

## A SNAPSHOT OF LOCAL CONTENT COMPLIANCE LAW IN THE CONTEXT OF MINING INDUSTRY IN TANZANIA

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### ABSTRACT

This paper discusses on the development of Tanzania local content regime's policy and legal framework in the extractive industry, specifically on the mining industry. The author starts by deliberating on the evolution of Tanzanian local content compliance law in the mining. Then followed by the conversation on the governing principles, objectives, strategies, and guidelines used by the Tanzanian government in developing local content paradigm in the extractive industry. The author intended to assess the prerequisites which form the very basis of the legal framework governing local content compliance law in the context of mining industry in Tanzania and to investigate their relevance in ensuring maximum benefits obtained under mineral wealth. This paper employed purely qualitative research approach in collecting data. The author found that Tanzania had a legitimate reason as to why opted for local content compliance law in the mining industry. This paper recommends that further initiatives on ensuring the intended beneficiary to local content are aware about the regime. So that they understand the current normative framework on local content.

**Keywords:** Africa Mining Vision, Compliance, Empowerment, Maximum Benefits, Mineral Resource Endowments, Local Content, Participation, Mining, Tanzania.

## INTRODUCTION

Tanzania is known to be rich in mineral resources. It is endowed with geology which is highly perspective for precious metal, fossil fuel, base, uranium, gemstones mention in a few. To date there are continuous discoveries of commercially viable minerals.<sup>i</sup> Tanzanian's minerals are categorized into five groups: metallic minerals, gemstones, industrial minerals, energy source minerals, and construction minerals.<sup>ii</sup> Metallic minerals include gold, iron ore, nickel, copper, cobalt, and silver. Gemstones include diamond, tanzanite, ruby, garnets, and pearl among others. Industrial minerals include limestone, soda ash, gypsum, salt, and phosphate. Energy source minerals include coal and uranium. Construction minerals include aggregates, gravel, sand, and dimension stones.<sup>iii</sup> Thus, with such vast minerals, Tanzania is ranked as the fourth wealthiest country bestowed with Africa's natural resource.<sup>iv</sup>

As mentioned earlier, with the discovery of commercially viable minerals Tanzania desires to optimize the mining industry's benefits to bring socio-economic development to its citizens through local content compliance law.<sup>v</sup> The rationale being for a long time the portion retained by the country out of exploration and extraction of the minerals did not significantly contribute to the economy. Looking at the mining industry, which is the leading sector in attracting foreign direct investment, it has no relative proportionality when it comes to its contribution to the economy. Not only that, but these minerals are also not significantly contributing to the country's export earnings. In 2019 they contributed only 40% of total goods exported, which amounted to USD 2,217 million and 23% of total exports.<sup>vi</sup> Hence it is expected that Tanzania's mining industry should significantly contribute to the GDP of the economy. As a result, citizens and the Government remained dissatisfied with what was happening.<sup>vii</sup> To address the situation the government of Tanzania adopted local content paradigm on its mining industry.

## HISTORICAL DEVELOPMENT OF LOCAL CONTENT IN THE TANZANIAN MINING INDUSTRY

Dissatisfaction on contribution and participations of the citizen in the mining sector to the Tanzania economy development is not a new phenomenon. During colonial era in line with

colonial policies, Tanzanians were denied participation in the mining sector, due to historical reasons. The colonial government employed many tactics to enable only their own kind (the settlers) to have a share in the mining activities. Not until 1960's few natives participated and take control of the economy prevailed. Even after independence, economic power remained in the hands of settlers and few citizens.<sup>viii</sup>

The mining industries' local Content paradigm can be traced back through economic development initiatives as early 1960s. In the post-independence era, the Government of Tanzania made various attempts to place the requisite policy and legal framework for its growth, including industrial development. In 1967, the country opted for a protectionist economic development path through the Arusha Declaration on socialism and self-reliance. Mwalimu Julius Kambarage Nyerere, who was the first President of Tanzania<sup>ix</sup>, recognized the importance of public ownership of the essential means of production and exchange and decided to nationalize all the significant sectors of the economy, extractive industries inclusive.<sup>x</sup>The Arusha Declaration was a necessary strategy to ensure that Tanzanian took command of the economy.<sup>xi</sup>

In implementing the Arusha Declaration from the 1970s to the 1980s in the mining sector development operations were mostly State-owned. The industry was run by the companies under the National Development Corporation (NDC). Later the government formed and assigned responsibilities to the State Mining Corporation (STAMICO) in 1974.<sup>xii</sup> The Mining Ordinance, a colonial law, was repealed in 1979 and replaced with The Mining Act No. 17<sup>xiii</sup>, which promoted public enterprises. It was then when STAMICO seized 100% control of the mining sector.<sup>xiv</sup>

Despite the progress made from post-independent era to 1980s still in 1984 another public dissatisfaction came over through parliamentary debates where a motion was brought in the Parliament by Edward Lowasa then a member of Parliament. The motion was a call for the government to investigate why the mining sector under the Ministry of Energy and Minerals failed to contribute to national income and how the mining contract between the government/

STAMICO and a foreign company known as Dar Tadine Al Umma Ltd (DTU) did benefited the nation.<sup>xv</sup>

The Report of the Parliamentary Committee investigating Mining Contract between the government/Mining Company (STAMICO) and Dar Tadine Tanzania Limited (D.T.T) of 1984 chaired by Edward Lowasa. It aimed on the analysis of the contribution of the mining sector to the national income. The report's findings showed that there was a complaint(s) from the public that the one of the investors in the mining was extracting minerals without having any plan of transfer technology to the locals so that they might also benefit from the existing mining activities in the future.<sup>xvi</sup>

