



# **FROM TRANSPARENCY TO IMPROVED REVENUE COLLECTION & MANAGEMENT IN THE EXTRACTIVE SECTOR**

WORKING PAPER

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# Section One

## Overview of the Extractive Sector in Tanzania

Tanzania is a country endowed with hydrocarbon and solid minerals among other natural resources. Exploration for oil and gas in Tanzania started in the 1950s. The first discoveries were made in the 1970s, and commercial production started in 2004. Since 2010, additional huge reserves have been discovered offshore the southern coast. The size of the total confirmed gas reserves is currently standing at more than 57.27 trillion cubic feet. Tanzania has registered significant discoveries of natural gas around the onshore/shallow waters gas fields at Songo Songo, Mnazi Bay, Mkuranga, Kiliwani North, Ntorya and Ruvu Basin. The deep-sea discoveries have brought about new exploration targets for hydrocarbons in Tanzania and the whole of the Western Indian Ocean Region. With this level of discovery, the natural gas sub-sector is estimated to generate a reasonable size of government revenue of about \$ 3-6 billion per year (TZS 5-10 trillion) <sup>1</sup>. There are prospects for additional offshore, as well as onshore, reserves of both gas and oil. However, the current fall in oil prices is likely to alter these estimates significantly. There is considerable uncertainty about the decision to invest in a Liquefied Natural Gas (LNG) plant, the total volume of petroleum reserves, and the future petroleum prices.

Solid and gaseous minerals include Gold, Diamond, Gypsum, Gemstones, Iron Ore, Phosphate, Coal, Nickel, Cobalt, Tanzanite, Uranium, and Helium. Tanzania has proven reserves of solid minerals in excess of 50 million ounces of gold. Tanzania is currently the 4th largest producer in the African continent with estimated value of about US\$2.5 billion. Other reserves include 1.5 million tons of Nickel, 20,770 tons of Uranium, 300 million tons of coal, 50 million carats of Tanzanite (colored gemstone),

among others. The recent announcement of discoveries of Helium gas probable deposits estimated at 54 Billion cubic feet in the South Western Tanzania if proven will place Tanzania among the top exporters.

### 1. Extractive Sector Contribution to the Economy

In 2017, industry and construction sector contributed 26.4% of the Gross Domestic Product (GDP), within which, the extractive sector contributed only 4.8% of GDP. This is below the target of 10% by 2025 as envisaged in the Mineral Policy of 1997. Specifically, the mining sector recorded a tremendous growth rate of 17.5% in 2017 (*based on 2007 constant prices*)<sup>1</sup>. The banking sector extended loans of value TZS 357 billion to support mining activities in 2018<sup>2</sup>. Mineral exports, especially gold has contributed more than half of the total foreign exchange earnings. According to the International Monetary Fund (IMF, 2016, reported that the extractive sector in Tanzania contributed about 3.12% of the total government revenue i.e. TZS 13,914 billion. However, the 8<sup>th</sup> Tanzania Extractive Industry Transparency Initiative (TEITI) Report of 2015/16 fiscal year, shows that 55 extractive entities paid a total of TZS 465.2 billion to the government, which is only 0.74% of the total government revenue. Most of this revenue (about 78%) was collected from royalty in minerals (36.4%), corporate tax (29.4%), additional gas revenue (6.8%) and skills and development levy (5.4%). The TEITI Report also shows that the informal extractive

<sup>1</sup> National Income Accounts of the National Bureau of Statistics, 2019

<sup>2</sup> Tanzania Bankers Association (TBA), 2018

sector contributed only 1.4% of GDP and less than 1% of formal employment in Tanzania, and where large-scale mining employed around 6,501 people in 2016.

## **2. Managing Expectations in the Extractive Sector**

Extractive resources are finite, and therefore important that revenues generated are managed prudently and invested wisely into sustainable and long-term economic activities to improve the quality of people's lives. This has never been the case with mining revenues, a lesson that should be avoided at any cost with the emerging natural gas revenues. Too often, corruption and mismanagement of natural resources has led to continuing poverty and social conflicts.

The capacity of the government to effectively monitor and regulate the sector has also been questioned for not meeting expectations. Ultimately, there is a need for striking a balance between under and over-regulation in order to maintain legitimacy in the eyes of the public as well as secure future investments.

## **3. Contract Disclosure.**

Tanzania joined the global Extractive Industry Transparency Initiative (EITI) to promote transparency in the overall governance aspects. The Tanzania Extractive Industries Transparency and Accountability Act of 2015 require contract and beneficial ownership disclosure among others and the Oil and Gas Revenue Management Act 2015 as well as Petroleum Act 2015 also aim to improve governance in the extractive sector if effectively enforced. Despite impressive initiatives and the government affirmation to disclose MDAs and PSAs, the government and companies have not yet formerly disclosed agreements on oil, gas and mining thus denying

citizens the right to know how their natural resources are being managed.

# **Policy, Legal and Regulatory Landscape**

## **1.0 Introduction**

The policy, legal and regulatory aspects of the extractive sector in Tanzania (mining, oil and gas) are highlighted in the context of the Mineral Policy of Tanzania of 2009, the Mining Act No. 14 of 2010, the Written Laws (Miscellaneous Amendments) Act No. 7 of 2017, the Tanzania Extractive Industries (Transparency and Accountability) Act No. 16 of 2015, the Oil and Gas Revenues Management Act No. 22 of 2015, the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017 and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act No. 5 of 2017.

## **1.1 Positive Aspects of the Policy, Legal and Regulatory Instruments**

### **1.2 The mining sector**

- i. Objectives (c) and (d) of the Mineral Policy of 2009, focus on enhancing transparency and accountability, through strengthening the legal and regulatory framework and the capacity of institutions to improve governance of the sector. More importantly, to attract and sustain investment in the long run, predictability, minimum discretion, security of tenure and consistency, and constancy of mineral policy and governing institutions over the long-term are

underscored.

- ii. The Mining Act of 2010 (S. 66) provides for a severe penalty for late payment of mineral royalty due over 90 days, which is 25% of total due for individuals and 50% for corporates. S. 109 provides for making regulations on the minimum public shareholding requirement and procedures for selling shares to Tanzanian nationals through listing with the local stock exchange (e.g. DSE). Timely payment of mineral royalty will ensure quick revenue realization for the government, where royalty constitutes 36.4% of the total extractive industry revenue. Also, allowing ownership of shares in the mining companies by Tanzanians, embraces the local content spirit.
- iii. The Mining Act Amendments, the Permanent Sovereignty and the Review and Re-Negotiation of Unconscionable Terms Acts of 2017 have constructive aspects in establishing the permanent sovereignty of Tanzanian people over natural wealth and resources, empowering the Parliament to review arrangements or agreements on extraction, exploitation or acquisition and use of natural wealth and resources; and where these agreements contain unconscionable terms or compromise interests of Tanzania, provide for a room to re-negotiate, rectify or expunge these terms. Further, the Acts vest all mineral resources in the President of Tanzania, in trust for the Tanzanian people. Also, the Acts prohibit exports of unprocessed minerals, prohibit use of stabilization clauses (for a lifetime) and provide for withdrawal or cancellation of mining licenses and permits,

upon failure to comply with the integrity pledge. In effect, the Acts are beneficial in protecting interests of the country regarding natural wealth and resources, safeguarding her interests in contracts and negotiations, and encourage value addition in processing minerals. However, processing and smelting of minerals is a matter which requires rigorous studies on the costs, benefits and feasibility of processing, which varies from mineral to mineral, and which requires heavy investment in equipment, finance, technology, skills and availability of sufficient raw materials to warrant achievement of scale economies.

### **1.3 Oil and Gas sub sectors**

- i. The Oil and Gas Revenue Management (OGRM) Act of 2015 has a very constructive provision (S. 8) for establishing and funding the *Oil and Gas Fund* using royalties, government profit share, dividends on government shares, corporate income tax and return on investment of the Fund. Further, S. 12 provides for the establishment of the *Portfolio Investment Advisory Board* to advise the Minister on portfolio investment strategies of the Fund. If the funds are properly invested in financially sound assets, they may generate returns and growth to benefit Tanzanians in

many years to come.

- ii. Regarding governance, the Oil and Gas Revenue Management (OGRM) Act of 2015 (S. 16) provides for two-third approval of members of the Parliament to change fiscal rules regarding expenditure of revenues. Also, service levy revenue (0.3% of gross revenue) is directed to LGAs (S. 17). Further, transparency and accountability regarding the Oil and Gas Fund management, publication of information and Parliamentary oversight, are highly emphasized (S. 18), with heavy penalties provided for misappropriation of funds.

## **1. Challenging Aspects of the Policy, Legal and Regulatory Instruments**

- i. Lack of formulated regulations to enforce provision of the Mining Act of 2010 (S. 109), to prescribe minimum shareholding structure for the public (Tanzanians) and to require mining companies to be listed in the local stock exchanges (e.g. DSE), thus depriving Tanzanians of owning their resources through buying shares.
- ii. Despite many benefits of the 2017 Acts (Mining Act Amendments, the Permanent Sovereignty and the Review and Re-Negotiation of Unconcionable Terms Acts), in a democratic and market based economy, shareholding and ownership in a company is a matter of gentleman agreement among consenting parties. Setting minimum non-dilutable free carried interest in shares of 16% and an additional of up to 50% of the shares of the mining company, to be owned by the government, is against the market based principles, which are the foundation for the flow

of foreign investment in the economy. In fact, the government already collects substantial rents from extractive industry companies in form of taxes, royalties, levies, and other charges; and companies can also avoid paying dividends on minority state equity, using accounting techniques and discretions.

- iii. The 2017 Acts (Mining Act Amendments and the Permanent Sovereignty) prohibit export of raw minerals and mineral concentrates. However, thorough research and feasibility studies (specific to each mineral) on mineral processing logistics and building required capacity in terms energy supply, capital, technology, skills and finances, and availability of adequate raw materials to guarantee scale economies (e.g. gold and copper), are yet to be implemented. These are aspects which require substantial period of time to be realized, and which vary from mineral to mineral. As a result, Acacia, which is the largest gold producer (owns Bulyanhulu, Buzwagi and North Mara gold mines) failed to export mineral concentrates in 2017 and lost over 30% of its revenue, with the government losing substantial revenues as well. (Deloitte, 2017). Statistics from TRA (2019) show that mining revenues declined from TZS 1,281 billion in 2016 to TZS 867 billion in 2018 (32% decline).
- iv. S. 100F of the Mining Amendments Act 2017, requires mineral rights holders to participate in the growth of the Tanzanian economy, by investing a certain portion of their returns (also S. 7 of the Permanent Sovereignty Act 2017) and file the annual returns which show efforts undertaken. However, these Acts do not specify



the manner in which mineral rights holders participate in the growth of the economy, what proportion and where to invest their returns in the economy. Further, these investments can be based on agreement with the Commissioner for Minerals, allowing discretion and value judgement, which may hinder good governance.

