

# INTERNATIONAL TRADE AND INVESTMENT LAWS VIS -A -VIS LOCAL CONTENT COMPLIANCE IN TANZANIA'S EXTRACTIVE INDUSTRIES: A FOCUS OF MINING

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## ABSTRACT

It is the desire of all countries to maximize opportunities presented by the abundance of mineral resources within their boundaries. This desire is manifested through the enactment of various laws for the best interest of the citizens and the nation as a whole including those related to local content compliance. Conversely, under the international trade and investment normative framework, this legitimate motive is not a total buffer. However, it is limited to the extent that the country has chosen to be committed and obliged by the multilateral and bilateral treaties. The more treaties a country has entered into (both multilateral and bilateral) the more limitation on enactment of laws or perform measures that may contradict the existing commitments. This paper examines the rationale for, and use of, local content compliance in the mining industry in Tanzania. Local content compliance is being used to facilitate local participation, wealth creation, domestic linkages, and sustainable development linked to minerals exploitation.

Premised on the above, this paper examines Tanzania's local content compliance in the mining industry vis-à-vis international trade and investment laws. It employs a purely qualitative research approach supported by interviews of relevant key respondents.

The author found that the existing legal framework in relation to local content compliance in the mining industry in Tanzania is incompatible with the international trade and investment laws hence not harmonious with the existing benchmarks. This paper recommends further legal reforms to be conducted including enacting local content principal legislation that accommodate where necessary existing international benchmarks and best practices, as well as Tanzania, should drive for a regional local content policy approach to minimize potential legal risk.

**Keywords:** Compliance, Investment, International Trade, Extractive Industries, Local Content, Mining, Minerals, Maximum benefits and the United Republic of Tanzania.

## INTRODUCTION

This paper examines the legal framework governing local content in the mining industry in Tanzania in light of its international obligations. The problem which this paper sought to address was the adoption of local content paradigm in the extractive industries. A focus being mining and explore the harmoniousness between domestic legal framework with that of international trade and investment laws.

The knowledge gap was identified through limited literature accessible on the nature and essence of the local content paradigm in the extractive industries in Tanzania complimented by field work and the obligations available under international trade and investment laws. Analytical knowledge gap identified was then compared to international trade and investment laws. The main objective was to examine local content compliance in the extractive industries in Tanzania, the focus being the mining, brings about the potential contradiction between the domestic laws and international trade and investment laws.

This paper is guided by four specific objectives: *First*, to understand concepts, principles and theories of local content paradigm as a tool of maximizing benefits obtained under mineral wealth. *Second*, to assess the prerequisites which form the very basis of the legal framework governing local content compliance in the mining industry in Tanzania and investigate their relevance in ensuring maximum benefits obtained under mineral wealth. *Third*, to identify any potential conflict(s) between local content compliance in the mining industry in Tanzania vis-a-vis international trade and investment laws. *Fourth*, to propose suggestions on area of law for future development and identify challenges of possible difficulties of implementing local content compliance in mining industry in the context of international trade and investment laws. The author assumed that the legal framework of local content compliance in mining industry in Tanzania is inconsistent with the International Trade and Investment Laws.

## **THE CONCEPT, PRINCIPLES, AND THEORIES LINKING TO LOCAL CONTENT COMPLIANCE IN MINING INDUSTRY IN TANZANIA**

The author found that there was dissatisfaction with the contribution of the mining sector in Tanzania; the country did not harness the full potential of its mineral endowments for sustainable and inclusive development.<sup>i</sup> Although there was a taxation regime compelling the investors in mining to pay it was found that taxation did not enable the country to gain much. For example, from 1997 to 2009 no mining company paid income tax from their operations to the government of Tanzania.<sup>ii</sup>

Good example, being the Mwadui mines that did not pay a corporate tax as required by the law on the economic ground that the mine is operating under loss. According to the parliament report on mining of 2016 Mwadui Mining only paid on 200/2009 to 2013/2014 only.<sup>iii</sup> The Parliamentary committee on mining did not buy this idea so do many Tanzanians perceive the mining operation in Mwadui. The same situation is also observed in gold mines whereas the company has not to pay corporate tax on the economic ground of operating under loss continuously.<sup>iv</sup>

While on the other hand Company like Resolute which operated in the Lush mine for more than fourteen (14) years only paid for two years only before it closed its operations in 2012.<sup>v</sup> According to the TMAA report of 2015 shows that gold mining companies have not paid 10.27 Billion in Service Levy and Royalty to the relevant Local Government Authorities.<sup>vi</sup> These experiences showed that there was a shift of economic wealth from the extraction of mineral resources for many years to foreign countries and Tanzania did benefit much out of her minerals wealth.

It was also found the economic operators in mining areas routinely outsourced essential services such as security and food services from vendors of outside the country. At the same time, there are plenty of such services providers in Tanzania. It reaches a time where economic operators imported vegetables to feed the mining companies. To curb, the situation local content paradigm, a policy tool of ensuring maximum benefits beyond fiscal gain, was adopted in Tanzania's mining industries.

To realize an industrial economy and inclusive growth by 2025, the government of Tanzania set a policy and legal framework that ensure maximum and meaningful participation of Tanzanians and enterprises in the mining value chain. Local content being the value added to

the national economy through the use of goods and services that are outsourced locally; encouraging employment of locals; technology transfer from the mining investment; local ownership and participation were the only options Tanzania adopted in the mining sector. There are several legitimate reasons as to why the Tanzania select this path. The principle of Permanent Sovereignty over Natural Resource (PSNR) being the core, the PSNR assures the country's right and control over natural wealth.

The PSNR principle was developed by the international community from the 1950s, so as to address matters of exploitation of natural resources in the world. The principle is enshrined with rights and duties. Such rights include: the right to assert the ownership of natural resources; the right to manage and control exploitation of the natural resources; freedom of a country to exploit its natural resources; and the right of a country to benefit from the exploitation of its natural resources.<sup>vii</sup>

On the side of duties associated with the PSNR include: the duty to practice the right of PSNR in the interest of national development to ensure that the population benefits from their natural resources; the duty to refrain from actions that would likely jeopardize the rights and interest of the people in the exploitation of state over its natural resources; the duty to pay promptly a fair compensation in case of nationalization, expropriation or requisition; the duty to observe international agreements and to accomplish international obligations in good faith in practice of PSNR mention in a few.<sup>viii</sup> To date due to the development of doctrine of PSNR countries such as Tanzania may have a valid justification of implementing local content in the mining industry.