Furthermore, the outcomes were that in the mining sector contributed less than it was required. The nation's wealth was deprived for instance gold and raw materials associated with it were taken from mines to abroad and there was poor monitoring and evaluation that upon refinery the available volume of gold will be the same as declared by the investors. As stipulated in the parliamentary debate that According to Escrow Agreement and Production Sharing Agreement under clause 19 provide an avenue to transport gold extracted from Tanzania to Switzerland where it will be properly stored, refined then sold in Switzerland. On the same hand the Agreement prescribed authority to supervise the whole process to *Banca Della Svizzera Italiana* a Switzerland Bank.<sup>xvii</sup>

In 1992, the Government put an Economic Empowerment Policy that served as a roadmap for effective participation of Tanzania citizens in all sectors of the economy. The policy intended to address all economic empowerment needs of individual citizens and local companies in which not less than fifty percent of the shares were held by Tanzanians. The Policy put general guidelines for the formulation of strategies to be used by respective sectors.<sup>xviii</sup> Important to understand this was not a specific Policy rather served various sectors in Tanzania.

For the first time in 1997, the Government placed the mineral policy<sup>xix</sup> to realize the great potential that the mineral sector holds in contributing to rapid national economic recovery and development. The Government's mission was to have a robust, efficient, and profitable mining industry to benefit the Tanzanian people. Reading throughout the policy, one could easily

conclude that the Government wanted to reap benefits out of minerals endowment and potential. Despite its good intentions to maximize benefits bestowed in diverse mineral resources, the policy did not contain local content requirements be it in the form of strategies or plans.

On the other hand, the mentioned above mineral policy and World Bank's five-year Mineral Sector Technical Assistance Project lead to enactment of the Mining Act in 1998.<sup>xx</sup> The World Bank's mining sector reforms emphasize policies and programs that increase the value added by the mining sector, both at the community level for individual mines and at the regional or national level for the sector as a whole.<sup>xxi</sup>

As part of the project, the Bank supported also the 2010 Mining Act which increased royalty rates, changed the royalty base, and phased out the tax incentives in the 1998 Mining Act. This led to an increase in fiscal revenues derived from the sector following the end of the tax holiday period granted to several of the first wave of foreign investors in the late 1990s. As part of the Bank's advice, Mining Development Agreements (MDAs) were subject to review after every five years and at the renewal of the mineral rights. To promote revenue transparency, the Bank also supported Tanzania's implementation of the Extractive Industries Transparency Initiative (EITI).<sup>xxii</sup> Again, the said Mining Act had no clause on local content.

From the mid-2000s onwards, the mineral sector in Tanzania received several new conceptions concerning policies that led to the enactment of new legislation and regulations that fit public outcry and several stakeholders such as HakiMadini project for Popularizing African Mining Vision at Country Level.<sup>xxiii</sup> For instance, People wanted to see the endowment of minerals added value or provide maximum benefits to the Government and Tanzanians.<sup>xxiv</sup>

Another milestone is seen under the government of Tanzania initiative whereby under the 2008 Mineral Policy, among others, aimed at increasing participation of the Government and Tanzanian in Mining Activities.<sup>xxv</sup> The Mining Policy did not provide Local content provisions as it was provided for in the local content policy of the petroleum sector of 2014, instead it provided elements that suggest Local Content requirements in the mining activities.

The Government re-enacted the Mining Act in 2010 with substantial amendments of the provisions that regulate the law relating to prospecting for minerals, mining, processing and dealing in minerals, to granting, renewal, and termination of minerals, payment of royalties, fees and other charges.<sup>xxvi</sup> For the first time, the new law introduced local content Requirements (LCR) in the mining sector. Section 8 prescribed restrictions on the grant of mineral rights. The Commission for Mining would not grant a primary mining licence for any mineral to an individual, partnership, or body corporate unless composed of Tanzanian citizens. If it is a company, its membership is composed exclusively of Tanzania citizens, and its directors are all citizens of Tanzania. A mining licence for gemstones is only granted to applicants who are Tanzanians.<sup>xxvii</sup>

The law also imposed local content requirements for every applicant seeking mining licence, the basic being a statement on the local procurement plan of goods and services available in the United Republic.<sup>xxviii</sup> A Proposed Plan for the employment and training of Tanzanians and a succession plan to replace the expatriate employees.<sup>xxix</sup>

To supplement the initiative, the Government passed other laws in 2015, such as Tanzania Extractive Industries (Transparency & Accountability) Act No. 23 of 2015. Among others, This Act established the Tanzania Mining Audit Agency mandated to advise the Government on the matters relating to the mining sector. Also, it reduced the Mining Development Agreement period from a lifetime to a maximum of ten years.<sup>xxx</sup> Besides, in 2016 the Mining (Minimum Shareholding and Public Offering) Regulations<sup>xxxi</sup> was become operational. It obliges the holder of a Special Mining License to issue shares to the public and get listed on the stock exchange in the United Republic of Tanzania.

Apart from the enormous developments in the laws on maximizing benefit beyond fiscal benefits in the existing natural resources, there were also administrative initiatives that the Government opted and it led to the expansion of Local Content in Tanzania. For example, upon receiving a recommendation from the President Committee, which was established to investigate the export of mineral concentrates sands. In July 2017, there was a massive amendment of the revised Mining Act of 2010 through the Written Laws (Miscellaneous

Amendments) Act, 2017. The said Act laid out several clauses with the local content model that the mining sectors' economic operators are abiding.

Furthermore, the Government passed new legislation, namely, The Natural Wealth and Contracts (Review and Re-negotiation of Unconscionable Terms) Act of 2017 and The Natural Wealth and Resources (Permanent Sovereignty) Act 2017, which have impact on the mining sector. In order to support the legal basis established by the Written Laws (Miscellaneous Amendments) Act, 2017.

