



Conflict, Claims, and access to Gold

- A Thesis on the conflict between artisanal miners and a mining company in North Mara, Tanzania



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Abstract

Since the beginning of the 1990s, liberalisation of the mining sectors in Africa has resulted in a large influx of foreign mining companies, bringing them into conflict with existing primitive artisanal mining activities, which is an important livelihood strategy on the continent.

This study focuses on the conflict around the North Mara Gold Mine situated in the north-western Tanzania, one of the most severe and violent cases of conflict between artisanal miners and a mining company in the world. This study seeks to find the causes of this conflict and identifies three stakeholders in the conflict; the artisanal miners in the area, the mining company African Barrick Gold operating the mine, and the Tanzanian government, which all claim access to the gold.

The sparse academic literature on this topic is reviewed along with studies of conflicts between mining companies and local communities and studies of livelihood of artisanal miners. This review finds that the legislation in Tanzania to be of great importance to the conflict, as it gives preferential treatment to foreign large-scale mining companies, while dispossessing artisanal miners of their livelihood. The most utilised theoretical approaches in the relevant literature are Corporate Social Responsibility and Resource Conflict Theory but both fail to acknowledge the human agency aspect by which conflict is relational and depending on the actors' perceptions of the circumstances of the conflict. Accordingly this thesis turns to the concepts of contestation, protest, and claim-making from Social Movement Theory. Within this theoretical framework violence can be an expression of protest, entailing feelings of wrong-doing that call for redress. These feelings are socially constructed under perceived circumstances, legitimising the feelings, thus ultimately legitimising the way of articulating the claims as well. The aim of the study therefore, is to analyse how the stakeholders each legitimise their claims.

Acknowledging the perceptions of the stakeholders as being subjective this study takes on a constructionist position. The historical origins and development of the conflict are reviewed and the legal context of the conflict is discussed in relation to how it affects the claims of the stakeholders. The analysis relies on secondary analysis of qualitative interview data to combine the resources of various fieldwork.

This study finds that the three stakeholders legitimise their claims of access to the gold on legal and non-legal grounds different from each other. The perceived legitimacy of the claims ultimately justifies violence as a mean to gain or secure the access to the cold, making the conflict a manifestation of a clash of articulated claims.

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Acronyms

ABG – African Barrick Gold (plc)
AMGM – Afrika Mashariki Gold Mines (Ltd)
ASM – Artisanal and small-scale mining
CSR – Corporate Social Responsibility
EAGM – East Africa Gold Mines (Ltd)
FDI – Foreign direct investment
FFU – Field Force Unit
GDP – Gross Domestic Product
IMF – International Monetary Fund
LEAT – Lawyers’ Environmental Action Team
LHRC – Legal and Human Rights Centre
LSM – Large-scale mining
MDA – Mining Development Agreement
MEM – Ministry of Energy and Minerals
NMGM – North Mara Gold mine
NGO – Non-governmental organisation
RPC – Regional Police commander
SSA – Sub-Saharan Africa
SMT – Social Movement Theory
SML – Special Mining License
TCME – Tanzania Chamber of Minerals and Energy
THRR – Tanzania Human Rights Report
TShs – Tanzanian Shillings
URT – United Republic of Tanzania
VBA – Village Benefit Agreement
WB – World Bank (Group)

1. Introduction: Mining and conflicts

Artisanal and small-scale mining (ASM¹) is an important livelihood strategy in many developing countries². It is a labour-intensive, low-skilled, manual form of mining with minimal mechanisation, using basic tools such as shovels and buckets and is often carried out informally. ASM requires limited capital investments to enter and provides employment and income to a large number of people in developing countries (Bryceson & Jønsson 2012: 1; Fisher et al. 2009: 32; Hentschel et al. 2002: 3-4).

Contrary to ASM, modern large-scale mining (LSM) is high-tech, highly mechanised, capital-intensive, employing small but highly skilled work forces (Greenen 2011: 150; IIED 2002: 201). To attract foreign direct investment (FDI) several mineral rich, Sub-Saharan African (SSA) countries have liberalised and restructured their mining sectors throughout the 1990s, which have led to a substantial increase of exploration and mining operations by foreign LSM companies in these countries. This has been considered an important development strategy, strongly encouraged and financially supported by the World Bank (WB). The reforms offer investors an attractive business and investment climate in the mining sector, with low royalty rates, tax exemptions and transferability of profits, low taxes on imports of mining equipment, the ability to carry forward losses and offset these against tax, and other incentives to induce growth in the sector (Bebbington et al. 2008: 889; Carstens & Hilson 2009: 304-305; Curtis & Lissu 2008; WB 1992: xii-xiii).

The increase in LSM operations has brought them into conflict with existing ASM activities and a lot of people have been displaced to accommodate LSM operations (Carstens & Hilson 2009: 310; Fisher 2007: 744; Lange 2008: 28; IIED 2002: xviii, 324). SSA has experienced the most violent and prolonged conflicts between LSM and ASM³, which in many cases have resulted in injuries and casualties and caused costly damage to equipment and buildings (Carstens & Hilson 2009: 306, 308).

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- 1 Although a few distinguish between artisanal and small-scale mining in that they are commonly described under this common abbreviation (e.g. Mwaipopo et al. 2004: 21). This thesis will use the same abbreviation and only distinguish between them when necessary, in which case the difference will be described explicitly.
 - 2 An estimated 13 million people in about 30 countries are directly engaged in ASM and a further 80 to 100 million people across the developing world depend on small-scale mining for some aspects of their livelihoods (Hentschel et al. 2003: vii).
 - 3 Examples are for instance numerous conflicts in the Manica Province of Mozambique, during the 1990s, conflict in Katanga, Democratic Republic of Congo and violent confrontations in Ghana (Aubynn 2009: 64; Carstens & Hilson 2009: 308; Dreschler 2001: 52-53).

In mineral rich⁴ Tanzania⁵, ASM has been carried out in the country since colonial days and has proliferated over the past 30 years. An estimated 680.000⁶ men, women and children are currently engaged in ASM making it an important economic activity in Tanzania (Bryceson & Jønsson 2012: 1; Jønsson & Fold 2009: 212). At the same time the influx of LSM companies have made Tanzania the 3rd largest gold producing country in SSA (Carstens & Hilson 2009: 309; Hall 2010: 1; THRR 2010: 223). Many people engaged in ASM have been displaced from their areas and deprived of mining possibilities as a result of this influx and many now work illegally on concessions awarded to mining companies (Carstens & Hilson 2009: 310; Hall 2010: 1; Lange 2008: 14).

1.1. Problem area: The North Mara case

Tanzania is host to one of the most severe cases of ASM-LSM conflict in the world. The conflict takes place around the North Mara Gold mine (NMGM) in the north-western part of Tanzania, in the Tarime District of the Mara Region⁷ (see Fig 1 and Fig 2). This case will be the focus of this thesis.



Fig 1. Location of North Mara
(tanzaniagold.com)



Fig 2. Air photo of the NMGM
(davidchancellor.com)

The NMGM is owned and operated by African Barrick Gold (ABG), the biggest mining

4 Tanzania has huge reserves in eleven key minerals which include gold, Nickel, Tanzanite, Diamonds, copper, Iron ore, coal, Limestone, soda ash, gypsum and phosphate. The five key minerals and their provable amounts in brackets is Gold (2,222tonnes), Nickel (209million tonnes), Diamonds (Carat 50.9million), Copper (13.65million tonnes), and Iron ore (103million tonnes). (tanserve.co.tz). Tanzania is believed to have the second largest gold reserves in Africa (mbendi.com).

5 United Republic of Tanzania (URT)

6 Though some estimates are as high as 1.5 million people but there are no accurate figures available on the number of people employed in ASM in Tanzania, especially due to their high mobility and the informal nature of their work (Bryceson & Jønsson 2010: 358; Carstens & Hilson 2009: 310 - footnote 3; Jønsson & Fold 2009: 212 - footnote 2).

7 100 kilometres east of Lake Victoria and 20 kilometres south of the Kenyan border.

company in Tanzania⁸ and a subsidiary of the Canadian mining company Barrick Gold Corp (Barrick), the leading mining company in the world (Barrick.com). The mine is located in the middle of seven densely populated villages - Kewanja, Nyakunguru, Kerende, Nyangoto, Genkuru, Matongo, Nyamwaga - with a total population of 70,000-122,000⁹ (Mlowe & Olengurumwa 2011: 3; Mwikwabe 2011: 14; York 2011b). The mine consists of two areas. One contains the Nyabirama pit and a gold processing plant in the village of Nyangoto (A2 in Fig 3). Located seven kilometres north east of this are the Gokona and Nyabigena pits in the village of Kewanja (A1 in Fig 3). The two areas cover 41,8km² in total¹⁰ (ABG.com; ABG 2012e; ICMM 2007: 23).



Fig 3. The two mine areas (googlemaps)

Prior to the opening of the NMGM in 2002, gold mining activities in North Mara were undertaken by local villagers and was their main source of income. The five villages of Kerende, Kewanja, Nyamwaga, Genkuru and Nyangoto held mining rights to the areas Nyabigena and Nyabirama although many people worked informally. The investment in LSM in the area has meant that 40.000 people have been displaced and dispossessed of mining opportunities and farm land, as the LSM company acquired mining rights to the areas Nyabigena and Nyabirama, excluding the claims of the villages (Bryceson & Jønsson 2012: 1; Hall 2010: 3; LEAT 2003a; Mlowe & Olengurumwa: 2011: 4; Mwikwabe 2011: ix, 8, 64).

The local communities have not benefited from the NMGM and are among the poorest and

8 ABG also operates the mining sites of Bulyanhulu, Tulawaka and Buzwagi which together with the NMGM comprises four of the six largest gold mining sites in Tanzania (ABG.com; Hall 2010: 2).

9 Estimates differ and the number can vary due to uncertain exact villager borders and in-migration from other areas (Mwikwabe 2011: 4).

10 All three are open pits and conventional hard rock operations with drills. The mining concessions have been enlarged several times (ABG 2012e). The Nyabirama pit and plant are now covering 10.5 km² (6,65 km² originally) and the Gokona and Nyabigena pits are now covering 31.3 km² (8.3 km² originally).

most underdeveloped in Tanzania. Most villages have no utilities such as sewerage or electricity and generally there is a low living standard¹¹ (ICMM 2007: 26; Mlowe & Olengurumwa: 2011: 4; Mwikwabe 2011: 21; Simpson 2010). Instead they are negatively affected by environmental pollution, lack of social services, forced evictions, human rights violations, unnecessary arrests, compensation disputes, arguments over economic benefits and allegations of sexual assault by police and security guards at the mine (THRR 2010: 225; York 2011b).

An estimated 200-300 artisanal miners in groups of three to five people, trespass onto the ABG mining concession on a daily basis (see Fig 4 and Fig 5), to scope for gold sand or use shovels to dig out low-grade ore from waste rocks (Bariyo & Steward 2009; Cooksey & Kelsall 2011: 67; Mlowe & Olengurumwa 2011: 9).



Fig 4. People within the ABG concession rocks

(davidchancellor.com)



Fig 5. Artisanal miner searching for gold in

(Bloomberg 2010)

These illegal activities within the ABG mining concessions lead to confrontations with police forces stationed in the areas and ABG security guards (Hall 2010: 5; York 2011b). Since the NMGM opened at least 50 villagers have been killed in these confrontations and several critically injured, making it one of the most violent case of present LSM-ASM conflicts in the world (Mlowe & Olengurumwa 2011: 2, 17, 21).

11 Based upon personal observations. In official figures the Mara region has a high poverty rate and the highest inequality in Tanzania (Mkenda 2004: 16; NBS 2002: 19; NBS 2011: 4; URT 2005: 111). Regional per capita Gross Domestic Product (GDP) at current prices: 642,528 million Tanzanian Shillings (TShs) (\approx 396.99 million USD) (NBS 2011: 41). Although the region is not the poorest in all of Tanzania poverty is still considerably with 31,9% of the population being below the basic-needs-poverty line in the Tarime district and below the average Tanzanian annual income (NBS 2011: 41; URT 2005: 111).

But why is this conflict that violent? Police and security guards have been accused of human rights abuses and police brutality, and a shoot-first-ask-later mentality against anyone trespassing onto the mining site (Mlowe & Olengurumwa 2011: 15-21; Saunders 2011; York 2011b). The police is ultimately deployed by the government and the government has formulated the legal framework regulating the mining sector, which has attracted the foreign LSM companies in the first place. The Tanzanian government is hereby an important stakeholder in this case as well. But why is violence utilised and how is it legitimised? That is the overall objective for this thesis to investigate as formulated in the research question below.

1.2. Research question

Why is the ASM-LSM conflict in North Mara particularly violent and how is this violence perceived and legitimised by the stakeholders?

1.2.1. Sub-questions

To approach this research question, three sub-questions have been formulated. The combined answers of these will provide the overall answer to the research question as presented in the conclusion of this thesis. As will be argued later on, the sub-questions are derived from, theoretical considerations and discussions of concepts of social movements and collective struggles, and how these can be applied to an African context, making the theoretical framework of this thesis guiding for the thesis and its methodological approaches. In this theoretical perspective, protest actions and claim-making of the stakeholders are central to explain the the conflict. The perspective regards that claims and protest actions to articulate such claims are legitimised in relation to how the claimants perceive the circumstances under which, protests and claims are articulated.

All three stakeholders; government, company, and artisanal miners have needs and interests in gold (Hall 2010: 1). This study regards the claims of access to gold as central to each of the stakeholders, focusing the study at these claims.

The entry of the LSM company in North Mara have changed who access the gold and how this is carried out and therefore also changed how this access is being claimed and legitimised. This relates to the social circumstances and how these are perceived by each stakeholder and how these perceptions have been constructed in relation to the social changes in the area and

in the country. The sub-questions therefore are:

- How was and how is the gold accessed and claimed by the stakeholders?
- How are the claims legitimised and how has this legitimacy changed?
- How is this legitimacy socially constructed?

1.3. The conflict as a development issue

This thesis regards the conflict in North Mara, Tanzania within the wider context of development problems. The communities around the NMGM are rural and poor, whilst the price of gold has been rising for decades (ARM 2011: 3; goldprice.org¹²). ASM is perceived to be poverty-driven, but also having development potential in terms of poverty reduction. It is far larger in labour absorption compared to LSM (Bryceson & Jønsson 2012: 1; Fisher et al. 2009: 36; Hentschel et al. 2003: 1; Mwaipopo et al. 2004: 8). LSM can potentially contribute to development at both the national, as well as the local level in terms of increased state revenue, employment, local developments initiatives and investments, and positive influence on others parts of the industrial sector (Ansoms & Marysse 2011: xvii-xviii; Curtis & Lissu 2008: 41-43). This positive relationship have however, been strongly contested in the light of many examples of failure of LSM to contribute (enough) to development in developing countries. This failure has mostly been assigned to improper policies by the governments as well as the companies (Bebbington et al. 2008; Curtis & Lissu 2008; Hilson & Haselip 2004; Jenkins & Yakovleva 2006; Lange 2006; Lange 2008).

The aim of this thesis is to contribute to the academic literature on the complex relationship between mining and development in developing countries, especially within the little but growing literature on ASM-LSM conflicts. It is the hope of this author that insights into the ASM-LSM conflict in North Mara can contribute to a better understanding of the complex relationship between conflict and claims and different perceptions of legitimacy. The study will challenge existing explanations to conflict and violence in mining areas such as: misconceptions between the stakeholders of their alleged rights; confused legal rights; claims to the same gold deposits; and a legal framework giving preferential treatment to foreign mining companies while marginalising artisanal miners, arguing that these are not incorrect but incomplete. Instead I argue that the stakeholders legitimise claims to access the same gold resources differently, each in ways that ultimately justifies use of violence to access the gold.

12 This source offers a historical as well as currently overview of the development of the value of gold.

This thesis is biased towards the artisanal miners in North Mara and their situation although, it cannot be ignored that ASM is not unproblematic. ASM is often characterised by poor working conditions, health hazards, lack of social security, prostitution, child labour, erosion and reduced soil fertility, mercury pollution of water sources¹³, and lack of knowledge about the negative consequences of the activities (Bryceson & Jønsson 2012: 2; Hentschel et al. 2003: vii-viii; Mwaipopo et al. 2004: 55; Schueler et al. 2011: 534).

