

# CHALLENGES OF THE LEGAL PROTECTION OF FOREIGN INVESTMENT IN THE MINING SECTOR IN TANZANIA'S MAINLAND: A CASE STUDY OF LAKE ZONE

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## ABSTRACT

This paper examines the challenges of the legal protection of foreign investment in the Mining Sector in Tanzania Mainland with Lake Victoria Zone as a case study. To lay the foundation of protection, the Paper focuses on the legal challenges in implementing the legal framework governing the protection of foreign investment in the Mining sector regarding the country's benefits and its methods in attracting foreign investors in Tanzania. Furthermore, this paper evaluates limitations arising from challenges and requisites in the whole process of investment and mining activities in Tanzanian laws including changes in the legal framework, unstable policies, political instability, fragmented institutions dealing with investment and mining in the country, and lastly to bring critical questions whether the legal framework protects and facilitates the attainment of benefits from investment in the mining sector in Tanzania. The legal framework governing investments and mining sectors in Tanzania is made of three segments of laws, namely; international investment law, national investment law, and investment agreements between states and investors, mostly referred to in this paper as state-investor agreements or investment contracts. The paper examines all these sources of laws with the principles laid of investment, and it recommends the conclusion of this discourse.

## INTRODUCTION

The concept investment is defined to mean the use of resources intended to increase future interests or income, output, production, or profits. In other words, investment refers to the creation or acquisition of new business assets and includes the expansion, restructuring, or rehabilitation of an existing business enterprise.<sup>i</sup> Under this Act, a business enterprise is also authorized to conduct reconnaissance, prospecting, or mining operations under the Mining Act, 1979, or is seeking authorization to conduct and such operations.<sup>ii</sup> The concept is also defined under various contextual namely to mean: in value context, is the money set towards the exchange, the purchase, improvement, and development of an asset for creation of value in expectation generating and increasing profits. In terms of environment, is ideas which require the host state to ensure security on investment regarding the following aspects: monetary policy system including banking and taxation policies, population demographic; capital market regulation; intellectual property laws and the available protection; rules of law and judicial independence; regulatory certainty; transparency; labor rigidity and bargaining powers of organized labor, ethical standards and human rights culture.<sup>iii</sup>

On the other hand, the foreign investment refers to the kind of asset resources, capital, or asset of any natural person or a company invested in the territory of the other Contradicting Party although not exclusively, but it includes: a) movable and immovable property and any other property rights such as mortgages, liens or pledges; or b) shares in, stocks and debentures of, and any other form of participation in a company of business enterprise; c) claims to money or any performance under contract having an economic value; d) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.<sup>iv</sup>

Whereas the international law recognizes the right of the United Republic to assert the permanent sovereign right to explore, exploit, and manage its natural resources, Tanzania is the signatory to the United Nations Universal Declaration of Human Rights and the African Charter on Human and Peoples Rights and subscribes to Articles 17 and 21 of the Charter.<sup>v</sup> Article 27 of the Constitution of the United Republic of Tanzania provides for the protection of natural wealth and resources of the country under the charge of the people and the

Government and the control of which is entrusted to the President. According to the 1962 UN General Assembly Resolution, the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the wellbeing of the people of the State concerned.

In Tanzania, investment activities, which related to mining are a determining process, which passed through different eras. Periods include a period before colonial, during colonial and after colonial eras of which were caused by the global economic changes in Tanzania, notably with period limited first to independence 1961-1967, secondly epoch from 1967 to mid-1980s', and third epoch was the time from mid-1980s to 2000s'. Distinctively, the period 1961-1967 epochs the time of independence from British Colonialists in which Tanganyika inherited the capitalist mode of production. The political idea and policy were still to depend on foreign investment to support capital-intensive industrialization and agricultural development projects.<sup>vi</sup> Tanzania during the process changed the policy due to the obstacle arising from the economical barrier of poverty to the country.<sup>vii</sup>

1967 to 1980s' is an era marked by the Arusha Declaration of 1967, whereby under Julius Nyerere the first president of Tanzania it was declared that Tanzania would be following the *Ujamaa policy*. From the mid-1980s' to the 1990s' investment in Tanzania was considered as another way of developing the national economy. In this era, Tanzania changed the policy leading the state to privatizations of the national economy sector so that government-owned industry, mining firms, and other investments were privatized that led the country into a new outlook towards economic trends.<sup>viii</sup> Between the 1990s' and 2000s,' Tanzania witnessed the development of globalization and liberalization of which Tanzania found it necessary to open up borders for foreigners to invest in the country. Through the introduction of new mines, big companies led to greater flows of capital from foreign countries to Tanzania. Thereafter, the implications of the Mining Policy in 1996, the invigorated investment policy and Act of 1997, and other promotional efforts by the Government, are noticeable through the sharp increase of foreign direct investment transactions from 1998s' up to 2012. At the same time, the political shocks of an infant democracy related to the October 2000 general elections may have affected the foreign direct investment inflows during that period, prompting investors to adopt a wait-and-see approach to the continuation of the economic reform processes. However, Tanzania's

mining industry was envisaged to double in value to \$.28bn from \$0.64bn between 2010 and 2015 period.<sup>ix</sup>

The country has enacted various legislations and amended others to meet the good regulatory framework for the protection of investment in the mining sector. Currently, the major legislations include the Tanzania Investment Act of 1997<sup>x</sup> and the Mining Act of 2010<sup>xi</sup> but the Constitution of the United Republic of Tanzania, 1977, and other ancillary laws lead all these laws. Despite the laws enacted in Tanzania, there is the assumption that the foreign investment in the Mining Sector is not given the protection that leads the country and its citizens to attain benefits and to safeguard the sustainability of the foreign investment and the inflow of investors.

## **GENERAL OVERVIEW ON LEGAL FRAMEWORK GOVERNING THE INVESTMENT AND MINING SECTOR IN TANZANIA**

The general overview on the legal framework governing and protecting foreign investment in the Mining Sector in Tanzania Mainland,<sup>xii</sup> this is made up of three segments of law namely, international investment law, national investment law, and investment agreements or simply investment contracts. The mentioned three segments of law are the basis in the exercise of investment activities in the country. They play such a significant role in the investment policies and exploitation of the country's resources particularly minerals investments and natural resources partly.

In their entirety, the three segments of investment law aimed at addressing legal protection based on four main issues of investment, namely; regulation of admission and treatment of investment, including regulation of the flow of capital, expatriation of profits and safeguards of investment; management of investment; control of investment; and investment dispute settlement.

The international investment legal framework is categorized further into three segments of law, namely; the framework of customary international law; multilateral investment framework (including regional investment agreements), and bilateral investment treaties (BITs).