In 2018 the Mining (Local Content) Regulations were enacted. The rationale was to put in action the implementation of local content paradigm in the mining sector. The said regulation lasted only a year, whereas, in February 2019, the Government published the Mining (Local Content) (Amendments), which revised the Regulation of 2018.

In 2019 several developments in the mining industry impacted mining. These included the Mining (Mererani Controlled Area) Regulations;<sup>xxxii</sup> with the purpose of ensuring high security, effective management of mining activities and environmental issues in /and around the wall.<sup>xxxiii</sup> the Mining (Mineral Beneficiation) (Amendments) Regulations reading together with the Mining (Mineral Beneficiation) Regulations;<sup>xxxiv</sup> provides for procedures regulating beneficiation of mined minerals within the country. The Mining (Diamond Trading) Regulations;<sup>xxxv</sup> ensuring control and supervision of diamond prospecting and mining, export and importation permit. The Mining (Minerals and Mineral Concentrated Trading) (Amendment) Regulations reading together with the Mining (Minerals and Mineral Concentrates Trading) Regulations, 2018;<sup>xxxvi</sup> provides for procedures regulating dealing in minerals and mineral concentrates, registration and storage of minerals also application for dealer and broker licence. The Tanzania Extractive Industries (Transparency and Accountability) Regulations<sup>xxxvii</sup> which regulates transparency and accountability of extractive industry companies and statutory recipient.

In 2020 the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations<sup>xxxviii</sup> came to pass. It ensures the arrangements or agreements on natural wealth and resources and related or connected business

or activities to that conducted in a manner consistent with the highest ethical principles at all times and within the requirements of the Constitution of the United Republic of Tanzania of 1977 and all applicable national policies and laws.<sup>xxxix</sup> Alongside, the Mining (Value Addition) Regulations, The Mining (Value Addition) (Amendment) Regulations,<sup>xi</sup> ordering value addition activities such as smelting and refining. The Mining (Mineral Rights Applications by Tender) Regulations<sup>xii</sup>, The Mining (Mineral Rights) Regulations<sup>xiii</sup> and the Mining (State Participation) Regulations<sup>xliii</sup> came into force. To date, until present local content is not codified in a single document, instead is embedded into several laws governing mining activities in Tanzania.

## **THE CONCEPT OF LOCAL CONTENT IN THE MINING INDUSTRY IN TANZANIA**

Tanzania has a legitimate ground through the principle of Permanent Sovereignty over Natural Resources (PSNR) to assert the right of a country to assert ownership of minerals, the right to control and manage the exploitation of minerals; the right of the country owning mineral resource and its people to exploit minerals resources by themselves. This legal position informed the policy framework in the country where the preference can be to have the mineral resource of Tanzania exploited mainly by Tanzanians or Tanzanian companies to the exclusion of foreign companies.<sup>xliv</sup>

Further local content found its basis from the ruling party manifestation which provides a foundation on how things are to be run in Tanzania. As provided under the 2020 Chama cha Mapinduzi governing general election when it comes to the mining sector the government shall ensure that all big mines employ, procure goods and services domestically to a larger extent as well as providing social services to the mining area.<sup>xlv</sup>

Mining sector is one among the contributor of GDP in Tanzania. During the period of 2015-2020 the government has managed to strengthen policy and legal framework so as to enable the citizen and nation benefit from endowments of minerals and other natural resources.<sup>xlvi</sup> Also among others the government shall strengthen value addition on minerals as well as publish



guidelines on mineral value addition regulation by 2019.<sup>xlvii</sup> Further, in the next phase namely 2020 to 2020 the ruling party pledge to ensure massive transformation in the mining sector, especially by empowering citizens to participate and own natural resources mining being inclusive. This will be possible by strengthen control and supervision of large mining extractions and medium so that the nation benefited from investments in the mining without affecting national's growth and expectations in relation to mining investments.<sup>xlviii</sup>

Apart from the ruling party manifestation. Tanzanian mining local content get its basis from the Africa Mining Vision (AMV). The AMV is a political framework programme passed by the Africa Union (AU) in 2009, is understood to be a development strategy, outlining different approaches towards a transparent, fair and efficient use of mineral resources in Africa.<sup>xlix</sup>

The Africa Mining Vision (AMV) was adopted in February 2009 by the African Union (AU) Heads of State and Government as a home-grown blueprint for Africa's mineral development. It envisages a "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". Being a political framework, it broadly focuses on structural transformation of the minerals' sector through enhanced linkages with the local economy, increased value addition, promotion of local citizen participation and human resources development.<sup>1</sup>

