

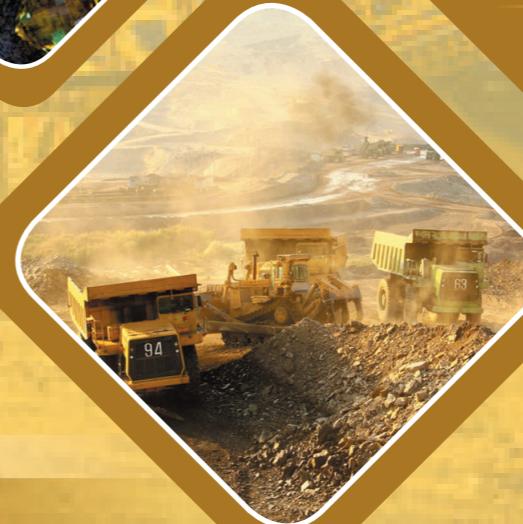
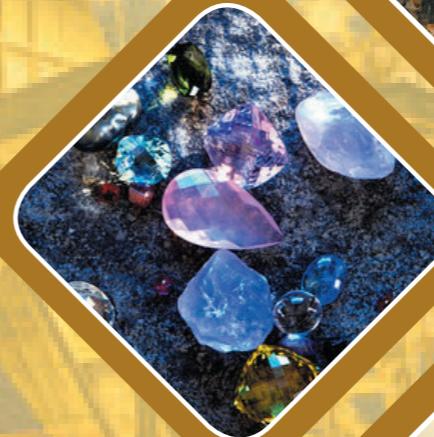


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Analysis on Tanzania's Implementation of the Africa Mining Vision Cluster Five (Mineral Sector Governance)

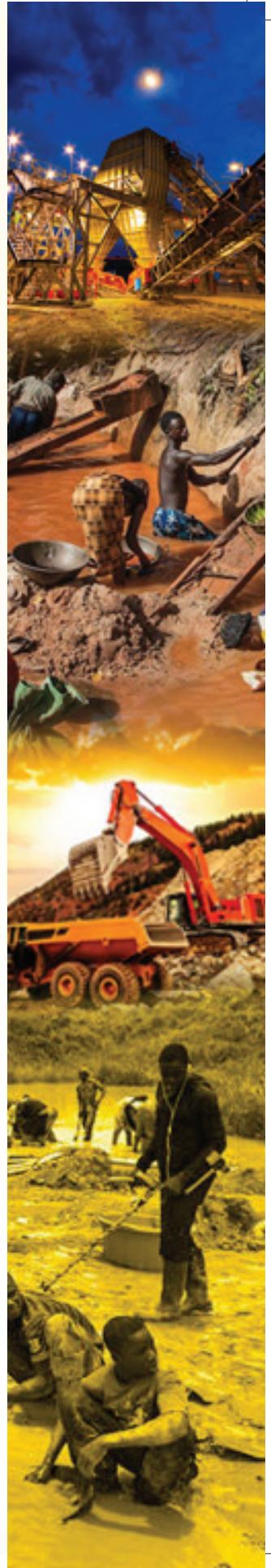
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Executive summary

This study assesses Tanzania's domestication and implementation of AMV Action Plan Cluster 5 (Mineral Sector Governance). The study adopts a desktop research approach to gather and make sense of the information. It seeks to identify Tanzania's strong and weak areas in respect to the implementation of AMV Cluster 5. It adopts the AMV Action Plan monitoring indicators to evaluate Tanzania's progress. Based on this, this analysis makes the following findings:

With creating a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities:

- i. Tanzania has not developed a National Mining Vision (NMV) to domesticate the AMV and provide a context-specific roadmap for the implementation of the AMV Action Plan.
- ii. Some information on the mining sector especially on revenue receipts from mining companies is publicly accessible. However, contract and beneficial ownership information disclosure remains a nightmare. Further, even the disclosure of information on revenues is not that much accessible to all because it is only those that are proficient in English and have access to the internet that can access it.
- iii. No specific policies, laws and regulations on public participation in mineral sector legislative processes have been developed in Tanzania. The existing laws, policies and regulations only provide for public participation in local content, CSR, primary mining licences and equity participation. These, however, do not entail participation in legislative processes.
- iv. Although the 2017 laws provide for parliamentary oversight of the mineral sector especially with regard to renegotiation of contract terms, in practice this has not been the case. Further, although there is an oversight parliamentary standing committee on energy and minerals, funding to facilitate its proper functioning remains a challenge.
- v. Community and other stakeholder participation in policy making processes and mining projects remains wanting. Community participation is only limited to CSR; there has not been efforts to streamline national policy making with community participation. Broader stakeholder participation in the same takes place within constrained time limits because the practice has been that mineral sector laws are made under a certificate of urgency. This does not provide ample space for stakeholders to participate in policy making.





- vi. The Protocol of Free Prior Informed Consent with respect to communities affected by mining activities has not been fully domesticated. There are some provisions in the Mining Act 2010 (CAP 123 R.E. 2019) in favour of FPIC but these have not been followed with clear regulations to guide their implementation.
- vii. With respect to CSR policy coherence, the existing policy and legislative framework are coherent. What is stated in the 2009 mining policy is further strengthened in the Mining Act 2010 (CAP 123 R.E. 2019).
- viii. Capacity of local governments, communities, CSOs and mining companies to make informed decisions on mining projects remains challenging. Even though local governments have been provided space to determine CSR, there is limited emphasis on building their capacity to negotiate with mining companies on CSR. Some CSOs have come to the rescue but this remains a limited effort. Communities on the other hand have not been empowered to negotiate make informed decisions. CSOs have done some advocacy on this but their coverage remains limited.
- ix. Guidelines for the equitable distribution and utilisation of portions of the mineral wealth have not been developed. Revenues streaming from mining go directly to central government coffers and it is not clear how these are managed and utilised. It would be wise to have in place a mechanism for mineral wealth distribution and utilisation that is inclusive and takes into account intergeneration equity issues akin that for the oil and gas revenue management.

On improved human rights in the mineral sector:

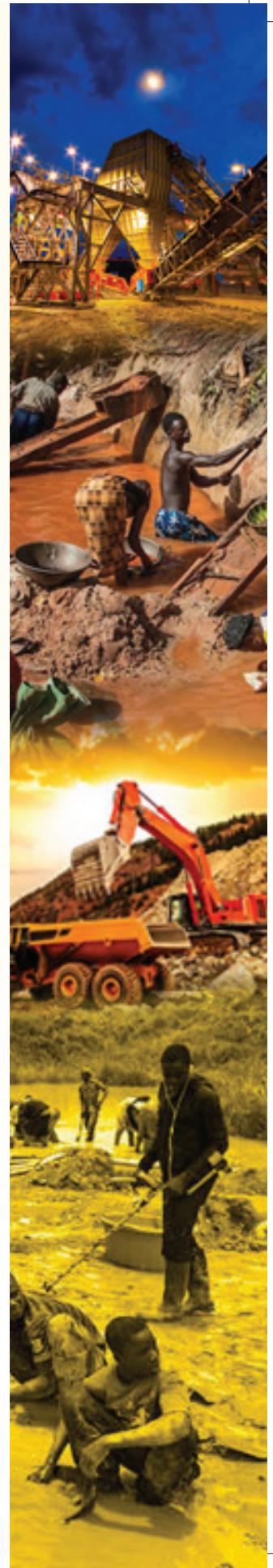
- i. Tanzania has ratified human rights conventions and instruments relevant to the mineral sector in its broader legal system. However, these have not fully been domesticated in the mining sector. There are some human rights provisions in the mining sector legal framework but these are not strengthened with an implementation strategy such as regulations.
- ii. Tanzania has not developed any guidelines for mining companies to comply with human rights standards.
- iii. Public human rights institutions exist but these have not been empowered with human and financial resources to monitor enforcement of human rights standards with respect to mining. The Commission for Human Rights and Good Governance, a key human rights promotion institution, faces financial constraints. It did work on mining human rights issues in the past but with financial constraints, it has not been doing much of recent.



- iv. Other human rights organisations such as CSOs have, with funding support from international agencies and institutions, have kept a strong monitoring eye on the human rights record of mining companies. They also conduct advocacy around human rights issues.
- v. Methodologies and tools for mainstreaming health and human rights issues into impact assessment procedures and policy planning frameworks have not developed. Impact assessments in the mining sector and other sectors continue to focus on economic, social, cultural and environmental issues. Health and human rights have not yet been mainstreamed.

Based on these findings, the following recommendations are made:

- i. Tanzania should consider developing a National Mining Vision to domesticate the AMV and provide a roadmap for the implementation of the Cluster 5.
- ii. Tanzania needs to further strengthen transparency and access to information beyond the publication of revenue reconciliation reports. It also has to invest more in access to information using a variety of formats and in language that is accessible to majority of Tanzanians.
- iii. Since the beneficial ownership regulations have been published, the government should now move to swift implementation of beneficial ownership disclosure especially with regard to the register of company beneficial owners.
- iv. Tanzania should strengthen its commitment to community, public and stakeholder participation in mineral sector decision-making and governance processes. It should adhere to the AMV Action Plan by legislating for public participation.
- v. Tanzania needs to strengthen mineral sector oversight by building the capacity of institutions and empowering oversight organs such as the parliament. This can be done through increasing financial resource allocation to parliament to enable its standing committee perform its oversight function adequately. Ensuring that the oversight institutions are independent of government and political manipulation is also an important capacity building strategy.
- vi. Tanzania should consider developing a revenue sharing and distribution mechanism to ensure that mineral revenues are shared between the national government and local governments/communities where mining takes place.
- vii. Tanzania should develop guidelines for companies to comply with human rights standards, empower public institutions for oversight and enforcement of human rights and mainstream human rights and health in impact assessments.





Background and objectives

In 2009, the African heads of state adopted a vision to guide the management of the continent's mineral resources for Africa's socio-economic transformation. Known as the Africa Mining Vision (AMV), the vision seeks, broadly, to use Africa's mineral resources to transform Africa's socio-economic development path in order to address its poverty and limited development by setting Africa on an industrialisation path.¹ In essence, the AMV seeks to set Africa on a resource-based industrialisation path where, instead of exporting raw minerals, Africa invests in creating linkages between mining and rest of the economy. Following its adoption in 2009, the main task that followed was to domesticate and implement the Vision at the regional and country levels. To assist countries in implementing the Vision and ensuring that there is convergence in how the Vision is domesticated and implemented, the African Union Commission, the Africa Development Bank and the UN Economic Commission for Africa coproduced an action plan for implementing the AMV. Published in December 2011, the AMV Action Plan sets out a roadmap on how African countries can put the Vision into practice. The Action Plan details the implementation of the Vision in nine key clusters concerned with different aspects of mineral sector and resource development and governance. These clusters are mining revenues and mineral rents management; geological and mining information systems; building human and institutional capacities; artisanal and small scale mining; mineral sector governance; research and development; environment and social issues; linkages and diversification; and mobilising mining and infrastructure investment.