It is argued that ASM and LSM target different deposits, as LSM is most suitable for large areas and large quantities and can dig much deeper than ASM, whereas ASM targets deposits which are uneconomical to extract for LSM companies¹⁴. Hence, mineral reserves could be exploited to the fullest through cooperation, which could also mitigate many of the problems associated with ASM¹⁵ (Aubynn 2009: 69; Carsten & Hilson 2009: 306; Dreschler 2001: 21; Hilson 2002b: 7). Having this in mind, the conflict in North Mara is a serious barrier to local development in the area, making it all the more relevant to understand the conflict.

13 Use of mercury is common in North Mara (Bariyo & Stewart 2009; York 2011b).

14 Marginal mineral deposits are better suited for ASM operations as they are financially viable because they require less time to develop and therefore have a faster payback on investment compared to LSM operations (Hilson 2002b: 7).

15 The study by Aubynn describes experiences from Ghana, in which the company Abosso Goldfields Limited have implemented a strategy (called "Live and Let Live") to lead artisanal miners work within its concession, creating a peaceful relationship between the two (Aubynn 2009: 67).

2. Background

This chapter will elaborate on the situation in the area and the characteristics of the local communities as well as the ABG to draw up the empirical field to provide an understanding of the context of the conflict.

2.1. Characteristics of the Local communities

In this thesis the villagers, artisanal miners and former artisanal miners of the seven villages of Kewanja Nyakunguru, Kerende, Nyangoto, Genkuru, Matongo, Nyamwaga are regarded as the local communities around the NMGM (see Fig 6), in line with other research on the conflict in North Mara¹⁶ (Mlowe & Olungurumwa 2011: 3; Hall 2010: 5).

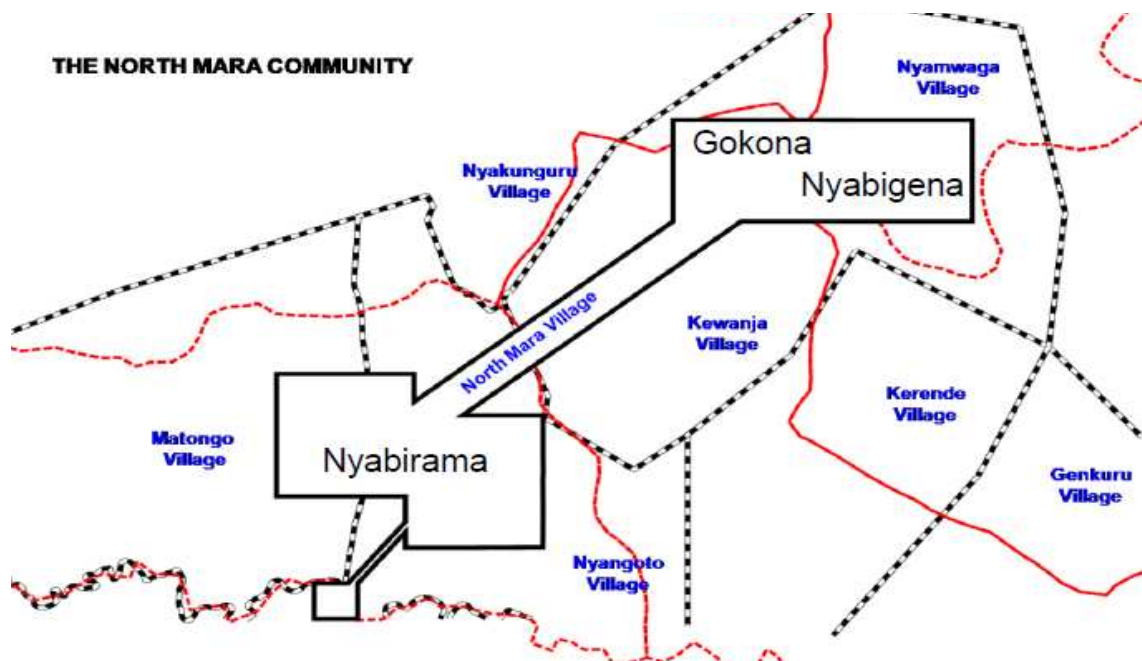


Fig 6. The villages around the mine (ABG 2010: 5)

The NMGM is situated in close proximity to many homes, having large piles of waste rock almost in their backyard (see Fig 7 and Fig 8) and not everywhere is the line between village land and mining area clearly defined (LEAT 2003b; Mlowe & Olungurumwa 2011: 5, 6, 15; York 2011b).

¹⁶ It should be noted that the area which Barrick/ABG has defined as its neighbourhood, contains thirteen villages which besides the seven mentioned includes, Keisangora and Kimusi, Gibaso, Mrito, Nyarwana and Weigita (ICMM 2007: 25-26).



Fig 7. House next to the mine
(protestbarrick.net)



Fig 8. Houses next to the mine
(Curtis & Lissu 2008: 8)

2.1.1. Artisanal and small-scale mining activities

The main economic activities in Tarime are agriculture, pastoralism and mining but the local communities around the mine however, have relied on ASM for approximately 50 years (Hall 2010: 4; Mlowe & Olengurumwa: 2011: 2, 4, 21; Mwikwabe 2011: 8). Most artisanal miners in North Mara have worked or are working informally. The informal ASM sector have little regulation and it is difficult to obtain accurate information about it. The informal ASM sector is generally isolated from government policy and actions from development planning and from wider social and environmental policies, such as health care and natural resource management, and ASM is often unsafe, unhealthy and environmentally unsound (Dreschler 2001: 7; 21; Hentschel et al. 2003: 8-9; Mwaipopo et al. 2004: 9). ASM gold production in the Mara region prior to the NMGM was very small¹⁷ compared to the volumes that the ABG operation amounts to presently. Now ASM activities are conducted around and within the NMGM perimeters (Mwikwabe 2011: 43-44; York 2011b). Rocks containing ore are moved to the surrounding villages where they are crushed and washed using large amounts of mercury¹⁸ in a basin to extract and separate the gold dust (see Fig 9 and Fig 10).

¹⁷ Even when considering that existing numbers are probably lower than the actual ASM production, due to the informality (ICMM 2007: 40).

¹⁸ Which is a hazard to both the artisanal miners and everyone else as I can the local water sources and eventually the food chain (Bryceson & Jønsson 2012: 2; Greenen 2011: 164).



Fig 9. Artisanal miners crushing rocks
(davidchancellor.com)



Fig 10. Artisanal miners washing out ore
(davidchancellor.com)

Once extracted, the gold obtained by the artisanal miners is sold to traders around Lake Victoria and ultimately shipped legally or illegally to overseas markets, primarily in Asia (Bariyo & Stewart 2009; Fisher et al. 2009: 36; Greenen 2011: 204; Jønsson & Fold 2009: 215).

2.2. NMGM characteristics

2.2.1. Performance and NMGM profile

Gold production of the mine in 2011 amounted to 170,832Oz^{19/20} (production in 2010: 212,947 Oz) which is 25% of the overall output of the ABG mines in Tanzania. Revenue in 2011 was \$1,218 million with a net profit of \$275 million. The life expectancy of the NMGM is about 10 years, based on proven gold reserves of 3,485,000 Oz (ABG.com; ABG 2012a). The mine employs 2,329 people, consisting of 1,029 group employees and 1,300 contracted personnel. About 700 of these are Tanzanians but only very few are locals (ABG.com; Mwikwabe 2011: 41; York 2011b). ABG pays 3% of their revenues in royalties to the Tanzanian government and corporate taxes have now been disclosed²¹ (ABG 2012d; Barrick.com).

19 Oz = ounce. 1 Oz = 28,350g.

20 Up till now the NMGM has produced over 2 million Oz = approximately 56,7 ton of gold.

21 ABG taxes and royalty payments in 2011 (for all four mines). Taxes: \$54,242,020. Royalties: \$45,642,646 (including royalties paid to third parties). In 2012, ABG agreed to pay a voluntary additional 1% royalty going forward, in addition to the 3% rate stipulated in their MDA In 2011 ABG made a direct contribution to Tanzania of \$176 million in taxes borne (ABG 2012d; Barrick.com).

2.2.2. African Barrick Gold acquisition of the NMGM

The ownership of the NMGM has come in the hands of ABG via a few detours. The Tanzanian company Afrika Mashariki Gold Mines Ltd. (AMGM), a 100% owned subsidiary of the Australian based East Africa Gold Mines Ltd. (EAGM), was originally granted the mining licenses to the areas in 1996 by the Ministry of Energy and Minerals (MEM) and opened the NMGM (then Afrika Mashariki Mine) in November 2002 (LEAT 2003b). In 2003 AMGM/EAGM was bought by the Vancouver based Placer Dome, which hereby acquired the mine. In 2006, Barrick acquired control of Placer Dome and hereby ownership of the NMGM (Barrick 3 2012; LEAT 2003a).

In 2010, Barrick established African Barrick Gold²² to operate and manage the gold mines in Tanzania (Barrick.com). Some claim that this was done to distance itself from the problems around the mine, which had attracted negative attention towards Barrick ever since it acquired the mine in 2006 (York 2011b). The original agreement by which AMGM/EAGM acquired the village land (see chapter 6) contained provision of compensation and obligations for the company to invest in the local communities²³. ABG have inherited these terms but they have never been complied with by any of the companies²⁴. Since 2010 however, a range of community development programmes have been initiated and in 2012, ABG signed Village Benefit Agreements (VBAs) with all seven villages. This includes compensation payments of \$100,000 to each of the seven villages in an attempt to end the *longstanding issues*²⁵ and a \$8.5millions investment²⁶ in the seven communities, along with local and national initiative not confined to the communities around the NMGM (ABG 2012b; Kisanga 2012; The Citizen 2011a).

2.3. Major incidents of violence

The daily confrontations between artisanal miners, and security guards and police forces have sometimes escalated and people have been killed. A couple of these escalated incidents have attracted considerable attention from the media, NGOs and activist groups. The specific

22 ABG is a company listed on the London Stock Exchange that owns gold mines and exploration properties in Africa. Barrick holds a 73.9% equity interest in ABG.

23 Rates of 150,000 TShs (≈ 92.5 USD) per one square feet to any person who was deprived of land and obligations for the company to give 25% of its earnings to education services; building a development college; and a college for the development of women (Mlowe & Olengurumwa 2011:5).

24 ABG contributes with 1% of its earnings to community development programmes (Mlowe & Olengurumwa 2011: 52)

25 ABG formulation.

26 Which includes the development of school infrastructure, provision of clean water, the upgrading of a local health centre to a hospital level where it will receive national funding, rehabilitation of village offices, improvements to the road infrastructure and extension of overhead electricity lines (ABG 2012b).

circumstances of these incidents however, are uncertain and reports differs on numbers, whether the miners had weapons or did not or were peaceful or attacking the company security guards.

In December 2008, a number of people, armed with bows, arrows and pangas, invaded one pit after it had been blasted for ore and burned \$7²⁷ million worth of equipment. Field Force Unit (FFU) troops were brought in to disperse the invaders and they shot and killed one trespasser (Cooksey & Kelsall 2011: 67; Simpson 2010). The most noticed incidents among media and human rights organisation is the incident of May 16th 2011, in which five people were shot and killed and more than 10 people were left injured by police officers. An estimated 800-1500 people entered the mining site for the sake of collecting the gold from the waste rock, due to inside information that the waste rock on this day would include high-quality rocks (ABG 2011a; Guardian 2011; Mlowe & Olengurumwa 2011: 9; Saunders 2011). In November 2012 more than armed 4,000 people raided the NMGM, prompting policemen on patrol to use their firearms to disperse them, killing one person in the process (Guardian 2012).

No one have been arrested for these killings (Mlowe & Olengurumwa 2011: 17-21).

27 Originally estimated at upwards of \$16 million.

3. Review of existing literature

This chapter will discuss existing, relevant literature on ASM-LSM conflicts and related issues, discussing the explanations to ASM-LSM conflicts that this literature offers. This will, based on a critical review of the theoretical approaches of this literature, lead to the chosen theoretical approach of this study. The utilised methods in this literature will also serve as inspiration to the methodological approach of this study.

3.1. Studies of conflicts between artisanal and large-scale mining

Existing academic literature on the situation in the North Mara case is limited²⁸ but it has attracted significant attention from non-governmental organisations (NGOs), activist groups, and news media (local and international)²⁹. Academically the case is mostly discussed peripherally³⁰ within the broader discussion of problematic issues related to LSM or ABG operations in Tanzania. It is therefore more relevant to consult literature specifically on ASM-LSM conflicts. There are few studies of ASM-LSM conflicts and ASM-LSM relationships in Tanzania but the amount of literature is growing. Carstens & Hilson (2009), Lange (2008) and Lugoe (2011) are important case-studies on this topic. Focusing on the gold-rich Geita District in Northern Tanzania (approximately 200 km south west of North Mara) Carstens & Hilson, along with other authors have found that conflicts between ASM and LSM in Tanzania are attributable to a policy environment which gives preferential treatment to LSM companies at the expense of the ASM sector (Carstens & Hilson 2009: 310, 320; Jønsson & Fold 2009: 218; Lange 2011: 4). Lange and Lugoe focus on the mineral policies in Tanzania. Lange finds that the legal framework is ambiguous, leading to contradicting and conflicting claims of access to resources between artisanal miners and LSM companies (Lange 2008: 20-21). Both Lange and Lugoe find that the legislation offers poor security of land tenure for communities resulting in forced relocation and inadequate compensation (Lange 2008: 20-21; Lugoe 2011: 34). Along with literature on ASM-LSM conflicts in Tanzania, there is a fair amount of literature on this problem in other countries. Aubynn (2009), based on experience from Ghana, regards ASM-LSM conflicts as: “... *contestation to exploit the same mineral resources in territories where the competing operators have divergent views of land ownership.*” (Aubynn 2009: 65). The author argues that mining companies and artisanal miners have different claims to the

28 I have been able to find two studies plus a couple more dealing with the case peripherally.

29 E.g. Corpwach (2007), Mlowe & Olengurumwa (2011), Saunders (2011), York (2011b).

30 See Bebbington et al. 2008; Curtis & Lissu 2008; Goldstuck & Hughes 2010; SID 2009.

same resources, the companies at the basis of legally acquired concessions and the artisanal miners on their traditional rights to work on the land (Aubynn 2009: 65).

These studies put much emphasis on the legal framework of mining and land. Further review of the practical implications of this legislation in regard to the ASM-LSM conflict in North Mara is therefore necessary for this thesis.

3.2. Studies of artisanal mining livelihood

The two most cited references in studies of ASM are Dreschler (2001) and Hentschel et al. (2002). The latter studies ASM in countries around the world whereas the first concentrates on SSA countries. ASM-LSM conflicts have also been discussed as part of general studies of ASM in Tanzania, again arguing that relocation and inadequate compensation arise a source of conflict (Bryceson & Jønsson 2012: 2) and that, much in line with Carstens & Hilson (2009), officials anxious to encourage FDI and support the development of the LSM industry, marginalise artisanal miners in the decision making process (Fisher 2007: 754). Additionally there is a large body of literature on Tanzanian ASM livelihood³¹ and its contribution to development (e.g. Fisher et al. 2009; Jønsson & Fold 2009; Mwaipopo et al. 2004).

These type of studies serve as valuable introduction to the ASM sector but are unspecific regarding ASM-LSM conflicts. Both type of studies overall utilise qualitative, methodological approaches conducting fieldwork and interviewing stakeholders and key informants in the selected areas. Some combine this with a few statistics on the financial output of ASM and LSM respectively, or with a global, political economy perspective, discussing how the reforms to attract FDI have put control of natural resource in the hands of foreign companies, weakened the power of host-governments to manage these resources for the purpose of national development (Auty 2006: 137; Hilson & Haselip 2004: 28; Jensen 2009: 7-8). Likewise both type of studies share an emphasis on the legal framework when it comes to ASM-LSM conflicts. However, I will argue that they disregard the human agency perspective; the actions and choices of the actors involved in the conflict and that they cannot account for the violent aspect of the conflict. Many are theoretically vague and very inductive in their approaches but some apply the theoretical concepts of Resource Conflicts Theory (see Bebbington et al. 2008; Carstens & Hilson 2009; Franks 2009).

