

Criminal Trespassers in Mining Areas: A Case Study of Bulyanhulu Gold Mine, Kahama

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Abstract: *With respect to private property, trespassing in a mining site is illegal; attributing to stern actions by the owner against the trespasser. However, the situation can be burdensome when actions taken against the culprit are inhuman in the eyes of law, especially when actions taken are against rule of law and good governance. Data for this study, criminal trespassers in mining areas were collected from three wards, namely Bugarama, Bulungwa and Bulyanhulu in Kahama district, Shinyanga region. Data collected were analyzed qualitatively through the narrative analysis which is a method involving the reformulation of stories presented by respondents taking into account context of each case and different experiences of each respondent. Findings revealed that little feeling of benefiting from mines by local communities, little social corporate responsibility, and unfair compensation of land acquired by mining companies are some of the factors fueling persistent trespass in mine sites. Other findings indicate that household poverty due to lack of alternative resources of income, limited access to land, and forced acquisition of land by the government and little compensation upon vacating mining areas attribute to trespass in mine sites. On the other hand, on reviewing proper strategies to control trespass in mine site, it was found that use of social license to operate, use of lawful methods to acquire land with mines, transparency in extraction of minerals and upliftment of communities through social corporate responsibility can easily pave new ways for sustainable investments and improved wellbeing of communities around mining areas. The study concludes that criminal trespassing in mining areas are caused by lack of rule of law and good governance, household poverty as well as little feeling that mining operations benefit local communities around mines. The study recommends that wide public interest should be given priority during land acquisition from local communities, education on legislation of land occupancy be provided and mining companies should effectively provide corporate social responsibility to the surrounding communities.*

Keywords: Trespass, Poverty, Rule of law, Good Governance, Mines

1. Introduction

By definition mines mean any operations or activities for the purposes of winning any mineral on, in or under the earth or water (Mineral and Petroleum Resources Development Act, 2002) in South Africa. However, it is pointed out by Department of Environmental Protection in Pennsylvania in the United States of America that mines are private property whether they are active or abandoned. However, trespass is an unlawful intrusion that interferes with one's person or property. In this course, persons caught in mine sites will be charged with criminal trespass. In similar vein, while mines and mining operations can contribute to economic development and improve social welfare of surrounding communities, yet, mining operations can also bring about suffering for individuals and communities (Centre for Environmental Rights, 2018). With respect to private property, trespassing in a mining site is illegal; attributing to stern actions by the owner against the trespasser. However, the situation can be burdensome when actions taken by the owners of the property against the culprit are inhuman in the eyes of law, especially when actions taken are against rule of law.

Thus, a basic way through which society can govern mining activities is through deciding how land and mineral rights should be owned and accessed. In most of the world's countries, mineral rights are held by governments (Eggert, 1994). A notable exception is the US, where mineral rights are held by property owners. The control of mineral

resources has traditionally been framed in terms of importance for economic development and security (Radetzki, 2008). Since any investor is aiming at earning huge profits from investment, policy frameworks have been framed in this scenario whereby communities around the mines are vacated sometimes with little compensation for the benefits of government and investor. A study by Coetzee and Riana (2006) on the role of mining industry in South Africa remarks that the achievements of the mining industry and its contribution to the South African economy are truly remarkable. It is a crucial foreign exchange earner and a substantial contributor to economic production. They further emphasize that the mining industry remains a leading employer and a leader in the field of scientific technological research, to the benefit of all South Africans. This in turn would create a bigger pool of future staff that would be better skilled. These mines follow a comprehensive approach to social development in their communities. They are involved in building and sustaining schools, health-care facilities, skills development, agricultural projects and the development and maintenance of infrastructure in the community (Yekela, 2014).

It is pointed out that mining industry follows the method of social upliftment; most mining houses develop infrastructure where they are located. Mining activities are labour intensive and attract people from all over South Africa and neighbouring countries. The nature of the gold mining industry makes it vulnerable to theft: the product is easy to identify and to mine, it is relatively easy to sell and it can be mixed with legitimately acquired gold to be used in legal

businesses. The theft of gold poses a substantial threat to the South African economy (Gastrow, 2001). In connection to criminal trespassing which is the subject matter of this study, this illegal intrusion to someone's land (mines) attributes to many factors such as being offenders arrested by police, injured during bullet exchange or even killed. In this case, trespassing in such mining areas is detrimental to all parties but largely the culprits. The study examined criminal trespassers in mining areas with an experience of Bulyanhulu Gold Mine, Kahama in Tanzania. The objectives of the study included:

- i) To determine the major causes of trespassing in mining sites.
- ii) To explore strategies that can be used to control trespassing in mining areas.

2. Literature Review

Security measures are only one solution to counter the theft of precious metals: they can help prevent theft by making it difficult to gain access to protected product, but they cannot stop the phenomenon completely. Poverty and unemployment have been found to be some of the main contributors fuelling criminal behavior (Coetzee and Horn, 2006). Social development is therefore an important method of countering crime more holistically. Some mining houses already participate in and contribute to social upliftment in their communities. Mining houses not doing so should consider participating in such initiatives. Social upliftment in local communities with prominent mine involvement can be essential in combating the crime phenomenon. Most of the mine's workforce will also benefit from better housing, schools and infrastructure in the community in general (Coetzee and Horn, 2006).