It is now ten years since the Action Plan was first published in 2011. A decade is an adequate timeframe to take stock of how countries have progressed on implementing the clusters and the Vision generally. This is the main reason why Policy Forum decided to commission this study to provide a critical analysis on how Tanzania has progressed in domesticating and implementing Cluster 5 of the AMV Action Plan. This report presents findings from this analysis. The scope of the assignment revolved around the analysis of the implementation of Africa Mining Vision Cluster Five with a focus on three critical areas, namely,

- i. To examine the AMV cluster five main goal which is (To create a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities), including how it is being domesticated and what are the impacts.

¹ African Union (2009). *Africa Mining Vision*. Addis Ababa: African Union.



- ii. To probe how the activities and outcomes as outlined in the AMV action plan have been implemented and achieved in the country.
- iii. Identification of advocacy gaps and recommendations that can help in attaining full domestication of the AMV cluster five.

This assignment seeks, broadly, to conduct a thorough analysis of the implementation of the Africa Mining Vision in Tanzania with a focus on Cluster V. The Cluster aspires to create a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities.

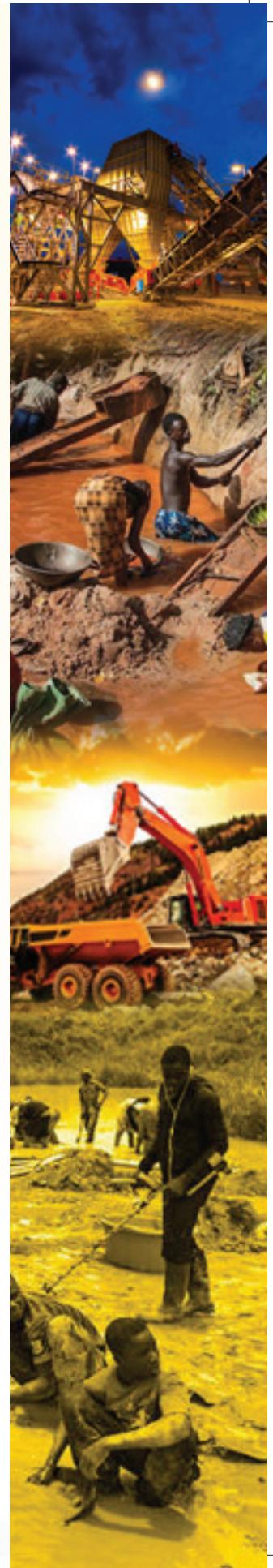
It is now twelve years since the Africa Mining Vision (AMV) was adopted in 2009. Tanzania has, since then, taken measures to domesticate some of the AMV aspirations. Beginning in 2009 with a mining policy and subsequent reforms in the sector, the government has taken several steps to improve the governance of the sector culminating into what has been described as resource nationalist reforms instituted in the period between 2016 and 2019.

Among other things, the AMV calls for resource rich African countries to improve the governance of mineral resources by promoting public participation, putting in place legislative framework for good mineral resource governance, and promoting human rights in the sector (African Union, 2009). Cluster V of the Action Plan emphasises two key areas for better governance of mineral resources: 1) improved multi-stakeholder interactions with greater stakeholder engagement in policy making and decisions related to mineral development; and 2) respect for human rights by companies as an important part of their social licence to operate. Both of these are critical areas that have been at the heart of popular dissatisfaction and civil society advocacy for some time now.

Being a regional initiative, the implementation of the AMV is largely dependent on member country willingness to domesticate its provisions into their extractive sector policy and legal framework and implement them. Thus, to understand the extent to which the AMV is being implemented, one ought to study individual member country progress into the realisation of the Vision's goals. Across Africa, there have been limited focus on studying country level domestication and implementation of the AMV. This assignment is an important step towards addressing the paucity of evidence on the domestication and implementation of AMV Action Plan.

Analysis plan

This is an analytical assignment based on a critical desktop review of existing scholarly studies, government reports and policy documents as well as reports by Civil Society Organisations (CSOs) and other local and international institutions. Given the timeframe for this assignment, the analysis plan has had to be confined to secondary research. Understandably, this means that the resulting report may miss out on the inputs that could come





from primary sources of data had primary data collection been done. This notwithstanding, efforts have been made to ensure that the resulting analysis is as robust and dependable as one can have. Future analyses can benefit further from gathering and making sense of views from the ground where mining activities take place.

A detailed analysis plan for each specific objective of the assignment is provide below.

S/No	Assignment objective	Analysis plan
1	To examine the AMV cluster five main goal, including how it is being domesticated and what are the impacts.	In conducting analysis on this objective, the starting point was the Action Plan itself which describes what should be done to create a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders. Cluster V places emphasis on two areas, namely, well governed mining sector that is inclusive and appreciated by all stakeholders, and improved human rights in the mining sector. A list of activities expected to be done at the national level was used to analyse how Tanzania has domesticated Cluster V and what are the impact so far. In particular, all key legal, policy and regulatory frameworks that have been put in place since 2009 were analysed. This made it possible to determine how Cluster V has been domesticated. To determine the impacts, existing academic studies, government reports and speeches as well as reports and studies by CSOs and other non-government institutions were analysed.
2	To probe how the activities and outcomes as outlined in the AMV action plan have been implemented and achieved in the country.	In this objective, Tanzania's progress on implementing each of the activities and outcomes outlined in the AMV Action Plan Cluster V was evaluated. The evaluation drew on existing laws and instruments, ministry reports and press releases, annual ministry budget speeches, and existing academic publications, among others. Each activity and outcome was analysed so as to provide a detailed account of the experience of Tanzania. This is important as it made it possible to identify areas where Tanzania has performed well and areas that still need improvement.
3	Identifying advocacy gaps and recommendations that can help in attaining full domestication of the AMV cluster five.	This is a synthesis objective that drew on the preceding objectives to draw some conclusions, identify advocacy gaps and consider practical recommendations. In this objective, no new analysis was conducted.



Domestication of the AMV Cluster Five main goal

The Africa Mining Vision Cluster Five, as stated earlier, focuses on mineral sector governance. Mineral sector governance is broadly construed to include concerted efforts taken by resource-rich countries to promote inclusive, beneficial, responsible and sustainable mineral resource development. It is about forging lasting relations between different mining stakeholders including the mining companies, the state, communities and civil society organisations.² According to the AMV Cluster 5, mineral sector governance refers to the 'legal and institutional environment in which various actors in the mineral sector interact.'³ It focuses on such issues as public participation, transparency and accountability, and respect for human rights, among others.⁴

The main goal of Cluster 5 is to create a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities. By focusing on inclusion and stakeholder involvement, the Cluster strives to refocus mineral sector governance on the relationships i.e. building lasting, respectful and trustworthy relations and interactions between and among different mining stakeholders. To properly understand how Cluster 5 goal is being domesticated and what impact that has on Tanzania's mining sector, it is important to closely examine the two specific outcomes expected to result from the implementation of the goal.

1. A well-governed mining sector that is inclusive and appreciated by communities and other stakeholders

Several studies have shown that a key to addressing the infamous 'resource curse' in Africa lies in creating stronger governance mechanisms that bring about inclusion, equality, transparency and accountability in the mining sector.⁵ This is why Cluster V has set 'a well-governed mining sector that is inclusive and appreciated by communities and other stakeholders' as its key outcome. It is important to note here that emphasis is placed on inclusion and appreciation by communities of the mining sector. Communities in mining areas have reportedly remained in the shadows when

² Elias T. Ayuk, Antonio M. Pedro, and Paul Ekins (2019) *Mineral resource governance in the 21st Century: Gearing extractive industries towards sustainable development- Summary for policymakers and business leaders*. Nairobi: United Nations Environment Programme.

³ African Union Commission, African Development Bank and UNECA (2011) *Building a sustainable future for Africa's extractive industry: From vision to action: Action Plan for Implementing the AMV*, p. 24.

⁴ Ibid.

⁵ Okeke-Uzodike, U., Amao, O. B., Idoniboye-Obu, S., & Whetho, A. (2014). From adversity to prosperity. *African Security Review*, 23(3), 243-263; Pedersen, R. H., & Jacob, T. (2017). Reconfigured state-community relations in Africa's extractive sectors: insights from post-liberalisation Tanzania. *The Extractive Industries and Society*, 4(4), 915-922; Poncian, J., & Kigodi, H. M. (2018). Transparency initiatives and Tanzania's extractive industry governance. *Development Studies Research*, 5(1), 106-121.





it comes to mining sector governance despite being the bearers of the negative consequences of resources extraction. This is the main reason for why there has been frequent conflicts between communities, large miners and the state in mining regions, notably in North Mara, Bulyanhulu and Geita. A key question to raise here is: how has Tanzania worked to promote good governance of the mining sector? How has it created opportunities for communities and other stakeholders to partake in the governance processes of the sector?

Legislative reforms undertaken in the mining sector since 2009 have sought to strengthen mineral sector and resource governance including creating opportunities for communities and the general public to participate in mining activities and their governance. The government formulated a new mining policy in 2009, enacted a new mining law in 2010 and subsequently introduced new other laws to cater for the petroleum sector and for transparency and accountability in the extractives sector. The government further introduced stricter laws in 2017. Generally dubbed as resource nationalist reforms, these legislative reforms have sought, among others, to improve the extractive sector's governance by promoting transparency, accountability, participation and inclusion of diverse stakeholders, including communities, in the management of the mineral resources. Taking the Tanzania Extractive Industries (Transparency and Accountability) Act 2015, for instance, citizen participation in the management of mineral resources is emphasised. Further, the 2017 laws provide yet more avenues for strengthened mineral sector governance through parliamentary oversight. Moreover, by asserting sovereign rights over mineral resources and reasserting public resource ownership, it can arguably be said that the laws provide avenues for mineral sector governance to be inclusive.

