



# THE JOURNAL OF AFRICAN LAW AND CONTEMPORARY LEGAL ISSUES

JALCLI Vol. 1 No. 1, December 2022



---

ISSN 2773-6504 (Online)

ISSN 2773-6512 (Printed)

## **TABLE OF CONTENTS**

Implementation of the Global Compact on Refugees in Tanzania: A Synopsis <i>Leonard C. Joseph and Ines Kajiru</i> .....	1
Bail in Mainland Tanzania: An Overview of DPP'S Certificate on Denial of Bail <i>Baraka B. Mkami and Ines Kajiru</i> .....	27
Analysis of Legislative Reforms in Consolidating Citizens' Participation in the Mining Sector in Tanzania <i>Evaristo E. Longopa</i> .....	45
The State of the Law on Small Scale Mining in Tanzania: Challenges and Prospects from Colonial Period to Present <i>Elia Mwangi</i> .....	71
Legal Status of Stabilisation Clauses vis-à-vis Legislative Actions: The Implications in the Current and Future Investment in the Petroleum Industry in Tanzania <i>Barnabas Mwashambwa and Ryoba Marwa</i> .....	96
Transparency as a Tool in Realising Citizen Participation in the East African Community <i>Gotrib M. Mgaya</i> .....	117
Assessing the repression of constitutional coups in Africa through the lens of the Malabo Protocol on International Crimes <i>Charles Ntamti</i> .....	133
Examining the Implications of the East African Community Strategies on Irregular Migration Governance <i>Deogratias I. Gasto</i> .....	152
<b>Case Review:</b> Ominde Sweta Versus Robert Manyama, The High Court of Tanzania, Musoma District Registry, at Musoma, Land Appeal No. 120 of 2020 (Unreported) <i>Aron A. Kinunda</i> .....	175



# **The State of the Law on Small Scale Mining in Tanzania: Challenges and Prospects from Colonial Period to Present**

*Elia Mwanga\**

## **Abstract:**

Small-scale mining sub-sector employs thousands of local Tanzanians. However, the laws and government officials have neglected this sub-sector for a long period. Small scale mining has been associated with environmental pollution, smuggling of minerals and labour exploitation. Early mining legal reforms that took place in the 1990s resulted in small-scale miners being forcefully evicted to provide areas for large-scale mining. However, large-scale mining is yet to yield the expected benefits, despite being most favoured by the government of Tanzania for a long period. For this reason, Tanzania's mining laws have been experiencing reforms from time to time. The reforms in the mining legal regime do not only affect large-scale mining. Small scale mining also suffers the effects of the legal reforms that take place frequently. Therefore, this study examines the state of the law on small scale mining in Tanzania, tracing its history from colonial period to present. In doing so, this article also examines the legal challenges brought by mining legal regimes to small scale mining industry from time to time and related prospects. The article argues that despite several reforms in the Tanzania mining legal regime, small scale mining industry has continued to suffer various legal challenges. These challenges include lack of tenure security, uncontrolled discretionary powers given to the Minister responsible for minerals and lack of consultation of small-scale miners.

**Key Words:** *Small Scale Mining, Mining, Small Scale Miners, Mining Law*

## **1. Introduction**

Tanzania is blessed with various types of mineral resources. These include gold, copper, platinum, ruby, iron, tanzanite, diamond, coal, uranium, building materials and others.<sup>1</sup> The mining industry is dominated largely by large-scale

---

\* Elia Mwanga holds LL.B (Hons), LL.M and PhD (UDSM). The author is a Lecturer at the University of Dodoma

<sup>1</sup> URT, Ministry of Energy and Minerals, *The Mineral Policy of Tanzania* (Ministry of Energy and Minerals 2009) 7.

mining and small-scale mining.<sup>2</sup> Small-scale mining is common in diamonds, gold, coloured gemstones as well as building and construction minerals.<sup>3</sup>

The small-scale mining sub-sector sector employs thousands of Tanzanians in rural areas,<sup>4</sup> some of them being -time miners. In contrast, others also engage in other economic activities, including farming.<sup>5</sup> However, small-scale mining sub-sector represents a small percept of mineral production in the country. A report by Peronius *et al* shows that out of 40 tonnes of total gold produced in Tanzania in 2012, small-scale and artisanal miners only contributed about 4 four tones.<sup>6</sup> Small-scale mining activities occur in various regions of Tanzania, and the number of Tanzanians involved in small scale mining has been increasing significantly. Apart from contributing to individual livelihood by reducing poverty, small-scale mining also contributes to national income.

For many years, the role of small-scale mining has been downplayed by the government because of various reasons, the major one being low taxes contribution from the sub-sector. Small-scale mining is also linked with environmental pollution,<sup>7</sup> smuggling, land use conflicts and labour exploitation.<sup>8</sup> At the same time large-scale mining sub-sector has been growing but with no significant contribution compared to the expectations of the majority of Tanzanians. This is why many legal, policy and institutional reforms in the

---

<sup>2</sup> W Mutagwaba and others, 'Artisanal and Small-Scale Mining in Tanzania – Evidence to Inform an "Action Dialogue" (IIED 2018) 22 <<https://pubs.iied.org/sites/default/files/pdfs/migrate/16641IIED.pdf>> accessed 25 January 2021.

<sup>3</sup> W Mutagwaba, R Mwaipopo-Ako and AL Mlaki, 'The Impact of Technology on Poverty Alleviation: The Case of Artisanal Mining in Tanzania' (REPOA 1997) 1 <[https://media.africaportal.org/documents/impact\\_of\\_technology\\_on\\_poverty\\_alleviation.pdf](https://media.africaportal.org/documents/impact_of_technology_on_poverty_alleviation.pdf)> accessed 26 January 2021.

<sup>4</sup> There are no exact figures of small scale miners, however estimations shows that the number of small scale miners ranges from 500,000 to 1,500,000. See A Peronius, H Kuluta and T Karlsson, 'Project Report: Assessment of the State of Small Scale Mining in Nachingwea Area' (2015) 5.

<sup>5</sup> Mutagwaba, Mwaipopo-Ako and Mlaki (n 3) 1.

<sup>6</sup> Peronius, Kuluta and Karlsson (n 4) 5.

<sup>7</sup> DF Bryceson, JB Jønsson and H Verbrugge, 'Prostitution or Partnership? Wifetypes in Tanzanian Artisanal Gold-Mining Settlements' (2013) 51 *The Journal of Modern African Studies* 33, 34.

