

THE MEN WHO MOIL FOR

# GOLD



Photo by George Mulala REUTERS

Mining is a treacherous but strangely compelling occupation. Above, a Tanzanian miner grieves for his brother, buried alive after a rainstorm in 1997. Some say Tanzanian miners were also buried alive in 1996, but that the cause of their deaths was far from natural. STEPHEN KERR and KELLY HOLLOWAY have worked to uncover what happened that summer when a Canadian-owned mining company took possession of the largest gold find in East Africa. This is the result of their six-month investigation.

Night was falling on Eastern Africa and Melania Baesi still had not heard from her sons. The two had left that morning to work at an increasingly turbulent gold field where the family had a small pit mine.

A week before, armed police had evicted tens of thousands of peasants from the area. They wanted to clear the way for Kahama Mining, a Canadian-owned company that had been granted mining rights to the site.

Most of the miners fled from the police. But some, like her sons Jonathan and Ernest, returned to work the shafts. It was clear that police threats alone would not scare them away from the Bulyanhulu gold fields.

On August 7, 1996, Kahama's bulldozer sputtered to life and rolled onto the Bulyanhulu gold fields.

It began pushing sand and rubble into the mines. ▶



cent of the shares owned by his wife—Sinclair had a big interest in the outcome of the case.

But it was about more than just money. From the start of his career, Sinclair has had a deep interest in the gold industry and in Africa. He has written several books on the gold market and mining; he was friends with the president of Tanzania. He also ran Service Assistance International, a charity operating in Tanzania, which is now run by his daughter, Marlene. Sinclair, a devotee of Indian guru Sri Sathya Sai Baba, places high value on personal virtue and

“When this case was filed, I thought it a simple case of the defendants [the small-scale miners] being sued for contravening the Mining Act and tampering with the plaintiff’s [Kahama’s] rights under the Act,” he stated in the ruling. “But when the Written Statement of Defence and Counter Claim was filed, I discovered that this suit was more than that.”

Major issues were at stake. “I found no provision made for compensation and/or resettlement of the indigenous people,” he ruled. In his view, the issue was one of “constitu-

#### THE INVESTOR REBELLION

The potential profits were getting bigger, and also getting further away. With no prospect of evicting the miners, the stock continuing its slide southward, James Sinclair threw down the gauntlet.

On December 11, as Sutton’s stock fell to one of its lowest levels, Barbara Sinclair called a meeting of the board to demand their resignation and the appointment of a new board hand-picked by Sinclair. Instead, the board voted down her proposal and immediately stripped Mr. Sinclair of his chairmanship. Sinclair was not to be thwarted. He founded the Sutton Action Group to unseat the board.

“Under the stewardship of current management, there has been a precipitous decline in Sutton’s share price from US \$40.75 at March 29, 1994 to approximately US \$12.00 today,” he noted on March 8, 1996.

With the dissident investors, Sinclair attacked the entire approach of Sutton’s management. An information circular, filed with the BC Securities Commission, was sent to all investors, accusing the board of being out of their depth at Bulyanhulu. He cited the well-documented “political problems” at the site and alleged “Sutton’s managers have built no relationship on the ground with local personnel at the site of Bulyanhulu, a critical step in the development of any business in Africa.”

The core of his argument was that his experience and partnership with a company who knew the area better would save Sutton—its stock was valued primarily for the unmined gold beneath Bulyanhulu.

But Sinclair’s rivals on Sutton’s board didn’t want a partner. They wanted to issue several million dollars in new stock to finance construction. On April 11, 1996,

the battle came to a head.

Forty-six per cent of shareholders voted with Mr. Sinclair to remove Sutton’s board. Under British Columbia’s securities legislation, 75 per cent of shareholder approval is required to unseat a company’s board of directors.

Sinclair vowed to fight on at the company’s annual general meeting on July 30. The revolt put pressure on Sutton’s management. With Sinclair planning another challenge, and with nearly half of the shareholders opposed to their leadership, management had to prove they were in control of the situation.

Sutton’s president was supplied with two pages of detailed questions about Bulyanhulu and whether the internal conflict at Sutton Resources affected how the company proceeded with the evictions. He declined to comment.

#### THE CANADIAN GOVERNMENT STEPS IN

While James Sinclair lobbied Sutton’s shareholders, the Canadian government threw its weight behind Sutton’s management to convince the Tanzanian government to remove the miners.

Boxes of heavily censored correspondence of the Canadian High Commissioner, obtained by Probe International under Access to Information legislation, tell of the intense lobbying efforts to remove the miners. They show a government that wanted a peaceful solution to the problem, but was desperate to ensure investor confidence in the mines.

