DISCOVERING THE QUESTION OF BENEFITS IN NATURAL RESOURCES INVESTMENT ARRANGEMENTS: THE CASE OF MINING SECTORS OF TANZANIA

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ABSTRACT

The paper enlightens on the philosophical advance to the concept of benefits in the conduct of investments in the extractive sector. Through qualitative approach of the nature of doctrinal research, the author uncovers the aspects which are necessary in forming the opinion on the decisive legal basis for the determination as to whether a particular extractive investment project suitably depict the issue of benefits expected by both, investors and the host state as well as the citizens. The paper reflects on the Tanzania mining legal framework, which gives rights and obligations to parties in their investment endeavors.

The paper concludes with the view that it is imperative to have arrangements which balance the best interests of the country and its citizens, the people who are the owners of natural resources and the investing company to ensure equitable exploitation of natural resources.

The idea in this paper revolves around the content as found in the author's PhD Thesis at the School of Law, St. Augustine University of Tanzania.

ISSN 2581 3382

GENERAL OVERVIEW ON BENEFITS IN EXTRACTIVE INVESTMENT ARRANGEMENTS

World over exploitation of extractive natural resources and the question of benefits go together. Planned extractive investment projects, mining projects in particular are anticipated to provide maximum benefits for the country and its people, but without an overlook on the efforts of the investors. The rationale for this expectation is that many resource rich countries consider natural resources as the common heritage of the people. Therefore the state has the custodian obligation to ensure that arrangements which are made on the use of these resources benefit all the people.[i] Many resource rich countries, mostly developing countries Tanzania inclusive, believe and hope that natural resources is the right option to spur or foster their social and economic development, and to ensure improved living conditions. Therefore, there have been legal arrangements which aim to ensure that the country and its citizens receive maximum benefits from exploited natural resources. In Tanzania benefiting from natural resources is among the objectives of the constitution.[ii] The force of this objective has been made available in other legal instruments and policies which regulate extractive investments.[iii]

Scholars have identified some challenges on what and, or how much are expected as benefits for the country and for local population or local communities, and whether there are contractual arrangements between those who are giving and those who are receiving the benefits;[iv] and whether there could be a way for a country to have achieved a greater share in the advantages and profits derived from investment on an equal basis; thoughts which convey the thinking about benefit sharing.[v] Generally the term benefit has been used in many different ways that are available in different investment projects. This alone makes it difficult to identify the essential features that could veil the term benefit for a clear definition.

DESCRIPTION ON THE QUESTION OF BENEFITS IN NATURAL RESOURCES INVESTMENT ARRANGEMENTS

As established in the above paragraphs, the conduct of investment in view of ensuring benefits especially in the extractive sector encounters a lot of challenges. One of these challenges is the fact that while investors of the extractive sector fight to make sure that legal arrangements

ISSN 2581 3382

facilitate their efforts to achieve the greatest advantages and profits during the lifetime of the project, with much consideration to their capital and technology, natural resource rich states and their people have also thought that since they are the owners of these resources, they deserve the maximum possible benefits which are available in the conduct of an investment project over their resources. On the other hand, the attainment of benefits and the kind of benefits to be attained from the respective investment project of the nature of extractive remain to be the question of interest to both the investor and the natural resources rich states as well as to the people.

Kilangi[vi] identifies the two ways through which benefits from exploited natural resources could be attained; the direct and the indirect ways. It is through these two ways that we can discern the kind of benefits to be obtained from the exploited mineral and petroleum resources. In this sense of acquisition of benefits, benefits which can be acquired directly are the direct benefits, and benefits which can be acquired indirectly are the indirect benefits.

Direct benefits are the proceeds that could be obtained in the whole conduct of investment. These benefits are generally the tangible earnings which mostly aim at improving the economy, and the livelihood of the people or conditions of living. Indirect benefits are the advantages and profits which can be acquired indirectly. These advantages and profits aim at improving the economy, and the conditions of living as well. These benefits are: compensation for relocation and resettlement; the use of locally produced goods and services or simply local content; employment, training and transfer of technology; campaigning to building local capacity in technical and managerial skills; building strategic linkages with other sectors of the economy; institutional building and reform; increased participation of nationals in planning, management and decision making in the projects; increased participation of nationals in research and development (R&D) projects, and provision of technical support and know-how to nationals.

Other indirect benefits are government participation or simply free carried interest; and company's participation in developmental needs of the local population by way of sharing revenues and spill over support to extractive local communities or simply corporate social responsibility (CSR).

