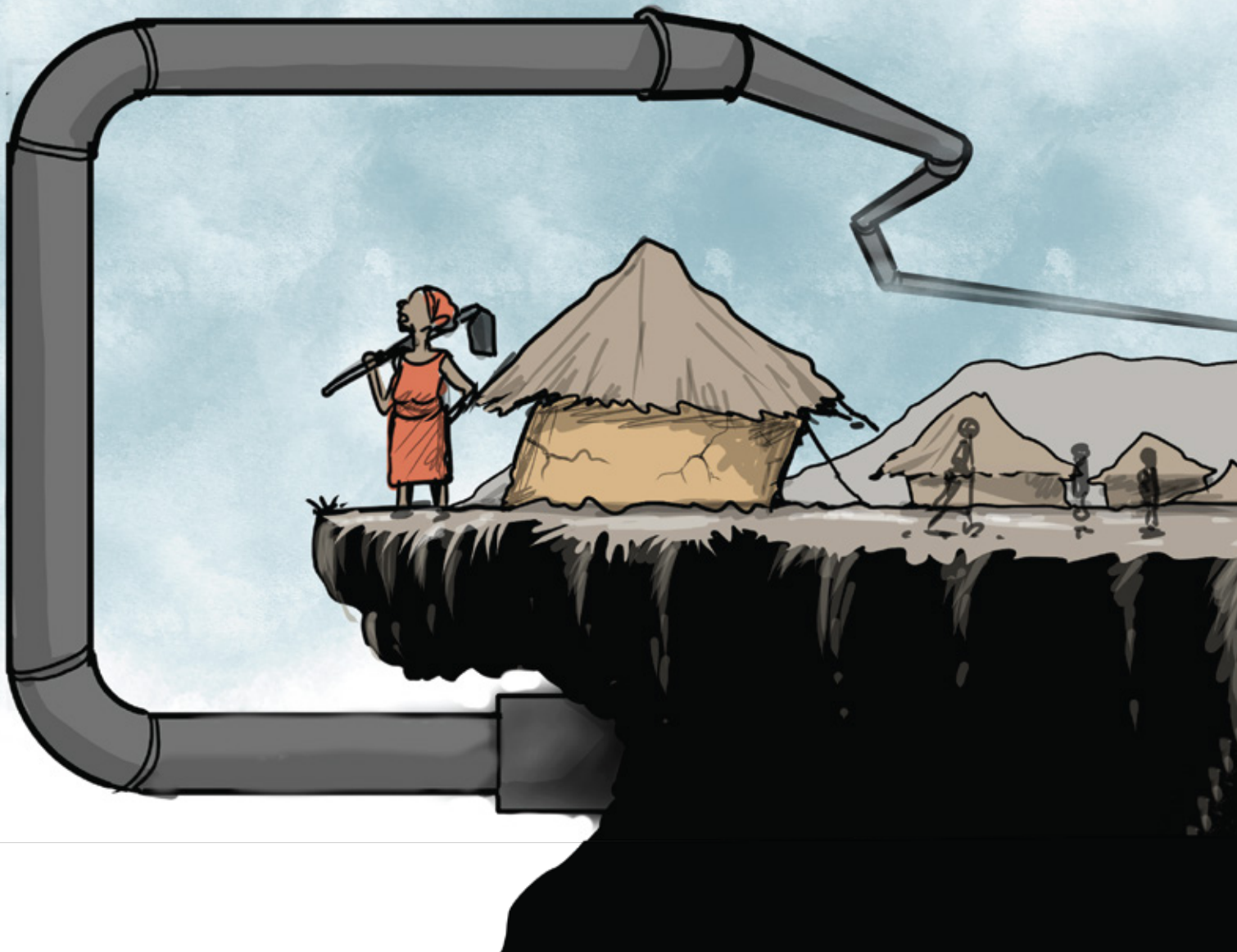


Ministry for Foreign
Affairs of Finland

Engendering the Mining Sector in Tanzania:

To What Extent are Women Benefiting or Losing Out in Revenue Management?



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ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
AMV	African Mining Vision
Art.	Article
ASM	Artisanal and Small-Scale Miners
AU	African Union
BoT	Bank of Tanzania
Cap.	Chapter
CEDAW	Convention on the on the Elimination of all forms of Discrimination against Women
CF	Consolidated Fund
Co.	Company
CSOs	Civil Society Organisations
CSR	Corporate Social Responsibilities
DAW	Discrimination against Women
DRC	Democratic Republic of Congo
Ed.	Editor
Edn.	Edition
EI – TA	Extractive Industries Transparency and Accountability
EIA	Environmental Impact Assessment
G.D.P.	Gross Domestic Product
G.G.M.	Geita Gold Mine
G.N.	Government Notice
HR	HakiRasilimali
ICESCRs	International Covenant on Economic, Social and Cultural Rights
LEAT	Lawyers Environmental Action Team
LGAs	Local Government Authorities
LSM	Large-Scale Mining
MoFP	Ministry of Finance and Planning
NBS	National Bureau of Statistics
NGOs	Non-Governmental Organizations

No.	Number
NRGI	Natural Resources Governance Institute
O & OD	Opportunities and Obstacles to Development
OPCEAFDAW	Optional Protocol to the Convention on the Elimination of all forms of
PhD	Doctor of Philosophy
PO-RALG	President's Office–Regional Administration and Local Government
R.E.	Revised Edition
RPAM	Research and Policy Analysis Manager
SACCOS	Savings and Credit Cooperative Societies
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
SID	Society for International Development
SPSS	Statistical Package for Social Sciences
TAWLA	Women Lawyers' Association
TAWOMA	Tanzania Women Miners' Association
TEITI	Tanzania Extractive Industries Transparency Initiative
TGNP	Tanzania Gender Networking Programme
TMC	Tanzania Mining Commission
TNDV	Tanzania National Development Vision
TRA	Tanzania Revenue Authority Officials
UNDHRs	United Nations Declaration of Human Rights
URT	United Republic of Tanzania
USD	United States Dollar
VAT	Value Added Tax
Vol.	Volume
WFT	Women Fund Tanzania
WYPWDs	Women, Youths and Persons with Disabilities

EXECUTIVE SUMMARY

This study aimed at examining the extent to which women benefit from or lose out in mining revenue management in Tanzania. It also sought to find out whether Tanzania has a revenue allocation mechanism to ensure that women benefit from the sector as men. The study was triggered by the fact that participation of women in the extractive sector generally and in mining activities in particular is very low. Moreover, in Tanzania, all revenues derived from various sources for the use by the Government are usually deposited into the Consolidated Fund (CF). The funds are then drawn and allocated to various budget votes. Once mining related funds are put into the CF, they tend to lose their identity and it is challenging to track the extent of distribution across different social groups, such as women.

Specifically, the study aimed to explore the manner in which policy, legal and institutional framework governing the mining sector in Tanzania ensure socio-economic outcomes with a gender eye. It also investigated how mechanisms for mining revenues sharing have impacted women in the sector and the extent to which local content and Corporate Social Responsibility (CSR) initiatives, plans and projects have empowered women within host communities. The study recommends for policy, legal and institutional reforms to enhance women's benefit from the mining sector in Tanzania and indicates the capacity needed to enable women enhance their participation in and benefit from the entire mining value chain of Tanzania.

This study was guided by two theories, namely, empowerment theory and economic justice theory. Empowerment theory is a theory which understands human problems in the context of a social, political, and economic environment that is stratified and oppressive to those with the fewest advantages in society. On the other hand, economic justice theory is the notion that the economy will be more successful if it is fairer. The goal is to create opportunities for all to thrive, and that prosperity and justice go hand-in-hand rather than in opposition to one another. In the context of this study, the two theories were used to explain gender inequality in Tanzania mining sector and the manner it affects women throughout the mining value chain. These theories are reflected in the findings of the study in the analysis of policy and legal framework governing the mining sector as well as the practice of mining decision making organs, LGAs and mining companies.

Documentary review and in-depth interview methods were employed in data collection. Relevant policies, legislation, books, reports, strategies and journal articles were analysed to explore opportunities that are created for safeguarding women's interests in the Tanzanian mining sector. The review helped in understanding what other researchers had found out in relation to the problem under scrutiny. Data obtained through documentary review was supplemented with field data obtained through interviews with key informants.

Telephone interviews were used to supplement data obtained from documentary review. Interviews were conducted with Twenty-One (21) respondents from different stakeholders including government institutions, members of parliament, women engaging in mining activities, civil society organisations, individual lawyers, representatives of mining companies etc. Institutional affiliation and work experience of these respondents enabled them to provide data which helped in responding to the objectives of the study. Data obtained from reviewed documents and conducted interviews was appropriately presented, interpreted and analysed by using thematic content analysis method. Findings were discussed by correlating them with policy and legal requirements.

The study established that participation of women in mining is minimal due to the presence of a legal framework which is not gender sensitive, lack of capital, socio-cultural factors and lack of skills, among other factors. It was also proved that women are not effectively involved in mining decision making organs. This was found to be a problem of both law and practice. Further, contribution of women to the mining sector being unidentified, coupled with lack of revenue allocation mechanism, were found to be the factors for women to remain in periphery of the entire mining revenue value chain.

LGAs' financial loans for women, youth and persons with disabilities (WYPWDs) have been observed to be inadequate and the whole of processes for budgeting, issuing and monitoring of their repayment alienate women, making the loans not so beneficial to women in mining. Lastly, the mining companies and mineral rights holders have not been involving women in setting CSR and local content plans respectively. Due to this, it has been proved that women benefit just by the way from mining revenues specifically, when revenues are spent for improvement of social services in their communities. Otherwise, requirements of the law that exploration and exploitation of minerals should go hand in hand with employment, training and transfer of technology plans which are gender-based, have remained in papers.