Whereas these measures to strengthen mineral sector governance imply that Tanzania has indeed worked to domesticate Cluster V main goal, the practicalities of all this continue to cast doubt on the reality of inclusion and the possibility of the mining sector to be appreciated by the communities and other stakeholders. To be fair, it should be said here that the reforms undertaken in the mining sector since 2009 have opened some spaces for inclusion of civil society and other stakeholders in mineral sector governance processes. A quick example that comes into mind is how the civil society organisations were instrumental in the drafting and enactment of the 2010 Mining Act and how they persistently pressed the government for transparency, accountability and participation in extractive sector. Further, the government has been providing some opportunities, albeit limited, to communities and the general public to participate in shaping mineral sector governance through public/community hearing meetings such as those conducted in Mtwaru and Lindi following the 2012/2013 violent natural gas protests.⁶

6 Poncian, J. (2019). *Extractive resource politics and government-community engagement in Tanzania: A case of natural gas*. PhD Thesis (University of Newcastle). <https://nova.newcastle.edu.au/vital/access/manager/Repository/uon:35558>



Whereas these opportunities are welcome especially given the fact that the mining sector governance was non-inclusive and less participatory prior to 2009, the complex political economy surrounding resource ownership and development in Tanzania means that achieving a well-governed mineral sector that is inclusive and appreciated by communities and all stakeholders remains to be seen. For mineral sector governance to be inclusive and appreciable, communities and other stakeholders should have practical opportunities not just to participate but also to shape and determine the agenda. For quite a long time in Tanzania, policy and law making in the extractive sector have remained a closed area. Since 1997, all laws in the mining sector have been passed under a certificate of urgency, which effectively means that communities, and civil society are left with limited or no opportunity to participate in and shape law making for the mining sector. In effect, the resulting laws have largely not been pro-communities; they have instead been in favour of an elusive national interest. The fact that mineral and other natural resources are nationally owned and defined as only extractable to the benefit of 'all' citizens has meant that an inclusive and appreciable mineral sector governance cannot realistically be achieved. There have been instances where the government has insistently dubbed all those calling for inclusion and participation of communities in shaping mineral sector governance as 'selfish' and anti-national development.⁷

Not only has it been difficult to have a well-governed mineral sector that is appreciable to communities, it has equally been the case even to investors. This is especially so with regard to the past five years reforms in the mining sector. Whereas the resource nationalist reforms undertaken during the 2005-2015 period were softer and pro-investors, the reforms since 2016 have sought to subjugate the investors and paint them as conmen and fraudsters. The process by which the reforms were institutionalised was a tightly closed one with the government using the economic war mantra and keep alternative voices in check. Consequently, the resulting governance framework for the mining sector after the 2017 laws could not be said to be inclusive and appreciable, especially to mining investors. Even government initiative to organise mining stakeholder meetings and conferences did not help matters. One may argue that government's pro-artisanal and small scale mining can be said to have made the mining sector's governance inclusive and appreciable to the sub-sector's stakeholders. While there is reason to believe so given the fact the artisanal and small-scale mining sub-sector has suffered marginalisation and criminalisation for so long, the reforms, however, do not necessarily make the sector more inclusive. Studies have shown that the reforms have not been so much motivated by the need to make mining

⁷ Muhongo, S. M. (2013). *Hotuba ya Waziri wa Nishati na Madini Mhe. Prof. Sospeter Mwijarubi Muhongo (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi kwa Mwaka 2013/2014*. Dar es Salaam: Ministry of Energy and Minerals.





sector governance more inclusive and participatory but by the government's plan to formalise the ASM sub-sector for taxation purposes without addressing the plight of artisanal miners.⁸ A detailed analysis that follows below showing how the activities and outcomes of AMV Cluster 5 have been implemented in Tanzania further attest to this.

1.1. Improved human rights in Africa's mineral sector

Mining activities have reportedly been synonymous to human rights abuse and violation. Incidences of community displacement without fair compensation, killings, child labour, violation of labour rights, women marginalisation, destruction of community economic livelihoods, rape and environmental pollution have been widely reported in African mining.⁹ Other human rights such as procedural rights including right to information, participation, and fair compensation have also been compromised in Tanzania's mining sector.¹⁰ Such violations of human rights have been at the heart of many civil society advocacy in Africa generally and Tanzania in particular. CSOs such as Policy Forum, HakiRasilimali, HakiMadini and Legal and Human Rights Centre have been very vocal on these issues and very instrumental in some of the achievements in mining legislations providing for human rights in Tanzania. That said, how has Tanzania fared in terms of promoting improved human rights in its mining sector?

Judging from the existing mining sector policy and legal framework, one can confidently argue that there have some milestones in legislating for human rights and striving for improved human rights observance in Tanzania. Procedural rights such as fair compensation, participation, and access to information are all provided for in the mining policy, the Mining Act 2010 (as amended in 2018), the

⁸ Huggins, C. and Kinyondo, A. (2019). Resource nationalism and formalization of artisanal and small-scale mining in Tanzania: Evidence from the tanzanite sector, *Resources Policy*, 63, pp. 101436; Kinyondo, A., and Huggins, C. (2019). Resource Nationalism in Tanzania: Implications for Artisanal and Small-Scale Mining. *Extractive Industries and Society* 6 (1): 181–89; Kinyondo, A. and Huggins, C. (2020). 'Centres of Excellence' for Artisanal and Small-Scale Gold Mining in Tanzania: Assumptions around Artisanal Entrepreneurship and Formalization. *The Extractive Industries and Society* 7 (2): 758–66.

⁹ See, among others, Fisher, E., Mwaipopo, R., Mutagwaba, W., Nyange, D., and Yaron, G. (2009). The ladder that sends us to wealth: Artisanal mining and poverty reduction in Tanzania. *Resources Policy* 34 (1), pp. 32 – 38; Centre for Environmental Rights, Centre for Applied Legal Studies, Ground Work, South Durban Community Environmental Alliance, Vaal Environmental Justice Alliance, Highveld Environmental Justice Network, and Earth Justice. (2016). *Joint Stakeholders' Submission on: The threats to human rights from mining and coal-fired power production in South Africa*; Mlowe, P., & Olengurumwa, O. (2011). *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania-the Shootings of the Five. Fact Finding Mission Report*. Dar es Salaam: Legal and Human Rights Centre; Handelsman, S. D. (2002). *Human Rights in the Minerals Industry*. London: IIED and WBCSD.

¹⁰ Pedersen, R. H., and Jacob, T. (2017). Reconfigured State-Community Relations in Africa's Extractive Sectors: Insights from Post-Liberalisation Tanzania. *Extractive Industries and Society* 4 (4): 915–22; Poncian, J. and Jose, J. (2019). Resource Governance and Community Participation: Making Hydrocarbon Extraction Work for Tanzania. *Resources Policy*, 62: 84-93.



petroleum sector laws and policy, and the Tanzania Extractive Industries (Transparency and Accountability) Act 2015 and its regulations. For instance, the TEITA Act 2015 provides for citizen participation in the extractive sector governance, for the citizens to be supplied with information about the sector and the proceeds from the sector, and for fair and transparent compensation.¹¹ However, as we show in the detailed analysis of the outcomes and activities below, legislating for some aspects of human rights in the mining sector laws and policies does not necessarily imply an automatic improvement in the practice of human rights in the sector. Studies have shown that even though the mining sector legal and policy framework may be supportive of some aspects of human rights, the broader political economy context is counterproductive to the promotion of human rights in the sector.¹² More importantly, the challenges and weaknesses identified here have to do, in part, mainly with Tanzania not having adopted a Country Mining Vision (CMV) to domesticate and implement the AMV. This is despite increased calls for a CMV from CSOs and other stakeholders in order to fully domesticate and implement the AMV.¹³

How the activities and outcomes of the AMV action plan have been implemented and achieved in the country

We have briefly provided an outline of how the Cluster 5 main goal has been domesticated in Tanzania by looking at the two key outcomes. In this part, we provide an evaluation of how the activities of the AMV Action Plan Cluster 5 have been implemented and achieved in Tanzania. Based on the two envisaged outcomes i.e. a well governed mining sector, and improved human rights in mining, the Cluster lists several activities to be undertaken at the national, subregional and regional levels in order to achieve the main goal. In this section, our analysis focuses on the activities at the national level.

2. Activities for a well-governed mining sector

In order to attain a well-governed mining sector that is both inclusive and appreciated by communities and other stakeholders, several activities are proposed in the AMV Action Plan. We analyse each of these activities as follows:

¹¹ United Republic of Tanzania. (2015). Tanzania Extractive Industries (Transparency and Accountability) Act.

¹² Poncian, J., & Kigodi, H. M. (2018). Transparency initiatives and Tanzania's extractive industry governance. *Development Studies Research*, 5(1), 106-121; FIDH, and LHRC. (2017). *Tanzania: Freedom of Expression in Peril: Joint Situation Note*. Dar es Salaam: FIDH and LHRC.

¹³ See, among others, Uongozi Institute (2020). *Enhancing national ownership in the mining sector: Domesticating the Africa mining vision*. Dar es Salaam: Uongozi Institute; Tax Justice Network-Africa and Policy Forum (2017). *Where is the Money? Taxation and the State of Africa Mining Vision Implementation: A case of Tanzania and East Africa*. Nairobi: Tax Justice Network-Africa.





2.1. Strengthening transparency and access to information

Access to information and transparency are key ingredients of inclusive and participatory mineral resource governance. Access to information is a prerequisite to functioning transparency and accountability in mineral resource governance; transparency cannot be said to be observed without unhindered citizen access to information.¹⁴ Access to information enables citizens not only to know what is going on in the mineral sector but to demand for accountability of the leaders and mining companies. Further, transparency and access to information have been shown to be antidotes to the resource curse, corruption, resource conflicts, and an enabler of proper revenue management and expenditure in the mining sector.¹⁵ Given the numerous resource conflicts across Africa, mismanagement of mineral revenues, and opaqueness surrounding mining deals, revenue receipts and expenditure, and exclusion of citizens and communities from the mineral sector governance, transparency and access to information have increasingly become a topical agenda of regional bodies, international and local NGOs and CSOs; this is the reason why we have the Extractive Industries Transparency Initiative (EITI), the principle of the Free Prior Informed Consent and many other such initiatives. It is also the main reason why the AMV emphasises transparency and access to information with its Action Plan listing it as a key activity towards achieving a well-governed mining sector that is both inclusive and appreciated by communities and other stakeholders.

Tanzania has made strides in implementing the activity of transparency and access to information in the mining sector. It has enacted laws and regulations which provide for transparency and access to information both in and outside the mining sector. It has enacted the Tanzania Extractive Industries (Transparency and Accountability) Act 2015 to provide for transparency, accountability and access to information in the extractive sector; has developed and published the regulations for transparency and accountability in the extractive sector; and made provisions for transparency and access to information in several other laws including the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017, and the Natural Wealth and Resources (Renegotiation of Unconscionable Terms) Act, 2017. Together, these laws require that mining activities be conducted in transparent manner and that citizens should be provided with information on the developments in the mining

¹⁴ Poncian, J. (2020). ICT, citizen engagement and the governance of extractive resources in Tanzania: Documenting the practice and challenges. *Extractive Industries and Society*, 7(4): 1498-1510.