“Sutton [censored words] is ready to go to stock market [censored words] but cannot / not do so in absence of Tanz govt action to remove 7,000/10,000/ illegal miners...” said a report to the Department of Foreign Affairs

“Sutton [censored words] is ready to go to the stock market [censored words] but cannot / not do so in absence of Tanz govt action to remove 7,000 - 10,000 illegal miners...”

—Canadian High Commissioner in a heavily censored document obtained through Access to Information, communicating with the department of Foreign Affairs.

morality. He is the model of a capitalist idealist.

Sinclair saw Sutton’s stock price steadily decline. His opinion—as later revealed in documents filed with the BC Securities Commission—was that Sutton was in over its head and needed to partner with a company with African experience.

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The Canadian government’s High Commissioner to Tanzania had confidence in the Tanzanian courts. In a September memo to Sutton president Michael Kenyon, she counselled him to trust the courts, noting that Tanzania “does have an independent judiciary.”

On September 29, Justice Mchome proved her correct.

tional basic rights and duties,” and needed to be referred to a special three-judge panel under the Basic Rights and Duties Enforcement Act of 1994.

In what is perhaps the most consequential part of this story, that panel did not meet in 1995. Nor did it meet in 1996, when the evictions occurred. In fact, to this day it has neither been constituted nor ruled on the matter.

But at the time, the ruling did halt plans to remove the miners. There was also an election going on. It was now a constitutional matter—and the stakes were rising. By October 1995, drilling at Bulyanhulu produced a new, higher reserve estimate of 2.49 million ounces of gold underground, worth more than \$750 million.

“The current board of directors and incumbent management of Sutton have exhibited a sustained inability or unwillingness to take actions necessary to enhance shareholder value. They have no experience building or managing an underground mine in Africa, and have attempted to manage Sutton’s assets from afar.”

—Former Sutton chairman James Sinclair, in a circular filed with the BC Securities Commission, in which he attempts to convince shareholders to remove Sutton’s board of directors.

Commission published a special supplement in the Tanzanian press in early July, and the High Commissioner appeared in a half-hour TV interview.

“In short, with this full court press, the decision makers will be fully aware of how important this mining sector, Cdn participation, and rule of law is to their economy,” the Canadian High Commissioner wrote in a June 28 memo to Ottawa.

Reporters on this story were unable to obtain clarification from the then-High Commissioner as to why the government seemed prepared to see the evictions progress without the constitutional panel having convened. Attempts to contact the former High Commissioner were not successful.

#### EVICTED

By July 31, 1996, the eviction process was set to begin. A day after Sutton’s shareholders filed into a Vancouver conference room for the company’s annual general meeting, tens of thousands of Africans were about to be evicted from their homes.

At 1 p.m. on July 31, the voice of the Minister of Water, Energy and Minerals can be heard around the country. His Radio Tanzania speech decrees the small-scale miners have one month to evacuate the Bulyanhulu area.

A few hours later, Major General Tumaniel Kiwelu, Shinyanga

Regional Commissioner, arrives at Kakola village, where many of the small-scale miners live. He is joined by armed police, many in riot gear.

He tells the miners they have 24 hours to leave the area, reportedly saying that he only wants to see “birds, lizards, insects and snakes” in the area by morning. Now two different sets of instructions have been given to the miners.

By daybreak, tens of thousands of peasants are fleeing a land they have been fighting to hold for years. But some stay to square off with Kahama and the police.

Mallim Kadau, the Miners’ Committee chairman, quickly gathers several others and speeds back to Tabora, back to the High Court. They hope this time the ruling of the court will be respected by Tanzanian officials.

On August 2, Justice Mchome grants their request for an *ex parte* injunction—a temporary emergency ruling granted in the absence of one of the parties. Mchome rules that no evictions may occur until the parties can meet before him in court. “Democracy (sic) Good Governance, the Rule of Law, and Respect for Human Rights require the executive wing not to interfere in matters that are still pending in court,” he stated in the ruling. “Natural justice requires that even a poor peasant at least be consulted before a decision affecting his life is made.”

Amnesty International holds that



Mallim Kadau, chair of the Miners’ Committee, successfully fought for an *ex parte* injunction against the evictions. “He’s one of the most courageous people I have ever met,” says human rights lawyer Tundu Lissu. “He’s gone through hell.”



Video image of a shaft where miners were allegedly buried. There were as many as 500 shaft mines (also called “pits”) in Bulyanhulu. Many were 50-100 feet deep, and some had tunnel systems connecting them to other mines. The police refused to remove dirt from filled pits, saying it was too expensive. They recommended “those who still believe that their friends, relatives, and family have been buried...exhume the pits themselves at their own cost.”