<sup>8</sup> Peronius, Kuluta and Karlsson (n 4) 5.

mining sector have been taking place frequently. However, the reforms in the mining legal regime do not only affect large-scale mining. Small scale mining sub-sector has equally been affected by these legal reforms. Therefore, this article examines the current position of law with regard to small-scale mining and small-scale miners by tracing the historical development of the sub-sector from the colonial period to present. The article identifies legal challenges facing the small-scale mining sub-sector from the colonial period to the present. In line with the above objective, the article also identified prospects brought by different mining legal reforms. The purpose is to contribute to the existing knowledge and hasten measures to address challenges facing small-scale mining sub-sector and small-scale miners in Tanzania.

## **2. The Concept of Small Scale Mining in the Context of Tanzania**

There is no universally accepted definition of small-scale mining.<sup>9</sup> Generally, attempts to define small-scale mining point out the following characteristics of small-scale mining: little capital investment, labour intensive, lack of appropriate and modern technology, low standard of health and safety, practiced in the poorest and most remote rural areas of a country and lack of long term planning.

The Mining Act of Tanzania does not define small scale-mining. The Act, however, defines a primary mining licence issued for small-scale mining operations. Two characteristics of small-scale mining are identified. First small-scale mining involves minimal machinery or technology, and second it involves a small capital investment which does not exceed 5 million US dollars.<sup>10</sup> In practice, small-scale mining is carried out by 'local miners using basic methods to extract near-

---

<sup>9</sup> Different countries use different criteria to define small-scale mining. The criteria include amount of investment in terms of capital, labour and technology (as for the case of Tanzania), annual production and level of mechanization (as for the case of Ethiopia), size of concession area (as for the case of South Africa). See R Mwaipopo and others, 'Increasing the Contribution of Artisanal and Small-Scale Mining to Poverty Reduction in Tanzania: Based on an Analysis of Mining Livelihoods in Misungwi and Geita Districts, Mwanza Region' (Department for International Development 2014) 20 <[https://transparencylab.org/Documentation/Additional%20resources/Additional%20documents/Tanzania\\_2004.pdf](https://transparencylab.org/Documentation/Additional%20resources/Additional%20documents/Tanzania_2004.pdf)> accessed 19 May 2021.

<sup>10</sup> Mining Act, Cap. 213 RE 2021, section 4(1).s

surface deposits in an informal, low investment and labour-intensive operation, alongside informal marketing channels.<sup>11</sup> Most small scale-miners have no basic formal mining training and no access to formal credit facilities like commercial bank loans.<sup>12</sup>

In some jurisdictions, the distinction is made between artisanal mining, which is purely manual, and small-scale mining.<sup>13</sup> The Mining Act does not make this distinction. Thus, it can be argued that the phrase small-scale mining in the Tanzanian context involves both small-scale and artisanal mining. In this study, such distinction is also ignored. To be precise, it is also important to note that there are many individuals in Tanzania who are involved in small-scale mining activities, some with legal recognition and others with no legal recognition.<sup>14</sup> In this study, the latter category is also considered as small-scale miners. Their engagement in mining minerals is also considered small-scale mining. Therefore, the word small-scale mining is used in this study broadly to refer to both broadly to small scale mining activities conducted by persons who are legally recognised in mining laws and small-scale mining activities that conduct their mining operations in Tanzania but without any legal recognition.

### **3. Small-Scale Mining During Colonial Period**

Various studies examining the historical development of mining activities in Tanzania conclude that mining activities have been taking place in the country

---

<sup>11</sup> Mutagwaba and others (n 2) 22.

<sup>12</sup> *ibid.*

<sup>13</sup> T Hentschel, F Hruschka and M Priester, 'Artisanal and Small-Scale Mining: Challenges and Opportunities' (IIED 2003) 5 <<https://pubs.iied.org/sites/default/files/pdfs/migrate/9268IIED.pdf>> accessed 26 January 2021.

<sup>14</sup> The Report of Human Rights Watch points out that majority of small scale mining takes place on unlicensed mines, Human Rights Watch, 'Toxic Toil: Child Labor and Mercury Exposure in Tanzania's Small-Scale Gold Mines' (Human Rights Watch 2013) 28.. Further, according to Bryceson & Jønssen as cited in Peronius, Kulita and Karlsson, in Tanzania, small scale mining is organised into: primary mining licence owners, pit holders and diggers. Peronius, Kulita and Karlsson 6.

even before colonialism.<sup>15</sup> Mining activities at the time consisted of mining and working iron, copper and salt.<sup>16</sup> Literature also points out that Arab traders exploited gold from Tanzania.<sup>17</sup> Available literature further confirms that gold was produced in the areas around Lake Victoria around 800 and 400 B.C.<sup>18</sup> While it is true that mining activities during the pre-colonial era were predominantly small-scale in nature, there is a scarcity of literature that extensively discusses the nature of the sector extensively the nature of the sector the nature of the sector during the said era. It suffices to point out that mining activities did not start with the coming of colonialism. However, organised mining exploration and exploitation started during the colonial period.

Tanzania (formerly German East Africa and later Tanganyika since 1920s) was firstly colonised by the German from 1880s to 1919. She was after that put under the British colonial government as the League of Nations' mandate territory until the end of World War II, when she acquired the status of being the United Nations trust territory. In 1961 Tanganyika got her independence. At the beginning of German colonisation, German colonial government put little interest in the mineral resources.<sup>19</sup> As such, mineral exploration activities also received little attention. The reasons for such a state of affair include insufficient personnel and funds and prioritization of plantations in the colony.<sup>20</sup> Mining exploration and exploitation activities were left to private mining companies. The German colonial government introduced a concession system where private companies could explore minerals over large areas with mineral potential. The holder of the

---

<sup>15</sup> LS Chachage, 'Can Africa's Poor Inherit the Earth and All Its Mineral Rights?' 3 <<http://www.codesria.org/IMG/pdf/chachage.pdf>> accessed 27 January 2018; LS Chachage, 'The Meek Shall Inherit the Earth but Not the Mining Rights: The Mining Industry and Accumulation in Tanzania' in Peter Gibbon (ed), *Liberalized Development in Tanzania* (Nordiska Afrikainstitutet 1995) 48 <<http://nai.diva-portal.org/smash/get/diva2:277259/FULLTEXT01>> accessed 28 January 2021.

<sup>16</sup> Chachage, 'Can Africa's Poor Inherit the Earth and All Its Mineral Rights?' (n 15) 3.

