HakiRasilimali

Transparency & Accountability for the Extractive Industry

THE IMPLICATION OF EXTRACTIVE SECTOR FISCAL REGIME TO THE ECONOMY:

A CASE OF THE MINING SUB-SECTOR IN TANZANIA

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To the end, HakiRasilimali envisages a transparent and accountable extractive sector for equitable and sustainable national development. The platform works to enhance and influence related policy and practice processes through learning, advocacy and Collaboration that leads to equitable governance of the country's extractive sector.

How to quote

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ACRONYMS

AMT	Alternative Minimum Tax
ASM	Artisanal and Small-Scale Mining
BRELA	Business Registrations and Licensing Agency
CAG	Controller and Auditor General
CIT	Corporate Income Tax
CSOs	Civil Society Organizations
DL	Dealer Licence
DRD	Domestic Revenue Department
EAC	East African Community
EES	Employment Earning Survey
EITI	Extractive Industries Transparency Initiative
IMF	International Monetary Fund
IPSAS	International Public Sector Accounting Standards
ISAs	International Standards on Auditing
Kg	Kilogram
Km	Kilometers
LAAC	Local Authority Accounts Committee LGAs Local Government Authorities
LTD	Large Taxpayer Department
MDA	Mine Development Agreement
ML	Mining License
MoM	Ministry of Minerals
NSSF	National Social Security Fund
PAC	Public Accounts Committee
PAYE	Pay as You Earn
PWYP	Publish What You Pay
SDL	Skills and Development Levy
SML	Special Mining Licence
STAMICO	State Mining Corporation
TEITI	Tanzania Extractive Industries Transparency Initiative
TRA	Tanzania Revenue Authority TSHS. Tanzanian Shilling
USD	United States Dollar
VAT	Value Added Tax
VAT	Value Added Tax
WCF	Workers Compensation Fund
WTO	World Trade Organisation

PREFACE

The mining fiscal regime in Tanzania is characterized by the fact that the Government is the owner of the resource with sovereign authority to impose taxes, fees and rents on all persons and companies operating in its jurisdiction. For that matter, the Government of Tanzania (GoT) imposes a combination of resource-based levies such as royalties on won minerals; rental fees on exploration or mining ground and application and registration fees for different categories of mineral rights licenses; nominal taxes, that is to say, land rent, land use fee, application fees, preparation fee, share of dividends (current 16%); corporate income tax, stamp duties, export duties, Value Added Tax, withholding tax, excise duty, fuel levy, import duty, and service levies. These taxes and levies charged at different levels of the mining projects (from prospecting to production stages), among others.

The regime has made a significant contribution to the economic growth and development, and thus earmarked by the Tanzania Development Vision, 2025 as catalyst to stimulate and facilitate realisation of Tanzania Industrial Economy by 2025. The contribution of the sector has so far been mainly through Foreign Direct Investment (FDI) which have increased by 5% to USD. 1.1 billion in 2019 compared to USD. 864 million in 2018; GDP contribution to 5.2% in 2019; mineral exports earnings to more than 40% in 2020 from 1% as recorded in 1997; government revenue contribution from Tzs.168 billion in 2014/2015 to Tzs. 528.24 billion in 2019/2020; country's GDP from 1% in 1997 to 5.2% in 2020. The mining sector has as well contributed through employment with 7,355 people directly employed in the formal mining sector and more than 3,000 in the informal sector, while the ASM sub-sector reported to engage more than 600,000 people. The contribution of the sector is also witnessed through performance on local content as a means to linkages for economic growth, with the mining sector reported to have a value of TZS. 2.4 trillion through locally and foreign procured goods and services etc.

The frequent and unpredictable changing of rules and regulations; complex mining fiscal regime and related mining laws; the multitude of regulators charging exorbitant fees; limited disclosure, the stringent local content and CSR regulations, etc. altogether have made the regime to be complex and less attractive to not only large-scale mineral explorers but also to large scale investors in the country.

The Report puts forth the following recommendations among others: the need to adhere to the principles of disclosure; Strengthening of the Tax management systems; Legal stability and enforcement, the enactment of the Mineral Revenue Management legislation is also very critical to institutionalize the creation of the Mining Fund intended for intergenerational saving; Fast-trucking the implementation of the Blue-Print on regulatory for improving business environment; Continuous dialogue and consultation to enhance local participation for a sustainable mining sector in Tanzania.

1.0 PROJECT INFORMATION

Introduction

In Sub-Saharan Africa, tax revenues account for less than a fifth of GDP (compared to a third of GDP in OECD countries) and the extractive sector represents a unique opportunity to enhance domestic resource mobilization. Globally, taxation is now seen as the most sustainable source of revenue for governments, with the potential to contribute to investments in basic services and to enhance the social contract between citizens and their government. The United Nations handbook on Extractives Industries Taxation emphasizes that resource rich countries need to balance key issues like attracting foreign or domestic direct investment in the extractives industries, while ensuring the government receives an appropriate share of revenues in order to enhance the contribution of taxes to sustainable and equitable development. The IMF recently noted that Sub-Saharan African countries could increase tax revenue by an average of 5% of GDP if they reform their tax policies, including by removing harmful tax incentives and exemptions, renegotiating tax treaties that undermine the tax base related to the extractives industry, strengthening tax systems and regional cooperation to curb tax leakages and illicit financial flows that occur as a result of tax avoidance and evasion.

Also, challenges of managing the risk of a “race to the bottom” via low tax concessions that could have a long-term impact on revenues; as well as the need to manage expectations about how rapidly the development of the sector will translate into tangible benefits for citizens is critical.

Lastly, to address the above, the role of civil society organisations is critical in ensuring oversight and optimal utilization of these revenues generated by the extraction of oil, gas and minerals.

Background

Tanzania is endowed with vast natural resources, predominantly minerals, which currently, it contributes to contribute 5.2% to the Gross Domestic Product (GDP). Efforts to streamline domestic laws have been observed in order to generate more revenue from the extractive sector. The Mining Act 2010, license holders and contractors in the mining sector are liable to pay taxes including corporate tax (30%), capital gain tax (30%), and withholding tax (10%), among others. Profits resulting from transfer or disposal of rights are also subject to taxes, which are collected by the Tanzania Revenue Authority. In 2017, the government of Tanzania embarked on reviewing a number of laws, including the Natural Wealth and Resources (Permanent Sovereignty) Bill. A number of the changes provided for in this bill have implications for how Tanzania generates revenues from the sector, including abolishing the export of raw minerals for beneficiation outside the country; abolishing the retention of mineral earnings in banks outside the country; prohibiting proceedings in respect of national wealth and resources in foreign courts or tribunals; and the review of new and existing agreements by the National Assembly, subsequent to which the government may be ordered to renegotiate terms deemed unconscionable . Yet, the contribution of the extractive sector to the national economy and community development is still not meeting citizens’ expectations. In addition to this, shrinking civic space has hindered public debate even though the Tanzania Extractive Industries Transparency and Accountability Act 2015 demands that all new concessions, contracts and licenses are made available to the public. This can only be done if the public is provided with the space and resources to debate and scrutinize government policy and provide alternative views.

Therefore, in order to understand the Mineral fiscal regimes and its implication in the Tanzania economy, background description of the mining fiscal regime is inevitable. Since early 1980’s, Tanzania has been undergoing structural economic reforms (from international, regional and National initiatives) all aiming at promoting the country socio-economic development. Thus, triggering for legal and policy reforms in Tanzania such as the development of the National Mineral Policy of 1997, enactment of the Mining Act of 1998 and adjustments in the financial laws that regulate the Mining sector. Further, more reforms were also realized in early 2000s resulting to the enactment of the Mining Act of 2010 and thereafter the enactment of the 2017 Natural Resources Laws5. The main objective of the reforms was centered on creating a better conducive environment to encourage private investment in the sector including the foreign direct investments (FDIs). Furthermore, the role of the government has also been shifted from being sole owner/direct operator to regulator of private investment to having more state control in the natural resource management. With this, the mining sector has been targeted to grow to 10 percent of GDP from 1.5%. A strong, vibrant, well-organized private sector is thus intended to enable this process. In addition, the role of the CSOs will be critical in ensuring oversight and optimal utilization of these revenues generated from the extraction of oil, gas and minerals.

Despite the increase of the Foreign Direct Investment (FDI) in between 1998 to 2008,in 2009 the average annual growth rate of the mineral sector was 13.74% and value of mineral exports increased from US$ 26.66 million in 1997 (less than 1% of total exports) to US$ 1,003.21 million in 2007 (52% of total exports). The situation led to public outcry on the imperative need to increase its contribution through enhancing integration of the mineral sector with other sectors of the economy and having a fiscal regime which maximizes benefits to the national economy.

Research objectives

To examine the effectiveness of the mining fiscal regime and its implication for the development of the Tanzania Economy as the country move towards middle income status.

Methodology

Owing to the nature of the study, a strong and viable methodological approach was applied, whereby both primary and secondary sourced including policy documents, legal instruments, directives, reports (such as TEITI reports), journal articles and other publications related to mining fiscal regime and revenue management in Tanzania were used to generate data. The study team approached the assignment through the following methodological steps: (i) initial consultations and literature review; (ii) data entry, processing and analysis; (iii) drafting the report; (iv) submitting draft report; and (v) submitting the final report.

The Consultants reviewed literature from the following institutions:

From the extractive companies, the Tanzania Chamber of Minerals and Energy (TCME), an organ representing the interests of extractive companies, and one mining;
The Mining Commission, Tanzania Revenue Authority (TRA), Ministry of Minerals, Ministry of Finance, Tanzania Bureau of Statistics, STAMICO and Tanzania Investment Centre (TIC).

National Bureau of Statistics (NBS), Bank of Tanzania (BOT)

The Ministry of Minerals as the lead policy and administrative institution; with various line agencies that report to the ministry:

The Attorney General's Office, which is also involved in negotiation and devising contracts. This may be significant should it involve signing a resource development agreement.

