



BENEFIT-SHARING OF PROCEEDS FROM MINERALS:

A Legal Analysis of the Shortfalls of Tanzania's New
Mining Laws and Regulations on Beneficiation

by
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ABSTRACT

Beneficiation is the process whereby minerals undergo value addition before exportation. For the beneficiation process to be successful, it must be regulated effectively by legislation. The United Republic of Tanzania (Tanzania), being a resource-rich country, enacted new mining laws and regulations to improve mining activities' economic benefits. However, Tanzania continuously fails to realise the intended purpose of the new mining laws and regulations, particularly in respect of benefit sharing. The bottom line is that this country fails to acquire a fair share of its mineral resource benefits.

This dissertation argues that the beneficiation of minerals is one way to enhance a host nation's economic benefits from exploiting its mineral resources. The dissertation analyses the new Tanzanian mining laws and regulations on beneficiation and discusses their shortfalls. First, this dissertation inquires how the new Tanzanian mining laws and regulations promoted minerals' beneficiation as a benefit-sharing enhancement mechanism. Second, this dissertation inquires how Tanzania can improve these laws to ensure an increased share of benefits from mineral activities. This dissertation argues that the new Tanzanian mining laws and regulations have shortfalls and practical challenges on beneficiation. This dissertation offers recommendations to the Tanzanian government to carry out beneficiation to develop Tanzania and its citizens.

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Chapter 1: Introduction

1. Introduction

Like many resource-rich countries in Africa, the United Republic of Tanzania (Tanzania) has generated massive profits for foreign mining investors.¹ Contrary to expectations, most of these resource-rich countries have failed to utilise their mineral resources to succeed economically.² In 2008, Tanzania was one of the leading gold producers on the African continent.³ Gold production has been steady over the years, with statistics showing that in 2018, Tanzania produced 39 tonnes of gold.⁴ However, Tanzania remains one of the poorest countries in the world despite being endowed with natural resources due to failure to use minerals for development.⁵ The main concern has been how the mineral resources endowments can translate into growth for Tanzania.⁶ Effective mining laws and policies are crucial in improving the host nation's share of proceeds from the extraction of minerals.⁷

Investors in the mining industry are profit-oriented at the expense of the well-being of the people directly and indirectly impacted by mining activities.⁸ Thus, there is a need for host nations to formulate mining laws and policies that will ensure that the mining companies must share the benefits from mining with the resource-rich host nations to improve their citizens' lives and wellbeing.⁹

In 2010, Tanzania amended its Mining Act.¹⁰ Apart from the Mining Act, Tanzania enacted new additional mining laws and regulations to empower the State to review and renegotiate any excessive terms and clauses in mining contracts

¹ Alexandra Readhead *Improving Mining Revenue Collection: Tanzania's Mineral Audit Agency's Natural Resource Governance Institute* (2017) at 2.

² Claudia Pérez & Oscar Claveria 'Natural resources and human development: Evidence from mineral-dependent African countries using exploratory graphical analysis' (2020) 65 *Journal of Resources Policy* at 8.

³ Siri Lange 'Gold and Governance: Legal Injustices and Lost Opportunities in Tanzania' (2011) 110 *Journal of African Affairs* at 239.

⁴ Tanzania Invest 'Tanzania Gold Production & Export' available at [⁵ Eleanor Fisher, Rosemarie Mwaipopo, Willison Mutagwaba et al 'Artisanal mining and poverty reduction in Tanzania' \(2009\) 34 *Journal of Resources Policy* at 33.](https://www.tanzaniainvest.com/gold#:~:text=Tanzania%20Gold%20Export,South%20Africa%2C%20India%20and%20Switzerland., accessed on 24th November.2020.</p></div><div data-bbox=)

⁶ Mia Ellis & Margaret McMillan *Optimal local content for extractive industries: How can policies best create benefits for Tanzania?* (2018) at 1.

⁷ Claudine Sigam & Leonardo Garcia *Extractive Industries: Optimizing Value Retention in Host Countries' United Nations Conference on Trade and Development (UNCTAD)* (2012) at 1.

⁸ Hanri Mostert, Kangwa-Musole Chisanga, Fatima Mandhu et al 'Corporate Social Responsibility in the Extractive Industries of Namibia, South Africa and Zambia: Choices and Consequences' in Lila Barrera-Hernandez, Barry Barton, Lee Godden et al (eds) *Sharing The Costs and Benefits of Energy and Resources Activity* (2016) at 6.

⁹ *Ibid.* at 6, 9.

¹⁰ Mining Act 14 of 2010 (the Mining Act).

and increase benefit sharing.¹¹ These new laws intend to settle how best the Tanzanian mineral resources will enhance its economic development.¹² One of the ways of increasing the share of benefits from mineral resources is the Local Content Requirements (LCRs) such as beneficiation which is the refining and smelting of raw minerals to increase their value before they are exported outside the host nation.¹³ Beneficiation entails prohibiting exportation of minerals in their raw form.¹⁴ These refining and smelting processes are intended to add value to the raw minerals to ensure they attract higher revenues when exporting.¹⁵ Beneficiation has the potential to enhance the benefits a host nation acquires from the extraction of its minerals by adding more value to the raw minerals and creating employment opportunities, among others.¹⁶ To ensure beneficiation translates into economic growth, there is need to promote it.¹⁷

Historically, Tanzanian mining laws lacked performance indicators for mining companies, such as monitoring, and enforcement mechanisms for compliance with LCRs such as beneficiation.¹⁸ Further, the laws did not incentivise mining companies by enabling them to comply with requirements easily and did not impose strict penalties for non-compliance.¹⁹ The mining laws did not make provisions for the infrastructure necessary to carry out beneficiation as expected.²⁰ These shortfalls existed against the backdrop that the beneficiation activities are capital intensive for the mining companies.²¹ Given these historical shortcomings, this dissertation investigates how the recent amendments to the Mining Act of 2010 and the introduction of new legislation in Tanzania have impacted benefit-sharing from mineral resources.

This dissertation further investigates whether the new mineral laws have succeeded in improving benefit sharing through beneficiation. This dissertation explores LCRs and, more particularly, beneficiation as the focus among the various critical benefit-sharing concepts. This dissertation is motivated by the fact that African resource-rich countries such as Tanzania have received an insignificant share of benefits by exporting their minerals in raw forms.²²

¹¹ Leezola Zongwe and Ndamonoghenda Hiveluah 'Let's talk renegotiation of mining contracts' available at <https://www.namibian.com.na/191578/archive-read/Lets-Talk-Renegotiation-of-Mining-Contracts>, accessed on 20th February 2020.

¹² John Page & Finn Tarp *Mining for Change: Natural Resources and Industry in Africa* (2020) at 282.