ISSN 2581 3382

In view of the above reasoning, it is intricate to define the term benefit, and to identify the type of benefits that need to be allotted for the country and for local communities vis-à-vis benefits for extractive companies. It is difficult as well to determine what type of benefits are, and what benefits need to be shared or how much could be accessible to satisfy the desire of the main stakeholders: the government, the local communities and the investor. However, the term benefit could be elucidated in terms of its attributes also referred in this paper as aspects of benefits, as describe hereinafter.

ROYALTY/ROYALTIES

Royalties are the payments based on production, such as of minerals, oil and natural gas. There are two ways of calculating royalty rates. First, royalty is calculated as a proportionate of the total production value such as of gold, oil or natural gas. Secondly, royalty is calculated as a proportionate not of the total production value, but of the net back values, which is the market value of produced mineral or petroleum resources minus the cost of transport and the cost of smelting or refining. To constitute a royalty payments need not be periodical.

The rationale for paying royalties especially on mineral resources is that these resources are non-renewable resources. Therefore the country and its people would need to get maximum benefits from their use. As we have observed in this tête-à-tête, many resources rich jurisdictions reflect on natural resources particularly minerals resources as the common heritages of the people, and states or governments are only custodians of these resources for the common good of the people.[vii] The people are the owners of these resources. These owners of natural resources have greater expectations in the use of their resources. They wish to reap adequate benefits from these resources. They need these resources to have significant contribution to their economy and to improve their conditions of living.

And since mineral resources are non-renewable type of natural resources, people would expect to obtain maximum benefits from their use. People would demand that the grant of their rights to use these natural resources should be subject to certain consideration apart from taxes, which may be paid in different forms. The people would need that it is not even enough for the community to obtain other investment benefits which may be gained as a result of hosting the investment operations such as employment opportunities, and technology transfer, and benefits

ISSN 2581 3382

resulting from corporate social responsibility (CSR) and state participation. The consideration for the grant of right to use or for the grant of title to access natural resources especially mineral resources is what is called royalty (or royalties).

Royalties are determined by the state or government. It is part and parcel of the fiscal regime governing investments especially in mineral and petroleum sectors. Its adverse impact to country's economy depends much on its regime. As income, royalties are expected from the production stage of the investment project. It is charged basing on the production or the value of the resources that have been produced. This however depends on the agreed terms between the government and the extractive investor. In Tanzania royalties from mining investments are provided for by the Mining Act, 2010 R.E 2017 and by the concluded Mineral Development Agreements (MDAs).

TAX/TAXATION

Tax or taxation is defined as a compulsory contribution to the support of the government, levied on persons, income, commodities, and transactions, and it is imposed by the legislative power for the purpose of raising revenue to be used for public or governmental purposes.[viii] Taxes may be an income tax, a health tax, a user tax, a tariff, a transfer tax, or a value added tax.[ix] Tax is the most general term for duty, custom, toll, impost, tribute and contribution.[x] In his discussion on the objectives of taxation, Makinyika[xi] summarizes the reasons why the country needs taxes: as sources of government revenues; taxes play the role of mobilizing and accumulating capital from the general public and concentrating the same to the disposal by the government through investments in enterprises that are considered to be of high economic priority. Taxes can be used to allocate resources to ventures or geographic areas that are considered underdeveloped.

Taxes can be used as a tool for fiscal stabilization through influencing increased investments, and as an incentive to promote more production on the market. Taxes can also be used to boost domestic industrial production by for instance imposing high taxes on imports thereby creating more market for domestic goods and services. Taxes are used as a means of redistributing wealth for instance, by taking away from the wealthy and providing services to the people.

ISSN 2581 3382

Despite the primary role of taxes as discussed above, which is generally intended to raise government revenue, Oduntan[xii] adds other roles which taxation play in the economy; which are to ensure fairness and equality among taxpayers. In Tanzania taxes are provided for in different pieces of legislation, including the Income Tax Act, 2004 and the Value Added Tax Act, 2014. Requirement for taxation is also provided for in concluded MDAs.

Reports, especially the TMAA report of 2016 shows increased amount of taxes payable to the government as a result of extractive investment activities. According to this TMAA report Tsh.195 billion was paid as corporate tax and an additional income of a total of Tsh. 4.42 billion was paid as other taxes. TMAA has reported further that Tsh.4.3 billion was paid to the government from Value Added Tax (VAT) reaching technology to recover gold from trailing in Mwanza, Geita and Mbeya regions.