31 Besides just as much focusing on ASM in Ghana (e.g. Aubynn 2009; Banchirigah 2008, Garvin et al. 2009) or the African continent in general (e.g. Dreschler 2001; Hilson 2002b; Hilson 2009).

3.3. Studies of Mine-Community conflicts

ASM-LSM conflicts can be analysed within the broader issue of Mine-Community conflicts which is a relatively familiar feature of the global mining industry (Franks 2009: 2). One way is to consider the wide range of social, environmental and economic impacts, LSM operations have been proven to have on local communities especially in developing countries. Among many issues, this includes pollution from the mining operation, marginalisation of different groups (particularly women), human rights abuses by mining personnel, re-location of people, and demands of employment and local investments³² (see Bebbington & Williams 2008; Franks 2009; Kemp et al. 2011; Schueler et al. 2011). The assumption in these studies is that conflicts are caused by such impacts. A slightly different assumption is that conflicts are a result of (perceived) unequal distribution of cost and benefits (negative and positive impacts) between stakeholders, where the company harvest the benefits, while the communities experience the costs (Bebbington et al. 2008: 888; Kemp et al. 2011: 93; Muradian et al. 2003: 775-776). In other words, conflicts in this perspective are not caused by the negative impacts alone, but by a feeling among the local communities that they do not benefit enough compared to the company.

These studies provide insights into the broad range of issues that local communities can encounter when LSM companies enters, and how these can lead to conflict. However, this approach does not consider specifically the very direct impact that LSM operations have on ASM-livelihood and the ever ongoing struggle between the two stakeholders, over the same resources. This is not to say that negative impacts from the NMGM at the local communities have nothing to do with the conflict. Instead, I argue that these studies cannot distinguish the particularities of the ASM-LSM conflict from the broader perspective of Mine-Community conflicts.

3.3.1. Applied theories of this literature

Two of the most utilised theoretical approaches in research on Mine-Community conflicts have been Corporate Social Responsibility (CSR) and Resource Conflict Theory. Both rely on further assumptions about the causes of conflict in relation to LSM operations.

³² See Franks (2009: 3) for a neat overview.

3.3.1.1. Corporate Social Responsibility

The CSR perspective considers CSR-policies³³ for proper corporate practice that is social responsible and sustainable, beyond legal requirements (Yankson 2010: 358). Authors utilising this approach their studies of Mine-Community conflicts include Anguelovski (2011), Goldstuck & Hughes (2010), Szablowski (2002), and Yankson (2010). The interaction with local communities in which they operate is an important aspect. For the mining sector the CSR-approach relies on a notion that companies need a social license to operate by the local communities. The social license is conditional on companies behaving in a manner that is consultative, collaborative, ethical, progressive and legitimate, to build greater trust and to win community support necessary to minimise disruption in their operations and not to bring them into conflict with the communities (Anguelovski 2011: 386; Goldstuck & Hughes 2010: 6; Lange 2006: 42). As conflict can be of great cost to a company (e.g. financing, construction, operations, reputation), Companies take great interest in avoiding or mitigating conflict (Davis & Franks 2011: 2). Conflicts are often attributed to simple lack of knowledge and misunderstandings of facts concerning the mining operation in the communities (Frank 2009: 8; Kemp et al. 2011: 105; IIED 2002: 358; Newenham-Kahindi 2011: 270).

This literature often seem to be biased in favour of the company not asking whether an operation should exist in the first place, and it is generally confident that operations proper CSR-policies and behaviour accordingly will minimise conflict with local communities.

In this literature the causes of conflict are also being assigned to corruption and lack of accountability on behalf of the government (Newenham-Kahindi 2011: 270). In this view corporations simply act according to governments requirements and blame for wrongful doings, which lead the operation into conflict with local communities should therefore be directed at the host-governments. This explanation is not too far from previously discussed explanations, emphasising the legal framework as a source of conflict. However this view does not recognise that companies do benefit from dealing with governments they know to be weak or corrupt, hereby increasing the risk of their operating coming into conflict with the local communities (Goldstuck & Hughes 2010: 6; Kemp et al. 2011: 93; IIED 2002: xix).

33 Besides companies' own CRS policies there are global CSR guidelines that companies can voluntary adhere to: e.g. United Nations Global Compact; the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; the Voluntary Principles on Security and Human Rights; Amnesty International's Human Rights Guidelines for Companies.

3.3.1.2. Resource Conflict Theory

This literature offers another way to conceptualise Mine-Community conflicts particularly in developing countries. Inspired by the resource curse thesis³⁴ (see Auty 2001; Karl 1999; Sachs & Warner 1995, 1997; Ross 1999, 2001) the theory discusses the relationship between natural resources and civil violence (e.g. Collier & Hoeffler, 2004, 2005, De Soysa & Neumayer, 2007). The relationship is explained through two concepts:

- Greed: The idea that civil wars unfold in resource-rich regions because of rebel groups' predatory motivations or desires to 'get rich quick'. The resources can provide the rebel-groups with finance for large-scale violence.
- Grievance: Motivation based on a sense of injustice in the way a social group is treated.

(Collier & Hoeffler 2004: 564, 2005: 626; Collier et al. 2008: 464; De Soysa & Neumayer, 2007: 203).

Since the concept of greed is aimed at large-scale violence and civil war the concept of grievance is the most interesting. The studies of Mine-Community conflicts utilise this concept by regarding the impacts of LSM as causing grievance among groups of the community. Violence in this case is a manifestations of community agitation over these impacts (Carstens & Hilson 2009: 302). Hence, a sense of injustice is linked to the negative impacts as causes of conflict. The grievance-term has become common within the mining sector (see IIED 2002) and even ABG uses this term to describe the causes of the conflict (ABG 2011b; The Citizen 2012). The grievance concept is interesting but vague on how a sense of injustice leads to violence.

34 Based on work by Sachs & Warner (1995/1997) who found a negative relationship between the abundance of natural resources in developing countries and their economic growth, compared to countries without this abundance (Sachs & Warner 1997: 2, 26). Explanations to this have been attributed to economic (Dutch Disease) and political (poor governance or weakened institutions) effects:

- *Dutch Disease*: Boom in natural resource exports draws labour and capital away from other sectors of the economy (de-industrialization) leading to real exchange rate appreciation, decreasing the competitiveness of the manufacturing sector, and increasing imports while decreasing exports (Ross 2001: 10-11; Sachs & Warner 1997: 5).
- *Political effects*: The easy rents achieved from the natural resources leads government towards corruption, increased military spending and inefficient institutions and takes away incentives for governments to invest in their economy and for efficient policy making (Karl 1999: 36, 43; Ross 2001: 4; Sachs & Warner 1997: 9). Interestingly it is the latter explanation that mining companies rely on when they blame the host-government for their conflict with local communities.

3.3.2. Critique of the theoretical approaches

Both CSR and Resource Conflict Theory concepts fail to acknowledge that conflict is:

- relational and interactional (Özen & Özen 2011: 346; Kemp et al. 2011: 94)
 - between the stakeholders of the state, the community and the capital (company), which are the three major ‘players’ in the resource extraction sector (Banks 2008: 24). Hereby conflict evolves through interaction rather than through external circumstances.
- not objective but based on the stakeholder's perceptions of what are the causes of conflict (Anguelovski 2011: 385; Garvin et al. 2009: 574; Muradian et al. 2003: 775-776). Especially the study by Garvin et al. (2009) is important in this respect, as it discovers how difference in perceptions between the stakeholders is a cause of conflict, whereas especially the literature on Mine-Community conflict seems to regard the causes as separated from the actors.

Considering this critique, this study will now turn to Social Movement Theory (SMT) to obtain more adequate explanatory concepts to the ASM-LSM conflict in North Mara. This chapter have however, been very inspirational and SMT can elaborate on the argument of the greed-concept that feelings are important to explain the violent conflict along with the importance of the legislation.

4. Theoretical discussion and applied theory

This chapter will discuss relevant concepts within SMT and the advantages and limitations of these concepts in an African context leading to a discussion of the SMT-related concepts contestation, protest and claim-making.

4.1. Social movements and other related concepts

There is a vast amount of literature dealing with social movements, collective action, political participation and mobilisation. This have addressed how different movements have organised themselves, mobilised and struggled for political change, as well as analysed what determines the outcome of this, which have been applied to protests, civic organisations, nationalism, revolutions, state-structures among many other things (see e.g. Tilly 2004a: 473; McAdam et al. 2001: 6).

4.2. The evolution of Social Movement Theory

SMT is a theoretical framework developed to describe the empirical phenomenon of social movements. There is general consensus among researchers that the historical origin of the social movement can be traced back to the 18th century³⁵, during which a new form of political participation among people outside the ruling political system developed. This happened as the representative democracy at the time was deemed incapable of advancing popular sovereignty³⁶, as it left no room for the people to influence the parliament except around the time of elections. This lead to sustained mass movement campaigns that stretched over several months, involving demonstrations, strikes, petitions, pamphleteering, public meetings, which addressed the rulers directly with claims to a fairer distribution of power (Rudbeck 2012: 581-599; Tilly 2004b: 17-25). In the 19th century people with no access to political power began to recognise mobilisation as a mean to urge power-holders to attend to their interests, and many countries in Europe and South America experienced democratic transitions followed by increased mobilisation and increased international connection among these (Tilly 2004b: 57-58, 64; Tilly & Castañeda 2007: 34). The 20th century witnessed increased class-

35 It is important to notice however that different emphasis by different scholars regarding the exact nature of social movements have lead to different conclusions about when and where social movements and their new repertoire of contention first occurred, and even Tilly, a main-contributor to this chapter, hesitated to describe this mobilization as a social movement (Rudbeck 2012: 586).

36 In previous interpretations of sovereignty, it lied with the crown as absolute ruler which thus was above the law, and the right to disobey authority was limited to the absolute entitlements of self-presevation (Rudbeck 2012: 589- 590).

consciousness in the postwar period. Students and workers revolted, challenging repressive, authoritarian regimes (Tilly 2004b: 68-69, 74-76). Through the beginning of the 21st century globalisation has contributed to an internationalisation of movements across country borders (Tilly 2004b: 101).

4.3. Conceptual development

At the backdrop of this historical development of new ways of political participation, SMT has been developed accordingly to understand and explain these and investigate the circumstances under which they succeed or not. This development continuously challenges and reformulates the meaning of SMT to accommodate the historical changes in mobilisation and political participation, leading to internal division and specialisation such as resource mobilisation, political process, protest, framing or new social movement theories, which each implies certain choices of focus and approach (Mees 2004: 312; Tilly 2004a: 473).

4.3.1. Charles Tilly and social movements

A key author in social movement literature is the social scientist Charles Tilly (1929-2008), who has been very influential in both the conceptual and analytical development of the study of social movements³⁷. Tilly defines social movements as:

sustained campaigns of claim making, using repeated performances that advertise that claim, based on organizations, networks, traditions, and solidarities that sustain these activities. (Tilly & Castañeda 2007: slide 40).

This can involve different forms of political actions such as: creation of special-purpose associations and coalitions, public meetings, solemn processions, vigils, rallies, demonstrations, petition drives, statements to and in public media, and pamphleteering. Social movements perform those campaigns of collective claims making through public, collective action, which links two complementary activities: assertions of identity and statements of demands (Tilly 2004a: 473-474; Tilly 2004b: 3-4; Tilly & Castañeda 2007: slide 34). The claims involve a righting of a wrong, most often a wrong suffered by a well-specified population. Herein lies the identity, for instance as wronged workers, dispossessed peasants, or persecuted religious minorities, which constitutes them collectively with a shared agenda,

³⁷ His work include the two important and much cited; *From Mobilization to Revolution* (Tilly 1978) in which he examines the ways people act together in pursuit of common interests and applies various political process models for the analysis of collective action; and *Social Movements, 1768–2004* (Tilly 2004b) in which he analyses the origins of contemporary social movement practices, relations of social movements to democratization, and the likely futures of social movements.

hereby publicly displaying their unity and commitment to the movement and to their claims (Tilly 1991: 601; Tilly 1998: 467; Tilly 2004b: 3-4; Tilly & Castañeda 2007: slide 34). This definition entails a rather sharp distinction of what entails a social movement and what does not. The original definition of social movements by Tilly excludes the use of violence and draws a distinction between social movements and other forms of collective contentious action such as insurrections, insurgencies, peasant uprisings, rebellions, and revolutions, which usually involve widespread violence (Rudbeck 2012: 585-586). Interestingly the first social movement in the 18th century were accused of insurrection and rebellion (Rucbeck 2012: 582). The analysis of this thesis will demonstrate similar accusations from ABG as well as the Tanzanian government toward the artisanal miners, with the purpose of de-legitimising their claims.

4.3.2. Contentious politics

Doug McAdam and Sidney Tarrow are two other important contributors to the social movement literature and, together with Tilly they have developed the concepts even further and included them in their framework of contentious politics (McAdam et al. 2001).

Contentious politics is:

episodic, public, collective interaction among makers of claim and their objects when (a) when at least one government is a claimant, an object of claims, or a party to the claims and (b) the claims would, if realized, affect the interest of at least one of the claimants. (McAdam et al. 2001: 5)

Compared to the previous definition of social movements this is more open. It focuses on the process, disregarding the features of the movement, hence the sharp distinction between social movements and a non-social movements embedded in previous definitions has somewhat faded in this definition. It argues for explanation of claim-centered episodes through identification of similar mechanisms and processes across a wide variety of political forms, having in common their public character and their relations to governments (Tilly 2004a: 474). Social movements are, by this definition, just one variation of a variety of forms of collective claim-making.

Movements and their claims often give rise to responses – counter claims - by authorities and objects of claims or among those whose advantages would be threaten by success of the movement's claims (Tilly 1998: 467-470). SMT hereby, acknowledges the relational nature of ASM-LSM conflicts which CSR and Resource Conflict Theories, do not adequately.

4.4. Limitations of Social Movement Theory in an African setting

Some authors however, have challenged the applicability of contemporary SMT in an African setting (e.g. Brandes & Engels 2011; Larmer 2010; Macamo 2011; Roy 2010).

4.4.1. Epistemological challenges of Social Movement Theory

Elísio Macamo³⁸ and Miles Larmer³⁹ who both have analysed political struggles in Africa, have directed important critique towards SMT, arguing that this theory is based on European historical development (as described previously in this chapter) with embedded notions of government, democracy, collective organisation, direct action, political parties and civil society (Larmer 2010: 257; Macamo 2011: 50). Such notions do not often correspond with the empirical realities of the African continent. Most African countries, Tanzania included, have a short independent political history compared to western counterparts and have therefore not a strong tradition of political participation (Larmer 2010: 257; Macamo 2011: 57; THRR 2010: 32). Besides, the notion of social movements is too broad to capture local political processes as they occur in African political settings, which often takes place at the micro level, which the Norht Mara case also does (Macamo 2011: 55 - footnote 5; 65).

4.4.2. Formal vs informal organisation

The definition of social movements presented previously in this chapter have a strong implicit notion of formal organization, I argue, with emphasis on “sustained campaigns”, “organisations” and “network” and often SMT has been applied to overt institutional and organisational forms, like civic organisations, environmental groups, worker unions, church or other religious groups (see e.g. Moodie 2002; Tilly 2004a). Moodie (2002) argues that SMT more and more only regard formal organisations as having any potential of collective action (Moodie 2002: 58). However, according to Larmer, movements in Africa can take on more amorphous and temporary forms. NGOs, civil society organisations, self-defined social movements, strikes and riots, mobs and crowds, all exhibit elements of a social movement but they may recourse to non-institutional forms of political participation (Larmer 2010: 252). On this account, Larmer is arguing along the lines of McAdam, Tarrow, and Tilly, who include both contained and transgressive (institutionalised and non-institutionalised) actors in their framework of contentious politics, acknowledging that the latter can adopt means that are either unprecedented or forbidden within the regime (McAdam et al. 2001: 7-8). Working

38 A political sociologist, with primary focus on Africa.

39 Senior Lecturer in International History specialising in African history.

informally the miners are not formally organised but when 800-1500 or even 4000 people enter a certain area at the same time, as describe in the previous chapter the actions are clearly sustained, public and collective, even though the nature of the ASM working process is less coherent (Bryceson et al. 2010: 375-376).