Tanzania has mainly fragmented laws protecting and governing foreign investment in the mining sector in Tanzania Mainland. The Constitution of United of Tanzania of, 1977<sup>xiii</sup> is an important and the mother law of the land, which provides inter alia the right to own and the protection of property. Under the same Constitution, Article 24(2) provides for the protection of individuals from the expropriation of their property without prompt, fair, and adequate compensation<sup>xiv</sup> as followed also by the Tanzania Investment Act, 1997 that states the need for compensation in case of expropriation of property and the investment.<sup>xv</sup>

The Tanzania Investment Act of 1997<sup>xvi</sup> is also another major legislation. This Act addresses investment issues in Tanzania for issues including the establishment of the Tanzania Investment Centre (TIC)<sup>xvii</sup> and the Centre's functions as the one-stop center and the primary agency of the government including coordination, encouraging, supervising, promoting, and facilitating investment in Tanzania. The Centre is vested with the duty of advising the government on investment policy and related matters,<sup>xviii</sup> on how to invest in Tanzania,<sup>xix</sup> categories of investors, the capital requirement for commencement of investment activities by foreign investors, steps for the settlement of disputes, acquisition of incentive, guarantee against expropriation in case of compensation as was discussed in the case of Theonest K. Kalokola & 16 Others v The Tanzania Airport Authority, the Hon. Attorney General, the Minister for Infrastructure Development, and the Minister for Lands and Human Settlement Development.<sup>xx</sup> In this case, the question of adequate and prompt compensation was discussed against the government over the residence around the International Airport of Dar es Salaam in Tanzania. Also, the Act states the offenses and penalties over investments.

## **TANZANIA INVESTMENT CENTRE (TIC)**

The Tanzania Investment Centre (TIC) is the government agency established under section 4(1) of the Tanzania Investment Act (TIA).<sup>xxi</sup> The Centre is under the supervision of the

Minister responsible for investment that is the minister of state in the Prime Minister's Office responsible for the investment.<sup>xxii</sup> TIC is a body corporate with a legal personality capable of being sued and to sue in its name. The Centre also has rights to own property and to enter into contracts with any other person.<sup>xxiii</sup> The Centre is the successor of the Investment Promotion Centre, which was established under section 4(1) of the National Investment (Promotion and Protection) Act.<sup>xxiv</sup>

*i. Composition and Division of the Centre*

The Centre is composed of the Board of the Centre as established under section 7 of the Act. The Board of the Centre is composed of seven members; the chairman a Presidential appointee,<sup>xxv</sup> two members from private sectors and two members from the public sector as the minister appointees and two other members both appointed by the minister of investment.<sup>xxvi</sup> The Act lays the qualification<sup>xxvii</sup> of members of the Centre to be endowed with sound knowledge and experience in public or private investment and management capacity. While other officers and staff of the Centre are appointed by the Tanzania Investment Centre.

To make the Centre effective, it is divided into several divisions, departments, or Zonal offices with several officers and staff according to the determination of the board of the Centre. In Tanzanian Mainland the Centre is divided into the following portfolios as follows; Head Office in Dar es Salaam; Lake Zone offices located in Mwanza, Northern Zone offices located in Moshi, and Southern Zone offices found in Mbeya.

*ii. Objectives of the Centre*

Section 5 of the Tanzania Investment Act states the main objective of the Centre ranking it as a one-stop Centre for investors and governmental agencies vested with the roles of coordinating, promoting, and facilitating investment in Tanzania. The Centre assumes the advisory body role to the government on investment policy and other related matters.

While the National Investment (Promotion and Protection) Act states the requirement of regulating and monitoring local and foreign investments in Tanzania,<sup>xxviii</sup> the current Act does not state the same on the role of TIC in foreign investment.

*iii. Functions of the Centre*

The TIC the governmental agency's duties include:<sup>xxix</sup>

- a. Initiating and supporting measures that will enhance the investment climate in the country, for both, local and foreign investors;
- b. Collecting, analyzing, and disseminating information about investment opportunities and source of investment capital and advise the investors upon request on the availability, choice, or sustainability of partners in joint venture projects;
- c. Consultation with government institutions and agencies, identify investment sites, estates, or land together with associated facilities of any sites, estates or land or the purpose of investors and investment in general;
- d. To assist investors to attain necessary permits, licenses, approvals, consents, authorization, registrations on other matters required by law for the person to start up the business and enable the certificate issued by the TIC to have the full effects.
- e. To provide, develop, alter, construct or maintain and administer investment sites, estates, or land together with the associated facilities of those sites, estates, land and subject to the relevant law, the creation and management of the export processing zone;
- f. To provide up-to-date information on the benefits or incentives available to the investors;
- g. To carry out and support local investment promotion activities which are necessary to encourage and facilitate increased local investments, including entrepreneurial development programs; and
- h. To perform any other functions which are incidental to the attainment of the objectives of the TIA.

Whether these functions established under the TIC by the TIA can be fully implemented to provide the major criteria required for any investor to comply with if they want to invest in Tanzania. The TIC works hand in hand with anybody who wants to institute, establish and maintain investment in Tanzania.

The Land Act of 1999<sup>xxx</sup> addresses the issue of land in Tanzania. It provides for the procedure for foreigners to acquire and use the land for investment purposes.<sup>xxxi</sup> The Banking and Financial Institutions Act, 2006,<sup>xxxii</sup> the Act is relevant to the investment business since it

provides for the regulation of banks and financial institutions in giving loans for individual citizens and companies involved in business and investments. Loans that are accessed and provided, can be used by foreigners and investors for investing in different projects.

The Mining Act, 2010<sup>xxxiii</sup> is a specific Act regulating all activities related to mineral rights and the exploitation of mineral resources in the country? The Mining Act again regulates investment conducts related to reconnaissance, prospecting, and mining operations.

The ancillary laws,<sup>xxxiv</sup> regulating investments activities like the exploration of minerals include, the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act,<sup>xxxv</sup> the Natural wealth and Resources (Permanent Sovereignty) and the Written Laws (Miscellaneous Amendments) Act, 2017.<sup>xxxvi</sup>

The Employment and Labour Relations Act, 2004,<sup>xxxvii</sup> provides for the relations of the employer and employees in different employment activities including the investment activities. The Act addresses and prohibits forced labor and child labor. It also covers the issues of remunerations including the salary of the employee and the procedure on how to solve labor disputes. Other ancillary laws,<sup>xxxviii</sup> which govern the investment activities, include the Capital Market and the Security Act, 1994,<sup>xxxix</sup> the Immigration Act, 1995<sup>xl</sup>, the Foreign Exchange Act, 1992,<sup>xli</sup> the Value Added Tax Act, 1994,<sup>xlii</sup> and the Arbitration Act, 2002.<sup>xliii</sup>