- v. S.10 of the Permanent Sovereignty Act 2017 requires mining companies to retain earnings from disposal and dealings, in the banks and financial institutions established in Tanzania (except for profit repatriation). S. 11 provides that disputes are not subject to proceedings in any foreign court or tribunal. These two provisions may potentially and significantly discourage foreign investments in the sector, by reducing flexibility of conducting banking transactions of the mining proceeds in the jurisdictions of investors' choice. Lack of independent and neutral platforms and institutions to settle disputes (e.g. foreign courts or tribunals) will degrade investors' confidence regarding settling mining disputes.
- vi. S.4 of the 2017 Act on Reviewing and Re-Negotiation of Unconcionable Terms empowers the Parliament to review arrangements or agreements and advise the government on re-negotiation, rectification or expunging of unconcionable terms or those that are prejudicial to the interests of Tanzania. However, the power of the Parliament is restricted to advising the government to initiate re-negotiation with the view of rectifying the terms (S. 5). Also, the Act is biased and onerous towards the interests of Tanzania than those of the investors, who have invested massively in finance, capital, technology, skilled labour and equipment (S. 6(2)). Further, S. 7 empowers the government to expunge unconscionable terms, when the other party (investor) fails to agree to re-negotiative or reach an agreement.
- vii. Lack of formulated, publicly communicated and implemented regulations for the establishment of the Oil and Gas Fund and Portfolio Investment Advisory Board (S. 8 and 12), as provided for in the Oil and Gas Revenue Management (OGRM) Act 2015.
- viii. The Tanzania Extractive Industry Transparency Initiative (TEITI), after reconciling and conducting investigation on material discrepancies between revenue payments and receipts, the report does not account for reasons of each material discrepancy, which would shed light on potential improvements. S. 27 of the Tanzania Extractive Industry Transparency Act (TEITA) provides for the disclosure of information regarding Mineral Development Agreements (MDAs), Production Sharing Agreements (PSAs), contracts, concessions or any other agreement, except for the information which is confidential as the Committee may determine. This provision does not define confidential information, whose disclosure is at the discretion and judgement of the TEITI Committee, thus restricting transparency. For example, during the 2016/17 fiscal year, the CAG office failed to audit some companies. Further, information on licenses and names of shareholders in extractive companies is not freely accessible for public use. Finally, authorities affected by CAG investigations are

required to submit implementation report to the TEITI Committee and to the Minister for publication. These reports are not accessible, which would enlighten on which areas have been worked upon. TEITI does not fully utilize the penalty for late submission of information or submission of false information by companies, to collect information timely and complete its report.

## **2. Recommendations and Way Forward**

Based on review of policies, laws and regulations in the context of their strengths and weaknesses, we propose the following interventions. Details of the legal and regulatory amendments are provided in Annex 1.

- i. The spirit of the Mineral Policy of 2009 in building policy and institutional predictability, minimum discretion, security of tenure, consistency and constancy of mineral policy, laws, regulations and governing institutions over the long-term, embracing market based principles and the pivotal role of the private sector, are key to attracting and sustaining investment in the long run.
- ii. The Ministry of Minerals to construct regulations which interpret and implement S. 109 of the Mining Act 2010, to provide for the process of listing mining companies in the local stock exchanges (e.g. DSE) and the minimum shareholding structure for the public (Tanzanians). This initiative will enable Tanzanians to engage in ownership of mining companies.
- iii. The Ministry of Minerals to formulate regulations, based on S. 112 of the Mining Act 2010, to establish and operationalize the Mining Fund, with investment management strategy to invest the funds, earn rate of return and grow the fund, for the benefit of future generations.
- iv. The Ministry of Minerals to formulate regulations to interpret and implement S. 8 and 12 of the Oil and Gas Revenue Management Act of 2015, regarding establishment and operationalization of Oil and Gas Fund and the Portfolio Investment Advisory Board, which in addition to advising the Minister, shall manage and invest the funds, earn return and realize growth, for future generations of Tanzanian citizens. Sources for the Fund include royalties, government profit share, dividends on government shares, and corporate income tax. We propose investing the Fund's returns in strategic infrastructure, education, health and social security, regional development and some proportion distributed in bank accounts and mobile phones of adult Tanzanians, annually.
- v. The Ministry of Minerals and the Parliament to amend S. 10 of the Mining Amendment Act 2017, to replace the provision regarding minimum non-dilutable free carried interest in shares of 16% and an additional of up to 50% of the shares of the extractive companies, to be owned by the government, with mutual agreements of consenting parties based on win-win principles, or using MDAs and PSAs, agreed upon between Tanzania and investors. This would be in line with the spirit of a democratic and market based economy, upon which flow of foreign investments is built. The government can focus on collecting royalty, service levies, corporate taxes, and other



forms of revenues, in which the government realizes an important stake in the sector.

- vi. The Ministry of Minerals and the Parliament, to amend S. 100C of the Mining Amendments Act 2017 and S. 9 of the Permanent Sovereignty Act 2017 and the Ministry to halt its ban on exporting unprocessed minerals (raw minerals and concentrates), until a rigorous research and feasibility study for each mineral type is conducted regarding processing capacity and logistics and building capacity in the processing and smelting capital, finances, technology, energy supply, skills and availability of adequate raw materials (e.g. copper and gold) to guarantee scale economies for the investors.
- vii. Formulation of regulations to interpret and implement S. 100F of the Mining Amendments Act of 2017 and S. 7 of the Permanent Sovereignty Act of 2017, regarding contribution of mineral rights holders in the economy, by specifying the exact manner of the contribution, activities and the proportion of returns to be invested in the economy, and minimizing or reducing discretion and agreement with the Commissioner for Minerals in this matter.
- viii. Amendment of S. 10 of the Permanent Sovereignty Act of 2017, to provide mining companies with flexibility regarding retention of earnings from disposal and dealings, in the banks and financial institutions, in jurisdictions of their choice.
- ix. Amendments of S. 11 of the same Act, to allow for settlement of disputes in independent and neutral foreign courts and tribunals, where possibility of establishing such institutions in Africa is encouraged. These initiatives will both enhance good governance and increase investors' confidence and attract increased foreign investment in the extractive sector.
- x. Review and amend the 2017 Act on Reviewing and Re-Negotiation of Unconscionable Terms, to the effect that the process of reviewing and re-negotiation of unconscionable terms is not biased and onerous and that it guarantees win-win outcomes to both parties (not biased towards one party), before rectification and expunging of these terms. More importantly, involvement of neutral and independent foreign commercial courts (which could be established in Africa) to guarantee fairness and equity to both parties (Tanzanian government and investors) is key towards increasing investors' confidence and guaranteeing inflow of foreign investment in the extractive sector.
- xi. The TEITI report to thoroughly account for reasons of discrepancies between payments and receipts of government revenues, to shed more light on the issues. Further, authorities affected by CAG investigation regarding material discrepancies, to submit implementation report to the TEITI Committee and the Minister, and such report to be published, and measures taken for failure to implement directed actions, to be sanctioned.
- xii. Amendments of S. 27 of the TEITA Act of 2015, to require extractive sector companies to disclose information regarding MDAs, PSAs,

contracts or concessions, without any restriction of such disclosure by the TEITI Committee for any reason. Further, to thoroughly enforce S. 16 of the TEITA Act 2015, which requires the Minister to publish information on concessions, contracts, licenses and names of shareholders, for public access.

- xiii. TEITI to utilize S. 23 of the TEITA Act of 2015, to penalize for failures to submit required documents, which is minimum TZS 10 million for individuals and TZS 150 million for corporates.

## Section Two

### Revenue Collection And Management Systems

#### 1.0 Introduction

The analysis of revenue collection and management systems was based on the review of various reports, developments and data sources. Such as; TEITI Report of 2015/16; CAG Annual Report for the Central Government 2016/17; the CAG Annual Report on Public Authorities 2016/17; the CAG Annual Report on Public Authorities 2017/18; and Kabwe (2014) Report on “Oil and Gas: Fiscal Challenges of Tanzania’s Production Sharing Agreements PSAs”.

**Table 1: Reconciliated Revenues from TEITI Report**

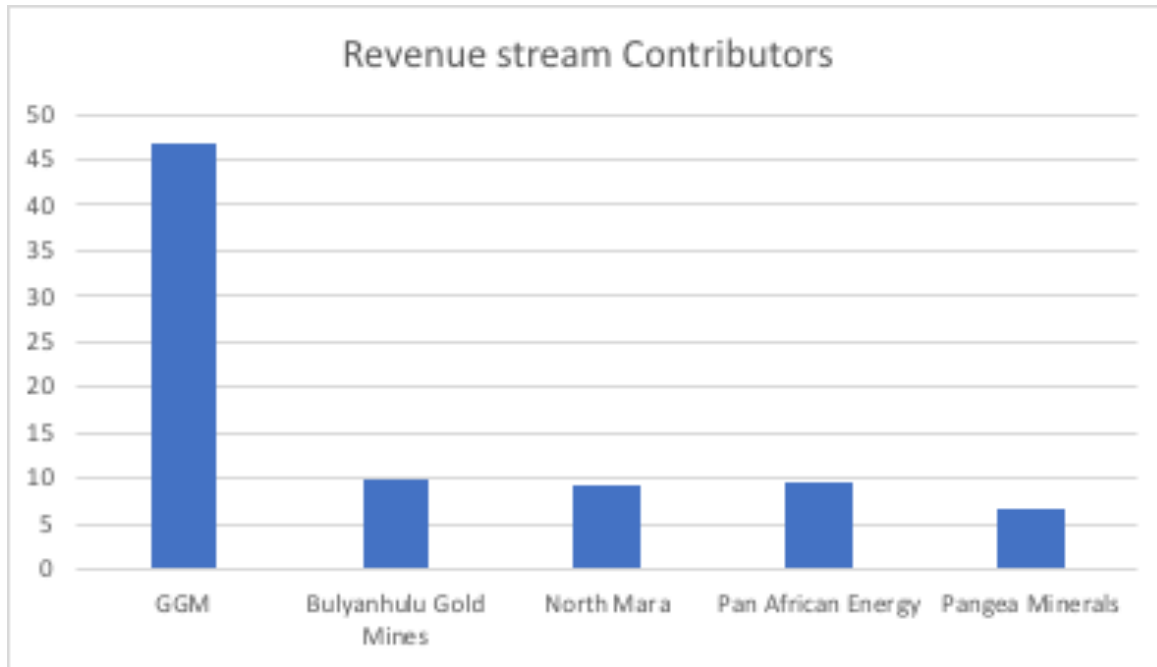
Report	Total estimates	Rationale
<b>TEITI 2015/16 (size of the extractive sector-mining, oil and gas)</b>	TZS 4.98 Trillion	
<b>Revenue reported by extractive companies</b>	TZS. 465.2 Billion	55 companies, one individual and STAMICO
<b>Government claimed revenue</b>	TZS. 434.6 Billion	
<b>Discrepancy</b>	TZS 30.5 Billion	7% of the final Government receipts, caused by under-collection by TRA, closure of local offices of some companies, low collection rates by TODC and underreported government dividends by Treasury Registrar

**Table 2: Revenue Streams Contributed in the Sector**

Revenue Streams	In Percentage (%)
Royalties in minerals	36.4
Corporation tax	29.4
Additional gas revenues	6.8
Skills and development levy	5.4

whereas the largest contributing companies were Geita Gold Mining Ltd (46.9%), Bulyanhulu Gold Mine Ltd (9.8), North Mara Gold Mine Ltd (9.3), Pan African Energy Tanzania Ltd (9.7%) and Pangea Minerals Ltd (6.7%). During the 2017/18 fiscal year, the government implemented a 1 percent clearance fee on gross value of mineral exports.