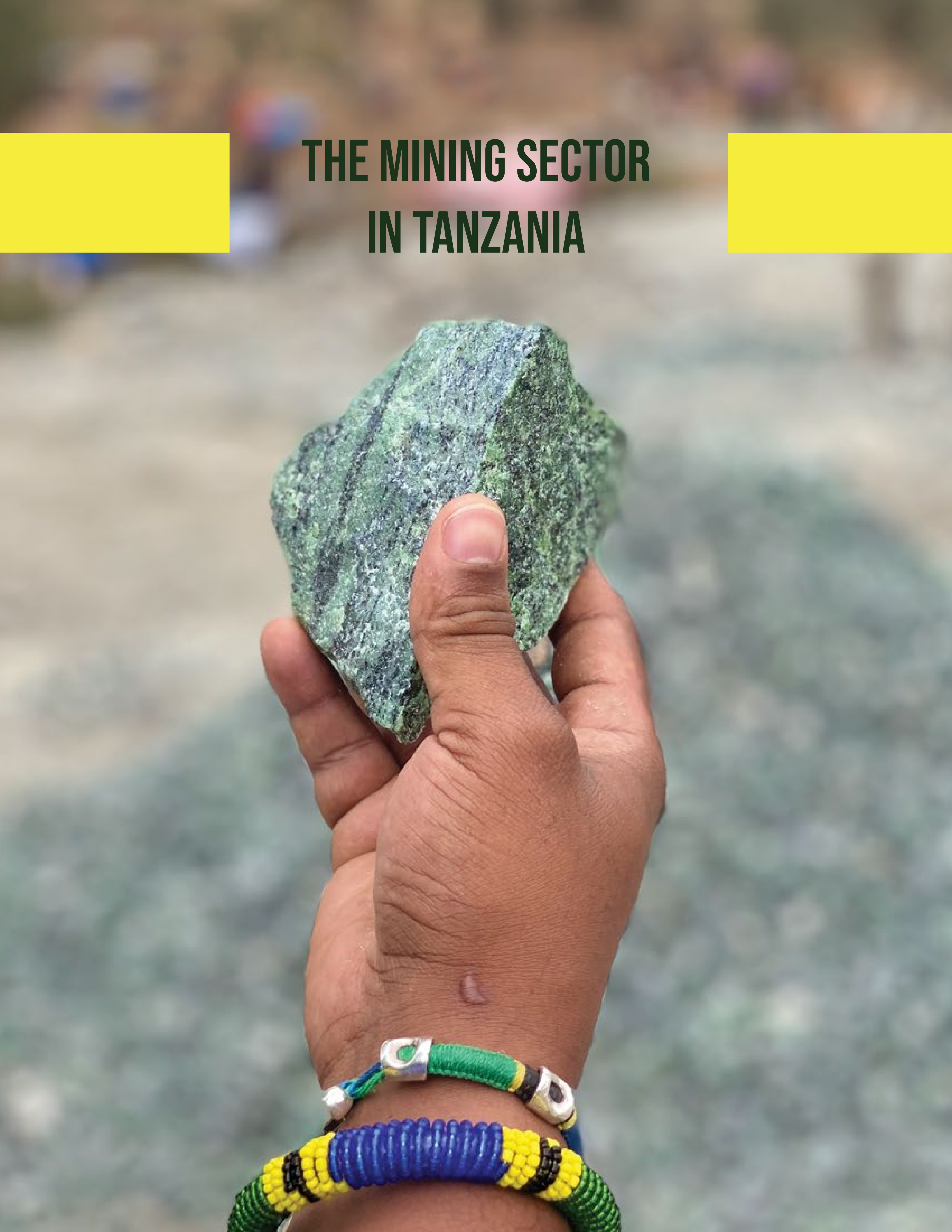
Local Authorities, which collect a local service levy from extractives companies and manage local environmental issues.

The Ministry of Labour and Employment, leads on the formulation of labour, labour market, social security and employment policies, while the Ministry of Lands, Housing and Human Settlements Development has to approve land allocations for extractives use.

The Ministry of Industry and Trade oversees all trade- and investment-related projects, and is responsible for administering various incentives:

International Organisations such as the World Bank, International Monetary Fund.

THE MINING SECTOR IN TANZANIA



2.0 THE MINING SECTOR IN TANZANIA

Overview of the mining sector in Tanzania

Mining activities in Tanzania, largely characterized by Large Scale and Small Mining, have existed way before independence as the country is predominantly endowed heavily with solid minerals including metallic, industrial and energy minerals i.e., gold, copper, diamonds, Tanzanite, copper, zinc, coal, uranium, colored stones etc. The economic importance of the mining sector was thus realized during the post-independence and the government opened doors to foreign investment and ownership. Currently, there is an estimate of 8.5 % production growth in 2017 at a projected value of almost US$ 960 million, and its contribution to the Gross Domestic Product (GDP) as of 2021 stood at an average of 5.2% (Ministry of Minerals Budget Speech, May 2021). Thus, making Tanzania the 4th largest gold producer in Africa after South Africa, Ghana and Mali. But that in that time there were little operations and revenues realized.

Tanzania redefined its economic policies in the 1990's under the auspices of the World Bank. The country abandoned its socialist policies and replaced them with a neoliberal, market-oriented economy. The major objective of these reforms was to attract large scale foreign direct investment into different sectors of the economy including the mining sector. In implementing this new approach, the Mining Policy was adopted in 1997 and later the Mining Act 1998 was enacted. There was significant success in implementation of these reforms as the country was able to attract large scale investments in gold mining. As a result, gold production expanded rapidly and positioned it to be the third largest producer of gold in Africa, and placed it in the higher ranks of non-oil African economies in terms of foreign direct investment (FDI) receipts. During this period the total contribution of the mining sector to the Gross Domestic Product (GDP) increased between 1.7 percent and 3.8 percent.

However, despite such reforms, the contribution of the mining sector over the years to the economy against expectations has remained very low. Currently, the contribution of the sector to the Gross Domestic Product (GDP) stands at the average of 5.2% (Ministry of Minerals budget Speech, May 2021. Such a situation has continuously drawn stakeholders' interests and public outcry on the imperative need to increase the sectors contribution to the economy and also enhancing integration of the mineral sector with other sectors of the economy and having a fiscal regime which maximizes benefits to the national economy.

2.1 The policy and legal framework governing the mining sector in Tanzania

Tanzania, overtime has undergone through economic, socio-economic and political series of change shaping the current status of its mining sector. The assessment of the country's mining policy cannot be discussed without highlighting the Tanzanian history. It is argued that the country mining sector has had five phases including; Pre-Colonial Era ; the Colonial Era (1840-1961) ; The Ujamaa Era (1961-1979 whereby the country inherited most of the colonial laws and policies but also making some radical changes in terms of running the new independent country's economy thus abandoning the traditional mixed state market model thus for instance effecting new economic orientation and exert control over minerals ; Pro-Foreign Direct Investment Era (1997-to date) whereby Tanzania started to review its policy and legal framework regulating the mining sector, giving emphasis to the private sector to drive the mining sector.

2.1.1 The Mining legislation and policy framework from 1980s to 2015

Since early 1980s, there was liberalization and linear activities for Tanzania to reform its mining sector with the aiming of having state control over natural resources for the increase benefits to be attained by its people. These reforms have been mainly backed up with political aspirations and socio-economic factors i.e., to alleviate poverty and maximizing government revenue generation and collection in the country (EITI 2018). Failure to realize attraction for the large and modern investment in 1960s-1980s, in 1990-2015, the GoT assumed a mineral sector-restructuring programme, with a view to encourage and promote the private sector-led development at the same time encouraging small-scale and artisanal mining activities.

The Africa Strategy for Mining - Technical Paper of 1992 developed by the World Bank (WB) and the International Monetary Fund (IMF) argued for need of the African countries to learn from the few African countries i.e., Botswana, Gabon, Ghana, Guinea and Niger success stories whereby the mining development had been successful due to the formation of the fruitful joint ventures between the private sector and government.

The strategy triggered for legal and policy reforms in Tanzania including the formulation of the national mineral policy of 1997, enactment of the Mining Act of 1998 and adjustment in the financial laws that regulate the Mining sector. The main objective was creating conducive environment to encourage private investment in the sector including the foreign direct investments. Furthermore, the role of the government shifted from being sole owner/direct operator to regulator of private investment. This means the role of the government was to formulate Policies, Laws, regulations, guidelines and institutional setup to govern the mining investments and operations in Tanzania (total withdrawal of the Tanzanian government in holding stakes in the mining business). The mining sector is targeted to grow to 10 percent of GDP from 1.5% by 2025. A strong, vibrant, well-organized private sector was intended to enable this process.

Nevertheless, with the increase in awareness of the economic potential for the mining sector and privatizing the mining sector, Tanzania during this time made a resolution to dismantle the state-owned control monopoly system allowing Tanzanians to own mining operations in Tanzania (this also led to the establishment of STAMICO) (Phillips et al. (2001). Hence experiencing a mineral prosperous and that is still happening (Ibid).A National Mining Policy of 1997 (as amended in 2009) was passed, the Mining Act 1998 (as amended in 2010) and the Tanzania investment Act , 1997 and its amendments in 2017 were enacted (Magai et al, 2011), attempting to enhance sectoral integration, to support and promote small scale mining (World Bank 2013), maximizing capture of mining revenues, promoting public participation, support value addition and to promote transparency and access to rightful information from the sector (TEITA Act 2015) (TEITA regulations of 2019).

2.1.2 The Mining Policy and Mining Act 2010 as amended via the Written Laws (Miscellaneous Amendments) Act, 2017

The vision of Mineral Policy of 2009 was to have an effective mineral sector, contributing significantly to the acceleration of socio-economic development through sustainable development and utilization of mineral resources in Tanzania by 2025. The focus was: INTEGRATING MINING WITH OTHER SECTORS OF THE ECONOMY. The policy was complemented by other initiatives aimed at improving the play field and

[1] This committee probed on the relations between the small miners and AFGEM and recommended on issuing of licences to ASM instead of large-scale investors. The recommendation led to Mirerani Designated Area in 2007.
[2] Commissioned to Review the Mining Policy of 1997 on improving the sector's oversight system. Further, it advised the government to participate strategically in the mining activities through STAMICO and NDC as a means of empowering Tanzanians to take part in large scale mining operations. It further recommended on mining revenue distribution and review of the mining taxation system, specifically, to remove unnecessary tax relieves.
[3] It was commissioned to review Mining Contracts and Taxation System in the Mining Sector on some of the provisions in their MDAs especially those related to taxation; and amendment of the taxation system.

ensure a win-win situation such as: General Mboma Committee of 2002;[1] Dr. Kipokola Committee of 2004;[2] Lau Masha Committee of 2008;[3] and Judge Mark Bomani Committee of 2009 which together with the Mining Policy of 2009 led to the enactment of the Mining Act 2010.[4]

The Mining Act of 2010 then led to the establishment of the Mining Commission replacing the roles of the Mining Advisory Board (Board) and TMAA. Apart from having advisory functions, the Commission Supervises and regulates the proper and effective carrying out of the Provisions of the Mining Act; Ensures orderly exploration and exploitation of mineral resources and the optimal utilization of mineral resources at all mining operations in accordance with the mining policies and strategy; Resolves disputes arising out of mining operations or activities; Carry-out inspections or investigations on health and safety issues related to mining operations or activities; Monitors and audits environment management, environmental budget and expenditure for progressive rehabilitation and mine closure among others.

Further, section. 10 (1), 35(3), 39(1 and 5) granted power to the Minister responsible to enter into Mineral Development Agreements (MDAs) with private foreign companies for development of mineral prosperous on behalf of the united republic. Under this act there is flexibility of the minister responsible during negotiations to enter into a specific private agreement with an investor, without any other legal restriction hence monitoring of the contracts and agreements become more difficult. Generally, the process as provided by 1998 act undermined transparency and accountability in the mining sector.

2.1.3 The Tanzania Extractive Industries (Transparency and Accountability) Act, 2015

The law is regulating the entire extractive sector: oil and gas and minerals. It came into force on September 2015. It was passed under the certificate of urgency during the 2015/2016 Budget Parliament. The law came to enhance transparency and accountability in the extractive industry. The law establishes several the following key organs: the Extractive Industries (Transparency and Accountability) Committee, the Nomination Committee, Secretariat, and an independent administrator.

2.1.4 The Natural Wealth and Resources legislations of 2017.

In 2017 new laws governing natural resources in Tanzania were asserted giving significant changes to the legal and institutional framework and increasing Government control over the mining sector (NRGI, 2017; HakiRasilimali 2017).[5] Moving in the spirit of resource nationalism and sovereignty, the asserting of the 2017 laws came in place in order to provide more state control over mining operations in Tanzania. These

[4] Commissioned in 2008 to advise the government on oversight of the mining sector, the Committee among others reviewed the tax system in the mining sector and commended that the system has played a big role in attracting and increased mining trade. However, system has remained firm, predictable and uncharged for a period of 10 year since the Mining Act was enacted and does not equally benefit the government and the investor because most of mining companies have not been paying the right tariffs under different laws due to excessive incentives and that most of laws are characterised with a number of weaknesses.

