history of the area in order to understand the events, how they occurred, and who the main players were. To do so, we had to cast our nets wider for relevant information. This took us into the Bulyanhulu area for personal interviews with the local communities, and some of the key players and witnesses still living in nearby areas.

We searched public libraries and newspaper archives in Tanzania, Canada, and the United Kingdom; parliamentary and court records in both Tanzania and the United Kingdom; personal papers; official police and government reports, both public and the not-so-public; and company records, internal memoranda, and correspondence of company executives. We sought and obtained documents submitted to the World Bank and MIGA. We even obtained official correspondence and internal documents of the Canadian diplomatic mission in Tanzania and various Canadian government departments and agencies. In short, we sought and were able to obtain an enormous amount of information that enabled us to build an accurate picture of what had happened before, during, and after the events of August 1996.

We collected information from unimpeachable sources, then carefully assembled and analysed it. We understood the full implications of what our opponents and adversaries had said or written. Internal memoranda and off-the-record communications were often the best sources of information, for they almost invariably contained information that company or government officials found too compromising to be included in official communications or reports intended for public consumption. Comparing these with information released to the public yielded results that often revealed considerable divergences between public and private positions on a certain issue. It took over two years to collect, assemble and analyze this body of evidence. With this amount of carefully documented information, we thus earned the right to speak and take our case to the public stage.

THE CAMPAIGN STRATEGY

In choosing a campaign strategy, we had to consider the complexity of the issues and the legal, political, and economic factors that would affect the campaign. We considered the viability of such strategies as legal action in courts of law, popular mobilization through media and public information and public pressure, and lobbying of key decision-makers and institutions. And this had to be done in a way that would capture the local, national, and international dimensions of the project and that would have the most impact both locally and nationally.

In considering legal action, we had to contend with a history that showed a pattern of illegality and impunity encouraged by the highest levels of both the Tanzanian government and judiciary. For example, statutory prohibitions and licensing requirements regarding the Bulyanhulu concession had been overlooked. Evidence taken from official documents showed that no license over the area had, in fact, been issued to Sutton Resources and its subsidiary.

Various legal restrictions pertaining to the company's exercise of its mining concession had also been completely ignored. Lawful orders of the High Court had twice been deliberately violated, and it appeared that other parties were interfering with the case. There was also evidence that suggested the High Court, where we would commence any legal action, was beginning to waver in its approach to the Bulyanhulu cases.

Considering all these factors, we concluded that as far as Bulyanhulu was concerned, conditions for fair trial did not exist in the Tanzanian courts. We also considered options for court action outside Tanzania, particularly in the United States, where Barrick has extensive mining interests and its stock was listed in the New York Stock Exchange, or in Canada, where Barrick has its global headquarters and former executives of Sutton Resources live. This was agreed in principle, but filing a lawsuit in these countries would have been too expensive without a contingency fee agreement or free legal aid by a public interest litigation group.

We then considered other forms of advocacy and focused on popular pressure through intense media campaign combined with lobbying. This approach had several advantages. Tanzania has a burgeoning free press with scores of daily newspapers. Our approach would be to put out as much information to as many newspapers as possible. This was less costly than going to court and had the potential to reach large sections of the population and draw the attention of decision-makers and key institutions both inside and outside Tanzania. It would also serve to attract more attention to the issues than a court-based strategy would likely accomplish.

Knowing that certain financial institutions such as the World Bank/MIGA and the EDC were supporting Barrick's Bulyanhulu operations also provided LEAT with the opportunity to fight on terrain that the government of Tanzania and Barrick neither controlled, nor could easily influence. Using this opportunity would also enable us to build alliances with, and obtain the support of, various advocacy groups, social movements, and activists involved in the struggle to reform the policies and practices of these institutions. In addition, the nature of the allegations of human rights violations would assure us of support from the human rights community from around the world. We would also benefit from the enormous experience that other organizations specifically dealing with mining issues had accumulated over the years and draw on their support networks and alliances. With these considerations in mind, LEAT launched its media campaign.