**Figure 1: Revenue stream contributors in frequency**



### 1.1 Government Revenue from the Extractive Sector (2015 – 2018)

Table 1 shows the trend of mining revenue collection during the 2015-18 period, where persistent declines have been observed since 2016. During the 2015/16 fiscal year, on average, the government collected tax revenues to the tune of TZS 1,176 billion from the extractive sector (*average of 2015 and 2016 to estimate 2015/16 fiscal*), according to TRA (2019), contrary to TZS 434.6 reported by TEITI in 2015/16 fiscal year (*2.7 times*). The TRA data is also lower than the total contribution of government revenue from the extractive sector in 2016 of TZS 13,914 billion (*3.12% of total government revenue and 11.8 times the one reported by TRA*) as reported by IMF in 2016. The differences between IMF and TRA data is based on the fact that TRA focuses on tax-related revenues while IMF considers all economic rents from the extractive sector (tax and non-tax sources). Further, mineral rents (*difference between value of production at world prices and total cost of production*) as a percentage of GDP was 2.95% in 2016.

**Table 3: Government Tax Revenue Collection from the Extractive Sector (2015 – 2018)**

Year	2015	2016	2017	2018
Mining Revenue (TZS billion) <sup>(a)</sup>	1,070	1,281	1,127	867
Extractive Industry Revenue (TZS billion) <sup>(b)</sup>	1,259	1,507	1,326	1,020
Mineral Rents (% of GDP) <sup>(c)</sup>	2.69	2.95		

### Source

: Tanzania Revenue Authority Database (2019)

: Estimated by the Author based on the assumption in the EITI 2015/15, where mining constituted 85% of the extractive industry revenues

: World Development Indicators (World Bank) 2019

## 1.2 Key Issues in the Revenue Collection and Management Systems and Recommended Interventions

The following areas, have been identified requiring improvement on revenue collection and management systems, alongside recommended interventions.

**Table 4: TEITI Report of 2015/16**

Issue	Observation	Recommendation
<p>Payments by individual payees instead of mineral right holders</p>	<p>Gas royalties were not reported by TPDC; lack of streamlining regarding payment of oil and gas license fees was observed; late submission of receipts data was evident among LGAs and other companies; and wrong classification of payments (<i>some payments were classified as license and permit fees instead of corporate tax</i>) was observed. These deficiencies hindered compilation of accurate data, materiality determination and production of meaningful reconciliations.</p>	<ol style="list-style-type: none"> <li>1. Names of mineral rights holders to be used instead of individual payees;</li> <li>2. Timely reporting of gas royalty by TPDC to be enforced;</li> <li>3. Petroleum license fees to be paid directly to the Ministry and royalty from TPDC to be paid direct to the Treasury; regional mining offices to collect and maintain data on collections by LGAs (0.3% service levy);</li> <li>4. Classification of revenue streams need to be enforced;</li> <li>5. TEITI experts to provide training to stakeholders on the compliance process;</li> <li>6. TEITI to utilize TEITA Act of 2015 provisions to penalize late compliance and false reporting.</li> </ol>



<p>Contract transparency and Disclosure</p>	<p>Non-compliance of the TEITA Act of 2015 regarding public disclosure of MDAs, PSAs, concessions, contracts, licenses and beneficial ownership in companies. For example, no mining contract has been publicly disclosed. Only three PSAs (2004, 2008 and 2013) out of 26 PSAs were published in the TPDC website and only three gas and oil contracts were made publicly available by the Resource Contracts Organization (Addendum PSA involving TPDC, Statoil and ExxonMobil signed in 2012; Addendum PSA involving Pan African and TPDC signed in 2001; and Portfolio Gas Sharing Agreement (GSA) involving TANESCO and Pan African signed in 2011). Some efforts have been demonstrated in disclosing ownership status, where 54 out of 68 extractive companies (79%) disclosed ownership information. However, only 8 out of 68 companies (only 11.8%) disclosed beneficial ownership by individuals (ownership of at least 1% of the shares).</p>	<p>S. 27 of the TEITA Act to be amended to require disclosure of all information to the public, regarding MDAs, PSAs, contracts, licenses, names of shareholders and concessions, without any influence from the TEITI Committee.</p>
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**Table 5: Observations of the CAG Annual Report of 2016/17 for the Central Government Financial Statements**

Issue	CAG findings	Recommendation
Payments to the Government (Pangea)	Pangea Minerals Ltd is required to pay the government USD 125,000 every 31 <sup>st</sup> December as a contribution to the Mining Development Empowerment Fund, as per Article 4.1.3 of the Minerals Development Agreement (MDA) between the Ministry and Pangea, to enhance local content and corporate social responsibility. However, Acacia (Buzwagi Gold Mine) has not pay accumulated TZS 732 million during the 2009-2016 period	For the purpose of settling the outstanding contribution by Pangea to the government , the Ministry of Minerals to make a close follow up with 'Acacia' as per the MDA
Operations without mineral processing licenses	51 processing plants have operated without mineral processing licenses as required by S. 60 of the Mining Act of 2010 and where 33 operators applied for processing licenses, which have not been issued, leading to a loss of TZS 231.7 million per year	The Ministry to ensure compliance with the Mining Act of 2010 and recover uncollected revenues, and timely issue processing licenses to the applicants.
Minerals rent and royalty revenues	Drastic increase in accrued minerals rent and royalty revenues (revenues earned but not collected) in the Ministry of Minerals, from TZS 9.7 billion in 2015/16 to TZS 28.6 billion in 2016/17 (194% increase).	The Ministry of Minerals to be more aggressive in collecting mineral rents and royalty payments, to ensure timely payments are honored.

**Table 6: Observations of the CAG Annual Report of 2016/17 for Public Authorities and Other Bodies**

Issues	CAG Observation	Recommendation
(MPSAs) of 2008 and 2013	<p>The Model Production Sharing Agreements (MPSAs) of 2008 and 2013 require calculation and payment of additional profit tax on cash basis to the government in each calendar year, on net cash flow.</p> <p>Additional Profit Tax (APT) is a tax levied by the government when economic conditions allow companies to earn above average profits.</p> <p>However, the MPSAs does not clearly define above average profits. Extractive companies in oil and gas have been providing for this additional profit tax in their financial statements.</p> <p>Moreover, the Income Tax Act of 2004, as amended under the Finance Acts of 2016 and 2017, does not provide for the mandate of TRA to collect the additional profit tax</p>	<p>Amendments of the Income Tax Act of 2004 to mandate TRA to collect the additional profit tax and to provide definitions and clarifications on the meaning of above average profits and calculation of the additional profit tax liability</p>
TPDC participating interests in Oil and Gas companies	<p>S. 44(5) of the Petroleum Act of 2015 requires TPDC to maintain a minimum participating interest of 25% of the petroleum rights granted. However, TPDC holds only 20% shares under Mnazi Bay and 0% shares under Songosongo and Kiliwani North gas fields</p>	<p>The Ministry of Minerals to acquire shares in petroleum rights granted (through TPDC) based on the negotiation and gentleman agreement with petroleum exploration and extraction companies and to utilize benefits of petroleum production based on the MPSAs in force.</p>

<p>Computation of oil and gas Royalties</p>	<p>Contrary to S. 113 of the Petroleum Act of 2015 which requires a license holder and contractor to pay royalty at a rate of 12.5% and 7.5% of the total crude oil/gas gross revenue, for onshore and offshore areas, respectively; Article XII of the Songosongo PSA stipulates that royalty from Mnazi Bay gas field will be computed based on government profit share and that TDPC pays royalties and development license fees based on its share of profit gas</p>	<p>Amendments of the Songosongo PSA to ensure that royalty is charged and paid by both the license holder and contractor as provided for in S. 113 of the Petroleum Act 2015.</p>
<p>Decline in Gold production (State Mining companies)</p>	<p>Based on special audit of Stamigold Company Limited<sup>1</sup> (Biharamulo) during July 2015 to June 2018 period, observed a consistent decline in gold production from 14,286 ounces to 6,011 ounces (58% decline) and sales revenue from TZS 60.1 billion to TZS 17.9 billion (70% decline) and substantial outstanding liability of TZS 95.1 billion, caused by high plant and machinery renting costs, low production efficiency, poor management of the company, non-compliance with tax laws and contract terms, intentional misappropriation, inadequate investment monitoring and low security around mines</p>	<p>STAMICO and Treasury Registrar to strengthen regular investment monitoring and evaluation to provide for timely guidance and proper proactive actions, adherence to contract agreements, planning and prioritizing settlement of liabilities and assess value of Stamigold assets to determine the current position</p>

**Table 7: Observations of the Kabwe (2014) Report on Oil and Gas: Fiscal Challenges of Tanzania's Production Sharing Agreements PSAs**

Issue	Kabwe Observation	Recommendations
(PSA) between TPDC and Statoil/ExxonMobil	Based on the Production Sharing Agreement (PSA) between TPDC and Statoil/ExxonMobil in Offshore Block 2 ( <i>leaked document by Taylor, 2014</i> ), the Contractor can use up to 70% of natural gas produced to recover costs of production, contrary to the MPSA Addendum for Natural Gas Terms of 2010. Further, under the MPSA 2010, Tanzania would receive 45% of crude natural gas production. However, under the actual PSA, Tanzania would receive only 21%, leading to a 24% loss. Using price of USD 11 per mmscf and gas reserves of 21 billion mmscf in Block 2, Tanzania will lose USD 55 billion during the 2014-2029 period (15 years), which is an annual equivalent of USD 12 billion. Note that as at 2014, 26 PSAs were concluded, out of which, only one discussed here leaked and only four PSAs were audited	The Ministry of Minerals to audit and review all PSAs, and to enforce full disclosure of all PSAs, MDAs, concessions and contracts; to ensure that interests of the people of Tanzania are secured.
Economic rents and revenue sharing (oil and gas)	Economic rent and revenue sharing from gas revenues among government units, that is, the central and local government, is not properly guided by the Minerals Policy.	Amendments of the policy and laws to guide and explicitly provide for the economic rents sharing between central and local government, to support local and community development in the spirit of the local content and empowerment

## Section Three:

### 2.0 Overview of the Extractive Sector in Tanzania

The extractive sector in Tanzania constitutes mining, oil and gas sub-sectors. In the national income accounts and GDP computations, the extractive sector is treated within the industry and construction sector. Tanzania is a country rich in minerals, which include metals (gold, iron ore, nickel, copper, cobalt, silver), industrial minerals (diamond, tanzanite, ruby, garnet, limestone, soda ash, gypsum, salt, phosphate, gravel, sand, dimension stones and lately graphite) and fuel minerals (oil, gas, coal, uranium). The country holds 45 million ounces of gold reserves and since 1940, it has produced over 19 million carats (3,800 kgs) of diamonds. Current natural gas reserves are estimated to hold over 55 trillion cubic feet<sup>1</sup>.