4.5. Protest and claim-making

This chapter now turns to elaborate and discuss the process of the collective actions, inspired by the framework of contentious politics. Attention is given to collective claim-making, its articulations and the contents of claims, which are regarded as contestation which finds practical expression in protest (Macamo 2011: 46, 64). Protest is a form of dissent and collective claim making, which shows how these concepts have arisen from the framework of social movements (Macamo 2011: 45). Key attributes of claim-making in protest are:

- forms of articulation - can be violent (e.g. looting, clashes with police, road obstructions) or peaceful (e.g. marches)
- structure of articulation - can be organised (trade unions, interest groups) or spontaneous (e.g. youth, market vendors, dwellers)
- content - can articulate demands (e.g. new measures and policies) or reject impositions (e.g. measures and policies)
- target - can be clear (e.g. official in charge, government agency, party) or unclear (e.g. general dissatisfaction)
- direction - can point towards change (e.g. resignation of officials, government, new elections) or preservation of the status quo (e.g. corrections in favour group interest)

(Macamo 2011: 58).

Violence is in this respect a potential feature of articulation of claim-making and the “contents” “target” and “direction” represents the contents and the aims of the claims. Protest shares some features with SMT and contentious politics and especially the more open-ended approach of the latter is reflected in claim-making protest; forms and structure. Uniquely to protest however, is that the direction not necessarily involves change as especially SMT assume. Protest for the preservation of social, economical or political conditions can be just as much a struggle as the opposite.

4.5.1. Legitimacy and perceptions

SMT has a strong tendency to package the agendas of social movements into a normative frame of reference that lends normative and teleological legitimacy to protest, in which social movements are authentic and unproblematic movements of the people, with legitimate grievances against the powerful and exploitative forces in society or the dominant political order. The concepts of protest and claim-making on the other hand, does not pass judgement on the societal relevance of contestation (Larmer 2010: 252; Macamo 2011: 48; 54). Macamo argues that the expression of contestation encompasses feelings of outrage and anger as particular manifestations of contestation (Macamo 2011: 45, 46, 52). Anger entails a feeling of having been wronged or offended and calls, consequently, for some form of redress and outrage is simply its intensified form coupled with the idea that normative expectations have been violated. Anger and outrage are socially constructed under circumstances in which individuals feel strongly unhappy, hereby legitimising this feeling (Macamo 2011: 45, 46). In other words, struggle has to resonate with people's concept of legitimate, meaningful, and justifiable political action although not necessarily legal (Rudbeck 2012: 587-588). Conflict as a product of contestation has no objective causes as CSR and Resource Conflict Theories otherwise argue but are rather tied to individual feelings and perceptions about circumstances which have led to wrong-doings (Macamo 2011: 46).

To sum up contestation is protest and claim-making that:

- entails a sense of wrong-doing that call for redress
- have internally legitimacy to the protesters
- is socially constructed under perceived circumstances contributing to the legitimacy of the actions

This also sums up the inspiration to the sub-questions, especially the last two focusing on legitimacy and the construction of this legitimacy.

4.6. Protest and claim-making of artisanal miners

The fact that the operations of the artisanal miners entering ABG concessions are illegal should not refrain us from considering their struggles but rather examine their actions closer. It is beneficial to regard the actions of the artisanal miners as claim-making, manifested through collective protest, derived from their perceived claims. This makes identification of these

claims, their contents and how they are legitimised the main focus for the analysis. According to Rudbeck people refrain from acting in ways that are meaningless, especially if such actions potentially come at high costs (Rudbeck 2012: 587-588). However, the seemingly violent form of protest and the high number of casualties in the North Mara case strongly implies deep-lying meaning to these claims and an embedded feeling of outrage. The protest action is met with opposing claims by ABG and the government resulting in dissent, making the conflict an interaction between the three stakeholders.

The artisanal miners are therefore not the only claimants and the claims of the mining company and the government must be a target of the analysis as well. This thesis must investigate the features of protest (forms of articulation, structure of articulation, content, target, and direction) discussed previously in this chapter and more importantly the construction of legitimacy.

To Larmer, struggles in Africa are related to the context of political, economic and social change on the continent (Larmer 2010: 251). In this case the change is of change in access to the gold for the the different stakeholders and therefore also a change in their claims to this access (or the creation entirely new claims).

This section has shown how the sub-questions are inspired and derived from the concepts of contestation, protest and claim-making, and argued how these are help answer the main research question of this thesis. It has also stated why the claims of all three stakeholders have to be analysed to understand the conflict. Ultimately the conflict is a result of different perceptions of how the each stakeholder relate to the circumstances of the social world, affecting their claim to access the gold resources. When this claim is violated it leads to a sense of wrong-doing among the stakeholder group which requires redress, for which physical protest is legitimate. This approach is considerable different from the theoretical approaches discussed in the previous chapter, which seem to regard the causes of conflict as external to the actors involved.

The concepts of contestation, protest and claim-making amounts to a theoretical framework which is critical to the choices of methodological approaches, presented and discussed in the next chapter.

5. Methodological approach

The aim of this chapter is to establish and account for how this thesis will answer the sub-questions to provide an answer to the main research question. Emphasis is put on the methodological approach to answer the last two sub-questions as these presents the most challenging in terms of data collection and analysis. This chapter will focus on, why secondary analysis of qualitative interview has been chosen as the methodological approach to data collection. It discusses the ontological and epistemological position of this study and how this relates to the theoretical framework. Furthermore, it discusses the disadvantages of the chosen methods and what this means to the validity of the finding of this study. The aim of this chapter is therefore also to provide internal validity to the thesis, explaining in which context the conclusion should be understood.

5.1. Ontology and epistemology

The sub-questions focus on the claims of the stakeholders; the artisanal miners, the Tanzanian government, and the mining company ABG, to access to the gold in North Mara. As stated in the previous chapter, the claims and actions are justified by the perceived wrong-doings under circumstances affecting the access to the gold of the individual stakeholders. In other words the analysis is interested in examining the social world as seen through the eyes of its participants, Therefore this study adopts a constructionist ontological position, in which social properties are outcomes of interaction between individuals and their interpretations of the social world.

5.2. Qualitative research strategy

To look through the eyes of the studied actors this study utilise a qualitative research strategy, acknowledging the subjectivity of the research. This is however, not an inductive study where the aim is generating of theory (Bryman 2004: 266). Rather this study demonstrate a qualitative research design utilising a theoretical framework to guide the analysis, in which understanding and not the formulation of theory is the aim.

This research is also micro-oriented, as the conflict in the local area of North Mara, Tanzania and the stakeholders involved there are in focus in of this study.

5.3. Initial steps to the analysis

The answers to the first sub-question lays the foundation to the analysis of the following two. Chapter 2 has already described how efforts to access the gold by the different stakeholders have resulted in violence and killings but to account for the change in this access it is necessary to with a historical review of the origins of the conflict and a discussion of the legal framework in Tanzania and how changes in this have affected the claims of each stakeholder. The historical review in the next chapter relies on sources of different research, which have incorporated a historical background description. The following chapter discussing the legal framework relies on the official law documents and other authors who already have analysed the legal framework. This chapter also responds to arguments from the review literature in which the legislations is said to be important to the conflict. These two chapters make up the combined answers to the first sub-question, describing the circumstances of changed claims. Thus they provide a foundation which will be referred to throughout the analysis, answering the next two sub-questions. It is these questions that presents the most challenging as they investigate the subjective opinions of the studied stakeholders and the rest of this chapter will focus on how these are approached.

5.4. Data collection: Qualitative interviewing

Much research in the reviewed literature on ASM livelihood and ASM-LSM conflicts have utilised the method of participant observation and different kinds of interviewing styles. Qualitative interviewing is regarded as the the most suitably method of data collection for this study, in order to get “their stories” of how they perceive their claims to access the gold. This is chosen because of the focus on the articulations of claims, rather than observed behaviour. For the comparability of data this single method rather than a multi-method approach is preferable. This research has not utilised fieldwork or otherwise produced primary data through interviews as a method of data-collection. There are a couple of reasons for this. The sub-question must be answered in relation to each of the three stakeholders. This influences the data-collection which differs for the three stakeholders because access to data from each stakeholder is different. Primary interviews are therefore not sufficient as the only sources of data and the availability of data, as discussed below, suggest a slightly different method of data collection to be the most constructive.

5.4.1. Stakeholder definitions

A clear definition of the stakeholders is necessary to account for who can articulate claims that are representative of each stakeholder group and who exactly are part of this group, which influences which sources that must be approached. Additionally this definitions also establish the stakeholders as targets of claims (cf. the previous chapter).

5.4.1.1. African Barrick Gold/Barrick

As the mine is operated by ABG but is majority-owned by Barrick, representatives of both companies are regarded as part of the same stakeholder-group. This includes management or other executives, who are able to represent ABG and Barrick in public. ABG mineworkers and security guards are involved physically but the claims articulated by ABG do not relate to them as individuals.

5.4.1.2. The Tanzanian government

The Tanzanian government has developed the legal mining framework and are granting mineral rights. Ministers and other state officials are considered to be considered relevant representatives of the government. Physically they are involved in the conflict through the deployment of police forces in the area around the NMGM. The police however, should not be seen as a claimant in their own right but only as acting on behalf of the state. In cases of claims targeted at the police, it is the government that must be considered the real target. This study does not regard electoral shifts in government as relevant, because the claims of the government are strongly related to the mining legislation, as will be argued later on, which is not a subject to electoral change.

5.4.1.3. The artisanal miners

The artisanal miners are rather difficult to define as a specific stakeholder-group. The local communities are depending on the gold but the establishment of the NMGM has meant that a lot of people can no longer engage in ASM activities although they still have claims to do so. This stakeholder groups, therefore, includes both current and former artisanal. Besides those working within the perimeters of ABG, women and children are involved in the extraction process. The stakeholder-group can therefore be said to include former and present artisanal miners and affiliated workers. This study focuses specifically on the ASM-LSM conflict and claim of access to the gold, and relevance of a claim is hereby determined. Hence, claims to be allocated benefits from the gold production or of compensation for pollution or other negative

impacts of the ABG operation, associated with Mine-Community conflicts are not relevant in this study. This is not to say that artisanal miners are not a part of the local communities or that they cannot articulate such claims but rather to maintain a specific focus on the ASM-LSM aspect. Because the distinction can fluctuate at times, careful considerations must be made to whether an individual is articulating a claim as a part of this stakeholder.

Another problem in defining this stakeholder-group is that there has been a considerably amount of immigration to the area, both from other parts of Tanzania, artisanal miners who left the area and have returned again, as well as immigrants from the neighbouring country Kenya, which is bordering not far from the NMGM (Mwikwabe 2011: 4). Again this means that close attention must be paid to who the claim-makers are but also that it is impossible to account for any exact size of this stakeholder.

Some research states that mining and other extractive operations can cause internal division and conflict in the local communities deriving from their different perceptions of cost and benefits and the impacts on them and the community (Banks 2008; Horowitz 2002). There are evidences of united claims⁴⁰ but some villagers blame youngsters for the conflict, using means resulting in conflict with the police and security guards as they try to get easy access to a share (Marato 2011; Saunders 2011). To utilise the concepts of protest and claim-making this aspect is disregarded and the artisanal miners are treated as one group with no contradicting claims internally but it is an aspect that might be a target for further investigations.

5.4.2. Available sources

Statements from the stakeholders of ABG/Barrick and the Tanzanian government are easily accessed through their official web-pages. The ABG and Barrick websites⁴¹ include various background information regarding the company and its operations, including the NMGM specifically. Additionally, development projects and official guidelines on how the company seeks to mitigate conflict can be found.

Through the official website⁴² of the Tanzanian state, the official documents of the legal framework are available, along with various background information although, survey data is not up-to-date. Most of it, including the acts and laws are available in English, as English is

40 LEAT for instance have lodged a complaint to the Tanzanian Commission for Human Rights and Good Governance against AMGM/EAGM on behalf of some 1260 former small-scale miners, peasant farmers and other residents of Nyabigena and Nyabirama areas (LEAT 2003a).

41 barrick.com and africanbarrickgold.com.

42 The web-page of the Tanzanian government (tanzania.go.tz – URT web1) contains sub-pages for each ministry and department, of which the sub-page of the MEM (tanzania.go.tz/ministriesf.html – URT web2) is the most relevant as it is the department managing the mining sector.

the official language of Tanzania along with Kiswahili⁴³ and is the language of higher courts. These official sources of the company and the government are considered credibly⁴⁴ to the point that statements are in fact representative of the stakeholders and information is correct. Additionally, representatives of both stakeholders have been interviewed by national as well as foreign media, so there is a good amount of articulated data, making these preferable as sources of data from these two stakeholders.

5.4.3. Limited access to data on the artisanal miners

The artisanal miners on the other hand are less accessible as they work informally and have no official channel or (union) representation. Although not much academic research has been conducted on this particular case, the violence has attracted the attention of scholars, national human rights organisations, the government, foreign activist groups, national and foreign media and a lot of people living in the area have already been interviewed. Although the perspectives have varied, relevant data in terms of quotes from former and current artisanal miners are available from these sources as secondary data.

5.5. Method of secondary analysis of qualitative data

There is direct access to data on two of the three stakeholders and data concerning artisanal miners in the area do exist. This has led this author to use secondary analysis of qualitative data⁴⁵ as the method of data collection, in which the data is treated as interviews - as articulations of the stakeholders. The advantage of this method is, that it utilises the combined resources of existing research and fieldwork, which have already gathered articulated data from the three stakeholders. This makes a good ground for getting data from many different representatives of each stakeholder group. This approach also makes for better comparison of data, which would have been harder utilising a multi-method approach.

5.5.1. Validation and quality of the secondary data and its related interview-methods

The use of secondary interview data and statements means that there is no control of the

43 Which is the language of the majority of Tanzanians. Is also known as Swahili which however designates the culture of the inhabitants of the East African coast and the people who speak the language as well.

44 Official sources of the government however, contain what I deem to be mistakes of typos and the like in the acts and the presentation is not a 100% consistent. For instance the first subsection of a paragraph (§) is sometimes printed as (1) but sometimes as (I), being capital "I" and characters are sometimes missing, confusing the exact number of the particular paragraph.

45 See Bryman (2004: 414).

interview methods utilised by the different sources and therefore no choice or control concerning the asked questions nor choice of respondents. It is therefore necessary to critically discuss and assess the interview methods of the relevant sources and hereby the quality of the data, and to what extent this data is useful to the analysis, as if it was a primary interview strategy.

5.5.1.1. Interview methods of secondary sources

The report by Mlowe & Olungurumwa (2011) from the Legal and Human Rights Centre (LHRC) aims to determine the circumstances of the specific indecent in which five people were shot (see chapter 2). Besides basic observations in the case area, methodologically they conducted survey interviews with villagers and semi-structured interviews with local villagers, LHRC's monitors, relatives of the deceased, local leaders and District Government officials, including the Regional Police Commander (RPC) of Tarime and Rory Police Special Zone, and the Tarime District Commissioner (DC). The interviews were conducted after May 16th 2011 but it is not explicated when exactly in the report. Some of the quotes are in Kiswahili which are unsuitable as data⁴⁶ for this thesis, because of lack of adequate English translation. The report does not state the asked questions explicitly.

The Tanzania Human Rights Report (THRR 2010) by the LHRC is an annual report on the human rights situation in Tanzania, concerning civil and political rights, vulnerably groups, HIV/AIDS and corruption. At least 5000 people were randomly picked and directly interviewed. The research relied on field work, surveys, focus group discussions, media and online research (THRR 2010: xxvi). The problems around the NMGM comprise only a small part of the compiled report and much of the relevant data refers to the LHRC-report⁴⁷ and additional information from THRR is mostly used to understand the social context of the data.

An important resource is the study by Mwikwabe (2011) from the International Institute of Social Studies. This study revolves around the same topic as the thesis although, the focus is somewhat broader with emphasis on ASM-livelihood in relation to expansion of LSM in the area. The primary data collection is based on field-work conducted from June to August 2011 (after the incident of May 16th). This includes semi-structured interviews with current and

46 Quotes in Kiswahili can be translated to using Goggle Translate understandable phrases to but the translation is highly inaccurate.