¹³ Aaron Cosbey, Nicolas Maennling, Jeff Geipel et al *Mining a Mirage?: Reassessing the Shared-Value Paradigm in Light of the Technological Advances in the Mining Sector* (2016) at 36.

¹⁴ Takunda Yeukai Chitaka *Sustainability Performance Analysis and Decision-Making for Minerals Beneficiation: a South African Iron and Steel Scrap Case Study* (published thesis, University of Cape Town, 2015) at 1.

¹⁵ Angela Gapa 'Strategic Partner or Short Caller? The De Beers Factor in Botswana's Development' (2016) 33 *Journal of Global South Studies* at 63.

¹⁶ Uongozi Institute *Enhancing Value Addition In the Extractive Sector in Africa: Why is it Important and How can it be Achieved?* (2017) at 11.

¹⁷ Brendan Vickers & Dimpho Motsamai *Industrial Policy Cooperation in Southern Africa: Exploring the Opportunities and Challenges* (2011) at 13.

¹⁸ John Page & Finn Tarp op cit note 12 at 285.

¹⁹ Ibid.

²⁰ Aaron Cosbey, Nicolas Maennling, Jeff Geipel et al op cit note 13 at 37.

²¹ Angela Gapa op cit note 15 at 63.

²² Uongozi Institute op cit note 16 at 11.

2. Background

In 1997, Tanzania implemented its Mineral Sector Policy (MSP) to regulate and promote the mining sector, which necessitated an amendment of the Mining Act of 1979, replacing it with the Mining Act of 1998.²³ The Mining Act of 1998 and the MSP of 1997 provided tax incentives to lure foreign investment.²⁴ However, this Act did not have any LCRs.²⁵

The MSP, which loosened the financial laws and reduced taxes payable by mining companies, managed to lure foreign investors.²⁶ The MSP permitted total foreign ownership of mines, which restrained indigenous Tanzanians from actively participating in the mining sector.²⁷ The mining sector's contribution to the GDP increased to 3 per cent from 1.4 percent. The minerals export value reached USD420 million from USD26 million within five years.²⁸ While remaining one of Tanzania's contributor to export earnings, minerals contribute little to the national GDP.²⁹ However, Tanzania would have benefitted more from mining if there were proper administration mechanisms, infrastructure, beneficiation, *et cetera*.³⁰

Tanzania's precious minerals, such as gold, have not substantially contributed to the country's development.³¹ In 2002, foreign investors received over 90 per cent of the proceeds from mining, while the Tanzanian government only collected US\$36.2 million.³²

The Tanzanian Minister responsible for Energy and Minerals facilitated the replacement of the 1997 MSP with the 2009 MSP to improve the mining sector in Tanzania.³³ The 2009 MSP sought to increase the mineral sector's economic contribution to the Tanzanian government by enhancing private sector involvement³⁴ in the beneficiation of raw minerals as one pathway to national development.³⁵ The 2009 MSP intends that the mining sector significantly enhance

²³ Siri Lange *Benefit Streams from Mining in Tanzania: Case Studies from Geita and Mererani* (2006) at 6.

²⁴ P.R. Lobe, A.S. Nhleko & H. Mtegha 'Evaluation of government equity participation in the minerals sector of Tanzania from 1996 to 2015' (2019) 119 *Journal of the Southern African Institute of Mining and Metallurgy* at 263.

²⁵ Mia Ellis & Margaret McMillan op cit note 6 at 4.

²⁶ See Foreign Exchange Act 1 of 1992.

²⁷ Petro S. Magai & Alexandro Marquez Velazquez *Tanzania's Mining Sector and Its Implications for the Country's Development* (2011) at 17.

²⁸ P.R. Lobe, A.S. Nhleko & H. Mtegha op cit note 24 at 264.

²⁹ The World Bank Group *Tanzania DTIS Update 2017: Boosting Growth and Prosperity Through Agribusiness, Extractives, and Tourism* (2017) at 85.

³⁰ P.R. Lobe, A.S. Nhleko & H. Mtegha op cit note 24 264.

³¹ Mark Curtis & Prosper Ngowi *The One Billion Dollar Question 'Revisited 5 years later' How Much is Tanzania Now Losing in Potential Tax Revenues?* (2017) at 23.

³² Siri Lange op cit note 3 at 239.

³³ Thomas Mihayo Sipemba & Jacqueline Matiko 'The Mining Law Review - Edition 8 Tanzania' available at <https://thelawreviews.co.uk/edition/the-mining-law-review-edition-9/1234676/tanzania>, accessed on 22nd September.2020.

³⁴ Baraka Kambi & Michael Kambi 'Local Content Agenda: The Role of Institution Theory on Policy and Practical Challenges in Local Procurement Practice by Mining Entities in Tanzania' (2016) 5 *Journal of Humanities and Social Science* at 2.

³⁵ The Mineral Policy of Tanzania (published in September 2009) at 3.

Tanzania's socio-economic development by 2025.³⁶ Under the 2009 MSP, Tanzania enacted its Mining Act of 2010 to promote local investment compared to the Mining Act of 1998.³⁷ The said Mining Act of 2010 further provides state participation in large-scale mining activities (valued at not less than USD100 million) by signing a Development Agreement³⁸ (DA).³⁹

The enactment of further legislation followed the Mining Act of 2010.⁴⁰ For example, the Sovereignty Act speaks to benefit sharing and state participation in mining activities.⁴¹ The Contract Review Act⁴² provides for renegotiation of all mining contracts containing unreasonable and excessive terms and clauses, thus increasing the benefit sharing.⁴³ The new mining laws ensure that Tanzania and its citizens acquire more benefits from their mineral resources.⁴⁴ This dissertation will collectively refer to these laws as 'the new mining laws and regulations' throughout.

Despite the coming into force of the new mining laws and regulations intended to regulate mineral resources and maximize fair benefit-sharing, the new mining laws and regulations' success in achieving a fair benefit-sharing is not apparent.⁴⁵ Between 2013 and 2015, foreign investors extracted and exported minerals worth at least USD1.7 billion from Tanzania.⁴⁶ Before the new mining laws and regulations, the mining sector contributed a mere 2.3 per cent to Tanzania's Gross Domestic Product (GDP).⁴⁷ Tanzania has lost around \$30 billion worth of mining revenue due to tax evasion schemes alone.⁴⁸ Tanzania is estimated to lose a further \$46 billion every year from the fraudulent clearance of diamonds.⁴⁹

³⁶ Erik Richer La Flèche (ed) *The Mining Law Review* (2019) at 202.

³⁷ P.R. Lobe, A.S. Nhleko & H. Mtegha op cit note 24 at 264.