Industry and construction sectors contributed 26.4 percent of the GDP in 2017, where mining sector (including oil and gas) contributed only 4.8 percent, below the expected contribution of 10 percent, despite that the mining sector grew rapidly at the rate of 17.5 percent based on 2007 constant prices, as compared to the growth rate of 12.1 percent for the entire industry and construction sector<sup>2</sup>. In the year 2018, according to a statement by the Tanzania Bankers Association (TBA) Chairman, Mr. Abdulmajid Nsekela, during the January 2019 mining forum, commercial banks in Tanzania disbursed a total of TZS 357 billion of loans to the mining sector towards supporting mining contractors, equipment purchases, research and environmental conservation. Mining sector exports contribute more than half of the total foreign exchange, of which the largest contribution comes from

gold exports. According to Tanzania Extractive Industry Transparency Initiative Report of 2015/2016 year, the extractive sector in Tanzania contributed only 1 percent of total government revenue (actual 0.74%), where the informal extractive sector contributed about 1.4 percent of GDP (e.g. more than 6 million small scale miners operate in Tanzania), where overall, the extractive sector contributed less than 1 percent of formal employment in Tanzania. Further, large-scale mining operations employed around 6,501 people in 2016.

The recent ban to export unprocessed minerals in Tanzania (in 2017) has adversely affected the largest gold producer, Acacia, the company which owns the three largest mines in Tanzania (Bulyanhulu, Buzwagi and North Mara), where the company lost over 30 percent of its revenue (Deloitte, 2017). The government through the 2017/18 fiscal year budget, has indicated implementing a 1 percent clearance fee on gross value of mineral exports, for all minerals exported from Tanzania.

1 Grid95 (2017), The Mining Industry in Tanzania: An Overview

2 National Income Accounts of the National Bureau of Statistics, 2019

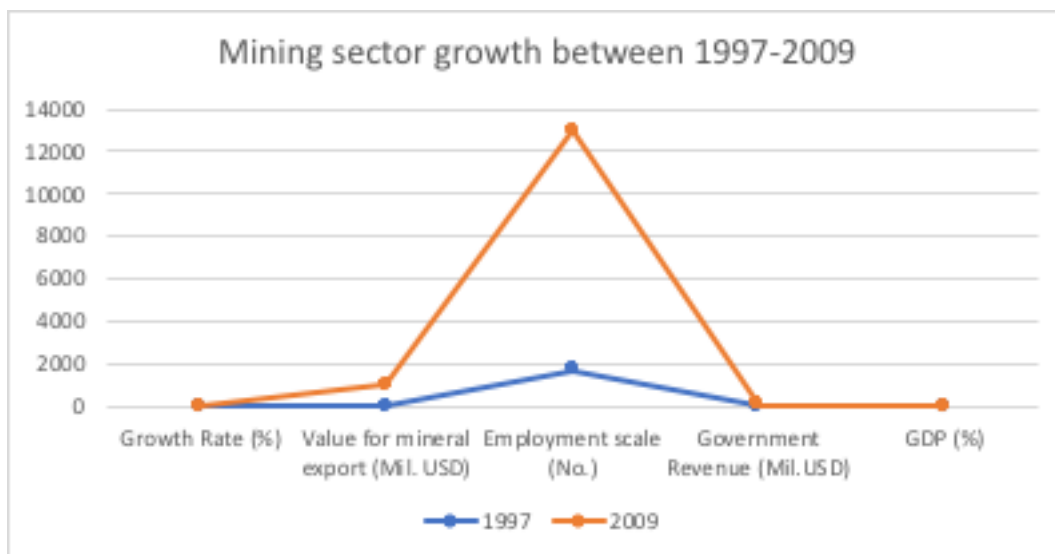


## 2.1 Policy, Legal And Regulatory Landscape

This section presents and discusses the key policy, legal and regulatory instruments, which govern the operations and conduct of operations in the mining, oil and gas sector in Tanzania. We discuss the Mineral Policy of 2009, the Mining Act 2010 and its 2017 Amendments, Tanzania Extractive Industry Transparency and Accountability Act of 2015, and the two 2017 key acts which focus on protecting and safeguarding the position of Tanzania, regarding its natural wealth and resources management.

### 2.1.1 The Mineral Policy of 2009

The mining sector in Tanzania is guided by the Mineral Policy of 2009, which is a key policy document for the sector. Before this Policy was enacted, during the 1997 to 2007 decade of the former Mineral Policy of 1997, the growth rate of the mining sector increased from 7.7 percent to 10.7 percent, and the value of mineral exports increased from USD 26.7 million (just 1% of total exports) to USD 1,003 million (52% of total exports). Further, during this decade, employment in large scale mines increased from USD 2 million to USD 78 million and contribution of the mining sector to GDP increased from 1.4 percent to 2.7 percent



**Figure 2: Mining sector growth between 1997 - 2009**

The Mineral Policy of 2009 aims at maximizing benefits from mining, improving the legal environment and strengthening capacity for administration of the mining sector, among others. The vision of the Policy is to have

an 'effective mining sector, contributing significantly to the acceleration of socio-economic development through sustainable development and utilization of mineral resources in Tanzania by 2025'. The Policy has eighteen objectives where objectives (c) and (d) have relevance regarding building transparency and accountability governance systems. Objective (c) focuses on strengthening the legal and regulatory framework

for the mining sector and enhancing the capacity for monitoring and enforcement, while objective (d) aims at strengthening the institutional capacity for effective administration and monitoring of the mining sector. The Policy clearly stipulates that the legal and regulatory framework shall be built on the spirit of transparency, predictability, minimum discretion and security of tenure. To attract and sustain investments in the sector, consistency and constancy of mineral policies and governing institutions over the long-term are crucial.

### **2.1.2 The Mining Act of 2010 and the 2017 Amendments**

The Mining Act of 2010 and its 2017 amendments forms the primary legal stance for the mining sector in Tanzania. The Mining Act (as amended) restricts export of minerals to mineral right holders or licensed dealers who have paid the required royalties. Further, the Act specifies a penalty for failure to pay royalty within ninety days to the tune of 25 percent (for individuals) and 50 percent (for corporates) of the total dues. The royalty is charged on the gross value of the minerals at a rate of 5 percent for uranium, gemstones and diamond; 4 percent for metallic minerals; 1 percent for gem and 3 percent for other minerals (salt, building and industrial minerals). Finally, the Act provides for a room of making regulations to prescribe minimum shareholding requirement and procedures for selling shares to Tanzanian nationals through listing with the Tanzanian stock exchanges.

Numerous amendments to the Act were enacted in 2017 through the *'Written Laws (Miscellaneous Amendments) Act, 2017'* with the primary objective of protecting the interests of Tanzanians and effectively increasing accrued benefits from the sector. Through amendment of Section 5 of the Act, all mineral resources in Tanzania are the property of the United Republic, vested in the

President, in trust for the People of Tanzania, where the government has lien over any material, substance, product or associated products extracted from the mining operations or mineral processing. Through amendment of Section 10 of the Act, in any mining operations, the government will have a minimum non-dilutable free carried interest shares, in the capital of a mining company of 16 percent (depending on the type of the minerals and the level of investment). In addition to the free carried interest shares, the government can acquire a total of up to 50 percent of the shares of the mining company depending on the total tax expenditures incurred by the government in favor of (enjoyed by) the mining company.

The Amendments Act also provides, for governance and securing of interests of Tanzania, establishment of the national gold and gemstone reserve for the depositing of all royalties required to be paid in refined minerals, impounded or confiscated minerals, government purchased minerals and dividend minerals paid. Relatedly, the government minerals warehouse will be established as a central custodian of all metallic minerals and gemstones won by mineral rights holders in Tanzania. Regarding calculation for royalties payable, the government has the power to reject such valuation if it is deemed steeply low due to deep negative price volatility, unless the minerals are disposed of for beneficiation in Tanzania and where the government has the option of buying the minerals at the low value ascertained. Further, one-third of the value of royalty payable is required to be paid to the government in form of depositing the refined minerals into the national gold and gemstone reserve.

To enforce value addition and domestic processing of extracted minerals in Tanzania, the Amendments Act require the removal of raw minerals from the mine under the supervision of the government and keeping

them secured in government minerals warehouse and that export of raw minerals and mineral concentrates is prohibited (*no license or permit to export the same shall be issued*). All minerals are to be processed in Tanzania and that the government has a lien in all mineral concentrates. Failure of compliance to this provision results to the confiscation of the minerals.

Furthermore, stabilization clauses and arrangements will only be specific and time bound, and are never to last for a lifetime of any mine. It is also prohibited to use stabilization clauses to freeze the laws or contracting away the sovereignty of Tanzania. The government also has the power to convert the quantified values of the tax expenditures enjoyed by mining companies using stabilization clauses into equity holdings in the mining company. Regarding how the mineral right holders can participate in the growth of the Tanzanian economy, mineral right holders are required by law to invest a certain portion (*not specified*) of their returns and file the annual returns showing the efforts undertaken to invest in the economy. These efforts will be used as the basis in considering extension or renewal or permission of transferring mineral rights. The planned investments to be undertaken can be based on agreement with the Commissioner for Minerals. Finally, to uphold the highest degree of ethics, mineral right holders are required to comply with the integrity pledge, which includes conducting mining operations and activities with utmost integrity, desisting to engage in any arrangement that undermines the country's financial or monetary system, tax system, economic objectives, policies and strategies and national security, and maintaining adequate insurance covers against damages to the community and environment. Failure to comply with the integrity pledge will result to withdrawal or cancellation of licenses and

permits.