<sup>17</sup> *ibid.*

<sup>18</sup> K Roder, 'The State of Extraction: A Short History of Space and Extractive Industries in Tanzania, 1885 – 2019' (PhD Thesis, 2020) 42 <<https://ul.qucosa.de/api/qucosa%3A38391/attachment/ATT-0/>> accessed 25 January 2021.

<sup>19</sup> *ibid.* 48.

<sup>20</sup> *ibid.*



prospecting licence was entitled to exclude other miners and get a better title in an area where he discovers minerals.<sup>21</sup> As early as 1894, gold was discovered in the Lake Tanganyika region – the North-western part of Tanganyika.<sup>22</sup> Other discoveries were made in 1898<sup>23</sup> and 1906<sup>24</sup> at Saragula Hill and Senkeke, respectively. First production started in 1909 at the Senkeke mine.<sup>25</sup> By 1910, there were about 76 mineral prospecting fields and 111 claims.<sup>26</sup>

Before the beginning of the First World War, six mining companies in the German East Africa territory. However, small-scale mining understood in this study, was not common during the time.<sup>27</sup> German colonial government focused on organised mining activities by persons with requisite skills, technology and financial capacity.<sup>28</sup> German colonial mining laws favoured whites.

In 1919, Tanganyika was put under the British colonial regime. The British colonial regime intensified mineral prospecting. By the 1920s gold was discovered at Lupa, Mwanza and Musoma. However during the 1920s, there were no big mining companies in the colony since those which existed during German colonial period were confiscated for being enemy properties.<sup>29</sup> Another reason large-scale mining was not dominant during the 1920s was 'low prices of gold

---

<sup>21</sup> *ibid* 50.

<sup>22</sup> G Schoneveld and others, 'The New Face of Informality in the Tanzanian Mineral Economy: Transforming Artisanal Mining through Foreign Investment?' (IIED 2018) 12 <<https://pubs.iied.org/sites/default/files/pdfs/migrate/17614IIED.pdf>> accessed 25 January 2021.

<sup>23</sup> Large gold reserves was discovered within Northwestern part of Tanzania in today's Geita region. See *ibid*.

<sup>24</sup> DF Bryceson and others, 'Unearthing Treasure and Trouble: Mining as an Impetus to Urbanisation in Tanzania' (2012) 30 *Journal of Contemporary African Studies* 631, 4.

<sup>25</sup> *ibid*.

<sup>26</sup> Chr. Michelsen Institute, 'Benefit Streams from Mining in Tanzania: Case Studies from Geita and Mererani' (Chr Michelsen Institute 2014) 14 <[https://www.researchgate.net/publication/37166436\\_Benefit\\_Streams\\_from\\_Mining\\_in\\_Tanzania\\_Case\\_Studies\\_from\\_Geita\\_and\\_Mererani](https://www.researchgate.net/publication/37166436_Benefit_Streams_from_Mining_in_Tanzania_Case_Studies_from_Geita_and_Mererani)> accessed 26 January 2021.

<sup>27</sup> A Kinyondo, 'Resource Nationalism in Tanzania\_ Implications for Artisanal and Small-Scale Mining' 3 <[http://repository.udsm.ac.tz:8080/xmlui/bitstream/handle/20.500.11810/4750/Kinyondo\\_Huggins%20Resource%20Nationalism.pdf?sequence=1&isAllowed=y](http://repository.udsm.ac.tz:8080/xmlui/bitstream/handle/20.500.11810/4750/Kinyondo_Huggins%20Resource%20Nationalism.pdf?sequence=1&isAllowed=y)> accessed 25 January 2021.

<sup>28</sup> Roder (n 18) 51.

<sup>29</sup> Chachage, 'Can Africa's Poor Inherit the Earth and All Its Mineral Rights?' (n 15) 3.

and lack of state-sponsored incentives.<sup>30</sup> Therefore, mining activities were dominated by small-scale miners of all races and the number of small-scale miners increased from the 1920s. Chachage points out that at Lupa itself, the number of small-scale European miners rose from 150 in 1923 to 1000 in 1936.<sup>31</sup>

On the legal aspect, in 1920, the British Colonial Government made the Tanganyika Order in Council, which was the colony's Constitution. The Tanganyika Order in Council vested all mineral resources to the governor. It clearly stipulated in its article 8(3) that:

All mines and minerals being in, under on any lands in the occupation of any native tribe or any members thereof or person not possessed of the right to work such mines and minerals shall be vested in the Governor ... in like manner as mines and minerals in, under or on any public lands.<sup>32</sup>

In the same year, the British Colonial regime enacted the first Mining Ordinance. The Ordinance responded to the gold rush resulting in the discovery of gold around Lake Victoria.<sup>33</sup> The Ordinance vested to the holder of prospecting licence the rights to: prospect and search minerals; pegging out claim, and the right to 'exclusively own a claim.'<sup>34</sup> The 1920 Mining Ordinance was revised in 1929. The 1929 Mining Ordinance laid down further regulations for mining in the territory. Regarding small-scale mining concerns, the 1929 Mining Ordinance put conditions that were difficult to comply with by the native small-scale miners. For instance, the Ordinance required mineral rights holders to demonstrate that

---

<sup>30</sup> *ibid* 4.

<sup>31</sup> Chachage, 'The Meek Shall Inherit the Earth but Not the Mining Rights: The Mining Industry and Accumulation in Tanzania' (n 15) 49.

<sup>32</sup> Copied from S Lange, *Land Tenure and Mining in Tanzania* (Chr Michelsen Institute 2008) 9 <<https://www.cmi.no/publications/file/3008-land-tenure-and-mining-in-tanzania.pdf>> accessed 21 May 2021.

<sup>33</sup> PR Hundsbæk and others, *Rights to Land and Extractive Resources in Tanzania (1/2): The History* (DIIS 2016) 5.

<sup>34</sup> *ibid*.

they can raise sufficient capital and further possess the required technology.<sup>35</sup> It was a criminal offence to engage in mining activities without a licence issued by the colonial government. Nevertheless, such unfavourable legal environment did not stop the development of small-scale mining. In fact, the number of persons (natives) involved in the small-scale mining activities kept increasing irrespective of the above legal hurdles.<sup>36</sup>

Large-scale mining production resumed in the 1930s with several British and South-African based mining companies dominating the mining industry in Tanganyika.<sup>37</sup> It later declined in the 1940s because of Second World War. During that period, many large-scale mines were closed.<sup>38</sup> The only mining activities that remained were medium and small-scale mining.<sup>39</sup>

#### **4. Post-Independence: Socialism and Self-Reliance Policy**

Immediately after independence, there were no significant changes on the mining industry in the then Tanganyika. The mining industry was still dominated by small-scale; being the continuation of the aftermaths of the Second World War. Few large-scale mines, especially gold, diamond and mica mines, were in operation during the early 1960s. Still, most of these were also in operation during the early 1960s, but most were closed before the end of the 1960s.<sup>40</sup> Further, the 1929 Colonial Mining Ordinance, which prioritized large-scale foreign operations and criminalised predominantly native-owned artisanal mining, continued to regulate the mining sector in the independent Tanganyika.

