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Analysis of Legislative Reforms in Consolidating Citizens' Participation in the Mining Sector in Tanzania

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Abstract:

This article analyses the participation of Tanzanians in the extractive sector since reforms were introduced to natural wealth and resources in general, specifically, mining operations in 2017. It expounds on the extent to which the right to participation of Tanzanians in resource governance is consolidated and reinforced.

This study observes that the current legislative framework on natural wealth and resources governance provides extensively on the participation of Tanzanians in the exploitation of mineral resources. These include a duty to respect and uphold constitutional protections by all investors, reserving Primary Mining and gemstones licences to Tanzanians, employment and training of nationals, observance of Local Content Plans, increased Corporate Social Responsibility accountability and effective participation of Local Government Authorities, and the need for mineral beneficiation in Tanzania. Indeed, there have been witnessed achievements in the mining sector, including the establishment of mineral markets and trading centres, promotion of small-scale miners, increased employment of Tanzanians and their participation in decision-making processes, procurement of goods and services available in Tanzania as well as increased accountability on Corporate Social Responsibility projects.

However, some challenges hinder the effective participation of Tanzanians in the mining sector. These include disparities in emoluments between Tanzanians and foreigners with similar qualifications, lack of clear understanding of the mandate of local government authorities and their limited participation in prioritization of CSR projects, lack of up to standards required of goods and services available and minimal implementation of local content plans by some mining entities. Thus, the study calls for the ameliorating of all these challenges to enhance Tanzanians' participation in the mining sector.

Key Words: *Citizens Participation, Mining Sector, Legal Reforms, Permanent Sovereignty, Tanzania.*

1.1 Introduction

Minerals are among the natural wealth and resources that Tanzania is endowed with. Tanzania is ranked as the fourth country in the African continent in

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mineral resources possession after the Republic of South Africa, the Democratic Republic of Congo and Ghana.¹ The mineral resources in Tanzania entail metallic, gemstones, industrial, construction and energy minerals.²

The mining sector is one of the leading sectors for foreign earnings and contributions to Tanzania's Gross Domestic Product (GDP).³ Its contribution to the GDP in Tanzania has slightly increased from 3.7 per cent in 2014 to 4.8 per cent in 2016.⁴ The mining sector revenue collection for the Financial Year 2019/2020 increased to five hundred twenty-eight billion Tanzanian Shillings from one hundred ninety-six billion Tanzanian Shillings in the 2015/2016 Financial Year.⁵ The mining and quarrying sector grew by 15.3 per cent during the quarter that ended in March 2020. Such growth was attributed to improved management of mining activities, including streamlined operations and the establishment of mineral trading centres providing market access to small-scale miners.⁶

Participation of citizens in harnessing natural wealth and resources is among the topical aspects of the contemporary world. It reinforces democratic governance requiring peoples' participation in activities of state governance. Through the extensive documentary review, this study provides an analysis of the legislative framework in consolidating the participation of citizens in mining activities through the lens of recent reforms in the mining sector in Tanzania. It articulates the legal landscape and challenges of implementation of such reforms.

1.2 The Need for Citizenry Participation in Mining Sector

¹ United Republic of Tanzania, *Mineral Sector Environmental Impact Assessment Guidelines*, Ministry of Energy and Minerals, October 2014, p.1, and Mikidadi, M., "An Examination of Some Key Issues on Legal and Policy Environment in the Mining Sector After the Economic Reforms in Tanzania", *International and Public Affairs*, Vol. 3, No. 2, 2019, pp.33-42. doi:10.11648/j.ipa.20190302.11 (as accessed on 5th October 2020).

² United Republic of Tanzania, *Mineral Sector Environmental Impact Assessment Guidelines*, Ibid.

³ See the Bank of Tanzania, *Economic Bulletin for the Quarter Ending June 2020*, Vol. LIII, No. 2, at p.1.; and Madini and Uchumi Online News Bulletin, First Issue, 1st August 2020 at p.2. See <https://www.madini.go.tz/wp-content/uploads/2020/08/Madini-Uchumi-1-1.pdf> as accessed on 12th October 2020.

⁴ Malinganya, W and Bangesi, K.M.K, "Policy Enabling Environment of Mining Sector in Tanzania: A Review of Opportunities and Challenges", *Journal of Sustainable Development*, Vol.11, No. 4, at p. 7.

⁵ The Mining Commission, "Editorial Comments", Madini News (Online Version), No. 5 July-September 2020, at p. 2. as accessed on 22nd October 2020 at 19:00hrs)

⁶ The Bank of Tanzania, *Economic Bulletin for the Quarter Ending June 2020*, Vol. LIII, No. 2, at p.1.

People form an integral part of any state in the world. Being a critical component in existence of a state, people have an indispensable role to play in exploitation, utilization and extraction of mineral resources. Under International law, for a state to exist there must be people occupying a particular piece of land on a permanent basis; people must be occupying a particular piece of land permanently.⁷

Citizens' participation is eluded by the view that the mining operations likely impact their lives and livelihoods. The people's fundamental right to enjoy permanent sovereignty over natural wealth and resources within their territories.

2. Policy Foundations for Citizenry Participation

Policies being the precursor to the enactment of laws normally contain statements with respect to some intended legislative enactment to address anomalies in the legal framework. Some policies provide enabling environment for active participation of citizens in the mining sector, including the Tanzania Development Vision (TDV) 2025 and the Mineral Policy of Tanzania, 2009.

TDV 2025, for instance, urges State to "...ensure that markets permit wide participation of men, women, youths and the entire citizenry in activities which enable the realization of the Vision. The government will have to put in place affirmative action programmes which provide for special support for promoting the participation of all the indigenous population in the wealth creation and ownership process. These programmes will need to be effectively supported to ensure that the place of the indigenous Tanzanians in the ownership and control of the economy is enhanced."⁸ Indeed, including Tanzanians in ownership and control of the economy entails their active participation in the extractive industry.

The Mineral Policy of Tanzania, 2009 provides for the promotion of public participation in mining activities by providing clear guidance on investments towards sustainable exploitation of Tanzania's mineral resources in a win-win manner.⁹ Thus, the Policy caters for facilitation, supporting and promoting active participation of Tanzanians in gemstone mining; strengthening involvement and participation of local communities in mining projects and encouraging mining

⁷ See Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933. Four main characteristics of the State are: a permanent population, a defined territory, government and capacity to enter into relations with other states.

⁸ See United Republic of Tanzania, *Tanzania Development Vision 2025*, p. 16.

⁹ United Republic of Tanzania, *Foreword to Mineral Policy of Tanzania 2009*, Ministry of Energy and Minerals, Dar es Salaam, at p. 4.

companies to increase corporate social responsibilities; and encouraging and promoting women's participation in mining activities.¹⁰

These objectives suggest active engagement of the citizenry of all walks of life, including women, in gemstone mining. These are curative measures to facilitate the limited participation of Tanzanians in the mining sector. It has been noted that communities have been the least regarded and historically neglected in policy and related discussions in mineral sector development.¹¹ The inclusion of local communities' participation addresses the public demands and outcry that there have been very limited responsibility and lack of accountability in democratic governance of natural wealth.¹²

The Mineral Policy reiterates four main areas where the participation of Tanzanians in the mining sector can be gauged. The first aspect is increased participation of the Government and Tanzanians in mining activities. This is through empowering its institutions to participate strategically as a developer or jointly with the private sector in mining projects and taking necessary measures to enable Tanzanians participate in medium and large-scale mining.¹³

The second aspect relates to the development of the gemstones mining industry. Gemstone industry is reserved for Tanzanians save for large-scale gemstone mine ownership where joint ventures with foreigners are permitted. The Government reiterates its resolve to ensure that Tanzanians own all large large-scale gemstones mines by not less than 50% shares; the entirety of ownership and operation of the small and medium medium-large scale gemstones mines ownership must be vested on Tanzanians; and the Government promotion of participation of local investors in gemstone mining¹⁴.