### **2.2.3 The Oil and Gas Revenues Management Act of 2015**

The extractive sector basically covers mining, oil and gas sub-sectors. Regarding the oil and gas sub-sector, the Oil and Gas Revenues Management Act of 2015 is a principal legislation with a key focus on revenue management. While the Tanzania Revenue Authority (TRA) is charged with collection of taxes and levies, the National Oil Company (in this case the Tanzania Petroleum Development Corporation, TPDC) is responsible for the collection of non-tax oil and gas revenues and surface rentals (or annual block fees), signature bonuses and training fees. To ensure fiscal and macroeconomic stability, financing of investment in oil and gas, social and economic development and resource for safeguarding future generations, the Oil and Gas Fund will be established and funded from royalties, government profit share, dividends on government shares, corporate income tax and return on investment of the Fund. Further, the money deposited in the Fund is not to be used to provide credit to the government or any other entity, or as collateral, or for rent seeking. To effectively generate revenues for future generations, the Act provides for the establishment of the Portfolio Investment Advisory Board, which is charged with advising the Minister on portfolio investment strategies of the revenue saving account of the Fund and reporting its performance. Changes in the fiscal rules governing expenditure of oil and gas revenues, need a two-third approval of the members of the Parliament. Revenues from the service levy of the oil and gas is directed to the Local Government Authorities (LGAs). Section 18 of the Act places weight on the transparency and accountability regarding collection and deposit of oil

and gas revenues to the Fund, disbursement of funds from the Fund, publishing oil and gas revenues records in the Gazette and on the website of the Ministry of Finance and subjecting oil and gas revenues to the Parliamentary oversight. Finally, heavy penalties for misappropriation of funds include fines to the tune of a minimum of the amount misappropriated, imprisonment of not less than thirty years, or both.

#### **2.2.4 The Tanzania Extractive Industries (Transparency and Accountability) Act of 2015**

The Tanzania Extractive Industries (Transparency and Accountability) Act of 2015 is the first piece of legislation in Tanzania, to explicitly lay the structure and direction for enhancing transparency and accountability in the Tanzanian extractive sector (mining, gas and oil) and officially supporting the global initiative that provides standards for governing the extractive industries. This Act provides for the establishment of the Tanzania Extractive Industries (Transparency and Accountability) Committee, which is an independent government oversight body for promoting transparency and accountability in the sector. The Committee is composed of fifteen members from a mix of government entities (five), extractive industry companies (five) and civil society organizations (five) to be appointed by respective umbrella organizations. Its main responsibility and the functions assigned to it are to ensure that the benefits of extractive industry are verified, duly accounted for and prudently utilized for the benefit of Tanzanian citizens. These functions include collection of information from both the extractive industry companies and the government statutory receipts of revenue accruing to the government, cost of production, capital expenditures, volumes of production, export data and information on local content and corporate social

responsibility; promoting effective citizen participation in the extractive industry; reconciling and conducting investigation on material discrepancy from revenue payments (by companies) and receipts (by statutory authorities). The Committee is also responsible in each year, to set out threshold for identifying companies that qualify for reconciliation on payments made and revenues received by the government. More importantly, the Act requires publishing of information regarding all concessions, contracts and licenses of extractive industry companies, individual names and shareholders who own interest in the extractive industry companies and implementation of environmental management plans, through the website or other accessible media.

For good governance purposes, material discrepancies between payments (by companies) and receipts (by statutory authorities) identified in the reconciliation report, are submitted within fourteen days to the CAG for investigation. The CAG effectively prepares the audit report and submit it to the Committee and the Minister for consideration. The relevant authorities affected by the investigation of the CAG are required to take action on the recommendations within 30 working days and prepare and forward the implementation report to the Committee, which within 14 days, is required to submit the report to the Minister for consideration and publication. Failure to produce and submit required documents or information constitutes an offence amounting to a minimum fine of 10 million shillings for individuals and 150 million shillings for a body corporate. Submission of false information or reports amounts to an offence punishable by a fine not less than 100 million shillings. Most importantly, this Act explicitly requires disclosure of all mineral development agreements (MDAs), production sharing agreements (PSAs) or any agreement, except confidential information as the Committee may determine.

### **2.2.5 The Natural Wealth and Resources (Permanent Sovereignty) Act of 2017**

This Act is a basic proclamation of the permanent sovereignty of the Tanzanian people over natural wealth and resources. For any arrangement or agreement involving extraction, exploitation or acquisition and use of natural wealth and resources, the following (among others) are required by the Act.

- i. Guaranteed returns into the Tanzanian economy from the earnings accrued.
- ii. No raw resources are exported for beneficiation (processing) outside Tanzania.
- iii. Earnings from disposal or dealings are retained in the banks and financial institutions established in Tanzania, except where distributed profits are repatriated.

Further, permanent sovereignty over natural wealth and resources are not subject of proceedings in any foreign court or tribunal, and that the disputes will be settled by judicial organs established in Tanzania and according to Tanzanian laws. Finally, all arrangements or agreements for extraction, exploitation or acquisition and use of natural wealth and resources may be (not a requirement though) reviewed by the Parliament.

### **2.2.6 The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act of 2017**

This Act provides for the process of reviewing arrangements or agreements, in the spirit of the permanent sovereignty Act, regarding unconscionable terms. The powers to review these arrangements or agreements are vested in the Parliament based on the understanding that the negotiations are concluded in good faith and fairly and that the interests of Tanzanian people are observed at all time. If the arrangement or agreement contains unconscionable terms or is prejudicial to the interests of Tanzanian people, the Parliament may by resolution advise the government to initiate re-negotiations with the aim of rectifying them. Unconscionable terms in this regard are those that (among other scenarios) restrict the right of permanent sovereignty and exercise of authority over foreign investments in Tanzania, inequitable and onerous to the state, restrict periodic review of the arrangement or agreement which purports to last for a lifetime, secure preferential treatment in alternative legal regime to the investor, restrict the right of the state to regulate activities of the transnational corporation in Tanzania, deprive Tanzanian people of economic benefits, and that empower transnational corporations to intervene in internal affairs or subject the state to the jurisdiction of the foreign laws or fora. Finally, the Act directs that if the other party fails to agree to re-negotiate the unconscionable terms or no agreement is reached, such terms cease to have effect (treated as expunged).

## Section Four:

# Main Findings And Insights Of The Extractive Industries Transparency Initiative And Cag Reports

### 3.1 Introduction

In this section, we present the key insights and findings from three important reports, the Tanzania Extractive Industries Transparency Initiative Report of the 2015/16 fiscal year, the Annual General CAG Report for the Central Government Financial Statements during the 2016/17 fiscal year, and the Annual General CAG Report on the Audit of Public Authorities and Other Bodies for the financial year 2016/17. The main issues and recommended interventions are also provided.

### 3.2 The 8th Tanzania Extractive Industries Transparency Initiative (TEITI) Report for the 2015/2016 Fiscal Year

The Extractive Industries Transparency Initiative (EITI) is a global initiative for enhancing transparency and accountability in the extractive sector (mining, oil and gas). Since the first implementation of this program in Tanzania in 2009, eight reconciliation reports have been produced, which disclose and reconcile extractive industry payments made by companies and government revenues received. During the 2015/16 fiscal year, 17 new mining licenses and 144 prospective licenses were awarded. A total of eight international oil and gas companies are operating in Tanzania. The size of the extractive industry is 4.98 trillion shillings, where mining (including oil and gas) contributes 4.8% of GDP and extractive collections

contribute 0.74% of total government revenue.

During the 2015/16 fiscal year, data for final company payments collected from 55 entities (53 companies, one individual and STAMICO), shows that final company payments from 21 revenue streams<sup>1</sup> amounted to TZS 465.16 billion, while the government reported to have received TZS 434.63 billion, creating a net discrepancy of TZS 30.53 billion and an absolute discrepancy of TZS 71.33 (if all discrepancies are considered positive). These net and absolute discrepancies constitute 7.0% and 16.4% of the final government receipts respectively. The materiality threshold for companies to qualify for exemption during the 2015/16 fiscal year was TZS 300 million, where 55 companies (including STAMICO and one individual) qualified and contributed a total of 95% of the total government receipts. The following government agencies were required to disclose revenues collected from the extractive sector: TRA, Ministry of Energy and Minerals, TPDC, Ministry of Finance, NSSF, PPF and LGAs (Biharamulo, Chunya, Geita, Ilala, Kahama, Kilwa, Kinondoni, Kishapu, Mbeya, Mtwara, Nzega, Simanjiro, Tanga and Tarime). The exchange rate of TZS 2,100/

<sup>1</sup> The revenue streams include corporate tax, withholding tax, PAYE, SDL, VAT, VAT on imports, excise duty, import duty, stamp duty, fuel levy, protected gas revenue, additional gas revenue, profit per PSA, license, permit, application, training and annual rental fees, signature bonus, production bonus, royalty, dividends on government shares, social security contributions, revenue from selling government shares and local service levy.



USD was used. The data of revenues collected from 21 revenue streams shows that the biggest four contributors include royalty in minerals (36.4%), corporation tax (29.4%), additional gas revenue (6.8%) and skills and development levy (5.4%), making a total of 78.0 percent. Out of 55 companies, the biggest five companies which contribute the largest proportion of the revenue stream are Geita Gold Mining Ltd (46.9%), Bulyanhulu Gold Mine Ltd (9.8), North Mara Gold Mine Ltd (9.3), Pan African Energy Tanzania Ltd (9.7%) and Pangea Minerals Ltd (6.7%), making a total contribution of 82.4 percent. Out of 55 entities that met the materiality threshold, nine companies did not submit any template, because of cessation of operations for wrongful classification, where four companies closed operations.

The report observed numerous issues, however, to highlight key aspects with direct relationship to transparency and governance systems.

- i. The report noted payments to the Ministry of Minerals using names of payees instead of owners of mineral rights (companies), leading to wrong materiality determination.

**Recommendation:** The names of owners of mineral rights (companies) to be used, instead of agents who make payments (payees).

- ii. The government receipts for the reconciliation on gas royalty were not reported where TPDC claimed that the payments were received late.

**Recommendation:** TPDC to reconcile payments from the gas sector (royalty on

gas) timely.

- iii. The mode of payment is not well streamlined, where oil and gas companies pay license fees to TPDC, which in turn pays to the parent Ministry, which wires the payments to the Treasury.

**Recommendation:** Payment of petroleum benefits to be streamlined, where license fees are directly paid to the Ministry of Minerals and royalty payment by TPDC to the Treasury.

- iv. Poor response from local government authorities (LGAs) in timely submitting receipts data, where also many local councils are located in remote areas, thus hindering timely gathering of data.

**Recommendation:** It is recommended that the regional mine offices collect and maintain readily accessible data on payments collected by LGAs in their jurisdictions.

- v. Flaws were also observed in the classification of revenue streams where some corporate tax payments were recorded as license and permit fees.

**Recommendation:** TRA is advised to endeavor using Extractive Industry Transparency Initiative (EITI) experts in providing training to the focal persons (in government statutory receiving entities and the extractive sector companies) to effectively and accurately categorize payments made

by extractive companies.

- vi. A number of reporting entities do not comply by timely submitting payment and receipts data as required by the Tanzania Extractive Industry Transparency and Accountability (TEITA) Act.

**Recommendation:** The Extractive Industry Transparency Initiative (EITI) Committee is advised to utilize penalty provisions provided in the Act to enforce compliance.