47 Although the LHRC-report was published later (2011) than the THRR (2010) report but the collected data from LHRC was obviously available.

former artisanal miners, village leaders, company personnel, NGOs, government staff (anonymous) and an additional focus group discussion was utilised⁴⁸. The interviews were conducted in the vernacular language of Kurya and Kiswahili and the quotes have been translated into English in the report (Mwikwabe 2011: 15).

Quite a few different media articles are used as sources. The articles by Geoffrey York (2011a; 2011b) from the American The Globe and Mail newspaper (online version) along with Cam Simpson (2010) from the American business and financial media Bloomberg are much cited in other articles. The articles are both lengthy compared to other articles used in this thesis and are based on observations and interviews, especially with artisanal miners and other villagers around the mine site⁴⁹. Simpson specifically states that he conducted interviews with 28 people, including victims' relatives, witnesses, local officials and human rights-workers. Other articles includes the Tanzanian papers The Citizen⁵⁰ (English version) and Guardian, along with other non-Tanzanian articles. These provide a few interviews with artisanal miners but are mostly used for quotes from company representatives and government officials. Again the limitation concerning the use of news articles as data is that only English articles were practicable.

5.5.1.2. Discussion of interview methods

The semi-structured interview method utilised in the reports are useful to aim the questions toward specific issues but at the same time being able to ask follow-up questions depending on the particular answers. This method has provided useful data for this study although the sources have emphasised matters that are different from the focus of this study. There is a risk that the interviewer impose pre-conceived ideas into the responses. This risk is apparent when the sources do not state the questions. This is mitigated by using several sources and quotes. The study by Mwikwabe (2011) additionally uses a focus group interview, a way to study the ways in which a group constructs meaning in relation to a topic (Bryman 2004: 346). In this study, the group consisted of villagers attracted by the opportunity to tell their story.

According to Mwikwabe the focus group interview: “...helped to get general views of the difficulties people experiencing collectively as communities in North Mara” (Mwikwabe

48 Additionally a survey was tried but was apparently rejected by many people on the ground that they have been filling many questionnaires without any results (Mwikwabe 2011: 15).

49 York made a five-day visit in June to the NMGM the surrounding villages. Simpson interviewed 28 people, including victims' relatives, witnesses, local officials and human rights-workers, conducted throughout December 2010.

50 From IPP Media, one of East Africa's largest Media conglomerates which i.a. comprises nine newspapers, published in both English and Swahili.

2011: 15). The study does not acknowledge the risk of generalisation but this does not present a big problem, as it constitutes only a part of my data. However, Mwikwabe is not explicit about the composition of the group interview (e.g. sex, age, current or former artisanal miner etc.) or the size, which puts some limitations on representation of the artisanal miners.

The media articles are especially concerned about creating stories of oppressed and marginalised people, victimising the local communities. Quotes from the artisanal miners are very short and information about the respondents is only provided to the extent that it specifically supports the story. The use of quotes from the media articles run the highest risk of being out of context. The validity of these quotes however, is dependent on the broad definition of the artisanal miners in this thesis, and the aim of the thesis to find the perceived legitimacy to the claims of the stakeholders themselves, rather than try to judge such legitimacy objectively.

None of the sources clearly state whether responses originally were in English or were translated. ABG and government representatives are believed to respond in English due to their position of public representatives, whereas artisanal miners and other local villagers are believed to respond in local language⁵¹. Different ways of saying something and subtle layers of meaning, biases and interpretations can be lost in the translation process (Fontana & Frey 2005: 707). Mlowe & Olengurumwa (2011) and THRR (2010) were both produced by Tanzanians and Mwikwabe is a Tanzanian as well. Together with the Tanzanian media sources these are regarded to make the best possibly interpretations in terms of translation, whereas the risk of misinterpretations in the American articles are more present.

5.5.1.3. Empathetic interviewing

All the sources have a general sympathy towards the artisanal miners and they give a strong impression of them a being treated unfairly. Rather than being seen as a problem though this is considered a natural and even a beneficial part of empathetic interviewing. The interviewer becomes an advocate and partner in favour of the groups being studied, hoping to ameliorate the conditions of the interviewed (Fontana & Frey 2005: 696). This view disregards the interviewing as a neutral process of fact finding. This is very much in concordance with the constructionist stance, in which the researcher does in fact interact with the subjects being studied and the research results therefore reflects this interaction (Fontana & Frey 2005: 716).

51 Kurya or Kiswahili as described in Mlowe & Olengurumwa (2011) and Mwikwabe (2011).

5.5.1.4. Quality of data representation

It must be considered to what extent each stakeholder group is represented in the individual quotes as well as in the combined utilised data set. Bryman (2004) argue that minimum requirements in the size of a sample of interviews is 20-30 (Bryman 2004: 335). The number of quotes of artisanal miners utilised in the analysis is below this number, but considering that Mwikwabe conducted the focus groups interview, and that Simpson interviewed 28 people, the sources of data can be said to be representative in accordance with Bryman. Additionally I state that because the quotes of artisanal miners are gathered from several different sources chosen independently, it ensures that a range of different individuals have been heard. Besides the use of data from focus group interviews strengthen the representation quality of the samples, because these are constructed in a social setting (Bryman 2004: 348).

5.5.2. Analysing and interpreting data

The specific interview data have been chosen according to their relevance to claims and legitimacy of access to the gold. Direct quotes rather than author rewrites that incorporate them into their text, are preferred as this make for the best raw data. A few re-writes have been used because of the importance of their contents but in these cases, it is made explicitly that it is a re-write. However, as the constructionist position regards meanings of questions and responses jointly constructed by the interviewer and the respondent, it must be considered limitation to the findings of this thesis that the data in either case have been interpreted beforehand.

The approach to interpreted the quotes is similar to that of a thematic analysis with emphasis on what is said, which is then ordered thematically (Bryman 2004: 412). However, the theme in this analysis - legitimacy of access to the gold - has been chosen beforehand. The analysis is structured according to the different ways the stakeholders legitimise their claims. This thematic structure, rather than than by each stakeholder separately, is chosen because there are identical and overlapping ways of legitimising the claims, underlining the relational aspect of the conflict. The claims are then discussed in relation to the attributes of protest by Macamo, within the theoretical framework of contestation, protest and claim-making.

The analysis also discusses how the legitimacy of these claims are socially constructed in relation to the history of ASM and LSM in the area and the legal framework and the changes in claims this have brought. It finally discusses how the current circumstances are perceived by each stakeholder and this influences the perceived legitimacy of their claims. Herby the

answers to the first question are conditional to the analysis and the answers to the other sub-questions, but as a perceived context rather than an external and objective reality.

This thesis will now return to the studies empirical field and take the initial steps for the analysis by providing accounts of the origins of the conflict and then the legal framework and how this have changed the access to the gold to each of the stakeholders.

6. The historical origins of the conflict

To answer the first sub-question *How was and how is the gold accessed and claimed by the stakeholders?*, this chapter provides a historical review of ASM and the beginning of LSM in North Mara, to account for the origins of the conflict and how has marked a change in the access to the gold for each stakeholder. It will describe how rights were transferred, and how people were displaced and killed. The description must be regarded as storytelling and not an objective account of events, as there are inconsistent and contradicting versions of what exactly occurred. Instead it provides a basis to understand the individual, subjective perceptions of how such events have impacted and changed claims of access to gold and the circumstances under which these claims are legitimised.

6.1. Discovery of gold and forced displacement

Historically, the Nyamongo area, where the Nyabirama pit and a gold processing plant are located, has been inhabited by the Kurya tribe for centuries, in particular the Kenye clan. The area was largely involved in agriculture until gold was discovered by clan-members. Since then there has been little agriculture and members of the community have relied on ASM.

In 1987 villagers from the five villages of Kerende, Kewanja, Nyamwaga, Genkuru and Nyangoto discovered gold deposits at Nyabigena and Nyabirama, located in the areas of Nyangoto and Kewanja, respectively. The gold deposits were divided into five mining claims which were allocated by the MEM to the five villages in 1991⁵². The five villages then sub-granted some mining rights to individuals, making it 13 PMLs in total. The villagers started ASM operations at the claims and in nearby areas, making heavy investments in construction of mine shafts and purchase of water pumps and other mining equipment, as well as the feeding and caring of individual⁵³ miners working informally (LEAT 2003a; LEAT 2003b; ICM 2007: 54; Mwikwabe 2011: 60).

In August 1993, a locally registered company (Winani Mining) that held claims in the same area, sold their rights to EAGM/AMGM. In October 1994, this company started extensive drilling within its claim and later illegal drilling within the claims that belonged to the five

52 Kewanja village was granted a Temporary Right (TR) 2/88; Kerende village was granted TR 5/88; Nyangoto village was granted TR 1/90; Nyamwaga was granted TR 2/90; and Genkuru was granted TR 1/91 (LEAT 2003b).

53 There exists no records of the numbers this involved. Considering that 40,000 people that has been displaced from the area and that 70,000-122,000 are now living around the mine at least 10,000 seems a fair estimate.

villages. On August 30th 1996, EAGM/AMGM was granted new mining licenses with respect to the same areas. The five villages and the individual claim holders agreed to sell their mining claims and their land to EAGM/AMGM in agreement with the local government. Allegedly however, this happened under illegal and irregular circumstances without proper consultation. People were evicted from the gold sites of Nyabigena and Nyabirama with the company promising to pay compensation (as required) to villagers for their loss of land⁵⁴. By the year 2001, the compensation had still not been paid, and tired of waiting the evicted villagers began openly to challenge the rights exercised by EAGM/AMGM, reoccupying their lands and properties. On August 2nd 2001, the Tarime District Commissioner areas called on the villagers to vacate the Nyabigena and Nyabirama areas with immediate effect. The villagers refused and armed FFU forces invaded the villages and after four days of fighting, they violently drove the villagers out of Nyabigena and Nyabirama. Close to 40.000 people were evicted and hundreds of villagers, including village leaders, were arrested and jailed. Hereafter EAGM/AMGM went to build the Afrika Mashariki Gold Mine (now NMGM) which opened in November 2002 (ICMM 2007: 54; LEAT 2003a; LEAT 2003b; Mlowe & Olengurumwa: 2011: 4).

This chapter has showed how access and rights to the gold deposits of Nyabigena and Nyabirama have changed and been transferred from the local artisanal miners and villagers to the the first LSM company, now inherited down to ABG, turning access into a risky affair for the artisanal miners.

54 Approximately 671 hectares although Placer Dome later claimed that this was only 450 hectares when they acquired the mine (Mlowe & Olengurumwa 2011: 4).

7. How the legal framework affects claims

In the reviewed literature the importance of the legal framework to the conflict was clearly suggested by several authors. Therefore, the aim of this chapter is to discuss how the liberalisation of the mining sector and the formulated legal framework have created and changed the claims to access the gold, and how this defines the legal and non-legal claims of the stakeholders. Together with the previous chapter this will answer the first sub-question. The chapter will also serve as a description of the legal context of the conflict, as a basis for how the stakeholders perceive this, which is relevant to the analysis in the next chapter. As a product of the Tanzanian government, the legislation reflects the interest of the state and because it affects the access to the gold in North Mara for all the stakeholders the analysis will refer back to this chapter throughout.

7.1. The history of gold mining in Tanzania

Gold was discovered in the Lake Victoria region in 1894, during the German colonial period and mining began in 1909. The German colonial government encouraged mineral exploitation by private companies and introduced a concession system, whereby companies were given exclusive mining rights to large areas. Corporate claims to access gold were therefore introduced right from the beginning of gold mining in Tanzania⁵⁵ but the mineral resources (whether above or beneath the ground) were the property of the colonial government and companies had to be granted permission from the authorities to operate. Mineral prospecting and exploitation continued during British colonial rule (1918-1961). Private prospecting for and extraction of various minerals was encouraged under these same rules, with operations peaking in 1940⁵⁶. With the beginning of the World War II however, production declined (Lange 2006: 2-3; SID 2009: 21-22).

Alongside LSM companies a few artisanal miners often congregated illegally around virgin exploration sites and mines, often re-mining company waste or marginal ground (Mwaipopo et al. 2004: 25). After independence in 1961, mining (along with a number of other industries) was nationalised in 1967 and foreign and domestic capitalists were expropriated and new private investment discouraged (Cooksey & Kelsall 2011: 17, 20; Lange 2006: 2-3). In 1972, the State Mining Corporation (STAMICO) was established to operate the sector (Lange 2011: 6). The Tanzanian state held hereby exclusive rights and claims to mining, excluding any

⁵⁵ Then called Tanganyika.

⁵⁶ It contributed to about 90% of the value of the mineral production (Lange 2006: 3).

legal, private LSM or ASM operations and ASM production declined and ceased in the early 1970s (Mwaipopo et al. 2004: 26).

With the (first) Mining Act of 1979 all mineral resources became vested ownership of the state. It provided Tanzanians with the opportunity to formally engage in ASM activities through prospecting rights in areas designated for prospecting and to post claims within these areas (Jønsson & Fold 2009: 213). This Act created the first possibility for artisanal miners to engage in formal operations by themselves and to acquire legal access to gold. The claim-titles that the villages of Kerende, Kewanja, Nyamwaga, Genkuru and Nyangoto acquired in 1997 were granted on this legal foundation.

7.2. Liberalisation of the mining sector

The period from 1979 however, was marked by a severe economic decline in Tanzania and the nationalised mining companies performed poorly, contributing to only 0.3 percent of the national revenue in 1988. There was little investment in the sector and the greater share of recovered gold and gemstones were smuggled out of the country (Cooksey & Kelsall 2011: 76; Lange 2006: 3). In 1986, Tanzania agreed to a structural adjustment programme designed by the WB, in which internal and external trade was liberalised (Lange 2006: 3). In 1992, the WB published its “*Strategy for African Mining*” arguing that the endorsement of reformed mining codes could transform the underperforming African mining sector into a driver of economic recovery (WB 1992). The WB assisted⁵⁷ the Tanzanian government in creating relevant mining legislation in order to attract foreign investment to the sector. This led to the current legal, mining framework in Tanzania and a substantial rise in mining operations by foreign mining companies (Lange 2011: 6).

7.3. Legislation and mining policies

The legislation relevant to mineral exploration and exploitation making up the legal framework consists of:

- The Constitution 1977/1998
- The Mineral Policy 1997 (and The Mineral Policy 2009⁵⁸)
- The Mining Act 1998 (and The Mining Act 2010⁵⁹)

57 Although some argues that the WB, the International Monetary Fund (IMF) and the donor community imposed such policies in return for loan agreements and aid (Bryceson et al. 2010: 355; THRR 2010: 222).

58 The Mineral Policy 1997 was revised in 2009 (URT 2009) but the 2009 edition is merely a confirmation of the 1997 version, although with an enhanced gender focus (THRR 2010 223-224).

59 The Mining Act 1998 was revised in 2010 but the 2010 edition only made minor changes in provision in

- The Land Act 1999 and The Village Land Act 1999

7.3.1. The constitution 1977 (1998⁶⁰)

The constitution is relevant by §9(c) and §9(i) on the preservation and harness of natural resources for development of the people and the common good, and §27(1) and §27(2) referring to the duty of the people to protect the natural resources and safeguard the property of the state authority and its people respectively (URT 1977: §9(c), §9(i), §27(1), §27(2)).

7.3.2. The Mineral Policy 1997

The Mineral Policy 1997 is mainly a statement of intent with the objective of establishing a regulatory framework to promote the mining sector (mineral development and exploitation), attract FDI to it, and to regulate and improve ASM (Jønsson & Fold 2009: 214; URT 1997: v, §3.3.3; URT web 2). In recognition of private sector development and market-oriented economic management, this policy marked a shift, from government as owner and operator of the mining sector to that of facilitator and regulator (URT 1997: 3). The policy recognises the positive contribution of ASM to the economy and includes strategies to support and improve the sector (URT 1997: 14; §3.3.6). This is largely an effort to formalise and transform (rationalise) artisanal mining into organised small-scale mining (URT 1997: §3.3.6.(i)). It envisions small- and large-scale mining operating on equal footing, and the policy seeks to harmonise their operations by streamlining the licensing procedures and ensuring fairness in this process to *ensure exclusivity of licensed areas* (URT 1997: §3.3.3(i); §3.3.3(iii)). An important principle in this regard is the *first come, first served basis*, under which ASM and LSM apply for rights on equal basis and that the first one to (rightfully) apply for a mineral right will also be the one granted ownership of this mineral right (URT 1997: §3.3.3.(ii)). Furthermore, it seeks to promote partnerships between ASM and LSM to facilitate technology transfer and optimise the exploitation of mineral resources (URT 1997: §3.3.6 (iii)).