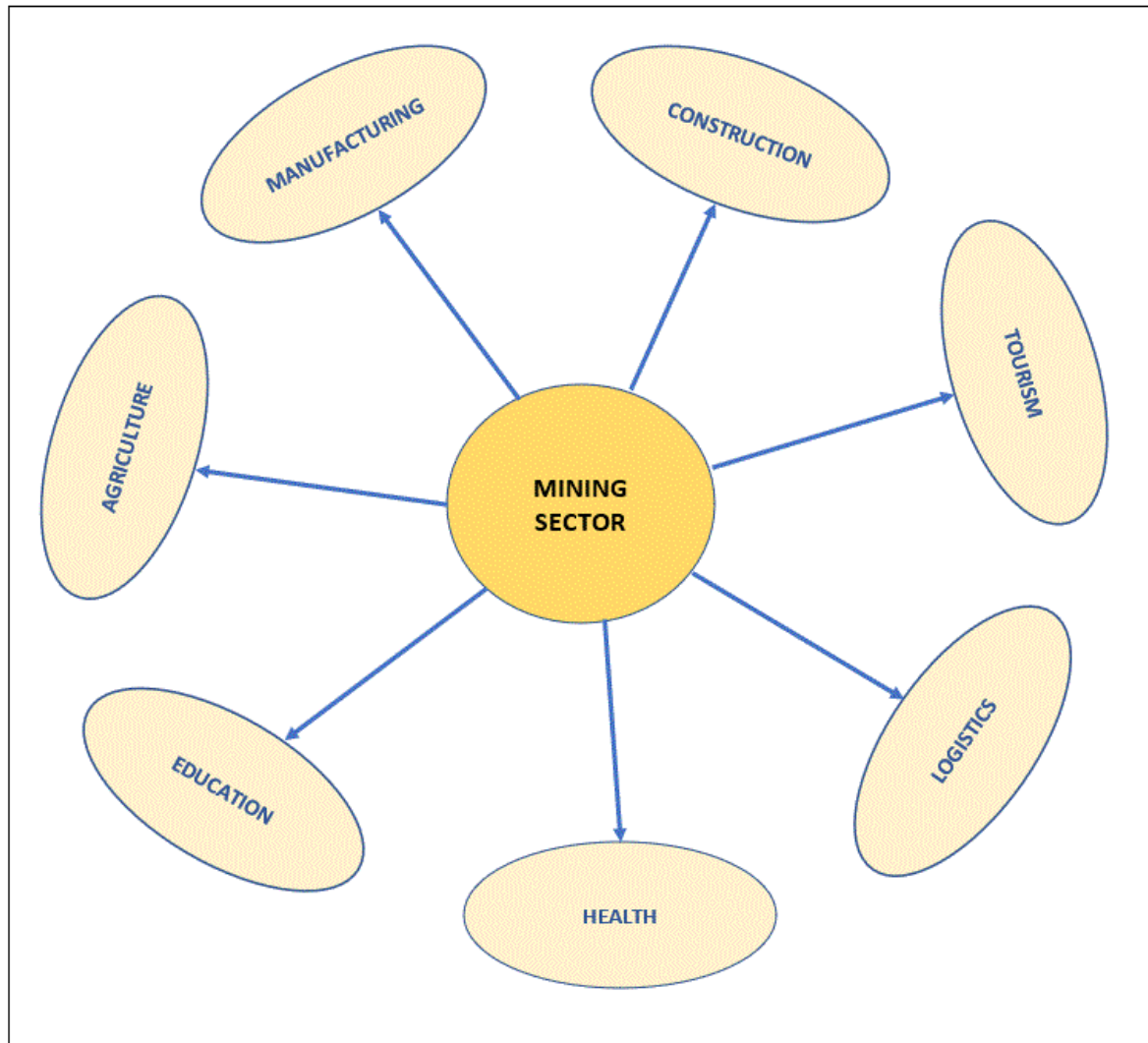
Since its establishment linkages and diversification are the cornerstones of the AMV, resulting in the complete structural transformation of the economy. Linkage development requires the right policies and strategies which may include identifying minerals with greater potential for national and regional value chains. To achieve this, Tanzania has to support a multisector approach to mineral sector development. The current mining policy 'enclave' continues to reduce the trickle down and sideways beneficiation. The mining sector as it is now will have limited economic impacts while retaining huge social and ecological concerns.<sup>li</sup>

The AMV has identified building blocks for effective governance of the mineral resources sector on the continent. These are: peace, security and political stability; clear, transparent, predictable and efficient legal and regulatory frameworks to ensure mineral wealth creation;

fair and equitable fiscal regimes to facilitate equity in the distribution of benefits; credible public participation to enhance ownership and shape-shared development outcomes; transformational leadership to harness mineral wealth with a view to building resilient, diversified and competitive economies; and strong institutions to ensure effective management of the sector.

A knowledge-driven mining industry is beneficial to both the Tanzanian Government and the private sector. It is important for the country to invest in technical education and research to fully draw benefits from the sector. The AMV advocates a knowledge-driven African mining sector that is internationally competitive. Tanzania is required to develop a strong and competitive human resource base to prevent jobs being taken by foreign nationals so as to work the talk of the AMV.<sup>lii</sup>

In practice the medium and large-scale mines require various services and suppliers for their daily operations. For years participation of Tanzanians in providing these services to mining operations was limited. The Mineral Policy of 2009 predetermined that provision of the services and goods will increase local benefits from the mineral sector and its integration with other economic sectors. In order to obtain the multiplier effects of mining local content to other sectors of the economy such as manufacturing and construction, the Government anticipated the right strategies for economic integration between the mineral sector and other sectors of the economy. The policy statement stated that the Government would require mining companies to procure goods and services locally and support and promote Tanzanians to supply quality goods and services to the mining industry.<sup>liii</sup> The objective of this initiative as stated herein above aimed at maximizing contribution of the mining sector to the economy of Tanzania as shown in the diagram below;



**Figure 3.1: Multiplier Effects of Local Content in the Mining Sector in the Local Economy of a Resource-Rich Country.<sup>liv</sup>**

The mineral policy of 2009 also intends to facilitate, support, and promote increased participation of Tanzanians in gemstone mining. By ensuring that Tanzanians own large-scale gems and mines to not less than 50 percent shares; medium and small-scale gemstones mines are entirely owned and operated by Tanzanians. Furthermore, promoting the participation of local investors in gemstones mining. However, these Tanzanian investors will need access to

adequate capital and modern technology to invest in gemstone mining.<sup>lv</sup> All these statements cement that the mineral policy of 2009 was embedded with local content elements.