Ultimately, the study concluded that women benefit from the mining sector just a little and coincidentally. There are no strategies to ensure that women are not left out in the mining revenue value chain. To a large extent, the mining sector in Tanzania has been found to be benefiting men more than women. Therefore, it has been firmly concluded that in Tanzania, women lose a lot from the mining sector, especially in mining revenues management.

From findings and the conclusion, a number of recommendations have been made to the key actors in the mining sector. Firstly, the Ministry of minerals put in place an enabling environment for women's effective participation in the mining sector. Specifically, the Ministry has to spearhead amendment of the mining laws to incorporate gender inclusion provisions as contemplated in the Mining Policy. Secondly, the Ministry of Finance and Planning through TRA, is urged to segregate mining revenues according to contribution by different social groups which will contribute to a purposive approach in allocating revenues. Further, the Ministry should set a mechanism for revenues allocation for easy assessment on the extent to which women benefit from or lose out in the mining revenues. Third recommendation is for the mining companies to abide by their commitments as submitted to the government before commencement of mining exploration. Gender equity should be considered in all practices of the mining companies. Fourthly, the Parliament is also encouraged to have gender consideration when enacting or amending any mining legislation. Lastly, LGAs and CSOs are advised to include in their plans advocacy programmes for women awareness creation on mining laws and policies to enhance their participation in mining and benefits gained there-from.

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Chapter 1



“In order to ensure that women are not left behind and do not lose from mining revenues, revenue collection, management and allocation across different social groups need to be debated to create a shared understanding of the laws and practices of different actors in the mining sector.”

INTRODUCTION, BACKGROUND AND CONTEXT

1.1 Introduction

Tanzania is endowed with a vast and valuable extractive resource, ranked fourth in Africa, after South Africa, DRC and Nigeria.¹ Mining is one of the dominant sectors of the Tanzania economy. Its contribution can be seen in terms of contribution to the GDP, contribution to government revenues and export earnings. Currently, the mining sector contributes on average 5.2% of the country's GDP.² According to the Bank of Tanzania (BoT), gold contribution to non-tradition export contributed the largest amount accounting to 48.8% of non-tradition export in 2018/19.³ The Natural Resources Governance Institute (NRGI) reports that 2016 is the most recent year that all of Tanzania's mines were operating at full capacity, with mining contributing 3% of government revenue and 37% of exports.⁴ Reports show that revenue collection from mineral activities has increased from Tshs. 168 billion in 2014/2015 to Tshs. 528.24 billion in 2019/2020⁵ with royalties accounting for 85% of the total government revenue.⁶

Management and administration of mining revenues is conducted by the Ministry of Minerals, Ministry of Finance and Planning (MoFP), and the President's Office Regional Administration and Local Government (PO-RALG). The Ministry of Minerals deals with issuance of mining licences and collection of royalties (through the Mining Commission), whereas MoFP is charged with fiscal policy issues in relation to tax administration (TRA collects revenues and advises the MoFP in relation to mining revenues). Collection of service levies, local taxes and fees has been vested to LGAs.

Tanzania's legal and policy framework emphasizes on all Tanzanians to benefit equally from mining resources in order to ensure even distribution across the country.⁷ To achieve this goal, there are affirmative actions to safeguard benefits to local communities in mining areas (example the use of service levy), but there is no mechanism to ensure women benefit in the entire mining value chain. Tanzania has taken several steps to bridge the gap between men and women in several aspects but the same has not yet been achieved in the mining sector. The National Development Vision 2025 and the National Strategy for Growth and Reduction of Poverty II (2010) are some of the Government initiatives in bridging the gap between men and women in decision making, participation in the national economy and development process. In principle, the Vision 2025 places greater emphasis on the inclusion of women in emerging economic opportunities. The mining sector is one of such emerging economic opportunities in Tanzania at present. The government has also manifested its commitment to gender equality by ratifying a number of international legal instruments that call for the elimination of discrimination against women.

In this regard, Tanzania is part to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the United Nations Declaration of Human Rights (UNDHRs); the African Charter on Human and Peoples Rights (ACHPR); and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OPCEAFDAW). Achievement of gender equality will be possible if women are facilitated to engage in, and benefit

¹Society for International Development (SID) (2009), Report: *The Extractive Resource Industry in Tanzania, Status and Challenges of the Mining Sector*, p. 11.

²Ministry of Minerals Budget Speech for the Financial Year 2020/2021, at p. 11.

³Bank of Tanzania Annual Reports 2017/18, 2018/19, 2019/2020.

⁴Ibid.

⁵2020 Parliament inaugural speech by the Present of the United Republic of Tanzania.

⁶Tanzania Mining Commission 2019.

⁷Mineral Policy, p. 10, Art. 9, the Constitution and s. 6, Natural Wealth and Resource (Permanent Sovereignty) Act, 2017.

from all key sectors of the national economy including mining. This is so due to women's position as the fulcrums of their own families, with key roles in ensuring the health, nutrition, education, and security of those around them. Thus, investing in women and ensuring their economic wellbeing is not only important for their own development, but also for the socio-economic development of their families, communities and the country at large. Despite this fact, mining has mainly been a male-dominated sector whose benefits are largely enjoyed by men while women bear a disproportionate share of the negative social, economic, and environmental impacts.⁸ Mining resources have to benefit all citizens such that women and men are involved in the sector's governance and enjoy equal benefits created therefrom. The benefits are expected to be viewed in the context of women's engagement in the mining sector, extent of revenues generated by them therein; management of such revenues for their benefit and its allocation in ways which manifests consideration of women.

In order to ensure that women are not left behind and do not lose from mining revenues, revenue collection, management and allocation across different social groups need to be debated to create a shared understanding of the laws and practices of different actors in the mining sector. In an effort to achieve this objective, HakiRasili-mali conducted this study to provide an in-depth analysis on the extent to which women benefit or lose out in mining revenue collection, allocation, and distribution mechanisms in Tanzania. Specific focus of the assignment was to examine the existing legal and policy framework to find out how it ensures socio-economic outcomes with a gender eye during mining revenue collection, allocation and distribution, and recommend for policy and legal reforms to enhance women's benefit from the sector.

To achieve the purpose of this study, analysis was made on policies and laws relating to gender and mining so as to realise the extent to which they guarantee women's benefit from mining revenues in Tanzania. Participation of women in mining revenue collection, management and allocation was also assessed and indicated the areas where improvements are required for women to benefit from mining revenues. Practices of key actors in the mining sector were evaluated with a view to seeing how benefits of different social groups, especially women can be enhanced.

The study focused on women miners as Artisanal and Small-Scale Miners (ASM), Large-Scale Miners (LSM), women employed in mines, women who play role in the mining sector and other linked business and women who are not in any way engaged in mining activities, but living in areas surrounding mining sites.

The report consists of four chapters. Chapter one provides the introduction, background and context for the study, chapter two explores policy and legal framework governing the mining sector in Tanzania and Africa, chapter-three provides an analysis and discussion of study findings and chapter four presents a conclusion and recommendations.

1.2 Background and Context

In the 2000s, Tanzania reformed its mining policy, legal and regulatory framework aiming at strengthening its fiscal and non-fiscal benefits.⁹ Legal and regulatory reforms introduced new tax regimes which focused on reorganizing fiscal issues in the extractive sector.¹⁰ The re-organization enables the government to acquire more benefits from the extractive sector, including mining. In order to monitor revenue collection,

⁸Tanzania Extractive Industries Transparency Initiative (TEITI) Report, 2019.

⁹See for example, s. 22 (j & k), the Mining Act, 2010 and s. 10, Natural Wealth and Resource (Permanent Sovereignty) Act, 2017.

¹⁰See for example, s. 14 (2), Extractive Industry (Transparency and Accountability) Act, No. 23 of 2015

expenditure control and accountability, the Public Finance Act provides that all revenues should be deposited into the CF.¹¹ The same is later allocated to various budget votes by the Ministry of Finance as guided by the Appropriation Act.¹² When deposited into CF, revenues from mining activities are mixed with funds from other economic sectors. It then loses its character and becomes difficult to identify the extent of contribution by different social groups such as women. Once women's contribution in revenue generation is unidentified, their needs are ultimately overlooked during allocation of the said revenues.

It is worth noting that allocation of funds intended to improve agriculture and health services have some impact on women since the agricultural sector employs more women than men.¹³ According to the National Bureau of Statistics, agriculture employs about 4.7 million Tanzanians from whom 54% are women. The health sector reform is also significant to women because the improvement of healthcare services and clean water facilities have a direct impact on women's well-being. This is also the case where funds are designated for improvement of the education system because the education sector benefits both boys and girls. For instance, Tarime District Council received over 2 Billion Tanzanian Shillings, being service levy from North Mara Gold Mine for the period between July to December 2020.¹⁴ The Council committed itself to use the money to, among other things, improve social services in health, water and education. Regarding education, some of the said money will be used for construction of secondary school hostels and a special secondary school for girls in Tarime.