³⁸ A Development Agreement is an agreement between the Tanzanian government and the mining company licensed to conduct mining activities under a special mining license.

³⁹ S 10 (1), (3) of the Mining Act 14 of 2010.

⁴⁰ (1) Written Laws (Miscellaneous Amendments) Act 7 of 2017 ('Amendments Act'), (2) Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017 ('Sovereignty Act') and (3) Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 6 of 2017 ('Contract Review Act').

⁴¹ Ss 7 & 8 of the Permanent Sovereignty Act 5 of 2017.

⁴² The Review and Re-Negotiation of Unconscionable Terms Act 6 of 2017.

⁴³ Ss 4 & 5 of the Review and Re-Negotiation of Unconscionable Terms Act 6 of 2017.

⁴⁴ Burure Ngocho & Sadock Magai 'Mining in Tanzania: Effects of the mining legal framework overhaul' available at <https://www.dlapiper.com/en/us/insights/publications/2020/08/africa-connected-issue-4/6tanzania-mining-legal-framework-overhaul/>, accessed on 21st September.2020.

⁴⁵ Rachel Wynberg, Doris Schroeder & Roger Channells (eds) *Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case* (2009) at 5.

⁴⁶ Mark Curtis & Prosper Ngowi op cit note 31 at 23.

⁴⁷ Siri Lange op cit note 3 at 239.

⁴⁸ Beatrice Materu 'Tanzania may have lost \$3 b in mining revenue, probe team says' available at <https://www.theeastafrican.co.ke/business/2560-3966856-47v6xgz/index.html>, accessed on 19th May.2020.

⁴⁹ Yomi Kazeem 'Tanzania has seized a UK miner's diamond shipment and spooked the global mining world—again' available at <https://qz.com/africa/1074700/tanzania-has-seized-15-million-of-diamonds-from-petra-diamonds/>, accessed on 19th May.2020.

The continued loss of revenue from mining and the low contribution to the Tanzanian GDP have motivated this research. The research will endeavour to investigate and analyse the new mining laws and the accompanying regulations on benefit-sharing from mining activities by benefiting raw materials.

3. Research Aims

First, this dissertation will discuss the LCRs and, more particularly, beneficiation as the selected concept of benefit sharing in the mining sector. Second, this dissertation will analyse the current legislative framework in the Tanzanian mining sector and the changes (improvements) and how it affects beneficiation as a benefit-sharing concept. Third, this dissertation will investigate the shortfalls and concomitant legal and practical challenges of the new mining laws and regulations incongruous with benefit-sharing and make recommendations for law reform where applicable.

4. Research Question

The dissertation aims to answer the following questions:

1. How have the new Tanzanian mining laws and regulations been tailored to promote and enhance beneficiation as a benefit-sharing concept in the Tanzanian mining industry?
2. How can the new mining laws and regulations ensure improved benefit sharing in the mining industry through the Local Content Requirement of raw minerals' beneficiation?

5. Research Method and Methodology

This dissertation will use a textual analysis (by using primary and secondary sources). The information source will be the legal framework (legislation), peer-reviewed journals, website articles, case law, publications, and books.

6. Research Structure

The dissertation divides into five chapters. Chapter one introduces this dissertation's aims, objectives, relevance and provides a contextual background: This chapter further includes research questions, the research methodology used, and the structure of this dissertation. This chapter sets out the mining industry's existing legal framework and briefly touches on Tanzania's past legal framework. This chapter also demonstrates a lack of benefit sharing and loss of wealth to foreign companies.

Chapter two lays a general foundation and discusses the concepts of benefit sharing in the mining industry. There are so many essential concepts of benefit sharing in the mining sector worth discussing. However, this dissertation focuses on beneficiation as one of the LCRs that ensure the enhancement of benefit sharing from mining activities for a resource-rich host nation such as Tanzania.

Chapter three delineates the current new mining laws and regulations that govern the mining sector in Tanzania as of the present. The said new laws are: (1) the Mining Act,⁵⁰ (2) the Amendments Act,⁵¹ (3) the Sovereignty Act⁵² , and (4) the Contract Review Act.⁵³ This chapter specifically focuses on the provisions and amendments that speak to having the wind in the sails of maximising benefit-sharing through the LCRs of beneficiation.

Chapter four presents the shortfalls and the legal and practical challenges imposed by the new mining laws and regulations on the beneficiation of raw minerals. This chapter provides an overview of the aspects lacking in the new mining laws and regulations on the beneficiation of raw minerals as one of the benefit-sharing concepts.

Chapter five makes recommendations to remedy the shortfalls of the new mining laws and regulations and practical and legal challenges facing the Tanzanian mining sector. This chapter further discusses how Tanzania can circumvent these practical and legal challenges to achieve the intended goal of improving the benefit sharing in the mining sector of Tanzania, if at all.

⁵⁰ Mining Act 14 of 2010.

⁵¹ Miscellaneous Amendments Act 7 of 2017.

⁵² Permanent Sovereignty Act 5 of 2017.

⁵³ Review and Re-Negotiation of Unconscionable Terms Act 6 of 2017.

Chapter 2: Beneficiation Under Local Content Requirements

1. Introduction

This chapter lays a general foundation and discusses beneficiation as one of the benefit-sharing concepts under the Local Content Requirements (LCRs) in the mining industry. The mining industry generates significant revenue from mineral resources trade, but sharing the benefits between investors and host nations is not proportionate.⁵⁴ Resource-rich countries such as Tanzania should be well developed, given their wealth of mineral and petroleum resources, but this is not the case.⁵⁵ Instead, Tanzania has failed to use its mineral resources to eliminate poverty and underdevelopment successfully.⁵⁶ Infrastructure in mining communities remains in poor and dilapidated conditions.⁵⁷ Mining communities continue to be the areas where most local people feel the negative impacts of mining activities.⁵⁸ Minerals have failed to improve the lives of ordinary Tanzanians.⁵⁹

This chapter discusses what amounts to a fair benefit-sharing of exploited minerals' proceeds because of these concerns.⁶⁰ In essence, benefit-sharing means a reasonably appropriate dissemination of mining proceeds amongst all interested and affected parties.⁶¹ Resource-rich countries must acquire a share of the benefits from their non-renewable mineral resources.⁶² Benefit-sharing involves LCRs, and corporate social responsibility, among others.⁶³ These aspects are required to improve and increase the host nation's benefit from mining activities within its jurisdiction.⁶⁴

For this dissertation, the focus will be on the beneficiation of mineral resources as a specific concept of benefit-sharing under the umbrella of LCRs. This chapter gives a brief and general background of LCRs in section 2 before narrowing

⁵⁴ Victoria R. Nalule *Mining and the Law in Africa: Exploring the social and environmental impacts* (2020) at 1.