THE ART OF WAR

Attack When Least Expected

On the day the President of Tanzania was expected to officially open the Bulyanhulu Gold Mine, newspapers in Tanzania published LEAT's open letter to President Mkapa in which we asked the President to establish an independent commission of inquiry to investigate the allegations of the killings of artisanal miners in 1996. Our letter also provided information showing that the Canadian investors were set to reap huge profits from the mine while the social and economic benefits to Tanzania would be marginal or negative. Only a day before, Barrick had bought big spaces in the country's major newspapers to advertise the opening of the mine and to list the supposed benefits to the country of its multi-million dollar investment.

The timing of the open letter, the issues it raised and the sheer audacity of challenging the President in public over an issue he took particular pride in, all helped to spark a very lively national debate on the mining industry that is still going on to this day. In the days that followed, LEAT took every opportunity to highlight the Bulyanhulu issues in the media. In August, we opened another front by writing to the MIGA President, who is also the World Bank President, to urge MIGA to suspend its involvement in the Bulyanhulu Mine pending full and independent investigation of the 1996 events.

The internationalization of LEAT's campaign brought NGO support from the United States, Canada, and Western Europe. It also opened more opportunities to deepen the campaign. There were media events and public meetings in these countries at which LEAT was invited to present its case on Bulyanhulu. LEAT supporters organized meetings with government officials in the US, Canada, the Netherlands, and the United Kingdom. We urged these governments to support LEAT's demands. Legislators in the United States and Canada also brought pressure to bear, with questions concerning the Bulyanhulu events being asked on the floor of the Canadian House of Commons and a ranking member of the Foreign Relations Committee of the House of Representatives of the United States Congress writing to the MIGA President in support of LEAT.

By shifting our campaign from the national to the international stage, we were able to confound the authorities. We were taking the fight to an arena not necessarily favorable to the authorities: that of international public opinion. We were making use of opportunities afforded by institutions that are relatively independent of the Tanzanian government or the Canadian companies, such as the office of the Compliance Advisor/Ombudsman for MIGA. This institution provided a venue we knew the Tanzanian government had no control over, and where it could not interfere without being openly in breach of the convention establishing MIGA. The element of surprise has resulted in the Bulyanhulu campaign being perhaps the most publicized and effective advocacy campaign in Tanzania's history.

Maintain the Initiative

It is of absolute necessity that the advocacy organization should control the initiative and maintain the offensive. It should be able to change tactics and choose the moment of engagement or withdrawal or retreat; it should be able to choose the most advantageous arena for its campaign. All these are impossible without solid research and documentation. A few examples are helpful here. With the information and documented evidence we had gathered, we were able to shift from the national arena to the international arena with ease.

Our campaign was launched by way of an open letter addressed to the President that was circulated in advance in the Tanzanian press and published on the day the President opened the mine. Within weeks we had shifted to the international arena, mobilizing international allies to demand action from the MIGA President. We also hit the international airwaves with our documented information being broadcast over a number of weeks by the Voice of America radio network, as well as by a number of other radio stations in the United States and Canada. Our demands were also published in the Canadian, American, and European press.

By maintaining the initiative in this way, we made sure that the Bulyanhulu issue remains in the public eye. It gave us the flexibility to choose the timing, venue, and tactics of our campaign. It also kept the government and the companies relatively on the defensive.

Openness and Transparency Equals Credibility Equals Strength

An advocacy campaign can only be successful if the organizations behind it have nothing to hide from the public or their adversaries, most often the authorities. Credibility and honesty of purpose are often the strongest weapons in the arsenal of public interest organizations. A campaign with a hidden agenda or an axe to grind will soon be exposed and discredited. An advocacy organization must therefore strive to be as open and as transparent about its campaign as possible. Southern governments and their corporate allies like to accuse Southern advocacy NGOs of being stooges of Northern interests or Northern NGOs. This charge is often attractive because most often Southern NGOs depend on funding sources from the North.