Therefore, the assumption that there is a contradiction between local content compliance and international trade and investment obligations has been rejected in the first objective. The justification being there are legitimate reasons as to why Tanzania opted to adopt local content compliance in the mining industry. Tanzania has adopted a protectionism approach known as resource nationalism to maximize benefits from mineral wealth available, so as to retain a more excellent value from natural wealth extraction to support local and domestic socio-economic growth and development in Tanzania. When it comes to local content concepts, principles, and theories, in Tanzania's mining industry. The author has found useful concepts, principles, and theories linking regulation mining activities with the maximum guarantee benefits for the country and its citizen. However, there are no standing-alone laws on local content in the

mining industry. Such that, provisions are embedded into different policies, Contracts, and Legislations on mining.

## **THE POLICY AND LEGAL FRAMEWORK OF LOCAL CONTENT WITHIN THE MINING INDUSTRY IN TANZANIA**

Local content in Tanzania is built beneath economic objectives, allowing local firms' participation and increasing value addition in mining activity extraction.<sup>ix</sup> As stated by one respondent from the Ministry of Minerals in Tanzania; local content is among the best tools to attain unseen wealth previously taken outside the country by multinational companies. The respondent further stated if local content is well organized in mineral extraction activities, there will be unmeasurable multiplier effects from mining to other sectors of the economy such as manufacturing, transport, education, agriculture, and construction mention a few. This was also cemented by a respondent from the Mining Commission.

Another aspect is on the social-political objectives whereby local content in Tanzania attempts to get as many Tanzanians as possible in the mining industry. Through policies and regulations such as those relating to local content; they allow nationals to gain employment and subcontracts for the supply of goods and services to the extraction companies in a manner that will facilitate the transfer of skills, knowledge, technology and increase revenues to government coffers; thus, achieving greater backward-and-forward-linkage of a particular extractive industry with the local economy. As stated by the respondent from the Natural Wealth and Resource Observatory Unit in Tanzania. All this is also supported by the Africa Mining Vision of 2050.

On the side of theories that govern local content in the Tanzanian mining industry, the economic theory is a significant guide to correct market failure associated with foreign goods and services to dominate mining, oil, and gas-related activities.<sup>x</sup> Local content rules in Tanzania were incorporated as an intervention to remedy market failure as well as to gain economic objectives in every extractive activity in Tanzania. Besides the correction of market failures, an infant industry theory justifies protecting local industries or the economy by granting favor and privileges to domestic industries. The rationale is to allow growth and provide goods and services such as to promote expansion and growth of the local industry to

meet economic operators' needs in extractive industries. Unlike multinational companies and industries, domestic enterprises lack economic scale advantages that offer goods and services in mining, oil, and gas operations.<sup>xi</sup>

To achieve the above objectives, Tanzania has opted to be governed by a protectionism philosophical point of view. That as a form of non-border measures, local content requirements act as a shield of promoting domestic industries and services plus service providers operating in the mining, oil and gas exploration, and extraction. The motivation is to ensure domestic producers and service providers get a slice of benefits arising from every investment associated with mining, oil, and gas. Bearing in mind that the existing natural wealth belongs to the people of Tanzania and there must be returns beyond fiscal benefits in every activity that relates to the extraction and exploration of minerals, oil, and gas in Tanzania

Local content is not a new concept in Tanzania. For instance, its history can be traced through policies since the adoption of the National Economic Empowerment Policy in 2004. It is noteworthy this initiative advocated for most Tanzania citizens' participation in all sectors of the economy.

Its vision was founded under the empowerment of citizens of Tanzania as set under the Tanzania Vision 2025. It envisaged that, by the year 2025, a large segment of the national economy would be owned by Tanzania.<sup>xii</sup> The said policy intended to address all economic empowerment needs of the individual citizens of Tanzania and local companies in which Tanzania citizens hold not less than fifty percent of the shares. However, the policy only accommodated farmers, livestock keepers, fishers, employees, traders, and other groups of individuals in various economic activities.<sup>xiii</sup>

This was directed to the enactment of the National Economic Empowerment of 2004 Act No. 16. Tanzania's government aimed at resolved to take measures designed to promote and facilitate economic initiatives aimed at empowering Tanzanians. Further, the government agreed in terms of the national Economic Employment Policy that natural resources, trade, agriculture industry, and other economic opportunities must generate wealth, boost the small and medium enterprise sector, to bring about a sustainable affirmative action, and facilitate genuine and positive economic empowerment to the population of Tanzanians.<sup>xiv</sup>

The author found that local content in the mining industry in Tanzania lies in the economic empowerment initiative in 2009. The mining policy came to existence policy statement did not

directly embrace the concept of local content but had an element that signifies Tanzania's position to maximize benefits beyond fiscal benefits in the minerals.

The policy tool established objectives and principles that the mining sector in Tanzania is guided. Among others, the goals were to facilitate, support, and promote increased participation of Tanzania in gemstone mining; to encourage and facilitate value addition activities within the country to increase income and employment opportunities; to promote research development and training required in the mining sector.<sup>xv</sup> The two policy statements provided a basis for why there was a need to ensure that Tanzania harnesses maximum benefits from the existing natural resources minerals being inclusive.

Apart from policy, the author has found that there is a legal framework governing local Content in the extractive industries in Tanzania. Starting from the Constitution, which is the ground norm. Article 8(1)(b) and 9(f) of the Constitution<sup>xvi</sup> are the landmark provision of the law assert that the United Republic of Tanzania is a State that adheres to democracy and social justice principles. And, accordingly, sovereignty resides in the People of Tanzania, and it is from the People that the Government, through the Constitution, derives all its powers and authority and that the primary objectives of the Government of Tanzania shall be the welfare of the people of Tanzania and not otherwise in everything the government's undertakings.

Apart from the Constitution, we have found that local content is embedded in the different legal frameworks governing the mining industry in Tanzania. That is 2010, and afterward, we have observed there was a substantial adjustment in the mining industry, which lead to the re-enactment of the Mining Act, which among other things amalgamated the local content as a mandatory requirement.<sup>xvii</sup> The law articulates that the primary licence remains to be granted to Tanzanian applicants, either individuals or juristic persons only. The to-date gemstone mining licence is only given to the applicant who is an individual or Tanzanian origin company.