The third area relates to promoting the relationship between the mining companies and local communities. The mining companies are required to implement credible corporate social responsibility (CSR) policies and encourage the involvement of local communities in setting priorities of community development projects and socio-economic aspects during the projects' lifespan.¹⁵

¹⁰ United Republic of Tanzania, Mineral Policy of Tanzania 2009, at pp. 9-10.

¹¹ Mikidadi, M., "An Examination of Some Key Issues on Legal and Policy Environment in the Mining Sector After the Economic Reforms in Tanzania", *International and Public Affairs*, Vol. 3, No. 2, 2019, pp.33-42 at p.40. doi:10.11648/j.ipa.20190302.11 (as accessed on 5th October 2020).

¹² Luoga, F.D.A.M., "Challenges in Setting up Legal Frameworks for Natural Resources Governance in East African Countries", *African Review*, Vol.43, No. 2, 2016, pp.1-16 at p. 1.

¹³ Paragraph 5.5 of the Mineral Policy of Tanzania.

¹⁴ See Paragraph 5.7, Ibid.

¹⁵ Clause 5.9, Ibid.

The people and their authorities are entrusted with prioritization of projects in CSR.

The fourth aspect rests entirely on women's participation in the mining sector. The Government reiterates its resolve to continue to promote the participation of women in mining activities and ensure all mining-related programmes, including education and training opportunities, are based on gender equality and equity.¹⁶ It is argued that ‘the government has made several progressive efforts in its attempts to make provision for gender balance in policy and legislative framework in key natural resources sector generally, and specifically those that have a direct bearing to the extractive sector.’¹⁷

These policy initiatives address overarching concerns of the people that existing policy and legal frameworks were not best suited to foster democratic natural resource governance; thus, the country and its people were not benefiting from the mining sector to the expected level.¹⁸ Thus, there was a dire need to change such a policy landscape to address policy and legal framework inadequacies.

3. Legal Frameworks for Citizens’ Participation in Mining Sector in Tanzania

Tanzania has legislative framework that cater for public participation in natural wealth and resource governance. These legislative enactments cover issues of governance of natural wealth and resources. These include the Constitution, framework legislation and sector-specific statutes dealing with exploration, extraction and utilization of mineral resources.

3.1 The Constitution of the United Republic of Tanzania, Cap. 2 [R.E. 2002]

The Constitution of the United Republic of Tanzania, 1977, is the fundamental law of the land. It provides for various aspects of democratic governance, including coverage of fundamental rights and duties of individuals and institutions.

¹⁶ See Paragraph 6.2.

¹⁷ Majamba, H.I., Engaging Women in the Extractive Sector: A Review of Tanzania’s policy and Legislative Framework, *Tanzania Journal of Development Studies*, Vol. 18 No 1 (2020), p.42.

¹⁸ Luoga, F.D.A.M., “Challenges in Setting up Legal Frameworks for Natural Resources Governance in East African Countries”, *African Review*, Vol.43, No. 2, 2016, pp.1-16 at p. 1; and Mikidadi, M., “An Examination of Some Key Issues on Legal and Policy Environment in the Mining Sector After the Economic Reforms in Tanzania”, *International and Public Affairs*, Vol. 3, No. 2, 2019, pp.33-42 at p.37.

The Constitution provides for issues of natural resources in its Directive Principles of State Policy. It requires that 'the national wealth and heritage must be harnessed, preserved and applied to the common good and also to prevent the exploitation of one person by another; and that the use of national wealth places emphasis on the development of the people and in particular geared towards the eradication of poverty, ignorance and diseases.'¹⁹

The Constitution recognizes the need to protect natural wealth and resources for the betterment of the people of Tanzania. As a result, it reiterates that the use, exploitation and management of natural wealth and resources in Tanzania should be directed towards achieving sustainable development of the State. Such incorporation is reflected in the Directive Principles of State Policy and the Bill of Rights.

The Bill of Rights in the Constitution caters for aspects on governance in natural wealth and resources. In particular, the Constitution provides that "every person must protect natural resources of United Republic, property of state authority, property collectively owned by the people and also to property owned by individuals." There is a duty to enjoin every person in Tanzania to protect natural wealth and resources.²⁰

This provision of the Constitution mandates every person to ensure that natural wealth and resources in Tanzania are protected. Indeed, this provision ensures that natural wealth and resources are used wisely for national development. People are the beneficiaries of the national development because any development activities aim to improve people's livelihoods and lives. All the people are enjoined to ensure that natural wealth and resources are utilized sustainably.

3.2 The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 [R.E 2019]

To reform the legislative landscape in natural wealth and resources' governance, the Natural Wealth and Resources (Permanent Sovereignty) Act was enacted in July 2017. This Act incorporates two important international instruments, namely 1962 UN General Assembly Resolution on Permanent Sovereignty over Natural Resources (GAOR 1803) and Charter of Economic Rights and Duties of

¹⁹ Article 9(c) and (i) of the Constitution of the United Republic of Tanzania, Cap 2.

²⁰ Article 27(1) and (2), Ibid.

the States GA Res.328 (XXIX), UN GAOR 29th Sess., Supp. No. 31(1974) 50 as part and parcel of this law.²¹

Under the Act, natural wealth and resources are defined to include all minerals or substances occurring naturally, such as soil, subsoil, gaseous and water resources, flora, fauna, genetic resources, aquatic resources, micro-organisms, airspace, rivers, lakes and maritime space, including Tanzania's territorial sea and continental shelf, living and non-living resources in the exclusive economic zone which can be extracted, exploited or acquired and used for economic gain whether processed or not.²² This coverage is all-inclusive and entails all the resources under international law and all the resources under international law are regarded as properties within the PSNR. As such, minerals of all kinds are part and parcel of the natural wealth and resources for which citizenry participation cannot be underestimated.

The Act provides for a proclamation of the PSNR principle over resources in Tanzania. It grants entitlements to the people of the United Republic of Tanzania over natural wealth and resources.²³ The ownership and control over natural wealth and resources are entrusted to the Government for and on behalf of the People and the United Republic.²⁴ This assertion reiterates that people are at the centre of exercising the PSNR. The Government must ensure that such wealth and resources are exploited or utilized for the benefits of Tanzanians.