The period between 1967 and the 1980s represented a major transition in the economy of Tanzania. During this period, the Tanzanian economy was

---

<sup>35</sup> RH Pedersen and others, 'Mining-Sector Dynamics in an Era of Resurgent Resource Nationalism: Changing Relations between Large-Scale Mining and Artisanal and Small-Scale Mining in Tanzania' 62 *Resources Policy* 340.

<sup>36</sup> *ibid.*

<sup>37</sup> Chachage, 'Can Africa's Poor Inherit the Earth and All Its Mineral Rights?' (n 15) 4.

<sup>38</sup> Chachage, 'The Meek Shall Inherit the Earth but Not the Mining Rights: The Mining Industry and Accumulation in Tanzania' (n 15) 52.

<sup>39</sup> *ibid* 52–53.

<sup>40</sup> Roder (n 18) 87.

dominated by socialist policy adopted following the Arusha Declaration of 1967. Through the Arusha Declaration, Tanzania, under its first President, Julius K. Nyerere advocated for its form of socialism; *ujamaa na kujitegemea* (socialism and self-reliance). The Arusha Declaration resulted into putting into the control of the state all major means of economy. Private investments including foreign investment were therefore nationalised. The socialist policy had impacts on the mining sector too. Under the socialist policy, the State owned and operated the mining industry.

In 1972 the government established a state mining company, State Mining Cooperation (STAMICO), through the State Mining Corporation Establishment Order<sup>41</sup> issued under the Public Corporation Act.<sup>42</sup> STAMICO was vested with exclusive rights to prospect and exploit mineral resources in Tanzania. Further, the National Development Corporation which was established in 1965 managed the ownership of mineral resources on behalf of the State. Consequently, the mining sector in Tanzania became predominantly state-owned and controlled. However, STAMICO could not yield the expected results mainly due to a lack of capital and required technology. Therefore, the socialist country resolved not to extract minerals that required skills and capacities that were not available in Tanzania at the time until the required capabilities existed.<sup>43</sup>

As far as the mineral production is concerned, from 1967 to the 1980s large-scale gold mining production declined and almost ceased by 1972. The small-scale mining dominated Tanzania's mining industry in the 1970s because the adoption of the socialist policies forced the government to nationalise or close down privately owned mines. Most small-scale miners at the time were skilled personnel who were previously employed by large scale mining companies.<sup>44</sup> However, these small-scale miners were not formally recognised by the

---

<sup>41</sup> No. 163 of 1972 as amended in 2014.

<sup>42</sup> Cap 257, R.E. 2002.

<sup>43</sup> Roder (n 18) 95.

<sup>44</sup> Chachage, 'The Meek Shall Inherit the Earth but Not the Mining Rights: The Mining Industry and Accumulation in Tanzania' (n 15) 54.

government.<sup>45</sup> Mining of diamond and gems by private companies was done in partnership with the government, following the nationalization process.

In spite of all the above changes in the social and political system, the Mining Ordinance of 1929 remained the main law regulating the country's mining industry. Alongside the Ordinance was the Gemstone Industry (Development and Promotion) Act of 1967, which was designed to deal with the problem of smuggling gemstones to neighbouring countries, especially Kenya.<sup>46</sup> Amendments were introduced in the 1929 Mining Ordinance in 1969 through the Mining Ordinance (Amendment) Bill. The amendments related to the powers of the Minister to issue, renew or refuse to issue or renew exclusive prospecting licence.<sup>47</sup>

Significant changes to the colonial Mining Ordinance were brought in 1979 when the new Mining Act<sup>48</sup> was enacted to replace the colonial Mining Ordinance. The new Mining Act vested all mineral resources in the State. The Act further put more attention on organised and large-scale mining. It did not expressly mention small-scale or artisanal mining. However, in section 69(1), the 1979 Mining Act gave discretionary powers to the Minister responsible for minerals to designate any area for prospecting and mining of minerals by methods that do not require substantial expenditure or the use of specialist technology. The above provision created an opportunity for formalisation and legal recognition of small-scale mining industry in the country. However, the Act's effectiveness in relation to small-scale mining depended much on the minister's will responsible for minerals to exercise the above discretionary powers.

---

<sup>45</sup> URT, Ministry of Energy and Minerals, 'Final Report on Baseline Survey and Preparation of Development Strategy for Small Scale and Artisanal Mining Program' (1996) 1 <[http://artisanalmining.org/Repository/01/The\\_CASM\\_Files/CASM\\_Database\\_documents/Tanzania%20-%20Artisanal%20and%20small-scale%20mining%20baseline%20-%20WorldBank%201996.pdf](http://artisanalmining.org/Repository/01/The_CASM_Files/CASM_Database_documents/Tanzania%20-%20Artisanal%20and%20small-scale%20mining%20baseline%20-%20WorldBank%201996.pdf)> accessed 20 May 2021.

<sup>46</sup> Law Reform Commission of Tanzania, 'Position Paper on the Legal Framework for the Development of the Mining Industry' (2011) 13 <<http://www.tzonline.org/pdf/legalframeworkforthedevelopment.pdf>> accessed 20 May 2021.

<sup>47</sup> *ibid* 14.

<sup>48</sup> Act No 17 of 1979.

Another important reform in the mining policy during the end of socialism was the adoption of the Small-Scale Mining Policy Paper in 1983. The Policy Paper encouraged Tanzania's citizens to engage in small-scale mining activities to supplement their incomes.<sup>49</sup> Encouraging small-scale mining also meant that the State was starting to liberalise the previously state-owned mining industry. Generally, the implementation of the 1979 Mining Act witnessed Tanzania changing its role from owner and operator to the service provider, regulator and promoter of the mining industry.<sup>50</sup>

In 1992, the government directed miners, including small-scale miners, to sell their gold to the Bank of Tanzania. The government further required the Bank of Tanzania to buy gold at parallel market prices to combat the smuggling of minerals. This government direction positively impacted the development of small-scale mining in the country as it indirectly acted as an assurance to the small-scale miners that they could operate their activities without fear of being harassed. Despite the formulation of the 1983 paper and government directions of 1992, there were no changes in the mining legal regime.