It is also important to note that the local content requirements in Tanzania comprise both qualitative requirements and quantitative requirements. By qualitative requirements, the Act provides that the mining operators are mandatorily required to give a local procurement plan of goods and services in Tanzania. The Act also introduced a mandatory submission of employment and training of Tanzania's plan before commencing the mining operations. Further, as part of the holder's obligations of the mining licence, the provisions of the Act and regulations shall make preferential treatment of employ and train citizens of Tanzania and implement a succession plan on expatriate employees.<sup>xviii</sup>

We have also found out on the side of Mineral processing, smelting, and refining. The mineral rights holder is obliged to set aside a certain amount of minerals at such percentage as the relevant authority determination for processing, smelting, or refining within the United Republic.<sup>xix</sup>

On the aspect of compulsory listing in the stock exchange market and issuing of shares. We have also found that in 2015 holders of a special mining licence in Tanzania were obliged to issue shares to the public and list on a stock exchange to allow more Tanzania who could afford to buy such shares to have a slice in the mining sector.

As local content requirements gain popularity in Tanzania, we have also seen as discussed that in 2017 under the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017, Act. No.5. the government of Tanzania resolved to fairly and equitably undertake protracted measures intended to ensure that the natural wealth and resources from the mining being inclusive of the United Republic and utilized for the most significant benefit and arrangements or agreements made into by the government protect the interest of the People and the United Republic.<sup>xx</sup> This was based on the state's statutory power in the name of permanent sovereign principle, which tallies the protectionism approach over existing natural resources. The said law also prohibited extraction, exploitation, or acquisition and natural wealth except for Tanzania's benefit.<sup>xxi</sup> Additionally, there shall be a guarantee of returns from natural wealth resources in Tanzania.<sup>xxii</sup>

Lastly, the law cements the participation of the people and the government in any authorized granted of extraction, exploitation, or acquisition and use of natural wealth and recourses.<sup>xxiii</sup> Is it not enough, in the same year, June 2017, an Act to amend specific written laws in the extractive industry with the view to enhance control and compliance, ensuring maximum collection of revenues and securing national interests?<sup>xxiv</sup>

We have found that this law did define what local content concerning mining operations in Tanzania is.<sup>xxv</sup> It also provides for ownership of minerals to be vested in the President in trust for the people of Tanzania and the government to have Lien over any materials, substance, or product extracted from the mining operations or mining processing.<sup>xxvi</sup> Another clause under this Act, which is critical concerning local content, is under State participation. The law requires any mining operations. The government shall have not less than sixteen non-dilutable free carried interest shares in a mining company's capital. Additionally, the government is entitled to acquire, in total, up to fifty percent of the shares of the mining company's total tax



expenditure incurred by the Government in favour of the mining company.<sup>xxvii</sup> Lastly, the Act of 2017 provided that a mineral holder is also subject to share to the Commission of minerals Training and technology transfer plan.

Furthermore, we have found that every application for prospecting licence, retention licence, primary mining licence, special mining licence, and mining licence when applying for such licence should include a local content plan, for their application to be complete before the relevant authority.<sup>xxviii</sup>

Reading together with part eight of the same Act, the holder must also comply with local content requirements. The law states a mineral holder shall prefer goods produced or available in Tanzania and services rendered by Tanzanian citizens and or local companies.<sup>xxix</sup> The mineral right holder shall prepare and submit to the Commission a procurement plan for at least five years indicating, among others, use of local services in insurance, financial, legal, accounts, security services, cooking and catering services, and health matters and goods produced or available in Tanzania.<sup>xxx</sup>

Furthermore, within sixty days after the end of each calendar year, the mineral rights holder shall submit to the Commission a report of its achievements in utilizing Tanzanian goods and services during that calendar year.<sup>xxxi</sup> Additionally, a mineral right holder shall, within twelve months after the grant of a licence, and on each subsequent anniversary of that grant, submit to the Commission for approval, a detailed program for recruitment and training of Tanzanians per approved local content plans.<sup>xxxii</sup>

In 2018 the regulations on mining local content came to pass to provide more details for local Content in extractives. The regulations start by introducing nine objectives of local content in the mining industry to remind the Tanzania concept's applicability.<sup>xxxiii</sup> Generally, the said regulation covers both quantitative and qualitative requirements. To start with the quantitative requirement, the regulation provides for legally binding targets. For example, the holder of a mining licence is expected to have a 50-60 percent number of local staff employed by management and technical core staff to be Tanzanian. Procure 50 percent of goods and services within five years after obtaining the licence.

Next to that, there are qualitative requirements obligations to transfer technology or training of staff local content in all mining activities involvement of indigenous and ownership of the company by indigenous Tanzanians. Indigenous Tanzanian company" means a company incorporated under the Companies Act that has at least fifty-one percent of its equity owned by a citizen or citizens of Tanzania. It has Tanzanian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non-managerial and other positions.<sup>xxxiv</sup>

The Commission shall give an indigenous Tanzanian company first preference to grant a mining license concerning mining activities. Also, there shall be at least a five percent equity participation of an indigenous Tanzanian company other than the Corporation to be qualified for grant of a mining licence. A non-indigenous Tanzanian company intends to provide goods or services to a contractor, a subcontractor, licensee, the Corporation, or other allied entities within Tanzania shall incorporate a joint venture company with an indigenous Tanzanian company and afford that indigenous Tanzanian company equity participation of at least twenty percent.<sup>xxxv</sup>

We have also observed under the same regulation<sup>xxxvi</sup>, a contractor, subcontractor, licensee, or other allied entity shall before the commencement of mining activities submit a plan to the Commission specifying-

- i. The role and responsibilities of the indigenous Tanzanian company;
- ii. The equity participation of the indigenous Tanzanian company; and
- iii. The strategy for the transfer of technology and know-how to the indigenous Tanzanian company.

Therefore, the assumption that there is a contradiction between the local content compliance and international trade and investment obligations has been affirmed in the second objective of this study. The justification being the existing legal framework contains provisions that are economically discriminatory in the eyes of international trade and investment legal framework.

## INTERNATIONAL TRADE AND INVESTMENT LAW VIS -A -VIS LOCAL CONTENT IN TANZANIA'S EXTRACTIVE INDUSTRIES: A FOCUS OF MINING

This part covers international trade and investment law vis-a-vis domestic law regarding the implementation of Local Content in the extractive industries.