The President of Tanzania is entrusted to hold the natural wealth and resources (in trust) on behalf and for the benefit of the people. Further, all all-natural wealth and resources are declared to be inalienable in any manner whatsoever, and such resources should always remain the property of the People of Tanzania.²⁵ This inalienability of natural wealth and resources enforces the PSNR under international law, which recognizes the inalienability of resources under full control and ownership of a sovereign state. ²⁶ To reinforce the inalienability of natural wealth and resources, the Act states that all activities and undertakings relating to the exploitation of natural wealth and resources should be conducted by the Government on behalf of the People of the United Republic.²⁷

²¹ Section 4(3) and First and Second Schedules to the Natural Wealth and Resources (Permanent Sovereignty) Act, Cap 449 R.E.2019.

²² Section 3, *Ibid.*

²³ Section 4(1), *Ibid.*

²⁴ Section 4(2) of the Act.

²⁵ Section 5(1) of the Act.

²⁶ Section 5(2) of the Act, *Ibid.*

²⁷ Section 5(3) of the Act, *Ibid.*

The Act recognises that partnership in exploiting and utilising natural wealth and resources in a globalized world cannot be avoided. As such, in entering into agreements with foreign investors, two main conditions should be adhered to: first, they must fully secure the interests of the People and the United Republic and second, they must get the approval of the National Assembly.²⁸ Any agreement violating the interests of the People of Tanzania and not approved by the National Assembly is considered invalid. These conditions are safeguards intended to secure both people and national interests.

Indeed, the law curtails executive discretionary powers on agreements with investors that do not consider the interests of the People of Tanzania. It enforces accountability of the executive arm of the State to the People of Tanzania through their elected representatives. It addresses anomalies persistent in the legislative frameworks before the current legislative reforms in natural wealth and resources. It has been observed that before these enactments, “there were no principles set down to guide policy and legislative processes to secure national interests. At times laws that are damaging to the economy and the people could be enacted. PSNR was invariably disregarded.”²⁹

In addition, the Act requires any arrangement or agreement for international cooperation on economic and social development involving natural wealth and resources to further Tanzania’s independence based upon respect for PSNR. This is irrespective of whether such agreement is in the form of public or private capital investments, exchange of goods and services, technical assistance and exchange of scientific information.³⁰ This is a full claim of PSNR and properly guarding of State’s sovereign rights over its natural wealth and resources.

The need to control economic development through the extraction, exploitation and utilization of natural wealth and resources is a requirement under the Act.³¹ It requires that any arrangement or agreement guarantee returns to the economy from the earnings accrued or derived from natural wealth and resources. Economic benefits for national development are the major focus of agreements under the new regime on PSNR. Economic development is for the betterment of the people of Tanzania. These can be achieved through ensuring tax revenues, securing the communities contributions to the economy, and royalties.

²⁸ Section 6(1) of the Act.

²⁹ Luoga, F.D.A.M., “Challenges in Setting up Legal Frameworks for Natural Resources Governance in East African Countries”, *African Review*, Vol.43, No. 2, 2016, pp.1-16 at p. 5.

³⁰ Section 6(2) of the Natural Wealth and Resources (Permanent Sovereignty) Act.

³¹ Section 7 of the Act

Further, the Government and People of Tanzania's participation in developing and utilising natural wealth and resources is reiterated. The law requires an equitable share to the government through joint venture and the citizens of Tanzania to have a stake in the venture whenever there is authorization to extract, exploit or acquire and use natural wealth and resources.³² It entails the participation of the Government and Tanzanians in all development and utilization of the resources. The requirement that citizens should participate in resource extraction operations expands existing requirements applicable to special mining license-holders to all mineral rightsholders.³³

Furthermore, beneficiation is a pre-condition for ensuring natural wealth and resources benefit the citizens. The Act prohibits the export of raw resources outside Tanzania, invalidating any agreement on natural wealth and resources without beneficiation.³⁴ Invariably, any arrangement or agreement for the extraction, exploitation or acquisition and use of natural wealth and resources must include a commitment to establish beneficiation facilities within Tanzania.³⁵ Such beneficiation processes ensure that the Government obtains revenues and collections that reflect the minerals' actual value after being fully refined. Thus, the number of royalties and taxes imposed on the investors are likely to have an incremental effect because 100% value of the mineral resources is obtained as all sales are made upon full beneficiation. Such beneficiation creates employment for Tanzania's citizens for smelting, refining and other beneficiation processes conducted within our jurisdiction, thus stimulating economic development.

Further, retention of earnings arising from disposal of the natural wealth and resources in Tanzanian banks and financial institutions is among the mandatory requirements in natural wealth and resources in Tanzania.³⁶ The law prohibits keeping earnings in banks and financial institutions outside Tanzania. The only exception permitted relates to distributed profits which must be repatriated in accordance with the laws of Tanzania.³⁷ This inventive step is for accountability purposes in that Tanzania as a host State should ably know the revenues from the extraction of its natural wealth and resources. Indeed, this long-term aspect

³² Section 8 of the Act, *Ibid.*

³³ Woodroffe, N., Genasci, M., and Scurfield, T., (2017), "Tanzania's New Natural Resources Legislation: What Will Change", *Natural Resource Governance Institute Briefing August 2017*, at p. 4. See <https://resourcegovernance.org/sites/default/files/documents/tanzania-new-natural-legislation-what-will-change.pdf> (as accessed on 26th October 2020 at 1600hrs).

³⁴ See Section 9(1), of the Act.

³⁵ Section 9(2), *Ibid.*

³⁶ Section 10, *Ibid.*

³⁷ Section 10(2), *Ibid.*

entails stimulating the economic long-term aspect entails stimulating the economy's banking and financial sector in the host State of the natural wealth and resources development activities.

Moreover, the judicial competence of institutions in Tanzania in all matters related to natural wealth and resources is reiterated. The law prohibits subjecting the exercise of the PSNR to any foreign court or tribunal.³⁸ As such, all matters related to PSNR must be adjudicated within the judicial bodies and other organs in Tanzania pursuant to the laws of Tanzania.³⁹ This reflects UNGA Resolution 1803 (XVII) on host state rights under the PSNR. This provision respects the host State's independence in utilising its natural wealth and resources. It is argued that proclaimed sovereignty cannot be questioned in any foreign court or tribunal.⁴⁰

Secrecy featured in almost all the Mineral Development Agreements (MDAs). In order to ameliorate such weaknesses, the Act provides for powers of the National Assembly to review all agreements or arrangements entailing extraction, exploitation or acquisition and use of natural wealth and resources.⁴¹ Such scrutiny increases the accountability of the executive arm of the government. Such mandates of the National Assembly entail reviewing and initiating re-negotiation of unconscionable terms.⁴² It ensures that people's representatives satisfy themselves with the benefits that Tanzanian citizens obtain from natural resources agreements. In the absence of clear benefits for Tanzanians, the National Assembly is empowered to direct the Government to re-negotiate such agreements to guarantee adequate benefits to citizens.

The law mandates the Minister to make regulations for better implementation of the Act, including those prescribing code of conduct for investors in natural wealth and resources and all incidental aspects conducive to the effective implementation of the law. Indeed, the Minister promulgated the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations.⁴³ The Regulations require investors in any natural wealth and resources-related activities, arrangements, agreements or business to comply with all applicable policies, laws, regulations

³⁸Section 11(1) of the Act.

³⁹ Section 11(2).

⁴⁰ Sipemba, T., "Tanzania" in Erik Richer La Fleche (Ed.), *the Mining Law Review* (8th Edition), London, Law Business Research Ltd, 2019, p.203.