CHARGES AND FEES

Generally charges and fees are payments for purposes of use of any right or property to be granted, or payments for any right or property which have been already granted, but which requires extension for its use or occupation. They include rental payments, licence charges, corporate registration fees, transfer charges, or assignment charges, annuities and interests. Charges and fees are provided for in different laws that regulate mining activities. They are provided for in the Mining Act, 2010, R.E 2017, the income tax pieces of legislation and in MDAs as well.

DUTIES AND LEVIES

The fourth direct benefits are duties and levies. They include tariffs which are normally imposed by law for importation or exportation of goods or services. These benefits maybe imposed over the use of certain resources such as mineral and petroleum resources by relevant authorities, including local authorities such as the local government authorities. Duties and levies are provided for in different laws that regulate mining investment activities; including

ISSN 2581 3382

the Mining Act, 2010, customs tariff legislation, financial pieces of legislation, including the local government financial legislation, stamp duties legislation and road tolls legislation.

LOCAL CONTENT

Local content is a concept that calls for want of increased participation of local population in accessing greater benefits from projects that operate in their vicinities. Local content is an idea which has featured importantly in the extraction of mineral and petroleum resources. There is no conventional meaning on the concept of local content. Local content involves several dimensions. Its scope and depth have varied from sector to sector. Despite the fact that local content is highly discussed in the extractive sector, mining and petroleum inclusive, it is not limited only to these sectors. It has been and is still being broadly used irrespective of countries' income levels.[xiii]

There is scholarly literature attempting to define local content globally. In the Nigerian context for example local content is defined as:

> …the quantum composite value added or created in the Nigerian economy through the utilization of Nigerian human and material resources for the provision of goods and services to the petroleum industry.[xiv]

The above definition may be criticized as being of more theory, more of a text book than what is found in practice. In Ghanaian context local content has acquired much of its importance to 'local local' companies, that is, those local investments positioned in the mining sites. The concept of 'local local' focuses more on the desire to use of local endowments essentially to promoting positive transformation of local community. As presented by Gbegi and Adebisi,[xv] Chief Tony Obuaya defines local content in two ways:

> a set of deliberate orientation and actions to build domestic capacity relevant for service and product delivery comparable within that industry and an opportunity to locally build a sustainable culture of service quality and capabilities exceeding customers' expectations and comparable to international standards through key local personnel's and management.

ISSN 2581 3382

The two definitions above appear to be more of scholarly. They are precise and analytical. They add more insights into the manner in which local content policy could be scrutinized. Gbegi and Adebisi[xvi] argue that local content acquires old thoughts. It has existed longer in other jurisdictions. Local content has been referred to as 'community content,' with an intention to recognize the way oil and gas products from development companies can compete from point of view of local strategies and country's legal framework.[xvii]

The Local Content Policy of Tanzania[xviii] defines local content as:

> The added value brought to the country in the activities of the oil and gas industry in the United Republic of Tanzania through the participation and development of local Tanzanians and local businesses through national labour, technology, goods, services, capital and research capability. [Emphasis added]

According to the Petroleum Act, 2015,[xix]

> Local content means the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzanian human and material resources and services in the petroleum operations in order to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation.

Local content portrays the idea about the need of many resource-rich developing countries to have benefited from the wealth created from extractive resources, through the direct participation of local people in the established investment projects. The idea of local content originates from concerns brought by many natural resource-rich developing countries and extractive national companies, that for a long time they have not benefited satisfactorily from the wealth created by their extractive natural resources. Host nations and national extractive companies have increased their demand for an increased contribution to the local economy and community development.[xx]

The idea of local content is based on the assumption that if nationals, especially local communities are provided with ample opportunity to have directly participated in investments that are established within their vicinities such as mining investments, their developmental needs and objectives, including their living standards and economies would have been raised.

ISSN 2581 3382

Tanzania agrees that to pursue local content, that is to deliver benefits from mining investments to local communities, is no longer the wish or choice of companies; rather it is a commercial necessity and one that is increasingly mandated by law.[xxi]

Tanzania has adopted the local content regulations in its mineral[xxii] and petroleum[xxiii] sectors. The main areas of local content among others are: use of local materials, human resources, goods and services which are available in the host state, succession plans, research and development plans, employment, training and technological transfer, insurance services, legal services, and financial services.

The government of the United Republic of Tanzania is aware that in this new competitive panorama of diminishing supply and increasing demand for mineral and energy resources, corporations, especially those in the extractive sector face rising expectations to do more than simply mitigate negative impacts, serve as sources of tax or royalty revenue and as good neighbours. In view of the above propositions, local content initiatives in the country aim at setting mechanisms that will enable local communities tape the opportunities to manage, supply goods, services and labour to enable these communities to obtain the greatest benefits.