Despite the above justification, the mining sector legal framework in Tanzania has no harmonized statutory definition of local content. As a concept, Local Content was first defined in a legal document in 2017 as

‘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 to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation’.<sup>lvi</sup>

The Act did not elaborate further on what is value addition that economic operators in the mining sector need to be aware of when complying with Local content obligations.

Similarly, in 2018 the regulation on mining provided yet another definition. The local content was defined as

“The quantum or percentage of locally produced materials, personnel, financing, goods, and services rendered in the mining industry, and measured in monetary terms”.<sup>lvii</sup>

The law further defines the meaning of the local content requirement. It states

“a contractor, sub-contractor, license, the Corporation, or other allied entity carrying out a mining activity shall ensure that local content is a component of the mining activities engaged in by that contractor, sub-contractor, and license, the corporation or other allied entity”.<sup>lviii</sup>

Law requires that a mineral right holder prefer goods produced or available in Tanzania and services rendered by Tanzanian citizens and local companies. In a situation where the mineral holder’s goods and services are not available in Tanzania, such goods shall be provided by a company that has entered into a joint venture with a local company.<sup>lix</sup>

Further, it has been cemented that as far as practicable, before carrying out any work or activity in the mining industry, a contractor, subcontractor, licensee, or other allied entity shall set up a

project office within the district where the project is located.<sup>lx</sup> All this will be possible after gaining approval from the Commissioner, who will grant a permit to carry out mining operations by approving local content plans, among others. It is a requirement of the Law in Tanzania that a contractor or licensee submit the local content plan<sup>lxi</sup> for approval by the Mining Commission at the time of making an application to undertake mining operations.<sup>lxii</sup> To date, the economic operators are required to abide by at least minimum local content levels<sup>lxiii</sup> as follows;

**Table 3.1: Minimum Local Content in Goods and Services**

Item	Start	5years	10 years
1.1 Goods and Services	10%	50%	60-90%
1.2 Recruitment and Training			
(a) Management staff	30%	50-60%	70-80%
(b) Technical core staff	20%	50-60%	70-80%
(c) Other staff	80%	90%	100%

***A Local Content Levels to be Attended from Date of Effectiveness of License or Mining Agreement***

Not only the above minimum level plan, but a mineral holder is also required to prepare and submit to the Commission a procurement plan for at least five years indicating, among others, the use of local services, financial, legal, accounting, security services, cooking and catering services and health matters and goods produced or available in Tanzania.<sup>lxiv</sup> That within sixty days after the end of each calendar year, a mineral right holder is expected to submit to the Commission a report of its utilizing Tanzanian goods and services during that calendar year.<sup>lxv</sup> Furthermore, the mineral right holder is subjected to comply with the integrity pledge, which implies conducting mining activities or operations with the utmost integrity; disengage in an inconsistent arrangement with the country's economic objectives, policies, and strategies.<sup>lxvi</sup>

## **THE GUIDING OBJECTIVES FOR LOCAL CONTENT IN THE MINING INDUSTRY**

Economic and socio-political objectives are the fundamental basis which the mining industry local content in Tanzania builds. As stipulated under regulation 4<sup>lxvii</sup>, main objective of local content in the mining industry- is nine specific goals as;

- i. The fostering the maximization of value -addition and job creation through local expertise, goods and services, business and financing in the mining industry's value chain, and their retention in Tanzania.<sup>lxviii</sup> The value addition referred to in the local content means economic improvement resulting from use of local products or services in the mining industry.<sup>lxix</sup>
- ii. Development of local capabilities in the mining value chain through education, skills, transfer of technology and know-how, and active research and development programme.<sup>lxx</sup>
- iii. To promote local employment in the mining industry value chain.<sup>lxxi</sup>
- iv. To support domestic business in Tanzania.
- v. To provide a platform whereas the mining and related supportive industries ensure will sustainable economic development.
- vi. To attain a level of control by Tanzanians in the mining activities.
- vii. Establish a mechanism that calls for robust and transparent monitoring and reporting system to ensure delivery of local content policy objectives by economic operators in the mining industry.
- viii. Facilitate application and submission of the Local Content plan and related sub-plans by contractors, subcontractors, licensees, and any other allied entity involved in the mining industry.
- ix. To supervise and coordinate the implementation and monitoring of Local Content.

The above objectives set a roadmap that will enhance the participation of Tanzanians in the mining value chain. All this is made to attain the mission to create an enabling environment and opportunities for Tanzanians to benefit from the economic wealth derived from the mining industry in local participation in the ownership, operations, control, and management.

## **GOVERNING DOCTRINES AND THEORIES BENEATH THE TANZANIAN MINING SECTOR CONCERNING LOCAL CONTENT LAW**

Like other laws governing other sectors in Tanzania, the principle of utilitarianism<sup>lxxii</sup> and Pragmatism<sup>lxxiii</sup> are the core philosophies that oversee development of policies and legal frameworks in the extractive industry. This also implies local content laws being inclusive. The above core philosophical principles work hand in hand with principles such as protectionism to ensure maximum benefits is gained from natural resources for the betterment of the people of Tanzania.