⁴¹ Section 12 of the Act.

⁴² Ibid, Section 12.

⁴³ GN No. 58 of 2020 dated 31st January 2020.

and other binding instruments and decisions based upon such instruments.⁴⁴ Such compliance to laws is not limited to the principal legislation but also all existing subsidiary legislation.

Investors covenant to operate investment activities in good faith, transparent and in the general interest and welfare of the people. Such covenant includes a duty to report to the Government any conduct that is likely to deny the people of Tanzania benefits from natural wealth and resources.⁴⁵ It is imposed on every investor, entity, consultant, supplier, contractor, partner, agent or employee.

Moreover, respecting all the basic Constitutional rights is a tenet that must be adhered to by any investor. The law proscribes every investor from violating any basic rights and the undertaking to promptly address any violation occurring with respect to activity or business on natural wealth and resources.⁴⁶ It implements the constitutional duty on every person to abide by the Constitution and laws of the country.⁴⁷

Investors should conduct periodic reviews through proper scientific methods and transactional recording to ensure that investments brought in conform with state policies and laws. Further, such investments should do not lead to unconscionable behaviours.⁴⁸ The Government is mandated to conduct audits and monitoring of compliance on investors' reports.⁴⁹ A verification exercise is crucial in establishing veracity of investment reports and to ensure monitoring and evaluation.

Indeed, the current legislation ensures that utilization of resources in Tanzania is geared towards benefiting the people of Tanzania. The provisions invariably protect the right of the Tanzanian people to take active role in exploiting, utilising and managing natural wealth and resources.

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

This law regulates prospecting for minerals, mining, processing and dealing in minerals, granting, renewal and termination of mineral rights, payment of

⁴⁴ Reg. 5(1) and (2), *Ibid*.

⁴⁵ Regulation 6, *Ibid*.

⁴⁶ Regulation 9, *Ibid*.

⁴⁷ Article 26(1) of the Constitution of the United Republic of Tanzania.

⁴⁸ See Regulation 17 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020.

⁴⁹ Regulation 18, *Ibid*

royalties, fees and other charges, and other relevant matters. It covers citizens' rights to participate in mining activities in Tanzania.

First, the ownership and control of entire mineral resources in the United Republic of Tanzania belongs to the State as the sole owner of all mineral resources within its jurisdiction. These mineral resources entail all those in or found any land, rivers, streams, watercourses through ought Tanzania, area covered by the territorial sea, continental shelf or the exclusive economic zone.⁵⁰ The Presidency has the right to own and control over all mineral resources in trust for the people of Tanzania.⁵¹

Second, there are provisions describing various licences in the mining sector. Tanzanians are enjoined to participate in mining activities as mineral rights holders. The Act provides that mineral rights cannot be granted to an individual who is under the age of eighteen years, has not being a citizen of Tanzania for four years, is an undischarged bankrupt, or has been convicted within a period of ten years for an offence involving dishonesty as an element of the offence.⁵² Thus, for individuals to qualify for a grant of a mineral right, the law requires them to be citizens of Tanzania.

Certain mineral rights are exclusively reserved for Tanzanians. In particular, a primary mining licence (PML) can be granted to Tanzanian citizens, whether individuals or partners composed of exclusively Tanzanian citizens or corporate bodies whose all shareholders and their directors are Tanzanians and the control of the company, whether direct or indirect, is exercised from within Tanzania by all persons who are Tanzanians.⁵³ The only exception is when a holder of PML needs technical support where that mineral holder may be permitted to contract a foreigner for such technical support.⁵⁴ The validity of such an agreement for technical support depends on the Commission's approval. Dedicating PML to Tanzanian citizens reflects the Government's resolve to recognise and ensure formalization of -scale mining, which has been the backbone of mining in the country prior to the influx of large-scale mining operations in the 1990s. It is affirmed that "artisanal and small-scale mining has therefore been a source of livelihood for a significant number of people in Tanzania for decades."⁵⁵

⁵⁰ See Section 5(1) of the Mining Act, Cap 123 R.E. 2019.

⁵¹ Ibid.

⁵² Section 8(1), Ibid.

⁵³ Section 8(2), Ibid.

⁵⁴ Section 8(3) and (4), Ibid.

⁵⁵ Mutagwaba, W., Bosco Tindyebwa, J., Makanta, V., Kaballega, D. and Maeda, G. (2018), *Artisanal and Small-scale Mining in Tanzania – Evidence to inform an 'Action Dialogue'*. Research

A gemstone mining licence is also reserved for Tanzanian applicants only.⁵⁶ However, the Minister for Minerals may relax this exclusivity in gemstones mining licence when he determines that the development of gemstones is mostly likely to require specialized skills, technology or a high level of investment, given that non-citizens shareholding in totality does not exceed fifty per cent.⁵⁷

Third, applications and conditions for grant of the Mining Licence (ML) and Special Mining Licence (SML) have a bearing on the participation of Tanzanians in the mining sector. Such a grant including a clear statement on proposed employment and training of citizens of Tanzania, succession plan on expatriate employees, procurement plan of goods and services available in Tanzania, and statement of integrity pledge as well local content.⁵⁸ Every SML/ML must contain conditions on employment and training of citizens of Tanzania, succession plans conditions on the employment and training of citizens of Tanzania, a succession plan, and an approved procurement plan for goods and services available in Tanzania.⁵⁹ The mineral right holder is obliged to ensure compliance on these aspects.⁶⁰ Non-compliance to these conditions may be an event of default if such mineral right holder applies for renewal of the SML/ML.

Part VIII of the Mining Act is dedicated to reforms to ensure effective citizenry participation. It expounds on the need to ensure that conditions of the grant of mineral rights are adhered to, including issues of local content, corporate social responsibility and integrity pledge.

The Mineral right holder must give preference to goods produced or available in Tanzania and services rendered by Tanzanians or local companies.⁶¹ In the absence of such goods in Tanzania, a local company in a joint venture with a foreign company should be engaged to import such goods. Such a company must have at least 25% share ownership by Tanzanians.⁶² Every mineral right holder is duty bound to prepare and submit a procurement plan for at least five years. These services include local insurance, financial, legal, accounts, security, cooking, catering, and health, as well as works, goods and equipments manufactured, produced or available in Tanzania.⁶³ In order to ensure

Report, IIED, London, p. 26. See <https://pubs.iied.org/pdfs/16641IIED.pdf> (as accessed on 16th October 2020).

⁵⁶ Section 8(5) of the Mining Act.

⁵⁷ Section 8(6), *Ibid*.

⁵⁸ Sections 41(3) (g), (h), (i); 42(2)(d); and 49 (2)(f), (h),(i) and (j), *Ibid*.

⁵⁹ Section 44(d) (iii) and (v) and 50(1) (c), *Ibid*.

⁶⁰ Section 47 (b) and 52(e) and (f), *Ibid*.

⁶¹ See section 102(2),*Ibid*.

⁶² Section 102(2) and (3), *Ibid*.