[5] The Written Laws (Miscellaneous Amendments) Act 2017 ; the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017. Mineral processing and its associated issues b. Mineral concentrates and the possible minerals to be found after mineral processing c. Introducing local content requirement which was not covered under the Mining Act before d. Introducing the integrity pledge to be taken by mineral right holders, that they will refrain from corrupt practices as well as pledge to support the country's campaign against corruption e. Introducing the Executive Secretary to the Commission instead of the Secretary to the Board which has been turned into a commission.

amendments follow the investigative report from the Presidential Committee, on the export of metallic mineral concentrates. The Government then entitled to hold a minimum of 16 per cent free carried interest and possible acquisition of up to 50 per cent of the shares in a mining company (HakiRasilimali, 2017).

According to NRGI, the 2017 reforms ranked Tanzania to be the most taxed mining sector in the world, with an average rate of more than 70% followed by Guinea (61%), South Africa (59%), Ghana (58%) and Chile (48%), Peru and Western Australia (45%), Zambia (44%), And Kyrgyzstan (39%).[6] Business entities in the sector have a critical role in the economies of the country as some of companies have act legitimately while others have questionable issues such as tax evasion, money laundering, bribery and corruption, insider dealings, tax fraud, terrorism funding, and the like. Corporations provide a way for criminals to disguise their activities and channel illicit proceeds through the financial systems (MM Attorneys, 2017).[7]

2.1.5 Natural Wealth and Resources (Permanent Sovereignty) Act, 2017

The law is designated to the President of Tanzania on behalf of its people, and it provides for Parliamentary approval for any future investor-state agreements, which must consider fully the interests of the country's citizens, restricting investors from exporting raw minerals, repatriating funds and accessing international dispute resolution mechanism is mainly vesting the property rights over natural resources to the people of the United Republic of Tanzania.[8] It also bestowing on the day to day state control / management of natural resources.[9]

2.1.6 The Natural Wealth and Contracts (Review and Re-negotiation of Unconscionable Terms) Act of 2017

The Act strongly provides an opportunity for the Government to review and renegotiate mining contracts that are entered with the extractive companies prior or before the enactment of the Act.[10] The law also institutes the grounds upon which the government may deem certain agreements, MDAs, for example, unconscionable. It provides for resource beneficiation and value addition by allowing all mineral resources to be processed in the country.[11] Mining companies operating in Tanzania to list their shares in the Dar es Salaam Stock of Exchange and also providing an opportunity for the Parliament of the United Republic of Tanzania to review any arrangements or agreements made by the government relating to the country's Natural Wealth and Resources.

[6] Magufuli Seeks the Right Balance for Tanzania's Mining Fiscal Regime, NRGI (January 2019)
[7] Report-on-Disclosure-of-Beneficial-Ownership-of-the-Extractive-Companies-in-Tanzania.pdf
[8] Natural Wealth and Resources (Permanent Sovereignty) Act, 2017, section 4 (1).
[9] Ibid section 4 (2)
[10] The Natural Resources Act and the Natural Wealth and Resources (Permanent Sovereignty) Act 2007, section 4.
[11] Section 9(1) of the Mining (Mineral beneficiation) regulations, 2018

3.0 THE MINING SECTOR FISCAL REGIME IN TANZANIA

Introduction.

A fiscal regime refers to a set of instruments or tools that determine how the revenues from any business are shared between the state and private investors. The Government needs money to facilitate social-economic development of the country. The state (Government) collects its share of revenue from a business by imposing taxes, fees, duties, rents, charges, bonuses and royalties. The revenue share can also be obtained by way of receiving a share of dividends in situations where the state has a share in the ownership of the respective company. For a sustainable fiscal regime, a balance has to be struck between the Government's interests and those of the investors. Whilst the Government broad interests will include collection of revenue from the business, the investors' interest will be that of ensuring that the company is left with sufficient funds for issuing dividends to its shareholders and also reinvesting in the company for its future expansion and sustainability. A good fiscal regime will ensure that interests of both parties are reasonably fulfilled. In designing a mining fiscal regime, care must be taken to ensure proper measures are adopted for preventing tax avoidance. Other Government interests like skills development for its people, technology transfer, local beneficiation of won minerals, backward and forward linkages may not necessarily be part of the mining fiscal regime.

3.1. Characteristics of the Mining sector Fiscal regime in Tanzania

The mining fiscal regime in Tanzania encompasses several laws and regulations which have evolved over the years since the Tanganyika Mining Ordinance was first enacted in 1920. This was followed by the Mining Ordinance of 1929 (which revoked the Mining Ordinance of 1920); Mining Ordinance Amendment Bill of 1969 (which amended the Mining Ordinance of 1929), Mining Act 1979 which revoked the one of 1929; Mining Act 1998 which revoked the one of 1979; Mining Act 2010 which revoked the one of 1998 and finally the Miscellaneous Amendment Act No.7 of 2017, which made a complete overhaul of the Mining Act CAP 123 (Mining Act 2010).

To complement the Mining Act CAP 123, the mining fiscal regime in Tanzania encompasses other laws including the Income Tax Act, 2004; the Local Governments Finance Act, 1982; the VAT Act CAP 148 and the Customs Act. It also encompasses other fees and charges levied by different Government agencies regulating the public conduct in areas of environment (NEMC & TFS), occupational safety (OSHA & the Fire Brigade), water management (Water Basin Authorities working under the Vice President's office), chemicals, foods and industrial products quality (GCLA, TMDA & TBS), import and export (TASAC), et cetera.

In Tanzania the mining fiscal regime is characterized by the fact that the Government is the owner of the resource with sovereign authority to impose taxes, fees and rents on all persons and companies operating in its jurisdiction. For that matter, the Government of Tanzania imposes a combination of resource-based levies (such as royalties on won minerals; rental fees on exploration or mining ground and application and registration fees for different categories of mineral rights licenses. Much as the law in Tanzania requires any user of land to be subjected to various fees: Section 33 of the Land Act imposes a nominal tax (land rent, land use fee etc.) on the holder of prospecting or mining license that is based on a set amount per unit area unless one enjoys the exemptions under section 33A, which is also subject to Public Finance Act; however, the practice on the ground has been different in the sense that holders of mineral rights (PL, PML, ML & SML) would only pay for application fees, preparation fees and annual rent on the lease. The fees are paid to the Ministry of Minerals (not Ministry of Lands and Settlements which administers the Land Act). There are also non-resource-based income sources which generate revenue for the Government; for example, equity participation whereby, the Government will earn revenue when dividends are issued to shareholders. Other non-resource-based sources of revenue for the Government are different types of taxes such as corporate income tax, stamp duties, export duties, Value Added Tax, withholding tax, excise duty, fuel levy, import duty, and service levies.

3.1.1 Key features of the Mining sector Fiscal regime in Tanzania

Table 1: Sources of Revenue that are resource based

#	FEE NAME	FEE DESCRIPTION AND APPLICATION/RATES
1.	Application Fees	Charged on all license applications (new and renewals). Charged on all applications for transfer of mineral rights and shares. Different rates are applied for different license types, ranging from as low as Tshs. 50,000/= for a PML to as high as T11,300,000/= (USD 5,000) for SML.
2.	Preparation Fees	Charged on all applications which have been approved for issue. Ranging from TSHS.50, 000/= (for PML) and USD300.00 to USD 1, 000.00 for PL, ML and SML.
3.	Annual Rents	Charged on all mineral rights in their different types: Prospecting License, Primary Mining License, Mining License and Special Mining License. Different rates are applied for different license types. Charged per Hectare (for PML) and per Square Kilometer (for all other licenses). The rates range from Tshs.80, 000/= per Hectare for PML and USD100.00 (PL); USD500.00 (ML) and USD 1,000.00 (SML).
4.	Royalty	Charged on all won minerals. Different rates are applied depending on the type of mineral. The rates range between 1% and 6% of gross value of the mineral.
5.	Inspection Fee	Charged on all won minerals before export. The rate is 1% on Gross Value.

Table 2: Sources of Revenue that are Non-Resource Based

#	FEE NAME	FEE DESCRIPTION AND APPLICATION/RATES
1.	Corporate Income Tax	30% of net profit
2.	Alternative Minimum Tax	0.5% of gross revenue
3.	Withholding Tax	Withheld from service providers. Different rates are applied depending on type of service rendered and residential status of the service provider. Range between 5% and 15%.
4.	Skills Development Levy	4% of gross payroll cost
5.	Import Duty	For SML holders charged at 0% until 1st anniversary of commercial production. Thereafter it's capped at 5%. For other license types normal rates are applicable.
6.	Excise Duty	Normal rates apply, otherwise, companies holding Special Mining Licenses (SML) for Gold are exempted all excise duty levied on Fuel used solely in the production of Gold.
7.	Value Added Tax (VAT)	Zero rated on exports. Companies qualify for VAT input credit emanating from purchases made. The net VAT Credit is refunded to the company. Some purchases do not qualify – for example purchase of Alcohol, food and light vehicle spare parts. VAT on heavy equipment can be deferred on application.
8.	Fuel Levy	Capped at USD 200,000.00 per annum for holders of Special Mining Licenses for Gold. Normal rates apply for other licenses.
9.	Capital Gain Tax	Charged on asset realization. The rates are 10% for residents and 20% for non-residents.
10.	Stamp Duty	Charged at 1% on signed instruments
11.	Railway Development Levy	Charged at 1.5% of customs value of imports.
12.	Customs Processing Fee	The rate is 0.6% on FOB value of imported goods
13.	Service Levy	The law allows local Governments to create by-laws to levy between 0.1 and 0.3% of the gross company's turnover.

Table 3: Sources of Revenue other Non-Resource Based

#	FEE NAME	FEE DESCRIPTION AND APPLICATION/RATES
1.	WCF Contributions	The rate is 1% of gross monthly payroll
2.	Social Security Contributions	The rate is 10% of gross monthly salary
3.	OSHA Fees	Various rates apply depending on the service offered
4.	TFS Fees	Various rates apply depending on size of the area disturbed
5.	TBS Charges	Different rates apply depending on the product tested
6.	GCLA Fees	Different rates apply depending on the type and volume of Chemical imported
7.	Water Basin Authority Fees	Different rates apply depending on the Water Basin Authority and the size of the water catchment area.
8.	NEMC Fees	Various rates apply depending on the service offered or type of task regulated
9.	TASAC Fees	Different rates apply depending on the volume and type of goods imported
10.	REA Fund	3% of own electricity generation cost; OR 3% of amount paid to buy electricity from TANESCO or any other private electricity producer
11.	Dividends	The Government stand to earn a dividend when a company it has shares in declares a dividend to its shareholders after making a profit. For all Mining Licenses and Special Mining Licenses the Government has an automatic, at least, 16% Free Carried, undiluted shareholding in the mining company.