⁵⁵ *Ibid.* at 2.

⁵⁶ *Ibid.* at 24.

⁵⁷ Bernard Kengni 'Morocco: Mining Tax Reform to Benefit Local Communities' available at <http://www.mlia.uct.ac.za/news/morocco-mining-tax-reform-benefit-local-communities>, accessed on 17th September.2020.

⁵⁸ Nonhlanhla P. Mbatha *Sharing Benefits from Coastal Resources with Rural Communities in South Africa: The Influence of Institutional Arrangements* (published thesis, University of Cape Town, 2011) at 43.

⁵⁹ Amne Suedi 'Tanzania: The Local Content Regulations In Tanzania And Its Compatibility And Compliance With The World Trade Organisation Laws' available at <https://www.mondaq.com/mining/741366/the-local-content-regulations-in-tanzania-and-its-compatibility-and-compliance-with-the-world-trade-organisation-laws>, accessed on 17th September.2020.

⁶⁰ Victoria R. Nalule op cit note 54 at 1.

⁶¹ Hanri Mostert, Kangwa-Musole Chisanga, Fatima Mandhu et al op cit note 8 at 25.

⁶² Juan José Herrera, Marcela Morales & Sebastián Jarrin *Lessons from Latin America: Local Content Frameworks in Latin American and African Oil and Gas Sector* (2016) at 2.

⁶³ Victoria R. Nalule op cit note 54 at 3.

⁶⁴ Peter D. Cameron & Michael C. Stanley (eds) *Oil, Gas and Mining: A Sourcebook for Understanding the Extractive Industries* (2017) at 62.

down to beneficiation in section 2 as the focus of this dissertation. This chapter delineates the requirements for beneficiation to be successful in maximising benefits for the host nation. Section 3 discusses the nature of beneficiation and how Tanzania can achieve it successfully.

2. Local Content Requirements

This section discusses the main aspects of LCRs that elucidate their nature.⁶⁵ LCRs necessitate availing locally available human resources and procurement of local goods and services in mining activities.⁶⁶ LCRs often require a specific percentage of the items needed for a project supplied by the local industries.⁶⁷ LCRs encourage the use of local goods and services to enhance local participation and subsequent economic prosperity of the host nation.⁶⁸ LCRs are fundamental in improving the growth and participation of the local industries of the resource-rich host nations.⁶⁹ LCRs promote and protect the local industries in the resource-rich host nation.

Further, LCRs enhance the local industries' production capacity.⁷⁰ In general, LCRs contribute to a host nation's economic growth⁷¹ and development of technology advancements.⁷² Many resource-rich host nations impose LCRs as a precondition for obtaining or renewing mining licences.⁷³ LCRs are of paramount significance in sharing the benefits from the extraction of mineral resources⁷⁴ as they increase the host nation's share of the proceeds from extracting its minerals.⁷⁵ LCRs also extend to processing and adding value to raw minerals (beneficiation) domestically before

⁶⁵ Kennedy Chege *Designing Local Content Frameworks in the Oil, Gas and Mining sectors in Africa: Principles and Guidelines* (2020) at 9.

⁶⁶ Victoria R. Nalule op cit note 54 at 84.

⁶⁷ Gary Clyde Hufbauer, Jeffrey J. Scott, Cathleen Cimino et al *Local Content Requirements: Report on a Global Problem* Institute for International Economics (2013) at 8.

⁶⁸ Evaristus Oshionebo *Mineral Mining in Africa: Legal and Fiscal Regimes* (2020) at 249.

⁶⁹ Boniphace N. Luhende *Analysis on the Implementation of the African Mining Vision (AMV) in Tanzania, 2017-2019* Policy Forum Management Information System (2020) at 39.

⁷⁰ Ulrich E. Hansen, Ivan Nygaard & Mike Morris et al 'The effects of local content requirements in auction schemes for renewable energy in developing countries: A literature review' (2020) 127 *Renewable and Journal of Sustainable Energy Reviews* at 1.

⁷¹ Murat Issabayev & Islam Rizvanoglu 'Optimal choice between local content requirement and fiscal policy in extractive industries: A theoretical analysis' (2019) 60 *Journal of Resources Policy* at 2.

⁷² Aidan Barlow 'The politics of the temporary: Tanzanian local content in the East African crude oil pipeline' (2020) 7 *The Extractive Industries and Society Journal* at 740.

⁷³ Evaristus Oshionebo op cit note 68 at 249.

⁷⁴ Racheal Chagonja 'Extractive resources-industrialisation linkages: Opportunities, challenges and lessons for Tanzania' available at <https://www.hakirasilimali.or.tz/extractive-resources-industrialisation-linkages-opportunities-challenges-and-lessons-for-tanzania/>, accessed on 14th October.2020.

⁷⁵ Peter Arthur & Emmanuel Arthur 'Local Content and Private Sector Participation in Ghana's Oil Industry: An Economic and Strategic Imperative' (2014) 61 *Journal of Africa Today* at 58.

exportation outside the host nation, known as "forward linkages."⁷⁶ In essence, forward linkages can mean beneficiating, processing, upgrading, refining, or merely adding value to raw minerals.⁷⁷

2.1. Relevance of Local Content Requirements

LCRs ensure that foreign investors do not prefer foreign employees, goods, and services over local ones.⁷⁸ LCRs are a means of maximising the mining industry's revenue for local economic growth through the encouraged preference and advancement of the locally available services.⁷⁹ LCRs further extend to the transfer of knowledge and technology to the local people of the host nation.⁸⁰ The LCRs of employing local people enhance the tax revenue that the host nation collects from the employed citizens in national income taxes.⁸¹

LCRs are fundamental in improving the host nation's economy⁸² by maximising the potential of bringing the benefits of extractive activity back to the host country or even host community.⁸³ LCRs encourage local trade growth, subsequently increased the earnings⁸⁴ and economic development of local entrepreneurs and employees.⁸⁵ Local businesses have a platform to exploit benefits from the mining sector for the mining project duration.⁸⁶ In that vein, local industries, especially in developing resource-rich countries, are fundamentally enhanced,⁸⁷ increasing their productivity.⁸⁸ LCRs provide a chance for local people to be at the forefront of benefiting from the minerals located in their country.⁸⁹ This expectation is against mining companies' background of spending millions due to the extractive industries' capital intensive nature.⁹⁰ LCRs increase the local involvement in the mining sector, and therefore host nation realizes more revenue from mining activities.⁹¹

⁷⁶ Abel Kinyondo & Espen Villanger 'Local content requirements in the petroleum sector in Tanzania: A thorny road from inception to implementation?' (2017) 4 *Journal of the Extractive Industries and Society* at 374.