# tanzaniafacts

Situated in Eastern Africa, Tanzania is a land of incredible beauty and desperate poverty. It is home to 120 different ethnic groups, and Mount Kilimanjaro, one of the world’s highest peaks. It is also home to an average life expectancy that is a full 27 years below the Western average.



#### POPULATION AND LANGUAGE

While Swahili and English are the official languages, the people of Tanzania speak various dialects according to their location and background.

While most of the population of Tanzania lives in the countryside, 3 million live in Dar Es Salaam, which is also home to most government offices, although the official capital is Dodoma.

#### SOCIAL AND POLITICAL CONDITIONS

Tanzania is the fourth-poorest country on earth. Access to medicine is limited and more than 40 per cent of the population is classified as malnourished.

Fifty-one per cent of the population lives on less than \$1 US per day. Accessing fresh water often requires a half-hour trek. Most schools lack basics like books, desks, teachers and classrooms.

Despite the adoption of a constitutional parliamentary system in 1961, Tanzania operated on a one-party state as of 1977. From

that time until 1992, all parties except Chama Cha Mapinduzi (CCM) were outlawed. Currently, numerous political parties exist, but none challenge the power and influence of the CCM.

#### ECONOMIC CONDITIONS

Tanzania is heavily dependent on foreign aid. In 1986, the International Monetary Fund (IMF) negotiated a Structural Adjustment Fund, in 1990, followed by the Economic and Social Action Program (ESAP). Since then, Tanzania has been subjected to privatization, the elimination of many import restrictions and the “liberalization” of the banking sector and foreign exchange markets.

Due to apparent slow implementation of policy reforms, including lack of progress in liberalizing the gold sector and inadequate mobilization of domestic resources, IMF credit was withheld in January 1994. The funding only returned in 1996.

Today, Tanzania’s total external debt is \$6.4 billion US. It spends 40 per cent of its GDP on interest payments on external debt.

#### TANZANIA AND GOLD

Africa hosts approximately 40 per cent of the world’s gold reserves. There are more than 100 gold exploration corporations presently operating in Tanzania. Since 1994 the government has granted more than 1,000 prospecting licenses to foreign exploration companies.

The area around Lake Victoria is home to numerous gold fields, including Bulyanhulu and several other fields owned by Canadian companies. In May of 2002, several miners were buried alive in a gold-field near Bulyanhulu, operated by a South African gold company.

As early as 1976, peasant or “artisanal” miners were digging rudimentary shafts and pits in Bulyanhulu to mine gold.

There are at least 10 million ounces of gold on the Bulyanhulu claim. According to Barrick’s recent statements to the media, the cost of extracting that gold is \$130 US per ounce. With current prices of \$300 per ounce, that means the profit on the mine could be more than \$1 billion.





John Mutemankamba, secretary to the small-scale miners committee.



Joseph Magunila, past chairman of Shinyanga regional miners' association. He lost his house and cannot account for his nephew.



Julius Kachwele lost his house and his mine and witnessed the filling of the pits. He says he also removed two bodies from one of the filled pits.



Stephen Katani, former miner, current miners' committee member. Lost his house and his mine pits.



Shigalu Masalisengwa lost his farm and grazing lands.



Raphael Utenga lost his house and his pits.

point," said DFAIT spokesperson André Lemay.

"We're not saying that we're not going to change our position. We're just simply saying that if further information is brought to our attention, we will consider that information, see whether or not we must or should in fact modify our approach. If that is the case, then we will take the appropriate action at that point."

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Barrick does not apologize for the evictions. When asked where the small-scale miners were supposed to go, Barrick's legal counsel Kent Thomson replied, "Bearing in mind that you've got a highly migrant population, and bearing in mind that this site is surrounded by a number of other sites, including the Bulyanhulu South site, operated by Ashanti Goldfields and not Sutton Resources, who exactly was deprived of their livelihoods?"

"If you've got a highly transient, highly migrant population which is able to walk onto a site which is one kilometre south of Bulyanhulu, and they are able to do so shortly after the government's removal order, why do you say they were deprived of their livelihood?"

Barrick representatives preferred to focus on August 7 and 8, for which the company has documented the process of filling in the shafts and the peaceful departure of the locals.

"We've got photographs, we've got videotape, we've got any number of contemporaneous documents dated on the very day this is happening, not two weeks after the fact, not four years after the fact, and not six years after the fact, as some of these witness statements now are. What they indicate beyond a doubt is that the way people left this site was in a peaceful, systematic fashion. There is just not one shred of contemporaneous evidence of people being beaten up or forced physically off the site."