The Aggregate and Sand Producers Association of Southern Africa (2016) asserts that illegal mining has a serious detrimental financial impact on the state, employees, companies, the mining sector and the country because of loss of revenue, taxes, employment opportunities, capital expenditure, exports, foreign exchange earnings, procurement, etc. It also presents a serious risk to the sustainability of the industry and its ability to contribute to a meaningful future for all. In similar vein, mining companies have to spend a significant amount of time and money on security. Also Illegal miners present a major risk to themselves and to the health and safety of the employees of legal mining operations, often threatening them and their families to assist in the crime. The illegal miners also steal explosives, diesel, copper cables and other equipment from mines and make illegal electricity connections from the mine's electricity infrastructure.

According to Day (2013), villagers often try to gather rocks in the vicinity of the mine in the hope of finding small amounts of gold. "Police, which are an integral part of the mine's security, allegedly shoot at the villagers using tear gas and live ammunition. It is further stated that the claims relate to several incidents at North Mara Gold Mine where curbing use of excessive force at the mine, including deadly force used by police on a regular basis over a protracted period of time is unpromising (Day, 2013). Mining activity can lead to conflict by exacerbating existing

tensions over access to economic opportunities and natural resources, particularly land and water. The Business and Human Rights Resource Centre (2014) notes that diamonds are fuelling conflict in Angola, the Central African Republic and Zimbabwe. Similarly, mining is often seen as a development that is in the best interest of the whole country. If particular communities are unwilling to sell their homes or land to allow for such development, governments are able to invoke the power of eminent domain, otherwise known as 'compulsory purchase'. The severity of the resulting impacts depends on the ability and willingness of companies to adhere to international best practices for involuntary land acquisition, for example, in following IFC Performance Standard 5 on Land Acquisition on Involuntary Resettlement (World Bank, 2004). With regard to enforced purchase of land with mines, surrounding communities tend to intrude the areas in order to access resources for the mere purpose of earning income; however, in so doing they fall victims under the trespassing actions. To this end, some get injured if not killed or sometimes jailed for that cause.

A paper by Roe (2016) points out that new mining investment did make a big difference to the Tanzanian economy. At the same time there was considerable controversy in Tanzania over many aspects of mining; particularly around the scale of revenues received by government from mineral exploitation, and around questions as whether the nation was receiving an adequate return on its gold and diamond resources. It was also argued that the windfall associated with new gold and diamond investments had not been managed in a way that might have yielded optimum benefits both to the nation and to the affected communities around Mwanza and Shinyanga. However, the communities around four major mines in Tanzania (Geita Gold Mine, Mwadui diamond mine, Bulyanhulu and Buzwagi gold) had negative perceptions of the benefits from mining, with respect to most of the benefit streams. Although all four companies had made efforts to maximize local job creation, communities generally do not feel the mines have provided good employment opportunities and benefits: among other things there was perceived to be an endemic problem of patronage (Oxford Policy Management, 2011). With respect to trespassing in mining areas, struggle for benefits from these natural resources attribute to frequent intrusion in mining areas with a view to benefit from the mines.

Accompanying this increase in mining activity has been a pushback by local communities that are largely poor and fear that mining projects will contaminate the land and water on which they subsist (Slack, 2009). Because of the economic value of mining to the country as a whole, the government has responded to this pushback by criminalizing social protests and mining companies have used private security forces not always respectful of human rights to protect their activities, actions which have further inflamed tensions on all sides of the issue (Slack, 2009). A study by Maier et al, (2016) on socially responsible mining states that there are no easy solutions to this type of complex problem because it is contributed to by local and regional issues related to culture, economics, environmental concerns, government, and politics and the situation in each country is different. The benefits of mining are clear; many developing

countries are currently successfully diversifying and growing their economies through mining. With respect to trespass in mind, the poor will rather continue struggling in order to benefit from mines even if there are problems which may impact their life.

In viewing causes of trespass in mining areas, (Coetzee, and Horn, 2006) remark that poverty and unemployment have been found to be the main contributors fuelling criminal behaviour. Social development is therefore an important method of countering crime more holistically. Some mining houses already participate/contribute to social upliftment in their communities. Most of the mine's workforce will also benefit from better housing, schools and infrastructure in the community. Other observations suggest that there should be more comprehensive education on relevant issues in the mining industry.

3. Sample and Methodology

3.1. Sample

The study used a total number of 20 respondents whereby 15 respondents were covered through focus group interviews/discussion while 5 respondents were interviewed singly depending on their key roles in the surveyed area. The logic for employing this multi-method data collection strategy was to increase reliability and validity of the findings. Largely, data were collected from three wards, namely Bugarama, Bulungwa and Bulyanhulu. The study used qualitative approach, and exploratory research design was applied by the study.