One mechanism that ensures this is to develop more experts, (human capacities) including transfer of technology for competitive, capable and sustainable local labour. Tanzania identifies local content policy issues to be among the things the extractive sectors in collaboration with the government need to undertake. Local content policy issues include:

> developing a baseline data/information to identify the current capacity and capabilities for Tanzanians to be employed and owned companies to become suppliers; developing needs assessment of the required capacities to deploy the Tanzania experts in the oil and gas industry; identifying the areas in which there is no capacity and capabilities and it will not be sustainable for Tanzania to have such a category in place; identifying potential partner companies who support our strategy and will help deliver it; and identifying ways in which this development will be reported, monitored, measured and evaluated through a regulated framework for local content with aim of continuous improvement.[xxiv]

Apart from the identified local content policy issues, strong statements related to local content are available in other country policies as well. The Natural Gas Policy[xxv] for example asserts

ISSN 2581 3382

precisely that natural resources in Tanzania belong to Tanzanians, and must be managed in a way that benefits the entire Tanzanian society. This statement forms the basis for the local content in Tanzania. In view of the Local Content Policy of Tanzania, local content in the country is aiming at achieving the following objectives:

> devising local content implementation strategies for the development of competitive, capable and sustainable local labour, generating and promoting adequate supply of local workforce with the necessary knowledge and skills; developing strategies for fostering the transfer of technology and knowledge, to invest heavily in research and development to seize the high caliber opportunities in the oil and gas industry; and to set a mechanism that will enable Tanzanians and their businesses to tap the opportunities to manage, supply goods, services and labour.[xxvi]

In addition to the stated objectives, the Mining (Local Content) Regulations, 2018 provides the following objectives: to promote the maximization of value-addition, job creation through the use of local expertise, goods and services, business and financing; skills transfer and expertise development, transfer of technology and know-how, and active research and development; develop local capacities in the mining industry value chain; achieve the minimum local employment level and in-country spend for the provision of goods and services; increase the capability and international competitiveness of domestic business, and achieve and maintain a degree of control by Tanzanians over development initiatives for local stakeholders.[xxvii]

Ramdoo[xxviii] identifies commonly four challenges that have enabled the use of local content in resource-rich countries: one is the over reliance on natural resources with respect to their contributions to national income, foreign exchange and export; two is the paradox of plenty, that is, unacceptably high prevalence of poverty and inequality amid an abundance of resource riches; three is to mitigate and manage social and political risks due to rising expectations for a better and more equitable distribution of wealth; and four is the need to create more job opportunities, given the capital-intensiveness of the extractive sector.

Despite strong statements from the Mining (Local Content) Regulations, 2018, the Local Content Policy of Tanzania, the Natural Energy Policy and the Mineral Policy on local content, there are still a numbers of issues that require immediate response for local content

ISSN 2581 3382

development in the country. It is important for the government to extend the application of local content into other public and industrial policies of the different economic sectors than concentrating on the extractive sector alone. There are advantages of involving public policies in local content. Public policies will generate more forecasted macroeconomic environment, increase the reliability of institutions and the legal system. It will provide incentives to enhance sound business practices generate more-enabling infrastructure for business development and enhance social structure, which would contribute to inclusion and participation.[xxix]

It is similar important for the government to increase local skills, business know-how, technology, capital market development, and wealth capture and wealth distribution to create condition for domestic companies to emerge. The industrial policy is another segment which is conceived with sustainable economic development. Industrial policies concentrate on the efforts, which could facilitate the participation of locally owned firms in the domestic petroleum and mining activities competitively.

The government should improve local infrastructure. This includes ensuring the availability of certain conditions such as information technology, local company's needs, standards, social, education, in the local extractive industry. The government in collaboration with major players in the extractive sector also needs to improve public utilities like roads, railways, and air transport, telecommunications electricity and water supply as business development infrastructure.

It is indispensable to improve local environment. Some particular government policies like investment policies, land policies, tax policies owe significant impact on ensuring competitive environment for local content development. The government must improve local capability. It is necessary to improve local capabilities with education, training, and sharing expertise, transfer of technology and know-how and to actively invest in research and in manufacturing and services. The government should adopt local policies which appreciate and encourage foreign firms to collaborate with local companies to give impulses and create dynamics to the development of indigenous firms.

Furthermore, the government should advance local content development. The government should establish strong relationships among political, infrastructure, environmental and local capability which results to economic growth, industrial growth and spill over impacts.

