

## AFRICA RISK CONSULTING

### Country briefing – Tanzania

February 2013

## 1 Summary

*Constitutional Review Commission chair Joseph Warioba says a new draft constitution is expected for public review in June. At the 2013 Mining Indaba in Cape Town (South Africa), mining minister Sospeter Muhongo publicly said he has not ruled out the imposition of a windfall tax on mining companies. In February, violence between Muslims and Christians continued to escalate in Zanzibar with the killing of a Catholic priest and the burning down of a church.*

## 2 Political dynamics

**Constitutional review moves forward slowly...**

**Constitutional Review Commission (CRC)** chairman **Joseph Warioba** says the CRC may have a draft constitution for public review in June<sup>1</sup>. In March 2011 parliament passed the **Constitutional Review Act (CRA) No.8**, amended in February 2012 by CRA No.2 aimed at regulating the constitutional review process. The main issues the constitutional review process will discuss are<sup>2</sup>:

- reforming the union agreement with **Zanzibar**, which will allow for strengthening the union while enhancing Zanzibar's autonomy;
- limiting the extent of presidential power;
- and reforming the electoral system.

The constitutional review process began in April 2012 with the appointment of the CRC<sup>3</sup>. Warioba, former prime minister and chair of the **Anti-Corruption Enquiry Commission**, heads the CRC. The vice chairman is retired chief justice **Augustino Ramadhani** and secretary is former constitutional affairs ministry permanent secretary **Assaa Ahmad Rashid**. The CRC has 30 members, 15 from Zanzibar and 15 from the mainland (**Tanganyika**)<sup>4</sup>.

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<sup>1</sup> Sahabi, 4 Feb 2013.

<sup>2</sup> [www.comparativeconstitutions.org](http://www.comparativeconstitutions.org)

<sup>3</sup> [www.comparativeconstitutions.org](http://www.comparativeconstitutions.org)

<sup>4</sup> [www.tzaffairs.org](http://www.tzaffairs.org) - The 15 from Tanzania mainland include Mwesiga Baregu (political science professor at St. Augustine University and Chadema political advisor), Riziki Shahari Mngwali (lecturer at the Centre for Foreign Relations, Dar es Salaam), Dr Edmund Mvungi (constitutional lawyer, vice chancellor of Bagamoyo University and NCCR-Mageuzi party legal advisor), Richard Lyimo, John Nkolo (chair of the Tanzanian Centre for Democracy), Alhaj Said Hamad El-Maamry (lawyer and sports administrator), Jesca Mkuchu (Tanzania Gender

The CRC's mandate expires in October 2013 at which point a final draft constitution is expected. However, the process has moved slowly to date.

*"The issue with Tanzania is that since independence there has only been one party in power. This is rare even in this part of Africa. So the main question is whether the legal and administrative system is robust enough in such a context ... This spearheaded a review of the constitution. However, with regards to the CRC ... elections are in 2015 ... I really do not see any politician trying to make major changes or push the CRC process quicker in the run-up to the election. Any major changes will just be viewed as too politically motivated<sup>5</sup>".*

### 3 Business dynamics

#### The government does not rule out introducing windfall tax on mining companies...

At the 2013 Mining Indaba in Cape Town (South Africa), Tanzanian mining minister Sospeter Muhongo publicly said he had not ruled out the imposition of a windfall tax on mining companies. Speaking at the mining conference, Muhongo said the mining tax regime was "set in stone" and if the mining companies are going to approach the government when they are making big losses then "... if they are going to make huge profits, we will also approach them...<sup>6</sup>". When asked if this meant the government will remain open to introducing a windfall tax, Muhongo said "yes<sup>7</sup>". The **Tanzania Chamber of Minerals and Energy (TCME)**, which represents over 60 mining companies including **AngloGold Ashanti** and **African Barrick Gold**, says such policy uncertainty will hinder growth of the extractives sector in Tanzania<sup>8</sup>.

Muhongo made his comments at the mining conference in response to a direct question from a journalist on whether Tanzania was open to the idea of a windfall tax on mining companies<sup>9</sup>. His comments raised a "... few eyebrows here in Tanzania...<sup>10</sup>", but the government will probably not take action in the near future – the mines ministry currently has no plans to impose such a windfall tax<sup>11</sup>.