## **ROLE OF THE FOREIGN INVESTMENT IN THE ECONOMY OF THE HOST STATE**

Globally and in Tanzania as well, Foreign investments have been expected to and play a significant role in strengthening the host state's economy. Most of the Foreign Investments have brought impacts in the respective society due to legal frameworks governing their activities. Despite the positive impacts of Foreign Investments, yet, some challenges rose due to inappropriate provisions and legal frameworks to the extent of hindering the development and motives of investments in the mining sectors. The following are positive roles for Foreign Investment in the economy of the host state



1. Foreign Investment develops the technical spillovers through training of workers, skills,<sup>xliv</sup> assisting human capital formation, contributes to international trade integration, helps to create a more competitive business environment, and enhances enterprises development. All of these contribute to higher economic growth, which is the most potent tool of alleviating poverty in the country for its citizens and improving living conditions.<sup>xlv</sup>
2. Impact on employment. The positive effects of Foreign Investment on employment have been considered as one main a priori expected impact of the industry inflows in developing countries and in particular in labor surplus economies.<sup>xlvi</sup> Foreign Investments are expected to generate employment in the host country because they bring factors of production such as capital, technology, and know-how, which permits the utilization and absorption of all an existing surplus labor fact that is relatively abundant which otherwise, would have remained either underemployed and or unutilized. Foreign Investment increases employment in the host state through the acquisition of existing companies.<sup>xlvii</sup> But investors are interested in the skilled, talented, and educated workforce to use them in their projects such as mining sectors. But to enjoy the fruit of employment from Foreign Investment, there must be a legal are regulatory framework that demands substantial labor in local contents in each Foreign Investments activity in the country.
3. Fostering of Capital in the Host State. Foreign Investment brings in investable financial resources to capital-scarce countries like Tanzania. Foreign Investment contributes to capital formation by crossing the investment gap that may be experienced by the host economy. Therefore, Foreign Investment can prevent capital shortfalls.
4. Changes in Corporate Social Responsibilities (CSR). Amongst obligations, Foreign Investment may contribute to social-economic transformation and poverty reduction through their CRSs.<sup>xlviii</sup> CSR includes the involvement of Foreign Investment in community development projects. This role can be played as part of the agreement in the Bilateral Investment Treaties (BITs), with appropriate authorities. CSR helps not only the host state but also foreign investors to win the political will of the people in the community where they operate their projects.

5. Economic Competitiveness. Foreign Investment can improve competition; this can improve the welfare of consumers through the improvement of product quality, the availability of additional products in the market, the expansion of product market, and reduced-price of products. However, small producers in the host countries may suffer if they fail to cope with the competitive price. In this case, Foreign can throng out local investors.
6. Government Revenue, Foreign Investment can contribute to increased funds to the host state; it is done through privatization proceedings such as payment of various types of taxes, royalties, dividends, and fees. An increase in government revenue helps poverty reduction, but an adequate collection of taxes and good evaluation of taxes from TRA is essential to benefit from foreign investment.<sup>xlix</sup>
7. Impact on productivity Performance. Foreign Investments improve the productivity of domestic companies. Improvement is classified into two spillover effects in horizontal spillovers and vertical spillovers. Horizontal spillovers are the beneficial effects from foreign companies on domestic firms operating in the same industry, while vertical spillovers are productivity spillovers taking place due to linkages between foreign firms and their local suppliers or distributors. The horizontal effects are generated where domestic firms are capacitated to improve efficiency to be able to compete successfully with multinationals. Differently, vertical spillovers can occur through direct knowledge transfer from foreign customers to local suppliers; higher requirements regarding product quality and on-time delivery introduced by the foreign companies; indirect knowledge transfer through labor turnover; and increased demand for intermediate products due to multinational entry.<sup>1</sup>
8. Impact on Wages. Foreign Investment despite creating employment, FI's impact in relation with wages and salaries. Several studies have shown that foreign companies pay a wage premium relative to domestic firms to prevent labor turnover leading to knowledge spillovers benefitting domestic competitors. Such wage premium also tends to secure labor force commitment, compensates for higher labor demand volatility in foreign plants, identifies and attracts good workers, and compensates and results from higher productivity.<sup>li</sup>

Despite those positive effects from foreign investment, there are also negative effects, which can be caused by foreign investments in the host state. These include hampering indigenous entrepreneurial technology, conflicts with the local community, and negative health and environmental effects.

However, regardless of these mentioned negative effects, Foreign Investment remains a fundamental tool in enhancing the national economy through raising national capital, creating employment opportunities, and technology transfer. Foreign Investment is the tool of poverty eradication in developing countries like Tanzania.

## **CHALLENGES IN PRINCIPLES AND POLICY OF FOREIGN INVESTMENT IN TANZANIA**

The United Republic of Tanzania (URT) <sup>lii</sup> has undergone tremendous changes since its independence, Union in 1964 and changes from 2000's to date. These changes are evident in the social, political, and economic spheres, as the country has moved to considerable unity, fostering greater political pluralism and promoting economic liberalization.

### ***Tanzania's Traditional Foreign Principles***

The Presidential Circular No. 2 of 1964 issued by the founding President, the late Mwalimu Julius K. Nyerere, set forth the fundamental principles and objectives of the United Republic of Tanzania's foreign policy.<sup>liii</sup> Since then, the conduct and content of the foreign policy have been guided by those principles and objectives, which include, inter alia: the policy demands for the defense of freedom, justice, and equality; Safeguarding sovereignty, territorial integrity, and political independence of the United Republic of Tanzania; the support for struggles against colonialism, racism, and neo-colonialism; the support for the oppressed people in the world; the promotion of African Unity; the promotion of the respect for the principle of non-interference in the internal affairs of the states; the support for the practice of the policy of non-

alignment; the support for the United Nations (UN) in its search for international peace and security; and the Promotion of good neighbourliness.

### *Achievements*

Having a foreign policy grounded in principles and with specific objectives, enabled the United Republic of Tanzania to engage effectively on the diplomatic scene since its independence. Its consistency of views, and having the courage to stand for what is right, also enabled the United Republic of Tanzania (URT) to emerge as an active player in world affairs, exercising diplomatic influence and authority far over its economic capability. Whether in decolonization, the struggle against racism and apartheid, the defense of the principle of social equality and for the rights of nations and peoples, in fostering unity and solidarity especially of Africa and the developing countries generally, or in promoting the policy of non-alignment, URT emerged as a dynamic player on the world scene.