ISSN 2581 3382

Advanced level of local content will significantly contribute to the host country's economy by creating and developing value added activities and competitiveness by intentional standards.

There are challenges of managing local content in the Tanzanian extractive sector. Among others are: lack of improved educational infrastructure, lack of a stimulating government regulatory framework, deficient infrastructural facilities, lack of adequate finance, insufficient pertinent technical expertise and unhelpful multinational company's attitude, corruption and mismanagement, and lack of appropriate materials.

Others are: inadequate or inappropriate industrial skills in local community to meet company needs, insufficient coordination with internal and external stakeholders, complex procedures and costs for small to medium sized local business associated with procurement prequalification requirements, lack of strong relationships between the extractive sector and communities, and prerequisite integration of the local content for the extractive sector with other economic sectors and lack of enforcement legal provision on failure to comply with local content requirements.

As far as this study is concerned, we are of the view that to improve local content in the country for purposes of obtaining the maximum benefits to local communities, particularly in mining and petroleum sectors, the government must adopt attractive and effective measures or fiscal policies, legal and institutional frameworks reflecting local content issues. Support for local content policies must be nation-wide. Efforts should be done of ensuring that local content objectives are known, accepted and integrated in every operator's business plan.

The concept of local content as discussed entails fundamentals which can be summarily stated as follows: that, indigenous or nationals need to be given opportunities to participate in investment businesses planned to be carried out, or that is being carried out in the country; and foreign investing companies, extractive companies in particular have to make use of and add value to the locally available possible resources: human, material and services. Investing companies, in this regard extractive companies are supposed to ensure increased participation of nationals, and especially local communities in the obtainment of the maximally possible benefits available in the ongoing investment projects for their development.

The concept of local content is useful to the study. It actually calls for examining whether there are appropriate legal arrangements for local participation in the exploitation of mineral and

ISSN 2581 3382

petroleum resources. It triggers for appropriate domestic legal arrangements that ensure local participation to obtain the greatest benefits from their own resources. In other words, the concept enlightens on the need of the legal framework that makes possible increased participation of nationals to securing the maximum possible benefits from the locally available mineral and petroleum resources.

As many scholars would suggest, particularly Bgegi and Adebis[xxx] local content in mining investment denotes the mainly planned contribution that a corporation can generate to secure its social licence to function and leave an affirmative legacy in country. With local content concept delivering benefits in communities, especially communities where extractive industries operate is no longer a choice of investing companies. It is a commercial need, increasingly mandated by law. Bgegi and Adebis have the following suggestion on local content:

> In the new competitive landscape of waning supply and increasing demand for energy and mineral resources, companies in the extractive industries face rising expectations to do more than simply mitigate negative impacts, serve as sources of tax/ royalty revenue, and act as good neighbours. Today, business success depends on the ability of companies to develop local talent, build a competitive local suppliers base, and deliver lasting socio-economic benefits to the areas where they operate.[xxxi]

In this context of wanting increased benefits from country resources, particularly extractive resources such as minerals, oil, and natural gas, local content is used as a government tool. This tool is indented to generate economic benefits for local economy. This is the same view which Ramdoo[xxxii] concedes.

The jurisprudence for applying local content is geared by the need to resolve regular challenges resulting from investments. With respect to mineral and petroleum investments for example, among the challenges include: the overreliance on natural resources with respect to their contribution to national income, foreign exchange and export; the paradox of plenty, that is, unacceptably high prevalence of poverty and inequality amid an abundance of resource riches; to mitigate and manage social and political risks due to raising expectations domestically for

ISSN 2581 3382

a better and more equitable distribution of wealth; and the need to create more job opportunities, given the capital-intensiveness of the extractive sector.[xxxiii]

The general account above on local content, portrays the five concepts, which even though they can be explained differently, they are decisive component parts of the whole of the concept local content. These five concepts are: free carried interest or simply state participation; corporate social responsibility (CSR); employment, training and transfer of technology; value edition; and empowerment.

FREE CARRIED INTEREST

Free carried interest is a concept which designates increased participation of state in the exploitation of natural resources. It is a notion which generally addresses ownership of extractive resources by a state as a determinant factor for the realization of maximum benefits.[xxxiv] It is also called state participation or government participation. McPherson[xxxv] affirms that the thought concerning free carried interest has existed for so long in the advancement of the extractive investments, mining and petroleum in particular. According to McPherson the passion on state participation in mining and petroleum sectors has developed, and even proved to be an important in the exploitation of natural resources, especially in resource-rich emerging economies and transitional economies for their benefits.