Low consideration of women in revenue alloca-

tion has also been noted from sector ministries which have inadequate data on projects with direct impact to special groups such as women, youth and persons with disabilities. Legislators who participated in this study and respondents from the Ministry of Finance indicated that in the 2019/2020 financial year, with the exception of women's financial loans and finances for social services, there were no revenues that were set aside for projects which benefit women directly. For example, in 2018/2019 financial year, non-tax revenues from the mining sector were USD 335,182.62 and in 2019/2020, they were USD 528,333.52,¹⁵ but there were no revenues allocated for projects with direct impact to women. Women's financial loans is a legal obligation of Local Government Authorities to set aside 10% of their own sources for women registered groups, youths and persons with disabilities. Practice diverges from the National Development Vision (TNDV), 2025 which seeks to redress all forms of imbalances and states that the creation of wealth and its distribution in society must be equitable and free from inequalities.¹⁶

Moreover, the second phase of the Five-Year Development Plan (2016/17-2020/21) emphasizes reducing poverty and job creation among women and youths, integrating human development and economic growth.¹⁷ However, Tanzanian women continue to face barriers in accessing and controlling major means of production such as land and capital adding to a variance in women participation in key economic sectors such as mining. Despite such variance in women's participation in some economic activities, it is still evident that Tanzania has enjoyed a progressive economic transformation for the past five years. This has been due to investment in huge infrastructure projects such as roads, railways, airports, water and energy, as well as the contri-

¹¹S. 11, *Public Finance Act*, [Cap. 348 R.E. 2002].

¹²Act No. 7 of 2019.

¹³United Republic of Tanzania, National Bureau of Statistics (NBS), (2014) *Integrated Labour Force Survey*, p. 56.

¹⁴Jacob, M., "Tarime Receives over 2bn/- Service Levy from Gold Mine." *Daily News*, 15th February 2021, <https://daily-news.co.tz>. Accessed on 22.4.2021.

¹⁵Field data obtained from the Ministry of Finance and Planning, February 2020.

¹⁶Para. 1.2.1, *Tanzania National Development Vision (TNDV) 2025*.

¹⁷Para. 1.3 (ii), p. 2.

bution of the mining sector. Notwithstanding the steady economic growth, the impact is still not distributed equally between gender lines.

It should be noted that Tanzania does not have a mechanism for distribution of mining revenues to enhance women's benefit as natural resources including minerals belong to all Tanzanians.¹⁸ Nonetheless, to ensure gender equality, there are affirmative actions which facilitate distribution of benefits from mining companies to communities surrounding the mining areas. For example, mining companies are required to ensure that local content is a component of their mining activities.¹⁹ They are obliged to prepare and submit local content plans to the Mining Commission for approval.²⁰ This has to be done before the mining company starts operations, at the time when applying to undertake mining activities.²¹ Local content is defined as a percentage of locally produced materials, personnel, financing, goods and services rendered in the mining industry value chain and which can be measured in monetary terms. Local content could benefit women if they were empowered to establish projects which would feed up the

mining community including the mining companies' employees. Women could also benefit through employment opportunities, education and training to enable them acquire modern technology required in mining operations.

Women can also benefit significantly from the mining sector through Corporate Social Responsibility (CSR) policies of the mining companies. Involvement of women in mining operations not only benefits them, but also ensures sustainability of the mining projects. However, poor communication between the mining companies and the surrounding local communities, in some mining areas, has resulted in implementation of CSR projects which are not considered as priorities by the respective communities. The involvement and participation of local communities has often been done during the Environmental Impact Assessment (EIA) studies by addressing priorities of local communities' development in order to maximize opportunities for their involvement. EIA helps to plan for the viability of economic activities in the local communities even after mine closure.

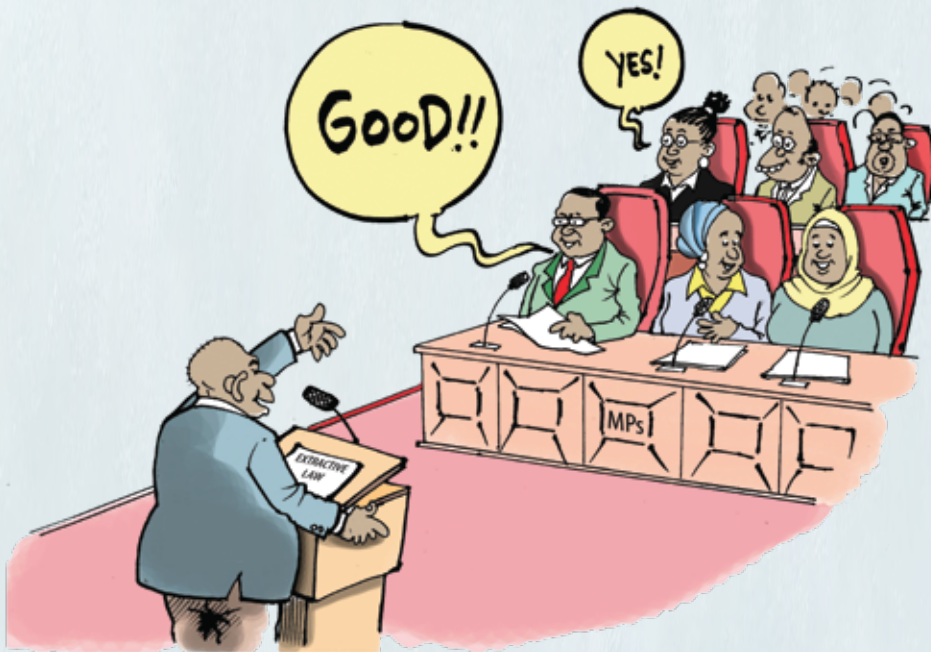
¹⁸Art. 9 (i), Constitution, [Cap. 2 R.E 2002].

¹⁹Rule 7, the Mining (Local Content) Regulations, G.N. No. 3 of 2018.

²⁰Ibid, Rule 10.

²¹Ibid, Rule 3.

Chapter 2



“While laws are generally expected to be facilitative tools for achieving policy goals, the mining laws of Tanzania lack affirmative provisions to echo stipulations of the Mineral Policy and the government commitment towards gender equality.”

— MINING SECTOR POLICY AND LEGAL FRAMEWORK REVIEW —

2.1 An Overview

Tanzania is a signatory to international instruments which set standards for the government to ensure and promote gender equity. Compliance with the national laws and international human rights standards in the mining sector is one of the mandatory requirements for any government or company investing in the mining sector.²⁴ The government has manifested its commitment by joining global efforts to bridge gender gaps by ratifying a number of international and regional legal instruments that call for gender equality and elimination of discrimination against women. Such instrument include the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), which calls for, inter alia, right to everyone to pursue his or her economic rights; the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, which urges States to adopt pro-women sensitive laws, policies and programs; and, the African Charter on Human and Peoples Rights on the Rights of Women in Africa of 2003 (commonly termed as ‘Maputo Protocol’), which provides for rights of women to effectively participate in socio-economic and other opportunities.

Moreover, there are mining-related international instruments including the African Mining Vision (AMV) of 2009; and, the SADC Protocol on Mining of 1997. The two instruments address the issue of community inclusiveness and benefits of mining activities (community direct participation and benefits in mining). However, there is no specific mention of women’s rights in the two instruments.

At the national level, the legal framework on mining is dominated by the Mining Act of 2010. It implicitly declared minerals as public goods –

not to be owned by anyone individually. A review of the mining law suggests that there is only one area in which gender rights (e.g. rights of Artisanal and Small-scale Miners, including women) can be enforced under the Mining Act. Such an area is on licensing in which the law provides for different types of licensing.²⁵ Despite this legal affirmative measure to recognise women in the mining sector, there are issues considered as insufficient legal support to women to effectively participate in the mining value chain. For example, the law is completely silent on specific support to women in the most common challenges (e.g., capital, skills, marketing, etc.) as articulated in policies. Usually, laws are regarded as part of implementing mechanisms of the policies. Therefore, avoiding addressing those challenges, means to leave them unenforceable. Besides, in the mining laws, there is no mention of women’s inclusiveness in the mining sector. Gender mainstreaming is generally not addressed in the Mining Act. The recently passed laws, namely the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017; the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act of 2017; and, the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015 are also gender-blind.

2.2 Reviews from Outside Tanzania

2.2.1 African Mining Vision, 2009

Tanzania is a member of the African Union, which has adopted the African Mining Vision (AMV), followed by an Action Plan for its Implementation of 2011. These documents are not legally binding, but outline a vision that suggests that mining must be pursued “as the royal road to growth” through sustainability and good governance.²⁶ The Vision was adopted in 2009

²⁴See for example, para. 5.9 of the Mineral Policy, 2009 which stresses on the importance of good relationship between mining companies and surrounding communities and the public in general in development of mining projects.

²⁵S. 8, Mining Act, 2010.

²⁶p. 7, Action Plan for Implementation of the AMV, 2011.

during the African Union (AU) Summit. Tanzania, being a member of AU, adopted the AMV. The Vision calls for African States to have transparent, equitable and optimal exploration of mineral resources based on broader sustainable growth and social economic development.²⁷

Concerning women's participation in the mining sector, the Vision acknowledges that there is inequality between men and women whereby women are not fully engaged in the sector, especially in the artisanal small-scale mining value chain.²⁸ It therefore calls upon African governments to initiate empowerment of women through integrating gender equity in mining policies, laws, regulations, standards and codes.²⁹ The Vision is in all aspects a pro-women guideline as it specifically calls for inclusion of women in the mining sector.

2.2.2 Maputo Protocol, 2003

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), to which Tanzania is a party, obliges States parties to take all appropriate measures to promote women's access to and control over productive resources such as land and guarantee their right to property.³⁰

2.2.3 Kampala Declaration, 2011

During the International Conference on Great Lakes Region (Kampala Declaration) on Sexual and Gender-Based Violence (SGBV), Tanzania committed itself to strengthen the inter-linkages between the regions for initiatives on natural resources by mainstreaming gender aspects into

the national policies on the natural resource sector.³¹ Gender inclusion considers achievement of gender equality and empowerment of all women and girls.