## **THE NEW FOREIGN PRINCIPLES OF TANZANIA**

### *Principles of Tanzania*

Given the economic and socio-political shift that has occurred in the domestic and international scene, there has been the need to adopt Tanzania's foreign policy to this new situation placing priority on securing the core national interests as a sovereign state. Tanzania's new Foreign Policy is to manifest itself in active international engagement, which is leveraged upon the pursuit of economic objectives, while at the same time preserving the gains of the past and consolidating the fundamental principles of Tanzania's traditional foreign policy. The Principles of the Foreign Policy are Safeguarding the sovereignty, territorial integrity, and political independence of the United Republic of Tanzania; Defence of freedom, justice, human rights, equality, and democracy; Promotion of good neighborliness; Promotion of African Unity; Promotion of deeper economic cooperation with our development partners; Support for the practice of the policy of non-alignment and South-Africa C-operation; Support for the United Nations (UN) in its search for international economic development, peace and security;

### ***Objectives of Tanzania***

The Objectives of the new United Republic of Tanzania (URT) Policy are: to project and protect URT's political, economic, social, and cultural interests through active and sustainable economic diplomacy; to ensure that URT's relations with other nations and international entities are also driven in line with economic interests; to build a self-sustaining economy, preservation of national peace and security as well as supporting regional and international endeavor for the creation of a better and peaceful world;<sup>liv</sup> to accelerate the political and social-economic integration for the region; To create the necessary conditions which shall enable the United Republic of Tanzania (URT) to participate effectively in the regional and global economies and international negotiations.<sup>lv</sup>

### ***Strategies for Investment***

The task before the new foreign policy is both of adjustment and change to face the new challenges of development through economic diplomacy, as well as of consolidation to preserve the gains of the past. The Ministry, which is vested with the mandate of directing other Ministries and Institutions on foreign policy matters, by the Presidential guidance given at the 1999 Ambassadors' Conference in Dar es Salaam, Tanzania needs clear strategies to meet those challenges. These strategies are listed below:

- (a) Building Facilitative internal Environment: to create an enabling domestic environment for increased economic performance, and making the United Republic of Tanzania a safe, stable, profitable, and attractive investment destination
- (b) Forging International Partnership: strengthening partnership with governments, intergovernmental and international organizations as well as commercial entities abroad; dealing with financial, monetary, industrial, and international trade institutions.
- (c) Prioritizing Economic Diplomacy: Economic diplomacy constitutes contacts and engagements, with other countries, intergovernmental organizations, and international entities in steering international processes towards contributing to Tanzania's efforts at economic development through elaborating arrangements for accessing technical assistance, financing fair trading, and investments.

- (d) Redefining Bilateral Diplomacy: in the light of the fact that bilateral relations between countries are the genesis of diplomacy, bilateral diplomacy shall continue to play an important role in determining the course of world events. The URT is to continue to refocus bilateral diplomacy, endeavor to improve and deepen bilateral relations, seek to secure from the country bilateral partners, greater support for and involvement in development efforts, promote trade, investments, and tourism as priority functions.
- (e) Strengthening Multilateral Diplomacy: the URT shall seek to pursue at the various international fora: support the reform and reinforcement of the UN and its agencies and the international system like WTO and the Bretton Woods Institutions; strengthen its position, reinvigorate its multilateral diplomacy for fostering solidarity purpose; emphasis economic relations, give priority to relations or processes which promote Tanzania's ability to develop a strong economy and contribute to extracting the country from dependence on foreign aid; make sure that the multilateral set-up and interactions safeguard the short and long-term implications to Tanzania's sovereignty as a nation and dignity as people.
- (f) Promoting Good neighborliness: by promoting trade, investments, and economic co-operation.
- (g) Enhancing Regional Peace and Security: security for other countries
- (h) Strengthening Regional Economic Integration: participate in the regional grouping within its vicinity including the East African Community (EAC), the Southern African Development Community (SADC), and the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC).
- (i) Enhancing the Commonwealth Organisation

## CHALLENGES IN THEORIES OF INVESTMENT IN THE MINING SECTOR

Foreign Investment as an effective aspect of economic development in the host state and the contracting party, there are various measures to protect the foreign investment and these include:

### *Standard, Stable, Predictable, and Consistent Legal Framework*

The legal aspect is considered as an important factor for the investors before, during, and after the decision to invest into the host or party country to the investment. In the process of investment, the legal framework has been a contentious issue between the hosting state and the investors. In the case of *Teamed v the United Mexican States*,<sup>lvi</sup> it was held by the tribunal that, the foreign investor is supposed to know before and all rules and regulations which govern the investment as well as the motives of policies, administrative measures and directives to be adhered to for the investment to comply with the regulations stipulated. In Tanzania, the law makes it clear that in case of permanent sovereignty over natural wealth and resources and proceedings arising therein cannot be adjudicated in foreign courts or tribunals.<sup>lvii</sup> Hence, foreign investment requires a standard, stable, predictable legal system framework enabling the protection of the economic interest of the investor against the host state. The case of *Reni International Company Limited v Geita Gold Mining Limited*,<sup>lviii</sup> gave the signs of the unreliable legal system of the country where the government was found to interfere (political influence) to the extent of the breach of contract of the plaintiff against the respondent.

### *Protection of Confidence and Legitimate Expectations*

The major object of the investment is profit maximization, income, and profit. Any investor in regards to expectation, before investing in a host state would like to be firm on the legitimate expectations on protection as was discovered in the case of *Poly gold Company Limited v Amazon Drilling Limited*,<sup>lix</sup> the court held the plaintiff was liable for breach of contract entered. Being the focus is the protection of confidence from the host state government's conduct against administrative and legislative conduct against any frustration on the legitimate expectations. In the international jurisdictional case, the *International Thunderbird Gaming Corporation v*

Mexico,<sup>lx</sup> the court made emphasize on the legitimate expectation for the contracting parties which only brings the reasonable and justifiable expectation on the party to the hosting state in which the investor relies upon to act according to the conduct under which the breach of it may cause the breach and damages to the investor. Under this principle, the available grounds for expectation may arise whenever the host state may reasonably justifies the impossibility for not the foreign investment to be able to achieve the expectation like the *force majeure*.

### ***Administrative and Judicial Obligation Due Process***

In the protection of investment, the foreign investors consider the high value attributed to the host state in delivering and issuing fairness and justice over the capital. The question of both fairness and justice is determined by a proper administration of the judicial, government organs on the criminal and civil contention. In the case of African Barrick Gold PLC v Commissioner General Tanzania Revenue Authority,<sup>lxi</sup> the court held the applicant liable on tax duty to the point for the applicant to bring before the court an intention for revision of the case. The due process in the judicial administration ensures the just and proper protection of the foreigner's capital, property but also maintains the host state from arbitrary and discriminatory conduct.