Free carried interest or state participation carries a broader thought. However in a very simplified definition free carried interest or state participation means a range of percentage of equity participation. Equity participation of state can be through partial, carried equity arrangements, or extend further to cover equity participation with no financially viable commitments.[xxxvi]

For natural resource-rich states having interest to participate in the exploitation of mineral and petroleum resources is considered significant. It becomes imperative due to the weight which these resources carry to cause improved socio-economic conditions in the society.

Many resource-rich communities have identified the mining and petroleum sectors as the powerful sectors of their economies. They lean on states to exercise great control to ensure that resources exploitation enhances the maximum benefits.[xxxvii] The importance of mineral and

ISSN 2581 3382

petroleum resources to economies compels states to adopt unique strategies which ensure that their exploitation provides adequate opportunities for the country and its people to obtain the maximum possible benefits. For that reason different countries have done every possible means to ensure that the national interests in the extractive sector are not exclusively owned by foreign companies. Some countries have put down laws which allow direct participation of the national companies (either mining or petroleum companies) in the commercial activities of the mining and petroleum sectors. Under these arrangements state participation can either be through joint ventures with foreign companies, or to open equity to local partners to obtain licence. Argentina and Mexico for example are noted by being the first countries in the world to have the direct participation of their companies (YacimientosPetroliferosfiscales (YPF) and PetroleosMexicanos (PEMEX) respectively) in petroleum investment businesses since 1920s and 1930s.[xxxviii]

Tanzania has opted for these arrangements in its mineral and petroleum sectors as well. Botswana has also opted for the same arrangements in its mineral sector. Brazil had opted for these arrangements before, but now accepts foreign ownership of extractive resources. There are those countries who have considered local ownership of extractive resources as the best way for benefiting from their extractive resources. They have put down laws which limit foreign ownership of their extractive resources. Good examples of these countries include Nigeria, Uganda, Angola and Ghana.[xxxix] Still there are other countries which do not consider any of the two described legal arrangements in their extractive resources sectors. To these countries, ownership of extractive resources is not a determinant factor for benefiting. They have put down legal arrangements which allow a total ownership of their natural resources by either foreign companies or local companies. What they consider is just the capacity of investors and not their nationality. Sometimes the laws of these countries are soft that they allow local companies to take shares in the business at a later stage, at elective basis. Norway is one of these countries.[xl] Tanzania has been being doing the same in its mining investments, though some initiatives are being done which consider local ownership as the best approach. This is revealed in its Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 (Act No.7 of 217).

Depending on country arrangements, there are mainly four major forms of state participation in the natural resources exploitation. These are: full equity participation, production sharing, free equity participation and carried equity participation. Full equity participation could involve

ISSN 2581 3382

a state carrying investment though its national company without private sector involvement, or investing with private investor from the initial stages of operation as contracted by parties.[xli] This could possibly be on joint venture agreement depending on the decided method of distribution of shares between parties. Production sharing involves an active participation of the national oil company in the operation of the investment business. The national oil company carries the national interests. It becomes the regulator of the project. It is mostly done in the petroleum sector. Free equity participation is similar to production sharing; but only that in free equity participation equity is granted to the state directly and with no fiscal commitments on part of the private investor. Carried equity participation may take dissimilar forms. However, the most common form is the one where private investor carries or pays to the national oil company or the state mining company (sometimes called National Mining Corporation) equity shares from early stages of the investment project. This is mostly done in the mining sector.

Generally with regard to state participation there has been a move in different resource-rich countries of increasing their participation in mineral and petroleum investment activities. It is stated that the 39 countries which are identified by IMF as currently or potentially petroleum-rich have provided for direct state participation under a variety of modus operandi.[xlii] These countries include Algeria, Angola, Azerbaijan, Bahrain, Brunei Darussalam, Cameroon, Colombia, Iran, Iraq, Kuwait, Libya, Mexico, Nigeria, Norway, Oman, Qatar, Russia, Saudi Arabia, United Arab Emirates, and Venezuela.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

This is another concept in the study of local content. Reviewed studies show difference among scholars in the conceptualization and construction of corporate social responsibility (CSR) across industrial sectors, and geographical contexts.[xliii] There are incongruities among scholars studying CSR on the definition of CSR.[xliv] There is however a common mind among scholars which put down the proposition that corporations form the primary part of societies for their significant role that they play in the advancement of the population in which they work.[xlv] This was the idea that has had driven the concept of CSR.