3.2. The implication of the Mining sector fiscal regime to the economy in Tanzania

The mining sector in Tanzania plays a significate contribution to the national economic growth and development. According to the Tanzania Development Vision, 2025, the mining sector has been earmarked as catalyst an important segment to stimulate and facilitate the realization of the Tanzania Industrial economy by year reaching 2025.Mining activities generates three basic outputs that much-needed for national economic development which are revenues, raw materials and local procurement of goods and services that are essential for economic diversification. The growth of Tanzania economy has greatly been realized through contribution from/of all sectors; however, records show that, mining sector has taken precedence over other sectors to a large extent.[12]

Key indicators of the sector's contribution to the economy among others include, the contribution made through the Mining Foreign Direct Investments (FDIs), mineral exports, Government revenue, local investments especially on locally procured goods and services, Corporate Social Responsibilities etc. Mineral exports, Capital inflows (FDI) from the development stages of projects and revenues from operations have had a positive impact in the country's balance of payments. Furthermore, such a contribution has also been also be reflected on; Macroeconomic performance such as GDP and share on Per Capita Income.

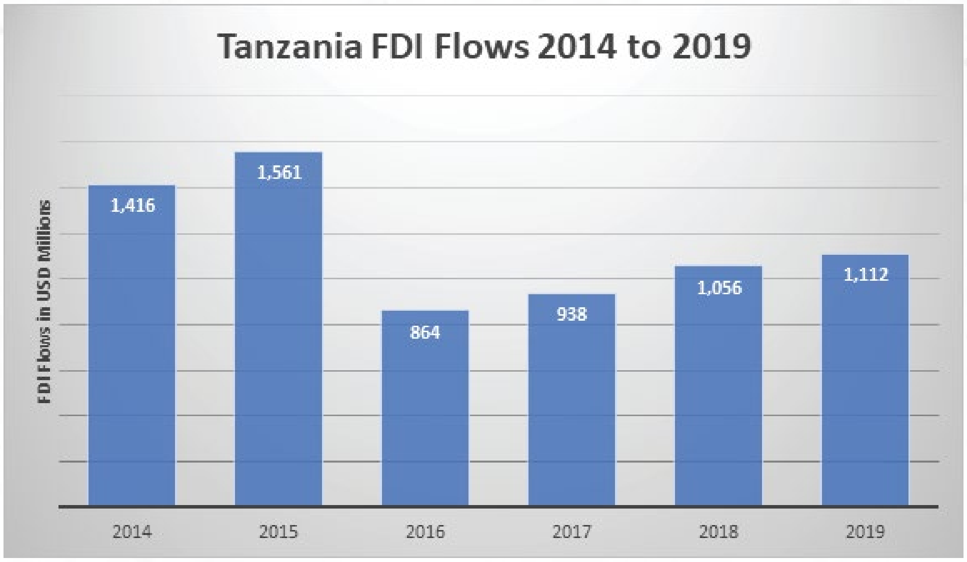
3.2.1. Performance of Foreign Direct Investment[13] flows to Mining Sector

Manamba (2016) asserted that "it is widely accepted that FDI has a significant role to play in national development strategies and is viewed as the engine with which to exploit and sustain the competitiveness of resources and capabilities mainly through economic liberalization doctrine". Recently, capital flows[14] have greatly been aided by the waves of globalization and liberalization – making it easier for countries to integrate its domestic economy with the global economy. The World Bank report of 2007 shows that, FDI inflows (external source of inflows) have dominated over Portfolio on Direct Investment (PDI) in developing countries like Tanzania and continues to be encouraged (Rutaihwa & Simwela, 2012).

The potentials of FDIs from the mining sector in Tanzania have been directly realized from different slants not limited to; local participation, productive capacity, research and development, economic diversification, employment opportunities created and other linked businesses. Tanzania export structure has been greatly rehabilitated by the mining sector.[15]
According to UNICTAD 2020, inflows to the United Republic of Tanzania reported to have increased by 5 per cent to $1.1 billion in 2019.[16]

[12] According to the Ministry of Minerals, currently the Mining sector contribution to GDP stands at 5.2%.
[13] FDI is simply defined as investment reflecting a lasting interest and control by a foreign direct investor, resident in one economy, in an enterprise resident in another economy – foreign affiliate (UNCTAD, 2019). FDI inflow comprise capital provided by a foreign direct investor to a foreign affiliate, or capital received by a foreign direct investor from a foreign affiliate. FDI outflows represent the same flows from the perspective of other economy. Furthermore, FDI flows are basically presented on a NET basis that is as Credit less Debits.
[14] Includes, both Foreign Direct Investment (FDI) and Portfolio Direct Investment (PDI)
[15] Magai & Marquez-Velazquez (2011) Taxation in the Tanzanian gold sector: Overview of impacts and possible Solutions, at page 2 cites UNCTAD, 2008 in their report titled: Trade and Development Report. United Nations, New York and Geneva. Upton, M, 2009. The Golden Building Block: Gold Mining and the Transformation of Developing Economies. With an Economic Life-cycle Assessment of Tanzanian Gold Production. ICMM Resource Endowment Initiative. World Gold Council, London.
[16] World Investment Report 2020.

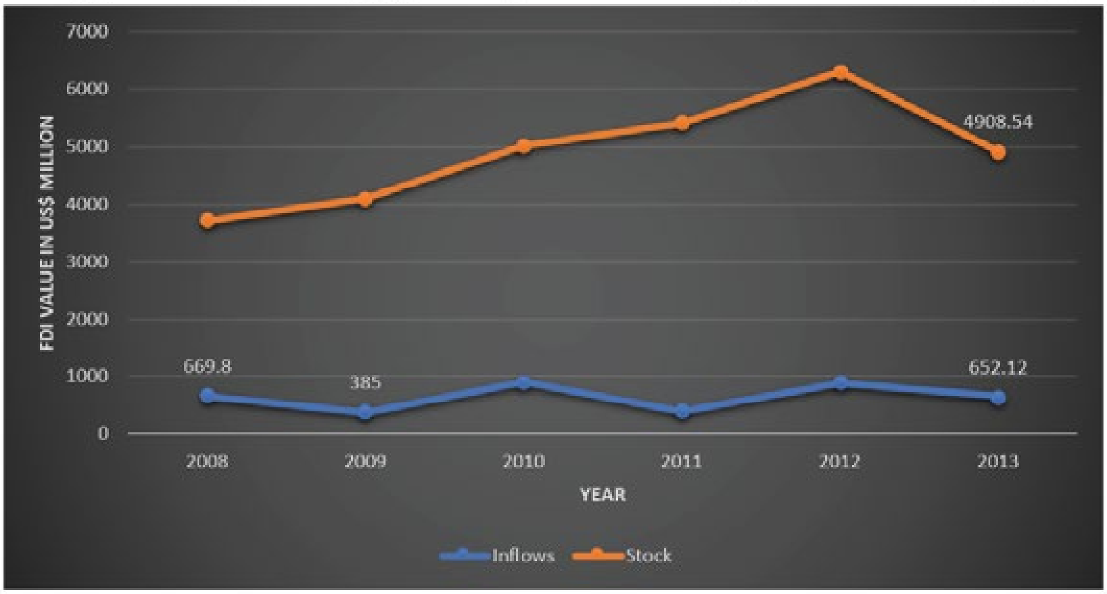
Table 3: Sources of Revenue other Non-Resource Based



Source: UNICTAD 2020

According to UNIDO (2014), from the early 1970s Tanzania did not manage to attract significant FDI to its economy, however, by the end of 1990s, mining has been and remains to be among the main sources of FDI inflows (Rutaihwa & Simwela, 2012). While realizing the importance of FDI inflows to the country's development and economic growth, in 1997 Tanzania started to attract new investments from all over the world by establishing of the Tanzania Investment Centre (TIC)[17] which among other things, is responsible for coordinating, encouraging, promoting and facilitating investments.

Figure 2: Inflows and Stock of FDI to Mining Sector in Tanzania over 2008 – 2013[18]



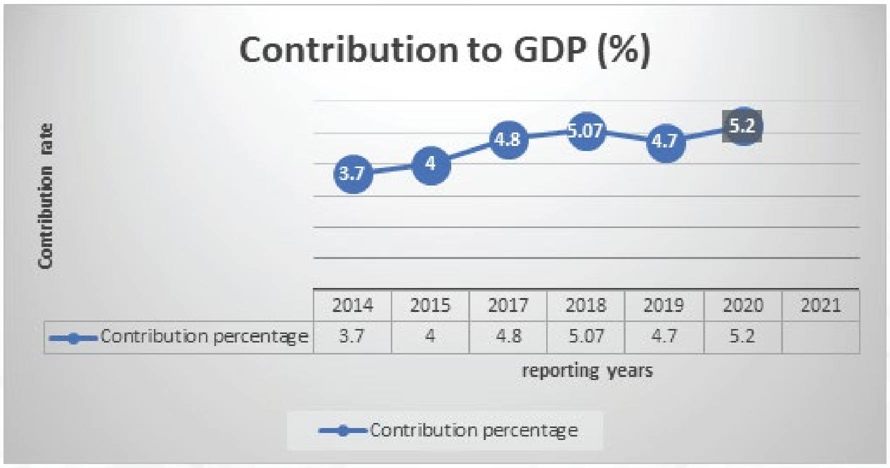
[17] Established by the Tanzania Investment Act of 1997.
[18] See TIC, 2012 and Epaphra , M (2016) Foreign Direct Investment and Sectoral Performance in Tanzania, Journal of Economics and Political Economy www.kspjournals.org Volume 3 December 2016 Issue 4 at p. 671.

Figure 1 above shows the trend of inflows and stock from 2000 to 2013. Steady increase of the FDI stock was observed in the period of 2008 to 2012 and it then dropped from US$ 6304.8 Million in 2012 to US$ 4908.54 Million in 2013. Similarly, fluctuating trend of FDI inflows was also portrayed being at the peak from years around 2008, 2010 and 2012 with a drastic drop in the years of 2009, 2011 and 2013. This volatile/unpredictable performance was attributed by factors such as the promulgation of the Mining Policy in 2009 which was followed with the enactment of the Mining Act of 2010 and its regulations; uncertainties around contract management and regime reshuffling in the year 2010.

The flow of FDI from the sectors of economy in Tanzania has nurtured a number critics by stakeholders to further analysis, if whether FDI inflows need to be used as instrument to assess the country's economic performance. For example, from years around 1998 to 2014, the agriculture sector which employed more than 70% of the population with considerable impact to GDP had about 1.3% of total FDI flows recorded, whereas, in the same period, the mining sector that employed not more than 1% of labour force and contributed less than 3.5% to GDP had 30.5% of total FDI flows recorded. It is thus argued that, the use of FDI in attaining sustainable employment, economic growth and poverty reduction would have substantial effect on the performance of the whole economy.[19]

According to Manamba (2016) postulated that, "Evidence from the mining sector is not clear despite the fact that the sector constitutes a substantial proportion of FDI inflows." While it is difficult to establish the definite impact of FDI flows to mining sector due to lack of systematic evidence on its actual impact, its good performance – the growing trend is manifested in the country's economy through various economic performance; FDI inflows in the mining sector have bridged the investment gap as a result boosting-up economic growth. They have also expanded/improved on the welfare of people in the country through increasing employment rates, and over the years, FDI inflows have significantly contributed to increase rate to the country's GDP from 1% in 1997 to 5.2% in 2020 (URT, 2015: URT, 2020), while export earnings from mining have greatly Increased from less than 1% of total export in 1997 to 52% of total export in 2013.

Figure 3: Contribution of the Mining sector to the Gross Domestic Product (GDP) over the years



Source:
URT, 2015
URT 2020

[17] Epaphra , M (2016) Foreign Direct Investment and Sectoral Performance in Tanzania, Journal of Economics and Political Economy www.kspjournals.org Volume 3 December 2016 Issue 4 at p. 672.