### ***Transparency of the Host State***

The host state is vested more with the role of transparency in the administration of government information and judicial justice. Any successful host state is interpreted by the investor through handling investment with the proper and rightful measures of investment. In the case of Metalcland v Mexico, the court held that the question of transparency refers to the way of handling relevant legal requirements to initiate, completing properly performing investment, and enabling readily the parties in believing that the investors are treated according to the relevant laws and regulations. The investors look at the legality of the laws and governmental institutions in the practice and conduct over the investments. In the case of Poly gold Company Ltd v Amazon Drilling Limited,<sup>lxii</sup> the court held the government responsible for the interference in the decision of the court. The hosting state is vested with the duty to have laws, institutions, and organs capable to provide the necessary information and relevant procedures



which facilitate the process of investment like information on how to invest, conditions to invest, procedures to start the investment as provided in the Tanzania Investment Centre.

### ***Reasonableness and Proportionality***

The basis of investment in the host state is the foreignness of the investor. The hosting state is considered to express the governmental conduct with the test of goodwill, reasonable and proportional performance. The hosting state must balance the interest of the government as well as the interest of the investors at the principle of *pacta sunt servanda*<sup>lxiii</sup> the government and host state to act in good faith that is the object and purpose of the treaty or investment.

### ***Expropriation***

Protection against uncompensated expropriation is the cornerstone in domestic and international law property,<sup>lxiv</sup> right to, international protection. Provisions addressing direct and indirect expropriation are contained in virtually all-modern bilateral investments. The Energy Charter Treaty<sup>lxv</sup> deals with expropriation. Although protection against expropriation is still invoked in many investment cases, its central position in international investment law has faded.

Tribunals give increasing weight to the police powers of the host states. Under this doctrine, legitimate regulations affecting foreign investment will not amount to expropriation. The tribunal in the case of *Methanex Corporation v United States* final award of the Tribunal on jurisdiction and merits said in this respect.<sup>lxvi</sup>

Similarly, the United States Model BIT of 2004 in Annex B states that except in rare circumstances, non-discriminatory regulatory actions that are designed and applied to protect public welfare objectives do not constitute indirect expropriations.

Tribunals tend to recognize expropriation only where the deprivation is total or substantial. Even a grave interference will not amount to expropriation if it leaves a measure of control in the hands of the investors.

Standards of protection contained in treaties, especially fair and equitable treatment, have assumed the central role once held by protection against expropriation. In the case of African Barrick North Mara Gold Mine Ltd v Maseke Marwa Hamba,<sup>lxvii</sup> the court emphasized compensation for the appellant to the respondent. These standards tend to be more flexible and offer a higher like the hood of success to foreign investment in litigation before an international tribunal.

Under domestic jurisdiction, the Tanzania Investment Act,<sup>lxviii</sup> states expropriation against the state towards the investors business enterprise by the government nor the capital of any business enterprise is to be compelled by the law to cede the capital neither any acquisition, whether wholly or in part of unless it is under the due process of the law. Any acquisition and expropriation shall be under-compensation paid promptly.

Furthermore, the protective measures include consideration on the internal political stability, immigration facilities, availability of skilled and cheap labors, a monetary system such as the taxation system and the power of the domestic currency, financial institutions, infrastructures such as means of communication like telecommunication, roads, public services such as hospital, water and electricity supply. The foreign investors are looking after the business or good environment whereby the invested capital may turn into more profits.

### ***Disputes Settlement***

From the investors' perspective, the most aspect of international protection of investments is the settlement of investment disputes. The traditional method for the settlement of disputes between states and foreign investors is to resort to domestic courts followed by diplomatic protection after the exhaustion of local remedies; local remedies, exhaustion. The domestic laws provide for the mode of dispute settlement in the Mining Act<sup>lxix</sup> and the Tanzania Investment Act.<sup>lxx</sup>

The unsatisfactory character of the traditional mechanism has led to the widespread acceptance of arbitration between the foreign investor and the host state. A major part of investment arbitration takes place in the framework of the International Centre for Settlement of Investment Disputes (ICSID) to which Tanzania has been assigned.<sup>lxxi</sup>

In the host state whereby there is unstable and fluctuating currency, the investors would consider that state with insufficient protection of the capital and income shown from the destabilizing of domestic currency which ultimately would result in high costs of goods, lack of competitiveness, and lower value in terms of products and market deregulation. In addition to this, there is *ad hoc* arbitration, often under the arbitration rules adopted by the (UNCITRAL).<sup>lxxii</sup> In the case of Kahama Mining Corporation Ltd (Barrick Gold Tanzania-Bulyanhulu v Patrobert D Ishengoma,<sup>lxxiii</sup> the court held the plaintiff liable for the illegal termination of the respondent.

Under the international law of state responsibility, reparation for a wrongful act takes the forms of restitution, compensation, or satisfaction. In investment arbitration, the remedy nearly always consists of monetary compensation. Satisfaction does not play a practical role. Restitution in kind is rarely ordered although a tribunal has the power to do so.<sup>lxxiv</sup>

### ***Sovereignty Over Natural Resources***

The natural resources concept originated whereby in 2017,<sup>lxxv</sup> Tanzania enacted two important pieces of legislation; the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017.<sup>lxxvi</sup> These lay signify the country's strong belief in the role that can be played by the natural resources in its national development. The Permanent Sovereignty Act stipulates the Tanzanian peoples' inalienable ownership of all-natural wealth and resources and proclaims their permanent sovereignty thereof. It obligates the Tanzanian government to exercise ownership and control over natural wealth and resources in a manner that safeguards the interests of the Tanzania people and the Republic when entering into contracts relating to extraction, exploitation or acquisition, and use of natural wealth and resources. Premised on the existing international system of sovereign rights to resources, the Act prohibits permanent sovereignty over natural wealth and resources from being the subject of proceedings in any foreign court or tribunal while requiring disputes arising from natural resources contracts to be adjudicated by judicial bodies or other organs established in the United Republic of Tanzania and accordance with laws of Tanzania.

For the same purpose, the Review and Re-Negotiation of Unconscionable Terms Act affirm Tanzania's permanent sovereignty over all natural wealth and resources.<sup>lxxvii</sup> It further emphasizes the country's responsibility to safeguard the interests of the Tanzanian people and the Republic when entering into contracts. Premised on these rights and responsibilities, the Act mandates the review of all contracts relating to extraction, exploitation, acquisition, and use of natural wealth and resources to rectify or expunge any unconscionable terms. An investment contract shall accordingly be deemed as unconscionable if it contains any provision or requirement, inter alia, which subjects the state to the jurisdiction of foreign laws and fora. This provision provides the flexibility to consider an agreement that refers investment disputes to international adjudication as an unconscionable agreement that must as a result be renegotiated. Refusal or failure to do so would render the applicable investor-state dispute settlement clause ineffectual under Tanzanian Law. Such clauses will further be treated as having been expunged.