¹⁵ Besada, H., Lisk, F., & Martin, P. (2015). Regulating Extraction in Africa: Towards a Framework for Accountability in the Global South. *Governance in Africa*, 2(1); Corrigan, C. (2014). Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative. *Resources Policy*, 40, 17-30; Williams, A. (2011). Shining a Light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency, and Economic Growth. *World Development*, 39(4), 490-505.



sector. For instance, the TEITA Act 2015 establishes the Tanzania Extractive Industries (Transparency and Accountability) Committee and charges it with, among others, the responsibility to promote awareness of extractive industry companies and its contribution to socio-economic development, and disseminate by way of publication of reconciliation and investigation reports or otherwise any information concerning revenues received by the Government from extractive industry companies as it may consider necessary. These two functions serve both the transparency and access to information purposes. To further enhance transparency and accountability in the extractives, the law requires that information on concessions, contracts and licenses relating to extractive industry companies, beneficial ownership and implementation of environmental management plans be published by the responsible minister in the website or through a media which is widely accessible.¹⁶ By providing for parliamentary review of contract conditions, the Permanent Sovereignty and the Renegotiation of Unconscionable Terms Acts provide room for contract transparency and for citizen access to information through their elected representative.

It is one thing having laws that provide for transparency and access to information and entirely another thing to have the legal provisions enforced. Since the AMV Action Plan was published in 2012, Tanzania has made some progress in actualising transparency and access to information. The laws that have established the Tanzania Extractive Industries Transparency Initiative (TEITI) and provided for regular conduct of revenue receipt reconciliation and publishing the reconciliation reports on accessible platforms provide for legal ability to make the mining sector transparent and accountable.¹⁷ However, a major challenge that remains is moving from what the laws provide for to making the sector realistically transparent and accountable. Further, in the period from 2010 to 2015, there was increased civil society advocacy around issues of transparency and access to information, increased critical media coverage of transparency and mineral revenue receipt as well as critical parliamentary debates on these and other mineral related issues. However, this cannot be said to be the case with the period from 2015 to 2021 during the late President Magufuli administration. In the 2015-2021 period, the government tightened its grip on transparency and access to information as it descended on freedom of press, curtailed the space within which civil society functioned and made the mining sector reforms an issue of an imaginary 'economic warfare' which made the state an exclusive custodian and disseminator of 'right' information. Moreover, whereas the 2017 laws provided for contract transparency, the government rescinded on that claiming that making contract transparent would expose Tanzania to unscrupulous people who would use freeze whatever national assets they find to secure money from the government.¹⁸

¹⁶ See Section 16 of the TEITA Act, 2015.

¹⁷ Poncian and Kigodi, 'Transparency initiatives and Tanzania's extractive industry governance'

¹⁸ Poncian, J. (2019). Galvanising political support through resource nationalism: a case of Tanzania's 2017 extractive sector reforms. *Political Geography* 69, 77-88.





And whereas the government had made a commitment to disclose beneficial ownership information since 2016, the Companies (Beneficial Ownership) Regulations only came out this year. How this leads to full beneficial ownership disclosure remains to be seen.

More importantly, transparency is more than just mere disclosure of information. For mining activities to be regarded as fully transparent, transparency has to meet five key defining qualities. These are that information disclosure must be timely, reliable, relevant, accessible, and understandable.¹⁹ It is questionable whether transparency in Tanzania's mining activities is timely, reliable, relevant, accessible and understandable. It cannot be said to be timely in a context where TEITI reconciliation reports come out usually two years after their due date. Delayed publication of TEITI reports presents issues with the reliability and relevance of disclosed information. More challenges still remain on accessibility of information given that much of the disclosed information is in English language and published on official websites of the ministry and its agencies. This means that information is only accessible to those who can read and understand English and those with internet connectivity; unfortunately majority of Tanzanians do not fall in this category.²⁰

2.2. Public participation in legislative processes

Public participation is a critical enabler of sustainable and inclusive mineral resource governance. It is known to have benefits such as being able to prevent resource conflicts, enhance accountability and produce mineral sector laws and policies that are inclusive and accommodative. Public participation in legislative processes entails creating opportunities for lasting public engagement in shaping legislative processes. It is considered as a key to promoting inclusive, sustainable and democratic mineral resource governance. The AMV Cluster 5 considers public participation to be a tool for legitimising a project, mining laws and policies, thus reducing the costs emanating from the social tensions that can result from an externally-imposed project or legislation.²¹ How has Tanzania fared on this activity?

Public participation in mining legislative processes in Tanzania has remained a contentious issue. Existing mining laws and policies provide some space for public participation in mineral sector

¹⁹ Klinsukhon, S. and Ussahawanitchakit, P. (2016). Accounting information transparency and decision making effectiveness: evidence from financial businesses in Thailand. *The Business and Management Review*, 7 (5): 112-120.

²⁰ Poncian, 'ICT, citizen engagement and the governance of extractive resources in Tanzania: Documenting the practice and challenges'; Poncian, and Kigodi, 'Transparency initiatives and Tanzania's extractive industry governance.'

²¹ African Union Commission, African Development Bank and United Nations Economic Commission for Africa. (2012). *Building a sustainable future for Africa's extractive industry: From vision to action-action plan for implementing the AMV*. https://au.int/sites/default/files/documents/31003-doc-action_plan_final_version_jan_2012_2.pdf



governance. For instance, the Mining Policy aims, among others, to strengthen involvement and participation of local communities in mining projects by requiring mining companies to implement credible corporate social responsibility policies, and involve local communities in setting their development priorities.²² The TEITA Act seeks, among others, to promote the effective citizen participation and awareness of extractive industry companies and its contribution to socio-economic development.²³ The Mining (Local Content) Regulations 2018 talks about the participation of indigenous companies in the mining value chain. These, however, do not sufficiently cover the requirement for public participation in legislative processes. They only cater for economic participation, that is, participation in mineral value chain and corporate social responsibility, not in determining the laws that govern how they benefit.²⁴

Cluster 5 requires that there be sector policies, laws and regulations on public participation for a country to be said to be observing public participation in legislative processes. There is currently no specific policy, law or regulation on public participation in mineral sector legislative processes in Tanzania. The existing laws, policies and regulations are broad covering everything about mineral sector governance. They only provide for public participation in other aspects of mineral sector governance such as corporate social responsibility, local content, and state participation. As good and important as these are, they do not provide opportunities for the Tanzania public to participate in shaping mineral sector legislative processes. Even without these laws, policies and regulations, and with some recognition of public participation in the same, the practice of public participation in legislative processes remains wanting. Although there has been some forms of public participation through, for instance, sporadic public hearing meetings, these have not translated into meaningful public participation in legislative processes.²⁵ The main avenue through which the public can participate in legislative processes is through their representatives in parliament. Assuming that this would work in the interest of the public, the actual practice of mineral sector legislation defies the logic of representation and participation. This is because mineral sector legislative processes in Tanzania have consistently remained a closed area with the government legislating almost entirely behind closed doors. For instance, since 1997, all bills for mining laws have been presented in parliament under a certificate of urgency.²⁶ When tabled under a certificate of urgency, the bills are only debated for a day or two and passed into law. This does and cannot provide opportunities for the public to participate in

²² United Republic of Tanzania. (2019). *The Mineral Policy of Tanzania*. Dar es Salaam: Ministry of Energy and Minerals.

²³ See TEITA Act, 2015.

²⁴ Poncian and Jose, 'Resource Governance and Community Participation'

²⁵ Poncian, J. (2019). *Extractive resource politics and government-community engagement in Tanzania: a case of natural gas*. PhD Thesis, University of Newcastle.

²⁶ Ibid.





and shape the content of mining laws, policies and regulations. It equally does not give room for members of parliament to digest the bills and represent the best of the public interest in legislating for mineral resources in Tanzania.

2.3. Promoting effective mineral sector institutional oversight by the legislature

A well-governed mineral sector thrives on strong institutions and institutional oversight. Strong and functional legislatures are vital in the promotion of effective mineral sector institutional oversight. Through their law making, budget approval and advisory roles, legislatures play a critical role in mineral sector oversight. Legislatures are considered to be the most effective and wide reaching vehicle that can collect and consolidate the views and aspirations of citizens and further enforce these aspirations into the regulatory and governance framework of the State.²⁷ Legislatures play their oversight roles through their specialised permanent committees that are called portfolio or standing committees.²⁸ In Tanzania, mineral sector institutional oversight by the legislature is done through several parliamentary standing committees. These include the Energy and Minerals Committee whose roles include: 1) scrutinising the ministry budget; 2) scrutinising the annual ministry performance reports; and 3) making follow up on the fulfilment of duties by the ministry.²⁹ In discharging its oversight role, the committee conducts regular visits to mines and mineral sector development projects, receives and scrutinises various reports from the ministry and its agencies, scrutinises the ministry budget, and provides inputs to bills tabled to parliament for enactment. The Committee reports on its activities to parliament annually and provides recommendations for improvement. For instance, in its 2020 report, the Committee advised the government to address the many challenges facing the State Mining Corporation (STAMICO) including capitalisation, infrastructure, and workers complaints.³⁰

Apart from performing oversight role over the ministry of minerals and energy, the legislature also plays oversight roles over other aspects of mineral sector governance such as revenue and taxation issues, implementation of laws and so forth. Oversight over mineral revenues and taxation issues is performed through the Public Accounts Committee (PAC). The Constitution and Legal Affairs Committee (CLAC) is a key parliament committee for oversight

²⁷ Zhuwarara, S. (2019). *The potential role of governments in mineral resources contracts*. <https://www.miningreview.com/energy/the-potential-role-of-government-in-mineral-resources-contracts/>

²⁸ <https://www.extractiveshub.org/topic/view/id/23/chapterId/439>

²⁹ Bunge la Tanzania. (2018). *Taarifa ya shughuli za kamati ya kudumu ya nishati na madini zilizotekelezwa katika kipindi cha kuanzia Januari 2017 hadi Januari 2018*. Dodoma: Bunge la Tanzania.

³⁰ Bunge la Tanzania. (2020). *Kamati ya kudumu ya bunge ya nishati na madini: Taarifa ya utekelezaji wa majukumu na shughuli za kamati kwa mwaka 2019/2020*. Dodoma: Bunge la Tanzania.



over all legal affairs including providing inputs on mineral sector bills and oversight over government's implementation of mineral sector legal provisions such as that for review of arrangements or agreements for extraction, exploitation or acquisition and use of mineral resources provided for in the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017.