However, the full contribution of the fiscal regime of mining projects does not occur until the start-ups of projects, particularly in terms of income taxes paid by companies. This is due to the accelerated capital write-downs that are commonly used to incentivize investments in the mining sector in Tanzania. Revenues arising from the mining sector in Tanzania tend to rise sharply as a share of total government revenues mostly in the period of 7 to 8 years after major mining activities are initiated.

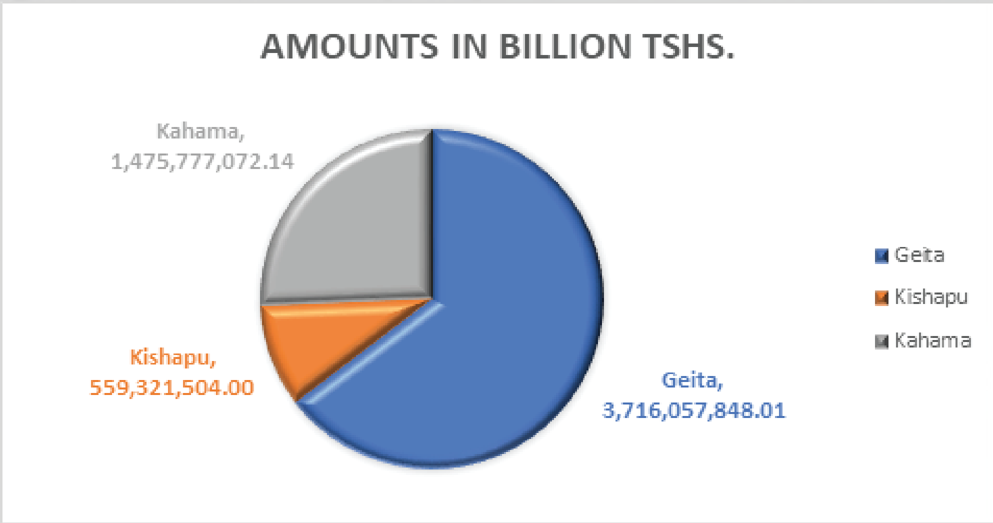
3.2.2. Government Revenue

The most important potential benefit of mining is the contribution the sector makes to government revenue. Tanzania uses a variety of mechanisms to appropriate revenues from the mining sector. These entails both fiscal and non-fiscal instruments such as royalties; corporate income tax, payroll taxes, stamp duty and withholding taxes. These revenues represent an important part of annual government revenues. These revenues have been a positive impact as a source to finance public infrastructures, human capital investments (education, health) or to support the development of other economic sectors.

From early 2000s, the mining sector was one of the dominant sectors of the Tanzania economy. Its contribution was only seen in terms of contributor to GDP, contribution to government revenues and export earnings (Ibid). However, moving forward such as in 2017/18, Mining companies were reported to have made contributions to the LGAs through the Service Levy and Other Local Taxes, Fees and Levies collected as follows:
According to the government reports over the years, the contribution of the mining to GDP has increased from 4.8% in 2017 to 5.2% in 2019. While contribution to government revenue is as well significant, with reports showing that revenue collection has increased from Tshs. 168 Billion in 2014/2015 to Tshs. 528.24 Billion in 2019/2020 with royalties accounting for 85% of the total government revenue.

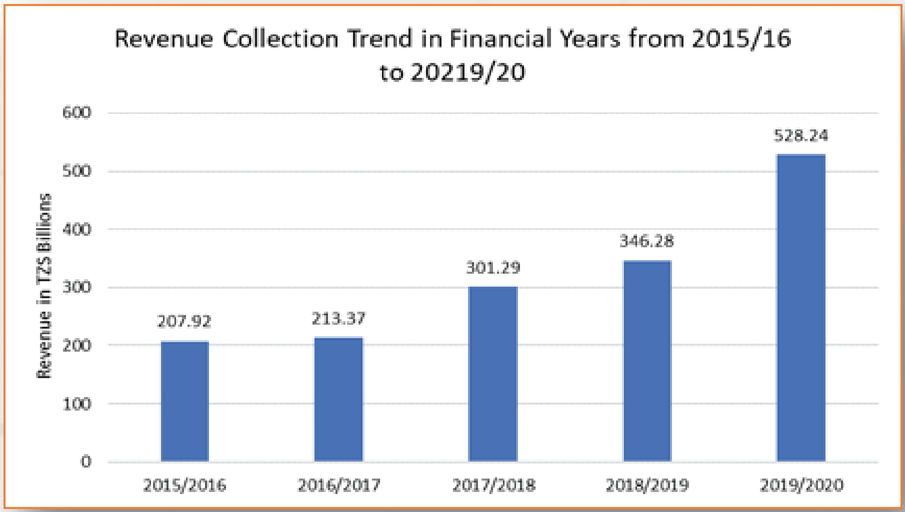
[18] Tanzanian ICMM study (2009a)
[19] (OSISA et al. 2009).
[20] The 10th TEITI Report for the Period July 1, 2017 to June 30, 2018
[21] Ministerial Budget Books 2020/2021.

Figure 4: Contributions made by Mining companies to Local Government Authorities (LGAs)



Source: TEITI report 2017/18

Figure 5: Government Revenue from Mineral Sector



Source: Tanzania Mining Commission 2020

Table 4: Royalties and Inspection Fees paid to the government.

No:	Type of Mineral	Weight Measurement	Weight	Value (TSHS.)	Royalty (TSHS.)	Inspection Fee (TSHS.)	Revenue (TSHS.)
1	Gold (SMLs and MLs)	Kg	27,550.91	2,522,921,796,902.50	151,375,307,814.15	25,229,217,969.03	176,604,525,783.18
2	Gold (PMLs, PCLs and Dealers)	Kg	2,214.99	201,856,812,436.93	12,111,408,746.22	2,018,568,124.37	14,129,976,870.58
3	Silver	Kg	9,406.88	10,657,002,819.71	639,420,169.18	106,570,028.20	745,990,197.38
4	Diamond (WDL)	Carat	309,303.85	161,105,379,136.69	9,666,322,748.20	1,611,053,791.37	11,277,376,539.57
5	Diamond (El Hillal)	Carat	3,352.90	1,746,406,408.16	104,784,384.49	17,464,064.08	122,248,448.57
6	Diamond (Dealers)	Carat	4,747.45	2,472,777,924.30	148,366,675.46	24,727,779.24	173,094,454.70
7	Tanzanite (raw)	Kg	768.75	14,031,547,691.59	841,892,861.50	140,315,476.92	982,208,338.41
8	Tanzanite (Cut and Polished)	Ct	87,389.02	6,698,067,975.79	66,980,679.76	66,980,679.76	133,961,359.52
9	Tanzanite (Magonga)	Kg	13,146.07	623,375,446.77	37,402,526.81	6,233,754.47	43,636,281.27
10	Graphite	Tones	9,127.94	10,142,189,518.46	304,265,685.55	101,421,895.18	405,687,580.74
11	Coal (Ngaka)	Tones	603,325.11	68,720,466,195.67	2,061,613,985.87	687,204,661.96	2,748,818,647.83
12	Coal (Kabulo)	Tones	7,370.69	839,542,801.37	25,186,284.04	8,395,428.01	33,581,712.05
13	Coal (Sumbawanga)	Tones	7,696.96	876,705,893.26	26,301,176.80	8,767,058.93	35,068,235.73
14	Other Gemstone	Kg	534,728.48	18,923,793,281.74	1,133,664,385.62	189,237,932.82	1,322,902,318.44
15	Construction minerals	Tones	13,087,435.48	226,715,242,680.80	6,801,457,280.42	1,996,691,511.91	8,798,148,792.33

Source: Tanzania Mining Commission 2019

3.2.3. Contribution from Mineral Export

In Tanzania, mineral exports represent one of the highest export contributions as a percentage of total merchandise exports with the country becoming increasingly reliant on export revenues as the main source of foreign exchange earnings. The sector accounts for almost 50% of the country's exports, marking it among the largest minerals exporters in Africa. This, thus implies that, production and income generation are critical forces in poverty reduction, and that the mining sector in Tanzania has a significant role to play.

By 2017, Tanzania was estimated to be the fourth largest gold exporter in Africa after South Africa, Ghana and Mali, and it was the 32nd largest Diamond exporter in the world by volume. The extraction of such minerals has so far contributed considerably to exports, Gross Domestic Product, employment opportunities, etc. For example, value of gold export increased from USD, 1,468.7 million in 2017/18 to USD. 2,591.3 million in 2019/2020 attributed to monitoring measures to ensure transparency in production and marketing of gold. Gold contribution to non-tradition export contributed the largest amount accounting to 48.8% of non-tradition export in 2018/19.

Nonetheless, the mining and quarrying grew by 1.5% in 2018 lower than 5.3% in 2017, largely due to decline in production of gold, gemstone and other minerals associated with the government ban on export of unprocessed minerals following the amendments of the Mining Act of 2010 as amended in 2017 thus protecting national interests for the benefit of general public – local beneficiation of minerals.

Figure 6: Value of Mineral Export

Source: Bank of Tanzania

3.2.4. Contribution to Employment

Encouraging employment of Tanzanians in the mining sector is one of GoT's aspirations when designing its mineral fiscal regimes. The local content requirements oblige investors (and their subcontractors) to make commitments regarding the employment and training .Nonetheless, by virtual, the mining sector is capital intensive and therefore there is inadequate direct contribution to the employment as reported below. The Artisan and Small-scale Mining (ASM) can have an important role in local employment; however, there limited and outdated data showing the extent in which the sub-sector has contributed towards employment of Tanzanians.

According to the Tanzania Chamber of Mines (TCME), the mining sector is estimated to have employed about 7,355 people directly in the formal mining sector. TCME also estimates that more than 3,000 Tanzanians have been employed indirectly in support of the mining sector in Tanzania. Recent data from the National Economic Empowerment Council (NEEC) and the Mining Commission report that , employment of Tanzanians in the mining sector by 2020 stood at 7,967 locals and 158 foreigners as opposed to 6,623 Tanzanians and 140 expert foreigners in the year 2018. Whereas, no data is available to show the employment contribution from the ASM. Past studies conducted by the Ministry of Energy and Minerals in 2011 estimated that, the sub sector ASM employed over 600,000 Tanzanians.