The TEITA Act requires public disclosure of mining development agreements (MDAs), production sharing agreements (PSAs), concessions, contracts and licenses. However, no mining contract has been publicly disclosed. The TPDC website provides three model PSAs dated 2004, 2008 and 2013. Only three contracts have been made available by the resource contracts organization that is: a) Addendum PSA involving TPDC, Statoil and ExxonMobil signed in 2012, b) Addendum PSA involving Pan African and TPDC signed in 2001, and c) Portfolio gas sharing agreement (GSA) involving TANESCO and Pan African signed in 2011.

Further, regarding beneficial ownership (owning at least 1% of the shares), of the 68 extractive companies as of July 2017, 54 companies (79%) which include 33 mining and 22 oil and gas companies, provided the data.

Finally, requirements stipulated by various legal instruments such as local government mandate to collect a service levy from extractive companies and corporate social responsibility are not honored. For example, only fourteen LGAs (Biharamulo, Chunya, Geita, Ilala, Kahama, Kilwa, Kinondoni, Kishapu, Mbeya, Mtwara, Nzega, Simanjiro, Tanga, and Tarime) collect the 0.3% of the gross turnover net of the VAT and excise duty from extractive companies.

### **3.3 The Annual General CAG Report for the Central Government Financial Statements during the 2016/2017 Fiscal Year**

The annual general CAG report for the 2016/2017 fiscal year, regarding the extractive sector, especially in enhancing local content and corporate social responsibility, according to Article 4.1.3 of the mining development agreement (MDA) between the Ministry and Pangea Minerals Ltd in 2007, during establishment of the Buzwagi Gold Mine in Kahama, the company was required to pay to the government USD 125,000 on every 31st December as a contribution to the Mining Development Empowerment Fund. It was observed that Buzwagi Gold Mine (Acacia) Ltd did not pay its contribution of TZS 732 million, which has accumulated for eight years (2009-2016).

Further, operations of mineral processing plants without processing licenses resulted to a total loss of revenue of TZS 231.7 million per year. According to Section 60 of the Mining Act of 2010 and 3(2) of the Mining Regulations (amended 2012), for acquiring mineral processing licenses, the application fee of USD 200, preparation fee of USD 200 and annual license fee of USD 1,000, are applicable. A total of 51 processing plants have been operating without licenses (8 in Mwanza, 2 in Kahama and 41 in Shinyanga). Further, 33 operators of processing plants have not been granted processing licenses, even though application have already been made. The Ministry is urged to ensure compliance with the requirements of the Mining Act 2010 and related regulations, recover uncollected revenues and timely issue processing licenses to the applicants who qualify.

The CAG report also noted drastic increase in accrued revenues (revenues earned without payments effected) in the Ministry of Energy and Minerals, from TZS 9.7 billion in 2015/16 to TZS 28.6 billion (194% increase) in terms of mineral rent and royalty not collected.

### 3.4 The Annual General CAG Report on the Audit of Public Authorities and Other Bodies for the Financial Year 2016/2017

The annual general CAG report for the 2016/2017 fiscal year has very key informative insights and observations. The report highlights that the two pieces of the 2017 legislations, which aim at protecting the permanent sovereignty of Tanzanians over natural wealth and resources and safeguard against unconscionable terms, that is, the ‘Natural Wealth and Resources (Permanent Sovereignty) Act of 2017’ and the ‘Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act of 2017’ do not have

regulations to provide for implementation guidelines and amplify the Acts. Without these regulations, the government may not realize the full benefits of the provisions. The Ministry of Minerals, which is responsible for creating such regulations, is urged to come up with a set of regulations to interpret and implement these Acts.

The annual general CAG report on public authorities and other bodies, during the 2016/2017 fiscal year, has observed the following audit queries.

**Table 8: Annual general CAG report audit query**

Issue	Audit Query as Observed by CAG
<b>Audit scope</b>	The CAG office has a limited scope in auditing the extractive industry companies, contrary to Article 143 of the Constitution of Tanzania and sections 5 and 15 of the Public Audit Act 2008, with respect to accessing information and persons. This provision is contradicted by Section 26 of the Mining Act 2010 and 2017 Amendments, and Section 93 of the Petroleum Act 2015, which prohibit disclosure of the mining and petroleum companies’ information to third parties, except with the consent of the mine owner, or license and permit holder. Article 18(k) of the model production sharing agreement of 2013 (MPSA 2013) allows government and TPDC through their authorized representatives and employees to access contract areas and information. The CAG office requested access from the Ministry and TPDC, which took about two months, to the end of February 2018, thereby contributing to the failure of the CAG office to audit company records on allowable and recoverable costs and declared revenue and include them in the 2016/17 report

<p><b>Verification of capital investments in the mining sector</b></p>	<p>The Mining Commission did not verify the mining initial capital investment cost of the applicants for a special mining license within twelve months, as per Section 41 of the Mining Act 2010 and 2017 Amendments, thereby hindering government ability to accurately determine its share of revenue (royalty and taxes) due to possible cost escalation and invoice mispricing (profit shifting and transfer pricing with affiliated companies)</p>
<p><b>Ownership of fixed assets</b></p>	<p>Article 22 (a) of the MPSA 2013 requires ownership of all fixed assets that were owned by the Contractor in petroleum operations to be transferred to the government (TPDC) at the expiration or termination of the agreement or when full costs of acquiring the assets have been recovered by the Contractor out of cost oil/gas.</p> <p>This also applies when more than 50% of the cost of a physical asset has been recovered and where TPDC has paid unrecovered portion of the asset. In this case, TPDC can elect to have the asset title transferred.</p> <p>The CAG report noted that MDAs do not provide for transfer of the mining assets. For example, Harvest Tanzania Ltd, on 3rd March 2018 issued a notice to conduct public auction to liquidate Acacia mining assets, inventory and plant at Buzwagi and in November 2013, STAMICO acquired Tulawaka Gold Mine and exploration licenses from Barrick Gold at a price of USD 4.5 million.</p> <p>These two deals were contrary to the MPSA 2013.</p>
<p><b>Functions of the Mining Commission</b></p>	<p>Among other functions charged to it, to sort and assess the value of minerals produced and produce indicative prices for determining the royalty and taxes payable as per the Mining Act 2010 and its 2017, the CAG report noted that despite the Commission establishing internal procedures and guidelines to sort and value gemstones, there is no evidence that these guidelines have been approved by the Ministry of Minerals.</p>
<p><b>Payment of sorting and valuation fees</b></p>	<p>Section 90 of the Mining Act 2010, as amended by Tanzania Extractive Industry (Transparency and Accountability) Act 2015, requires mineral right holders to pay sorting and valuation fee upon sale of gemstones, at a rate prescribed by the Minister.</p> <p>The CAG noted that this fee is not operational, since the Minister has not published payable rates.</p>

<p><b>Calculations of additional Profit Taxes</b></p>	<p>The MPSA 2008 and 2013 require calculation of additional profit tax (tax levied by the government when economic conditions allow companies to earn above average profits) each calendar year, dependent upon the rate of return earned by the Contractor on net cash flow and payment is to be made to the government on cash basis. The CAG report noted that despite companies providing for this tax in their financial statements, the Income Tax 2004, as amended under Finance Act 2016 and 2017, does not provide for the collection of this tax, neither does TRA have any mandate.</p>
<p><b>blocks 4/1B and 4/1C</b></p>	<p>Oil and gas Blocks 4/1B and 4/1C were reserved for TPDC in May 2016, which submitted proposed work programme and minimum expenditure for initial exploration during the 4 years, with minimum expenditure of USD 50 million for each block in each 2-years stage (total USD 200 million). The CAG noted that neither the exploration license has been issued to TPDC for exploration operations, nor any fund released for implementation. This delays the government in realizing the potential benefits of discoveries and attracting interested investors.</p>
<p><b>Tendering processes in the oil and gas projects</b></p>	<p>Tendering process of October 2013 for seven deep sea oil and gas exploration and extraction blocks and one in Lake Tanganyika North, during the 4th offshore licensing round, based on the MPSA 2013 and involving bidding from two companies (China National Offshore Oil Corporation and Ras Al Khaimah Gas LLC), was not successful.</p> <p>CAG noted that the investors were not comfortable with the terms of the MPSA 2013, in which case the government lost TZS 443 million for unsuccessful tendering process. Further, no re-advertisement has been made.</p>
<p><b>Tax Administration Act 2015</b></p>	<p>Section 51 of the Tax Administration Act 2015 provides that during tax grievances and complaints, for the Commissioner General to admit the objection by the company for the tax decisions made by TRA, the tax payer is required to pay amount of tax not in dispute or one third of the assessment tax, whichever is greater.</p> <p>TRA reviewed the acquisition of British Group Plc shares by the Royal Dutch Shell PLC in January 2016 and found capital gain tax assessment of USD 524.8 million (TZS 1.14 trillion), which British Group PLC objected in May 2016. The TRA Appeals Board concluded that TRA should admit and determine the objection made, where in June 2017, TRA confirmed the same tax assessment.</p> <p>However, TRA had not collected, the larger of the one-third of the assessment amount or amount not in dispute, according to the Act.</p>

<p><b>Operations below capacity on gas plants</b></p>	<p>1. Two TPDC natural gas processing plants (Madimba and Songosongo) are operating below capacity (combined capacity is 350 mmscfd<sup>1</sup>, actual capacity 85 mmscfd, capacity utilization rate 24%), thus reducing TPDC profitability, given the huge fixed sunk costs.</p> <p>Recommendation: TPDC to seek more potential customers for purchasing the gas to benefit from economies of scale and increased profit generation</p>
<p><b>State participation</b></p>	<p>Section 44(5) of the Petroleum Act 2015 requires TPDC to maintain a minimum participating interest of 25 percent of petroleum rights granted. However, TPDC holds only 20% shares under Mnazi Bay and 0% under Songosongo and Kiliwani North gas fields.</p> <p>Recommendations: The government to utilize Section 4(1) of the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017 to acquire and maintain a minimum participating interest in all development licenses.</p>
<p><b>Royalty payments</b></p>	<p>Section 113 of the Petroleum Act 2015 which requires a license holder and contractor to pay royalty at a rate of 12.5% and 7.5% of the total crude oil/gas gross revenue, for onshore and offshore areas respectively, Article XII of Songosongo PSA stipulates that royalty from Mnazi Bay gas field will be computed based on government profit share and that TDPC pays royalties and development license fees based on its share of profit gas.</p> <p>Recommendation: The government to utilize Section 4 of the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017 to review and amend Songosongo PSA to ensure that royalty is charged and paid by both the license holder and Contractor as provided for in the Petroleum Act 2015.</p>



<b>Gas prices</b>	Section 3.1(c) of the agreement between the government, TPDC, Songas Ltd and PAET provides that the price of protected gas is subject to review and change from time to time according to the regulations and directives of EWURA. However, CAG report noted that protected gas from Songosongo was sold by Songas at a price of USD 0.69 per mmbTU <sup>3</sup> while that from Mnazi Bay was sold at USD 3.00 per mmbTU <sup>1</sup> , and that no price reviews were conducted.
<b>Gas sales</b>	<p>TPDC and TANESCO entered into a gas sales agreement (GSA) in September 2015 where TANESCO would be buying natural gas from TPDC for power generation (Kinyerezi, Ubungo II and Symbion power plants).</p> <p>Of the total invoice amount of TZS 567.5 billion (September 2015 to December 2017), TANESCO settled only TZS 318.9 billion (56%), leaving TZS 248.6 billion unsettled, which impairs ability of TPDC to service loan granted by EXIM Bank of China to construct the Mtwara-Dar gas pipeline, and risk of transferring TPDC rights under GSA to EXIM Bank of China.</p>

### **3.5 The Annual General CAG Report on the Audit of Public Authorities and Other Bodies for the Financial Year 2017/2018**

Chapter Eighteen of the Annual General CAG Report on Public Authorities and Other Bodies for the Financial Year 2017/18 focuses on the extractive industry, which includes oil and gas extraction, and mining. The audit reviewed effectiveness of controls by various government players, namely the Ministry of Minerals, State Mining Corporation (STAMICO), Stamigold Company Ltd and the Tanzania Petroleum Development Corporation (TPDC). The CAG report has investigated the following matters and provided recommendations effectively.