## **5. Liberalization Period**

Tanzania started to attract private investments in the mining sector during the 1980s. During that period, socialism failed and the country faced a serious economic crisis. Therefore, to revamp its stagnated economy, Tanzania undertook significant economic restructuring. The restructuring was generally aimed at transforming Tanzania economy from a socialist to a capitalist one. As such-, different and donor-sponsored projects aimed at assisting Tanzania to liberalise its economy were implemented. The major projects included the National Economic Survival Program, the International Monetary Fund and

---

<sup>49</sup> United Nations Environment Programme, 'Analysis of Formalization Approaches in the Artisanal and Small-Scale Gold Mining Sector Based on Experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda: Tanzania Case Study' (UNEP 2012) 5 <[https://www.responsiblemines.org/wp-content/uploads/2018/05/Case\\_Study\\_Tanzania\\_June\\_2012.pdf](https://www.responsiblemines.org/wp-content/uploads/2018/05/Case_Study_Tanzania_June_2012.pdf)> accessed 19 May 2021.

<sup>50</sup> Roder (n 18) 107.

World Bank's Structural Adjustment Programme and the Economic Recovery Programme.<sup>51</sup> The above programmes increased the role of the private sector in the country's economy. On the mining sector, liberalization of the economy meant that the State could no longer be the only single actor in the sector. Private investors, especially foreign investors, were now encouraged to invest in large-scale mining, which was believed to bring meaningful development in the sector.

For five years, from 1989, the World Bank implemented the Mineral Sector Technical Assistance Project. The project's objective was to assist Tanzania in legislating mining laws that attract direct foreign investment.<sup>52</sup> In 1992, the World Bank developed a Strategy for African Mining Technical Paper. The Strategy Paper identified disadvantages of small-scale mining in Tanzania to include substantially high fatality and injury rate, environmental degradation, loss of government revenues, infringement of legally granted mining concessions and reduced food production due to shift from farming to speculative digging.<sup>53</sup> Among others, the Strategy argued African countries to privatize state mining companies and provide incentives to large scale mining investors in the legislation.<sup>54</sup> On small-scale mining, the Strategy urged African countries to formally recognize small-scale mining in the mining legislation.<sup>55</sup>

All the above incidents culminated in the promulgation of policies and enactment of laws that liberalised Tanzania's mining industry. Among others, in 1997, the Mineral Policy was made, followed by the enactment of the Mining Act of 1998, which repealed the Mining Act of 1979. Other relevant policy and legal

---

<sup>51</sup> PS Magai and AL Márquez-Velázquez, 'Tanzania's Mining Sector and Its Implications for the Country's Development' (2011) 2 <[https://www.lai.fu-berlin.de/homepages/Alejandro\\_Marquez/Publicationen/Tanzania\\_s-Mining-Sector-and-Its-Implications-for-the-Country\\_s-Development.pdf](https://www.lai.fu-berlin.de/homepages/Alejandro_Marquez/Publicationen/Tanzania_s-Mining-Sector-and-Its-Implications-for-the-Country_s-Development.pdf)> accessed 20 May 2021.

<sup>52</sup> S Lange, 'Gold and Governance: Legal Injustices and Lost Opportunities in Tanzania' (2011) 110 *African Affairs* 233, 238.

<sup>53</sup> The World Bank, *Strategy for African Mining* (The World Bank 1992) 44 <<http://documents1.worldbank.org/curated/en/722101468204567891/pdf/multi-page.pdf>> accessed 20 May 2021.

<sup>54</sup> *ibid* xiii.

<sup>55</sup> *ibid* xiv.

documents also passed at the time included the National Investment Promotion Policy of 1996 and the Investment Act of 1997. These policy and legal documents officially opened the mining industry to private investments, especially Foreign Direct Investment (FDIs).

On the part of small scale-mining, the influx of large-scale mining companies in Tanzania following the liberalisation of the economy was not without effects. Constant conflicts between large-scale-scale and small-scale miners were experienced in different parts of the country. Small-scale miners were constantly harassed by large-scale miners as well as government institutions. Most of the areas under small-scale miners were forcefully taken by the government and vested to large scale-miners.<sup>56</sup> The proceeding discussion provides a detailed examination of mining laws made during and after the liberalization period and their impacts on small-scale mining.

### **5.1 The 1998 Mining Act**

The enactment of the Mining Act in 1998 was preceded by the formulation of the National Mineral Policy of 1997. The Policy aimed to attract and enhance the private sector to take the lead in mining operations, including exploration, mining development, mineral beneficiation and marketing.<sup>57</sup> On small-scale mining, the Mineral Policy pointed out that the government of Tanzania was committed to supporting small-scale mining.<sup>58</sup>

1998, Mining Act was excessively generous to foreign investors. The Act allowed a hundred per cent foreign ownership, guaranteed against nationalization and unlimited repatriation of profits and capital.<sup>59</sup> The 1998 Act further conferred to the Minister responsible for minerals wide powers to grant, renew, suspend and cancel various categories of mining licenses and uncontrolled powers to conclude

---

<sup>56</sup> Chachage, 'The Meek Shall Inherit the Earth but Not the Mining Rights: The Mining Industry and Accumulation in Tanzania' (n 15) 30.

<sup>57</sup> URT, *The Mineral Policy of Tanzania* (Ministry of Energy and Minerals 1997) 8.

<sup>58</sup> *ibid* 15.

<sup>59</sup> Pedersen and others (n 35) 341.



mining development agreements on behalf of the government.<sup>60</sup> The Minister was also conferred wide discretionary powers to offer a range of incentives to the investors in the mining sector, including an exemption to conduct an environmental impact assessment,<sup>61</sup> tax exemptions, and deferment or exemption to pay royalties and fees.<sup>62</sup> To sum up, the 1998 Mining Act granted rights over Tanzania's mineral resources to foreign investors at the expense of national interests and the environment.

On small-scale mining, the Mining Act of 1998 had a number of provisions that articulated issues relating to small-scale mining.<sup>63</sup> The Act introduced primary prospecting licences and primary mining licences granted to Tanzanians who wanted to conduct small-scale mining activities in Tanzania.<sup>64</sup> The former lasted for one year with the possibility of renewal. At the same time, the latter was granted for five years with the possibility of renewal. The 1998 Mining Act further gave the Minister responsible for minerals powers to designate and reserve an area exclusively for small-scale mining.<sup>65</sup> However, the Act did not give any definition of small-scale mining. Further, the Act neither defined types of minerals nor the size of the area where the primary mining licence granted for small-scale mining activities could be issued. Instead, the powers to determine the above matters were vested to the Minister responsible for minerals.