Table 5: The number of direct employees reported by the extractive companies in Tanzania as of May 2021

SN	Projects	Foreigners			Tanzanians		
		skilled	Semi-skilled	unskilled	skilled	Semi-skilled	unskilled
1.	Geita Gold mining limited	50	-	-	1,471	497	40
2.	Lindi Jumbo limited	-	-	-	3	4	8
3.	Infosys IPS	-	-	-	34	2	-
4.	Tanzgraphite (TZ) limited	-	-	-	7	-	-
5.	north mara gold mine limited	13	34	-	171	480	63
6.	Rocket Tanzania limited	-	-	-	-	-	-

7.	Mbeya cement limited	3	-	-	71	117	-
8.	Buckreef gold company limited	1	-	-	11	26	36
9.	Dangote cement	3	-	-	21	127	12
10.	Msata Quarry limited	-	-	-	-	-	1
11.	Alistair performance inc limited	-	-	-	15	-	-
12.	TOI gas limited	1	-	-	42	33	38
13.	HJ Stanley and Sons limited	-	-	-	17	-	30
14.	CMS (Tanzania) limited	12	-	-	47	17	50
15.	Toyota Tanzania limited	7	2	-	91	162	77
16.	Kuplak Minerals Tanzania limited	-	-	-	4	-	-
17.	Ruvuma Coal Limited	-	-	-	22	30	-
18.	Mine Trade Limited	4	-	-	13	-	5
19.	Aums (T) Limited	59	-	-	199	84	45
20.	Uranex Tanzania limited	1	-	-	3	4	3
21.	Isa limited	1	-	-	5	-	-
22.	Ishaan limited	-	-	-	4	-	-
23.	max steel limited	1	-	-	4	-	4

24.	Pangea Minerals Ltd	-	-	-	54	199	-
25.	Williamson Diamond Limited	9	-	-	105	158	260
26.	Borrtech Tanzania Ltd	1	1	-	16	37	10
27.	Nyanzaga Mining Company Limited	1	-	-	6	12	1
28.	Tanga cement plc	4	-	-	94	160	42
29.	Yancheng Yinbao Investment Development (T) co. ltd	3	-	-	2	-	-
30.	Flamingo Mining Co. Limited (100%)	1	-	-	2	-	-
31.	Nazareth Mining Investment Co. Ltd	2	-	-	2	2	4
32.	Volt Graphite Tanzania Plc	-	-	-	-	-	-
33.	Bulyanhulu Gold Mine	22	-	-	142	279	-
34.	Even Enterprises Co Ltd	7	-	-	30	60	10
35.	Graphite Advancements (T) Ltd	-	-	-	3	-	-
36.	Alistair James company limited	2	-	-	72	174	24
37.	MD Drilling Services Tanzania limited	2	-	-	2	-	-
38.	Ramani Investment Limited	-	-	-	57	32	15
39.	Tanzania America International Development Corporation 2000	-	-	-	3	2	2

40.	Tri-pump Tanzania limited	4	-	-	12	-	-
41.	Shanta mining company limited	10	-	-	567	75	152
42.	TCL Services Limited	2	-	-	18	4	-
	Total	**226**	**37**	**0**	**3,442**	**2,777**	**932**

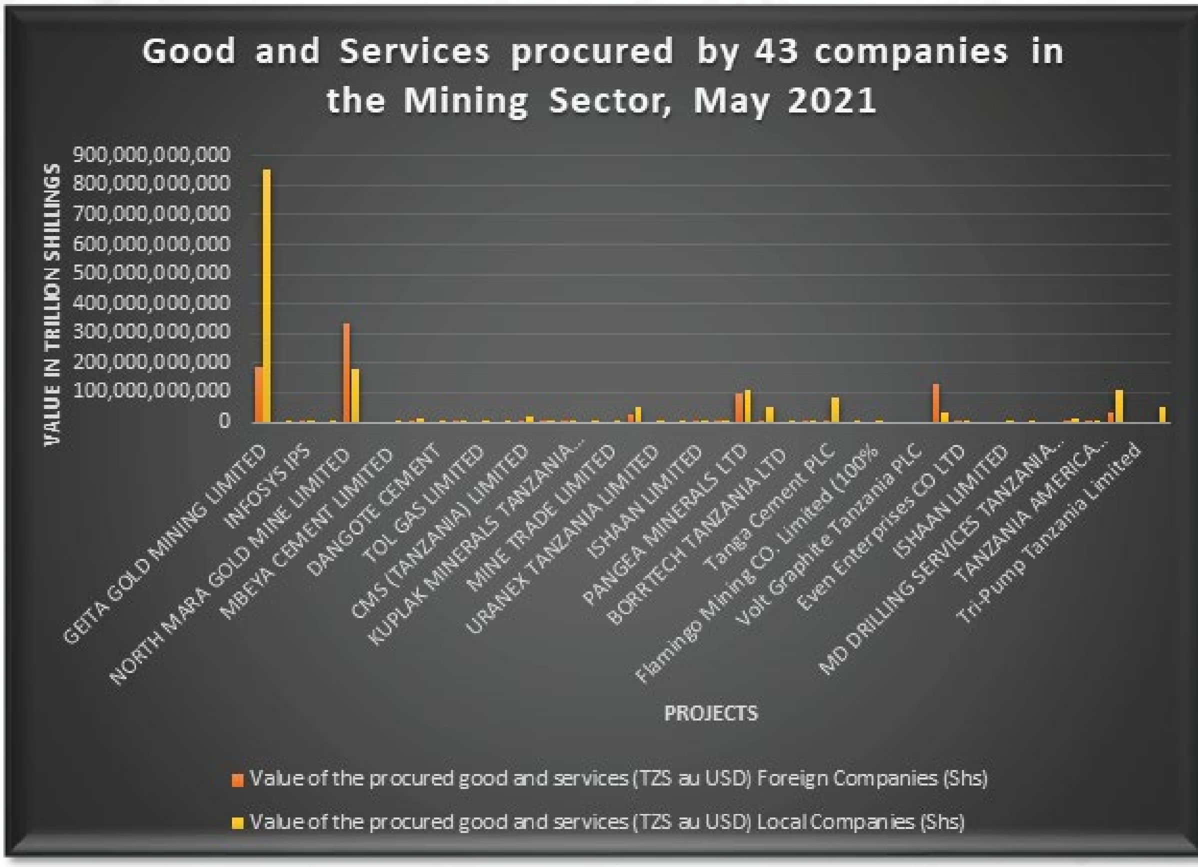
3.2.5. Performance on Local Content initiatives as means to linkages for economic growth

The concept of Local Content and participation of Tanzanians in Strategic and Investment Projects has been a crucial part of the implementation of the National Economic Empowerment Policy of 2004 which aims to achieve the Government's goal of building an industrialized economy towards a middle-income economy by 2025.The Local content legislation as provided in sections 30, 32, and 34 , therefore seeks to maximize on the multiplier effects by requiring mining companies to source, to the extent practical employees, goods, and services from within the country, among others. This, then, provides and enhances local participation in mining economy, allowing Tanzanian to acquire transfer of skills and knowledge that may be useful after Mining closures. As a consequence of the law, there are evidences on how local content initiatives have enable participation of locals in the mining sector value chain, despite being inadequate in numbers.

Also, research commissioned by HakiRasilimali in 2019 shows that, procurement of good services is a crucial catalyst in the stimulation of upstream and backward linkages and an avenue by which to enhance the minerals-based industrialization agenda as earmarked in TDV 2025. Procurement starts from the initial resource assessments to mine closure, it includes among others, procurement of services such as financial, legal, and catering; Capital goods and construction; consumable materials and replacement parts; bulk services and infrastructure and non-core goods etc

Local Content implementation status report (NEEC, 2020) in the mining sector is reported to had a value contribution of Tshs. 2,401,072,998,521 Trillion whereby Tshs.1,576,033,614,142 Trillion (66%) was generated through locally procured goods and services procured from local companies against the value of Tshs. 825,039,384,379 Trillion of goods and services procured from foreign companies.

Figure 7: Value of locally procured goods and services vis a vis foreign goods and services



Source: NEEC, May 2021

3.2.6. Performance on Social Investment

According to the Mining Act, Section 105 (1) requires that a mineral right holder on an annual basis, prepare a credible corporate social responsibility plan jointly agreed by the relevant local government authority or local government authorities in consultation with the Minister responsible for local government authorities and the Minister responsible for Finance. The corporate social responsibility has to account for environmental, social, economic and cultural activities based on local government authority priorities of the host community. Reports from TEITI show that, in the fiscal year 2017/18, mining companies were able to contribute a share to Social Payment as indicated in table 6.

Table 6: Various contributions made by the Mining Companies by the fiscal year ended on 30 June 2018 in TSHS.

SN	Company	Education	Health	Infrastructure	Sports	Community/social empowerment	Others
1	Geita Gold Mining Limited	131,905,484.78	-	3,590,522,163.30	794,461,458.08	1,510,032,520.22	-
2	North Mara Gold Mine Limited	4,011,560,164.43	-	-	-	-	-
3	Pangea Minerals Ltd	1,619,650,932.07	-	-	-	-	-
4	Bulyanhulu Gold Mine Limited	327,223,156.92	522,407,285.50	-	-	49,337,766.68	235,329,695.18
5	Williamson Diamonds Ltd.	-	-	-	-	5,225,000.00	-
6	Mantra Tanzania Limited	-	-	-	-	-	112,825,933.05
7	Busolwa Mining Limited	-	5,300,000.00	-	-	-	50,000,000.00

3.3. Performance on Foreign Exchange Earnings

Tanzania needs foreign exchange to pay for its imports and to service its foreign debt. The mining sector whose contribution is more than 50% of total exports is therefore the main provider of foreign exchange for the country's economy. The mining sector led all other sectors in foreign exchange earnings by earning the country a total of USD2.7 Billion in 2019. This amount surpassed the tourism sector which was historically the lead sector. But because the sector imports many of inputs, it is also a significant user of foreign exchange. Along with the repatriation of profits by mining firms, this reduces the net contribution to foreign exchange earnings. As a means of addressing the foreign exchange losses, the Government of the United Republic of Tanzania made the Mining (Local Content) Regulations, 2018 with the aim of making local public participate in the mining economy and further control the foreign exchange losses which resulted from keeping the accounts abroad and making payments while abroad for which Tanzania could not account for the foreign exchange losses resulting therefrom. The regulations requires a contractor, subcontractor, licensee or other allied entity shall maintain a bank account with an indigenous Tanzanian bank and transact business through banks in the country.

The Regulations further define "an indigenous Tanzanian bank" to mean a bank that has one hundred percent (100%) Tanzanian or a majority Tanzanian shareholding. This aims at among others, controlling the movement of foreign currency so that Tanzania becomes liquid of foreign currencies. Further, the enactment of the Natural Wealth and Resources (Permanent Sovereignty) Act cements the Tanzania's intention to control the foreign exchange losses resulting from maintaining accounts outside the United Republic of Tanzania. The law provides under section 10 (1) that any arrangement or agreement for extraction, exploitation or acquisition and use of natural wealth and resources shall require that earnings from disposal or dealings be retained in the banks and financial institutions established in the United Republic of Tanzania. The law further declares it unlawful to keep such earnings in banks or financial institutions outside the United Republic except where distributed profits are repatriated in accordance with the laws of Tanzania.

Thus, as of now in Tanzania, unless the earnings does not result from the distributions of the profit or otherwise dividend, the same shall be retained in the banks in Tanzania and contravention of the same is an offence.

Apart from winning accolades in revenue collection, contribution to the national Gross Domestic Product and foreign exchange earnings, the mining sector attained record performance in other areas as well:

Table 7: Other areas that the Mining sector attained performance contribution to the economy

Issue	Description	Value by fiscal years 2019/20
Mining sector Growth	17.7% in 2019/2020	The sector grew ahead of other sectors of economy such as agriculture
Production by the ASM sector	Production of 15,593.67 kilograms of Gold	Worth Tshs. 1,536,832,201,590.31Trillion. This was a record 29% of the total Gold production in the country. By comparison previous records show a contribution of less than 5% to total production
Construction of the Mererani controlled area	Construction of a 24.5 kilometers long wall around the Mererani controlled Tanzanite mining area resulted in improved security in the area which led to the declaration of a rare find of 2 big size Tanzanite gems weighing 9.72kg and 5.1kg in June 2020. Another Tanzanite stone weighing 6.3kg was declared in August 2020	The 3 stones were sold to the Government for an approximate total of USD. 5.4Million
New joint venture companies	Formation of TWIGA Minerals Corporation Limited, Kabanga Nickel etc	The Government has been able to acquire a share of 16% undiluted free-carried interest, share of 50/50 of economic benefits, among others arising from such ventures

It suffices to say that a lot of positives have been achieved since July 2017 when the Government of Tanzania took bold decisions to revamp mining and other laws and regulations to ensure that they are structured and worded in a way that will see fair economic benefits are derived from the mining sector for the benefit of the country.