### *Principles of Customary International Law*

Customary international law has long been one of the cornerstones of the international legal order, alongside treaties.<sup>xxxvii</sup> In particular, Article 38 of the International Court of Justice (ICJ) Statute serves as the classical starting point to determine customary international law's scope. The said clause circumscribes customary law as internal custom, as evidence of general practice accepted as law.<sup>xxxviii</sup> Among other, general practices involve the conduct of States in connection with a contractual obligation. Such conduct comprises the signature and acceptance of the convention and its subsequent application by the parties to fulfill such obligations.<sup>xxxix</sup> It is the Contractual behavior of states that develops the law through treaties. It is also the practice of countries and their belief in that practice that develops customary international law.<sup>xl</sup>

The traditional doctrine of customary international law results from the confluence of two elements which are (1) a practice among states that is relatively consistent (and thus a "custom"), and (2) a belief by the countries engaging in the practice that it is legally required or permitted. The first element is often referred to as the "consistent state practice" requirement, and the second element is the requirement of "*opinion juris* necessitates," also known as "*opinion juris*."<sup>xli</sup> According to International Law Commission in 1950, Customary International Law evidence includes treaties, decisions of national and international courts, national legislations, diplomatic correspondence, opinion of national legal advisers, and practices of international organizations.<sup>xlii</sup> It worth noting, Treaties constitute an independent source of (contractual) obligation in international law. As a result, treaty rules constituting progressive development obtain the necessary binding (contractual) force.<sup>xliii</sup>

There are several norms under customary international law governing civilized States that decide to be subjected to put this in motion. By 'norm' is meant standards of behavior defined in terms of rights and obligations. One of the crucial norms is *pacta sunt servanda* indicates

states are bound by Agreements or treaties they choose to be part too. According to the statutory definition, Article 26 of the Vienna Convention<sup>xliv</sup> articulates that every treaty that the partner state agrees to be in force is binding upon the parties and must be performed by the parties in good faith. This norm authorizes the states as the international community's subjects to regulate by treaty their mutual behavior: their organs and subjects' behavior concerning other states' organs and subjects.<sup>xlv</sup>Of course, trade and investment treaties are, just as any other treaty, subject to the requirement of being observed and avoidance in good faith and not otherwise.

To date, Tanzania is a signatory to the WTO since 1995 automatically as a Country is bound as per *pacta sunt servanda* to several trade agreements and principles that govern trade arrangement under the multilateral trading system under the WTO.

### ***Principles of Multilateral Trading Framework***

Under the multilateral trading arrangements, states compelled several ideologies. Some do discipline the use of Local Content initiatives in various sectors, including the extractives. The following are some of the fundamental trading principles that regulate the use of protective measures available under the Multilateral trading arrangement. They are governed by the WTO law and policy, which Tanzania being the signatory, is part of it.

- National Treatment

Economic discrimination among trade partners and their goods and services is highly discouraged under the Multi-lateral trading arrangement. Under the Multilateral legal framework governing trade in goods, there is a normative basis that discipline or direct whether to impose or shy away from protective measures such as using the extractive industries' local content model. By definition, national treatment obligation discourages discrimination between imported goods and services plus their service providers and locally made goods and services. The General Agreement on Trade and Tariff of 1994, the TRIMs, and Subsidies set a framework for Partner states to comply.

To start with GATT 1994, article III set a basis of non -discrimination between imported goods and locally made products. It prohibits a Member of the WTO from favoring its domestic products over the imported products of other WTO Members. The relevant clause in Article III paragraphs 1,2 and 4 of the GATT 1994.

The GATT 1994 states that *Members recognize that internal taxes and other internal charges, and laws, regulations, and requirements are affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products to afford protection to domestic production.*<sup>xlvi</sup>

Among other things, Tanzania has developed its local content legal framework, which is embedded in several policies and legislation associated with the mining sector. The laws include the Mining Act No. 14 of 2010, the Natural Wealth and Resources (Permanent Sovereignty) Act No. 5 of 2017; Contracts (Review and Re-negotiation of Unconscionable Terms) Act No. 6 of 2017, the Written Laws (Miscellaneous Amendments) Act No.4 of 2017, the Mining (Local Content) Regulation GN. 3 of 2018 and Mining (Local Content) (Amendment) Regulation GN. 139 of 2019. Hence, the Local Content requirements in Tanzania's mining legal framework contradict Article III (1) of the GATT 1994.

Reading together with Article III (4) of the GATT 1994 where it states that *the products of the territory of any Member imported into the part of any other Member shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations, transportation, and requirements affecting their internal sale, offering for sale, purchase, transportation distribution or use. This paragraph's provisions shall not prevent the application of differential internal transportation charges, which are based exclusively on the economic operation of the means of transport and not on the product's nationality.* Tanzania is prohibited from imposing internal regulations that will favour her domestic products versus the imported products.

The same reasoning on the National Treatment obligation has been provided for under the TRIM. 1994 Article 2(1) of the TRIM 1994 articulates *without prejudice to other rights and obligations under GATT 1994. No Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.* Further, under the same Article 2(2), the text provides *an illustrative list of TRIMs inconsistent with the obligation of national treatment*

provided for in paragraph 4 of Article III of GATT 1994. The obligation of general elimination of quantitative restrictions in paragraph 1 of Article XI of GATT 1994 is contained in this Agreement. We have found that economic operators are commanded to procure goods locally and submit a Local Content Plan, which shows procurements of local products contradict Article III (4) of the GATT 1994 and Article 2 of the TRIM 1994.

- Quantitative Restrictions Obligation

Apart from the non-discrimination clause, the GATT 1994 under article XI titled the General Elimination of Quantitative Restrictions disciplines the use of quantitative restriction measures. The text of the GATT 1994 articulates *no prohibitions or restrictions other than duties, taxes, or additional charges, whether made effective through quotas, import or export licenses, or other measures shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or the exportation or sale for export of any product destined for the territory of any other contracting party.*

To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures that require particular levels of local procurement by an enterprise (“local content requirements”) or which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports (“trade balancing requirements”). The agreement requires mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries, and within seven years for least-developed countries.<sup>xlvii</sup>

Looking at the current status in Tanzania, the existing Local Content legislation does provide for quantitative restrictions. For instance, the Mining (Local Content) regulation's first schedule provides minimum Local Content level in goods. To start within five years of operations, the mining industry's economic operators shall procure 50% of local goods for recruitment and training the economic operator expected to attain 50-60% of the Local Content level of Management and technical staff. At the same time, maintain 90% of other Local staff.