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1 One million British Thermal Units  $\approx$  1,000 cubic feet of gas

Issue	Observation	Recommendations
<p><b>Stamigold Company Limited</b></p>	<ol style="list-style-type: none"> <li>1. Stamigold Company Limited<sup>1</sup> (Biharamulo) special audit for three years (July 2015 to June 2018) revealed consistent decline in gold production from 14,286 ounces to 6,011 ounces (58% decline) and sales revenue from TZS 60.1 billion to TZS 17.9 billion (70% decline) because of high plant and machinery renting costs, low production efficiency, poor management of the company, inadequate investment monitoring and security around mines.</li> <li>2. During the same period of poor production performance as shown in (i), the Company had accumulated substantial outstanding liabilities, worthy TZS 95.1 billion (Company's total assets are TZS 387.9 billion) caused by changes in actual price for supplies and goods, declining gold production and sales and non-compliance with tax laws and contract terms. More specifically, weaknesses in monitoring contracts, lack of accurate forecasts of requirements during contracting and intentional misappropriation, is a largest contributor.</li> </ol>	<ol style="list-style-type: none"> <li>1. STAMICO and Treasury Registrar to strengthen regular investment monitoring and evaluation to provide for timely guidance and proper proactive actions.</li> <li>2. STAMICO and Stamigold to strengthen contract monitoring and assure adherence to contract agreements, planning and prioritizing settlement of liabilities and value its assets to determine current position.</li> </ol>

1 Subsidiary of STAMICO that took over operations of the African Barrick Gold Mines.

<p><b>TPDC</b></p>	<ol style="list-style-type: none"> <li>1. Review of the strategic and operational efficiency of the Tanzania Petroleum and Development Corporation (TPDC) note that TPDC has not submitted the instructed information and reports to the Ministry on geological and seismic (G&amp;S) data, geological and prospects evaluation, risk, social, economic and environmental impact assessment, on blocks 4/1B and 4/1C, which is required to give consent on securing strategic partners. The timelines for delivery were also not specified.</li> <li>2. Further, a substantial deterioration of financial position of TPDC's brokers of seismic data was observed, where in 2018, only one broker out of five made sales of USD 174,000. This observation is largely caused by the decline in the oil and gas sector globally, where share prices of three brokers declined by an average of 80% in the global stock markets during the last five years, and where TPDC has not developed capacity to conduct market intelligence on these trends and have contingent plans to deal with these developments.</li> <li>3. TPDC has not acquired 3D seismic data for deep sea blocks 4/1B and 4/1C to attract partners for exploration, due to changes in technology requiring upgrading the 2D seismic data. Out of the TZS 4.5 billion budgeted for the exercise, only TZS 24.8 million was released by the government (0.6%). Acquisition of 3D seismic data is vital for furthering exploration activities and attracting exploration partners.</li> </ol>	<ol style="list-style-type: none"> <li>1. TPDC to expedite the value addition process and produce and submit to the Ministry a report of the value addition made to the blocks, statistical and economic analyses of strategic partner model versus the normal PSA.</li> <li>2. TPDC to establish market risk intelligence unit and recruit competent personnel, to advise management on global market risk and develop a contingent plan to mitigate such risks.</li> <li>3. TPDC to liaise with the government through the Ministry of ENERGY in soliciting the funds necessary for acquisition of the 3D seismic data for further development of the two blocks.</li> </ol>
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## Section Five

# Fiscal Challenges Of Tanzania's Production Sharing Agreements (Psas) In Oil And Gas

### 4.1 Introduction

In this section, we discuss the fiscal challenges pertaining to the production sharing agreements (PSAs) in the oil and gas sub-sectors, with a particular focus on the PSA between TPDC and Statoil/ExxonMobil, according to the report of Hon. Zitto Kabwe of 2014, on the "Oil and Gas: Fiscal Challenges of Tanzania's Production Sharing Agreements PSAs". To set the discussion in the right direction, it is important to understand the basis of the PSA idea, how they practically work in Tanzania and the emerging issues.

### 4.2 Production Sharing Agreements (PSAs)

Production Sharing Agreements (PSAs) are contractual arrangements for petroleum (oil and gas) exploration and development, where the State as the owner of the petroleum resources, engages a private oil company as a Contractor. The contractor provides technical and financial services for the exploration and development operations. The PSAs are permitted in Tanzania under the Petroleum (Exploration and Production) Act of 1980. In that regard, State interests are represented by the Tanzania Petroleum Development Corporation (TPDC), herein referred to as the State Oil Company. The key aspect of the PSA is the definition and operational aspects of the fiscal regimes, which are basically the revenue streams. Two forms of these revenue streams

include the resource rents or non-tax revenues (royalty, signature bonuses, brown taxes and profit oil/gas) and tax revenues (corporate, withholding, capital gains, VAT, import duty, levies and charges). The arrangements and agreements of sharing the benefits of these projects are stipulated in the model production sharing agreements (MPSAs), the most recent one being the MPSA of 2013.

For clarity of concepts, the following key revenue streams are defined.

- *Royalty*: rent paid by the owner of the resource for removing it from land. The practice is that TPDC (*license holder*) pays to the Ministry of Finance, 12.5% of the total crude gas production for onshore fields and 7.5% for offshore fields.
- *Cost Recovery*: Recoverable contract expenses in any year, which is limited to a maximum of 50% of total natural gas production according to MPSA of 2013.
- *Profit Gas*: largest share of revenue for PSA and is obtained after deducting royalty and recoverable costs. This sharing is based on the daily production of oil/gas where the government share increases as the daily production increases.

### 4.3 A case of TPDC and Statoil/ExxonMobil PSA in Offshore Block 2

In this production sharing agreement (PSA), Statoil/ExxonMobil can use up to 70% of the total natural gas produced to cover their costs of production. The PSA is structured based on the MPSA Addendum for Natural Gas Terms of 2010 (MPSA 2010) as shown in the first three columns of Table 2. However, the actual terms (*See last three columns of Table 2*) of the PSA are as per leaked document<sup>1</sup>, they are very different from the MPSA 2010 Addendum and are in fact more favorable for Statoil/ExxonMobil.

**Table 9: MPSA 2010 versus Statoil/ExxonMobil & TPDC Profit Gas Sharing (PGS) Terms**

MPSA 2010			Statoil/ExxonMobil & TPDC PGS		
Production Rate (mmscfd)	TPDC Share of Profit Gas	Contractor Share of Profit Gas	Production Rate (mmscfd)	TPDC Share of Profit Gas	Contractor Share of Profit Gas
0 to 249.999	50	50	0 to 299.999	30	70
250 to 499.999	55	45	300 to 599.999	35	65
500 to 749.999	60	40	600 to 899.999	37.5	62.5
750 to 999.999	65	35	900 to 1199.999	40	60
1000 to 1249.999	70	30	1200 to 1499.999	45	55
1250 to 1499.999	75	25	1500 and Above	50	50
1500 and Above	80	20			

Source: Kabwe (2014)

Table 3 clearly shows how Tanzania would have received 45% of the total crude natural gas production under MPSA of 2010, compared to only 21% the country receives as per the leaked PSA. Using the price of USD 11 per mmscf (supply price to China) and based on gas reserves of 21 billion mmscf in Block 2, valued at USD 231 billion, Tanzania will lose USD 55 billion<sup>2</sup> over the next 15 years life of the reserve, which is an annual equivalent of USD 12 billion for each of the next 15 years (time value of money).

1 Taylor, Ben (2014), Leaked agreements showing how Tanzania may not get a good deal for gas, African Arguments Blog, Royal African Society

2 Difference of 45% share under MPSA 2010 and 21 % share under leaked PSA, is 24% x USD 231 billion, is equivalent to USD 55 billion.

**Table 10: Sharing of Benefits based on MPSA 2010 versus Statoil/ExxonMobil & TPDC Profit Gas Sharing (PGS) Terms**

Item	PSA Parameter	MPSA 2010	Leaked PSA
<b>A</b>	Gross Production	1500 mmscfpd	1500 mmscfpd
<b>B</b>	Royalty (7.5% of A)	112.5 mmscfpd	112.5 mmscfpd
<b>C</b>	Cost Recovery [50% of (A - B)] for MPSA 2010 Cost Recovery [70% of (A - B)] for Leaked PSA	693.75 mmscfpd	971.25 mmscfpd
<b>E</b>	Profit Oil (A - B - C)	693.75 mmscfpd	416.25 mmscfpd
<b>F</b>	TPDC Share (80% of E for MPSA 2010 and 50% of E for Leaked PSA)	555 mmscfpd	208.125 mmscfpd
<b>G</b>	Statoil/ExxonMobil Share (20% of E for MPSA 2010 and 50% of C for Leaked PSA)	138.75 mmscfpd	208.125 mmscfpd
<b>H</b>	TPDC Total Benefits (B + F) Statoil/ExxonMobil Total Benefits (C + G)	667.5 mmscfpd	320.625 mmscfpd
<b>I</b>	Statoil/ExxonMobil Total Benefits (C + G)	832.5 mmscfpd	1179.375 mmscfpd
<b>J</b>	TPDC Percentage Share of Production (H , A)	44.5%	21.4%
<b>K</b>	Statoil/ExxonMobil Share of Production (I , A)	55.5%	78.6%

Source: Kabwe (2014) and Author's Minor Corrections and Recalculations

#### **4.4 Transparency and Accountability Governance Issues**

As of June 2014, the country had a total 26 PSAs. Information on the remaining 25 PSAs and whether they follow the MPSA is not disclosed. Note that recent data shows a total of three disclosed PSAs. It is key to balance between attracting investment at favorable terms versus maximizing government revenue. Further, only 4 PSAs were audited, and actual costs verified. The report also noted that economic rent and revenue sharing among government units, that is, the central and local government on gas revenues is not properly guided by the Policy. In addition to the service levy, there is a need of apportioning agreed proportion of the royalty and profit shares (resource rents) to regional and local government authorities to support local and community development in the spirit of the local content and empowerment.