⁷⁷ Khensane Hlongwane *Mineral energy complex on the beneficiation policy through the lens of network analysis* (published thesis, University of Witwatersrand, 2014) at 23.

⁷⁸ Victoria R. Nalule op cit note 54 at 84.

⁷⁹ Damilola S. Olawuyi *Extractives Industry Law in Africa* (2018) at 234.

⁸⁰ Evaristus Oshionebo op cit note 68 at 249.

⁸¹ Tim Grice & Square Circle *Objectives of Local Content Policies for Direct Employment' International Institute for Sustainable Development (IISD)* (2018) at 6.

⁸² Victoria R. Nalule op cit note 54 at 84.

⁸³ Isabelle Ramdoo *Local content, trade and investment: Is there policy space left for linkages development in resource-rich countries?* (2016) at 1.

⁸⁴ Damilola S. Olawuyi op cit note 79 at 235.

⁸⁵ Isabelle Ramdoo *Designing Local Content Policies in Mineral-rich Countries' Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development* (2018) at 4.

⁸⁶ *Ibid.* at 11.

⁸⁷ Chilene Nwapi 'Defining the "Local" in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries' (2015) 8 *Journal of Law and Development Review* at 192.

⁸⁸ Shiue-Hung Lin & Yungho Weng 'Can strengthening the local content requirements meet a government's need to raise industrial productivity and production?' (2020) 23:1 *Journal of Applied Economics* at 316.

⁸⁹ Damilola S. Olawuyi op cit note 54 at 235.

⁹⁰ Peter D. Cameron & Michael C. Stanley op cit note 64 at 21.

⁹¹ *Ibid.* at 81.

Mining laws and mining contracts must promote the host nation's development by encouraging local participation and thus increased revenue sharing amongst all stakeholders involved.⁹² Local industries have preferences at the expense of foreign enterprises.⁹³ If properly managed, the extractive industries can enhance industrialization in the host nation.⁹⁴ One way of improving industrialisation and increased benefits from mineral resources is by enacting legislation giving effect to LCRs.⁹⁵ The LCRs should improve the benefit-sharing from mineral resources.⁹⁶

2.2. Nature of Local Content Requirements

LCRs are consequences of terms of a contract⁹⁷ or as a matter of law,⁹⁸ policy,⁹⁹ or part of the bidding process.¹⁰⁰ The host nation or the mining communities can enter into a contract agreement containing LCRs.¹⁰¹ LCRs under the statutes or regulations of a country¹⁰² are a means of maximising benefits from the mining sector.¹⁰³ The law providing LCRs demands that mining companies acquire employment and merchandise for a mining project from the host nation's economy.¹⁰⁴ This demand for sourcing local employment and services increases the involvement and subsequent development of the host nation's local mining community in economic activities stemming from the extraction of minerals.¹⁰⁵ In that way, the host nation ensures and guarantees that benefits from mining proceeds are shared reasonably.¹⁰⁶

2.3. Laws Governing Local Content Requirements

Benefits shared from minerals can tremendously improve the lives of citizens of the host nation.¹⁰⁷ For benefit sharing to be a success, there is a vital requirement to formulate laws that deal with the underlying hurdles defeating such development.¹⁰⁸ An excellent legal regime is crucial to an enhanced and effective benefit-sharing of mineral resource

⁹² Africa Mining Vision, 2009 at 12.

⁹³ Gary C. Hufbauer, Cathleen Cimino & Jeffrey J. Schott *A Proposed Code to Discipline Local Content Requirements* Peterson Institute for International Economics (2014) at 2.

⁹⁴ Mia Ellis & Margaret McMillan op cit note 6 at 1.

⁹⁵ Ibid.

⁹⁶ Damilola S. Olawuyi 'Local Content and Procurement Requirements in Oil and Gas Contracts: Regional Trends in the Middle East and North Africa' (2018) 37 *Journal of Energy & Natural Resources Law* at 1

⁹⁷ Legally binding mining contracts that contain local content provisions and requirements. See Damilola S. Olawuyi op cit note 54 at 234.

⁹⁸ Primary legislation such as Local Content Acts of Parliament and Secondary Legislation such as Local Content Regulations made from Acts of Parliament. See Damilola S. Olawuyi op cit note 54 at 234.

⁹⁹ Damilola S. Olawuyi op cit note 54 at 234.

¹⁰⁰ Chilenye Nwapi op cit note 8 at 192.

¹⁰¹ Ana M. Esteves & Mary-Anne Barclay 'Enhancing the benefits of local content: integrating social and economic impact assessment into procurement strategies' (2011) 29 *Journal of Impact Assessment and Project Appraisal* at 205.

¹⁰² Victoria R. Nalule op cit note 54 at 84.

¹⁰³ Damilola S. Olawuyi op cit note 54 at 234.

¹⁰⁴ Isabelle Ramdoo op cit note 85 at 2.

¹⁰⁵ Ana M. Esteves & Mary-Anne Barclay op cit note 101 at 205.

¹⁰⁶ Ibid.

¹⁰⁷ Peter D. Cameron & Michael C. Stanley op cit note 64 at 3.

¹⁰⁸ Brendan Vickers & Dimpho Motsamai op cit note 17 at 13.

revenue.¹⁰⁹ This legal regime can remarkably turn around the local mining communities' economic development and the host nation's fortunes.¹¹⁰ One such law is that which promotes and improves transparency in the mining industry.¹¹¹ Such law encourages mining companies to conduct beneficiation.¹¹²

Lack of local capacity as well as significantly weak or no enforcement mechanisms of LCRs laws in developing resource-rich African countries obscure the success of LCRs.¹¹³ Enforcement mechanisms must couple the laws providing for LCRs to compel mining companies to comply.¹¹⁴ These mechanisms include equipping the indigenous people with the necessary skills and expertise to perform the required tasks.¹¹⁵ Further, there should be a requirement to have a system to ensure strict compliance with local content requirements and non-compliant companies' punishment.¹¹⁶ One such way of ensuring total compliance is by requiring the submission of periodic reports on the performance of LCRs.¹¹⁷ There must be performance indicators to determine compliance with LCRs.¹¹⁸ The requirement to provide reports and updates of compliance with LCRs within a specified period can couple these performance indicators.¹¹⁹ Such performance indicators include having specified volumes and numbers of goods and services under the LCRs to be met by mining companies.¹²⁰ These constant updates will give the host nation an indication of whether the LCRs are feasible or not.¹²¹ Most Africa resource-rich countries have set up LCRs authorities to ensure local content requirements are adhered to correctly¹²² and for the issuance of permits where need be.¹²³ Therefore, satisfying LCRs must be part of the criteria for the issuance of these permits.¹²⁴ All these mechanisms entail having the requisite capacity to enforce LCRs.¹²⁵ These performance and enforcement mechanisms will ensure compliance and success of LCRs.¹²⁶

¹⁰⁹ Damilola S. Olawuyi op cit note 79 at 79.