⁶³ Section 102 (4) of the Act.

compliance, every mineral right holder should submit a report to the Mining Commission within sixty days after the end of a calendar year on achievements in utilising Tanzanian goods and services during that year.⁶⁴ Such reporting requirement entails a report on the programme's execution and a detailed local supplier development program per the approved local content plan (LCP).⁶⁵

Training and employment of Tanzanians is another important duty imposed on a mineral right holder to submit for approval a detailed programme for recruitment and training of Tanzanians as per approved LCPs.⁶⁶ Compliance must be within twelve months of the grant of licence and on every anniversary thereafter. Such a programme must provide for training and recruitment of Tanzanians in all phases of the mining operations that consider gender, equity, people with disabilities, host communities, and succession plans for expatriates.⁶⁷ Additionally, the law prohibits discrimination practices, including paying salaries to employees of the same cadre irrespective of colour, faith and nationality.⁶⁸

Furthermore, technology transfer is also crucial in consolidating citizenry participation. The Mining Commission is mandated to approve scholarships with a clearly defined training programme for Tanzanian employees within or outside Tanzania, a commitment by a mineral right holder to maximize knowledge transfer to Tanzanians and establish management and technical capabilities and any necessary facilities for technical works, and commitment to reserve adequate practical training opportunities to students from local training institutions.⁶⁹ However, technology transfer responsibility is not an onerous obligation as it is a shared responsibility between a mineral right holder and the Government.

In addition, the law enjoins the participation of Tanzanians in mining operations through corporate social responsibility (CSR). Every mineral right holder must prepare a credible CSR plan jointly with a local government authority (LGA) where mining operations are conducted or with the LGA in consultation with the Minister responsible for LGAs and the Minister of Finance.⁷⁰ Such a CSR plan should consider environmental, social, economic and cultural aspects based on the LGA's priorities for the host community.⁷¹ The submission and approval of

⁶⁴ Section 102(7), Ibid.

⁶⁵ Section 102(8), Ibid.

⁶⁶ Section 103(1), Ibid.

⁶⁷ Section 103(2), Ibid.

⁶⁸ Section 103(3), Ibid.

⁶⁹ Section 104, Ibid.

⁷⁰ Section 105(1), Ibid.

⁷¹ Section 105(2), Ibid.

the CSR plan are within the mandate of the respective LGAs.⁷² Indeed, CSR based on priorities of a respective LGA amplifies societal-based development, which is all-inclusive and participatory.

Breach of integrity pledge is considered as a breach of a fundamental condition of a mining licence. Also, it is a compulsory undertaking by every Mineral rights holder to comply with the integrity pledge. This entails operating mining operations with utmost integrity, good faith, compliance with all existing laws, tax matters, and disengaging in activities that undermine or prejudice national security.⁷³

Indeed, LCPs, CSR, mineral beneficiation, and integrity pledge are crucial to the participation of Tanzanians. They are integral part of either a ML or SML. They are also made as part and parcel of every ML and SML conditions to be granted.⁷⁴

3.4 The Mining (Local Content) Regulations, 2018

The Regulations⁷⁵ expounds on local content issues in mining operations. Local content is “the quantum or 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.”⁷⁶ There are several important provisions on the LCP. First, LCP must be incorporated as a component of the mining activities of any contractor, subcontractor, licensee, corporation or allied entity carrying out mining activity in Tanzania.⁷⁷ Indeed, LCP is a mandatory requirement in every mining operation, thus guaranteeing the participation of Tanzanians.

Second, there is a requirement to give preference to indigenous Tanzanian companies in granting a mining license.⁷⁸ Invariably, qualification for a grant of a mining license must include at least five per cent equity participation of an indigenous Tanzanian company.⁷⁹ The level of equity participation of indigenous Tanzanian company must be at least twenty percent. Such interest of an

⁷² Section 105(3), *Ibid.*

⁷³ Section 106(3), *Ibid* and Regulations 6-9 of the Mining (Integrity Pledge) Regulations GN No.304 dated 13th July 2018.

⁷⁴ See Regulation 3(2) of the Mining (Mineral Rights) Regulations, GN No. 1 of 2018 dated 10th January 2018 as amended through Form No. MRF 13 and Form MRF No. 14 of the Schedule to the Mining (Mineral Right) (Amendment) Regulations, GN. No. 937 dated 23rd October 2020.

⁷⁵ Government Notice No. 3 of 10th January 2018 and the Mining (Local Content) (Amendment) Regulations, 2019 GN No. 139 of 8th February 2019.

⁷⁶ Reg. 3 of the Mining (Local Content) Regulations, 2018.

⁷⁷ Reg. 7, *Ibid.*

⁷⁸ Reg. 8, *Ibid.*

⁷⁹ Reg. 8(2), *Ibid.*

indigenous Tanzanian company is non-transferable to a foreign company.⁸⁰ A non-indigenous company can participate in mining activities by registering a joint venture between an indigenous Tanzanian company and a non-indigenous company which intends to supply goods and services as a contractor, subcontractor, licensee, corporation or allied entity.⁸¹ Entities participating in mining activities are urged to submit to the Commission a plan on the role and responsibilities of a local company; equity participation of a local Company; and strategy on technology transfer and technical know-how to a local company.⁸²

Third, there is a need to establish a project office within the district where the project is located prior to the commencement of mining activities.⁸³ This applies to the Contractor, subcontractor, licensee or other allied entity undertaking mining activity. This requirement plays a pivotal role particularly in ensuring implementation of CSR by that entity during subsistence of the project.

LCP must be submitted to the Commission simultaneously with making an application to undertake mining activities.⁸⁴ Such a plan is prepared by the respective entity applying to undertake such mining activities to cover both long-term LCP corresponding to the work programme of the application and annual LCP.⁸⁵ Once submitted, the LCP is transmitted to the Local Content Committee within seven days of the receipt for review.⁸⁶ There are strict timelines to be adhered to by the Committee and the Commission to review and approval, respectively.⁸⁷

The LCP must categorically contain detailed provisions ensuring first preference is given to services provided and goods manufactured within the country if they meet specifications in the mining industry in accordance with Standards Authority or acceptable international standards, qualified Tanzanians are considered first in employment, and adequate provision is in place for the training of Tanzanians on the job. Also, the plan must guarantee the use of locally manufactured goods where such goods meet the specifications of the mining industry.⁸⁸ The LCP should accommodate different sub-plans, namely:

⁸⁰ Regulation 8(5), Ibid

⁸¹ Regulation 8(6), Ibid

⁸² Regulation 8(7),Ibid..

⁸³ Regulation 9, Ibid.

⁸⁴ Regulation 10,Ibid.

⁸⁵ Ibid.

⁸⁶ Regulation 10(3) Ibid.

⁸⁷ Regulation 11,Ibid.