Arguably, the oversight effectiveness of a legislature can only be as strong or as effective as the government will enable it to be.³¹ Further, in order to play its oversight role, budgetary allocation for legislature for oversight has to be increased.³² The parliamentary standing committee for energy and minerals has regularly pleaded with the government to increase funding to the parliament to enable it play its constitutional, regulatory and oversight roles.³³ Funding aside, it has been shown that some countries have weaker parliamentary institutions that allow the bureaucracy to make decisions without seriously considering Parliamentary input.³⁴ Existing studies in Tanzania report that the Tanzania legislature is compositionally and structurally weak mainly due to being overly partisan with members of parliament prioritising their party interests at the expense of real oversight.³⁵ This limits the extent of legislative oversight over the mineral sector. In the period from 2005 to 2015 there was increased parliamentary oversight over the mining sector owing greatly to the increase in number and critical voices from the opposition members of parliament. It was during this period that issues such as the Richmond saga and the Buzwagi mineral development agreement were brought up to parliament and the parliament debated them critically resulting in cabinet reshuffle. Further, heated parliamentary debates on mining pushed the government to commission a study on mining; this culminating into the mining policy of 2009 and subsequent enactment of mining law in 2010. Because of these, it is not surprising that the parliament was, during this period, nicknamed 'Bunge lenye meno' (a parliament with teeth).³⁶ However, in the period from 2015 to date, this has, unfortunately, backslid due to increase in repressive and suppressive politics and complete non-representation of opposition parties in parliament.

³¹ <https://www.extractiveshub.org/topic/view/id/23/chapterId/439>

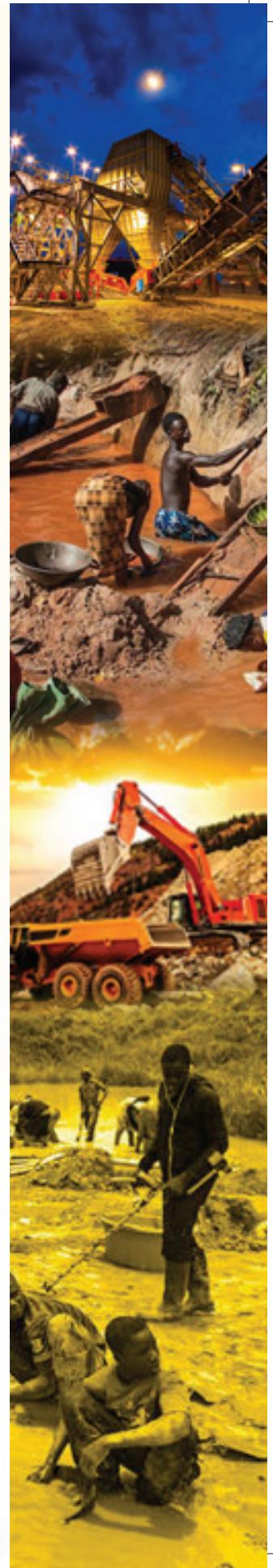
³² African Union Commission, African Development Bank and United Nations Economic Commission for Africa. (2012). Building a sustainable future for Africa's extractive industry: From vision to action-action plan for implementing the AMV.

³³ See reports of the Committee, for example, Bunge la Tanzania. (2018). *Taarifa ya shughuli za kamati ya kudumu ya nishati na madini zilizotekelezwa katika kipindi cha kuanzia Januari 2017 hadi Januari 2018*. Dodoma: Bunge la Tanzania; Bunge la Tanzania. (2017). *Taarifa ya shughuli za kamati ya kudumu ya nishati na madini zilizotekelezwa katika kipindi cha kuanzia Januari 2016 hadi Januari 2017*. Dodoma: Bunge la Tanzania.

³⁴ <https://www.extractiveshub.org/topic/view/id/23/chapterId/439>

³⁵ Pastory, P. (2017). *Regulatory compliance in local government procurement in Tanzania: institutions and context*. PhD Thesis, University of Dar es Salaam.

³⁶ See Slaa, W.P., Sitta, S. and Cheyo, J. (2008). *Bunge Lenye Meno: A Parliament with Teeth for Tanzania*. London: Africa Research Institute.





2.4. Strengthening local government, CSO and mining companies' capacity to make informed decisions

Mineral sector governance is a multi-stakeholder process involving diverse institutions and stakeholders such as local governments, civil society organisations and mining companies. For these institutions to play their role effectively, it is important that they be strengthened so that they can make informed decisions. Thus, Cluster 5 emphasises on the necessity of investing in programmes for capacity building targeted at the needs of each stakeholder. Except for some advocacy and training programmes run and funded by CSOs such as HakiRasilimali, Policy Forum and Natural Resource Governance Institute (NRGI), there have generally not been adequate government attention on strengthening local governments to make informed decisions. The government has, through the mining policy, laws and regulations, required the mining companies to work closely with local government authorities in designing and deciding on corporate social responsibility projects and programmes. There seems to be an implicit assumption that because LGAs know their development needs and challenges better than anyone else, they are automatically in position to negotiate better CSR deals with mining companies. True as this may be, it does not necessarily make LGAs knowledgeable of how the mining sector works to be able to make an informed decision and negotiate with mining companies on a level playing field. As such, there has not been adequate emphasis on training local governments to be able to make informed decisions when they negotiate with mining companies over corporate social responsibility. The government approach has largely been a reactive one, reacting to community and public protests. For instance, following the 2012/13 protests in Mtwara over natural gas pipeline project, the government handpicked a few community members, religious leaders and local government leaders and put them on a 'learning' trip to Malaysia hoping that that would help calm the people of Mtwara down.³⁷ This, however, cannot be said to constitute an attempt at building local government capacity for informed decision-making. In part, government approach in dealing with the local governments stems from the broader political economy context: mineral resources are nationally owned and centrally managed with local governments having little role to play in mineral decision-making and governance processes.³⁸

As for CSOs, it is interesting to note that much has been done by the CSOs themselves to promote capacity building to local governments, central government and other stakeholders. They organise and conduct trainings and advocacy with local CSOs and local governments in mining areas, and organise seminars

³⁷ Poncian, 'Extractive resource politics and government-community engagement in Tanzania: A case of natural gas.'

³⁸ Ibid.; Poncian, J. (2019). When government commitment meets community proactiveness: governing gas and community engagement in Tanzania. *Energy Research & Social Science* 52, 78-90

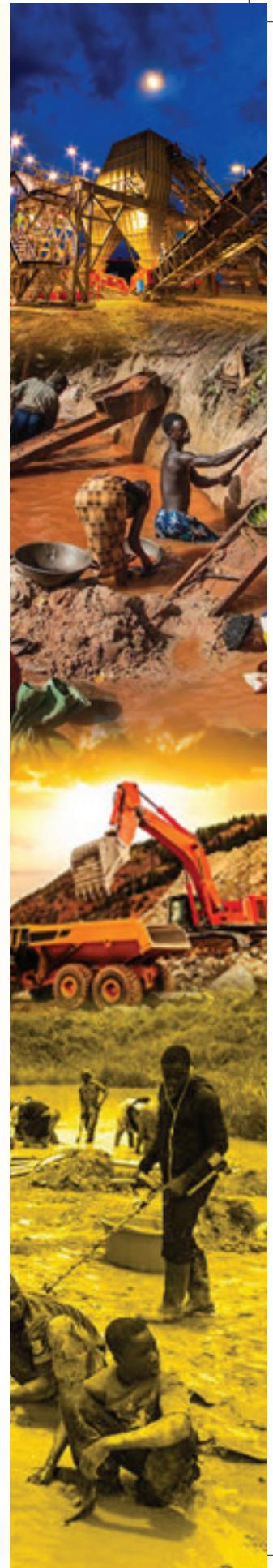


and conferences where they invite local government leaders and community groups from mining areas. Some examples of these include the annual Tanzania Extractive Conference organised by HakiRasilimali which brings together central and local government officials and institutions, large and small scale miners, civil society organisations and other stakeholders. There are also advocacy activities and trainings conducted by CSOs to central government officials and decision-makers including, for example, a training conducted by Policy Forum to members of parliament in 2019 on beneficial ownership and contract disclosure. These are all helpful in enhancing the capacity of CSOs, local governments and the central government to make informed decisions about mining. But more still needs to be done especially on local governments if mining activities have to deliver broader benefits at the local level.

2.5. Ensuring broad participation in decision-making, monitoring and evaluation of mineral projects

Broad participation in decision-making, monitoring and evaluation of mineral projects entails the participation of a broad array of stakeholders in mineral sector governance and monitoring. All stakeholders and actors such as the government agencies, the mining industry, the parliament, CSOs, communities, donors and international institutions ought to participate in decision-making, monitoring and evaluation. The AMV Action Plan shows that this can be achieved by ensuring that decisions made on mining projects incorporate the views of diverse stakeholders. Has Tanzania really worked towards promoting broad participation of stakeholders in decision-making, monitoring and evaluation of mineral projects?

On one hand, the country has made progress in promoting multi-stakeholder participation in decision-making, monitoring and evaluation of mineral projects. Joining the EITI initiative and establishing a multi-stakeholder group (MSG) involving representatives from mining companies, the government and CSOs can be said to be one way through which Tanzania has fulfilled this requirement. The MSG meets regularly to deliberate on several issues and the minutes of their meetings are published on the TEITI website. Further, the monitoring of revenue payment and receipt and subsequent reconciliation and publication of reconciliation reports can be said to be one way of broad participation in monitoring and evaluation of mineral projects. Environmental monitoring by National Environmental Management Council (NEMC), and oversight by the parliamentary standing committee on energy and minerals are other examples of broad participation here. CSO engagement in decision-making, monitoring and evaluation of mineral projects through conferences, research and publishing findings, advocacy with communities and government entities, and so forth are also notable examples of broad participation. But do these count when it comes to making final decisions by the government?





During the period from 2012 when the AMV Action Plan was published to 2015, it can arguably be said that decision-making in the mining sector was participatory with government seeking inputs from diverse stakeholders and using the inputs to reach to make decisions. For instance, the policy formulation process for the natural gas policy, the local content policy and the energy policy were very consultative with stakeholders from the CSOs, donor community, and extractive industries at the forefront. However, when it came to relevant law making in parliament, the space for broader participation was limited given that the bills were tabled under a certificate of urgency. As President Magufuli assumed office in 2015 and began taking radical measures in the mining sector, space for broader multi-stakeholder participation in decision-making, monitoring and evaluation was closed. The mining sector was securitised, mineral sector reforms were dubbed as 'economic warfare' and alternative opinions from the CSOs, mining industry and other stakeholders were criminalised.³⁹ In this way, decisions that were made did not incorporate stakeholder views and interests as these were generally regarded as informed by 'imperialist' motives. With time, these decisions were found to be non-implementable resulting in amendments of, for instance, the local content regulations in just a year. Further, as the Tanzania government concluded an agreement with Barrick Gold Corporation it became clearer that a ban on export of raw mineral concentrates and a requirement that investment disputes be resolved in Tanzanian judicial organs as provided for in the 2017 laws could no longer be applicable.⁴⁰ More important, whereas voices of powerful stakeholders such as the mining companies, donors, CSOs may have found some space in final decisions, community interests and voices have always been marginalised. Whenever communities and citizens push for their voices to be heard and taken into account in decision-making, they are usually met with a heavy state repression and suspension as 'selfish' and anti-national development.⁴¹

2.6. Developing guidelines for equitable distribution and utilisations of portions of the mineral wealth

Equitable distribution and utilisation of mineral resource revenues is an important strategy for addressing the resource curse syndrome which has plagued many mineral-rich countries in Africa. Some countries such as Angola, Chad, Congo DRC, Ethiopia, Ghana, Guinea, Niger, Nigeria, South Sudan, and Uganda have functional mineral revenue distribution and utilisation frameworks providing guidance on how revenues should be distributed and shared between the central government, local governments and traditional

³⁹ Poncian, 'Galvanising political support through resource nationalism.'

