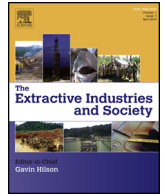




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Original article

Reconfigured state-community relations in Africa's extractive sectors: insights from post-liberalisation Tanzania

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ABSTRACT

The governance of Africa's extractive sectors has undergone major changes in recent years. Using mainland Tanzania as a case study, this article explores how the relationships between the state, investors and community actors in respect of mining and petroleum investments have developed as a result. It finds that the role of the state is again increasing through its introduction of more detailed regulations and tougher fiscal and operational terms after decades of liberalisation. Combined with the re-emergence of state-owned enterprises as direct investors, this has implications that are not always beneficial in the eyes of local communities. Based on research into land-acquisition processes for extractive investments, we argue that the emphasis on following national standards for acquisition may lead to more restricted compensation schemes than the international standards preferred by extractive companies from the Global North. This has also increased tensions between the state actors and local communities.

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1. Introduction

Due to an asymmetry of information and power, host-country governments and communities have often been described as 'weak' in relation to foreign companies in the extractive sectors (Collier, 2010, see also Humphreys et al., 2007; Oliveira, 2007). The supposed failure of state institutions to protect the rights of local communities has directed attention to the extractive companies' responsibilities for preventing infringements of environmental and human rights locally (Hilson, 2002a; Watts, 2005; Frynas, 2009; Prno and Scott Slocombe, 2012; Prno, 2013; Owen and Kemp, 2014). International standards have subsequently been promoted to increase how communities benefit from and are involved in extractive investment projects. Based on experiences from the past, these standards may provide important yardsticks for evaluating a company's performance. However, they are not always useful if the aim is to explain current changes in relations among the main actors in the mining and petroleum sectors.

Based on a review of legal and institutional changes and empirical research into selected projects in mainland Tanzania,

and drawing on recent research into similar developments in other sub-Saharan African countries, this article¹ puts forward two arguments. First, it argues that the role and influence of state actors on the continent has increased significantly following the reforms of recent years. Whereas liberalising reforms aimed at attracting foreign direct investments in the 1980s and 1990s may have reduced the institutional capacity of state actors (Campbell, 2009), this has changed following more than a decade of high global mineral prices, mainly driven by increased demand for raw materials from China. One aspect of this is the tougher fiscal conditions and new oversight institutions that were established during the upturn in the 2000s (Kopiński et al., 2013; Singh and Bourgouin, 2013; Hickey et al., 2015). Another aspect is the ways in which states seek to direct extractive activities in order to maximise domestic benefits through local content provisions and the establishment of various new state-owned enterprises or the strengthening of existing ones (Patey 2014, 2017; Hickey et al., 2015; Ovadia, 2016; White, 2017; Andreasson, 2015; SAIMM, 2012).

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These changes remain in place despite the recent fall in global commodity prices. Whereas one should not assume that they all work as intended, they do mark a significant shift towards more state engagement in the extractive sectors.

Secondly, based on research into mining and petroleum sector projects in Tanzania, the paper argues that the strengthening of state actors is reconfiguring relations between communities and companies in ways that might not always be beneficial from the communities' point of view. By focusing on rights to land, we find that Tanzanian state actors' new insistence on national laws and regulations when land is acquired for investment purposes may disadvantage rights-holders vis-à-vis the more comprehensive international voluntary standards that extractive companies from the Global North prefer. Though the country's de jure protection of the existing rights of communities and land-rights holders has improved in recent years (Knight, 2010; Boone, 2017), the evidence from the extractive sectors points to developments that render these achievements tenuous. This emphasis on the importance of land in shaping relations between the extractive sector, the state, the company and community actors has been emerging gradually in petroleum research on Africa in recent years (Emuedo and Abam, 2015; Pedersen and Kweka, 2017). It has a longer history in the study of mining operations on the continent, which traditionally focused on the plight of artisanal miners in relation to large-scale operations (Hilson 2002b; Banchirigah 2006; Lange, 2008). Based on Tanzanian evidence this article points out that in particular the re-emergence of state-owned enterprises as direct investors in operations and as holders of key infrastructure is putting further pressure on rights to land and resources as projects increasingly are framed as being of national and regional importance.