2.3 Reviews from Within Tanzania

2.3.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania provides for facilitation of building a nation of equal and free individuals enjoying freedom and justice.³² It requires the Government and all its agencies to provide equal opportunities to all citizens, men and women alike without regard to their colour, tribe, religion, or situation in life.³³ Thus, the constitutional ground for citizens participation in all affairs of the country is founded on the Constitution.³⁴ It sets out fundamental objectives and directive principles of State policy which ensures social justice and that national wealth is applied for the common good. It prohibits the exploitation of one person by another and it upholds the principles of Universal Declaration of Human Rights in the form of Bill of Rights.³⁵

Under the Constitution, every citizen is obliged to ensure that natural resources (including minerals) are protected.³⁶ This implies that everyone has to be engaged in planning and decision-making processes concerning natural resources such as minerals. The Constitutional requirement that calls for decentralization of inter alia, decision making processes to local government authorities and the enactment of legislation to put into effect this directive is yet another commendable

²⁷p. 26, *African Mining Vision*, 2009.

²⁸*Ibid.*, p. 29.

²⁹*Ibid.*, p. 32.

³⁰Art. 19 (c), *Maputo Protocol*, 2003.

³¹Paragraph 16, *Kampala Declaration on SGBV*, 2011.

³²The preamble to the Constitution, [Cap. 2 R.E 2002].

³³*Ibid.*, Art. 9 (d).

³⁴*Ibid.*, Art. 8.

³⁵*Ibid.*, Part III.

³⁶*Ibid.*, Art. 27 (1) and (2).

initiative to ensure women are not left at the periphery in the mining value chain.³⁷ Although the Constitution overrides all laws, constitutional provisions by themselves cannot ensure effective decentralization of natural resources, including minerals.

It has to be noted that the purpose of decentralization is to ensure effective implementation of policy and legislation (in this context, mining policies and legislation), to minimize costs and maximize social well-being.³⁸ It is not the aim of this study to venture on whether or not these objectives have been achieved, but it is vital to point out that social, cultural, economic and political factors have a big role in determining the extent to which management of natural resources can be effective where Constitutional provisions exist. Decision making processes in local government authorities do not reflect the intention of decentralization. This is so partly because the composition of the Village Councils, District Councils and Township Authorities is not required by the law to consist of any woman.³⁹ It is in these organs where decisions concerning mining revenues collection, management and allocation are made. Absence of women representation in such important organs impairs women participation in the entire mining value chain.

2.3.2 Gender Development Policy, 2000

The Policy aims at achieving gender equality and equity in Tanzania. Gender equality is thus at the core of this policy. It acknowledges that although Tanzanians generally have not yet effectively utilized freedom, opportunities and justice to attain social, economic and political develop-

ment, the situation is worse for women due to various reasons which have contributed to their discrimination as compared to men.⁴⁰ According to the Policy, in the year 2000, only 0.1% of women were involved in mining activities.⁴¹ The factors stated as hindering effective participation of women in the agriculture and mining sector are poor equipment, lack of capital, poor skills and lack of land ownership.⁴²

The Policy raises a pertinent concern regarding land ownership by women. Most of the mining activities take place in rural areas under customary right of occupancy. In this regard, land is usually labeled as household property and registered in the name of husband or other male relative such as father-in-law or son in the case of some widows. As men are the owners of customary right of occupancy and heads of the household, once land is acquired for mining operations, they are the ones who claim for and receive compensation. The problem is that in the household, resources are not shared equitably between men and women. Thus, women do not receive compensation since payment is made at the household level. Worse still, after acquisition of land, women are the ones who face adverse effects of losing access to communal land and forests from which resources such as water, firewood, fodder, wild plants, and fruits are gathered. During mining operations, local content plans and CSR projects by the mining companies do not also benefit women effectively since they are not engaged in planning these projects.

To implement the policy objectives, the National Strategy for Gender Development, 2005 was

³⁷ See also Majamba, H.I. (2012) *Decentralization of Natural Resources Management: Reflections on the Constitution of the United Republic of Tanzania*, *Orient Journal of Law and Social Sciences*, Vol. VI, Issue 11, pp. 31-46.

³⁸ Mniwasa & Shauri (2001), *Review of Decentralization Process and its Impact on Environment and Natural Resources Management in Tanzania*, Lawyer's Environmental Action Team (LEAT) Research Report, LEAT Dar es Salaam.

³⁹ See ss. 35, 45 and 55, *Local Government (District Authorities) Act*, [Cap. 287 R.E. 2002].

⁴⁰ Para. 10, *National Gender Development Policy, 2000*.

⁴¹ *Ibid*, Para. 16 (a).

⁴² *Ibid*.

formulated. It seeks to guide implementers to engender policies, plans, strategies and programmes and adhere to international, regional and national commitments on gender equality. As stated, policy is not a law. To realize benefits stated in the policy, the sectoral laws should embrace the spirit of the policy. Gender Policy and its strategy have adequately addressed gender equity, but unfortunately, the mining laws are lacking correlation with stipulations of these policy documents as far as gender equity is concerned. The Strategy for Gender Development highlights that most of the statistics at all levels in the country are not sex-segregated to show contribution of men and women.⁴³ As a result, resource allocation is not directed towards differential gender needs.⁴⁴ It is important to note that once the legal setting is inefficient, the practice cannot be expected to be effective. Equally, the study has revealed that mining revenues are not segregated according to gender, hence, women's contribution to the sector is not recognized and appreciated. Ultimately, in allocation of revenues from the mining sector, the needs of different social groups such as women are never considered as central. If women benefit from the mining revenues, they do so just inadvertently like when the revenues are used for healthcare services, clean water facilities and education costs. There are no deliberate efforts to ensure women benefit from mining revenues because even their contribution to the sector is unnoticed.

2.3.3 Tanzania Mineral Policy, 2009

The Mineral Policy imbeds an effective and efficient mineral sector, which contributes significantly towards acceleration of socio-economic development of Tanzania. It continues to attract local and foreign direct investment in

the mining sector and integration of the mineral sector with other sectors of the economy. One of the objectives of the Mineral Policy is to encourage and promote women participation in mining activities.⁴⁵ From such government commitment, women would be expected to benefit from all stages of the mining revenue value chain. Realization of the benefits created under the Mineral Policy has been hampered by the fact that there is no direct link between policies and laws on mining with other sectoral policies especially on gender rights and economic empowerment.

While laws are generally expected to be facilitative tools for achieving policy goals, the mining laws of Tanzania lack affirmative provisions to echo stipulations of the Mineral Policy and the government commitment towards gender equality. As a result, the practice in the sector has imitated the mining laws by not taking women onboard. This state of affairs reduces a chance of mainstreaming and addressing women's interests in the mining sector and therefore, little benefits from the mining value chain.

Women participation in mining activities is important in the socio-economic development process. The Mineral Policy recognizes that women face economic and socio-cultural barriers which restrict their effective involvement in mining activities as a result they receive minimal benefits.⁴⁶ Having such a strong realization of gender inequality by the policy raises the need for social change agents to advocate for legal change in the mining sector and integrate gender equity. In the Mineral Policy, the Government commits itself to ensure that all programmes related to mining, including education and training opportunities are based on gender equality and equity.⁴⁷

⁴³ Para. 2.1.17.1, *the National Strategy for Gender Development, 2005*.

⁴⁴ *Ibid.*

⁴⁵ Para. 4.0 (r), *Mineral Policy, 2009*.

⁴⁶ *Ibid*, para. 6.2.

⁴⁷ Para. 6.2, *Policy Statement (ii)*.

It states:

The Government will continue to promote participation of women in mining activities; The Government will ensure that all programmes related to mining, including education and training opportunities, are based on gender equality and equity.⁴⁸

In accordance with the Mineral Policy, the Mining Act obliges the mineral right holders to submit to the Mining Commission training programmes and plans for recruitment of Tanzanians in all phases of mining operations and consider gender equity, persons with disabilities and host communities.⁴⁹ Unfortunately, the provision regarding employment and training under the Mining Act (Local Content) Regulations does not mention anything about women or gender equality.⁵⁰ While a principal legislation is basically for incorporation of provisions of the policy, regulations have a role of actual implementation of the principal legislation. In gender perspective, omission of gender aspects in the regulations has a negative effect because ordinarily, regulations guide the enforcers on specific legal issues. Thus, there is little hope that gender inclusion as contemplated in the Mineral Policy and the Mining Act will ever be achieved in practice.

2.3.4 Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449

This Act seeks to confine the revenue collected from natural resources and related earnings to be retained in the United Republic of

Tanzania. Apart from being specifically designed to vest proprietary rights on the people of the United Republic of Tanzania through the doctrine of permanent sovereignty, the Act also promotes the principle of guaranteeing returns from natural resources and retention of earnings arising from natural resources, including the mining sector.⁵¹ Women are therefore supposed to benefit from mining revenues since they are among the citizens of Tanzania as contemplated by this Act.

The Natural Wealth and Resources (Permanent Sovereignty) Act operates hand in hand with the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act⁵² which mandates the Government to re-negotiate and rectify terms of existing investor-State agreements if the National Assembly considers those agreements or aspects of them, unconscionable.⁵³

In terms of the Unconscionable Terms Act, a term of an Investor-State agreement is unconscionable if it, inter alia, deprives Tanzanian citizens of economic benefits arising from beneficiation in Tanzania. Apparently, the Act is unlikely to achieve its objectives if women are deprived of economic benefits generated from minerals which are one of the natural resources in Tanzania. The Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations of 2020 were made to ensure that agreements on natural wealth and related business activities are conducted in a manner consistent with the highest ethical principles at all times, and within the requirements of the Constitution and all applicable national policies and laws.⁵⁴

⁴³ 46 *Ibid*, para. 6.2.

⁴⁷ Para. 6.2, *Policy Statement (ii)*.

⁴⁸ *Ibid*, *Policy Statement (i) and (ii)*.