Quantitative restrictions provided under Article XI also include qualitative measures imposed in Tanzania. The Second Schedule of the Mining (Local Content) requires the mining's economic operators to provide quarterly forecasts on purchases, estimated value contracts,

subcontracts, and any other information necessary to the commission. Other qualitative measures are provided under the third schedule of the Mining (Local Content) regulation. This legislation and practices contradict Article XI of the GATT 1994 and Article 2 of the TRIM 1994.

It is also essential to understand that the two significant principles governing multilateral trade arrangements have some exceptions. The question is whether the Tanzania practices fall under the general exception. In both trading principles, Member of the Agreement is allowed to implement National Treatment and Imposition of quantitative restrictions only temporarily. For example, Article 4 of TRIMs 1994 provides that a developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

The question is whether the current legal framework on Local Content in Tanzania provides local content measures temporarily. We have found that the existing legal framework on Local Content in the mining sector in Tanzania is permanent. According to Mining (Local Content), regulations and guidelines plus schedules are attached to provide that Local Content Measures stay. There are more years the economic operator continues her operations, the more obligations on Local Content expand coverage. For example, the current regulation demand that the minimum Local Content level to be attained from the date of signing of licence or mining agreement in ten years shall be 60-90 %. Recruitment and training of local shall be 70-80% on Management and technical core staff while 100% to other staff.<sup>xlvi</sup> This still contradicts general exceptions under Article XX of the GATT 1994 and Article 2,3,4 and Annex to TRIMs 1994.

## **PRINCIPLES OF BILATERAL INVESTMENT FRAMEWORK**

Since the multilateral trading framework focuses on governing trading relations among nations, bilateral Investment Agreements set a broad framework for international investment contractual whereabouts, ensuring investors' protection alongside providing for promotion and

reciprocal protection of investment between Countries that decide to be part of the said bilateral commitments, in a matter relating to investment and specific standards of treating foreign nationals.

Like the multilateral trading principles, the Bilateral Investment Framework contains obligations specifying the contracting parties' treatment of the investment once established. To put this into action, contracting may decide to be compelled by general standards of treatment, which can either be absolute standards of treatment or relative treatment standards. By fundamental standards of treatment, they involve the treatment to be accorded to the investment without referring to how other investments are treated. Examples of absolute standards are fair and equitable treatment, full protection and security, expropriation, and funds transfer. Whereas by relative standards of treatment, they define the necessary treatment to be granted to investment by reference to the treatment accorded to other investments. National treatment and MFN treatment are the relative standards of par excellence. Thus, in the case of national treatment, reference must be made to the treatment of nationals of the host country.<sup>xlix</sup>

We have found that according to the available database on existing BITs that Tanzania is contracting to as per the Investment Policy Hub of UNCTAD. By 2013 Tanzania has entered into twenty BITs. Out of the twenty BITs, only ten BITs are enforced; hence are binding. Not only that, Tanzania has six Treaties with Investment Provisions (TIPs) and twenty Investment Related Instruments (IRIs) that establish several standards, promotions, and standards on how investment and investors shall be treated to the best endeavors.<sup>1</sup>

Unlike the Oil and Gas sector in Tanzania, we have also found that service providers are registered under the database of EWURA, which is the regulatory authority. The Mining Commission, the regulator, has no transparent database that lists all service providers in the mining sector to know the mining database. On the other hand, it is also essential to be aware that there is Multilateral Cooperation that operates in the mining sectors such as North Mara Gold Mine Limited, Pangea Minerals Limited, Bulyanhulu Gold Mine Limited, Tanzgraphite (TZ) Limited who come to Canada, and Australia. These Countries have BITs with Tanzania, which gives the foundation of this research to analyse whether the existing Local Content legal framework contradicts or complies with the current BITs in Tanzania.



To start with absolute standards of treatment, the mandatory procurement of goods and services from locally imposed to economic operators in the mining industry in Tanzania contradict the obligation under Article 2 of the Tanzanian- Denmark BIT;<sup>li</sup> Article 3 of the Tanzanian-German BIT,<sup>lii</sup> Tanzanian- UK BIT, Tanzanian- Sweden BIT,<sup>liii</sup> Tanzanian- Finland BIT,<sup>liv</sup> Tanzanian- Italian BIT,<sup>lv</sup> Article 4 of the Tanzanian- Swiss Confederation BIT,<sup>lvi</sup> Tanzanian – Mauritius BIT<sup>lvii</sup> and Tanzanian- China BIT;<sup>lviii</sup> Article 5 of the Tanzanian – Canada BIT.<sup>lix</sup>

Also, the Performance requirement imposed on economic operators in the mining industry is contrary to the existing requirement under the BITs that Tanzania is part of. The said performance requirement is on the Local Insurance Services Content; Legal Services Content; Financial Services Content; Local Content performance reporting; Local Content Plan which ensures that first consideration is given to services provided within the country and goods manufactured in the country; qualified Tanzanians are given first consideration are violating obligation existing under the current BITs mention above. This is per Article 1 of the Tanzanian- German BIT; Article 2 of the Tanzanian- UK BIT, Tanzanian- Denmark BIT, Tanzanian- Sweden BIT, Tanzanian- Finland BIT, Tanzanian- Italian BIT; Article 4 of the Tanzanian- Swiss Confederation BIT, Tanzanian – Mauritius BIT, and Tanzanian- China BIT; Article 4 and 9 of the Tanzanian – Canada BIT.

On relative standards of treatment under Bit's obligation infringement of National Treatment obligation concerning the Local Content Legal framework in the Mining Industry in Tanzania. Do contradict with Article 2 of the Tanzanian- Denmark BIT; Article 3 of the Tanzanian-German BIT, Tanzanian- UK BIT, Tanzanian- Sweden BIT, Tanzanian- Finland BIT, Tanzanian- Italian BIT, Article 4 of the Tanzanian- Swiss Confederation BIT, Tanzanian – Mauritius BIT and Tanzanian- China BIT; Article 5 of the Tanzanian – Canada BIT.

It is undisputed that BITs provide for exclusion or special clauses, whereas a Contracting party may derivate from general standards of treatment of investors or foreign investment. It is true that Article 12 of the Tanzanian- German BIT; Article 3 of the Tanzanian- Sweden BIT, Tanzanian- Finland BIT; Article 4(2) of the Tanzanian- Swiss Confederation BIT. But the said exclusion clause is only compatible with temporary and provided measures that do not significantly affect the contracting party investors' investments and activities. This means Tanzania is allowed to impose Local Content measures to stimulate local industries temporarily only.