Moreover, the Public-Private Partnership (PPP) (Amendment) Act enacted in 2018 prohibits international arbitration concerning PPP agreements, particularly those projects relating to natural resources. The Act, accordingly, states that any dispute arising during the course of the PPP agreement "shall in case of mediation or arbitration be adjudicated by judicial bodies or other organs established in Tanzania and accordance with its laws". Accordingly, Tanzania's recent legislative reforms demonstrate a clear attempt to affirm its ownership of natural wealth and resources, fortifying state control thereof, and are premised on the existing legal system of sovereign rights to natural resources. They have upheld the country's inherent right to legislate and adjudicate property rights while insisting on its right to decide on the terms of foreign investment contracts in the natural resources sector.<sup>lxxviii</sup>

### ***Impact on Corporate Social Responsibility (CSR)***

The legal framework in any jurisdiction must provide clear provisions relating to the role of investment in Corporate Social Responsibility (CSR).<sup>lxxix</sup> From the legal framework reviewed discoveries point out that investment in mining rights-holders are legally required to produce, on an annual basis, a corporate social responsibility (CSR) plan that must be jointly agreed to with the relevant local government authority (in consultation with the minister responsible for

local government authorities and the Minister of Finance and Planning) Local government authorities are also required by the law to prepare guidelines for CSR within their localities, oversee the implementation and provide awareness to the public on CSR projects in their areas. Section 27 of the Amendments Act<sup>lxxx</sup> grants authority to draft regulations relating to local content and CSR obligations. Amongst the areas of CSR includes training of employees, participation in managerial posts, and empowerment of the citizens and the country at large.<sup>lxxxii</sup> The question was raised from the stakeholders about the CSR is how this can be implemented in Tanzania since the investors are counting and considering empowerment to be an additional role being considered as double standards under the country's regulations.

### ***On the Local Content***

Among the features of the international and national law is the duty of the local content. Local content is defined 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 investment mining operations to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation.<sup>lxxxii</sup> Local content plans are required in applications for various investment companies and mining licenses. Investors in mining rights are to give preference to goods that are produced or available in Tanzania and to services rendered into joint ventures with a local company, with the local company holding at least 25 percent of the joint venture. In this discourse, it found that there is a separate requirement to submit a detailed plan for training and employing Tanzanians. Unfortunately, the respondents around the Lake Zone Victoria reveal that not all laws including MDAs in investment and mining are giving provisions on local content. In Magogo Telesphory views',<sup>lxxxiii</sup> the lack of local content provisions in Tanzania's laws has been the ground for Tanzania to lose a lot of benefits and protection of investments in mining. Tanzania is emphasizing a report on annual execution, detailed local supplied development program, and report on training and recruiting Tanzanians from the companies. In addition to these requirements, a new section 100F of the Mining Act requires companies to plow back a portion of returns from the mining sector into the local economy. Annual reports are required to detail such efforts. While the required portion of returns to be invested is clear, subsection 100F(4)

considers the non-mandatory creation of a local investment plan, which would presumably provide an agreed basis for evaluating performance.<sup>lxxxiv</sup>

This paper discovered the existence of various domestic laws with having no proper provisions on local content. The mining legal framework is a typical example in which legal framework is with inappropriate provisions. It is found that in mining laws in particular the Mining Act of 2010 required the investor to present and promise to implement plans for procurement of goods and services available in Tanzania as a condition for grant of a special mining license or a mining license.<sup>lxxxv</sup> The legislation could not provide for planning either compelling mining investors to do their purchase locally or goods locally produced.

The interviewed stakeholders<sup>lxxxvi</sup> point more to their awareness that local content in the Tanzania mining sector is found to undergo abrupt changes. Tanzania's mining sector contributes an early 3% to GDP annually.<sup>lxxxvii</sup> From the literature views of point, Tanzania in 1961 the contribution of the mining industry to Gross Domestic Production (GDP) moved from 10% to 2%,<sup>lxxxviii</sup> and it remained until the mining legislation of 1979, which required applicants to present a clear plan for local procurement of goods and services. The 1980s is the period influenced by the World Bank campaigning for changes of laws in Tanzania a program that led to the enactment of the Tanzania Investment Act of 1997, followed by the Mining Act of 1998. These are pieces of legislation that led Tanzania to step into foreign mining investments.<sup>lxxxix</sup>

Specific functions in the laws; the Act of 1998 abolished provisions on local content requirements. This step declined peoples' consciousness about foreign mining corporations' responsibilities on local goods and services. This position laid the loss of opportunities due to a lack of local content requirements. In 1998 the enactment of the mining legislation and hereafter just in four years Tanzania is said to admit in four large scale gold mining corporations namely: Resolute Mining Ltd (Golden Pride Mine (GPM) 1999, the Ashanti Gold Ltd (Geita Gold Mine (GGM) 2000, and two Acacia gold mining companies; (Bulwanhulu Gold Mine, BGM) 2001, and North Mara Gold Mine (NMGM) 2002.<sup>xc</sup> The literature presents strong evidence on local procurement of goods and services, that, it has gone down relative to foreign procurement since the operation of the mining legislation of 2010, and the factor laid before this critical fall is the consequences of the absence of local content in the 1998 mining

legislation that opened the doors for the mining companies to procure goods from abroad as exporting states. The study notably finds that despite all the mining corporations above mentioned and their activities done around the Lake Zone Victoria, the conditions of living for the society have remained at a low level of standards.

The study discovered that despite Tanzania breaking from the local content requirements, this did not stop companies from seeking procurement of goods that is why companies were being influenced by global trends and initiatives, such as Barric (currently Acacia) to have joined the international supply bodies like the United Nations (UN) Global Compact since 2005. Barrick and other mining corporations took initiatives to adopt a code of ethics and standards, which require the suppliers to subscribe and to meet the standard, set by the bodies and finally to kill the local procurements as the local industries failed to meet the international standards. Since the removal of the local content and reintroduction of Tanzania legislation like the 2010 Mining Act, the country has not exhaustively benefitted yet from local content but only remains in loss of opportunities.<sup>xcii</sup> Opportunities that have been lost include the Integrated Mine Technical Training program (IMIT) and a few other minor initiatives and local content benefits in Production Sharing Agreements (PSAs) but negative to Mineral Development Agreement (MDAs); these benefits as found in other compared jurisdictions of Botswana and Norway.<sup>xciii</sup>

### ***On the Fiscal Regime and Income Taxes***

The legal framework is dutifully vested with the role to ensure that investment and Mining activities create and bring opportunities for the host country and citizens to benefit from the investments. The investors while being inspired for profit-making the hand the legal framework has to facilitate these goals through the financing of investments.