7.3.3. The Mining Act 1998

The Mining Act 1998 is a revision of The Mining Act 1979 to accommodate the changes of government policy expressed in The Mineral Policy 1997 (Lange 2006: 7). The Mining Act 1998 is the regulatory scheme containing the regulative provisions of the mining sector. It

terms of compensation, royalties and duration (THRR 2010 223-224).

⁶⁰ Is based on the 1977 edition of the constitution but incorporates and consolidates all amendments made in the constitution since its enactment by the Constituent Assembly in 1977 up to the 30th of June, 1995 (URT 1977).

establishes that the mineral wealth and control of this is all vested in the state⁶¹ (URT 1998: §5⁶²). It also specifies the different mineral rights (licenses) that may be granted by the MEM, including exploration and exploitation for ASM and LSM respectively (URT 1998: §7^{63/64}). Under this act, holders of mineral rights are entitled to exclusive right of ownership of the mining operations and the mineral recovered, as well as complete power to dispose the said mineral recovered (URT 1998: §43., §49--(1)⁶⁵). This provision makes a mining license a *de facto* property right, granting the holder the exclusive right to harvest the profit from all minerals extracted (minus taxes and royalties) within the mining concession. It is by this legal right, granted by the state, that ABG claims access to all the gold within its concession. Therefore the police is obliged to secure its mining concession and prevent people from invading it.

The state has no longer any *de jure* claim of access to the gold, but as the minerals are vested in the state and it is the government that is granting rights, the state is still to be considered a pseudo claimant.

7.3.3.1. Special Mining Licenses and Mining Development Agreements

The Mining Act 1998 introduced Special Mining Licenses (SMLs), which put on obligations for the license holder to explicit informations about the planned mining operation and to employ and train citizens of Tanzania (URT 1998: §44). The Minister of MEM may enter into a Mining Development Agreement (MDA) with a claim holder of a SML, in which special provision for the payment of royalties, taxes, fees and other fiscal imposts can be made, while binding the state to guarantee the long term fiscal stability of a mining project (URT 1998: §10). A MDA is a private and confidential agreement between the Tanzanian government and the mining company. Such agreements were expressly prohibited in The Mining Act 1979 in order to discourage corruption and conflicts of interest (SID 2009: 36). These conditions established in The Mining Act 1998 give preferential treatment to foreign mining companies and have heavily contributed to the large influx of foreign companies.

The original mining licenses⁶⁶ granted to EAGM/AMGM on August 30th 1996 was re-granted as SMLs⁶⁷ on February 7th, 2000 after The Mining Act 1979 was replaced by The Mining Act

61 Which is normal for most countries (Hilson 2002a: 68).

62 Under Part II - General principles of the act.

63 Division A of Part IV: a prospecting licence; a retention licence. Division B of Part IV: a special mining licence; a mining licence; a gemstone mining licence; Division D of Part IV: a primary prospecting licence; a primary mining licence (URT 1998: §7.(a), (b), (c)).

64 See URT web2 for related sizes, duration and fees.

65 The "--" is probably a mistake and should have been a ".".

66 ML 17/96 and ML 18/96.

67 SML 17/96 and SML 18/96.

1998. Those licenses now held by ABG were renewed in 2012 for additional 15 years (ABG 2012e; LEAT 2003b).

7.3.3.2. Artisanal and small-scale mining in the Mineral Act 1998

To engage in official, registered small-scale mining activities the acquisition of a Primary Mining Licence (PML) is required. A PML is granted for seven years and gives the owner the exclusive right to exploit an area designated by the Minister of the MEM. The PML can be mortgaged, renewed or transferred to another holder, including foreign firms (URT 2010: §9., §55.-§57.⁶⁸). According to the act, ASM is exclusive for Tanzanians and companies which are exclusively owned by Tanzanians (Tesha, 2000: 2, URT 1998: §8,(2)⁶⁹). The act designates that the Minister of MEM can reserve specific areas for ASM activities (URT 1998: 23⁷⁰; Tesha 2000: 7). Not many areas and non in North Mara have been preserved for ASM purposes however (ARM 2011: 4, 8-9).

The mining acts and policies have reintroduced the corporate body as a mineral rights holder and reduced the involvement of the state, but also made it possible for artisanal miners to acquire titles. However, this act officially prohibited any mining activities without granted mineral rights, making informal ASM illegal (URT 1998: §6.-(D)⁷¹).

7.3.4. The Land Act 1999 and the Village Land Act 1999

The Land Act 1999 (URT 1999a) and the Village Land Act 1999 (URT 1999b) are also relevant to discuss as LSM takes up large amounts of land. As seen in the previous chapter the company had to acquire land and 40.000 people had to be relocated to allow the mine and its infrastructure to be built (ICMM 2007: 54). The Land Act 1999 confirms tenures that were introduced under colonialism: granted right of occupancy, customary tenure, and leasehold estates (Lange 2008: 5; URT 1999a: §4⁷²). Customary rights to land are treated more specifically in the Village Land Act 1999 (URT 1999b), developed to ensure that existing customary land rights are being legally secured (Lange 2008: 5; URT 1999b: §3.-(1)-(c)). According to the Village Land Act 1999 *Customary Right of Occupancy* is a legal right to occupy and use the land based on historical occupation and use of an area⁷³, which is in every

68 Part IV, Division C

69 Under *Restrictions on granting Mineral Rights*.

70 (b) of "Reserved Area"

71 "(I)" is probably a mistake and should have been "(1)".

72 Categories; (a), (b), (c)

73 "All members of the village who have held land without disturbance since 1970, or been allocated land by a Village Council since, are considered to be holding customary rights of occupancy to that land [...]. These

respect is of equal status to a granted right of occupancy (URT 1999b: §14; §18.-(1); Willy 2003: 36). All public land is vested in the President on behalf of the citizens, in the same way as minerals (URT 1999a: §1-(1)-(a); URT 1999b: 3.-(1)-(b)). Hereby, people do not own land but have user rights. In North Mara, villagers have been using customary rights for many years, with no official registration or certificate, and carried out mining without licenses, but according to The Land Act 1999 minerals are by definition not a part of land in Tanzania (Mwikwabe 2011: 23; URT 1999a: 26⁷⁴, §22.(2)⁷⁵). Rights to sub-soil minerals are only obtained by mineral rights and the two acts hold no support for ASM activities through lands rights.

7.4. Transferability of rights and compensation

Both the land and mining legislations are built on the same principles of upholding the exclusivity of rights, with secured tenure throughout the tenure period, and of the transferability of rights (Lugoe 2011: 3). PMLs can be transferred to SMLs (ASM rights to LSM rights) by means of agreement between the two parties⁷⁶ (Tesha 2000: 2; URT 1998: §9-41)⁷⁷). Land tenure rights can also be transferred from one party to another, with the consent of both parties (URT 1999a: 33⁷⁸). However, the government can choose to convert (transfer) the tenure right of village land into “General” or “Reserved” land if this is in the “*public interest*” (URT 1999b: §4.(1)-(2)). This state expropriation clausal allows the government to order people to move in cases where the government needs the land for “development purposes” like mining, even if local people are working there as artisanal miners. Villages have little or no power to object to losing land to mining companies if the government sees this investment as being in the “public interest” (Lange 2008: 25). When minerals are discovered, the land turns into *mineral land* and falls under The Mining Act 1998, which overrules The Land and Village Land Acts (Jønsson & Fold 2009: 216; Lugoe 2011: 3). However according to the law, no land can be transferred until the amount, method and timing of compensation⁷⁹ to the

people may freely apply to have these rights registered.” (Willy 2003: 36).

74 Definition of *land* under *Interpretation*.

75 Under *Incidents of granted right of occupancy*.

76 The government envision the case when a small-scale miner wants to involve foreign investors in its small-scale mining operation (Tesha 2000: 2).

77 The assigned number “9-41” is most likely a mistake and should probably have been named “9.-(1)”

78 Definition of *transfer* under *Interpretations*.

79 The basis of compensation is to be value of the land itself together with unexhausted improvements, as determined by its current open market value, assessment of lost income, or by replacement costs, and this valuation is to be prepared by a qualified surveyor (Willy 2003: 51).

villagers has been agreed upon ((URT 1999a: §1-(9)^{80/81}, §5.-(7); URT 1999b: §4.-(8)). Compensation must i.a.⁸² include payment allowance for the loss of profits to all those directly affected (Willy 2003: 51) but because minerals however, are separate from land rights the dispossession of ASM opportunities are not compensated for. Villagers must be included in these negotiations concerning compensation and relocated accordingly (URT 1999b: §4.-(5)). It is the state that is responsible for compensating villagers but in the case of North Mara it became the company (then AMGM/EAGM) that paid the compensation (Mlowe & Olengurumwa 2011: 5).

State expropriation for the interest of the public is common all over the world and not a problem in itself. However, it becomes controversial in the light of the debate on whether LSM is in fact in the interest of the public and because of the excessive extent to which it is executed, displacing a large number of people (Carstens & Hilson 2009: 310; Lange 2011: 4-5; LEAT 2003b; Newbury 2011: xix).

The granting of SMLs to the company, the transfer PMLs from the villages to the company, and the transfer of land to be reserved to the LSM operation, in total grant ABG *de facto* property rights of not only the minerals extracted but of the land as well, leaving no legal possibilities for artisanal miners to mine the gold in the area.

80 Under Part 11 - *Fundamental principles of National Land Policy*.

81 The “(9)” is most likely a mistake and should probably have been “(g)”.

82 As well as payment of a disturbance allowance and transport allowance.

8. Analysis: The legitimacy of claims

This chapter will analyse how the claims of access to the gold are articulated by the different stakeholders, how the claims are legitimised, and what the contents and targets of these claims are, based on the theoretical concepts of contestation, protest and claim-making previously discussed. It will show how articulation of claims also lead to counter claims, de-legitimising the original claim, thus strengthening legitimacy in the view of the stakeholder articulating the counter claim. It will analyse how these claims of the stakeholders are socially constructed under the perceived circumstances and changes affecting the claims.

8.1. Historical legitimacy of the artisanal miners' claims

According to Boniface Magao Mwita, a resident in the Nyatongo village, who was engaged in mining activities in the area at the time the EAGM came, people in the area have been involved in mining activities for at least 50 years (Mlowe & Olengurumwa 2011: 18). The villagers have a perception of a long history of artisanal mining in the area and therefore of a historical right to access the gold in the area. This perception has been strengthened by the fact that ASM existed prior to LSM in North Mara and the perception is reflected in the media as well; *“Villagers, too, are hunting the ore on the North Mara land that their ancestors worked for decades, sometimes paying with their lives.”* (Simpson 2010). The historical legitimacy to access the gold is furthermore linked to cultural beliefs, about the gold being owned by gods or spirits and rewarded to the people in the areas by letting them discover the gold deposits. *“To the people from the area, the gold belongs to the gods or spirits and they have to have regard for the spiritual influence more than geological information.”* (Mlowe & Olengurumwa 2011: 4).

There is also a common feeling of historical attachment to the land among the artisanal miners in North Mara. In his research, Mwikwabe (2011) found that the interviewed told of being separated from their ancient's graves, which has strong meaning to them (Mwikwabe 2011: 43). According to the author the company has failed to differentiate cultural attachment of local people to the land from the economic value associated with the land (Mwikwabe 2011: 37). Lugoe (2011) comes to a similar conclusion, arguing that mining seeks to take away the ancestral land rights of communities and people's attachment to ancestral heritage in 'the public interest, and that money cannot compensate for this deep attachment (Lugoe 2011: 3). This indicates a feeling of historical and cultural attachment to the land which, according to

Hilson (2002c: 67-68) and Horowitz (2002: 46-47), are key attributes of indigenous people's resistance against mining projects.

Several quotes reveal a strong dissatisfaction towards the fact that it is foreigners, rather than (local) Tanzanians, who benefit from the gold and that the government is to blame, betraying its people. Before-mentioned Mwita says that it is the whites, who are protected by the police force in Tarime, who are the intruders, thus they will keep on going to the mining sites even if all of them are killed (Mlowe & Olengurumwa 2011: 18). A villager named Mkwave Mwita is quoted: *"it is Canadians that are reaping more benefits from Tanzanian mineral resources than Tanzanians themselves."* (THISDAY 2009). This feeling of betrayal can be regarded as outrage according to the concepts of claim-making and protest. It can seem somewhat racist but it points to a claim to the gold through nationality. This is actually in line with the constitution, proclaiming that the mineral wealth should benefit the Tanzanian people, as well as the Village Land Act 1999, stating that expropriation from land is feasible only if it is deemed an investment in the interest of the public. This suggests that the actions of the artisanal miners involves an aspect of political contestation as they act to acquire benefits of the gold themselves, challenging the government's management of the natural wealth as unconstitutional and not benefiting the people.

8.2. The legal claims of the artisanal miners

As seen from the historical accounts of the conflict in this thesis, the five villages of Kerende, Kewanja, Nyamwaga, Genkuru and Nyangoto acquired PMLs to the gold deposits at the Nyabigena and Nyabirama areas. The villagers have lived there under customary land rights, but as discussed in the previous chapter, land rights do not include minerals in the Tanzanian legislation. The two rights are often confused by villagers⁸³ when they are claiming legal rights to access the gold.

8.2.1. Claims of mineral rights

The historical account also suggests that this happened under illegal and irregular circumstances. According to the Lawyers' Environmental Action Team (LEAT), both the mining company and government officials *"...exerted undue influence upon the leadership of the villages to force them to illegally and irregularly sell the claim areas legally granted and held by the said five villages."* (LEAT 2003b). The granting of mining licenses to EAGM in

⁸³ As well as by media.

the same areas excluded these claims (LEAT 2003b).

Elia H (age 60) who had a PML and were among the few of those that bargained with EAGM/AMGM:

...we were called and it was first time to involve in negotiation, I remember some of us tried to reject the negotiation but other accepted just little amount of allowances paid per day by Company and we did not have lawyers but the Company had a lawyer... (Mwikwabe 2011: 60)

...our feelings were that after surrendered our mining licences as required by law then the company could employ villagers in the new system of gold production... (Mwikwabe 2011: 60)

Actually there exists no legal ground according to which owners of PMLs are required to sell their claims. Companies can make agreements with artisanal miners, so that the larger companies are able to access the licensed area of the artisanal miners. Often the agreements contain provisions allowing the company to buy out the artisanal miner if the miner wishes to do so, depending on the potentiality of the property (Tesha 2000: 12). This is however, only to the extent that such a provision is in fact existing in their mutual agreement but lack of knowledge and in some cases education of the artisanal miners can result in one-sided exploration agreements, which favour the larger mining company (ARM 2011: 10; Mwaipopo et al. 2004: 9; Tesha 2000: 12). The quotes above also shows how the artisanal miners believed that they would be able to enter into the new system of gold production, as the original agreement contained obligations of local investments and preferential hiring of members of villages. But it is not legal to conduct preferential local hiring to those from the North Mara region nor does the company require labour size equivalent to number engaged in ASM in the area (ICMM 2007: 52; Mwikwabe 2011: 60). Therefore the normative expectations of the artisanal miners were violated legitimising a feeling of outrage. According to LEAT, the villagers were never shown the mining license of EAGM. Accusations of illegal and forced sells of PMLs are therefore actually de-legitimising the mining licenses of ABG, reaffirming the claims to access the gold of the artisanal miners.

Another source of anger and outrage is the lack of inclusion of the informal artisanal miners in the negotiations, concerning the selling of the claims. The many people who were engaged in

informal ASM at the time EAGM/AMGM came to the area, were not included in the negotiations, only village representatives and the individual PML owners were (Mwikwabe 2011: 60).

Although the exact circumstances under which the mining licenses were transferred to the EAGM company are uncertain, it is clear that many former and current artisanal miners do not perceive the claims of the company to be legal.