We have found that the current legal framework on Local Content in the mining industry violates both absolute and relative standards set under the Bilateral Investment Framework. Tanzania is a contracting party to date. Additionally, the Local Content legal framework is embedded in several legislations governing the mining industry in Tanzania. It falls to be categorized as an exclusion umbrella because of its life cycle kind of legislation.

## **PRINCIPLES OF FREE TRADE AREAS**

These provide on the promotion and protection of investments and investors under a specific area where member States agree to have a common term for movements of goods and services. Currently, Tanzania is also part of several Free Trade Areas. Still, for this study, our focus is on the Cotonou Agreement,<sup>lx</sup> EAC-US TIFA,<sup>lxi</sup> and the SADC- Investment protocol.<sup>lxii</sup>

In both Free Trade Area commitments, Tanzania is reminded of her capacity to attract investment and commitment to protecting private investment under existing international trade and investment law. For example, the Cotonou Agreement under Title II emphasizes Economic and trade cooperation by living in conformity with the provisions of the WTO. This, among others, includes National Treatment Obligations, Elimination of Quantitative restrictions, and avoidance of protective measures.<sup>lxiii</sup> The EAC- US TIFA of 2008 also cement that parties should have a desire to reduce non - tariff barriers, an example of which can be the present Local Content Policy. Lastly, the SADC Investment protocol provides for Member States to eliminate obstacles to the free movement of capital, labour, goods, and services within the SADC region.

The present Tanzanian policy and Legal framework contradict the Free Trade Areas Agreement's commitment since there are protectiveness measures. No clause provides an exceptional clause that waives local content requirements to certain Countries originating from the free trade zone. We have found the implementation of local content may occur jeopardies Tanzania's commitment and obligation under free Trade Area Agreements.

Therefore, the assumption that there is a contradiction between the local content compliance and international trade and investment obligations has been affirmed by the third objective of this study.

## **SUGGESTION TO TACKLE SHORTCOMINGS SURROUNDING TANZANIAN LOCAL CONTENT IN THE EXTRACTIVE INDUSTRIES IN THE LIGHT OF INTERNATIONAL TRADE AND INVESTMENT LAW**

The following are the strategies that Tanzania may adopt to tackle the shortcoming of the extractive industries' local content paradigm.

### ***Adoption of Protectionist and Liberalized Approach to Local Content***

There is a need to adopt a combination of protectionist and liberalized Approaches to Local Content in the Tanzanian Mining Industry. Since most of the industries that the Government of Tanzania is seeking to promote and skills are still limited in the Extractive industry's operational activities, Tanzania should consider temporary local content measures to transform the existing local industries and service providers into potential economic operators. Once they are matured enough, the country can quickly switch to a liberalized approach to local content in the extractive industries. This means the Protections' and liberalized approach is reflected in the statutory and contractual approaches implemented by the Government of Tanzania.

### ***Enactment of the Principal Legislation on Local Content***

There is a need to have Primary Legislation on local content. Currently, the local content requirement is embedded in different Legislation. For example, some Local Content elements are available for the Mining industry under the Mining Act of 2010 as revised in 2019, as amended by the Written Miscellaneous Amendment Act of 2017, and several regulations such as the Mining (Local Content) Regulation of 2018. This makes it sometimes hard for the Government to communicate appropriately the intended message the Government is communicating to the people. The author recommends that the Government has to enact Principal Legislation on local content. That the Government may borrow lessons from Ghana they have local content as the principal Legislation.

### ***Review of the Current Legislation and Harmonize the Tanzania Local Content Laws with the International Trade and Investment Law***

There is a need to review and harmonize the national laws on local content. That the Government may review legislation in extractive industries such as the mining Laws to accommodate local content in the light of the international trade and investment perspectives, it can be done by reviewing and synchronizing the local content laws with the relevant

multilateral and bilateral treaties between state parties, to have coordination and detach contradictions between domestic laws and the international law.

#### ***Adoption and adherence to a single BITs Model***

To accommodate the best interest of the country, Tanzania may develop a customized BIT Model that sets standards and predictability for market access to goods and services. This shall serve as a basis for negotiation by negotiators from Tanzania for future Agreements. The investors should have a clear forecast of the nature of Tanzania's commitment that may have an impact to their economic operation in the extractive industries.

#### ***Need to Initiate a Regional Approach to the Local Content Paradigm***

Tanzania needs to take advantage of the regional economic blocks' existing membership, such as SADC, to explore the local content initiative as a group of nation's opportunities. The regional cooperation can provide coordination of local content development effort and information sharing on the experiences and challenges of implementing the regulatory of and institutional frameworks in the countries. Dispute of the fact that the nations may be at different levels of experience, development, and implementation of local content policies, regional cooperation can provide a peer review mechanism that can help countries create the relevant institutional tool for local content performance.

#### ***Adoption of incentivization model***

It was observed that Countries are disciplined for favoring their local industries and service suppliers in Mining, Oil, and Gas operations. However, there is no ban on introducing development strategies such as promotion and giving incentives, not like a subsidy to economic operators in the Mining, Oil, and Gas. The Government may adopt a requiring or incentivizing domestic goods and services suppliers' model. This is another form of advocating economic operators to procure goods and services without absolute force locally. By introducing attractive packages, economic operators might be encouraged to use local goods and services. In the end, the Government achieves its goal of promoting the local economy without violating its obligations and commitments available under Multilateral and Bilateral trading arrangements.

## CONCLUSION

The problem which the author sought to address was the implementation of the Legal framework on local content in the extractive industries in Tanzania in vis-a-vis international trade and investment laws. So as to recognizes any potential contradictions and recommend remedial measures. The author used mining industry as a focus area. This paper was undertaken under the assumption that the Tanzanian local content paradigm in the extractive industries is inconsistent with the International Trade and Investment Laws.

This paper approves the assumption that the Tanzanian local content legal framework in the mining industry is inconsistent with the international trade and investment law hence not compatible with the existing benchmarks. This may lead to Tanzania being exposed to legal risks such as attracting partner states' reciprocity action towards local content measures. It may also lead to being taken to Courts or Tribunals, in which the country is a signatory or part of various international investment instruments. However, Tanzania still has room for adjustment on her legal reforms to accommodate the existing benchmarks where necessary and without jeopardizing the state and citizen interests. Alongside Tanzania has an equal chance to advocating for the regional local content policy to be compatible with existing international trade and investment obligations. This can be put forward under East Africa Community or SADC which Tanzania is a partner state to the regional blocks.