⁴⁹ S.103 (2), *the Mining Act [Cap. 123 R.E. 2019]*.

⁵⁰ Rule 20, *the Mining (Local Content) Regulations, G.N. No. 3 of 2018*.

⁵¹ S. 10, *Natural Wealth and Resources (Permanent Sovereignty) Act, 2017*.

⁵² Act No. 6 of 2017.

⁵³ S. 6 (1), *Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017*.

⁵⁴ Rule 4 (1), *Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, G.N. No. 58 of 2020*.

Although upholding ethical principles and compliance with the national laws and policies are vital in protecting women's rights, to increase women's economic benefit from natural resources, the laws should be gender-sensitive and there should be strategies to ensure the actual enforcement of such laws and policies.

The Regulations prohibit Investors to discriminate against any person on the basis of gender, age, disability, sex, tribe, religion, marital status, union membership or political belief and affiliation.⁵⁵ It categorically prohibits gender discrimination by Investors, but it is necessary to note that management of natural resources does not involve Investors alone. The mining sector for example, comprises numerous actors starting from mining revenue generation, collection, management and allocation. Thus, such gender sensitive provisions need to be enshrined in all mining laws to increase women participation in the sector and the benefit gained thereof.

The Natural Wealth and Resources (Permanent Sovereignty) Act, the Unconscionable Terms Act and Regulations made under them do not firmly vest decision making mandate on women. Just in passing, it is provided that agreements relating to extraction and exploitation of natural resources (including minerals) must be tabled before the National Assembly for scrutiny or review.⁵⁶ Presumably, women's engagement in mining decision making processes was expected to take place in this style. The assumption is however highly rebuttable because Tanzania has not yet reached 50% representation of women in the National Assembly and at present, interests of women are generally not adequately represented by their Members of Parliament.

2.3.5 The Mining Act, [Cap. 123 R.E. 2019]

It aims at regulating prospecting for minerals, mining, processing and dealing in minerals, to grant, renewal and termination of mineral rights, payment of royalties, fees and other charges.⁵⁷ The Act was substantially amended in 2017 to establish a number of revenue-collecting mechanisms from mining activities. The said revenues include royalties, fees and other charges.⁵⁸ It is through these provisions that women were expected to benefit from the mining sector by being granted mineral rights, being involved in budgeting processes by LGAs where appropriation of royalties and service levies take place, and participation in the management of mining revenues as members of the Mining Commission and its committees. Regrettably, composition of the Mining Commission and its committees under the Mining Act is gender insensitive.

The Mining Commission is composed of the Chairman, Permanent Secretary (Treasury), the Permanent Secretary (Ministry of Lands); Permanent Secretary (Ministry of Defense); Permanent Secretary (Ministry of Local Government); Chief Executive Officer of the Federation of Miners Associations of Tanzania; Deputy Attorney General; and two eminent persons who possess proven knowledge and experience in the mining sector, one of whom is supposed to be a woman.⁵⁹ Therefore, composition of the Mining Commission requires the presence of one woman only and other members who subscribe to it by virtue of their official positions (most of them being Permanent Secretaries of the Ministries) not by gender representation.

Under the Act, there is a requirement that training and recruitment programmes submitted to the Mining Commission by the mineral right holders should consider gender equity.⁶⁰ This is a commendable move initiated by the law.

⁵⁵ *Ibid*, Rule 10.

⁵⁶ S. 12, *Natural Wealth and Resources (Permanent Sovereignty) Act*, [Cap. 449]

⁵⁷ Long title to the *Mining Act*, [Cap. 123 R.E. 2019].

⁵⁸ *Ibid*, Part VI.

⁵⁹ *Ibid*, s. 21 (7) and (8).

⁶⁰ *Ibid*, s. 103 (2).

However, its implementation needs monitoring of the mineral right holders not only by submission of programmes and reports to the Commission, but also evaluation of practices of the mining companies in maintaining gender equity in mining operations. The 2017 amendment to the Act abolished the Ministerial Advisory Board and established in its place the Mining Commission.⁶¹ From a gender viewpoint, this amendment is detrimental because the Ministerial Advisory Board was composed of one-third women members, whereas the Mining Commission consists of one woman only. This situation has a negative consequence in the mining decision making process and involvement of women in mining revenue management.

With regard to actual participation of women in mining, the Mining Act implies that women are entitled to apply for, and be granted the mineral rights unless one falls within the category of persons restricted from being granted mineral rights.⁶² More specific inclusion of women participation in mining activities may be inferred from categories of mining licences under section 4(1) where primary mining licence is considered as a licence for small scale mining operations whose initial capital for investment does not exceed USD 5 million or its equivalent in Tanzania Shilling.

It is interesting to note that the primary mining license is restricted to Tanzania citizens only. This is an affirmative action to ensure that Tanzanians participate in the mining sector and contribute more to the national economy. The same approach could be used to increase women participation in the mining value chain and benefit more from the sector. That is not the case, and

worse still, the Mining Act is silent about Artisanal and Small-Scale Mining (ASM) while it is undisputed that ASM is the major economic activity of communities surrounding mining areas. Their participation as primary mining license holders, small-scale and large-scale miners is often limited by numerous factors such as access to land for mining, access to loans and other grants, geological information, et cetera. For example, the last report of the Mining Commission (2018/2019) indicates that during that year, the Commission issued 5,094 mineral licenses. Among these, 2,456 were primary mining licenses equal to 48% of all licences issued.⁶³ The report does not show the number of women who were granted primary mining licenses or any other category of mining license. This is a continuation of non-segregation of data according to gender in almost every aspect of mining which affects the identification of women's contribution to the sector and the benefit gained thereof.

2.3.6 Public Finance Act, [Cap. 348 R.E. 2002]

This is a legislation which provides for revenue collection, allocation and expenditure. In compliance with the Constitution, the Public Finance Act requires all revenues derived from various sources for the use of the Government (including those from the mining sector) to be paid into one special fund known as the Consolidated Fund (CF).⁶⁴ The Minister of Finance has powers to draw money from the CF and allocate it to various budget votes.⁶⁵ Therefore, contributions from different social groups (women inclusive) cannot be tracked during specific expenditure or projects which benefit the said social groups directly.

⁶¹ *Ibid*, s. 21.

⁶² *Ibid*, s. 8.

⁶³ *The Mining Commission Annual Report, 2018/2019*, p. 20.

⁶⁴ Art. 135, *Constitution of the United Republic of Tanzania* and s. 11, *Public Finance Act, [Cap. 348 R.E. 2002]*.

⁶⁵ *Ibid*, ss. 13 and 18.

It is important to appreciate the presence of some mechanisms that are set by the government to ensure equity principle in allocation of resources to different social groups. These include the 10% allocation from LGAs' budget for interest-free loans to women, youth and persons with disabilities under the President's Office - Regional Administration and Local Government (PO-RALG) budget vote, improvement of agriculture and livestock keeping sectors where women are mainly engaged, special funds to improve maternity health systems which benefit women, budget allocation for improvement of water supply which ultimately benefit women and special funds for supporting girl child education. Nevertheless, given the fact that mining revenues contribute largely to the national GDP, if mining revenues were allocated with a gender eye, more funds would be set aside for further improvement in these aspects. The 10% LGAs loans for WYPWDs could be increased up to 20% in trying to resolve women's concerns in accessing loans for mining. In 2017/2018 financial year, mining revenues contributed Tshs. 3.77 billion to the national DGP.⁶⁶

2.3.7 The Local Government Finance Act, [Cap. 290 R.E. 2019]

This Act addresses the mining sector in terms of its application to collection of revenues from mining activities. It authorizes local governments to collect service levy from mining companies operating in their geographical jurisdictions. The levy is pegged at 0.3% of the turnover net of the value added tax and the excise duty of any corporate entity.⁶⁷ In addition, the Local Government Finance Act and its Regulations vest an obligation to Local Government Authorities to set aside ten percent from collection of their own

sources of revenue for financing development activities of registered groups of women, youth and persons with disabilities.⁶⁸

Since the funds are for registered women's groups, youth and persons with disabilities, the same are required to be appropriated as loans. The distribution of the loan is, 40% for women, 40% for youth and 20% for persons with disabilities.⁶⁹ These loans are not subject to any interest rate.⁷⁰ Granting interest-free loans to women is a commendable legal position, but it needs an effective engagement of women at the issuing stage, appropriation and repayment of the loans so as to access women's challenges relating to these loans, hence hindering them from benefiting from the mining sector. The budgeting process generally is supposed to take women on board because it is through this process that mining revenue collection and allocation take place. The process involves some of the stakeholders such as government departments and agencies (for planning), donor community (through General Budget Support), the Parliament (debate and approval), general public, including women, and civil societies.⁷¹

In LGAs, budgeting process starts at the village level whereby villagers identify their needs and prioritize them using a participatory approach known as the Opportunities and Obstacles to Development (O & OD) Principle. The priorities from villagers (including special groups' priorities) are taken to the ward level. From the ward, the priorities are sent to the districts and later at the national level-where technocrats under different guidelines from the government prepare the national budget for debates and approval by the Parliament.

⁶⁶ TEITI 10 th Report for 2017/2018, p. 24.

⁶⁷ S. 7 (1) (y), Local Government Finance Act, [Cap. 290 R.E. 2019].

⁶⁸ Ibid, s. 37A (1) & Kanuni 4 (1), Kanuni za Utoaji na Usimamizi wa Mikopo kwa Vikundi vya Wanawake, Vijana na Watu Wenye Ulemavu, Tangazo la Serikali Na. 286 la Mwaka 2019.

⁶⁹ Ibid, s. 37A (2).

⁷⁰ Ibid, s. 37A (3).

⁷¹ Part IV, Budget Act [Cap. 439 R.E.2015].