More importantly, this report recommended restructuring the TPDC, which is currently both the regulator and the provider in the gas and oil sub-sectors, into two institutions. The Tanzania Petroleum Regulatory Authority to perform regulatory functions and the Tanzanian Oil Company to discharge investment functions. Establishment of a Sovereign Development Fund is proposed, where economic rents from the mining, oil and gas shall be deposited and invested, to ensure proper use of resource rents, for future generations. The funds can also be invested in strategic infrastructure, education, health and social security. Twenty percent of the royalty can be distributed in a particular regional and local project. As the practice in some countries, resource rents can be distributed to the bank accounts and mobile phones of adult Tanzanians annually. Lastly, the report underscores the importance of making the contracts, that is, the PSAs and MDAs public.



# Section Six

## Findings And Insights From Events And Forums

### 5.1 Introduction

In this section, we summarize issues and recommendations for improving transparency, accountability and governance in the mining, gas and oil sectors, as collected from events, fora, newsfeed, media and speeches of key leaders.

### 5.2 Statement of the Minister for Minerals, Hon. Angela Kairuki

The Minister for Minerals, Hon. Angela Kairuki, on 31st April 2018 called for and directed a special audit based on the TZS 30.5 billion discrepancy, brought up by the Tanzania Extractive Industry Transparency Initiative (TEITI) report for the 2015/16 fiscal year. Further, discrepancy of TZS 6.1.

### 5.3 Small Scale Miners Sectorial Forum

On 22nd January 2019, the President of the United Republic of Tanzania, Hon. John Magufuli, called a sectoral forum to discuss challenges and prospects for small scale mining in Tanzania. The two-day conference was attended by stakeholders from the government, private sector and civil society organizations. The President of the Federation of Miners Association of Tanzania (FEMATA), which includes about 6 million miners, Mr. John Bina, brought in light, the following issues:

- i. Banks shun away from lending to small miners, therefore capital to conduct mining and business activities, remain a critical challenge. The primary reasons why banks are not optimistic about lending (*recalling remarks of the TBA Chairman, Mr. Abdulmajid Nsekela*) include lack of reliable collateral, lack of mining licenses and permits, lack of feasibility study on revenues and expenses of small miners for banks to make informed decisions, lack of strong organizations and associations of small miners to provide group guarantee, low usage of sophisticated technology, and mobility of small miners across mining areas, where banks faces difficulties in tracing them. Even with these challenges, banks disbursed total loans of TZS 357 in 2018 to the mining sector towards supporting mining contractors, equipment purchases, and research and environment conservation.

**Recommendations:** To enhance local content and empower small scale miners, and allocate more mining rights and areas for industrial and construction minerals, which is not capital and technological intensive.

- ii. Lack of formal markets for minerals and indicative prices, price volatility and that most traders and brokers are informal. Recently, price of a gram of gold dropped from TZS 80,000 to TZS 30,000. The restriction of exporting unprocessed minerals lacks guidelines and directives on what percentage of processing and value addition qualifies minerals to be exported

**Recommendations:** FEMATA proposed establishment of the Minerals Bank under the Bank of Tanzania (BoT) for purchasing minerals, coordinating buyers, brokers and dealers' activities and for custodianship of the minerals. Currently the BoT is working with the Mining Commission and the Ministry of Minerals to craft guidelines on custody of gold and gemstones. BoT can also provide a reliable and organized market for refined gold, through cooperation with current buyers.

- i. Unfriendly and nuisance levies, taxes and fees adversely affect small scale miners. These sum up to a total of around 12.3% of the gross value of production revenues, that is, 6% royalty, 5% withholding tax, 1% clearing fee for exports and 0.3% service levy for LGA). Further, these taxes, levies and fees require supporting documents and filings. Numerous LGAs collect more than the required 0.3% service levy by using estimation instead of complying with the Law. For example, in Kaolin which is priced at TZS 40,000 per ton, service levy is charged at TZS 21,000.

**Recommendation:** FEMATA recommends charging a flat rate total per annum which is reasonably affordable.

Other recommendations of FEMATA are as follows

- a. To require issuance of certificates of origin for Tanzanite, to exclusively provide for its origination in Tanzania.
- b. To implement the -Law which requires establishment of organized buying centers, by constructing and operationalizing these centers.

To support small miners by allocating licenses for renewal areas where large scale miners failed to develop the areas and allocating more areas for small miners.

- c. To provide business and managerial skills to small scale miners and geologists, in addition to technical skills.
- d. To subsidize inputs (e.g. equipment costs), provide electrification in many areas, and provide special preference for mining salt and industrial minerals to small miners.
- e. Towards formalization efforts, to issue IDs to small miners and other stakeholders, which provides information about their location, mineral types and TRA control numbers.
- f. State Mining Corporation (STAMICO) and Geological Survey of Tanzania (GST) to conduct geological surveys and intensive research to identify mineral deposits, instead of working at trial and error and gambling, for among small scale miners.

Strides have been made in removing fees and levies on salt mining for small scale miners. The Minister for Minerals declared that the Committee of Experts has already been formed to come up with regulations and guidelines for marketing of. As a wrap up, the President insisted on processing minerals in Tanzania, since the ore/sand/ concentrates conceal mineral contents. The contribution of the mining sector to GDP needs to increase from the current 4.8% to 10%

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# Annexes

## Annex 1: Schedule of Required Amendments in Identified Areas

No	Act/Policy	Section	Proposed Actions
1	Mining Act of 2010	S. 109	The Ministry of Minerals to construct regulations to provide for the process of listing mining companies in the local stock exchanges (e.g. DSE) and the minimum shareholding structure for the public (Tanzanians).
2	Mining Act of 2010	S. 112	The Ministry of Minerals to formulate regulations, to establish and operationalize the Mining Fund, with investment management strategy to invest the funds, earn rate of return and grow the fund.
3	Oil and Gas Revenue Management Act of 2015	S. 8 and S. 12	The Ministry of Minerals to formulate regulations to establish and operationalize the Oil and Gas Fund and the Portfolio Investment Advisory Board, to manage and invest the funds, to earn return and growth.
4	Mining Amendment Act of 2017	S. 10	The Ministry of Minerals and the Parliament to amend the Act, to replace the provision regarding minimum non-dilutable free carried interest in shares of 16% and an additional of up to 50% of the shares of the extractive companies, to be owned by the government, with mutual agreements of consenting parties based on win-win principles, or using MDAs and PSAs, agreed upon between Tanzania and investors.
5	S.100C of the Mining Amendments Act 2017 and S. 9 of the Permanent Sovereignty Act 2017	S. 100C and S. 9	The Ministry of Minerals and the Parliament, to amend the Acts and the Ministry to halt its ban on exporting unprocessed minerals (raw minerals and concentrates), until a rigorous research and feasibility study is conducted regarding processing capacity and logistics for each mineral type and building capacity in the processing and smelting capital, financing, energy supply, technology, skills and availability of adequate raw materials (e.g. copper and gold) to guarantee scale economies for the investors.

<b>6</b>	S.100F of the Mining Amendments Act 2017 and S. 7 of the Permanent Sovereignty Act 2017	S. 100F and S. 7	The Ministry of Minerals to formulate regulations to interpret and implement the Acts, regarding participation of mineral rights holders in the economy, by specifying the exact manner of this participation, which activities and the proportion of returns to be invested in the economy, and minimizing or reducing discretion and agreement with the Commissioner for Minerals in this matter.
<b>7</b>	Permanent Sovereignty Act 2017	S. 10, S. 11 and S. 12	The Ministry of Minerals and the Parliament to amend the Act to give mining companies flexibility regarding retention of earnings from disposal and dealings in the banks and financial institutions, in jurisdictions of their choice, to allow for settlement of disputes in independent and neutral foreign courts and tribunals.
<b>8</b>	Review and Re-Negotiation of Unconcionable Terms Act of 2017	General	1. The Ministry of Minerals and the Parliament to review and amend areas of the Act, to the effect that the process of reviewing and re-negotiation of unconcionable terms is not biased or onerous and that it guarantees win-win outcomes to both parties (not biased towards one party), before rectification and expunging of these terms. Also, involvement of neutral and independent foreign commercial courts (could be established in Africa) to guarantee fairness and equity to both parties (Tanzanian governmnet and investors).
<b>9</b>	Tanzania Extractive Industry Transparency Act of 2015	S. 27	The Ministry of Minerals and the Parliament to amend the Act, to require extractive sector companies to disclose information regarding MDAs, PSAs, contracts or concessions, without any restriction of such disclosure by the TEITI Committee for any reason.
<b>10</b>	Tanzania Extractive Industry Transparency Act of 2015	S. 16	1. To thoroughly enforce the Act which requires the Minister to publish information concessions, contracts, licenses and names of shareholders, for public access.

<b>11</b>	Tanzania Extractive Industry Transparency Act of 2015	S. 23	TEITI to enforce the Act to penalize for failures to submit required documents, which is minimum TZS 10 million for individuals and TZS 150 million for corporates.
<b>12</b>	Income Tax Act 2004	General	1. The Ministry of Finance to amend the Income Tax Act 2004 to mandate TRA to interpret and define additional profit tax, establish methods of calculating tax liability and collect the additional profit tax as per MPSA 2008 and 2013.
<b>13</b>	Petroleum Act of 2015	S. 44 (5)	To amend the Act to the effect that acquisition of shares in petroleum rights by the government (through TPDC) is based on negotiation and gentleman agreements, and through MPSAs.



# Acronyms and Abbreviations

APT	Additional Profit Tax
BoT	Bank of Tanzania
CAG	Controller and Auditor General
CSO	Civil Society Organization
DSE	Dar es Salaam Stock Exchange
EITI	Extractive Industries Transparency Initiative
FEMATA	Federation of Miners Association of Tanzania
GDP	Gross Domestic Product
GSA	Gas Sharing Agreement
GST	Geological Survey of Tanzania
LGA	Local Government Authority
MDA	Minerals Development Agreement
MmBTU	One million British thermal unit
Mmscf	Million standard cubic feet
Mmscfpd	Million standard cubic feet per day
MPSA	Model Production Sharing Agreement
NRGI	Natural Resource Governance Institute

NSSF	National Social Security Fund
OGRM	Oil and Gas Revenue Management
PPF	Public Parastatal Pension
PSA	Production Sharing Agreement
PWYP	Publish What You Pay
STAMICO	State Mining Corporation
TANESCO	Tanzania Electric Supply Company
TBA	Tanzania Bankers Association
TEITA	Extractive Industry Transparency Act
TEITI	Extractive Industry Transparency Initiative
TPDC	Tanzania Petroleum Development Corporation
TRA	Tanzania Revenue Authority
TZS	Tanzanian Shillings
USD	United States Dollar
VAT	Value Added Tax