¹¹⁰ Nonhlanhla P.Mbatha op cit note 58 at 48.

¹¹¹ Damilola S. Olawuyi op cit note 79 at 49.

¹¹² Takunda Yeukai Chitaka op cit note 14 at 2.

¹¹³ Racheal Chagonja op cit note 74 at para 20.

¹¹⁴ Berryl C. Asiago 'Fact or Fiction: Harmonising and Unifying Legal Principles of Local Content Requirements' (2016) 34 *Journal of Energy & Natural Resources Law* at 338.

¹¹⁵ Victoria R. Nalule op cit note 54 at 85.

¹¹⁶ *Ibid.* at 86.

¹¹⁷ *Ibid.*

¹¹⁸ Juan José Herrera, Marcela Morales & Sebastián Jarrín op cit note 62 at 15.

¹¹⁹ Damilola S. Olawuyi op cit note 96 at 14.

¹²⁰ Berryl C. Asiago op cit note 114 at 343.

¹²¹ Damilola S. Olawuyi op cit note 96 at 14.

¹²² Damilola S. Olawuyi op cit note 79 at 162.

¹²³ *Ibid.* at 261.

¹²⁴ Eduardo G. Pereira & Henrik Bjørnebye *Regulating Offshore Petroleum Resources: The British and Norwegian Models* (2019) at 160.

¹²⁵ Juan José Herrera, Marcela Morales & Sebastián Jarrín op cit note 62 at 5.

¹²⁶ Elijah D. Mushemeza, John Okiira, Marcela Morales et al 'Local Content in Latin American and African Oil and Gas Sector: A Comparative Analysis of Selected Countries' (2017) 17 *Journal of Human-Social Science: E Economics* at 55.

The LCRs provisions under the law have to be unequivocally clear on what LCR entails and its magnitude.¹²⁷ Laws and policies promoting LCRs must be clear on what they intend to achieve and how the host nation will reach the goals within a certain period.¹²⁸ These laws must define the essential features of local content explicitly and comprehensively.¹²⁹ Most LCRs laws lack clear definitions making compliance difficult.¹³⁰ The laws must answer the question as to what amounts to adequate LCRs in that particular jurisdiction.¹³¹ These laws must be able to illustrate the crucial elements of LCRs¹³² for easy understanding and compliance.¹³³

Laws promoting LCRs must also have clear and concise performance indicators or scorecards for easy determination of compliance.¹³⁴ For instance, the legislation must state the local merchandise quantities acquired by mining companies on a mining project.¹³⁵ These laws must further state the actual number or proportion of the local human resource a mining company is required to employ.¹³⁶ These specific and strategic performance indicators will assist in determining if the mining companies are compliant or otherwise.¹³⁷ Some countries criminalise breaches of LCRs, and they may subject offenders to criminal law sanctions.¹³⁸

Laws promoting LCRs must distribute and define the different authorities and interested parties' roles and duties to enable the laws' successful operation.¹³⁹ These authorities must be transparent, effective, and willing to engage all interested parties to ensure overarching decision making.¹⁴⁰ These efforts must be supported by a political will over and above other considerations to ensure beneficiation is successful.¹⁴¹ The host nation's government must provide the necessary funding to accomplish enforcement and monitoring mechanisms for LCRs.¹⁴²

Laws promoting LCRs must also be specific and encourage openness in the procurement processes.¹⁴³ These laws must be realistic to the communities' prevailing financial situation and accommodate small local businesses.¹⁴⁴ These laws must allow small local businesses to subcontract locally and enter joint ventures with other small companies to

¹²⁷ Berryl C. Asiago op cit note 114 at 346.

¹²⁸ Isabelle Ramdoo op cit note 85 at 21 & 22.

¹²⁹ Damilola S. Olawuyi op cit note 96 at 13.

¹³⁰ Rukonge S. Muhongo *Energy Justice: A Local Content Analytical Framework for Sub-Saharan Africa* (2020) at 32.

¹³¹ Damilola S. Olawuyi op cit note 96 at 3.

¹³² The LCR laws must expound on terms such as local, local company and the procedure to be followed when acquiring local products among others.

¹³³ Damilola S. Olawuyi op cit note 79 at 261.

¹³⁴ *Ibid.* at 263.

¹³⁵ Isabelle Ramdoo op cit note 85 at 8.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.* at 26.

¹³⁸ Damilola S. Olawuyi op cit note 79 at 330.

¹³⁹ Kennedy Chege op cit note 65 at para 10.

¹⁴⁰ Isabelle Ramdoo op cit note 85 at 22.

¹⁴¹ African Center for Economic Transformation (ACET) *Comparative Study on Local Content and Value Addition in Mineral, Oil and Gas Sectors: Policies, Legal and Institutional Frameworks-Trends and Responses in Selected African Countries* (2017) at 9.

¹⁴² Damilola S. Olawuyi *Local Content and Sustainable Development in Global Energy Market* (2021) at 185.

¹⁴³ Kennedy Chege op cit note 65 at para 11.

¹⁴⁴ Isabelle Ramdoo op cit note 85 at 23.

participate in LCRs.¹⁴⁵ The local businesses and companies must have the ability to supply the required merchandise under the LCRs.¹⁴⁶ Properly executed laws will result in improved benefit sharing and economic growth for the host nations.¹⁴⁷ The next section discusses beneficiation as one of the concepts under LCRs.

3. Beneficiation

LCRs may further extend to the value addition of raw minerals in the host nation, known by the term "beneficiation."¹⁴⁸ African mineral-rich countries, such as Tanzania, are adopting beneficiation.¹⁴⁹ The benefit of resource-rich host nations is that revenues from the mining sector are shared domestically and enhance other industries, thus creating jobs for citizens.¹⁵⁰ Beneficiation is significant as it enhances other LCRs, such as purchasing and using local goods and services and the host nation's citizens' training and employment.¹⁵¹ Collectively, this can significantly increase the host nation's economic benefits from extracting its mineral resources.¹⁵² Beneficiation is sometimes perceived as more beneficial for host mineral-rich countries than actual extraction in terms of the revenue generated.¹⁵³ Sadly, many African resource-rich countries fail to beneficiate their raw minerals and thus continue to export raw minerals at lower prices and low benefits while importing the finished products at exorbitant prices.¹⁵⁴ Resource-rich nations must draw lessons from Botswana who has exponentially increased their share of economic benefits from the extraction of precious diamond through beneficiation by cutting and polishing the diamonds locally.¹⁵⁵

3.1. What Is Beneficiation?

Beneficiation is the process of purifying the raw minerals by isolating them from foreign bodies to increase their value.¹⁵⁶ The waste or any form of impurities are removed from the raw minerals to obtain a higher content value mineral ready for its end users.¹⁵⁷ This process starts from the mining site before transferring the partially processed minerals to smelters and refineries.¹⁵⁸ Beneficiation, in the simplest terms, is adding value to raw minerals.¹⁵⁹ Beneficiation can

¹⁴⁵ Ana M. Esteves & Mary-Anne Barclay op cit note 101 at 207.