The challenge has always been having priorities proposed from the village level featuring in the national budget with funds allocated for their implementation. It is evident that the budget process, on its face, engages women in revenue allocation, but at the final stage, it is difficult to see how women's priorities are reflected in the budget.

It is principally agreed that women benefit from mining revenues distribution based in their locality in different ways, but in the LGAs budgeting process, there is nowhere that beneficiaries of financial loans for women, youth and PWDs are involved in allocation of such loans to verify that the 10% is actually set aside, or monitoring of such funds to ensure they benefit the targeted groups. The allocation role is vested to the LGA's Financial Loans Committee and the Regional Secretariat has been given a monitoring role in issuing, appropriation and repayment of the said loans.⁷²

The composition of both GA's Financial Loans Committee and the Regional Secretariat does not consider women representation since members of these organs are obtained by virtue of office positions they hold. In this way, mechanisms to ensure women participation in mining revenues collection, management and allocation is lacking in the entire LGAs budgeting process. One member of the Parliamentary Energy and Minerals Committee explained that, as mining revenues are not segregated according to gender during collection, there is no mechanism used during disbursement of revenues to specific social groups (women in this case). The allocation is done according to government priorities for the benefit of all people.

2.3.8 Extractive Industry (Transparency and Accountability) Act, 2015

The Act establishes a Committee known as Tanzania Extractive Industries Transparency and Accountability (EI-TA) Committee which is responsible for ensuring that benefits of

extractive industry are verified, duly accounted for and prudently utilized for the benefit of the citizens of Tanzania. The term "extractive industry" is defined as an industry dealing with natural resources, which implies that mining falls within the ambit of extractive industry and is regulated by this law. The Committee is composed of 15 members whose appointment is required to consider gender balance. Membership to this Committee is in the ratio of 5 members from government entities whose membership to the Committee is by virtue of government office positions they serve, 5 members from extractive companies (whose selection criterion has not been stated) and other 5 members originating from CSOs.

Presumably, the legislation contemplated that gender representation to the Committee would be achieved through members originating from CSOs. Nonetheless, this is not necessarily so because such CSO members may be men. Moreover, the Committee being responsible for the entire extractive industry (minerals, oil and gas), it is possible to have members originating from oil and gas sectors, consequently, women in mining will not be represented in the Committee. Like the EI - TA Committee, the Nomination Committee also suffers gender inequality syndrome because it consists of four Permanent Secretaries of the Ministries, one member from extractive industry companies and one member from CSO umbrella organisations.⁷³ As the extractive sector is known to be male-dominated, there is little hope that a member representing extractive companies will be a woman. Nomination Committee is mandated to nominate key persons to the EI - TA Committee for ensuring inter alia that, benefits of extractive industry are utilized for the benefit of Tanzanians. Having extractive industries committees which are gender-blind, it is evident that women have been left out in decision making and management of the extractive industry which includes the mining sector.

⁷² Rules 14 & 20, G.N. No. 286 of 2019.

⁷³ *Ibid*, s. 6.

Chapter 3



“Do Women Lose out or Benefit from the Mining Sector?”

FINDINGS AND ANALYSIS

3.1 Overriding Question: Do Women Lose out or Benefit from the Mining Sector?

In order to picture the gender portrait of the Tanzanian mining sector and establish the extent to which women are taken on board in the mining revenue value chain thereby benefiting from or losing out in the mining sector, this section presents specific issues to inform the reader about the position of women in the entire mining value chain of Tanzania. The picture is drawn from two viewpoints. The first viewpoint focuses on the legal environment as an enabler of women's participation, mining revenue management to women's benefit and allocation of mining revenue to women's advantage. The second viewpoint is set to consider external factors which are not necessarily legal but affect the extent to which women participate in and benefit from the mining sector in the country.

3.2 Women Participation in Mining

Women participation in the mining sector entails the extent to which they form part of the production process and the entire mining value chain. Despite its significance to development, the mining sector in Tanzania like in other parts of the world remains largely men-dominated.⁷⁴ Generally, women constitute less than 25% of the mining population.⁷⁵ They constitute about 20% of the labour force employed in mining and quarrying.⁷⁶ This study appreciates the review of Tanzanian legal framework governing the mining sector which takes on board imperative governance standards including women participation therein. However, the actual participation of women in the mining sector is still debatable. Researchers inquired about how the

mining laws ensure gender equality in the mining sectors. Most of the respondents were not sure if there is any mining law which provides for gender equality in mining. They however pointed out that, in practice most of the persons involved in mining activities are men. One of the Lawyers who participated in the study said:

It is very rare to find a woman owning the mining pit (kitalu), unless she had obtained it by way of inheritance from her deceased father or husband. Those who participate in mining are only engaged in secondary activities such as picking some gold left-overs and panning (kuchenjua).

This shows that there is low participation of women in mining that reduces their chances of benefiting from the sector and achieving the right to development. As put by UN Women, women are often key players in their communities, with key roles of ensuring the wellbeing and survival of those around and connected to them.⁷⁷ Therefore, ensuring women's benefit from mining revenues is not only good for their individual development, but also necessary for socio-economic development of their communities and the country at large.⁷⁸

In study areas, it was revealed that participation of women in mining activities is very minimal due to culturally construed perception that

74 UN Women (2016b) *Promoting Women's Participation in the Extractive Industries Sector: Examples of Emerging Good Practices*, Nairobi: UN Women.

75 UN Women (2016), *Mapping Study on Gender and Extractive Industries in Mainland Tanzania*.

76 NBS' *Integrated Labour Survey, 2014 Table 5.3*

77 UN Women (2016a) *Mapping Study on Gender and Extractive Industries in Mainland Tanzania, United Republic of Tanzania: UN Women*.

78 See *Sustainable Development Goals (SDGs)*, goal 5.5.

mining activities are for men. There are some efforts from gender rights NGOs to sensitize women to engage in mining activities in a more effective way, but still their engagement in mining activities is limited. In most of the cases, they are allocated with quite rudimentary and monetary insignificant activities such as hauling stones containing gold, milling, sieving mineral sand, fetching water and cooking food for sale around the mining areas. When asked on the factors which limit women's participation in mining and the way they overcome them, one of the respondents stated:

Our major challenge is capital. We do not qualify for loans issued by local government authorities because once you are involved in mining, you are considered as a financially capable woman. Financial institutions such as banks do not trust us because mining is like gambling, there is no guarantee that one will get the minerals and be able to repay the loan. We have therefore resorted to self-help plans by establishing a SACCOS. It is not yet operative, but we hope when it starts working, it will assist us a lot. Each member will contribute some agreed amount of money and be able to borrow at a low interest rate.

It should be noted that LGAs do not discriminate against women in issuing financial loans, but the law disqualifies women groups with formally employed members from getting loans.⁷⁹ Admittedly, in some cases, the capacity of women to engage effectively in the mining value chain especially in the production and exploration stages has been hampered by lack of capital and cultural factors, among others. One of the respondents when answering the question as to

how gender roles impair women participation in the mining activities had this to say:

“North-Mara is a male-dominated area (mfumo dume) where women are undermined in almost every aspect of life. Men are more exposed than women in economic opportunities, including mining activities. After men have got mining opportunities, they engage women as casual labourers to undertake activities like grinding, crushing and carrying sand from mining holes to machines.”

This indicates that apart from low participation of women in mining activities, even a few of them who participate engage in activities ancillary to mining. The finding is in consonance with the National Strategy for Gender Development which articulates some practical challenges hindering women from engaging in economic activities. They include presence of legal and policy frameworks which are not gender sensitive to consider gender factors such as level of women's education, traditional and reproductive roles affecting women's productivity and development, lack of entrepreneurial skills, management problems, inadequate capital and security which contribute to low productivity, persistent poverty and low social status.⁸⁰ This situation informs on women's level of participation in the mining sector and the extent of benefit gained by them.

During the interview with one of the mining company's Community Relations Officer, the challenges faced by companies in dealing with communities in mining were explained as follows:

⁷⁹ Rule 6 (1) (f), G.N. No. 286 of 2019.

⁸⁰ Paragraphs 1.4 and 2.1.6, Women and Gender Development Strategy, (2005).

Supporting surrounding communities in terms of finance has proved futile because members of the community stir up conflicts among themselves and they end up misusing the money knowing that we have no means to hold them accountable. They tend to treat these funds as free gifts. For instance, we once provided entrepreneurial skills and capital to women miners and initiated a poultry farming project for them, but the project failed because they treated it as free property from the company.

Whereas one of the noted barriers identified for ineffective participation of women in the mining sector is limited access to resources including capital, some women do not appreciate the mining companies' efforts to enhance women participation in mining and improve their benefit from the sector. They end up taking periphery roles such as service provision as well as panning and amalgamation.

Apart from actual participation in mining activities, there are women employed in mines and women who play roles in the mining sector and other linked businesses, for example women brokers and those who provide different services in mining areas. These are not directly engaged in the actual mining, but they are part and parcel of the mining value chain.

With regard to employment, the study involved two women miners engaged in ASM allegedly, due to their low levels of education. They are both standard seven leavers married women who resorted to informal mining as a livelihood option because they did not have a better way of living. The level of literacy amongst ASM therefore, informs the policy and law makers on employment that artisanal mining can be one of

the viable employment opportunities to absolve youths and women including graduates if ASM is upgraded. Presently, involvement of women in mining is in respect of performing tasks such as manually grinding sand and rocks, transporting sand and rocks to the crushers, carrying water needed for the crushers, and washing the sand. This kind of participation is unlikely to guarantee women's benefit from the mining sector in the same way as men.