⁸⁸ Regulation 12(1), Ibid.

employment and training, research and development, technology transfer, legal services, and financial services sub-plan.⁸⁹

Further, there is a minimum threshold of local content for every mining activity in Tanzania to be adhered to strictly. The minimum level for goods and services ranges from 10%, 50% and between 60-90% at the project commencement, on the 5th and 10th years of operations, respectively. On employment, there must be 30%, 20% and 80% minimum levels of Tanzanians for management, technical core and other staff, respectively. Such levels would incrementally rise to between 50-60% for management and core technical staff while the other staff would be at 90 per cent by the 5th year. It is expected that by the 10th year of operations, the employment levels would range between 70-80% for both management and technical core staff while the level would be 100% Tanzanians.⁹⁰

In addition, a contractor, subcontractor, licensee or other allied entity is required to maintain and operate a bank account within a Tanzanian bank for which such entity must transact business through it.⁹¹ Tanzanian bank is defined to mean a bank that is one hundred per cent Tanzanian or not less than twenty per cent Tanzanian shareholding.⁹² It is argued that this government's decision is in line with changes in mining laws aimed at curbing illicit financial flows in the mining sector.⁹³

Timelines for compliance with requirements of the LCP issues to all pre-existing contractors, subcontractors, licensees or allied entities in the mining operations was set to be three months after the Regulations coming into force.⁹⁴ This provision signifies that the application of these Regulations caters to existing entities and those intending to conduct mining operations in Tanzania.

Through the Mining (Local Content) Regulations, and the country can see how mineral resources contribute to the economic development of the indigenous Tanzanians. Indeed, the promulgation of the Mining Local Content Regulations is a mechanism to increase the participation of Tanzanians and improve the procurement of locally produced goods and services in the mining sector. The

⁸⁹ Regulation 12(3), Ibid.

⁹⁰ Regulation 13 and First Schedule to the Regulations of the Mining (Local Content) Regulations.

⁹¹ Regulation 36(1), Ibid.

⁹² Regulation 36(2), Ibid.

⁹³ See Delloitte, *Improving Mining Revenue Collections in Tanzania*, Delloitte Touché Tohmatsu Ltd, 2019.

https://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Improving_mining_revenue_collections.pdf at p.1.

⁹⁴ Regulation 51 of the Mining (Local Content) Regulations, 2018 GN No. 3 of 10th January 2018.

main reason that African governments revise mining legislation is in order to increase government income from direct revenues.⁹⁵ Accordingly, through the Ministry of Minerals, the government regulates, issues licences for large and medium mining, and ensures that contractors submit and implement participation in the local content economic chain. The plan includes calling on those investors to assure the use of locally produced goods and services, hire Tanzanians, and divert high salaries for similar jobs.⁹⁶

The current legislative framework is articulate enough to ensure the participation of Tanzanians in the mining sector. It intends to improve the participation of Tanzanians in the mining sector to fully realise benefits arising from mineral resources. These laws and regulations have enjoined citizens sufficiently to ensure that the mining sector is not dominated fully by foreigners alone. Still, Tanzanians were overwhelmed not only by foreigners but also by Tanzanians.

4.0 Achievements and Challenges on Participation of Tanzanians in Mining Sector

The mining sector has witnessed several achievements due to recent legislative reforms. The reforms have to a great extent, demonstrated the importance of consolidating citizenry participation. Some of these achievements and likely challenges in achieving increased participation of Tanzanians in the mining sector are as follows:

4.1 Establishment of Mineral Markets and Trading Centres

The reforms introduced the concepts of mineral markets and trading centres to ensure the availability of reliable markets for minerals in Tanzania. As such, mineral and gem houses have been established. These are established in every administrative region or district where mining activities occur.⁹⁷ Currently, there are a total of 39 mineral markets and 41 mineral buying centres which are facilitating mineral trading.⁹⁸ They are established in all areas with a concentration of mining activities. These markets and centres were established

⁹⁵ Lange, S., "Gold and Governance: Legal Injustices and Lost Opportunities in Tanzania", *African Affairs*, Vol110/439, pp. 233-252, at p. 236.

⁹⁶ Nuru Mwasampeta, "Mining Sector and Its Contribution to the Growth of other Economic Sectors", *Madini &Uchumi Online Bulletin*, Issue No. 1 (August 2020), p. 20.

⁹⁷ See Section 27C of the Mining Act, Cap 123 R.E. 2018 and Regulation 4 of the Mining (Mineral and Gem Houses) Regulations, GN No.418 dated 24th May 2019.

⁹⁸ See <https://tumemadini.go.tz/pages/list-of-mineral-markets> as accessed on 15th May 2021 at 1200hours.

to ensure that Tanzanians who engage in mining activities have access to reliable markets to obtain fair prices for minerals.

It is argued that establishing Mineral and Gem houses and buying centres in Tanzania has increased benefits to Tanzanians as all artisanal and small-scale miners have direct access to markets for minerals. Such reliable markets have enabled small-scale Tanzanian miners to secure fair market prices for their minerals. It addresses a -standing concern that small-scale miners have been left as orphans in their own country, that small small-scale miners have been left as orphans in their own country, and that the government does not care for them by providing them with markets.⁹⁹

Access to mineral markets relates to only a particular portion of minerals and gems. These markets are not suitable. The regulations governing the same do not apply to building, industrial, or energy minerals.¹⁰⁰ Such limitations arise because the excluded minerals tend to be either in bulky (thus, requiring extensive space like coal) or their radioactive nature (like uranium) make it difficult to trade in established mineral markets.

Indeed, establishing mineral markets, and trading centres has addressed the dire need for reliable markets for artisanal and small-scale miners. They have improved opportunities to small-scale and artisanal miners to access markets and better prices for the extracted minerals.

4.2 Promotion of Small Scale Miners

The government of Tanzania has resolved to ensure that Tanzanians particularly small-scale miners conduct their activities comfortably by addressing challenges facing small-scale miners. These challenges include the multiplicity of taxes, displacement from their mining areas to pave the way for -scale mining operations, and a lack of clear policy and legal framework to support the sustainability of artisanal and small-scale miners.¹⁰¹

Different initiatives have been put in place to ameliorate challenges. First, the law and its regulations emphasize the requirement for all applicants for SML to

⁹⁹ United Republic of Tanzania, Paragraph 2.11.1 of the Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector (Bomani Committee), April 2008.

¹⁰⁰ See Reg. 2 (2) of the Mining (Mineral and Gem Houses) Regulations, GN No. 418 dated 24/05/2020.

¹⁰¹ Curtis, M. and Lissu, T.A., *A Golden Opportunity?: How Tanzania is Failing to Benefit from Gold Mining* (2nd Edition), 2008 at pp.7-9, 37; Malinganya, W and Bangesi, K.M.K, "Policy Enabling Environment of Mining Sector in Tanzania: A Review of Opportunities and Challenges", *Journal of Sustainable Development*, Vol.11, No. 4, at pp.5-7.

include a proposed plan for relocation, resettlement and compensation of people within mining areas.¹⁰² Compensation must be prompt, fair and adequate in accordance with provisions of the Land Act.¹⁰³ Second, there are tax reliefs to artisanal and small scale miners to ensure that they formalize their mining activities and tax obligations as obligations do not overburden them do not overburden them. The withholding tax and the Value Added Tax (VAT) are exempted artisanal and small-scale miners disposing their minerals through mineral and gem houses.¹⁰⁴ Third, designating areas dedicated for artisanal and small-scale miners. Fourth, setting up indicative prices for minerals in the mineral and gem houses as well as buying centres have improved incomes of the artisanal and small scale miners.¹⁰⁵ These indicative prices are set by the Mining Commission. Fifth, the issuance of PMLs to citizens has continued to lead in terms of the numbers of licences issued. For instance, a total of 7653 PMLs were issued to Tanzanians from 2017 to June 2020.¹⁰⁶

It is argued that the government has also recognized that there are challenges that legitimate miners face. Due to the importance of the small-scale miners in the development and growth of the mining industry, and to ensure the provision of a better working environment for them, the government has set up seven training centres and 3 Centres of Excellence aimed at providing training for small-scale to enable them to mine productively. The outcome of the Ministry's conference with mining stakeholders in 2018 was the elimination of annoying taxes in mining sector for small-scale and artisanal miners. These taxes are withholding tax (5%) and VAT (18%). The elimination of these taxes enables a better and more efficient mining industry in the country.¹⁰⁷

4.3 Employment of Tanzanians and Decision-Making Powers

The current legal frameworks contain adequate provisions requiring employment and training of citizens of Tanzania in mining operations. They articulate the need to ensure that Tanzanians participate fully in mining activities.