Thus, in spite of the difficulties in defining the concept of CSR, mostly due to the level of abstraction of the word social, which have caused problems to scholars, to determine and

ISSN 2581 3382

evaluate corporations' contribution to the livelihood of society,[xlvi] there are still attempts to define the concept. The first attempt to define CSR was made by the World Business Council for Sustainable Development (WBCSD), where CSR is defined as the business behaving ethically while contributing to the economic development of its employees and the broader community.[xlvii]

In the World Bank's working definition:

> CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families, as well as of the local community and society at large…[xlviii]

Carroll has confined CSR in the four components as follows:

> The total corporate social responsibility of business entails the simultaneous fulfilment of the firm's economic, legal, ethical and philanthropic responsibilities.[xlix]

Scholars such as Burton et al.[l] explain how values that are emphasized by different cultures affect society expectations from institutions and the role of institutions within the society. The concept of CSR had extended to corporations participation in providing solutions to socio-economic challenges in local communities. Currently CSR is being embraced by many corporations, mostly multilateral extractive companies. Ideas of the many countries, especially developing African countries propose that CSR programs provide solutions related to resolving poor governmental and low levels of state provision of public services, human rights protection and environmental protection.[li] They consider CSR as beneficial when they are engaged in programs related to access to water, medical care and education, infrastructure and energy.

Literature advance that the construction of CSR from developed countries could not necessary become relevant or transferable to developing countries where business, political, economic and social environment differed considerably.[lii] It is necessary to contextualize CSR in developing countries both, in terms of corporations' ethical demands and societal expectations of corporations' accountability. Sincerely CRS as a concept has become functional, especially where there is established good relationship between the investment company and the local

ISSN 2581 3382

population in which the project is operating. Unlike in the previous era, where CSR programs have had organized in corporation’s head-quarters, it is important that CSR programs aim for the greater engagement at local community level.[liii]

There have been challenges regarding the practicability of CSR. Some scholars argue that practically CSR do not address the important problems of local communities in which investment corporations operate, instead it has concerned with stakeholders in developed economies. It is presented that CSR do not effectively hold the most important and sound effects of business activity on local communities. CSR is simply viewed as an attempt to buy off the community and create space goes with business as usual. For instance, building recreation hall or town hall or health clinic in a mining community where the most apparent impact of mining activity is large-scale environmental degradation or forced relocation of villagers or poor sanitation might be viewed as simply an attempt to buy off the community as the program does not address the most obvious negative consequence of mining.

Of all the cases, it is opined that to address the significant impact to community, CSR must acquire its force from country specific legal framework related to the planned investment project. It can acquire force from law or from any designed forms that allow community engagement. It can also be done in a form of community-investor social contract. This suggestion is made with knowledge that it is the community that understands its development needs and objectives, and whether such needs and objectives require mediate or immediate solutions than the investor.

Yakovleva and Vazquez,[liv] explain that CSR arrangements have become successful in investments of the extractive sector in Argentina. The reason for this success is that in this jurisdiction CSR is a negotiable issue between extractive investors and the local communities, where these communities through local stakeholders address important social, environmental and economic issues associated with investment.

The essence of CSR therefore could be summarized as follows; it is the commitments which investment companies, especially extractive companies are required to carry out, to contribute to improve the socio-economic growth of the local communities in which these companies have established their projects. The concept of CSR is useful to this study. It offers the indirect benefits which investments in the extractive sector are obliged to give to local communities. It

ISSN 2581 3382

could be by way of empowering these local communities or any better ways that could make possible for them to obtain the maximally possible benefits they are entitled to receive. It is important that investment companies, especially extractive companies contribute in addressing developmental issues of local communities in which they operate. This establishes a very good relationship because these are the host communities of their investment projects.

COMPENSATION AND RESETTLEMENT

Compensation means reparation or damages, and resettlement means relocation or repositioning. Investments in the extractive sectors are conducted on land which in most cases has been in use by natives. The natives use land for different purposes including among others, settlement and as major means of earning their income. The act of taking land from the natives under the philosophy of public interest has in most communities attracted negative impacts. It has raised conflicts between investors and the local population.

The concept of compensation and resettlement has become important in order to mitigate the negative impacts likely to come from the use of natural resources in extractive communities. With the negative implications of use of natural resources it becomes indispensable to have proper and effective legal and institutional frameworks, which provide for fair and reasonable compensation and which provide complimentary ways for resettlement if it appears that land acquisition is inevitable. It is proper to have the legal framework which recognizes and protects the rights of the natives on land, to extent that when such rights are infringed proper measures can be complied with for fair, prompt and adequate compensation.[lv] Inadequate compensation and poor resettlement plans are not intended to mitigate land havoc in the community, nor are they intended to benefit the natives. They can accelerate grievances and controversies in the community on reason of investment.