The mining laws contain mandatory requirements for mining companies to prepare plans indicating how they will employ and train Tanzanians for technology transfer and employment opportunities. Such plans are required to be gender sensitive and consider persons with disabilities. The study revealed that mining companies have no plans for women scholarships as part of the implementation of the obligation to employ, train and transfer technology to Tanzanian women. Employment opportunities for women can have substantial positive outcomes for them, their families and communities in which they live.

3.3 Revenue Collection and Allocation Mechanism

In Tanzania, mining revenue streams involve various government agencies which are responsible for receiving mining taxes, fees and charges. These include TRA, LGAs, Ministry of Finance and Planning, Ministry of Natural Resources and Tourism and Ministry of Minerals. Examples of payments made by mining companies to these government agencies are corporate tax (30%), capital gain tax (30%), withholding tax (5%), VAT collected by TRA, royalty, inspection fee and license fee collected by the Ministry of Minerals and service levy which is collected by LGAs. The question of revenue collection is a regulatory function exercised by the existing fiscal bodies mainly created by the financial laws. The purpose of this section is to explore the degree to which women feature in generating mining reve-

nues and if the allocation of such revenues reflect women needs as one of the special social groups. The financial report on non-tax mining revenues for 2018/2019- 2019/2020 financial years depicts the generality of mining revenues aggregated at USD 335182.62. This amount does not clearly specify the contribution from women engaged in the mining revenue chain during this period.

Sources from the field did not confirm the mainstreaming of mining revenue streams within the LGAs' systems. Rather, mining is generally regarded as a central government's issue in terms of licensing and revenue collections. The only areas in which LGAs can support women's mining activities is to assist them to register cooperative societies and other groups and to offer some grants, especially the 10% loans for WYPWDs from their own sources. Therefore, there is no direct support of women in mining from LGAs, (this was specifically confirmed in Tarime District Council). Still, to enjoy any form of support, women need to be mobilized to form groups and to formalize themselves in order to qualify for some loans from both LGAs and private sector such as commercial banks.

In Geita region on the other hand this study finds mining revenues forming 70% of the overall collection of the service levy in a financial year 2020/21. Ten percent of such funds equivalent to 466 million Tanzanian Shillings has been allocated to 102 groups of women in the region. However, it has been reported that the respective Welfare Department at the LGA level does not advance deliberate initiatives to follow up on whether the projects are beneficial to such women or not. The practice is considered a weak point towards realization of a big dream of ensuring women's benefit from mining revenues.

As regards to mining revenue allocation mechanism, there are no allocation criteria to ensure each budget vote is allocated funds according to

its share of contribution to the CF. When asked if there is any mechanism used in allocating revenues from CF to various budget votes, the respondent from the MoFP explained that there is no specific criterion. The funds are allocated according to government priorities starting with the national debt, salaries, emoluments and development projects. In explaining the manner in which royalties and service levy from the mining sector benefit women at the LGAs level, one of the respondents said:

To my understanding, royalties are spent generally in LGAs and some amount is usually directed to community development projects like supplying clean water, construction of schools, etcetera.

It was acknowledged earlier that the funds designated for improving health, water and education sectors benefit women as well. Nevertheless, Public Finance Act does not consider the contribution of various social groups into CF and ultimately employ a purposive approach in allocation of funds. If contribution of different social groups (women for this matter), was reflected, it could serve as a guide during revenues allocation to ensure that women benefit from mining revenues commensurate with their share of contribution to mining revenues generation.

3.4 Participation of Women in Mining Revenue Management

Participation of women in mining revenues management can be assessed from the extent to which women participate in mining decision-making organs such as the Mining Commission and its Committees, the level of women engagement in setting CSR and local content plans, as well as women's involvement in LGAs'

revenues collection and allocation processes. As established in the preceding sections, there is poor representation of women in mining decision-making organs. Likewise, it was established through LGAs budgeting process and distribution of revenues that there is no affirmative action to guarantee women involvement in mining revenue allocation.

Field data indicates that the Mining Commission consists of only one-woman Commissioner who coincidentally is a Permanent Secretary of the Ministry of Lands, Housing, and Human Settlements Development. This is also the case for Local Content Committee in which the law does not designate any woman member. Low women representation at this point implies poor participation of women in the decision making process pertaining to mining revenue management and allocation. Respondents from women's mining associations remarked that there is no TAWOMA member who is a member of the Mining Commission. The Mining Commission is a government institution. "...They usually visit us, but they are persons from different ministries..."

Thus, the composition of the Mining Commission, EI - TA Committee, Nomination Committee and that of the Local Content Committee requiring only one woman member, gives a clear picture on how participation of women in mining revenue management to enhance their benefit from the sector is an unachievable dream. Having only one-woman member in such important and strategic decision-making organs for women's economic benefits from mining revenues does not in any way guarantee its achievement.

Concerning women involvement in setting CSR

and local content plans, it has been noted that CSR is not a requirement applicable to the mining sector alone. It applies in every undertaking taking place around the communities. In the mining sector, CSR ensures communities surrounding the mining areas benefit from mining operations taking place therein. Researchers inquired on whether or not women are involved in planning CSR projects by the mining companies. One of the respondents from a mining company stated:

Our company involves mining women group leaders to suggest projects to be implemented by the company for them. Our community relations department is responsible for this. This is done in every project that affects women. However, there are projects which are in mining contracts such as fishing projects, milling, etc. It is difficult to involve women in these projects at the planning stage, but one of the conditions for implementation of these projects is that women must be involved. For projects which allow flexibility, we support women in establishing them or if already established, we support the implementation.

Therefore, there are ways through which women are involved at different levels in planning CSR projects. In this regard, women are involved in planning community development projects established in areas where mining activities are taking place. These projects seek to provide benefits to local community members (women inclusive) in mining areas.

3.5 Implementation Challenges

This study was geared towards establishing the extent to which women either benefit or lose from revenues in the mining sector. Nonetheless a number of factors impair the possibility of

attaining such benefits by women. The factors are presented in a two-pronged picture which focuses firstly on the legal environment as enabler of women engagement/ participation, mining revenue management to women's benefit and allocation of mining revenue to women's advantage. Secondly focus is directed on external factors which are not necessarily legal but affect the ways through which women benefit from the mining sector in the country.

3.5.1 Gender Insensitive Laws on Mining Revenue Management and Allocation

It cannot be over-emphasized that mining revenue management is a cornerstone for women to benefit economically from the mining sector. However, the same requires firm legal support in order to achieve the desired results which is unfortunately not the case for the Tanzanian laws as they are couched in a gender insensitive manner. This fact is justified by the non-gendered approach in appointment of women expected to sit in the decision-making bodies for purposes of proper management and allocation of revenue for the benefit of women themselves.

As noted under 4.4 above the composition of the Tanzania Mining Commission and the Local Content Committee requires only one-woman member on board. Such an ill skewed distribution potentially makes effective mining revenue management and allocation to the respective women's benefit an unfeasible dream. Essentially, that does not in any way guarantee the achievement of such important and strategic decision-making organs regarding women's economic benefits from mining.

3.5.2 Low Awareness on Mining Laws and Enforcement Mechanisms

Women's benefit from mining revenue is a function of the extent to which such women are aware of the enabling environment around them. As a way to gauge the extent to which

mining laws in Tanzania carry a gendered approach it was considered relevant to appreciate the level and extent of women's awareness on relevant mining laws and their enforcement mechanisms. This was necessary so as to obtain legal redress pertaining to their rights as potential participants in the sector and enable them to know the proper ways to engage according to the existing legal standards and generate income there-from.

Field results revealed the low-awareness of women on the existing legal framework on mining laws and even the corresponding remedies in a situation where their rights have been in any way affected. This reveals a rather weak point in terms of engagement of the women in mining activities making it a dream to even be able to enforce their rights there-from if any.

3.5.3 Low Women Participation in Mining Sector

A clear highlight on the extent to which the women are engaged in this sector was considered important in order to extrapolate their contribution to mining revenue generation even before advocating for their consideration in the mining revenue allocation process. Findings indicated that there is low women contribution in the mining sector thus difficult to trace the extent of mining revenue contribution from them attributable to a number of factors including lack of capital, lack of tools and equipment, and women's reluctance to engage in mining activities due to social and cultural norms. It is thus advocated that the definition of women who benefit from mining activities be expanded to capture their own engagement rather just as mere receivers in the mining sector.

3.5.4 Non-Characterization of Mining Income from Women in the CF

In order to ensure a vibrant economy and improve the livelihoods of communities, the

government has put in place a revenue generation mechanism in most sectors, including the mining. In doing so, some efforts have been made to ensure local communities at the grass-roots level share the benefits.

In due effect, the TRA is charged with the duty of collecting revenues and administering various taxes of the Central Government. For the purpose of monitoring revenue collection, expenditure control and accountability the Public Finance Act, of 2001 offers mandatory legal requirements to ensure all revenues including those drawn from the mining sector are deposited in the Consolidated Fund (CF).

However, deposit of mining revenue in the basket renders loss of character for mining revenue thus making it difficult to ascertain the extent of contribution by women miners in a specific context. And practically, this generalized approach and non-characterization of the produced income results in its poor identification for the purpose of determining a fair share to be reverted back to women during allocation stage.

It was therefore expected that a clear legal requirement for segregation of the said revenues in a gender parity manner would reinforce a clear legal framework for collection of revenues. This would thus help to identify women's contribution to the mining revenues, ultimately allocating them purposely to ensure that women get a deserving share of benefit from the sector.