3.2. Data analysis

Data collected were analyzed qualitatively through the narrative analysis which a method involving the reformulation of stories presented by respondents taking into account context of each case and different experiences of each respondent. In other words, narrative analysis is the revision of primary qualitative data by researcher (Dudovskiy, 2018).

4. Empirical Results

4.1 Causes of trespass in mine sites

In analysis data for causes of trespass in mine sites, it was revealed that little feeling of benefiting from mines by local communities, little social corporate responsibility, and unfair compensation of land acquired by mining companies are some of the factors fueling persistent trespass in mine sites. These results are in connection with empirical studies on theft of copper in the Republic of South Africa that stolen copper ends up literally being laundered similar to money laundering in the following process as explained: legitimization of stolen metal (copper) begins with mixing of stolen and "honest" scrap. It is then smelted, liquefied and out of this process comes copper cathode, the commodity that's traded on the London Metals Exchange. Cathode is sheets or bars of copper, literally "red gold" (Arendse, 2012). If there are unfair acquisition of land rich with

minerals, communities around such areas tend to have negative attitudes against investors because of lack of mutual agreement upon sustainability of their social welfare.

In connection to causes of trespass in mines, a report by Armstrong (2008) on the Ghana's wealth of natural resources remarks that fifty years after political independence, 40% of Ghana's 22 million citizens still live in poverty despite the fact that the country is the second-largest gold producer on the African continent. According to the Food and Agriculture Organization (FAO, 2006), a large proportion of Ghana's poor live in rural areas and about 11% of the population, over two million people, continue to suffer from hunger. It is further asserted that over two decades of neoliberal reform and a surge of foreign direct investment (FDI) in Ghana's mining sector (mainly gold) generated tremendous gains for TNCs but has delivered comparatively few benefits to either the national economy or mine affected communities. With regard to trespass, it is certain that communities faced with food insecurity, limited access to other basic needs will not worry to intrude mine site for the sake of looking resource to sustain their social welfare. This trend is not new in other countries; Tanzania has been experiencing trespass in mines by local communities, for example, this is evidence of how trespass is practiced around mine sites, Gokona, Nyakunguru village:

"there were was a very big conflict about land. It seemed normal. My community also had a conflict with the mining company Acacia, because we thought maybe they were thieves – that they just came here, drilled holes and took all the gold, and then they would leave. I used to intrude their mine and take rocks because I thought I was defending what is ours". The perception of Acacia Mining in north Mara was very negative, and people blamed them for their inhuman actions.

Other findings indicate that household poverty due to lack of alternative resources, limited access to land, and forced acquisition of land by the government and little compensation upon vacating mining areas attribute to trespass in mine sites. However, these indicate poor governance at grassroots level because the government does not seek the right methods of acquiring land from local communities and make compensation accordingly. These misunderstandings are commonly noticed in Lwabakanga and Busurwangiri villages surrounded by Bulyanhulu and Buzwagi gold mines whose community members worried about their rights when their land was acquired for public interests in order to transfer ownership to the mining companies which in turn fueled conflicts between community members and the investor (Acasia).

4.2 Measures to control trespass in mine sites

On reviewing proper strategies to control trespass in mine site, it was found that use of social license to operate, use of lawful methods to acquire land with mines, transparency in extraction of minerals and upliftment of communities through social corporate responsibility can easily pave new ways for sustainable investments and improved wellbeing of communities around mining areas. Empirical studies show that Community members can now clearly see a positive

relationship where Acacia, for example has heard the community and assisted them with infrastructure or social development projects, such as roads, construction of secondary school, dispensary and scholarships (Manirakiza and Loeskar, 2015). In linking these findings with sustainable development, it is again pointed out that barriers preventing developing countries from reaching the United Nations Millennium Development Goals (MDGs) include weak governance, institutional constraints, inconsistent policies, and inadequate resources. Ironically, over three billion people around 50% of the world's population live on less than US\$2 per day and the number of people in this category was expected to rise by more than 100 million by 2015 unless drastic measures were taken by national governments, donor countries, and the International Financial Institutions to overcome these major implementation barriers to sustainable development (Sustainability Watch, 2006). With respect to trespass in mine sites, the poor cannot stop intruding the mines if issues of good governance are not given priority by national and international communities in light of human rights. Mines are owned by multinational companies through sometimes unfair policy frameworks with a focus on wide public interest but indigenous people are left lagging demand of their social welfare; therefore, conflicts will continue for struggling to get benefits from these resources formerly fallen under their ownership through customary law.

5. Conclusion

Trespassing in mining sites has been experienced in many mining operations because of unlawful acquisition of land from indigenous communities, which does not really benefit the local people because no alternative economic resource is available to sustain their livelihood, lack of transparency from mining dealings also triggers trespassing. Similarly, little corporate social responsibility by mining companies to communities causes another obstacle between investors and communities. On the other hand, extreme poverty at household level prompts trespass in mines in order to benefit from this natural resource. It recommended that wide public interest should be given priority during land acquisition from local communities, education on legislation of land occupancy be provided and mining companies should effectively provide corporate social responsibility to the surrounding communities.

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