The entire property and control over minerals on or under the land are vested in the United Republic of Tanzania as a general principle.<sup>lxxiv</sup> This provides for sovereignty over minerals to be bestowed to the people of Tanzania by Article 8 and 9 of the Constitution,<sup>lxxv</sup> Henceforth, the entire property in and control of all minerals in, and under or upon any land, rivers, streams, water courses through Tanzania, the area covered by the territorial sea, continental shelf or the exclusive economic zone is the property of the United Republic shall be vested in the President in trust for the People of Tanzania. The Government of Tanzania shall have a lien over any material, substance, product, or associated products extracted from the mining operations or minerals processing.<sup>lxxvi</sup>

Tanzanian natural wealth and resources shall be inalienable in any manner whatsoever and shall always remain the property of the people of the United Republic. Furthermore, all activities and undertakings relating to exploration of natural wealth and resources shall be conducted by the Government on behalf of the people of the United Republic of Tanzania.<sup>lxxvii</sup>

Equally, in any mining operations under a mining licence or a special mining licence, the government shall have not less than sixteen non-dilutable free carried interest shares in the mining company's capital. Also, to the free carried interest shares, the Government shall be entitled to acquire, in total, up to fifty percent of the shares of the mining company commensurate with the total tax expenditures incurred by the Government in favour of the mining company.<sup>lxxviii</sup>

From the down, in any negotiations for the provision of a stabilization regime in the extractives sector, it shall be prohibited to use stabilization arrangements that entail the freezing of laws or contracting away from the United Republic's sovereignty.<sup>lxxxix</sup>

Reading together with the reforms of natural resources of 2020; every entity, consultant, supplier, contractor, investor, partner, and agent, including employees, governed, covenants to operate in good faith, transparently, and in the general interest and welfare of the people of the United Republic of Tanzania to whom the natural wealth and resources belong and undertake further to report to Government any conduct that is likely to deny the people of the United Republic of Tanzania benefits accruing from the prospecting, exploration or utilization of these natural resources.<sup>lxxx</sup> Also, there is the requirement of a periodic review. In contrast, the economic operator in the mining sector, at minimum, is required to include in their operational whether the investment benefits the people of the United Republic of Tanzania.<sup>lxxxii</sup>

On the other side, the core theory applicable in the mining industry is resource nationalism. That every economic operator in the mining sector must outsource and or give preference to Tanzanian goods and services and not otherwise. A local company means a company or subsidiary company incorporated under the Companies Act, one hundred percent owned by a Tanzanian citizen or a company in a joint venture partnership with a Tanzanian citizen or citizens whose participating share of ownership is not less than fifty percent.<sup>lxxxiii</sup>

In 2018, a new concept came to picture in the name of interest of a citizen in mining operations. The Regulation on local content provides that economic operators give an indigenous Tanzanian company first preference in mining license grants concerning mining activities.<sup>lxxxiv</sup> Complementarily, the law indicates there should be at least a five percent equity participation of an indigenous Tanzanian company other than the Corporation to be qualified for a grant of a mining licence.<sup>lxxxv</sup> The law also obliges contractors, sub-contractors, licensees, or other allied entities to establish and implement a bidding process to acquire goods and services to give preference to indigenous Tanzanian companies.<sup>lxxxvi</sup>

Note that an indigenous Tanzanian company's interest from a mining license is not transferable to a non-indigenous Tanzanian company.<sup>lxxxvii</sup> By definition, an indigenous Tanzanian company



means a company incorporated under the Companies Act that; First the said company has at least twenty percent of its equity owned by a citizen or citizens of Tanzania. Secondly, Tanzanian citizens hold at least eighty percent of executive and senior management positions and one hundred percent of non- managerial and other positions.<sup>lxxxvii</sup>

To ensure proper exploration and utilization of mining activities and benefits are retained within the country, the law requires the mineral right holder to set aside a certain amount of minerals at such percentage as the Minister after consultation with the mineral right 's holder and the Board determine for processing, smelting or refining within the United Republic of Tanzania.<sup>lxxxviii</sup> And for effective monitoring of mining activities within the country, the law has established the gem and mineral houses, which comprise the mineral action centre, the minerals exchange, and the mineral clearinghouse.<sup>lxxxix</sup>

## **UNDERSTANDING THE PERSPECTIVES OF LOCAL CONTENT IN THE TANZANIAN MINING INDUSTRY**

This part of the study generates a more detailed understanding of the local content paradigm in the mining industry. It covers various clauses that lead to the local content application as a concept and industry requirement

### ***Local Ownership and Participation***

In Tanzania local ownership is not novel. The Mining Act of 1979 had a clause under section 14 which directed to whom exploration and extractive permit could be issued. This protectionist approach was present since the era of the late President Julius K. Nyerere was as was a need to ensure Tanzanians benefit from natural wealth. He stated that if locals were not fully empowered and able to extract minerals, it caused no harm to leave the minerals in the ground since it never perished. Economic operators should only extract minerals in Tanzania if it brought value addition to Tanzanians and not otherwise. Similar philosophical thinking is found under the current president of Tanzania. Since his first term of serving as the president that is 2015-2020, a lot has changed in the extractive industries in developing a normative

framework that accommodates maximum benefits beyond fiscal benefit from the local economy has become a reality.

To ensure that Tanzanians own and participate in the mining sector, certain mining rights are given to nationals. To date, only Tanzanian citizens are eligible for primary mining licences.<sup>xc</sup> The law provides a direct mining licence application that can either be given to an individual; the individual is a Tanzania citizen or a partnership. The partners are the citizens of Tanzania. In case of a body corporate, its members should be Tanzanian; it is made up of Tanzanian directors, and control of the company, both directly and indirectly, is of Tanzanian citizens.<sup>xcii</sup>

Another similar grant restriction is on gemstones<sup>xciii</sup>. The law directs that a mining licence for mining gemstones be granted only to applicants who are Tanzanians.<sup>xciii</sup> When it comes to transferring, the mineral right it may not be transferred to a person to whom the law could not have granted that mineral right.<sup>xciv</sup> This implies a primary mining licence or gemstone licence cannot be assigned and or transferred to non-Tanzanian citizens.