Despite the noted increase of revenues to the Government and growth of the sector, growth of which is itself a subject of discussion as to whether the said growth is a result of new investment and hence increased production or is it a result of increased controls which have rerouted the previously smuggled minerals to be traded in the official mineral markets where proper records are kept and statistics collected; there are still complaints from both the Government – that insufficient revenue is collected from the sector; and from the existing and potential investors – that the mining fiscal regime is unfriendly.

Apart from the revenue collected by the Government from the mining sector, from resource-based and non-resource-based sources [Royalty, Rent, Application Fees, Corporate Income Tax, Withholding Tax, service Levies, SDL, Import and Excise Duties, et cetera]. Such benefits are hard to quantify but are vivid and emanate from the multiplier effect brought about by the existence of a particular mine.

Among other benefits, the list below is more vivid:

i. Exploitation of a country's mineral resources attracts FDI which is important in bringing in foreign exchange for the country. Foreign exchange improves the country's balance of payment.

ii. Export of minerals brings in foreign exchange that support importation of goods and services. It helps in the stability of the local currency.

iii. The multiplier effect of mining activities into other businesses like logistics services, consultancy, camping and catering services, supply of mining consumables, supply of different types of energies to the mines, and the economic activities generated by the overall value-chain of extracted minerals, et cetera, contributes heavily to the Gross Domestic Product.

iv. Mining companies have a moral responsibility to support the social development of the communities surrounding mines. The conduct of this responsibility is well explained in the Mining Act. Communities have benefited in obtaining financial support for the construction of health, education and other infrastructural facilities.

4.0. Introduction

A competitive fiscal regime is one that manages to balance between the need to maximize Government revenue collection from the sector while at the same time being able to attract investments. A lenient fiscal regime will appear to favor the investor and deny Government of a fair share of the mineral wealth. On the other hand, a stringent fiscal regime will tend to favor Government and threaten sustainability of existing and future investment potential.

There are several factors that a country needs to consider before adopting the model of its mining fiscal regime. These include the country's Geology, Political stability, Predictability of the fiscal regime, Simplicity of the fiscal regime, Skills availability, Infrastructure, etc. A rich geology will ensure a better return of investment. Skills availability will remove the need to engage foreign expatriates who are expensive to hire. Good infrastructure (roads, rail, ports, water, and electricity) will reduce operational cost of the mines. A politically stable and democratic country will remove the need for expensive political risk insurance. A simple and easy to understand fiscal regime will reduce expensive consultancy that a mining investor might need to get clarity of the various clauses in the fiscal regime. A country that has already been explored for its mineral potential provides an easier and cheaper entry point for a prospective mining investor. In general, poor infrastructure, unavailability of skills, unexplored landscape, unstable politics and unpredictable rules and regulations will all add to future operational costs of a mining company and reduce profitability which will eventually render the country to be less attractive to mining investment. A competitive mining fiscal regime will aim at finding a balance between strong and weak areas (some sort of a SWOT analysis will be required here). Weak areas can be counteracted by well researched incentives to ensure that at the end of the day investors will be able to recoup their investments and make a fair profit; and at the same time the Government will be able to collect reasonable revenue for the social economic development of the country. Further works and research are required to ensure that a different set of investors is found to exploit all the opportunities availed by the entire value chain of mined minerals. This will create the currently missing linkages with other sectors, in line with the focus of the country's Mineral Policy of 2009.

4.1. Situation analysis

In 2017, however, Tanzania passed a number of laws for the extractives sector with a wider objective of obtaining a larger share of benefit from its mineral resources. These laws among other, increased taxation of the mining sector. However as was pointed out by the late President Magufuli, the increase in taxes was hindering rather than helping efforts to collect more revenue from the sector and thus impacting large-scale investment. The President reiterated the government intention to review the 2017 laws.

To that effect, in 2020 through the enactment of the Finance Act 2020, Tanzania reintroduced value added Tax (VAT) refunds for mineral export which was removed in 2017. The Natural Resources Governance Institute (NRGI) stated in its analysis that the removal of VAT refunds resulted in taxes that were significantly higher than other countries (particularly for less profitable mines). The 2017 law reforms had shaken investors' confidence as the reforms affected the country's policy predictability. The Fraser Institute's annual survey for the year 2019 suggested that Tanzania's regulatory uncertainty would strongly discourage investment. In 2020. Tanzania enacted the Arbitration Act of 2020 with provisions that removed the restriction on using international arbitration to resolve disputes that was introduced with the laws of 2017. The enactment of this law is likely to remove the investors' concerns.

As it stands, Tanzania's mining fiscal regime has a few concerns which together have made the country to be less attractive to not only by large-scale mineral explorers but also to large scale investors in mining. New rules and regulations governing the two areas have made it difficult to raise project financing for the capital-intensive projects. Dispute resolution also became a challenge with key components of the 2017 reforms include removing access to international arbitration, which was later was later reversed by The Arbitration Act 2020 which removed the restriction on using international arbitration. More clarity and improvements are required to make Tanzania attractive to mining investment

FISCAL TRANSPARENCY AND ACCOUNTABILITY

5.0. Introduction

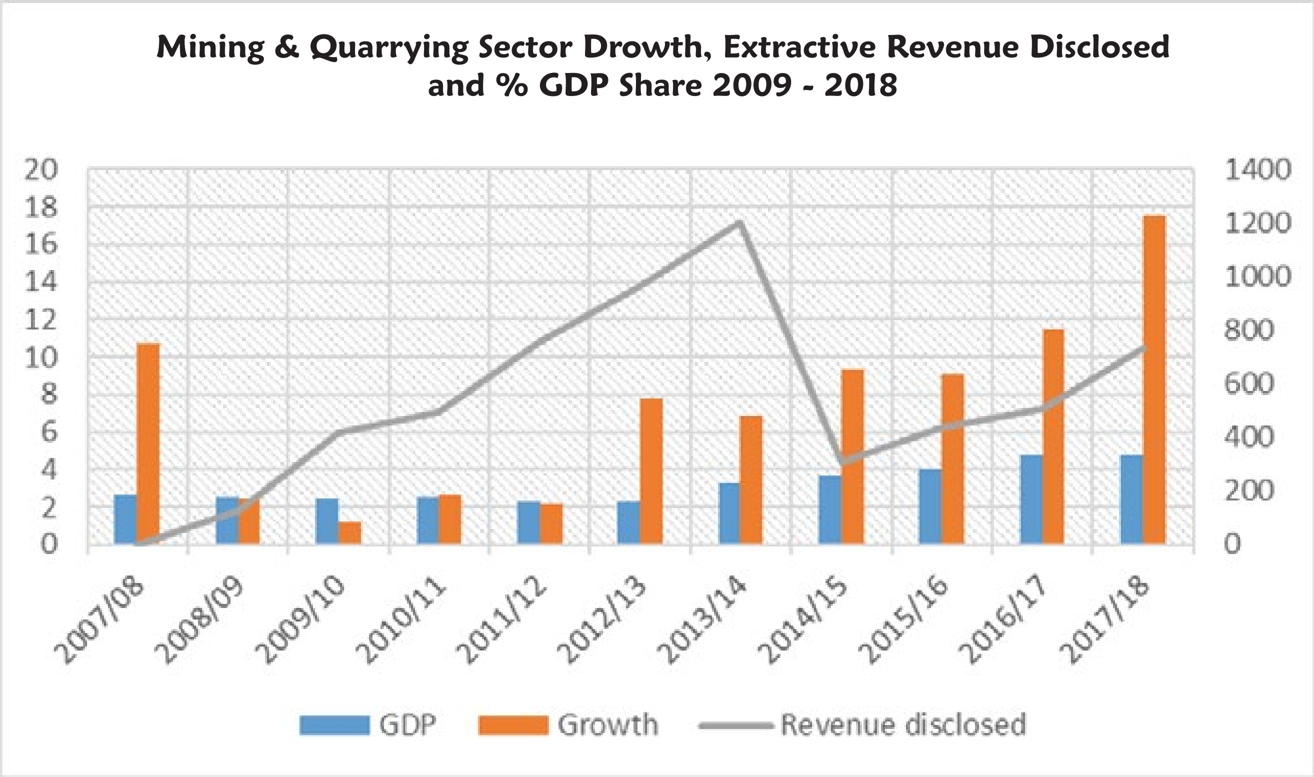
By virtue of article 27 of the Constitution of the United Republic of Tanzania “every person has the duty to protect the natural resources of United Republic of Tanzania (URT)” and by virtue of section 4(1) of the Permanent Sovereignty Act of 2017 providing that; “The people of United Republic of Tanzania shall have a Permanent Sovereignty over all natural wealth and resources”. According to Racheal C.et al, 2020, Transparency and Accountability (TA) in managing natural resources is therefore crucial for the well-being of the people. In its endeavor to harness TA, Tanzania joined EITI in 2009 and was declared compliant to its standards in December 2012. And, in 2015 the Tanzania Extractive Industries (Transparency and Accountability) Act was enacted in 2015 and its regulations in 2019, institutionalizing the Tanzania Extractive Industries Transparency Initiative (TEITI) that is overseen by a tripartite coalition comprised of government, business and civil society representatives. This is a transparency initiative whereby payments made by extractive companies are reconciled with payments received by the Government from those companies. As the country celebrates its 11th year membership to the EITI, domestication of the global standard has led to improvements in some facets of disclosure especially related to reconciliation of payment of taxes, royalties and fees made by the companies and collected by government.

5.1. State of transparency and accountability:

Various reports show that, the government and mining companies were required in the past, to only disclose disclosure revenue payments and data on production and exports. However, sections 14, 15 and 16 of the TEITA Act of 2015 and its regulations of 2019 have now raised disclosure bar. Mining companies are mandated to also disclose information related to local content, corporate social responsibility and capital expenditures. Section 16 of the Law provides for companies to disclose all Mineral Development Agreements (MDAs) and information on beneficial ownership.

To date, 10 TEITI RECONCILED REVENUE REPORTS have already been published, covering fiscal years from 2008/2009 to 2017/2018, whereby the mining sector has accounted for 85% of the total extractive payments in 2015/16 and 79.69% in 2016/17 before declining slightly to 75.84% in 2017/18. In 2017 the Mining sector grew by an estimated 8.5% to an estimated value of USD960Mln compared to a growth of 3.09 recorded in 2016 where it was estimated to be valued at USD880Mln. Mining and Quarrying was the 4th sector in terms of contribution to the GDP in 2017/18 after crops, manufacturing and livestock sectors .See table 8;

Figure 8: Disclosed revenue contribution of the Mining sector over Ten years



Source: TEITI reports 2008 to 2018: HakiRasilimali, 2020

5.2. Challenges related to revenue collectors – Tanzania Revenue Authority (TRA)

In the list of the non-resource-based revenue sources there are a number of taxes collected by the Tanzania Revenue Authority. It's a general rule that all business owners or managements entrusted with running companies would want to use any legal loopholes available in the tax law to reduce their tax obligations and therefore increase their net profit and return to shareholders. Mining is no exception to this general rule. Wherever possible companies would 'avoid tax'. 'Tax avoidance' is legal and companies would use several mechanisms including Transfer Pricing, Corporate Reorganization, Hedging Manipulation and Double Taxation treaties to avoid tax completely or at the least to reduce their tax liabilities. This is a challenge that TRA has been facing while executing its responsibility as a tax collector for the Government.