Barrick states that prior to any shaft-filling, every shaft was inspected while the police and Ministry of Mines supervised the process.

"If someone is found inside, that person is brought to the surface immediately. The person is taken to the police officer, who photographs the person. The person is documented and the person is then told to leave the area. When they verified that the shaft was empty, and only when they verified that the shaft was empty, they would take the bulldozer and fill the shaft in."

In short, Barrick contends that the reports of burials were concocted after the fact by the Miners' Committee, specifically by Mallim Kadau, the committee chairman. Barrick's position is that those like Tundu Lissu who have put these claims forward are motivated by political opportunism. Lissu ran as an opposition candidate in the 1996 parliamentary elections. He had no connection to Bulyanhulu at the time. Furthermore, both Barrick and the Canadian High Commission accuse the Miners' Committee of attempting to extort money both from the small-scale miners and from Kahama.

Certainly there must have been many disputes over such a valuable resource as a gold mine, even within the miners' community. Mine workers appear to have had less representation on the committee, but the committee also used some funds to build a local school and fund a soccer team.

#### IMPARTIALITY

Since August 1996, numerous investigations have taken place. The World Bank, the Tanzanian police, Barrick Gold, the United Democratic Party of Tanzania, the Lawyers' Environmental Action Team (LEAT) and others have probed the mys-

tery of Bulyanhulu. They have all come up with different results, emphasizing various pieces of evidence to refute or support the claims of burials and chaotic evictions.

The contradiction between the competing claims seems sufficient to warrant an independent investigation. United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions state that an independent commission of inquiry should be established when there are complaints about existing investigations or when there are questions of impartiality.

All of the parties that have conducted investigations have a financial or political interest in the outcome. On this point, the UN rules are clear, stating: "Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry."

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It seems clear that the Tanzanian government is not interested in a new investigation into the matter. In January 1997, the newly elected president of Tanzania, Benjamin Mkapa, stated that "those who are spreading the rumours should be dealt with according to the law," reported the Tanzanian newspaper *Majira*. On November 23, 2001 LEAT president Rugemeleza Nshala and the National Chairman of the Tanzanian Labour Party, Augustine Mrema, were taken from their homes and threatened with charges of sedition. Tundu Lissu, who was out of the country at the time, had his house searched by police and a warrant issued for his arrest.

Researchers continue to face intimidation. In late March, 2002, an international team of journalists, lawyers and researchers attempted to visit Bulyanhulu and were barred from doing so by armed police. The group included one of the authors of this story.

Barrick says LEAT and other NGOs have a political agenda on the side of the anti-globalization movement.

But a growing number of organizations are calling for an independent inquiry, including Amnesty International, the Council of Canadians, Mining Watch Canada, the New Democratic Party, Friends of the Earth, the Center for International and Environmental Law, and Rights and Democracy.

John Cheyo, leader of the United Democratic Party of Tanzania, whose party commissioned the only investigation that comes close to matching UN principles, is still calling for an independent commission of inquiry, and stands by the findings of the report submitted on January 19, 1997.

The world cannot account for the whereabouts of the people named as missing in the UDP report and by Tundu Lissu. To their families, their loss is incalculable, and they are only part of the human cost of the Bulyanhulu affair. The nameless tens of thousands who were evicted from Bulyanhulu are currently scattered across the United Republic of Tanzania, all but 56 still without compensation.

The feelings of the UDP and many peasants are summed up in a heartfelt plea in their report:

"We know the Canadian people. The sons and daughters of Canada are peace loving people. They are committed advocates of human rights. Their boys and girls are now engaged in the protection of human rights and the protection of people's lives against destruction out there in Zaire (Congo) and Burundi...I cannot therefore believe that the Canadian people can bless the actions and atrocities committed to the poor Sukuma peasants...all over Shinyanga the orphaned and the widowed are weeping in bereavement, but they receive no comfort because none is forthcoming."



William Musa, a member of the Miners' Committee and witness to the pit fillings. "What I saw with my own eyes is shameful."



Honourable Ezra Machogu, UDP councillor in Kahama town.



Emmanuel Bombeda had his house and mine pit destroyed.



Zephania Luzama, chairman of the Shinyanga Region small-scale miners association. Obtained permission from the Tanzanian president for small scale miners to work at Bulyanhulu in 1993.



Nasim Sanga lost three pits and says there were several miners buried alive in them.



Melania Baesi, who also says several were buried in her pit, including her two sons.

**Moil: To toil, to slave. To turn about endlessly.**