With a limited exception, the same right can be granted to non -Tanzanian. That where the Minister, after consultation with the Board, determines that the development of gemstone resources in an area of land subject to a mineral right, is most likely to require specialized skills, technology, or a high level of investment, he may grant a minimum licence of gemstone to the applicant, where he is satisfied that the licence will be held by that person together with a non- citizen whose undivided participating shares amount to not more than fifty percent alone, in the case of one person or the aggregate in the case of more than one person.<sup>xcv</sup>

There is also a requirement that the holder of a Special Mining Licence issues shares to the public and list on the stock exchange in the United Republic of Tanzania.<sup>xcvi</sup> The minimum local shareholding requirement of a Special Mining Licence holder is thirty percent of the total issued and paid-up shares.<sup>xcvii</sup> Thus, the minimum local shareholding for a Special Mining Licence is obtained through a public offering following the provisions of the Capital Market and Security Act within one year after being granted such a mining licence. By definition,

public offer means an invitation of the public to enter into an agreement for or to subscribe for or otherwise acquire any security.<sup>xcviii</sup>

Lastly, there is a condition precedent that the Government should own at least sixteen percent of shares in mining activities.<sup>xcix</sup> This will enable Tanzanian citizens to have ownership of mining activities in the country and have substantial participation over such mining activities through the Government.

### ***Procurement of Locally Produced Goods and Services***

Applicants for mining licences, namely, Prospecting, Special, and Mining licence in Tanzania, are obliged to provide a statement on the procurement plan of goods and services available in the United Republic when applying for the licence.<sup>c</sup> Additionally, a holder of a mining licence is obliged to implement a strategy for procurement of goods and services available locally.<sup>ci</sup>

As a matter of law, a contractor, subcontractor, licensee, or other allied entity shall submit a plan to the Commission before the commencement of mining activities. Among others, the local content plans must contain provisions that ensure that first consideration is given to services provided within the country and goods manufactured in the country where the goods meet specifications of the mining industry as established by the Standards Authority or by other internationally accepted standards. Further, it must ensure how the contractor, subcontractor, licensee, or other allied entity intends to guarantee the use of locally manufactured goods where the goods meet the mining industry specifications.<sup>cii</sup>

There is a specific limitation on which service provider needs to offer services in the mining industry. As per current status insurance, legal and insurance services are to be outsourced from indigenous companies. The insurable risk relating to mining activity in the country shall be insured through an indigenous brokerage firm or applicable to indigenous a reinsurance broker.<sup>ciii</sup> If the economic operator wants to obtain offshore insurance services relating to a mining activity, it must obtain written approval of the Mining Commission.

In granting permission for procuring insurance services offshore, the National Insurance Commission shall ensure that local Tanzanian capacity has been fully exhausted.<sup>civ</sup> There is a

requirement that economic operators procure only a Tanzanian legal practitioner or a firm of Tanzanian legal practitioners whose principal office is located in Tanzania. Additionally, they must provide legal services plan to the Commission, including a comprehensive report on legal services utilized in the preceding six months by expenditure, a forecast of legal services, and an annual legal services budget for the ensuing year quoted in Tanzania Shillings and United State Dollars.<sup>cv</sup>

The other is condition to outsource financial services locally.<sup>cvi</sup> The economic operator is only required to retain the services of a Tanzanian Financial institution or organization.<sup>cvi</sup> In case one wants to engage a foreign financial institution or organization, approval is required from the Commission subsequently submitting a financial services sub -plan that will significantly reflect the obligation as stipulated in the law.<sup>cviii</sup>

### ***Employment of Locals***

In Tanzania, local content laws were developed, among others, to ensure the country achieves the minimum local employment level and in-country spending for the provision of goods and services in the mining industry value chain.<sup>cix</sup> That a contractor, subcontractor, licensee, or other allied entity engaged in mining activities shall employ only Tanzanians in a junior or middle-level position. “Junior or middle-level positions” include the position of foreman, supervisor, or any corresponding position designated as such.<sup>cx</sup>

Economic operators in the mining sector, before commencing their operations, are required to submit a local content plan which contains provisions that ensures qualified Tanzanians are given first consideration for employment. Adequate provision is made for the training of Tanzanians on the job.<sup>cx</sup> The law clearly states every application for a mining licence for minerals must be appended by a plan on employment and training of Tanzanians and succession plan on expatriate employees.<sup>cxii</sup> The said employment plan which is submitted by a contractor, subcontractor, licensee, or other allied entity to the Commission with mining activities, should include; a forecast of the hiring and training needs of the economic operator, a time frame within which the economic operator or other allied entity will provide

employment opportunities for the Tanzanian workforce for each phase of the mining activities to enable members of the Tanzanian workforce to prepare for such opportunities.<sup>cxiii</sup>

On the side of the governing authority responsible for issuing mining licences, for example, before granting a special mining licence, the Minister shall take into account, among other things the size and nature of the proposed mining operations, the applicant's proposal for the employment and training of Tanzanians and succession plan on expatriate employees.<sup>cxiv</sup>

After being granted a licence, a holder of mining licences is required by the law to employ and train Tanzania citizens and implement the succession plan on expatriate employees following the Employment and Labour Relations Act.<sup>cxv</sup> Further, a mineral right holder is expected within twelve months after the grant of a licence. On each subsequent anniversary of that grant, submit to the Commission for approval a detailed Programme for recruitment and training of Tanzanians per approved local content plans.<sup>cxvi</sup> The Programme shall provide training and recruitment of Tanzanians in all phases of mining operations and take into account gender, equity, persons with disabilities, host communities, and succession plan following the Non-Citizens (Employment Regulations Act) that the mineral holder is required to submit to the commission annually, a report on the execution of the Programme.<sup>cxvii</sup> The report shall state the number of new Tanzania employees employed and their job descriptions. If Tanzanians are not hired because of lack of expertise, the contractor, subcontractor, licensee, or other allied entity shall ensure, to the Commission's satisfaction, that every reasonable effort is made to provide training to Tanzania s in the field locally or outside Tanzania.<sup>cxviii</sup>

### ***Technology Transfer Requirement***

To maximize the investment associated with mining activities, the Mining Commission, upon consultation with Planning Commission, relevant ministries, government departments, and agencies, develop a national policy on technology transfer concerning the mining industry. Once granted a licence, every economic operator shall support and carry out a technology transfer Programme under the national plan developed.<sup>cxix</sup> After that, a mineral right holder must meet training, technology transfer and priorities for promoting technology transfer to Tanzania concerning the mining industry obligation.