## BIBLIOGRAPHY

- ASIAGO, Berryl Claire (2017) *Rules of Engagement: A Review of Regulatory Instruments Designed to Promote and Secure Local Content Requirements in the Oil and Gas Sector*, Centre of Climate Change, Environment and Energy, University of Eastern Finland.
- BOAS, Gideon (2016) *Public International Law Contemporary Principles and Perspectives*, Edward Edger Publishing.
- BANURI, Tariq (1991), *Economic Liberalization: No Panacea: The Experiences of Latin America and Asia*, United Kingdom: Oxford University Press.
- BERNASCONI- OSTERWALDER, Nathalie (et al) (2012) *Investment treaties & Why they matter to sustainable development: Questions and Answers*, International Institute for Sustainable Development.
- BERNASCONI- OSTERWALDER, Nathalie and JOHNSON Lise *International Investment Law and sustainable development key cases from 2000-2010*, International Institute for Sustainable Development.
- BETHLEHEM, Daniel (et al) (eds) (2012), *The Oxford Hand book of International Trade Law*, United Kingdom: Oxford Press.
- BHAGWATI, Jagdish (1988), *Protectionism*, USA: Massachusetts Institute of Technology Press.
- HUFBAUER, Gary. C et al (2013) *Local Content Requirement: A global Problem*, United States: Columbia University Press.
- IRWIN, Douglas. A (2017), *Peddling Protectionism: Smoot-Hawley and the Great Depression*, United Kingdom: Princeton University Press.
- KALYUZHNOVA, Yelena (et al) (2016) *Local Content Policies in Resource-Rich Countries*, Palgrave Macmillan, United Kingdom
- KILANGI, Adelardus (2018) *The Principle of Permanent Sovereignty over Natural Resources: Its Doctrinal and Theoretical Quagmires*, Jomo Kenyatta University of Agriculture and Technology Law Journal.

LEOPARD, Brian (ed) (2017) *Reexamining Customary International Law*, Cambridge University Press, New York.

MAGOGO, TELESPHORY (2018) *Impact of Legal Framework Governing Investment in Tanzania on Ensuring Maximum Benefits for the Country and Its Citizens: Mineral and Petroleum Sector*, Ph.D. Thesis in Law, St. Augustine University of Tanzania.

MUHONGO, Sospeter.R (2020) *Energy Justice a Local Content Analytical Framework for Sub-Sahara Africa*, Palgrave Macmillan, Switzerland

TORDO, Silvana& ANOUTI, Yahya (2013) *Local Content in the Oil and Gas Sector: Case Studies*, United States, the World Bank.

VILLIGER, Mark (1985) *Customary International Law and Treaties*, MartinusNijhoff Publishers, Dordrecht, Netherlands.

WARNER, Michael (2011) *local Content in Procurement: Creating Local Jobs and Competitive Domestic in Supply Chains* Greenleaf Publishing.

## ENDNOTES

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<sup>i</sup> Through interview conducted by the author to government officials in May 2020 and other stakeholders in the international mineral and mining investment conference held at Julius Nyerere International Conventional Centre held from 21-24 February 2021.

<sup>ii</sup> The United Republic of Tanzania, the Parliament of Tanzania, Opinion from opposition cabinet on the Natural wealth and Resources (Permanent Sovereignty) Bill,2017, MU.01.BJT.2017, p. 3.

<sup>iii</sup> The United Republic of Tanzania, The parliamentary committee report on Energy and Minerals (2016), Dodoma, TK/11/BJT.2016, p. 9-13.

<sup>iv</sup> *Ibid.*

<sup>v</sup> The United Republic of Tanzania, the Parliament of Tanzania, Opinion from opposition cabinet (Ministry of Constitutional and Legal affairs) on the Natural wealth and Resources (Permanent Sovereignty) Bill,2017, MU.01.BJT.2017, p 3.

<sup>vi</sup>The United Republic of Tanzania, The parliamentary committee report on Energy and Minerals (2016), Dodoma, TK/11/BJT.2016, p. 12.

<sup>vii</sup> KILANGI, Adelardus (2018) *The Principle of Permanent Sovereignty over Natural Resources: Its Doctrinal and Theoretical Quagmires*, Jomo Kenyatta University of Agriculture and Technology Law Journal p.2,4.

<sup>viii</sup> MAGOGO, Telesphory (2018) *Impact of Legal Framework Governing Investment in Tanzania on Ensuring Maximum Benefits for the Country and its Citizens: Mineral and Petroleum Sectors*, Augustine University of Tanzania, p.119-120.