⁴⁰ Barrick Gold Corporation. (2019). *The Launch of Twiga Minerals Heralds Partnership Between Tanzanian Government and Barrick*. <https://www.barrick.com/English/news/news-details/2019/The-Launch-of-Twiga-Minerals-Heralds-Partnership-Between-Tanzanian-Government-and-Barrick-/default.aspx>

⁴¹ Poncian, 'Extractive resource politics and government-community engagement in Tanzania.'



institutions and/or communities hosting mining projects.⁴² Mineral revenue sharing and distribution stems from an understanding that communities hosting mineral projects suffer much of the negative consequences of mining and therefore, deserve a share of a portion of mineral revenues for their own development. Several countries including Nigeria have also put in place mechanisms for intergenerational distribution and utilisation of mineral wealth through the creation of sovereign wealth funds.

Whereas other mineral rich countries in Africa have devised mechanisms to effect revenue distribution and utilisation, wealth accruing from minerals in Tanzania remains an exclusive government zone in terms of how this wealth should be utilised. Communities hosting mining projects share in the mineral wealth through service levies paid by mining companies to local government authorities, corporate social responsibility projects by mining companies in their operation areas, and through local content requirements. Whereas these ensure that local communities are not left out in sharing in the mineral wealth, they do not guarantee that wealth is equitably and inclusively shared. Further, this arrangement only caters for current generations and needs without consideration of future generations. Since mineral resources are nationally owned and decisions for how revenues should be used are to be made in the interest of the entire citizenry, there are no provisions for equitable and intergenerational distribution and utilisation of mineral wealth. Whatever is accrued from mining goes into state coffers and is directly put to national use without consideration for intergenerational equity. It is surprising that guidelines and/or mechanisms for mineral wealth distribution and utilisation have not been developed despite one for the oil and gas revenues being in place. It would be logical and practical for the government to do the same in the mining sector as it did with the oil and gas sector where it enacted the oil and gas revenue management Act, 2015.

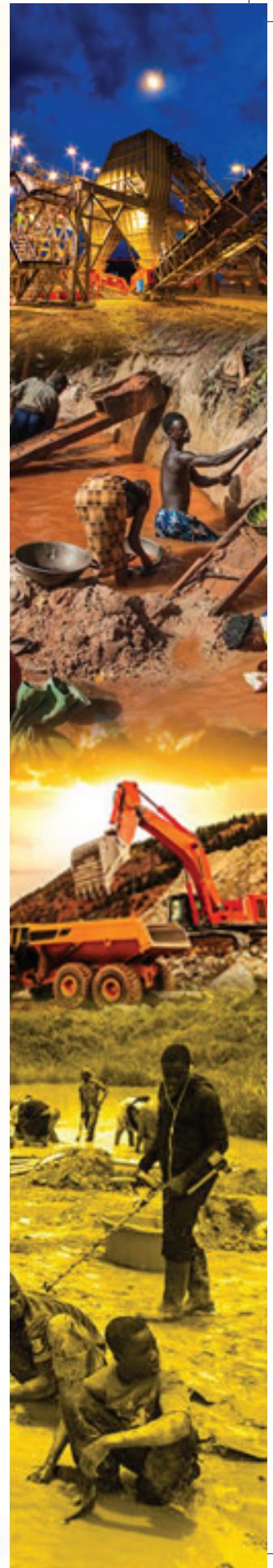
2.7. Domesticating the Protocol of Free Prior Informed Consent

The protocol of Free, Prior and Informed Consent (FPIC) emerged in the context of the increased injustices and human rights abuses to communities and global indigenous and human rights struggles associated with extractive activities.⁴³ FPIC aims at a fairer treatment of indigenous and community groups, the promotion of their rights, as well as giving them an active voice in any development project that is likely to affect their rights and livelihoods.⁴⁴ The main idea

⁴² Andrew Bauer, A. and Gankhuyag, U. (2020). Natural resource taxation and revenue sharing in Asia. In Kim, J. and S. Dougherty (eds.), *Local Public Finance and Capacity Building in Asia: Issues and Challenges*, OECD Fiscal Federalism Studies, OECD Publishing, Paris.

⁴³ Owen, J. and Kemp, D. (2014). Social licence and mining: A critical perspective. *Resources Policy* 38(1): 29-35.

⁴⁴ Mahanty, S. and McDermott, C. (2013). How does 'free, prior and informed consent' (FPIC) impact social equity? Lessons from mining and forestry and their implications for REDD+. *Land Use Policy* 35: 406-416.





behind FPIC is ensuring that the communities adversely impacted by mining activities should be given an opportunity to influence and determine decisions (investment, CSR, policies/laws, etc.) about mining.

With regard to the domestication of FPIC in Tanzania mining sector, nothing has been done to bring this to implementation. Despite constant CSO advocacy for adoption and domestication of FPIC in Tanzania mining, the government has not been moved to bring this fruition. Thus, like mineral wealth distribution and utilisation, FPIC remains an area where more advocacy is needed.

2.8. Strengthening and developing policy coherence to reinforce coherence of corporate social responsibility

Corporate Social Responsibility (CSR) refers to an idea that the idea that a business has a responsibility to the society that exists around it, that is, that a mining company, for instance, has a social responsibility to give back to the community hosting it as a reflection of its good citizenship.⁴⁵ It is an important ingredient to lasting and cordial corporate-community relations. Because of its imagined benefits (such as employment, training, procurement of goods and services, social service delivery, etc.), CSR has become a mandatory policy requirement in Tanzania's mining sector. This is despite the fact that CSR is, ideally, not like mainstream taxes which are mandatory, but something that mining corporations should voluntarily do as part of their good citizenship and to secure a social licence to operate.

Even though there is no policy and law developed specifically for Corporate Social Responsibility, existing policy and legal framework for the mining sector have catered for CSR. For instance, the 2009 Mineral Policy places a requirement on mining companies to implement credible corporate social responsibility policies which should be developed in consultation with local government authorities and communities.⁴⁶ In line with this policy provision, Section 105 of the Mining Act 2010 (R.E. 2019) provides for CSR. The law requires mining companies to prepare a credible CSR plan on an annual basis in consultation with ministers responsible for local government authorities and finance and submit the same to relevant local government authority for consideration and approval.⁴⁷ The law further tasks the local government authorities to: 1) prepare guidelines for CSR in their localities; 2) oversee the implementation of CSR action plans; and 3) provide awareness to the public on the projects in their areas. This means that local governments are defined here as critical institution for the governance of CSR projects in mining activities. Whereas it appears

⁴⁵ Stobierski, T. (2021). *Types of Corporate Social Responsibility to be aware of*. <https://online.hbs.edu/blog/post/types-of-corporate-social-responsibility>

⁴⁶ United Republic of Tanzania. (2009). *The Mineral Policy of Tanzania*. Dar es Salaam: Ministry of Energy and Minerals.

⁴⁷ United Republic of Tanzania. (2018). *Mining Act 2010 (CAP 123 R.E. 2018)*.



that there is some level of policy coherence to reinforce coherence of CSR in Tanzania, the policy is still not very much developed as compared to other aspects such as local content. While there are regulations for local content requirements for the mining sector⁴⁸, regulations to guide the implementation of mining policy and law requirements for CSR have not been developed.⁴⁹ What appears obvious from the existing framework is the decentralised nature of CSR policy making with local governments left to decide on CSR in their localities. Whereas this is a welcome decision in that local governments know better how mining companies should contribute to their development efforts, without clear national guidelines this is likely to produce divergent frameworks across different local government authorities.

3. Activities for improved human rights in mining sector

3.1. Ratify and domesticate human rights conventions and instruments relevant to the mineral sector

Mining activities have serious implications on human rights. They have been shown to inhibit human rights in Africa and across all countries where mining activities take place. This makes the ratification and domestication of human rights conventions and instruments relevant to the mineral sector important as a step to protect human rights. This why the AMV Action Plan emphasises the need for countries to ratify and domesticate human rights conventions and instruments relevant to the mining sector. These human rights conventions and instruments with relevance to the mining sector include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the ILO Convention No. 169 on the Rights of Indigenous Peoples. Others include the United Nations Declaration on the Rights of Indigenous Peoples, the UN Guiding Principles on Business and Human Rights and the African Charter on Human and Peoples Rights (ACHPR). Governments of resource-rich countries are expected to make their domestic laws and regulations consistent with their international human rights commitments; and incorporate principles and guidance from international 'soft' laws into their legal and regulatory framework to protect people affected by mining.⁵⁰ But has Tanzania done so? Many of these human rights conventions and instruments have been ratified by Tanzania and are incorporated in the broader national legislative framework. But this is not what the AMV Action Plan aspires for; the Plan requires that these conventions and instruments be domesticated in the mineral sector legislative

⁴⁸ See United Republic of Tanzania. (2018). The Mining (Local Content) Regulations, 2018 (R.E. 2019).

⁴⁹ Lange, S. and Wyndham, V. (2021). Gender, regulation, and corporate social responsibility in the extractive sector: The case of Equinor's social investments in Tanzania. *Women's Studies International Forum* 84: 102484.

⁵⁰ UNDP and UN Environment. (2018). *Managing mining for sustainable development: A sourcebook*. Bangkok: United Nations Development Programme.





framework. Do these conventions and instruments for human rights feature in the mineral sector legislative framework? The existing legislative framework incorporates some of the provisions of international human rights conventions and instruments. For instance with the right to property ownership, fair compensation and relocation, the Mining Act (CAP 123 R.E. 2019) provides that a mineral right holder should not exercise their rights unless they have had thorough consultation with relevant local government authority including a village council and a written consent of the lawful occupier of a land that falls within the prescribed coverage of the licenced area. With respect to compensation, relocation and resettlement, the Mining Act requires that compensation, relocation and resettlement be done in accordance to the Land Act and the Village Land Act. The existing legal framework further provide for the prohibition of child labour in mining activities.