A technology transfer sub-plan submitted by the economic operator in the mining industry will include a Programme of planned initiatives to promote the effective transfer of technologies from the contractor, sub-contractors, licensee, or other allied entity to a Tanzania indigenous company or citizen.<sup>cxx</sup> Also, to support and facilitate technology transfer regarding the formation of joint ventures, partnering of licensing agreements between indigenous Tanzanian companies or citizens and foreign contractors and services companies or supply companies.<sup>cxxi</sup>

To make the mineral right holder submit a report annually to the Commission stating the technology transfer initiatives being pursued and the current results concerning the technology transfer sub-plan.<sup>cxxii</sup> And a commitment by the mineral holder to maximize knowledge transfer to Tanzanians and establish management and technical capabilities and any necessary facilities for technical work, including interpretation of data. Furthermore, The Minister may make regulations prescribing requirements for the mineral right holder to provide technology transfer and skills relating to mining operations to Tanzanians employed in that mining sector.<sup>cxxiii</sup>

### ***Reporting on Local Content***

In order for the Government to be updated on matters pertaining local content. The Mining Commission requires a contractor, subcontractor, licensee, or other allied entity shall, within forty-five days of the beginning of each year after commencement of mining activities, submit to the Commission an annual local Content Performance report covering all its projects and activities for the year under review.<sup>cxxiv</sup>

Economic operators shall also ensure their partners, contractors, subcontractors, allied and associated entity are contractually bound to report local content information to the contractor, subcontractor, licensee, or other allied entity.<sup>cxxv</sup> It has come to practice that during tender advisement for service providers in the mining companies every applicant is required to submit local content plan approval from the Mining Commission. So, this also means for one to win a tender as service provider is required to have shown proof that the company has local content plan. This also implies when being audited by the Ministry of Minerals the company will have to show the service providers as well as their local content plan certificate as matter of compliance.

## **A CHECK LIST FOR LOCAL CONTENT COMPLIANCE IN THE MINING INDUSTRY**

The Mining Commission of Tanzania establishes a compulsorily requirements that every Mineral Rights and Holders of Prospecting Licence, Mining Licence, Special Mining Licence, Prospecting Licence, Smelting Licence and Refining Licence are obliged to meet for them to obtain Local Content Plan Approval.<sup>cxxvi</sup> The following is the checklist that every economic operator must check for them to qualify.

Fill in Declaration form that ensures that first consideration is given to goods and services provided in Tanzania and employment and training of Tanzania

- i. Submit Company details such as registered name of the company and address; Company legal documents such Certificate of incorporation; Tax Identification Number; Certificate of compliances of Board of Directors with their certified copies of citizenship identification; a certified copy of Memorandum and Article of Association of the company, financial status documents for at least three years and any other information related to changes within the Company.
- ii. Submit Employment and Training Sub-Plan.
- iii. Submit Succession Plan for position held by Foreigners
- iv. Submit Technology transfer sub-plan
- v. Submit Insurance and re-insurance sub-plan
- vi. Submit Banking and Financial Services sub-plan
- vii. Submit Legal Services Plan
- viii. Submit Health, Safety and Environment services
- ix. Submit Research and Development relating to in-country services
- x. Submit information system, information technology and commercial services
- xi. Submit Works, Goods and Equipment manufactured/produced or available in Tanzania

It is of significant to understand, the above checklist must be complying by both investors who have interest in mining activities. Non- compliance to local content regulation which among other demand local content approval will subject penalties to persons operating or providing

services or goods in the mining area. Since local content plan is applied annually <sup>cxxvii</sup>these checklist items will be required to be rechecked and updated on annual basis to meet the application procedure for local content.

## **CONCLUDING REMARKS**

Local content compliance law has played a significant role in ensuring citizen see the impact out of the mineral resource endowments. Having a normative framework is a major milestone for a nation that want to obtain maximum benefits out of such endowments. Understanding the normative framework governing local content in Tanzania in the mining industry was the primary purpose of this paper. Specifically, the paper has provided for a foundation of local content paradigm in Tanzania perspectives as it has been used under the policy and legal framework to date.



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<sup>lvi</sup>Section 4 of the Written Laws (Miscellaneous Amendments) Act of 2017.

<sup>lvii</sup> Regulation 3 of the Mining (Local content) Regulation of 2018.

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<sup>lix</sup>Section 102 (1)(2) of the Written Laws (Miscellaneous Amendments) Act of 2017.

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- lxxxvi Regulation 8(5) of the Mining (Local Content) Regulation of 2018.
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- lxxxix Section 27 (1) of the Written Laws (Miscellaneous Amendments) Act of 2017.
- xc Section 8(2) of the Mining Act ,Cap 123, R.E 2019.
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cxxv Regulation 39 of the Mining (Local Content) Regulations of 2018.  
cxxvi The Mining Commission (Guideline for Submission of Local Content Plan) 2018  
cxxvii Regulation 37 of the Mining (Local Content) Regulation 2018.
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