3.5.5 Role of the Parliamentarians

The Constitution of the United Republic of Tanzania, advocates formal representation of the general community through the Members of Parliament (MPs). Accordingly, the legal enactments point out the existence of certain rights for specific groups including the right to benefit from mining as an economic activity. This should also be the case for women as part and parcel of the general community that has the right to enjoy economic benefits from the mining sector in

Tanzania. However, the same may be futile where the parliamentarians who are duty bound to raise their voices on behalf of such women's rights as required by the law fail to do the same. This situation may not yield the desired results amidst the efforts to ensure women's benefits from the mining sector.

For instance, the enactment of the Natural Wealth and Resources (Permanent Sovereignty) Act categorically advocates for the government's control over natural resources on behalf of all Tanzanians women inclusive. This law provides that agreements relating to extraction and exploitation of natural resources (including extractives) must be tabled before the National Assembly for scrutiny/ review. The assumption inherent in this requirement which is of course highly rebuttable is that the interest of local communities including women, will be adequately represented by their respective MPs. However, matters pertaining to women benefits from the mining sector in specialized order have not been at the forefront of parliamentary debates in Tanzania making it counterproductive to enhance women's benefits from the mining sector.

3.6 Advocacy Areas and Topics

In order to enhance women engagement in the mining sector this study examined the existing advocacy areas and topics, measuring its success in terms of supporting women in achieving mining revenue and local benefits. The existing advocacy areas and benefits in the mining sector have focused mainly on mining as a tool for sustainable development; environmental hazards caused by mining and the measures to alleviate the same; economic gains and losses from mining towards the communities at large and gender disparities in terms of engagement in mining economy followed by designing generalised means to resolve the disparities. It is however so far revealed that these advocacy areas do

not carry the specific element vied for by this study thus cannot yield positive results if holistically applied. Therefore, the current study suggests a re-craft of specific advocacy areas for mining stakeholders in order to realise a gendered perspective expected to include women as important beneficiaries as follows:

Firstly, conducting sensitization programmes at the national, regional, and local levels. The programmes will ensure monitoring of various issues related to women miners mainly dealing with inclusion of women in mining decisions making bodies and elimination of gender-based violence in mining sites.

Secondly, designing interventions or programs aimed at reaching women and assisting in building their capacity and morale boosting to entice their full engagement in the sector. The intervention programmes should aim at instilling fresh knowledge that women are also able to engage and fully participate in mining despite being a traditionally male dominated sector. This will resolve and help to wither away the socio-cultural factors which suggest that women are not to engage in mining.

Thirdly awareness campaigns should also be created in order to enable women to understand their rights; to be aware of risks and health dangers of mining areas; to address HIV/AIDS related issues particularly in mining and neighbouring areas; needs to care and protect the environment particularly in mining and neighbouring areas; and sensitize and abolish child labour particularly in mining and neighbouring areas.

Fourthly, to organize capacity building workshops/seminars for women miners to help them acquire licenses and operate legal mining and mineral processing activities; attain mineral market skills; form co-operative groups and savings and credit societies (SACCOS).

Fifth, advocacy, and lobbying on behalf of women and children in local and international forums; access to productive resources such as credit schemes and access to appropriate equipment; requesting stakeholders to incorporate women's issues in their development programs.

Chapter 4



“The Mining legal framework should be considerate of gender in the entire value chain.”

CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusion

The study has established that women benefit partly and lose a lot from the mining revenues in Tanzania. It has been discovered that when mining revenues are allocated for improvement of social services such as clean water, health services and education systems, they benefit women as well. Nevertheless, review of laws and policies has shown that to a large extent, the Mining Policies and strategies are gender inclusive and provide for equal benefits from mining activities between men and women, but there is no direct link between what is provided in the Policy and provisions of the mining laws. Most of the mining laws have been found to be gender blind since they do not enhance women participation in mining. They do not also specifically require engagement of women in mining decision making bodies, setting CSR and Local Content plans as well as being involved in LGAs budgeting processes. Further, the laws are lacking mechanisms for tracking women's contribution in the mining sector and the criteria for allocating mining revenues. Ultimately the study revealed that the mining legal framework of Tanzania does not consider gender inclusion in the sector, hence not taking women on board in the entire mining value chain.

Evaluation on the practices of key actors in the mining sector such as the mining companies, government ministries and agencies, mining women groups and women miners indicate that apart from weaknesses in the mining laws regarding gender equality, effective enforcement of such laws is also lacking. The mining Act, for example, obliges mining companies to involve women in planning CSR projects, but in practice this was not found happening because some of CSR plans are contained in mining contracts, making it difficult to engage women in setting the said plans. The same problem was found in relation to local content plans where the law makes it mandatory for every holder of mineral rights to have gender-inclusive employment,

training and technology transfer plans, but the study did not confirm that the requirement is implemented. No mineral right holder was found having a specific plan such as scholarships for women in mining as part of compliance with the legal requirement.

On the other hand, LGAs have been found not involving women in budgeting processes especially in setting aside the 10% loans for WYPWDs. Women have no opportunity during budgeting to verify that the amount set as loans is actually 10% of the LGA's revenues collected. Moreover, organs responsible for assessment of loan applications, issuing loans and monitoring of repayment do not purposely consist of women to safeguard their interests. Participation of women in mining activities was found to be minimal, the TRA does not segregate mining revenues according to gender and in allocation of revenues, the MoFP does not use any mechanism to ensure that women benefit from mining revenues. It has been proved that Tanzania has no mechanism for revenues allocation, the approach used is based on government priorities.

4.2 Recommendations

Based on the findings and ultimate conclusion, the study has come up with recommendations to allow for full and effective women's participation in the mining sector; proper allocation of revenues from mining and involvement of women in management of revenues from the sector. The recommendations are offered towards specific actors in order to bring to light specific actions to be undertaken to ensure that women no longer lose out from the mining sector as per the findings of the study.

4.2.1 To the Ministry of Minerals

The Ministry of Minerals represents the government unit responsible for facilitating development of the mining sector. As a way of facilitating development in the sector it is recommended

that the Ministry devises affirmative programmes to foster participation of women in mining as it has been found that the level of women participation is relatively low compared to that of men. The low-level participation downplays their benefits therefrom. The study anticipates that an increase in women participation would reverse the loss suffered by women from the mining sector.

4.2.2 To the Tanzania Revenue Authority

The findings above suggest that the existing legal framework has not sufficiently put in place effective mechanisms to spot inclusion of women in the entire mining value chain. One among the consequences is the difficulty in tracing the exact amount generated by women from mining activities which should in turn inform the allocation process. Difficulty in tracing the amount generated by women from mining is also exacerbated by the regulator's practice which does not segregate the mining revenues contribution from women miners. The practice calls for a need to put in place clear legal requirements for segregation of the said revenues in a gender parity manner so as to identify women's contribution to the mining revenues.

4.2.3 To the Ministry of Finance and Planning

To ensure that women benefit from the mining sector according to their share of generating the said revenues, the Ministry of Finance needs to adopt a purposive revenues allocation mechanism. The mechanism has to be institutionalized rather than being subjective/ individualized. This will ultimately enable allocating them purposely to ensure that women get a deserving share of benefit from the sector.

4.2.4 To Local Government Authorities

Lack of capital and funds to enable women participate in mining activities has been one

among the highly pronounced factors leading to their low participation. In order to alleviate this challenge, it is proposed that access to finance is enabled in order to enhance women participation in the sector. The government through its Local Government Authorities is advised to establish state-managed loans facilities such as public micro financing structures accessible to women. In order to achieve the desired results preferential treatments may be applied through exemptions or offering women simplified procedures to access grant and loan schemes. Furthermore, the LGAs may design capacity building programmes aiming at facilitating women groups in as far as mindset change to engage in mining as an economic activity; project write ups for funding through the WYPD loans which may again be reinvested in the mining sector.

Alternatively, deliberate government efforts may be directed to the banking sector to persuade it to mainstream gender therein. This will provide room for incentivizing women determined to engage in the mining sector by offering them uncomplicated loan conditions. Such conditions may include low interest loans which would enable women participation into the sector.

4.2.5 To the Parliament

The study reveals a non-gendered approach in appointment of members who form part of decision-making bodies responsible for management in the mining sector. This is evidenced by the composition of members of the Tanzania Mining Commission as discussed above. The appointment of members to the Commission is by virtue of professional capacity and expertise in the mining sector as provided under section 21(7) of the Mining Act. This legal requirement gives no room for gendered approach to the appointment of members therein. Nonetheless it is considered that the Commission represents an important entity for overseeing prosperity and welfare of the people through its mandates

under section 22 of the Mining Act. With this in mind it is thus argued that its composition should take on board women representatives who would be at a better position to raise their voice on behalf of women within the Commission.

Enacted laws including the Natural Wealth and Resources (Permanent Sovereignty) Act assume that decision making interests of local communities including women, would be adequately represented by their Members of Parliament through parliamentary scrutiny/ review. However, matters pertaining to women benefits from the mining sector in specialized order have not been at the forefront of parliamentary debates in the Tanzanian parliament which is counterproductive to enhancement of mining benefits to women from the mining sector.

4.2.6 To Mining Sector Stakeholders (HakiRasilimali & CSOs)

This study appreciates the role of mining sector stakeholders in promoting women's rights thus yielding more sustainable returns in terms of

mineral production, poverty reduction and broader development effects. With this background it is recommended that mining stakeholders including NGO's and CSO's take part in advocating for review of the Mining Act, 2019 to accommodate a specific provision on creation of a conducive environment for women engagement in the sector. This will ensure a move away from the sweeping provision in the Mineral Policy, 2009 which aims at encouraging and promoting women participation in mining activities. This policy objective has not been actualized to date. The NGO's and CSO's are also advised to raise alarm on establishment of an allocation formula which would consider specific needs of women other than generalizing their needs in terms of health services, infrastructures and water services. Such needs could be in the form of capital and tools which would enable them to participate and equally become potential producers in the mining sector.

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