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Networking Programme), Professor Palamagamba Kabudi (Dean of the University of Dar es Salaam School of Law), Humphrey Polepole (Youth Advocacy), Yahya Msulwa (Teachers' Union), Esther Mkwizu (private sector), Maria Malingumu Kashonda (chairperson of the Tanzania Women Lawyers Association), Al-Shaymaa Kwegyir (CCM MP special seat), Mwantumu Malale (former Principal Secretary in the Government and the Vice Chancellor of the Islamic University of Morogoro) and Joseph Butiku (Mwalimu Nyerere Foundation executive director). Members from Zanzibar include Dr Salim Ahmed Salim (former Secretary General of the Organisation of African Unity (OAU) and member of the Nyerere Foundation), Fatma Said Ali, Omar Sheha Mussa (former CCM MP Chumbuni), Raya Salim Hamad (CCM House of Representatives Special seat), Awadh Ali Said (Zanzibar Law Society), Ussi Khamis Haji (lawyer and former Vice-chair Zanzibar Electoral Commission), Salma Maoulidi (Womens rights), Simai Mohamed Said (chairman of the Zanzibar Association of Tourism Investors), Abubakar Mohamed Ali (Director General Zanzibar Clove Producers Organization) and Ally Abdullah Ally Saleh (BBC Swahili correspondent).

<sup>5</sup> Source, legal expert, Tanzania.

<sup>6</sup> *Daily News*, 7 Feb 2013.

<sup>7</sup> *Daily News*, 7 Feb 2013.

<sup>8</sup> *Daily News*, 7 Feb 2013.

<sup>9</sup> Source, mining sector legal expert, Tanzania.

<sup>10</sup> Source, mining sector legal expert, Tanzania.

<sup>11</sup> Source, mining sector legal expert, Tanzania.

Mining companies have not commented publicly on the issue<sup>12</sup>. Only a handful of larger mining companies have fiscal stability clauses in their **Mineral Development Agreements (MDAs)** with the government<sup>13</sup>, so any windfall tax will have a significant impact on mining companies operating in Tanzania<sup>14</sup>. MDAs are signed between the Tanzanian government and large-scale investors mainly to create security of tenure for the investor<sup>15</sup>. Most notable companies in Tanzania with MDAs are African Barrick Gold and AngloGold Ashanti. Transparency advocates such a **Publish What You Pay (Tanzania) (PWYP-T)** continue to urge the Tanzania government to renegotiate the MDAs and review the mineral sector fiscal regimes in order to allow the government to impose a windfall tax on mining companies<sup>16</sup>.

## 4 Operations

### Violence between Muslims and Christians in Zanzibar continues ...

Violence between Muslims and Christians continues to escalate in Zanzibar. On 19 February unknown assailants burned down a Catholic church under construction on the Zanzibari island of **Unguja**<sup>17</sup> 48 hours after unknown gunmen killed **Roman Catholic** priest Father **Evarist Mushi**<sup>18</sup>.

*“... recently a senior priest Evarist Mushi was killed ... the government is saying it was a terrorist attack and asked the US for help. ... Calling it a terrorist attack is likely to escalate the already tense situation ... Muslim Christian tensions in Zanzibar do have potential to create massive disruption ... As global religious differences increase so will the tension in Zanzibar...”<sup>19</sup>”*

On 26 February deputy home affairs minister **Pereira Ame Silima** said agents from the US **Federal Bureau of Investigation (FBI)** and the UK’s **Scotland Yard** will arrive in Zanzibar in March to conduct a study of the state of security in Zanzibar and assist local law enforcement officials to get to the bottom of recent killings and Muslim Christian violence in Zanzibar<sup>20</sup>.

The majority of Zanzibar’s 1.2 million inhabitants are Muslims. Christians represent only 1.2% of the population<sup>21</sup>.

<sup>12</sup> Source, mining sector legal expert, Tanzania.

<sup>13</sup> Source, extractive industry transparency advocate, Tanzania.

<sup>14</sup> Source, mining sector legal expert, Tanzania.

<sup>15</sup> www.tmaa.go.tz

<sup>16</sup> Source, transparency advocate, Tanzania.

<sup>17</sup> Sahabi, 20 Feb 2013.

<sup>18</sup> Sapa, 17 Feb 2013.

<sup>19</sup> Source, legal expert, Tanzania.

<sup>20</sup> *Daily News*, 26 Feb 2013.

<sup>21</sup> AFP, 17 Feb 2013.

## 5 Implications

Politicians are not expected to call for any major constitutional changes in the run-up to presidential elections in 2015. The government has not ruled out a windfall tax on mining companies but there are no current indications that the mines ministry has plans to introduce such a tax in the near future. Companies without MDA remain most at risk if a windfall tax is imposed. Increasing religious tensions between Muslims and Christians in semi-autonomous Zanzibar are expected to remain a concern in 2013 and will probably increase in tandem with any global rise in Muslim Christian tensions.