¹⁴⁶ Isabelle Ramdoo op cit note 85 at 23.

¹⁴⁷ Kennedy Chege op cit note 65 at 10.

¹⁴⁸ Isabelle Ramdoo op cit note 85 at 3.

¹⁴⁹ Deloitte 'The Future of Mining in Africa: Navigating a Revolution' available at https://www2.deloitte.com/content/dam/Deloitte/za/Documents/energy-resources/za_Future_of_mining.pdf, accessed on 24th August.2020.

¹⁵⁰ Khensane Hlongwane op cit note 77 at 14.

¹⁵¹ Boniphace N. Luhende op cit note 69 at 40.

¹⁵² Ibid.

¹⁵³ Philip Daniel, Michael Keen, Artur Świstak et al *International Taxation and the Extractive Industries: Resources without Borders* (2016) at 82.

¹⁵⁴ Kojo Busia & Charles Akong 'The African mining vision: perspectives on mineral resource development in Africa' (2017) 8 *Journal of Sustainable Development Law and Policy* at 175.

¹⁵⁵ Charles Akong 'Reframing matter: Towards a Material-Discursive Framework for Africa's Minerals' (2020) 7 *Journal of the Extractive Industries and Society* at 464.

¹⁵⁶ Damilola S. Olawuyi op cit note 79 at 46.

¹⁵⁷ Ibid.

¹⁵⁸ Claudine Sigam & Leonardo Garcia op cit note 7 at 5.

¹⁵⁹ Isabelle Ramdoo op cit note 85 at 9.

increase the value of raw minerals by up to 400 times.¹⁶⁰ Therefore, beneficiation sells more valuable minerals outside the host nation, thus generating more revenue.¹⁶¹

Further, the processed raw minerals can be sold locally¹⁶² or exported to international markets.¹⁶³ The benefit of beneficiation is the exportation of low-valued raw minerals, which is concomitant with the African resource-rich nations.¹⁶⁴ The Africa Mining Vision (AMV)¹⁶⁵ advocates for beneficiation as one of the critical considerations for developing African resource-rich countries.¹⁶⁶ The African Union and SADC¹⁶⁷ that Tanzania is a member of share these sentiments to beneficiate raw minerals.¹⁶⁸ African resource-rich countries that export raw minerals lose a significant economic in the absence of beneficiation.¹⁶⁹

Beneficiation enables local industries to compete in the international arena¹⁷⁰ by improving the industrial sector and workforce capacity.¹⁷¹ Host nations must educate, train, upskill and transfer knowledge to the local citizens to achieve this workforce.¹⁷² Beneficiation ensures that a host nation has a diverse economy.¹⁷³ This diversity reduces reliance on foreign mining investment in the mining sector by promoting processing and refining industries.¹⁷⁴ The resource-rich host nations will no longer rely on the little revenue generated from the extraction and export of raw minerals.¹⁷⁵ Beneficiation will result in increased fiscal revenues and royalties.¹⁷⁶ Through beneficiation, the host nation ensures job creation and skills development for its citizens.¹⁷⁷ In that vein, beneficiation encompasses many aspects of LCRs, increasing the host nation's and the mining locality's benefit from mineral resources.¹⁷⁸ Beneficiation is also a solution

¹⁶⁰ Kojo Busia & Charles Akong op cit note 154 at 177.

¹⁶¹ Takunda Yeukai Chitaka op cit note 14 at 1.

¹⁶² Isabelle Ramdoo op cit note 85 at 9.

¹⁶³ Zonwabele Z. Tom *Analysis of the key factors affecting beneficiation in South Africa* (published thesis, University of the Witwatersrand, 2015) at 1.

¹⁶⁴ Africa Mining Vision op cit note 92 at 2.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid. at 4.

¹⁶⁷ Southern African Development Community (SADC).

¹⁶⁸ Mathew T. Mamina, Rutendo Maganga & Kudakwashe Dzwiti 'An analysis of Zimbabwe's comparative advantage in the beneficiation and value addition of minerals' (2020) 69 *Journal of Resources Policy* at 1.

¹⁶⁹ Evaristus Oshionebo op cit note 68 at 248.

¹⁷⁰ Miriam Weiss *The Role of Local Content Policies in Manufacturing and Mining in Low- And Middle-Income Countries' United Nations Industrial Development Organisation (UNIDO)* (2016) at 5.

¹⁷¹ Juan José Herrera, Marcela Morales & Sebastián Jarrín op cit note 62 at 6.

¹⁷² Tim Grice & Square Circle op cit note 81 at 6.

¹⁷³ Aaron Cosbey & Isabelle Ramdoo *IGF Guidance for Governments: Local content policies' The International Institute for Sustainable Development* (2018) at 9.

¹⁷⁴ Chilenye Nwapi op cit note 8 at 191.

¹⁷⁵ Alexis Habiyaemye & Evans Mupela 'How effective is local beneficiation policy in enhancing rural income and employment? The case of agro-processing beneficiation in Tzaneen, South Africa' (2019) 34 *Journal of Local Economy* at 330.

¹⁷⁶ Jeantet Aarpi *Mining Level 1* (2020) at 81.

¹⁷⁷ Zonwabele Z. Tom op cit note 163 at 4.

¹⁷⁸ Isabelle Ramdoo op cit note 85 at 4.

to the transportation costs incurred by mining companies for raw minerals. They will be able to process these raw minerals locally and only transport the less bulky refined minerals.¹⁷⁹

3.2. Nature of Beneficiation

Adding value to raw minerals during beneficiation entails having the capacity to process the raw minerals.¹⁸⁰ Without this capacity, the beneficiation will fail and lead to further losses.¹⁸¹ Host nations can draw examples of such failure can be drawn from Indonesia.¹⁸² The sudden ban on the exportation of raw nickel to allow beneficiation in Indonesia without addressing capacity resulted in companies suffering financial loss and citizens losing jobs.¹⁸³ The unsuccessful and ineffective decision to ban exports of nickel in 2017 forced Indonesia to reverse this decision.¹⁸⁴

Beneficiation, therefore, requires setting up industrial installations where mining companies will refine the raw minerals.¹⁸⁵ These industrial installations include the already mentioned refineries and smelters.¹⁸⁶ The refineries and smelters will improve the value of the undervalued raw minerals for subsequent exportation.¹⁸⁷ The refineries and smelters are exorbitantly expensive to construct but have a significant economic impact once operationalised.¹⁸⁸ These refineries and smelters also require a tremendous amount of energy and unlimited electricity supply.¹⁸⁹ Apart from refineries, beneficiation entails investing in skills and educational developments.¹⁹⁰ The need to enhance skills is peculiar because beneficiation is also a way of improving citizens' employment rate.