While this is commendable in the sense that the government respects economic, social, cultural and procedural rights of people, Tanzania has not gone further to adequately domesticate international human rights conventions in the mining sector legal regime. For instance, Tanzania has not domesticated the principle of Free Prior Informed Consent that would have empowered communities in mining areas to accept or reject the establishment of a mining project. The existing laws provide for consent but this is nowhere near what the FPIC protocol requires. Further, Tanzania has not fully domesticated the UN guiding principles on business and human rights which require the states to protect, respect and provide remedy to human rights.⁵¹ It has partially domesticated some aspects of the conventions such as a requirement for mining companies to adhere to and implement corporate social responsibility. Further, International Council on Mining and Metals (ICMM) mining principles on human rights⁵² have not been fully domesticated in the country's mining sector legal regime. Because of this partial domestication, the existing legislative framework does not address the key challenges with regards to the practice of human rights in mining contexts. Whereas the law provides that mining may not take place unless there is consent from the lawful occupiers of land, it equally provides a loophole for the state to withdraw that when it feels that consent is 'unreasonably' being delayed. Given the high stakes involved in large scale mining projects and the potential economic benefits to the nation, this can be abused by the state to fast-track mining investments.⁵³

⁵¹ See United Nations (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Geneva: United Nations.

⁵² These include 8 performance expectations which are: respect human rights, avoiding involuntary resettlement, managing security while protecting human rights, respecting the rights of workers, providing fair pay and working hours, respecting indigenous peoples, working to obtain free, prior and informed consent, and promoting workplace diversity. More details on this at: <https://www.icmm.com/mining-principles/3>

⁵³ Jacob, T., Pedersen, R.H., Maganga, F. and Kweka, O. (2016). *Rights to land and extractive resources in Tanzania (2/2): The return of the state. DIIS Working Paper*. Copenhagen: DIIS.



Further, since the law requires that licence holders liaise with local government authorities, there is possibility of mining companies short-circuiting them at the expense of powerless community members. Existing evidence from mining communities in Geita and North Mara shows that mining companies can side with local governments and powerful local leaders to trample on the rights of community members.⁵⁴ The existing legal framework does not, unfortunately, address this.

With regard to labour rights, the Mining Act requires that mining companies observe and promote equality and fairness in the treatment of employees at workplace and prohibits discrimination on the basis of, for example, payment of salaries to employees of the same cadre irrespective of colour, faith and nationality. This is very important given that mining in Tanzania has been blamed for discriminatory treatment of labour with official reports showing that Tanzanian employees with similar qualification and experience to expatriates were paid lower salaries.⁵⁵ However, there are no regulations on how this should be implemented. Further, the existing mining legislative framework does not address other labour rights issues including termination and trade union rights. There are reports that international mining interests bribed government officials to ignore workers' complaints and write false favourable reports on work conditions in mines and that employers discourage workers from collective bargaining and retaliate against workers' rights activists via termination of employment and other measures.⁵⁶

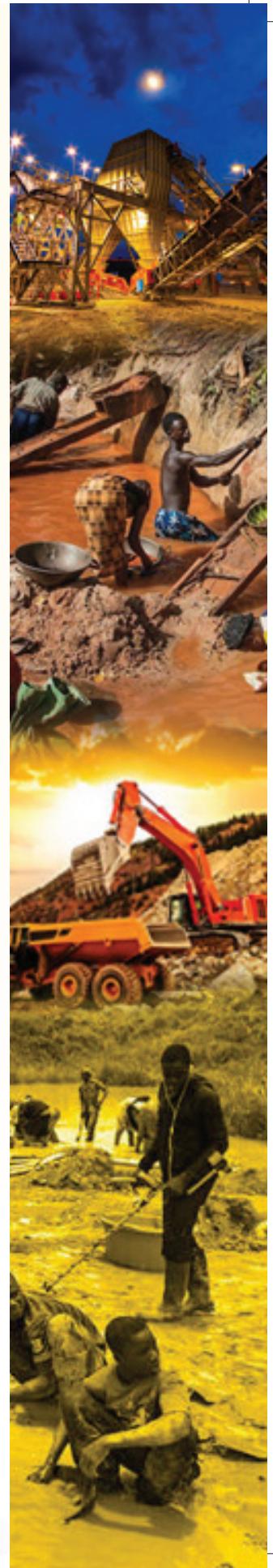
3.2. Develop and implement guidelines for companies to comply with human rights standards

Because mining companies are the key actors in human rights promotion in their activities, they ought to be subjected to compliance. However, for human rights compliance to take place, guidelines for companies to comply with human rights standards should be developed and implemented. Ideally, these should be developed taking into account the sector's legal framework as well as international best practices. The AMV Action Plan requires that the guidelines be developed and implemented so that the mining companies can have a reference point in their human rights compliance. Has Tanzania implemented this? The government has taken steps to institutionalise human rights observance by putting in place the Human Rights Action Plan (2013-2017). The Action Plan was developed to provide a holistic tool for the protection and promotion of human rights with a recognition that promotion

⁵⁴ Lange, S. (2006). *Benefit streams from mining in Tanzania: Case studies from Geita and Mererani*. Bergen: Chr. Michelsen Institute; Lange, S. (2008). *Land Tenure and Mining in Tanzania*. Bergen: CMI - Chr. Michelsen Institute

⁵⁵ United Republic of Tanzania. (2008). *Report of the presidential mining review committee to advise the government on oversight of the mining sector, Vol. 2*. Dar es Salaam.

⁵⁶ United States Department of State. (2021). *Tanzania 2020 human rights report*. Bureau of Democracy, Human Rights and Labour.





and protection of human rights is not limited to a single topic, sector, or government ministries, departments or agency.⁵⁷ This notwithstanding, the Action Plan has phased out and a new one has not been developed yet. Apart from this and the existing legal framework, there are no specific guidelines for compliance with human rights for mining companies that has been developed and implemented in Tanzania.

3.3. Empower public human rights institutions to monitor enforcement of human rights standards with respect to mining

It is one thing legislating for human rights observance in mining and another one moving from legislation to compliance. Compliance to human rights in mining thrives on existence of strong institutions monitoring the enforcement of human rights. The AMV Action Plan for Cluster 5 urges African countries to empower public human rights institutions so that they can monitor the enforcement of human rights standards. As there is no mineral sector specific public human rights institution, the key public human rights institution in Tanzania that monitors enforcement of human rights is the Commission for Human Rights and Good Governance. This Commission was established in 2002 to promoting awareness of human rights and investigating violations of the same.⁵⁸ The Commission has a record of dealing with human rights issues in the mining sector. For instance, in the 1990s when North Mara villages and artisanal miners were forced to vacate the area in favour a large Canadian mining company, they filed a complaint with the Commission in early 2000s. The Commission issued an interim injunction ordering the company and government to refrain from doing any act on the said disputed area until the final determination of the complaint even though the government went ahead to evict villagers and artisanal miners.⁵⁹ But has the Commission been empowered to monitor compliance with human rights in the mining sector? Existing evidence suggest that the Commission is impeded by both the structural and financial constraints, thus making it harder for it to effectively monitor compliance with human rights in the mining sector. Commissioners to the Commission are presidential appointees making them lack independence in fulfilling their responsibilities; and the Commission is underfunded meaning that it has to selectively deal with some human rights issues.⁶⁰ Limited financial resources has made the Commission fail

⁵⁷ United Republic of Tanzania (2013). *National Human Rights Action Plan: 2013-2017*. Dar es Salaam: Ministry of Constitutional and Legal Affairs.

⁵⁸ Mallya, E.T. (2009). *Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania's Commission for Human Rights and Good Governance*. EISA Research Report No 40.

⁵⁹ Commission for Human Rights and Good Governance. (2003). *Complaint Relating to Violations of Fundamental Rights and Duties Arising from Forced Evictions of Artisanal Miners from Afrika Mashariki Gold Mine, Tarime*. Dar es Salaam: CHRAGG

⁶⁰ LHRC and ZLSC. (2019). *Tanzania Human Rights Report 2018*. Dar es Salaam and Zanzibar: LHRC and ZLSC.



to deliver to human rights protection, promotion and remedy. For instance, due to budgetary constraints, the Commission failed to finalise a report on complaints by the residents of the Katoma and Nyakabale villages in the Geita district over their forceful eviction from their land in order to pave the way for mineral extraction.⁶¹ More importantly, the Commission has no mechanism to enforce its decisions and hold the government to account in case of non-compliance. The North Mara injunction mentioned above which the government did not comply with is a very good example of the limitation of the Commission as far as enforcement of human rights in mining. Further, the Commission is not very active in handling human rights complaints on a timely and effective manner. For instance, whereas the Commission received a total of 6,928 complaints on violations of human rights and good governance from citizens at the end of the financial year 2018/2019, only 564 had been investigated and 211 were referred to institutions with appropriate mandate to address them.⁶² This has left a vacuum that is being filled by civil society organisations working on mining issues which frequently uncover human rights abuse issues and conduct advocacy around that.

3.4. Resource Human Rights organisations to monitor and enforce human rights standards in relation to mineral operations

Human rights organisations are very important in the promotion of human rights observance as well as monitoring and enforcing human rights standards in the mining sector. For these human rights organisations to monitor and enforce human rights standards they should be well resourced in terms of human and financial resources. As noted above, public human rights organisations are under-resourced to be able to provide adequate monitoring and enforcement of human rights standards in the mining sector. They are plagued by limited human and financial resources. This leaves CSOs as the only hope for monitoring and enforcement of human rights in the mining sector. Such CSOs as Policy Forum, HakiRasilimali, HakiMadini and Legal and Human Rights Centre are at the centre of human rights monitoring and advocacy in the mining sector. However, these are not funded by the government, they are instead facilitated by international agencies and institutions. With resources from these and other partners, CSOs have been able to uncover human rights violations in the mining sector and conduct advocacy around that. For instance, as part of its strategy to promote the monitoring and enforcement of human rights in the mining sector, HakiRasilimali in partnership with MS TCDC launched in 2020 a training course by the name Fundamentals of Community led Advocacy in Mining, Oil and Gas Governance. This training course aspires to produce well trained advocates of human

⁶¹ Institute for Human Rights and Business (2016). *Human Rights in Tanzania's Extractive Sector: Exploring the Terrain*. London: IHRB.

⁶² Ibid.





rights and good resource governance to enhance community led advocacy for mineral policies that promote human rights and beneficial mineral extraction.

3.4.1. Develop methodologies and tools for mainstreaming health and human rights issues into impact assessment procedures and policy planning frameworks

Health is an aspect of human rights that should be taken seriously by mining sector stakeholders. This is why the AMV Action Plan urges mineral rich African countries implementing the AMV to develop methodologies and tools for mainstreaming health and human rights issues into impact assessment procedures and policy planning frameworks. The existing impact assessment procedures in Tanzania (for mining and other sectors) only focus on environmental, social, economic and cultural impact assessments. The Environmental Management Act (CAP 191) Regulations, 2018 is the main regulatory framework governing the conduct of impact assessment in Tanzania. The regulations do not mention health and human rights as issues to be taken care of in impact assessments. The regulations only talks about occupational safety and health of workers once the project takes course. Thus, this area remains unattended in the existing mining legislative framework.