The paper is structured around landmark decisions, that is, the emergence of new policy paradigms, which require not only adaptation, but also significant political and administrative effort to institutionalise (Hall, 1993; Hall, 1993; Kjær and Therkildsen, 2012), with an emphasis on the most recent developments. Tanzania is one of a number of African countries with large, but often undeveloped natural resource endowments that has reformed its entire legal and administrative framework in recent years under the influence of strong investor interest. Its Mining Act of 2010 and Petroleum Act of 2015 are both aimed at maximising the domestic economic benefits of such resources and strengthening state institutions. This legislation has not removed the state's ownership of minerals and petroleum resources, as is common on the continent (Veit et al., 2013), but, along with other recent policy reforms, it has gradually improved the protection of communities' and smallholders' rights, including the rights of artisanal miners and customary land-rights holders (Bourgouin, 2014; Pedersen et al., 2016; Jacob et al., 2016). However, as this article shows, these progressive legal provisions in one set of legislation may be partly undermined by regressive provisions in others. This points to the importance of the overall political economy of land and extractive resources in a country, the limits to the good governance of natural resources and the best-practice guidelines that have been promoted internationally in recent years.

Fieldwork was conducted in order to analyse how these policies are applied in practice. It was carried out between 2015 and early 2017 and involved semi-structured interviews with stakeholders relevant to the projects analysed in the article. These included on-site interviews with communities and their leaders, as well as local government representatives at the village, district and regional levels. Gas-related research took place in Lindi and Mtwara municipalities and districts, and mining-related research in Mbinga District. Overall, the interviews focused on the extent to which the affected communities and individual land-rights holders' were involved during the investment processes, with a

particular emphasis on procedural rights to information, participation and compensation during the acquisition of land. Further interviews were conducted with extractive company representatives in Dar es Salaam from both private and state-owned companies on overall investment project designs and on the standards for acquiring land. Finally, state representatives from various state institutions were interviewed about the extent of their influence on projects and standards, most importantly the Ministry of Energy and Minerals, the Ministry of Lands, Housing and Human Settlements Developments and the Tanzania Mineral Audit Agency.

This introductory section is followed by a review of historical developments that highlights both continuity and change in the regulation of the extractive sector from colonial times until the liberalising reforms of the structural adjustment era. We then move to a more in-depth section on the most recent post-structural adjustment reforms in the mining and petroleum sectors, showing how they affect relations between state actors, communities and investors. It is important to bear in mind that we may at times write about 'the state', 'communities' and 'investors', but these are analytical constructs that will be further unpacked in the analysis. The fourth and fifth sections thus analyse developments in the mining and petroleum sectors respectively with a particular focus on how the increased emphasis on direct state participation in extraction activities affects communities and land-rights holders. These two sections are followed by a conclusion. Zanzibar, which is also part of the United Republic of Tanzania, but has its own legislation when it comes to land and extractive resources, is not considered in this paper.

2. The regulation of mining and petroleum exploration in Tanzania: a historical review

Current developments in the regulation of Tanzania's extractive sectors draws heavily on developments in the past, as will be demonstrated in this section. This approach to the governance of land and natural resources had already been framed by the British colonial authorities and still has reverberations to this day. Back then, the African population generally had limited access to the formal institutions that had been set up to regulate and protect Europeans' property rights and that promoted large-scale mining operations at the expense of artisanal mining activities. In the extractive sectors, this meant that the right to explore and prospect for minerals generally trumped customary rights (Chachage, 1993; Knight and Stevenson, 1986). These main features of the colonial administration of land and natural resources were retained after Tanganyika became independent in 1961 (Pedersen et al., 2016). The most conspicuous change immediately after independence with implications for extractive operations was the passing of the Land Acquisition Act of 1967, still in force today, which provides the legal basis for the compulsory acquisition of land for 'public purpose' in Tanzania at the expense of customary rights and covers a wide range of activities, including the extractive sectors (URT, 1967, section 3, e).

The state's direct involvement in the extractive sectors began in 1958, when the Tanganyikan colonial government, eager to gain more control over one of its bigger foreign-currency earners, acquired fifty percent of the shares in the Williamson Diamond Mine in collaboration with the South African De Beers corporation upon the death of its founder and owner (Knight and Stevenson, 1986). A National Development Corporation (NDC) was established, initially aimed at catalysing private indigenous investments, for instance, through joint ventures, but as the modernisation drive speeded up with the 1967 socialist Arusha Declaration, it became a tool for the state to acquire and hold major stakes in key sectors of the economy constituting a minimum of

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