Reparation for relocation and resettlement becomes beneficial to the natives when paid or arranged promptly, fairly, and at the elevated level than the existing market price or below the market price. It is advised that objectives for compensation and resettlement include elements of good governance, such as equity, efficiency, participatory decision making, sustainability and accountability in line with the concept of Free Prior Informed Consent (FPIC).[lvi] It is further advised that in case of private investment, the investor negotiate by the natives instead

ISSN 2581 3382

of relying on compulsory acquisition measures of state. In Tanzania compensation and resettlements are provided for in different laws, including mining legislation, petroleum legislation, land legislation and investment legislation.

VALUE ADDITION

Value addition as a concept is defined in the Mining (Local Content) Regulations, 2018 as the economic improvement of a product or service in the mining industry.[lvii] This is also the idea that prevails in the petroleum sector about value addition. That it is the economic improvement of a product or service in the petroleum industry.[lviii] It is suggested by Amoako-Tuffour (etal.)[lix] That local content and value addition is used as one of the methods to increase benefits in natural resources exploitation.[lx] In fact value addition in the extractive sector aims at increasing additional economic prospects to domestic extracted raw materials, goods and services by the use of new technology and skills. It increases the economic quality and standards of locally available materials, produced goods and services to attract competitiveness at the international market.

Value addition is typically rooted in the want of transformation of locally available raw materials, goods and service to the better worth in the economic value chain. In the mining sector for example by value addition extracted gold increases the payback. Value addition involves contemplation of the whole value chain in the extractive investments. It starts from the exploration, to extraction, processing, beneficiation, fabrication and marketing.[lxi] It is expected that with new technology the percentage of locally available raw materials will be further transformed or beneficiated to attract international competitiveness.[lxii]

EMPOWERMENT

Empowerment as a concept in natural resources exploitation implies creation of awareness of individual persons, particularly the marginalized groups in the extractive projects for the purpose of increasing their participation in the control of natural resources exploitation.

ISSN 2581 3382

This concept of empowerment suggests for the facilitation of the marginalized groups: women and people living with disabilities, to gain much power to be able to participate actively in the governance of their resources with the goal to obtain maximum benefits.[lxiii] It entails the ideas that for the marginalized groups to be able to benefit it is necessary that they become acquainted with knowledge about their undeniable rights; and to empower them to be able to claim for these rights as defined in different legal instruments.[lxiv]

The concept of empowerment calls for stakeholders to design ways favourable to building capacity of local people, especially women and people living with disabilities to be enabled to benefit from their natural resources. It articulates further that designed legal frameworks in governance of natural resources exploitation should embrace local cultural practices and values.[lxv]

CONCLUSION

Generally benefits that can be obtained from extractive investments are the advantages and profits, which could be either in monetary form or in non-monetary form. In this sense there could be monetary benefits and non-monetary benefits. Maximum benefits are expected from investments in the natural sector because natural resources such as minerals are valuable national assets.[lxvi] They are expected therefore by the entire community to offering unique opportunities for socio-economic growth and to ensure community with supply of affordable energy. Investment projects in the extractive resources are expected to ensure considerable revenue to government and to contribute to improving the conditions of living of the people.

In a nut shell this paper discusses the term benefit as any advantages and profits accorded in the extractive investment, whether monetary or non-monetary, but not limited to the high level of state or government participation in the mineral and petroleum investment operations; revenue collection in the form of royalties and taxes, charges and fees, duties and levies; high level of local content supplies, increased participation of nationals in investment projects through employment, training, transfer of technology or succession plan, including research and development plan (R&D) and increased contribution of extractive companies to the socio-economic developmental needs of the local communities in which these companies operate. Appropriate legal provisions on the mentioned benefits have great positive impact for country's

ISSN 2581 3382

economic growth and for improving conditions of living of people, especially local communities. But again it is the author's view that it is imperative to have arrangements which balance the best interests of the country and its citizens, the people who are the owners of natural resources and the investing company to ensure equitable sharing of benefits in natural resources investments. Inappropriate legal provisions, which lean more on benefiting one party of the investment agreement, have great negative impact for country's economic growth and for improving the conditions of living not only in natural resources investment projects but also in any other economic endeavours expected to yield profits.

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ISSN 2581 3382