### ***Mineral Royalty***

The study has found that laws are found with inappropriate provisions, which have either granted royalties to investors at the detriments of the country and its citizens. With progress, the amendments Act increases the royalty on diamonds and gemstones from 5 percent to 6 percent and raises royalty on metallic minerals from 4 percent to 6 percent of gross value.<sup>xciii</sup> The stakeholders point out more than with the Mining Act royalty base was previously defined as

the 'market value of mineral at the point of refining or sale or.... at the point of delivery within Tanzania. The Amendments Act has now specified that 'market value' shall be based on a valuation procedure requiring the presence of amine resident officers and an officer from the Tanzania Revenue Authority (TRA).<sup>xciv</sup> Under the new procedure, the government may reject the valuation of exported or raw minerals that are rated 'low' because of 'deed negative volatility'. When the government rejects valuation, it is entitled to purchase the minerals at a low price. Respondents pointed that regulations will be needed to establish clear parameters for rejecting valuations on this basis.<sup>xcv</sup> About fiscal royalty, the study found the landmark dispute of Tanzania against Acacia, where the government obliged the mining company to pay a fine. Whether the government's tactics were good or not, the Tanzanian government has reasons for adopting a brazen approach to negotiations with the mining companies too. But after Tanzania announced a series of changes in 2016, it was confronted by mining company intransigence. Their development agreements enshrined protections against all manner of intrusions and impositions. They seemed resolved to impede changes by resorting to delaying tactics, legal obstacles, and arbitration.<sup>xcvi</sup>

### ***Income Taxes***

The study has discovered other significant fiscal taxes in the financial institutions whereby instability in taxes had caused the decrease of investors and for the loss of benefits of the country. The Finance Act, through amendments to the Income Tax Act 2004 (Income Tax Act), prohibits losses from 'speculative transactions' being deducted from taxable income. This has been a general provision applicable beyond natural resource companies, and it appears to attempt to reduce risks of transfer pricing abuse from practices such as hedging. The Amendments Act also makes generally applicable amendments to the Income Tax Act that is seemingly designed to reduce tax avoidance risks. It inserts a provision into the Income Tax Act stating that the value of any benefit of advantage accrued from the shifting of any tax obligation to another person through a contractual agreement or another arrangement shall be taxed at a rate of 100 percent.<sup>xcvii</sup> The scope and operation of this provision needed also clarification in regulations. According to respondents, it appeared to be an attempt to strengthen the Income Tax (Transfer Pricing) Regulations 2014, but its impact depended on the definition of 'benefit' and 'advantage'.



Some respondents<sup>xcviii</sup> who have visited on these issues above, they could state referring to some countries like Botswana and Norway that have proven to have the best legislation of mining investment which provided for the royalty rates of 7% and 10% respectively like in metallic minerals. Botswana was mentioned to implement a fairly liberal investment regime that its operation encouraged foreign investment. And unlike Tanzania, Botswana is said not to allow taxes to be filed in foreign rather local currency. Therefore, despite the historical backgrounds of these two states, yet royalties on metallic minerals could have risen to the highest reasonable rate on the total production value of the minerals produced.<sup>xcix</sup>

From the stakeholders' interviewed the study has found lost opportunities in provisions of the law on assessed and experienced in royalties and other revenues of the country. The law on power of the Minister responsible for minerals and the Commissioner for minerals were vested with the power to demand, sue for, recover and receive all fees, charges, dues, rents, royalties, or payments which would become due in respect of any mineral right or any license or other dues available. Tanzania under the existing situation previously explained attracts loopholes for signs of dishonesty and mythical in investment and mining sector deterioration.<sup>c</sup>

The study finds more in the country with Tax incentives granted to multinational companies in investment and mining firms to pay corporate tax only at a time they regained their investment capital since they carried forward losses and set them against corporate tax. From the interviewed respondent,<sup>ci</sup> it is noted that large foreign investors and mining corporations have been using the existing tax legal regime to evade taxes, through declarations varying commercial losses while in actual sense they make a profit. The landmark case of African Barrick Gold PLC v Commissioner General Tanzania Revenue Authority,<sup>cii</sup> the court proved the existing practices and conducts of the mining corporations that lead the host state to lose its benefits. Consequently, this has led to the loss of billions of shillings in taxes. It is a fact that the fiscal framework on investment and the mining sector contributes to lost opportunities in investment and mining activities.

The study finds that there are lost opportunities from free carried interest, lack of free carried interest in mining particular in Tanzania presents a diverse from compared jurisdiction of Botswana. From Botswana, it was found the best practices in investment in mining with

involvement of government in mining operations and activities. The government of Botswana's participation started through and in issuing of mining licenses, acquiring working interest in the minimum rate at 15% under the proposed mine. From 1974 Botswana to 2012's the government had retained a fifty percent joint venture (50:50) in big mining companies. The arrangement in Botswana's mining sector brings a significant message of positive impact to the economy and peoples' conditions of living opportunities.<sup>ciii</sup>

### ***Effect in Resources Curse***

The discoveries in this theory, stipulate the negative socio-economic effects of an investment in mining resources in countries endowed with natural resources. The interviewed respondents<sup>civ</sup> pointed out challenges of resources curse as it has a great impact in rich countries for failure of these countries to have set up proper arrangements in the protection and use of the resources. Scholars on resource curse identified country challenges of poverty, economic mismanagement, growing inequality, corruption, political instability, undemocratic governance, and conflicts with the improvement of natural resources, especially in developing natural resource-rich countries.<sup>cv</sup>

The resource curse theory shades light to understand that existence of natural resources in the country should not only be professed as a blessing if not used properly, and hence to pay many dependencies on these resources, but also to pay attention to the appalling results which are likely to affect the whole society as the consequence of poor protection and arrangements over the investment and resources. The scholars provide precaution to the society on the curse of natural resources against benefits of the community.<sup>cvi</sup>

From the findings of this paper, it has become apparent that till today plenty of the natural wealth and the resources in most developing countries signal three<sup>cvi</sup> issues including slow growth, an enhanced risk of civil war, and autocratic political regimes. However, the lesson from Equatorial Guinea, for instance, testifies that revenues from the natural resources particularly the oil counted the state's Gross Domestic Production (GDP) per capital to second in the world in 2007. Unfortunately, Genacsi and Pray<sup>cvi</sup> pointed out another typical model that sixty percent of the country's population in the country of Guinea had continued living in

abject poverty compared with the rich resource. Likewise in Venezuela<sup>cxix</sup> and Congo DRC by then<sup>cx</sup> there are reported the relevant cases as countries blessed with natural resources.