8.2.2. Claims of land rights

The villagers' historical presence in the area earned them customary rights to the land. The land of Nyabigena and Nyabirama have however been reserved for the mining company to accommodate space for the NMGM. The original contract for the sale of this lands was between the government of the District of Tarime and the EAGM company. As found in the previous chapter, it is required by law that villagers take part in negotiations when the state wants to transfer village land to reserved land. The villagers claim that the original contract between EAGM and the government was concluded without adequate consultation or approval of the majority of villagers (Mlowe & Olengurumwa 2011: 4). Furthermore, the language in the contract was English and not Kiswahili, the language of the majority of Tanzanians, making it difficult for local villagers to read the document and to make themselves assured that it was a fair agreement (Mlowe & Olengurumwa 2011: 4-5). Additionally, LEAT has directed their complaint against both government officials and the mine management, and holds that two government officials of the District of Tarime, had put undue pressure on 60 villagers to make them accept compensations that were too low, and that the officials had threatened them with arrests if they didn't comply (LEAT 2003b). This way in which the NMGM was established has led to a feeling of being deceived among the villagers, hence a sense of wrong-doings entailing feelings of outrage (York 2011b). Although the Tanzanian state should be the body responsible for paying compensation, in this case it has been for the different companies to do so hence, demands of compensation are now directed towards ABG, because ABG has inherited the contents of this original contract. Many however, have still not been properly compensated for the loss of land and many have cases in court (Mwikwabe: 30-31).

The artisanal miners generally confuses land rights with mineral rights, which is a common misconception among local people (Kulindwa et al. 2003: 91-92 in Lange 2008: 14). This is also the case in North Mara although, I will state that it is rather another perception of claims.

The artisanal miners do simply not differentiate between mineral and land rights in their claims of access to the gold, but have a pragmatic approach to rights. They have a strong feeling of being wronged and outrage among the artisanal miners has grown out of this, making entrance into the ABG mining concession to scope for gold minerals a legitimate form of articulation of claims, even if it involves violence, as the following quote states. Maheri C (age 43):

...the Company doesn't want to listens our concerns, the government is quiet, the police are murderous and cases in court take long time unusual...this conflict will end if we increase use of force... (Mwkwabe 2011: 37)

8.3. Legal claims and property rights of African Barrick Gold

As opposed to early post-independence, when mines were national property, the liberalisation of the mining sector has invited foreign LSM companies to extract minerals, particularly gold. By granting minerals to these companies the state is outsourcing the extraction of gold. As argued in the previous chapter, the mineral rights of ABG/Barrick, along with the transfer of the land to reserved land by the government grants the company exclusive rights, which effectively are *de facto* property rights. The claims of ABG are legally founded and when people are stealing gold sand or waste rock, or even just are physically present within the mine concession of ABG they are violating the exclusive rights of ABG.

8.3.1. Criminalising the artisanal miners

The company and the government are branding the artisanal miners as criminals, justifying the killings of them. Barrick has expressed concerns about the police shootings, but has also pointed out that the intruders⁸⁴ are illegally trespassing (York 2011b). This opinion is by large shared by the police. Constantine Massawe, RPC of Tarime and Rorya Police Special Zone:

The police officers are there not only to protect the mines but also the properties in the mine. Villagers are sometime invading the mine to collect mineral remnants, then in the course of preventing them police have to use gun and bomb to surpass them....as the result some are killed and some are injured. (Mlowe & Olengurumwa 2011: 14)

⁸⁴ Villagers entering the mine illegally to scrounge for rock have used the English word "intruder" to describe themselves and the word has entered the Swahili language, with no negative connotation, as the name of a new occupation that can produce money and even wealth (York 2011b).

District officials have also openly admitted that there have been many incidents of killings around the mine, but on the other side they have justified the killings by saying that, all those who have been killed and injured by security guards have been intruders at the mine (THRR 2010: 48). This is not exclusive to this case. Framing artisanal miners as encroachers, trespassers, criminals, intruders, bandits, criminals and the like has been a commonplace way for LSM corporations, to defend their use of security forces to remove ASM-groups from their legally endorsed concessions (Carstens & Hilson 2009: 306, 308; Mwaipopo et al. 2004: 27, 42). According to Andrew Wray, head of investor relations for ABG: *“People killed or injured after crossing into the mine area shouldn’t be considered small-scale miners because they were all trespassing and therefore acting illegally,”*. (Simpson 2010). This is also targeted at the government, urging it to improve law and order, referring to protection of their exclusive right to mine within its concession.

Government efforts to transform artisanal mining into formal small-scale mining imply a sharp distinction between the two (which this paper does not make).

Formal small-scale mining takes place legally with miners in possession of a primary mining license, which thus give them a legal right to mine...Informal small-scale miners or artisanal miners, on the other hand, hardly ever have a legal right to the mineral deposits they exploit and monitoring of their activities is problematic. (Tesha 2000: 5)

The criminalisation of artisanal miners by the government is taken further by referring to the problems of ASM:

Although artisanal mining provides a source of income, it engenders a host of undesirable effects. Being uncontrolled, it is often unsafe, unhealthy and environmentally unsound, and can give rise to social problems and crime. It is a wasteful utilisation of mineral assets and full economic benefits are seldom realised through the activity. (Tesha 2000: 5)

This statement is branding artisanal miners as criminals who should have no access to gold at all. It is based upon negative hazards associated with ASM; negative environmental impacts such as mercury pollution, use of child labour, health hazards etc. (see Chapter 1).

Additionally illegal mining activities are condemned by the the chairman of the Tanzania Chamber of Minerals and Energy (TCME), Mr Ami Mpungwe:

It has to be deeply appreciated that for every ounce of ore, diamond or tanzanite that is stolen or mined illegally, the state suffers substantially in terms of taxation, reputation and its law enforcement responsibility... (The Citizen 2011b)

Obviously, the state has to condemn any kind of theft but it must be remembered that informal ASM is illegal, according to The Mining Act 1998, and any claims of informal artisanal miners are hereby strongly de-legitimised as being harmful to the state.

8.3.2. Securing the claim

This branding defends efforts to improve security to safeguard the continued, exclusive right of ABG to access the gold and and ultimately shoot intruders. Barrick's PR and Communications manager Teweli Teweli states how security arrangements around the mine should be improved following the incident of May 16th:

Africa Barrick Gold (ABG) will continue to work towards the longer term resolution of law and order, which includes a combination of capacity building in the Government, increased community investment and greater engagement with the locals to resolve long term legacy issues. Over the past year we have been upgrading the physical security arrangements at all of our sites, initially focused on securing camp perimeters and then securing the operating area of each site and North Mara is part of this programme. Security infrastructure and resources across the site continue to be upgraded. (The Citizen 2011a)

In this statement it is interesting how *law and order* are coupled with security of the sites. This analysis interpret the statement of law and order as strongly related to legal property rights. The security upgrade includes installation of additional perimeter fencing and walls, installing cameras in sensitive areas, implementing personal radio tracking, reviewing options for in-car video cameras, and conducting a safety education programme with the local community to improve understanding of the inherent dangers associated with illegal mining and intrusions into the mine site (Barrick 2011a).

8.4. The perception of mining and development

The criminalisation of ASM, along with preferential treatment of LSM companies point to a fundamental basis of the mining legislation by which LSM claims are supported by government and ASM claims are not. The government largely prefers that people refrain from

ASM activities as reflected in a speech by the minister of finance Hon Basil P. Mramba on the budget for 2001/2002:

Rural poverty is to be reduced from the current level of 57 percent to 29 percent by 2010. The best way of achieving these targets is to fully implement the agreed policies and strategies for agriculture, livestock, tourism, basic industries and mining. However the people themselves are the only ones who can sustainably uplift their living standards by employing their skills and hard work, especially in the agricultural sector. (Mramba 2001)

This quote refers to The Mineral Policy 1997 and The Mining Act 1998, policies formulated to improve the contribution of the sector to national, economic development. Investing in the mining sector is still widely applied as a development strategy and the WB is encouraging countries to commit to the growth of the sector (Bebbington et al. 2008: 889; Greenen 2011: 149). This notion of a positive relationship between LSM and development is very apparent in the Mineral Policy 1997. The Tanzanian government argues that LSM offers a good tax-base, contributing to state revenues⁸⁵ and generating foreign exchange earnings, and that it has great potential for both forward and backward linkage of the Tanzania's economy, whereas informal ASM on the other hand does not (Hentschel et al. 2003: 41; Tesha 2000: 14; URT 1997: v, §3.3.3.; URT web2). In spite of studies indicating disappointing results at a national level (as discussed in chapter 1 of this thesis), the state not only use this notion of a positive relationship between LSM and development to support and legitimise the claims of ABG to access the gold, but to de- legitimise the similar artisanal claims as well. ABG/Barrick also argue for the positive impact of its mining operations. Aaron Regent, president and Chief Executive Officer of Barrick:

Some suggest we shut the mine. We think shutting down a mine that provides employment and other meaningful benefits to thousands is not a good solution. The economic and social impact would be severe for the community. (Regent 2011)

Although, the Tanzanian government has acknowledged the positive contribution of ASM to the economy in The Mineral Policy 1997, the granting of mineral rights to ABG along with the dispossession of the same rights of artisanal miners, show how the government ranks LSM above ASM. The state legitimises the right to access the gold of ABG by the notion of a

⁸⁵ The TCME executive secretary, Mr Emmanuel said that the government's revenue in the form of taxes amounted to \$120.5 million in 2010 compared to just \$2.1 million in 1997 (The Citizen 2011b). The contribution of mining to the GDP has increased from 1,6% in 2000 to 3,3% in 2010 (NBS 2011: 16). But this contribution is projected to rise to a 10% contribution of GDP in 2025 (URT web3).

positive relationship between LSM and development. In the same breathe, artisanal miners are criminalised by the company and the government, and as the mineral rights of ABG ultimately are *de facto* property rights granted by the state, violent means to defend its exclusive claims to access the gold are ultimately justified.

8.4.1. Development initiatives and legitimacy

The original agreement of the transfer of land to EAGM also included social development obligations, which were never complied with (Mlowe & Olengurumwa 2011: 5). In order to improve its relationship with the local communities and avoid conflict, ABG/Barrick has initiated a lot of developments initiatives, along with procedures for peaceful existence, much in line with CSR-approaches. This has included annually community investments, investments to connect North Mara to the Tanzanian power grid, support of the refurbishment and building of a number of schools and also supports a number of scholarship programmes in the North Mara region (ABG 2012b; ABG 2012c; Barrick 2011a). However, development initiatives do not simply remove the claims of the artisanal miners. Abel M (age 62) answers to whether he was satisfied with the company's education programme (see ABG 2012c):

...what people want is to engage in economic activities to have something to eat, it is irrelevant for this Company to claim that has been sending children to schools is like exchanging education for gold... (Mwikwabe 2011: 36-37)

This further underlines the claim among the local communities of access to the gold, which cannot simply be replaced by development initiatives. Mwikwabe (2011) identified feelings among villagers of restricted access to economic activities, rather than acceptance of development initiatives (Mwikwabe 2011: 37). This is in opposition to the assumption of ABG, which recently have signed the VBA with the seven villages to seek an end to the unsettled issues (see chapter 2). Hereby, they are ignoring mineral rights that the local communities originally held, and more importantly the maintained claim of access to the gold of the artisanal miners. Instead ABG is regarding the conflict merely as a compensation issue which can be settled by an adjustment of costs and benefits, which is much in line with the argument of the reviewed literature on Mine-Community conflicts.

8.5. Corruption, bribes and legitimacy

A much different source of disputes and legitimacy is corruption and bribes. Corruption and

bribes are part of everyday life around the NMGM. Villagers bribe⁸⁶ the police in order for them to access the waste rocks, a practice called “Mchongo” (Mlowe & Olengurumwa 2011: 14). An anonymous gold broker from Nyamongo have said:

...if you want to survive here you have to collaborate with police on duty...we are bribing to get into pits to collect gold sands, when killing happen is when many people want to force into pits without paying money... (Mwikwabe 2011: 45)

Maulidi Issa, a villager who has worked as an intruder for many years: “*The police are benefiting from the conflicts,*” “*They are becoming wealthy from the bribes.*” (York 2011b). According to Charcha Murwa, the head of Foundation Help⁸⁷, the local guards are extorting money from artisans miners to allow them access to the premises of the mine (Bariyo & Steward 2009). Gerhard Hermann, ABG production manager says it can't be held responsible for the actions of the police guards. “*They are deployed by government and draw a government salary, they are not on our payroll,*” (Bariyo & Steward 2009). The police are, of course, sanctioning any such practice but also suggesting that ABG employees are involved (Marato 2011). Constantine Massawe, RPC of Tarime and Rorya Police Special Zone:

Gold concentrate is grouped according top grades, now how come people invade the mine and identify the one of highest grade and go straight to it if not mine workers providing leading information to the invaders? (Marato 2011)

Some villagers have questioned the fairness of granting access to the lucrative sand to only those who are capable of bribing insiders. As area residents they deem it their right to have a share and thus form gangs of machete and spear-wielding invaders who clash with the police (Maroto 2011).

Thus there are different stories as to how exactly this corruption and bribing takes place and who exactly are involved. For the artisanal miners in North Mara bribing is a mean to make a living. Bribing is a practical expression of their claim to access the gold. It holds no moral resentment and is legitimised beyond legal terms, which makes corruption and legitimacy interlinked. The employers are tipping off the intruders and the police accepts bribes for access to the pits in an informal contract-like situation. It is when this “contract” is broken that

86 The amounts varies from source to source. It ranges from a dollar or two a person (York 2011b), several dollars a person (Guardian 2011), 30,000-50,000 TShs a person (\approx \$18-30) (Mlowe & Olengurumwa 2011: 14) to one million TShs (\approx \$650) for a group in exchange for a half-hour on the mining site (Marato 2011).

87 A local NGO monitoring human rights.

violence becomes an issue. Police officers and company staff can suddenly demand top-up cash above what they had initially agreed on or people refuse to pay the bribes. Disagreements occur and turn into confrontations that provoke policemen to aim their weapons at the very people who had been co-conspirators a moment earlier (Marato 2011; York 2011b). Onesmo Olengurumwa, researcher at the LHRC: *“When there are agreements between the community and the police, and the police fail to honour it, that’s when the conflicts start.” “If they’ve made a deal to collect rocks from the mine, how can you call them intruders?”* (York 2011b). In this view, corruption is perceived as legitimising the claims of the artisanal miners of access to the gold within the concessions of ABG.

8.6. Perceptions of circumstances

The ASM claims of legitimacy to mine must be considered in the context of poverty, lack of alternative sources of income and the value of gold.

8.6.1. Poverty and lack of alternative sources of income

Even though per capita income in the Tarime district is a little above average it is still below the poverty line (see chapter 1). According to the theoretical framework, legitimacy is related to how the actors themselves see these circumstances. A villager named Mang’era Saidi Mang’era is quoted:

We no longer have land for cultivation, we have lost our local mines, now there are no pastures because the mine has almost taken the whole land ... we have no sources of income, most us are amputated and we are living only through God's wishes
(Mlowe & Olengurumwa 2011: 21)

Nyagabure Chacha, a villager living close to the waste rock piles is simply quoted:

“These people have nothing,” “They have no resources to survive.” (Simpson 2010).

Neyakema Mwita (Age 39) see no other means of earning a livelihood besides returning to the mining site: *“I have a wife. If I don't go there, how else will I eat?”* (Wright & Edwards 2011). At the same time they see the company earning huge profits. Charles Mwera, Former Member of the Parliament:

.... people want areas for mining whose livelihood depended on mining that has been taken, are yet to be compensated as result some still live in the mining sites thus affected by mining explosives and chemicals through air and water pollution... are

being injured and some killed....the feeling that their resources are being taken by the foreign investor in cooperation with the government leaders (Mwikwabe 2011: 49)

Villagers have complained to the Deputy Minister that the mine has failed to support development, artisanal miners and small-scale projects in the area (Jacob 2012). Chacha M (age 49) on how he has been affected by investment: “...*we don't have income because I used to work as miner but now I am not allowed we are waiting to see if the state will relocate new place where we can be free to dig gold ourselves...*” (Mwikwabe: 2011: 35-36). This clearly reflects the lack of government support to the artisanal miners. Many intruders say they would happily give up their invasions and switch to small-scale mining if they could (York 2011b). These claims are directed towards the government in order to support them as promised but these quotes underlines a specific content of the claim of accessing the gold. They want to be able to (legally) mine gold themselves as they used to. The claims should be regarded in relation to the historical legitimacy and support the argument of this thesis, that access to the gold in North Mara is the central claim of the artisanal miners and therefore a crucial feature of the ASM-LSM conflict. This claim is different from merely wanting to benefit from the gold production, as is a common feature of community claims in Mine-Community conflicts (see chapter 3). This difference underlines the simple, yet important particularity of the ASM-LSM conflict in this case.