Accusations like this will always be used against advocacy groups. These should be met head on; financial questions should not be avoided but should be openly and honestly acknowledged and discussed. Difficult questions should not be side-stepped or overlooked but should be faced and answered even if there are risks that the authorities and the campaign adversaries are likely to know more about the campaign. The entire campaign agenda should not be hidden from the public. This transparency builds credibility and respect for the organizations undertaking the campaign. It wins more sympathy from the undecided members of the public and strengthens those already committed. It also disconcerts the adversaries.

Beware of Donors' Agendas

Public interest NGOs will always remain dependent on the philanthropic community and donors for much of the funding for their activities. The donors' interests and policies are not always altruistic or consistent with the interests or concerns of the advocacy groups or their constituencies. The power of the purse is a powerful instrument, and many donors are often willing to use it to redirect or change the focus of NGO policies and activities, and to bring them more in line with the financiers' wishes. This is not to say that all donors' interests or concerns regarding NGO policies or programs are necessarily negative. Rather, it is to warn advocacy groups to always guard against the danger of falling prey to donor pressures and losing sight of their own role and the interests of their constituencies.

The Bulyanhulu campaign has had its own share of donor politics. As the stakes have gone higher because of the powerful interests involved, some donors sought to change the focus of the campaign or to have the campaign stopped altogether. When we did not stop the campaign, some donors withdrew financial support hoping thereby to cripple the campaign. This is the price we pay to protect our independence. It is the price other advocacy groups must also consider in their planning.

Advocacy is a Dangerous Business!

As politics and political institutions have increasingly become further removed from the daily concerns and interests of the weak and the marginalized, advocacy groups

and movements have sought to provide an alternative voice for them. Advocacy groups and social movements have increasingly come to provide a forum and an organizational structure for voicing the demands of the voiceless. In this way, advocacy groups have tended to unsettle the status quo by challenging the policies and practices of the powerful interests and have, therefore, come face to face with opposition from these interests.

In many developing countries in Africa and elsewhere, the illiberal laws and repressive political practices that were the hallmark of the authoritarian single party or military regimes have tended to remain in the statute books and in the arsenal of the ostensibly democratic, multiparty regimes. As a result, advocacy groups that have challenged the status quo have often met with political repression and state-orchestrated violence or threats of violence. As far as the Bulyanhulu campaign is concerned, LEAT's offices have been raided by police and its property seized; its leaders have been harassed with arrests and prosecution on trumped-up charges of sedition.

This is a reality, the possibility of which other advocacy groups should be aware of and make plans to deal with. As the saying goes, "forewarned is forearmed;" advocacy groups must ask themselves the lengths to which they are prepared go in pursuit of their campaigns with the full knowledge of the likely consequences.

CURRENT STATUS

At the moment, the Bulyanhulu campaign is at a stage where it has acquired a momentum of its own. Dozens of environmental, human rights, and social justice groups in Tanzania, Western Europe, and North America have joined LEAT's call for independent investigation of the Bulyanhulu allegations. In March 2002, these groups appointed a fact-finding team that traveled to Tanzania to assess the situation, but that was prevented from going to Bulyanhulu to meet with local communities in the area. The Compliance Advisor/Ombudsman for MIGA carried out her own independent investigation of the allegations and traveled to Tanzania and Bulyanhulu in March 2002 for this purpose. Her report, and LEAT's response, may be found at <http://www.lead.or.tz/active/buly/>. Political repression and the heavy-handed actions against LEAT leaders and against the international NGO fact-finding mission to Bulyanhulu have caused an international uproar. And more recently, we have received indications that the Tanzanian Parliament might finally be getting interested in what happened at Bulyanhulu that August 1996.