Even after being legally recognised in the law, small-scale mining activities continued to face challenges. The legal reforms introduced by the Mining Act of 1998 did not aim primarily at upgrading and formalizing the small-scale mining industry in Tanzania. The aims of the provisions providing for small-scale mining were to curb illegal mining and trading and address environmental effects caused

---

<sup>60</sup> See section 10.

<sup>61</sup> T Lissu, 'In Gold We Trust: The Political Economy of Law, Human Rights and Environment in Tanzania's Mining Industry, Work in Progress' (2001) 2 Law, Social Justice & Global Development Journal 38.

<sup>62</sup> *ibid.*

<sup>63</sup> See Part IV, Division D of the Mining Act, No. 5 of 1998.

<sup>64</sup> See section 65 and 66 respectively.

<sup>65</sup> See section 14.

by small-scale mining.<sup>66</sup> To be more precise, the emphasis of the 1998 Mining Act was on large-scale mining by foreign companies. This was in line with the third-phase government's policy on the mining sector. The third-phase government under President Benjamin Mkapa considered the mining sector to be a key sector in 'restructuring the economy through the generation of much needed foreign capital and increased fiscal earnings'.<sup>67</sup> Thus to achieve the above policy consideration, foreign mining companies were granted concessions over large areas including areas that were previously occupied by small scale miners.<sup>68</sup> This government practice resulted in constant conflicts between, large-scale, and small-scale miners. Lange explains several of these conflicts, especially from the 1990s to 2000s.<sup>69</sup> Mostly, the conflicts resulted from the forcefully eviction of small-scale miners and relocation of areas occupied by small-scale miners to large scale miners. During this time, most of the small-scale miners were regarded as illegal miners, as such, their eviction was considered to be in accordance with mining laws.

## 5.2 The 2010 Mining Act

In 2010, a new Mining Act was enacted to replace the 1998 Mining Act. The 2010 Act came to implement the revised Mineral Policy of 2009. A series of many other events preceded the enactment of the Mining Act of 2010. During the 2000s an anti-large scale mining movement led by civil society organisations and religious leaders emerged. The movement was unhappy with the way the mining sector was operating. Many civil society organisations and religious leaders believed that the mining sector at the time favoured multinational companies engaging in large-scale mining.<sup>70</sup> In particular, in 2008, the Christian Council of Tanzania

---

<sup>66</sup> Lange (n 32) 10.

<sup>67</sup> Pedersen and others (n 35) 341.

<sup>68</sup> *ibid.*

<sup>69</sup> Lange (n 32) 14–20.

<sup>70</sup> Society for International Development (ed), *The Extractive Resource Industry in Tanzania: Status and Challenges of the Mining Sector* (Society for International Development, Regional Office for Eastern Africa 2009) 64  
<http://repository.businessinsightz.org/bitstream/handle/20.500.12018/2735/The%20Extra>

(CCT), National Council of Muslims in Tanzania (BAKWATA) and Tanzania Episcopal Conference (TEC) published a report that denounced various corrupt acts of large-scale miners. The report stated the effects of large-scale mining to include tax evasion, low contribution to the economy, unemployment<sup>71</sup> and mistreatment of small-scale miners.<sup>72</sup> The Norwegian Church Aid, which was among the organisations that financed the publication of the above report, used the findings and the recommendations of the report to pursue the Norwegian government's sovereign pension fund, the shareholder of two main companies investigated in the report, to investigate human rights and tax practices of the companies.<sup>73</sup>

The shortfalls brought in the mining sector by the 1998 legal regime further culminated in the formation of a number of Presidential Commissions to investigate the state of the mining industry in Tanzania. The Committees included the Committee that probed into the source of the Dispute between AFGEM (a Company that was issued with a licence to extract tanzanite) and small-scale miners in 2002 (the Mboma Committee). The Committee advised the government to stop granting tanzanite mining licences to big investors. As a result of such a recommendation, in 2007, the Miererani area was declared a designated small-scale miners.<sup>74</sup> Other Committees that were also formed to investigate the mining industry at the time were the Committee to Review the Mining Policy of 1997 (the Kipokkola Committee, 2004); the Committee to Review

---

ctive%20Resource%20Industry%20in%20Tanzania%20Status%20and%20Challenges%20of%20the%20Mining%20Sector.pdf?sequence=1&isAllowed=y> accessed 2 June 2021.

<sup>71</sup> The argument by the religious leaders was that in comparison small scale mining employs many individuals compared to large scale mining. By evicting small scale miners from their areas to grant large scale mining licences, the evicted small scale miners remain unemployed.

<sup>72</sup> M Curtis and T Lissu, *A Golden Opportunity: How Tanzania is Failing to Benefit from Gold Mining* (Second Edition, Christian Council of Tanzania (CCT), National Council of Muslims in Tanzania (BAKWATA) and Tanzania Episcopal Conference (TEC) 2008) 8–10 <<https://curtisresearch.org/wp-content/uploads/GoldenOpportunity2ndEd.pdf>> accessed 2 June 2021.

<sup>73</sup> Society for International Development (n 70) 64.

<sup>74</sup> URT, 'Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector (Translated Version)' (2008) Vol. 2 28 <[https://www.policyforum-tz.org/sites/default/files/BomaniReport-English\\_0.pdf](https://www.policyforum-tz.org/sites/default/files/BomaniReport-English_0.pdf)> accessed 2 June 2021.

Mining Contracts and Taxation System in the Mining Sector, 2006 (the Masha Committee); Government Committee on Contract Re-negotiation between the Government and Mining Companies (the Bukuku Committee) and the Committee to Advise the Government on Oversight of the Mining Sector (the Bomani Committee).<sup>75</sup> The Bomani Committee's report published in 2008 recommended the overhaul of the legal regime for the mining industry.<sup>76</sup>

The weaknesses that necessitated the repeal of the 1998 Mining Act are also outlined in the revised National Mineral Policy of 2009. These weaknesses include low integration of the mining sector with other sectors of the economy; low contribution of the sector to the GDP; slow development of small-scale mining; low capacity of the Government to govern the mining sector; and failure of the 1998 Mining Act to control environmental degradation resulting from mining activities.<sup>77</sup>

Unlike its predecessor, the 1998 Mining Act, which did not have a specific prospecting licence, the 2010 Mining Act, the current legal regime for the mining industry in Tanzania, provides for a specific prospecting licence and three types of mining licenses. These mining licences are primary licenses issued for small-scale mining activities. The mining license is issued for medium mining activities and special mining license is issued for large scale mining activities. A primary mining license, issued for an initial period of 7 years with a possibility of renewal, gives its holder the right to prospect and extract minerals over the area where the license is issued.<sup>78</sup> The Act identifies characteristics of small scale-mining to include poor machinery/technology and small capital investment.<sup>79</sup> Under this new Act, small-scale mining is reserved for Tanzanian citizens and Tanzanian corporations.<sup>80</sup> The 2010 Act, in its section 16, further reiterates the provisions

---

<sup>75</sup> *ibid* 28–29.