8.6.2. Economically value of gold

The value of gold have been increasing for decades (see chapter 1). From studies of ASM in Tanzania it is found that ASM is generally perceived as a potentially profitably career choice by people in Tanzania (Bryceson et al. 2010: 366; Bryceson & Jønsson 2010: 383; Fisher et al. 2009: 34). Since the discovery of gold in the area there has been little agriculture. Instead, members of the community have relied on ASM and have been able to benefit from these gold mining activities. Nelson Charles (age 22) represents a tangible evidence. Having worked within the ABG mining concession for three years, he owns a motorcycle, a television, a DVD player and a \$500 Nokia smartphone. He has spent thousands of dollars to buy a plot of land in his hometown, and he plans to build a house there for his family (York 2011b). The rewards of illegal mining activities are therefore considered worth the risk of getting hurt or killed by security guards or the police. Gold symbolises the only (profitable) economic activity in the area. The huge profitability of gold equally makes it hard for the company not to continue

their operation of the NMGM, in spite of the problems.

8.7. (the conflict as) A clash of claims

This analysis has identified articulated claims of access to the gold resources in North Mara by the three stakeholders; the Tanzanian state, the LSM company ABG, and the artisanal miners living around the NMGM. Through this study it has been argued that the conflicting claims of the stakeholders are based on diverse notions of rights and legitimacy to access and exploit the same gold deposits. These claims manifest themselves physically as protest actions, sometimes violently, when the different claims of the stakeholders clash. Violence is a physical expression of claim-making and protest, based on feelings of outrage and anger, from wrong-doings and violation of expectations.

The claims and the legitimacy to these claims, of the current and the former artisanal miners, are pragmatic and based upon historical legitimacy through historical occupation of land and of ASM activities, as well as previous mineral and (customary) land rights, which were “forced” sold. Legally their claims to access the gold contains a misconception of mineral and land rights, by which the artisanal miners perceive land and minerals (or rights to these) as the same. However, there is no legal support for this as minerals are not included in land rights, and even though The Land Act 1999 and The Village Land Act 1999 both contains provisions for compensation for lost income and profits, it does not include compensation for the loss of ASM opportunities.

The artisanal miners believe that their rights to both minerals and land were unrighteously handed over to the mining company under dubious circumstances, that excluded many villagers, who should have been part of the negotiations. Furthermore, they feel that compensation for their loss of rights and resettlement has been inadequate. This perception of wrong-doing by both the company and the state legitimise their protests in their own view, with a strong feeling of anger and outrage. It also de-legitimises the claims of ABG, as the legal requirements of transfer of the rights have not yet been complied with, hence the legal claims of the artisanal miners are still valid and legitimacy to these claims is consolidated. The claims are not differentiated sharply between legal and non-legal legitimacy as illustrated by the following two quotes. Matare S (age 41) from the Nyamongo village when asked of whether he was aware that the NMGM is working under legal guidance: “...*people talking about contract but we don't know what is contract we need back our gold...*” (Mwikwabe

2011: 36). Milima M (age 45): “...*how can you end conflict, the damaged relationship will never be repaired this Company is taking our gold and the government is protecting Company... of all these misery...*” (Mwikwabe 2011: 54). The notion of “our gold” and hereby right to access this gold, is very apparent in these two quotes and has also been clearly displayed throughout this analysis. This way of claiming is not unique to the North Mara case, however. Findings from a study in Ghana by Aubynn (2009) have found similar claims and argues: “...*that they [the artisanal miners in Ghana] have long sustained themselves on mining local mineral resources, well before the arrival of LSM operations; and, that the latter seizes control of lands and deprives local people of their rightful access to minerals and other natural resources.*” (Aubynn 2009: 65). This thesis has elaborated on how the artisanal miners in North Mara perceive this rightful *access*.

Very differently from the artisanal miners, ABG/Barrick adheres strictly to legal claims by their acquisition of mineral rights granted to them by the Tanzanian state. These provide them with exclusive right of ownership of the mineral recovered as well as complete power to dispose them. Together with the transferred land rights, by which the people who lived there prior to the mine could be legally displaced and relocated, the mineral rights grant ABG *de facto* property rights in regard to their concessions. These rights are accompanied by a strong notion of the sanctity of property rights, which is shared by the government, making it not only acceptable but legitimate to defend the mining concessions and the minerals within and to do so with force if necessary.

The Tanzanian government is managing the minerals on behalf of the Tanzanian people and can, on this ground, grant mineral rights to Tanzanian artisanal and small scale miners, as well as LSM companies including foreign corporations. The legitimacy of the claims of the government to access the gold is fundamentally legal, but since the liberalisation of the mining sector, the government has chosen not to be directly involved in mining operations and instead let others exploit the mineral wealth. In spite of the *first come, first served* principle embedded in the legal framework, LSM companies such as ABG/Barrick are preferred to grant mineral rights to. The notion of a positive relationship between LSM and development is what legitimises this although some authors, as explained in the previous chapter, argue that the mining reforms were ultimately imposed by the WB and the IMF and therefore not a notion of the government itself. Participating in this discussion is beyond the aim of this thesis but it suggests that the Tanzanian government is forced to support claims of foreign LSM companies

to profit from their mineral wealth.

On the ground of (perceived) legal legitimacy, ABG as well as the Tanzanian government, criminalise and de-legitimise the artisanal miners and their claims to access the gold. The artisanal miners are branded as simple criminals, breaking the law, violating the rights of the company, and acting violently against ABG personnel. This criminalisation further justifies the use of force to defend the mining concessions.

This analysis have described how the artisanal miners are involved in corruption by getting inside information from ABG employees about mineral rich waste rocks, and bribing the police to get access to these. To the artisanal miners this arrangement is perceived as a legitimate way to access the gold and can be considered an articulation of their claims to access the gold. At the same time bribing, in their view, legitimises the claim of access to the gold itself, although some have questioned the fairness of this arrangement. From this perspective the physical confrontations are results of someone not complying with this arrangement by refusing to pay the bribe, increasing the payment-demand or open fire despite being paid. ABG, on the other hand, is articulating this as a criminalisation of the artisanal miners, hereby de-legitimising their claims.

8.7.1. Target and direction of claims

As argued in relation to the theoretical framework the claims contains a target and a direction, which are the form of redress sought in the claims, aimed at the actor responsibly for carrying this out (see chapter 4). The company is targeting its claims at the state as the body responsible for ensuring and safeguarding its mining rights. The claims are directed at measures to improve law and order, and through this, the safeguarding of the company's continued and unrestricted access to the gold.

The target and direction of the claims of the artisanal miners are multifaceted and less simple. The claims are targeted at the company as well as the government, seeking measures to restore legal ASM activities to access the gold. The gold deposits are rich and might potentially benefit the local communities much longer than the ten years it is expected to be profitable to ABG, as their amount of gold productions is far smaller than LSM⁸⁸. There are artisanal

⁸⁸ However the proved size of the NMGM deposits is larger than the amount of gold extractable to the artisanal miners do to their simple methods of extraction, limiting the depth to which they can extract from (see chapter 2).

claims targeted at ABG and directed at improved employment opportunities. Other artisanal miners prefer to be able to mine ore themselves. Such claims are instead targeted at the government, directed at getting the government to actively support them and start designating areas where they can extract gold themselves. The government is a target of claims but the measures and direction is neither removal of the government nor any other revolution-type demand or far-stretching changes in the legislation, as the SMT-agenda would otherwise assume (as discussed in chapter 4). Rather they want the government to simply abide there own law and start supporting ASM activities, as stated in The Mineral Policy 1997 and they are in effect contesting the government's management of the natural wealth as unconstitutional and not benefiting the people. The advantages of the concepts of protest and claim-making are clear in this view, as it does not assume any normative agenda, which traditional SMT on the other hand tends to do (as argued in chapter 4).

Similarly, a direction close to status quo is apparent in relation to the bribing arrangement by which artisanal miners gain access to the mining site. In spite of some instability of this arrangement, some of the artisanal miners perceive it as a legit way of accessing the gold, given the circumstances. Others however argue that this arrangement is unfair, not letting the less resourceful gaining access to the gold. The slightly different directions of the claims of the artisanal miners indicate that the artisanal miners as a stakeholder group is less coherent than assumed.

The direction of the claims is not to be confused with wishes of ending the human rights abuses by the security guards (no matter the reality of these) or stop the pollution (no matter the reality of this) or ending of land expropriation. These issues are fuelling the conflict but are not directly related to the claims of the artisanal miners to access the gold. Instead, the direction of the claims emphasises a particularity of the ASM-LSM conflict in North Mara, which not only separates it from the broader Mine-Community conflict but points to why impact studies, CSR-approaches and Resource Conflict Theory are inadequate to understand the basis of the ASM-LSM conflict as well.

Besides being a target of claims the Tanzanian government can be considered a pseudo claimant. As opposed to the other stakeholders, the government is not articulating claims to access the gold itself. This was abandoned when the mining sector was liberalised, as seen from the previous chapter. Instead the government lets LSM companies extract the gold under state regulation, collecting taxes and royalties, and is strongly defending the claims of ABG,

while de-legitimising any claims of the artisanal miners. The government is therefore, better regarded as a source of legitimacy than a claimant in its own right.

The many de-legitimising claims identified, which are just as apparent as the claims of legitimacy, are findings not far from those of Mwaipopo et al. (2004) arguing that conflict between LSM and local communities is caused by “...*misguided preconceptions and strong feelings regarding each other and their alleged rights.*” (Mwaipopo et al. 2004: 26). However, this would indicate that the conflict would end (or at least be reduced) if these *preconceptions* and *feelings* were guided or corrected, and it ignores the very basis of claims.

8.7.2. The construction of claims

Each stakeholder's perceived legitimacy to claims of access to the gold by are socially constructed in relation to the historical changes, that have affected these claims, and the context in which these claims are articulated. The Tanzanian state has experienced the post-independence era and the subsequent economic decline, followed by liberalisation and reform of the mining legislation to change this. The company was attracted by the new legislation offering attractive policies for FDI in mining operations in a mineral rich country that was previously fending off foreign investors. Additionally ABG/Barrick was not involved in the original process of setting up the NMGM, but has inherited the contract through the overtaking of another mining company. The artisanal miners in the area have experienced the benefits of the gold, even acquiring legal rights to these claims, and then being removed from the area and dispossessed of (legal) mining opportunities, seeing a foreign company benefiting from the gold instead. This change has strengthened their perception of legitimacy. The historical-grounded legitimacy in terms of cultural attachment to the land and their history of ASM activities has been strengthened, even though the ASM activities in the area to many are a recent phenomenon.

To the artisanal miners legitimacy of their claims is constructed in a complex interrelationship with how they perceive their situation. To them their (economic) situation has become worse after the NMGM was established. As argued in the first chapter of this thesis, ASM can be regarded as being a poverty-driven livelihood activity but also a way of escaping poverty. People in the villages around the mine see the police as corrupt and dishonest (Guardian 2011). Still, in the context of poverty, collaboration with them is considered a legitimate mean to access the gold.

To Carstens & Hilson (2009) protest by artisanal should be seen as struggling to escape poverty, which is often misinterpreted as defiance and results in their being branded as criminals (Carstens & Hilson 2009: 307). However, this perspective fails to regard the legitimacy embedded in the protests. The artisanal miners have a strong sense of legitimate claims to access the gold, constructed under circumstances of widespread poverty, lack of support from the government and perceived illegal dispossession of rights. Under these circumstances illegal entrance into the ABG concession is justified, even with means of violence. ABG has been granted legal mining rights by the state, and has additionally acquired land rights, which grants them *de facto* property rights. Under this notion of rights ABG claim exclusive access to the gold within its concession. The Tanzanian government is very supportive of the claims of ABG and both are ultimately justifying the killings of artisanal miners on the ground that they were violating these claims. However, ABG/Barrick have failed to acknowledge the claims of the artisanal miners to access to the gold, and simply dismiss any actions in that directions as being illegal acts of criminals. At the same time ABG is trying to compensate the villagers for their loss of lands and working opportunities, again failing to acknowledge the dispossession of ASM activities experience by the local communities.

9. Conclusion

The conflict in North Mara, Tanzania can be regarded as a clash of claims manifested in physical and violent confrontations between the artisanal miners, the mining company African Barrick Gold (ABG), and the Tanzanian government. These three stakeholders all articulate disparate claims of access to the gold. Each stakeholder perceives their claims to be legitimate through their individual perceptions of circumstances, under which their means to secure these claims and accessing the gold are justified. The state deploys police to the mining site, ABG hires security guards to secure the mining concession, and the artisanal miners trespass onto the mining site to access the gold they used to mine by themselves, which leads to violent confrontations between the artisanal miners on one hand, and police and security guards on the other. These confrontations are intensified articulations of the claims of the stakeholders that clash. The intensified and violent articulations arise from feelings of rights being violated.

The legitimacy to the claims of the artisanal miners is based on historical occupation of land and of artisanal and small-scale mining (ASM) activities, as well as on the mineral rights previously granted to them by the government. The artisanal miners accuse the government and the company of having deprived them of their mineral rights and land illegally, hereby strengthening their claims. The artisanal miners do not distinguish sharply between legal and non-legal legitimacy but simply perceive the gold as their entitled right and feel that the government supports the mining company in “stealing” their gold.

The company on the other hand has been granted exclusive mineral rights by the government, and the area where the mine has been established, has been reserved by the same government for this operation. This effectively grants the company *de facto* property rights over their mining concession legitimising their claims on strictly legal terms.

The Tanzanian government is not directly a claimant but legitimises the right of ABG to access the gold by a notion of a positive relationship between LSM and development. By this notion informal ASM activities are considered as not contributing to Tanzanian development and all artisanal miners trying to make a living are criminalised as intruders and trespassers.

The legitimacy is socially constructed in relation to the stakeholders' individual perceptions of circumstances changing (or creating) their access to the gold and of their own situation. The villagers in the area carried out artisanal mining activities before any mining company came to

the area. Liberalisation reforms of the mining sector formulated by the government however, have changed access for all three stakeholders as they introduced new mining policies to attract foreign direct investments (FDI) and to formalise artisanal mining. The Tanzanian government outsourced the extraction of gold to foreign companies and small-scale miners, which has dispossessed the local communities of ASM opportunities and instead criminalised artisanal miners. At the same time the legal framework is giving preferential treatment to ABG, enabling them to harvest huge profits. This occurs in an area with severe poverty, and the local communities have depended on ASM as a livelihood strategy, which has contributed to a feeling among the artisanal miners of being wronged, which in their view legitimise their illegal activities within the ABG mining concession. Legitimacy to the claims of each of the stakeholders are therefore constructed under circumstances that they perceive very differently and inevitably the claims to access the same gold deposits clash with each other.

Concluding that the conflict is a clash of claims to access gold might at first seem elementary but it reveals a fundamental cause of the conflict which other authors have not considered. Authors have pointed to different causes of the conflict such as ambiguity within the mining legislation, unfair treatment of artisanal miners, different perceptions of land and mining rights, and misconceptions among the stakeholders of each others rights. This thesis challenges these arguments as incomplete, ignoring the aspect of perceived legitimacy, and moreover failing to recognise that the main claim of all three stakeholders is access to the gold. ABG has also failed to acknowledge this claim of the artisanal miners. ABG is trying to compensate the villagers for their loss of lands and work, assuming that this will end the conflict. However, ABG has not recognised that because of the dependency and attachment to ASM activities of the local communities, the mining operation has not only dispossessed the artisanal miners of access to the gold but of livelihood as well.

Mwalimu Julius Nyerere, the first president of Tanzania has said: “...*law and justice are totally different.*” “*Simply because Barrick signed a contract with the government doesn’t make everything right.*” (Matinyi 2011).

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