The interviewed respondents revealed truths and concurred with some literature that until 2016<sup>cxix</sup> Gold mining raised Tanzania into the largest 4<sup>th</sup> gold exporting country in the region and next after South Africa, Ghana, and Mali countries. With this growth, there are still complaints challenging the country on how it protects and benefits from the investment projects, which add, to the economy and to improving the conditions of living. Even though the developments in the extractive resources particularly the mining sector, and the fact that the country has achieved sustainable political tranquillity since her independence, the country's economy continues suffering<sup>cxii</sup> stagnation and population particularly the community around the mining projects suffer abject poverty, poor living conditions, human rights violations, and lack of employment opportunities and better conditions of life, environmental degradations, and pollution<sup>cxiii</sup> kept in the National Environmental Management and Council (NEMC) evaluation, failure in Corporate Social Responsibility (CSR), and the Corporate Social Liability (CSL). Briefly, Tanzania with its largest population for years was dissatisfied with the benefits from these developments in its mining investment for lack of proper regulations and protection of investment and mining activities.

### ***The Environment Management Challenge***

Environmental management has increased the debates among the stakeholders in regards to the role of Foreign Investment and the host state. In Tanzania, the environmental issues are vested under the National Environment Management Council (NEMC) established in 1983 when the Government of Tanzania enacted the National Environment Management Act No. 19 of 1983. NEMC was established because there was a high demand for a national institution to supervise environmental management issues. Also to implement the resolutions of the Stockholm Conference (1972) which requested all nations to establish and strengthen national environmental Councils responsible for advising governments and the international community on environmental matters. More efforts to strengthen NEMC came into being when the enactment of Environmental Management Act No. 20 of 2004 (EMA, 2004) by Parliament in

2004, repealed the National Environmental Management Act No. 19 of 1983 to re-establish NEMC.

The Environment Management Act No. 20 of 2004 provides for a legal and institutional framework for sustainable management of the environment: Prevention and control of pollution, waste management, environmental quality standards, public participation, environmental compliance, and enforcement. In addition, it gives NEMC a mandate to undertake enforcement, compliance, monitoring, and review of environmental impacts assessments, research, facilitate public participation in environmental decision-making, raise environmental awareness, collect and disseminate environmental information. Due to its responsibility, NEMC is one of the National Bureau of Statistics stakeholders. NEMC is responsible for providing Pollution and Prevention data to Tanzania Social Economic Database (TSED).<sup>cxiv</sup>

## **RECOMMENDATIONS**

From the above findings, this paper recommends areas in which the legal framework requires further attention from the country and hence enables the country to deal with challenges in the legal framework against the protection of foreign investment in the mining sector.

### ***The Legislative Organ***

The Parliament is vested with the role of legislating in the country. The paper recommends that this organ of Government take further legal obligations first to review all enacted laws existing and make the required amendments, which will facilitate the protection of investment in the mining sector. Secondly, the Parliament has to review and amend the Constitution of the United Republic of Tanzania, 1977 that would bring in specific provisions on the protection of natural resources and investment in the country.<sup>cxv</sup> The lack of appropriate provisions on investments, respective resources has been a loophole for the country to lose its benefits, interest, and maintenance of sustainable development. Tanzania could take the example of African neighbouring countries such as the South African Constitution,<sup>cxvi</sup> which provides provisions

for equality in protection and benefits and property rights. South Africa also enacted foreign investment Protection.<sup>cxvii</sup> Meanwhile, the Republic of Kenya in its Constitution protects the right to property and private property.<sup>cxviii</sup> Kenya has also enacted two pieces of legislation for foreign investment protection<sup>cxix</sup> and the investment promotion activities.<sup>cxx</sup>

### ***The Government***

The Tanzanian government is in charge of all mineral resources for the benefit of the country and citizens in general. It is recommended that the government continue with this constitutional right and obligations in taking and looking after all the good legal framework to enable the protection of investment in the mining sector. To achieve the goals of the country, the government has to invite and allow the participation of citizens in the preparations and enactment of the laws. The lack of the stakeholders' participation makes the government introduce laws, which are implemented only by the executive while the stakeholders are left with no knowledge and importance of respective legislation.

### ***The Law Organs Enforcers***

Laws enacted in the country are left to enforcers who are obliged to implement them and ensure that from laws justice and fair treatment are revealed in the investment mining industry. Most of the institutions are found to jeopardize their position with the misuse of the laws governing investment in the mining sector.

### ***The International Community***

Every state including Tanzania as well is sovereign. The natural resources of the respective country are at first and foremost to improve the conditions and interests of the hosting state. The laws of Tanzania have equal jurisdictional power like any other developed country and international institutions. There should be a non-profitable influence in domestic laws without consideration of the citizens of Tanzania.

### ***The Foreign Investor and Stakeholder***

The motive of investment is nothing else rather than making profits, interests, and benefits of the investing party. The stakeholders are invited to the country; however, the interests of the investing party should be respected while holding the *pacta sunt servand* principles. Either every operation of investment in the mining sector should according to the legal framework and in respect of benefits of the country.

### ***The Society and the Individuals***

The government and citizens represent the intended plans and goals of the country. It has been normal attitudes and regards of the society in Tanzania that for the country to develop there must be necessarily foreign investors from developed countries. This is why only in which the country can develop. The study recommends that the country have to introduce new initiatives in improving and changing the mindset of the citizens of Tanzania.<sup>cxix</sup> The government and its people have a duty to utilize the natural resources effectively with good and sustainable development goals and the country will be counted amongst the rich resources applied and turned into a blessing rather than a resource curse.

The study has empowered to the extent to allow opportunities on which the paper found in the significant knowledge in various aspects of investment and mining sectors legal framework, which generally we could not all consume to completion because of the insufficient space, time, and costs in finance barriers that constrained us. These areas include the sovereignty of natural resources mining sector in particular, investment in foreign, taxation in general CSR, local content, fiscal framework, resources nationalism or expropriation vis-à-vis liberalism, principles of the Foreign Investment (FI) protection, National Environmental Management Council (NEMC) and theory of internationalization. The paper suggests that these areas need further discoveries as a way of academic potential innovations.

## CONCLUSION

The paper has found and analyzed challenges of the legal framework and the significant concepts, principles, theories in-laws, and institutions which manifested important relationship existing between proper legal protection of foreign investment in the mining sector in the regulation for the benefits of the host state and the investor party. The study has further disclosed while pointing on the investment and mining resource that the resource-rich countries would fail to obtain the economical benefits for sustainable development due to inappropriate legal approaches theories, principles, laws, and institutions over the foreign investment and mining sector, and therein the study to come up with conclusion and recommendations.

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X. Documents from Foreign Jurisdiction

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- <sup>xv</sup> Section 22 of Act No 26 Tanzania Investment Act of 1997 [CAP 38 R.E 2002]
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- <sup>xvii</sup> *ibid*, Section 4(1).
- <sup>xviii</sup> *Ibid*. Section 5 of the Act.
- <sup>xix</sup> *Ibid*. Part III of the Tanzania Investment Act, 1997.
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