- <sup>ix</sup>TORDO, Silvana (et al.) (2013) *Local Content Policies in the Oil and Gas Sector*, Washington DC, United State of America, The World Bank, p.13. Reading together with KALYUZHNOVA, Yelena (et al) (2016) *Local Content Policies in Resource-Rich Countries*, Palgrave Macmillan, United Kingdom, p.48.
- <sup>x</sup>See ASIAGO, Berry, C. (2017) *Rules of Engagement: A Review of Regulatory Instruments Designed to Promote and Secure Local Content Requirements in the Oil and Gas Sector*, Centre of Climate Change, Environment and Energy, University of Eastern Finland.
- <sup>xi</sup>WARNER, Michael (2011) *Local Content in Procurement: Creating Local Jobs and Competitive Domestic in Supply Chains* Greenleaf Publishing.
- <sup>xii</sup>The Prime Minister's Office of Tanzania (2004) *The National Economic Empowerment Policy*, p.5.
- <sup>xiii</sup> The Prime Minister's Office of Tanzania (2004) *The National Economic Empowerment Policy*, p.3
- <sup>xiv</sup> The National Economic Empowerment of 2004 Act No. 16, p.3.
- <sup>xv</sup> Ministry of Energy and Minerals (2009) *The Minerals policy*, Section 4.0.
- <sup>xvi</sup>The Constitution of the United Republic of Tanzania, 1977 as amended from time to time, provided that the United Republic of Tanzania is a state which espouse principles of democracy and social justice and accordingly the primary objective of the Government shall be welfare of the people. Reading together with the preamble of the National Economic Empowerment of 2004, Act. No 16 and the Natural Wealth and Resources (Permanent Sovereignty) of 2017, Act No.5.
- <sup>xvii</sup>The preamble of the Mining Act No. 14 of 2010.
- <sup>xviii</sup> Section 47(f) , 51(f) and 52(e) of the Mining Act of 2010 , No.14.
- <sup>xix</sup> Section 59 of the Mining Act of 2010, No. 14.
- <sup>xx</sup> Preamble of the Natural Wealth and Resources (Permanent Sovereignty) of 2017, Act No.5.
- <sup>xxi</sup>Section 6 of the Natural Wealth and Resources (Permanent Sovereignty) of 2017, Act No.5 the law provides that Pursuant to paragraphs (c) and (i) of Article 9 of the Constitution, it shall be unlawful to make any arrangement or agreement for the extraction, exploitation or acquisition and use of natural wealth and resources except where the interests of the People and the United Republic are fully secured.
- <sup>xxii</sup> Section 7 of the Natural Wealth and Resources (Permanent Sovereignty) of 2017, Act No.5, the law stated that In any arrangement or agreement for extraction, exploitation or acquisition and use of natural wealth and resources, there shall be guaranteed returns into the Tanzanian economy from the earnings accrued or derived from such extraction, exploitation or acquisition and use.
- <sup>xxiii</sup>Section 8 of the Natural Wealth and Resources (Permanent Sovereignty) of 2017, Act No.5 provides that Any authorization granted for the extraction, exploitation or acquisition and use of natural wealth and resources, arrangements shall be made or given to ensure that the Government obtains an equitable stake in the venture and the People of the United Republic may acquire stakes in the venture.
- <sup>xxiv</sup> The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxv</sup> "local content" means the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzanian human and material resources and services in the mining operations in order to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation as provided for under section 4 of the Written Laws( Miscellaneous Amendment ) Act of 2017 , No. 4.
- <sup>xxvi</sup> Section 5 of The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxvii</sup> Section 10 (1) and (2) of The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxviii</sup> See Section 28(2), 37(2) 49, 54 of the Mining Act of 2010, No 14 and section 13,15,17, 20,21, The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxix</sup> See Section 102(1) The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxx</sup> See Section 102(4) The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxxi</sup> See Section 102(8) The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxxii</sup> See Section 103(1) The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxxiii</sup> See section 3The Written Laws (Miscellaneous Amendments) of 2017, Act No. 4.
- <sup>xxxiv</sup> Regulation 2 of the Mining (Local Content) Regulations of 2018, GN No. 3.
- <sup>xxxv</sup> Regulation 8 (1) (2) and (6) of the Mining (Local Content) Regulations of 2018, GN No. 3
- <sup>xxxvi</sup> Regulation 8 (7) of the Mining (Local Content) Regulations of 2018, GN No. 3
- <sup>xxxvii</sup> LEOPARD, Brian (ed) (2017) *Reexamining Customary International Law*, Cambridge University Press, New York, Read 1.1.
- <sup>xxxviii</sup> VILLIGER, Mark (1985) *Customary International Law and Treaties* ,Martinus Nijhoff Publishers, Dordrecht , Netherlands ,p 3.
- <sup>xxxix</sup> VILLIGER, Mark (1985) *Customary International Law and Treaties* ,MartinusNijhoff Publishers, Dordrecht , Netherlands ,p. 11.
- <sup>xl</sup> Boas Gideon (2016) *Public International Law Contemporary Principles and Perspectives*, Edward Edger Publishing p. 11.



- <sup>xli</sup>LEOPARD, Brian (ed) (2017) *Reexamining Customary International Law*, Cambridge University Press, New York, Read 1.2.
- <sup>xlii</sup> VILLIGER, Mark (1985) *Customary International Law and Treaties*, Martinus Nijhoff Publishers, Dordrecht, Netherlands, p. 5
- <sup>xliii</sup> VILLIGER, Mark (2009) *Commentary on the 1969 Vienna Convention on the Law of Treaties* Martinus Nijhoff Publishers, Dordrecht, Netherlands, p. 12.
- <sup>xliv</sup> Article 26 of the Vienna Convention on the Law of Treaties of 1969.
- <sup>xlv</sup> BOAS, Gideon (2016) *Public International Law Contemporary Principles and Perspectives*, Edward Elgar Publishing p. 11.
- <sup>xlvi</sup> Article III paragraph 1 of the Agreement on Tariffs and Trade of 1994.
- <sup>xlvii</sup> See the Official website of the World Trade Organization, Legal texts: the WTO agreement Available at [https://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#eAgreement](https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#eAgreement) (Last accessed on September 2020).
- <sup>xlviii</sup> First and Second Schedule of the Mining (Local Content) Regulation of 2018, see Table No.3: Minimum Local Content in Goods and services under p.95 of this study.
- <sup>xlix</sup> United Nations (2007) *Bilateral investment Treaties 1995-2006: Trends in the Investment Rulemaking*, New York and Geneva, p.28
- <sup>l</sup> See the Official Webpage of Investment Policy Hub, International Investment Agreement Navigator, United Republic of Tanzania, available at <https://investmentpolicy.unctad.org/international-investment-agreements/countries/222/united-republic-of-tanzania> (Last accessed on September 2020).
- <sup>li</sup> The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Republic of Tanzania of 1994.
- <sup>lii</sup> The treaty between federal Republic of Germany and the United Republic of Tanzania concerning the Encouragement and Reciprocal Protection of Investments of 1965.
- <sup>liii</sup> The Agreement between the Government of United Republic of Tanzania and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investment in 1999.
- <sup>liv</sup> The Agreement between the Government of the Republic of Finland and the Government of the United Republic of Tanzania on the Promotion and Protection of Investments.
- <sup>lv</sup> The Agreement between the Government of the Republic of Finland and the Government of the United Republic of Tanzania on the Promotion and Protection of Investments.
- <sup>lvi</sup> The Agreement between the Government of the United Republic of Tanzania and the Government of Italian Republic on the Promotion and Protection of Investments of 2001.
- <sup>lvii</sup> The Agreement between the Swiss Confederation and the Government of the United Republic of Tanzania on the Promotion and Protection of Investments of 2004.
- <sup>lviii</sup> The Agreement between the Government of Canada and the Government of the United Republic of Tanzania of 2013.
- <sup>lix</sup> The Agreement between the Government of Mauritius and the Government of United Republic of Tanzania of 2009.
- <sup>lx</sup> The Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States of 2000.
- <sup>lxi</sup> The Trade and Investment Framework agreement between The East Africa Community and the Government of the United States of America of 2008.
- <sup>lxii</sup> The South Africa Development Community Investment protocol of 2010.