¹⁰² Sections 41(3)(d), and 47(e) of the Mining Act.

¹⁰³ See Sections 3(1) (g), 22(1) (k), 35(3) (b)(iv) of the Land Act, Cap 113 and the Land (Assessment of Value of the Land for Compensation) Regulations, GN. No.78 dated 4th May 2001.

¹⁰⁴ Reg. 6(3) of the Mining ((Mineral and Gem Houses) Regulations, GN No.418 dated 24th May 2019.

¹⁰⁵ Regulation 7, Ibid.

¹⁰⁶ See Mining Licences Information at <https://www.tumemadini.go.tz/uploads/files/Mining%20Licences%20Information1.pdf> as accessed on 15th May 2021 at 1921hrs.

¹⁰⁷ Ministry of Minerals, "Minister's Message: Five Years of JPM- Mining Economy Revealed", *Madini&Uchumi Online Bulletin*, at pp.8,16.

Though the employment of Tanzanians in mining operations was part and parcel of the Mining Act in 1998, its implementation had a negligible effect. Some authors argue that “despite the fact that the law required holders of ML or SML to employ and train Tanzanians and implement succession plan on expatriate employees, yet between 2007 and 2015 the percentage of expatriates has fluctuated from five to eight per cent. This indicates that the law has not had any significant effect for increased employment of Tanzanian nationals.”¹⁰⁸

Moreover, implementation of employment of Tanzanians was limited due to the absence of clarity in terms of required percentages for different categories of employees in mining operations- technical staff with vocational training, professionals (engineers), unskilled staff and top management positions.¹⁰⁹ Indeed, even unskilled foreign nationals could be employed in mining operations under the pretext of expatriates as the legal framework lacked clarity and details on the percentages of allowed employees. A good example is the employment of foreign security guards, which is rampant in almost all SML mining operations in Tanzania.

Seemingly, in order to ameliorate such weakness in the employment and training of Tanzanians, the legislative reforms have addressed this aspect. Such requirement is provided for in the framework law and regulations on PSNR as well as the Mining Act and its regulations. They entail aspects of employment and training of Tanzanians, minimum thresholds on percentages for different categories of employees, namely management staff, technical core and other staff. Also, there are requirements to abide by all existing laws and monitoring and evaluation by the government on implementing these aspects.

Currently, the employment and training of Tanzanians paint somehow a rosy picture. SML/ML holders are reported to have a range of 96 to 99 per cent of all employees working with respective mining companies being Tanzanian nationals.¹¹⁰ The legislative framework reforms have been at the implementation

¹⁰⁸ Lange, S. and Kinyondo, A., “Resource Nationalism and Local Content in Tanzania: Experiences from Mining and Consequences for Petroleum Sector”, *The Extractives and Society*, Vol. 3 (2016), pp. 1095-1104, at p. 1098 and Curtis, M. and Lissu, T.A., *A Golden Opportunity?: How Tanzania is Failing to Benefit from Gold Mining* (2nd Edition), Dar es Salaam, the Christian Council of Tanzania (CCT), National Council of Muslims in Tanzania (BAKWATA) & Tanzania Episcopal Conference (TEC), 2008, pp. 37-39.

¹⁰⁹ Ibid.

¹¹⁰ For instance, Anglo Gold Ashanti’s Geita Gold Mine (GGM) has provided a total 4,567 employments where 1,828 are permanent while 2739 are contract employments out of which 96 % of that workforce is Tanzanian. Also 60% of the Executive Management team of GGM is Tanzanian. See <https://www.geitamine.com/en.html#employment> as accessed on 10th May 2021 at 19:00 hours.

stage since their promulgation. There are positive changes already registered towards consolidating the participation of nationals in the mining sector.

However, few issues need to be addressed. First, there are disparities in terms of the emoluments Tanzanian nationals are entitled to. Expatriates though few in number yet they part with the lion's share as they are paid substantially higher salaries compared to local employees with similar qualifications. There is an incomparable proportionality in terms of financial emoluments. It has been argued "Tanzanian professionals also complain about being paid less than expats with similar qualifications. Mining firms acknowledge that wage differential is company policy and worldwide practice."¹¹¹ There is a need to ensure comparable wage rates payable to Tanzanian nationals in mining sector to motivate the local employees. Such initiatives would implement the law against discrimination against employees based on nationality, colour or faith as clearly articulated in the laws of Tanzania.¹¹² In long run, objects of the current legal reforms are likely to be achieved.

Second, there have been concerns on the realistic and meaningful participation of Tanzanian nationals in decision-making processes in mining companies. We believe that the inclusion of Tanzanians in management positions should entail them having powers to make decisions for those entities. It is observed that "although companies holding SML have included Tanzanians in top management level, their presence is ceremonial as they have no decision-making powers."¹¹³ It is hoped that recent legal reforms, once implemented to the fullest extent, would ensure that Tanzanians in management positions actually participate fully in all decision-making processes in those mining entities.

4.4 Procurement Goods and Services

Procurement of goods and services by the entities engaged in mining operations from surrounding local communities and within the host state is crucial to ensuring economic benefits from mining activities are realized. It is argued firmly that local benefit policies are now seen as one way to create favourable linkages

¹¹¹ Lange, S. and Kinyondo, A., "Resource Nationalism and Local Content in Tanzania: Experiences from Mining and Consequences for Petroleum Sector", at p. 1099 and Curtis, M. and Lissu, T.A., *A Golden Opportunity?: How Tanzania is Failing to Benefit from Gold Mining* (2nd Edition), 2008, p. 37.

¹¹² See Article 13 (1), (2) and (5) of the Constitution of United Republic of Tanzania, section 103(3) of the Mining Act and Regulation 10 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020, GN No. 58 dated 31st January 2020.

¹¹³ Lange, S. and Kinyondo, A., "Resource Nationalism and Local Content in Tanzania: Experiences from Mining and Consequences for Petroleum Sector", at p. 1099.

and build economic capital at the national and local levels. Large extractive industry companies with millions of dollars of annual procurement can provide a significant business opportunity to the local economy if they are prepared or encouraged to include local small and medium-size companies in their supply chains.¹¹⁴

Before reforms Tanzania operations were considered to have neglected the local supply of goods and services under the pretext of standards. It was observed that “large-scale mining operations have generally been detached from local supply chains, with the result that they are poorly linked to the domestic economy.”¹¹⁵ Such experiences have made it paramount for ongoing legal reforms to be invoked to ameliorate such inadequacies.