4. Impact of domestication/non-domestication of AMV Cluster Five

From the analysis provided above, it is apparent that Tanzania has not done much to domesticate AMV Cluster Five. Even though some laws providing for transparency and accountability, revenue management, state and public participation in mineral value chain, progress towards full domestication of Cluster Five has been slow. In part, as noted in the analysis, this slow progress has much to do with the broader political economy of mineral resources in Tanzania. Issues of public and community participation, revenue sharing, human rights, local government capacity, and so forth are generally trivialised under the guise of mineral resources nationalism. This slow domestication of AMV Cluster Five has several impact on mineral sector governance in the country.

A major impact of not fully domesticating the AMV Cluster Five is that goals for improved mineral sector governance cannot be achieved. The mining sector cannot be said to contribute meaningfully to local community and national socio-economic transformation without the full domestication of the Cluster. Human rights observance in the mining sector especially in relation to compensation, relocation, labour rights, environmental rights protection, among others, cannot be guaranteed. Existing evidence, as noted in the foregoing analysis, point to the fact that these and other rights continue to be trampled on. Without developing and domesticating human rights guidelines for the mining sector, it is difficult to hold the sector's



actors accountable to human rights observance and to assess their progress towards promoting a mining sector that respects human rights.

Further, without building the capacities of local government authorities to negotiate with mining companies and make informed decisions, CSR goals cannot be achieved; and, consequently, mining cannot adequately contribute to local development through CSR. Limited public participation in mineral sector governance is a precursor to community-mining-state conflicts. If anything, the Mtwara gas protests and the continuous 'riots' around the North Mara Gold Mine are revealing of what may lie ahead if meaningful public participation in mineral sector governance and decision-making processes is not emphasised and institutionalised. Further, without domesticating the FPIC protocol, it is difficult to see how human and community rights in relation to large mining projects can be protected. It is difficult to see how informed consent provided for in the existing mineral sector laws can be achieved.

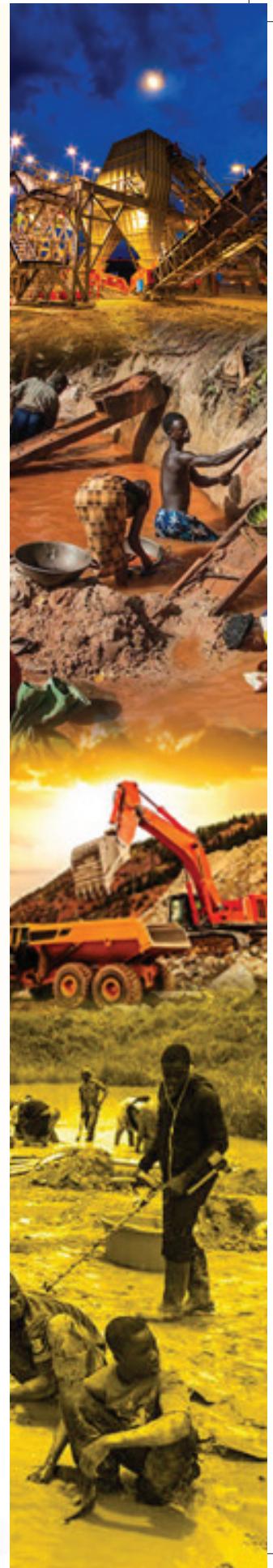
Importantly, having in place transparency requirements for revenue management without going further to mandate contract disclosure cannot make the mining sector overcome the rentier politics and the scourge of the resource curse. Thus, not domesticating the requirement for contract disclosure runs counter to Tanzania's stated anti-corruption goals in the mining sector. It also makes it harder for critical public and civil society scrutiny of mining deals; this in turn may make national efforts to get the best out of its mineral riches futile. Finally, inconsiderate mineral revenue distribution and utilisation leaves a heavy burden of bearing the negative consequences of mining on mining host communities. These negative consequences cannot, unfortunately, be offset by CSR projects or service levies.

5. Conclusion: advocacy gaps and recommendations for full domestication of the AMV Cluster Five

Having provided an analysis of the domestication and implementation of AMV Cluster Five in Tanzania in the preceding sections, an identification of advocacy gaps and recommendations for full domestication of the cluster is provided in this concluding section. Based on the analysis, the following conclusions can be made about Tanzania's domestication and implementation of AMV Cluster Five:

- a) With creating a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities:

Tanzania has undertaken several legislative reforms in the extractive sector since 2010 taking into account issues that are relevant to AMV. We have shown that the laws, policies and regulations enacted since 2012 have taken on board issues of transparency, accountability, participation (local content and community participation in determining CSR projects),





and revenue management. Efforts have also been made to streamline the artisanal and small scale mining sector into broader sectoral reforms. Thus:

- i. Some information on the mining sector especially on revenue receipts from mining companies is publicly accessible. However, contract and beneficial ownership information disclosure remains a nightmare. Further, even the disclosure of information on revenues is not that much accessible to all because it is only those that are proficient in English and have access to the internet that can access it.
- ii. No specific policies, laws and regulations on public participation in mineral sector legislative processes have been developed in Tanzania. The existing laws, policies and regulations only provide for public participation in local content, CSR, primary mining licences, and equity participation.
- iii. Although the 2017 laws provide for parliamentary oversight of the mineral sector especially with regard to scrutinisation of contracts and renegotiation of contract terms, in practice this has not been the case. Further, although there is an oversight parliamentary standing committee on energy and minerals, funding to facilitate its proper functioning remains a challenge.
- iv. Community and other stakeholder participation in policy making processes and mining projects remains wanting. Community participation is only limited to CSR; there has not been efforts to streamline national policy making with community participation. Broader stakeholder participation in the same takes place within constrained time limits because the practice has been that mineral sector laws are made under a certificate of urgency. This does not provide ample space for stakeholders to participate in policy making.
- v. The Protocol of Free Prior Informed Consent with respect to communities affected by mining activities has not been fully domesticated. There are some provisions in the Mining Act 2010 (CAP 123 R.E. 2019) in favour of FPIC but these have not been followed with clear regulations to guide their implementation.
- vi. With respect to CSR policy coherence, the existing policy and legislative framework are coherent. What is stated in the 2009 mining policy is further strengthened in the Mining Act 2010 (CAP 123 R.E. 2019).
- vii. Capacity of local governments, communities, CSOs and mining companies to make informed decisions on mining projects remains challenging. Even though local governments have been provided space to determine CSR, there is limited emphasis on building their capacity to negotiate with mining companies on CSR. Some CSOs have come to the rescue but this remains

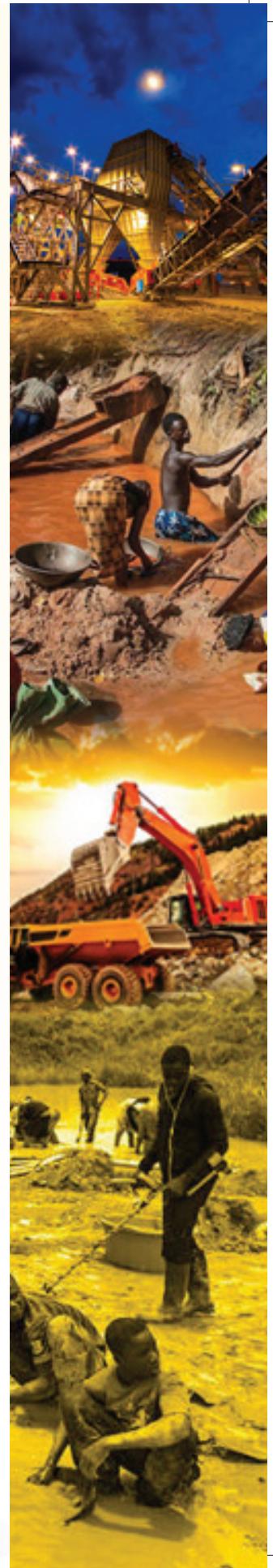


a limited effort. Communities on the other hand have not been empowered to negotiate make informed decisions. CSOs have done some advocacy on this but their coverage remains limited.

- viii. Guidelines for the equitable distribution and utilisation of portions of the mineral wealth have not been developed. Revenues streaming from mining go directly to central government coffers and it is not clear how these are managed and utilised. It would be wise to have in place a mechanism for mineral wealth distribution and utilisation that is inclusive and takes into account intergeneration equity issues akin that for the oil and gas revenue management.

On improved human rights in the mineral sector:

- i. Tanzania has ratified human rights conventions and instruments relevant to the mineral sector in its broader legal system. However, these have not fully been domesticated in the mining sector. There are some human rights provisions in the mining sector legal framework but these are not strengthened with an implementation strategy such as regulations.
- ii. Tanzania has not developed any guidelines for mining companies to comply with human rights standards.
- iii. Public human rights institutions exist but these have not been empowered with human and financial resources to monitor enforcement of human rights standards with respect to mining. The Commission for Human Rights and Good Governance, a key human rights promotion institution, faces financial constraints. It did work on mining human rights issues in the past but with financial constraints, it has not been doing much of recent.
- iv. Other human rights organisations such as CSOs have, with funding support from international agencies and institutions, have kept a strong monitoring eye on the human rights record of mining companies. They also conduct advocacy around human rights issues.
- v. Methodologies and tools for mainstreaming health and human rights issues into impact assessment procedures and policy planning frameworks have not developed. Impact assessments in the mining sector and other sectors continue to focus on economic, social, cultural and environmental issues. Health and human rights have not yet been mainstreamed.





Based on these findings, the following recommendations are made:

- i. Tanzania should consider developing a National Mining Vision to domesticate the AMV and provide a roadmap for the implementation of the Cluster 5.
- ii. Tanzania needs to further strengthen transparency and access to information beyond the publication of revenue reconciliation reports. It also has to invest more in access to information using a variety of formats and in language that is accessible to majority of Tanzanians.
- iii. Since the beneficial ownership regulations have been published, the government should now move to swift implementation of beneficial ownership disclosure especially with regard to the register of company beneficial owners.
- iv. Tanzania should strengthen its commitment to community, public and stakeholder participation in mineral sector decision-making and governance processes. A good starting point could be adhering to the AMV Action Plan by legislating for public participation.
- v. Tanzania needs to strengthen mineral sector oversight by building the capacity of institutions and empowering oversight organs such as the parliament. This can be done through increasing financial resource allocation to parliament to enable its standing committee perform its oversight function adequately. Ensuring that the oversight institutions are independent of government and political manipulation is also an important capacity building strategy.
- vi. Tanzania should consider developing guidelines for equitable distribution and utilisation of portions of the mineral wealth like one in the oil and gas sector. The guidelines should be inclusive and take into account intergenerational equity issues.
- vii. Tanzania should develop guidelines for companies to comply with human rights standards, empower public institutions for oversight and enforcement of human rights and mainstream human rights and health in impact assessments.