<sup>76</sup> URT (n 74).

<sup>77</sup> URT, Ministry of Energy and Minerals (n 1) 21.

<sup>78</sup> Section 54(4).

<sup>79</sup> Section 4(1).

<sup>80</sup> Section 8(2).

of the 1998 Act, which vested discretionary powers to the Minister to designate and reserve an area exclusively for primary mining activities.<sup>81</sup>

The Mining Act does not state the characteristics or qualities of an area that should be declared reserved for small-scale mining. However, reading section 16, together with other provisions of the Mining Act providing for small-scale mining, it can be argued that the area that is to be declared excessively reserved for small-scale mining should be an area that does not require large capital and/or sophisticated technology to extract the minerals.

Another reform brought by the 2010 Mining Act that is significant to small-scale mining is the reserve of licence for mining gemstones exclusively to Tanzanian applicants.<sup>82</sup> An exception is where the development of gemstones requires specialized skills, technology or a high level of investment. However, even where the development of gemstones requires such specialised skills, technology or a high level of investment, the licence has to be granted to a joint venture of Tanzanians and non-citizens, and the Tanzanians should hold not less than fifty per cent of the shares of the joint venture.<sup>83</sup> The implications of reserving gemstones licences to Tanzanians is to optimize benefits accrued from the mining sector to Tanzanians by encouraging Tanzanians, most of them who afford small-scale mining activities, to engage in mining for gemstones without competition from foreign investors.

Before the reforms in 2017,<sup>84</sup> the 2010 Mining Act included simplified procedures for making applications for a primary mining licence. The applications were made to the zonal mines officers who were stationed in all zonal mines' offices. After the 2017 reforms, applications are made to the Mining

---

<sup>81</sup> Section 16.

<sup>82</sup> Section 8(5).

<sup>83</sup> Section 8(6).

<sup>84</sup> The discussion about 2017 reforms in the mining regime are discussed in the proceeding paragraphs.

Commission. However, to avoid inconveniences arising from travelling to and from the licencing Authority's office, the Commission allows online applications.

The enactment of the Mining Act in 2010 did not provide an effective and sustainable solution to the sufferings of small-scale miners. Small scale miners continued to suffer vulnerability to violence and abuse by both multinational companies and government institutions. Further, there is a lack of potential areas suitable for small-scale mining.<sup>85</sup> In summary, it can be argued that the recognition of small-scale mining remains in paper rather than in practice.

In 2017 major reforms were introduced in the mining legal regime. The reforms were introduced by three pieces of legislation that have significant impacts on the mining sector. The said pieces of legislation are the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017, the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act of 2017 and the Written Laws (Miscellaneous Amendments) Act of 2017. The first two pieces of legislation reaffirmed Tanzania's sovereignty over natural resources, and the latter, among others, amends the Mining Act of 2010. The 2010 reforms included the establishment of the 2010 Mining Act and establishment of the Mining Commission with powers to issue, renew, suspend and cancel various categories of mining licences under the Act. The Commission, Commission's composition includes a representative from the Federation of Miners Associations of Tanzania; an umbrella organisation of all miners' associations in Tanzania.<sup>86</sup> This implies that, for the first time, small-scale miners have representations in the higher authority vested with powers to make significant mining decisions.<sup>87</sup>

---

<sup>85</sup> Peronius, Kulita and Karlsson (n 4) 7.

<sup>86</sup> See section 21(7) paragraph f.

<sup>87</sup> Pedersen and others (n 35) 342.

## **6. General Observations**

The small-scale mining sub-sector in Tanzania has passed through various periods. In all these periods, small-scale miners have survived neglect and mistreatment. Their sufferings have a historical origin from the colonial period. The legacy of colonial governments towards small-scale mining and small-scale miners continued even after independence. The main sufferings have been a lack of legal recognition of small-scale mining. Where small small-scale mining was legally recognised, there were no effective measures to ensure effective enforcement of the law. Both the government and large-scale miners, mostly multilateral corporations, have been the source of underdevelopment of the small-scale mining sub-sector and the sufferings of small-scale miners particularly by frequently treating small-scale miners as illegal miners who invade areas occupied by large scale miners. For this reason, small-scale miners have been constantly evicted by force from areas where they have been conducting their activities for many years, instead of finding a way to accommodate them.

Despite the harsh environment, small-scale mining has continued to offer employment to thousands of poor Tanzanians. Compared to large-scale mining that provides formal employment, small-scale mining is more advantageous to poor local communities. It offers employment to thousands of poor Tanzanians. Thus, instead of neglecting the sector, the government needed to adopt strategies that would accommodate small-scale mining and optimise the benefits accrued from small-scale mining for the government and the miners.

The mining legal reforms that were brought during the 1990s to 2000s had a significant impact of recognising small-scale mining in the laws of Tanzania. The Mining Act of 1998 provided specific licence for small-scale mining activities for the first time. The 1998 Act and 2010 Act provided for the declaration of an area to be reserved exclusively for small-scale mining operations. Nevertheless, such paper recognition has neither brought meaningful development to small-scale

mining sub-sector nor ended small-scale miners' sufferings. The main reasons for such failure include, first; excessive emphasis on foreign direct investments by attracting large-scale mining investment and second, the concentration of the wide powers to a single authority without any mechanism to control the exercise of such powers. Lack of political will and poor enforcement of the laws has also continued to contribute to the poor development of the small-scale mining sub-sector.

The 2010 Mining Act came to address the challenges posed by its predecessor, the 1998 Mining Act. Nevertheless, like its predecessor, the 2010 Mining Act has failed to provide sustainable solution to the challenges facing small-scale mining in Tanzania. The 2017 mining law reforms introduced some provisions in the mining laws that significantly affect the development of small-scale mining sub-sector. First, taking away the wide discretionary powers of the responsible for minerals to grant, renew and cancel mining licences and powers to negotiate and conclude mining development agreements have direct and indirect effect on the small-scale mining sub-sector. Overconcentrating these powers to the minister made easy the eviction of small-scale miners in favour of large-scale mining. Second, the establishment of the Mining Commission composed of representatives of small-scale miners may work more effectively to improve the status of small-scale mining, especially by ensuring that small-scale miners are represented in important decisions relating to the mining industry.