The laws enumerate the need to procure locally produced goods and services in Tanzania. There is an ownership requirement for Tanzanian nationals of entities engaged in providing goods to ML and SML holders. Such participation is by incorporation of entities by Tanzanians themselves or through joint ventures with foreign entities. Joint ventures are intended to participate in the importation of goods and services not available in Tanzania for supplying to mining entities in Tanzania.

Despite the presence of laws on local procurement of goods and services in Tanzania since 1998, implementation has not been effective. Such ineffectiveness was attributed to two main factors: lack of binding LCP requirements and generous VAT exemptions, i.e. tax holidays for foreign investors. Others have pointed to the weak capacity of domestic firms and local entrepreneurs as factors limiting successful linkages in the mining sector.¹¹⁶

For 2019/2020, the Mining Commission received and reviewed 41 LCPs from mineral rights holders and subcontractors. About 29 LCPs were approved, while 12 LCPs were not approved due to non-compliance with requirements.¹¹⁷ It is noted that there have been significant increases in the procurement of local

¹¹⁴ Cameron, P. D., and Stanley, M.C., *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries*, Washington, DC: World Bank, 2017, at p.21. See doi:10.1596/978-0-8213-9658-2.

¹¹⁵ Economic Commission for Africa, African Minerals Development Centre and African Union, “Assessment of Mineral Regimes in the East African Community: Aligning Frameworks with the African Mining Vision”, pp. 45-46.

¹¹⁶ Curtis, M. and Lissu, T.A., *A Golden Opportunity?: How Tanzania is Failing to Benefit from Gold Mining* (2nd Edition), 2008, p. 19, and Jacob, T., et al, “Rights to Land and Extractive Resources in Tanzania (2/2): The Returns to the State”, *DIIS Working Paper 2016:12*, at p. 17.

¹¹⁷ United Republic of Tanzania, Annual Performance Report for Financial Year 2019/2020, the Mining Commission, July 2020, at p. 22.

goods and services by large large-scale mines in recent years since 2015. This trend indicates the willingness of the mining licensees, entities, contractors, sub-contractors and entities to comply with the legal requirements.

However, there are some entities that failed to comply with the requirement for submission of LCPs. On 17th July 2018, the Mining Commission issued a Press Release reminding all applicants for and holders of prospecting, smelting, refinery, and mining licenses to adhere to the legal requirements to submit both the LCPs and integrity pledge.¹¹⁸

What remains to be seen is the enforcement of the legal requirements entrenching the right to participation of citizens of Tanzania in the mining sector. All stakeholders are urged to ensure that Tanzanians are accorded space in every aspect related to mining activities.

4.5 Powers of Local Government Authorities in CSR processes

CSR creates confidence and a license to operate, whereas license holders' activities become conscious of society's needs. It creates harmonious relationships between communities surrounding mining activities for both local and foreign investors in the mining sector. CSR projects are implemented within host communities where the mining operations occur.

We have noted that LGAs are crucial in CSR implementation. This duty entails two important things: First, LGA should participate in preparation of CSR plan. Second, it should receive and approve the submitted CSR plan. Both aspects call for adequate information on the benefits of proposed projects to society through CSR and capacity to analyse, validate and approve the proposed projects and their costs. Without being well informed and adequate capacities, projects implemented under CSR arrangements are likely to end up not being beneficial to the society.

It is thus important to fully empower LGAs to engage meaningfully in CSR within their vicinities. Such empowerment may be through regular trainings, engagement of people at the grassroots level in assessing needs and designing kinds of projects required in those areas. It is local communities who should set priorities where CSR need to focus. It must be down-top approach in setting priorities particularly on what projects should be implemented in a given LGA.

¹¹⁸ See <https://tumemadini.go.tz/uploads/pressreleases/en-1571120177-Press%20Release%20-%20Local%20Content%20&%20Integrity%20Pledge.pdf> as accessed on 31st October 2020 at 1900hours.

Moreover, there is a need to ensure auditing of all projects under CSR in order to validate truthfulness of expenditures in CSR. This is because there are laments that CSR projects were overpriced before legislative reforms. Auditing on CSR ensures accountability of investors.

4.6. Challenges regarding Citizenry Participation in Mining Sector

Despite the notable achievements some challenges hinder successful attainment of the objectives. First, existing gap between the legal framework and practice s impaired citizens' participation in the mining sector. Some entities fail to comply with LCPs requirements, limited participation of LGAs and citizens, and over-costing CSR projects. Second, lack of clarity on some taxes on small-scale and artisanal miners affects participation. Also, discriminatory payment policies between nationals and foreigners with similar qualifications are yet another challenge in ensuring citizenry participation.

5. Conclusions

Consolidating citizenry participation in the mining sector is two-fold: first, it is enhanced by enacting provisions that adequately address rights of Tanzanian nationals to participate and practice in ensuring legal provisions are implemented. Second, practice in the market must support policy and legal frameworks.

The legislative reforms landscape in Tanzania changed significantly on a people-centred approach as adequate provisions enhance the role of Tanzanians. They focus on ensuring that participation of Tanzanians in the mining sector is well entrenched, thus providing sufficient benefits to the citizens.

However, the practice on the ground has not been proactive towards effectively participating Tanzanians in the mining sector. The mining activities were not geared towards making mining activities beneficial to the nationals and contributing to local economy. These reforms are likely to change the participation of citizens in the mining sector in Tanzania. However, changes cannot be realized overnight.

Importantly, all stakeholders are called upon to continue promoting active participation of the citizens in the mining sector in order to realize full potential envisaged in the legislative reforms. Such implementation would ensure that Tanzanians benefit and mining sector contribute significantly to the country's economy.

It is necessary to recommend a few aspects regarding legislative reforms on the mining sector in Tanzania. First, there is a need to ensure enhanced equality in payment of compensations to Tanzanian nationals with similar professional qualifications and experience working in the same job cadre. The payments must be proportionate to foreign expatriates within the same job category. Second, the empowerment of LGAs on CSR projects to ensure value for money is obtained. It avoids overpricing of the costs. Third, modernization of local supplies and improved service delivery by Tanzanian firms is necessary to ensure value chain in the economy. Such improved local goods and service delivery would significantly implement LCPs for goods produced and services available in Tanzania. Fourth, the Mining Commission should conduct regular verification and audits on the implementation and adherence to LCPs by the mining companies operating in Tanzania.

The recent legislative reforms in the mining sector have enhanced the participation of Tanzanians in the sector. The reforms are shaping the legislative landscape towards people-oriented benefits. Local communities are included by requiring strict adherence and observance of LCPs requirements, increasing the role of LGAs on CSR-related projects, eliminating of burdening taxes to small scale miners, particularly VAT to incentivize them to use mineral markets and trading centres and minimising illegal export of minerals and ensuring fair mineral prices in mineral markets and trading centres for small scale and artisanal miners.

The importance of legislative reforms in addressing the existing inadequacies in the mining sector needs not to be re-emphasized. The reforms should be implemented in good faith to yield intended results and consolidate already witnessed outcomes. The people, mineral rights holders, licensees, contractors and sub-contractors and government institutions have a role to play in ensuring the realization of the legislative reforms. Implementing these reforms must be scaled up throughout mining operations as they have demonstrated clear benefits to Tanzanians.