In combating the challenge, the tax regime in Tanzania has instruments in place which are designed to combat tax avoidance practices. Among the instruments in place are: 1) Ring-fencing rules, whereby in the mining fiscal regime every license (mineral right) issued to an individual or an entity will be required to stand-alone when calculating taxable income for the particular entity.2) Transfer Pricing Regulations are in place to ensure that the 'arms-length principal' is observed whenever there are business transactions involving related parties.

Also, General Ant-tax Avoidance Rules (GAAR) are in place to ensure that any proven tax avoidance scheme is punishable by law. However, tax evasion is illegal and it has been criminalized by the Tax Administration Act. The Tax Investigations Department of the TRA has been tasked with combating tax evasion. Secondly, the Commissioner General of the Tanzania Revenue Authority has been given the power to amend to the deemed correct value, all voluntary tax assessments filed by tax payers if there are reasons to establish that such voluntary assessments have signs of under-declaration of revenue, over-declaration of expenditure, abuse of the 'arms-length' principle or any other irregularity that will lead to unlawful reduction of tax liability declared by the tax payer. Likewise, in the Mining Act, where the Minister realizes that the mineral price given does not correspond to the price at the point of transaction between seller and buyer, the Minister may issue a notice of disagreement to the license holder in accordance to Section 87(3) & (4) of the Mining Act 2018. The Minister has the power to reject an amount calculated for royalty in accordance to section 87(6) of the Mining Act 2018 if the declared value is considered steeply low on account of 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.

CONCLUSION AND RECOMMENDATIONS

6.0. Conclusion

Over the past 3 decades Tanzania has reviewed its mining policy twice (1997 & 2009) and its mining law thrice (1998, 2010 & 2017). The reviews were aimed at attracting more investment in the sector and generate more revenue for the socio-economic development of the country and its people. The most recent review in 2017 has managed to increase revenue from the sector but stagnated further investment. Introduction of the mineral buying centers has revealed the production potential hidden in the ASM sub sector (having contributed 29% of the total gold production in the fiscal year ending June 2020. Before the mineral buying centers were introduced total ASM contribution to total gold production was sitting at around 5%. Mining contribution to GDP has continued to raise over the years and it peaked at 5.2% in the fiscal year ending June 2020, whereby forex earnings from the sector reached a record USD2.7 Billion. Total revenue collected by the Ministry of Minerals reached a record TZS.527 Billion. ASM have created direct and indirect employment to many people, something that has helped in poverty reduction. LSM have generated the much-needed forex which has also helped in stabilizing the local currency.

Despite the increased output from ASM and overall revenue increase from the sector, there is still widespread public outcry that the Government is yet to receive a fair share of proceeds from its mineral resources.

Apart from the much visible CSR investment in host communities by mining companies, nothing more is seen to benefit mining communities where mines are located. This is because in Tanzania all revenue is deposited into a consolidated fund managed by the central government and later redistributed based on parliament approved budget allocations.

Mining investments are capital intensive hence making investors preference to be jurisdictions where mining fiscal regimes are welcoming and predictable, with presence of political stability. That way investors get the comfort to invest knowing there will be sufficient time without drastic changes in fiscal regime to allow them to recoup their investment and make a fair profit for the shareholders. The frequent and unpredictable change of rules and regulations; the complex mining fiscal regime and related mining laws; the multitude of regulators charging exorbitant fees; the cumbersome procedures in securing work and other permits; the stringent local content regulations and overall unfriendly business environment have made the mining sector in Tanzania to be less attractive to investors.

6.1.1. Policy, legal framework and competitiveness:

Over the years, Tanzania has reviewed its Mining Policy of 1997 and 2020, Mining Act of 1998, 2010 and 2017 with the aim attracting more investments in the sector and generate more revenue for the socio-economic development of the country and its people. The most recent amendments made in 2017, have managed to increase state control and share of the Tanzanian Mineral Resource but according to the US Department of State the new laws and regulations that may impact the risk-return profile on foreign investments, especially those in the extractives and natural resources industries, which may stagnate further investment.

6.1.2. Getting a fair share from mining:

The introduction of the mineral buying centers revealed production potential that was hidden in the ASM sub sector (having contributed 29% of the total gold production in the fiscal year ending June 2020. Despite the increased output from ASM and overall revenue increase from the sector, there is still widespread public outcry that the Government is yet to receive a fair share of proceeds from its mineral resources.

6.1.3. Transparency and accountability:

Despite the move to enhance transparency by ensuring presence of the policy, legal and institutional frameworks, like any other resource rich country, the country's fiscal policy is faced by limited transparency and accountability that poses challenges towards effective contribution of the sector to development and economic growth in Tanzania (HakiRasilimali, 2017). Among others, to date no MDAs have been disclosed. Contracts and processes of negotiations have also remained within few people denying access for public scrutiny. Secondly, payments on corporate taxes made by mining companies in Tanzania have been insignificant, and therefore, have not assisted in enhancing the country's domestic revenue. This is so, because majority of these companies have not been paying corporate tax. Most of the contribution is coming from royalties and taxes on wages, local content and CSR (TEITI, 2017: SARW et al, 2020).

6.1.4. Revenue management in the mining sector in Tanzania.

In Tanzania, with exception to only a limited number of revenue sources – for example Service Levy – which is collected by respective district councils; all other revenues collected from almost all other Government revenue sources is put into one basket (Consolidated Fund-CF) managed by the Central Government. Funds will then move from the central basket and put to different expenditure accounts in the central government and in the local governments based on Parliament-approved budget allocations. Revenue from mining is no exception. Revenues from the mining sector are collected by the TRA, Ministry of Minerals, Local Government Authorities (service levy), and other Government institutions which collect fees and charges. Local Governments where operating mines are located collect between 0.1% and 0.3% Service Levy [Local Governments Finance Act, 1985] which is charged on gross revenue of the mine. They also get a budget allocation from the Central Government, part of which has an element of revenue that the Central Government collected from mining companies. The Budget Act , the Public Finance Act of 2001 and the Annual Appropriation Act (for the specific financial year) provide guidance on how central government funds will be collected and distributed. All revenues are then deposited in the CF including those from the Mining sector. Once remitted into the Fund, they lose their identity and becomes challenging to tract the extent of their distribution across development projects and various socio-political groups.

6.1.5. The enactment of the Mining Revenue Management legislation.

The Africa Mining Vision calls for resource rich countries to adhere to a transparency and accountability framework in managing revenue from their minerals resources. Strong policies, strategies and political will is required in order to realize the expected objectives for the AMV. For instance, the Tanzania Petroleum Act, 2015 has imposed the establishment of a Sovereign

Wealth Fund (SWF) which is expected to be used to save a portion of oil and gas revenues for intergenerational use. Nevertheless, this aspect is lacking in the mining sector, given the facts that extraction of minerals in Tanzania has been occulting since more than four decades ago. It is important that a law is enacted to create a sovereign wealth funds for minerals. Minerals are finite resources and it's therefore critical for Tanzania, with abundance of such resources to have affirmative measures of saving and re-investing funds earned from exploitation of mineral resources in other income generation activities. As of 2019, Africa was estimated to have established more than 14 sovereign wealth funds to steward natural resource revenue in order to promote long-term economic growth and development. 3 decades ago, the United Arab Emirates (UAE) economy was dependent on oil by more than 90%. Today, the UAE has managed to diversify its economy and re-invest in other economic activities to the extent that dependency on oil has gone down to only 5%. Lessons could be drawn from other countries such as the Botswana's Pula Fund, which is Africa's oldest Sovereign Wealth Fund (SWF), emphasising on the importance of designing SWFs with robust fiscal rules, targeted investment mandates and accountability mechanisms that divert political incentives to misuse funds, as well as integrating SWFs within broader public financial management reform. Managing soft issues such as political and public expectations, awareness creation and buy-in are also critical and often overlooked in the technical design of SWFs.

6.1.6. Social payments (CSR and Local content):

Apart from the much visible CSR investment in host communities by mining companies, nothing more is seen to benefit mining communities where mines are located. This is because in Tanzania all revenues are deposited into a consolidated fund managed by the central government and later redistributed based on parliament approved budget allocations.

6.2. Recommendations:

6.2.1. Strengthening of the Tax management systems in the mining sector in Tanzania:

If well crafted, the DTA's are useful documents for easing tax management for multinational companies. The United Republic of Tanzania should cause the DTA's with some countries to be renegotiated so as to remove or do away with the possibilities of forum shopping by the Mining companies in countries where Tanzania has DTA; so as to avoid paying taxes relying on the DTA's.

6.2.2. Legal stability and enforcement:

Mineral exploration is an important activity for ensuring sustainable mining sector. The current fiscal regime is unfriendly to explorers. The Government should work with explorers in ensuring that all unfriendly clauses are re-worded in a manner that will not defeat the original purpose but at the same time protect the explorers' interest. The stability of the mining sector for economic growth is dependent on the mining fiscal regime existing at that particular time and therefore stability of tax laws is imperative. Tanzania shall therefore offer stability of tax laws to welcome more investors in the field. The Government should explore the possibility of re-drafting such clauses in a manner that will not push away investors but at the same time safeguard Government interest by taking care not to defeat the original purpose of the clauses.

6.2.3. Enactment of the Mineral Revenue Management legislation:

It is critical for Tanzania to enact the Mineral Revenue Management legislation to institutionalise the creation of the Mining Fund, a practice and relevance to be borrowed from the established Oil and Gas Fund .

6.2.4. Fast-trucking the implementation of the Blue-Print on regulatory reforms in Tanzania:

The Government should fast-track implementation of the Blue-Print for improving business environment; a document that was approved by the cabinet in May 2019. This document has proposals and recommendations which if implemented will resolve a multitude of concerns currently tormenting businesses across the board. Issues like consolidating functions of regulators and reducing the multitude of taxes have been addressed in the Blue Print document.

6.2.5. Technology and Energy transition: Technology is developing at a very fast pace.

New inventions are nowadays the rule of the day. With the increased restrictions on emission of greenhouse gases through burning of fossil fuels such as coal the country run the risk of having some of its resources becoming stranded following anticipated resolution by the United Nations on carbon neutrality by year reaching 2050.This can be evaded if green coal technology will be invented? Otherwise, the Government should fast-track exploitation of our coal and oil reserves and invest the proceeds elsewhere.

6.2.6. Dialogue and Stakeholder consultation:

For a sustainable mining sector, the Government is advised to always follow the due process of engaging with mining stakeholders before changing and law or regulation that will impact the mining sector. The Government should engage companies and dialogue on Local Content regulations to see how the same can be improved and simplified. Some of the current requirements in the regulations are not easy to implement. For example, the requirement for local partners to hold at least 20% in the share capital of a service provider to a mining company holding an ML or SML. Most potential local JV partners lack the required capital contribution; and for those who have the required capital they are reluctant to invest because of the limited time nature of contracts issued by mining companies to the service providers. The government should solicit and allow the local/host community participation in decision making on matters affecting their affairs and surroundings, being the most affected person especially on the consequences of the mining activities. The Oslo Dialogue should be activated to allow the international sharing of information to take its way to curb tax evasion and related matters.

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