However, the above reforms are not a panacea to the challenges facing small-scale mining in Tanzania. Small scale miners face the challenge of tenure security. The Mining Act does not specify an area and types of minerals subject to a primary mining licence. The Act further maintains discretionary powers of the Minister to declare an area exclusively reserved for small-scale mining. The Minister responsible for minerals is only required to consult the Mining Commission before designating an area to be exclusively reserved for small scale mining operations. The Minister is neither required to consult land holder nor local government authorities. No regulations regulate the exercise of those



discretionary powers by the Minister. Further, since the powers are discretionary, the Minister may or may not exercise the powers. Therefore, the above discretionary powers may be exercised or not exercised by the Minister at the detriment of small-scale mining.

Moreover, it is difficult for the Mining Commission to identify an area designated for small-mining due to lack of information on the presence of mineral resources.<sup>88</sup> In practice, areas that are often declared to be reserved for small-scale mining are those which small-scale miners occupy with no government permits or licences. Therefore, the declaration of areas reserved for small-scale mining is intended to formalise small-scale mining activities that are conducted without the Mining Commission's formalisation. After the declaration is made, small-scale miners will be required to apply for a primary mining licence.<sup>89</sup>

From the above observation, the Mining Commission uses small-scale mining operations as evidence of the presence of mineral resources. However, since no scientific data, it is difficult for the Commission to establish the exact amount of mineral deposits and relevant technology required to extract the minerals. Thus, the declaration of such areas without scientific data may not be in line with the Mining Act, which among others, intended that the areas declared to be reserved exclusively for small-scale mining are those which, among others, do not require sophisticated technology and large capital. As such, it is possible to find an area occupied by small-scale miners or declared to be reserved exclusively for small-scale mining being unfit for the purpose because of the technology required to extract the minerals. As such, a mere occupation of the area by small-scale miners or a declaration of an area to be reserved for small-scale mining operations does not guarantee that the area is suitable for small-scale mining operations.

---

<sup>88</sup> Interview with Mining Commission Officer, interview conducted on 29<sup>th</sup> May, 2022.

<sup>89</sup> Ibid.

Lack of consultations is another challenge facing small-scale mining sub-sector. Small-scale miners often ‘act as pathfinders or barefoot prospectors’.<sup>90</sup> They are the ones who discover new mining areas and often start mining activities based on their customary land tenure system but without government permits or licence. Because these small-scale miners lack government licence, they are normally evicted when the same areas are granted to the large-scale mining companies.<sup>91</sup> Nevertheless, issuing licences to these large-scale mining companies often does not involve consultation with small-scale miners. Such a non-involvement process is often the forceful eviction of small-scale miners and constant conflicts between small-scale and large-scale miners. A good illustration can be borrowed from 2016 incident, where the then President of Tanzania, the late John Pombe Magufuli publicly denounced the decision of the Minister responsible for minerals to grant a prospecting licence to a large-scale mining company. More than 5,000 small-scale miners earlier occupied the area in question. The small-scale miners were evicted from the area, and the area was licenced to Pangea Minerals Ltd, a subsidiary of Acacia Mining Plc (formerly Barrick Tanzania).<sup>92</sup> The President required the area to be reversed back to small-scale miners. However, the President’s direction was contrary to the law. The Mining Act sets out grounds and procedures for cancelling mining licences. Unless the grounds identified by the Act exist and relevant procedures are followed, the government may be sued by the investor for breaching the investment agreement.

Poor involvement of local government authorities is yet another legal challenge facing the small-scale mining sub-sector in Tanzania. The procedures for application and grant of mining licences, including small-scale mining licences

---

<sup>90</sup> Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, ‘Global Trends in Artisanal and Small-Scale Mining (Asm): A Review of Key Numbers and Issues’ (IISD 2017) 33 <<https://www.iisd.org/system/files/publications/igf-asm-global-trends.pdf>> accessed 27 May 2022.

<sup>91</sup> *ibid.*

<sup>92</sup> The Guardian Reporter, ‘Magufuli Orders Removal of Top Mining from Gold Field’ *The Guardian (Online)* (Tanzania, 7 December 2016) <<https://www.ippmedia.com/en/news/magufuli-orders-removal-top-mining-gold-field>> accessed 27 May 2022.

do not allow the local government authorities an opportunity to influence the decision. All applications for mining licences are made directly to the Mining Commission. Local government authorities are only included in the corporate social responsibility plan development. However, when small-scale miners discover a new mining area, they work in that area under the local government authorities before they are granted with primary mining licence. Sometimes, local government authorities invite people interested in conducting small-scale mining activities in their respective areas.<sup>93</sup> Although they do not have the power to do so under the mining laws, they find this practice to be effective in avoiding conflicts. Where the respective local government recognises small-scale miners, they consider themselves to be legal miners. Unfortunately, the practice may not offer protection to the small-scale miners since they have relevant permits and licences from authorities vested with the power to do so. As such, the authority responsible for granting mining licence may legally evict these small-scale miners and grant licence to a large scale mining company when someone applies for a large scale prospecting mining licence.

## **7. Conclusion**

Historically, the Tanzania small-scale mining sub-sector has provided thousands of employment opportunities to the local Tanzanians. However, contrary to the expectations of many, small-scale mining has been suffering from neglect by government officials and the laws. Despite several reforms in the legal framework for mining, challenges facing small-scale mining continue to exist. These challenges include lack of tenure security, lack of consultation, poor involvement of local government authorities and forcefully evictions.

---

<sup>93</sup> MwanaHALISITV, Wananchi Wakimbilia Fursa Za Uchimbaji Madini Gairo/Dc Makame Aita Wawekezaji, < <https://www.youtube.com/watch?v=G7ycX3v2Ry4> > Accessed 29<sup>th</sup> May, 2022.

## **8. Recommendations**

In order to address the challenges facing small-scale mining in Tanzania, this article recommends the following:

- a) Strengthening tenure security for small-scale miners by defining areas and types of minerals subjected to small-scale mining activities.
- b) Strengthening the involvement of local government authorities in the procedures for issuing mining licences by requiring the Mining Commission to consult respective local government authorities before issuing any licence.
- c) Ensuring that the procedures for granting various licences under the Mining Act involve small-scale miners likely to be affected by the decision.