¹⁷⁹ Jeantet Aarpi op cit note 175 at 81.

¹⁸⁰ Isabelle Ramdoo op cit note 85 at 9.

¹⁸¹ Jeff Geipel & Dan Hetherington *Local Content Policy: What Works, What Doesn't Work* Business Environment Reform Facility (2018) at 15 & 16.

¹⁸² Indonesia banned exports of raw nickel mined in-country in 2014 to encourage beneficiation. However, due to lack of smelting capacity it led to a \$4 billion loss from exports in its first year. The Indonesian government had to lift the ban in 2017 due to such losses from failure to export. available at <https://www.insideindonesia.org/the-life-and-death-of-indonesia-s-mineral-export-ban-3>

¹⁸³ Jackie Cameron 'Nickel prices up: Indonesia export ban' available at <https://www.biznews.com/briefs/2014/01/13/nickel-prices-mining-shares-indonesia-export-ban>, accessed on 5th November.2020.

¹⁸⁴ Eve Warburton 'The life and death of Indonesia's mineral export ban' available at <https://www.insideindonesia.org/the-life-and-death-of-indonesia-s-mineral-export-ban-3>, accessed on 6th November 2020.

¹⁸⁵ Isabelle Ramdoo op cit note 175 at 9.

¹⁸⁶ Ibid.

¹⁸⁷ Isabelle Ramdoo *Local content, trade and investment: Is there policy space left for linkages development in resource-rich countries?* ECDPM – European Centre For Development Policy Management (2016) at 9.

¹⁸⁸ Natural Resource Governance Institute (NRGI) 'Local Content Strengthening the Local Economy and Workforce' available at https://resourcegovernance.org/sites/default/files/nrgi_Local-Content.pdf, accessed on 15th September.2020.

¹⁸⁹ James Fungai Maposa 'Local Mineral Beneficiation to Present Challenges' available at https://www.miningweekly.com/article/local-mineral-beneficiation-to-present-challenges-2013-12-09/rep_id:3650, accessed on 11th October.2020.

¹⁹⁰ Karolina Werner 'Zambia: Governance and Natural Resources' (2016) 13 *Journal of Revue Gouvernance* at 45.

Further, beneficiation requires heavy investments by the mining companies, and the host nation must ease it by allowing mining companies to partner up.¹⁹¹ This obligation to invest in beneficiation should be coupled with the host nation's commitment to implement this obligation as the mineral resources owners to benefit their citizens.¹⁹² These issues remain the most significant shortfalls and hindrances to successful beneficiation in African resource-rich countries such as Tanzania.¹⁹³

3.3. How Can Beneficiation Be Achieved Successfully?

The beneficiation laws must enhance the skill and education required to carry out value addition to minerals.¹⁹⁴ The host nation can require the mining companies to offer a specified portion of their raw minerals to local manufacturers for beneficiation to succeed.¹⁹⁵ The host nation can need the mining company to subject a stipulated percentage of their raw minerals for beneficiation.¹⁹⁶

Further, the host nation can also require the mining company to undertake to strictly use the minerals exploited for local production as a precondition for obtaining a licence.¹⁹⁷ A further beneficiation precondition can be added to the bidding and tendering processes of mining contracts.¹⁹⁸ The host nation will award mining contracts to mining companies with the capacity and resources to beneficiate minerals.¹⁹⁹

The host nation can also impose a curtailment of the exportation of raw minerals.²⁰⁰ Host nations can use their fiscal system by increasing exportation taxes to deter raw minerals' exportation, thus encouraging beneficiation.²⁰¹

There is a need to have enforcement and monitoring mechanisms and institutions that will ensure performance and compliance with LCRs, such as value addition (beneficiation).²⁰² Such institutions must inter-relate with each other in fostering compliance and adherence to beneficiation requirements.²⁰³ Such institutions include a focal local content unit to act as an LCRs agent to facilitate the host nation's benefit-sharing objectives.²⁰⁴ The local content unit acting as

¹⁹¹ Extractives Hub 'Beneficiation and Value Addition' available at <https://www.extractiveshub.org/topic/view/id/18/chapterId/516>, accessed on 1st October.2020.

¹⁹² Genio L. Finasisca & Tri Hayati 'Domestic Beneficiation Policy in Mining Sector: A Case Study of Indonesia' (2020) 7 *Journal of Critical Reviews* at 194.

¹⁹³ Jeantet Aarpi op cit note 175 at 81.

¹⁹⁴ Karolina Werner op cit note 190 at 46.

¹⁹⁵ Isabelle Ramdoo op cit note 85 at 9.

¹⁹⁶ Jane Korinek *Local Content Policies in Minerals-Exporting Countries Part 1' Organisation for Economic Co-operation and Development* (2017) at 9.

¹⁹⁷ Isabelle Ramdoo op cit note 85 at 9.

¹⁹⁸ Extractives Hub op cit note 191 at para 15.

¹⁹⁹ Ibid.

²⁰⁰ Isabelle Ramdoo op cit note 85 at 9.

²⁰¹ Godfrey Mutizwa 'Beneficiation, African Buzz Word, Set to Take on Real Meaning' available at <https://www.acumenmagazine.co.za/articles/beneficiation-african-buzz-word-set-to-take-on-real-meaning-5915.html>, accessed on 2nd October 2020.2020.

²⁰² Damilola S. Olawuyi op cit note 96 at 11.

²⁰³ Extractives Hub op cit note 191 at para 30.

²⁰⁴ Damilola S. Olawuyi op cit note 96 at 11.

an LCRs agent is very crucial in realising the goals of LCRs.²⁰⁵ These agencies ensure adherence to LCRs such as beneficiation and are mandated to punish non-compliance by imposing fines, among others.²⁰⁶ The agencies correlate all relevant stakeholders such as private and state-owned mining companies, governmental departments, and local communities with different interests.²⁰⁷ This correlation is essential for acquiring LCRs permits, approvals, and execution of LCRs²⁰⁸ to achieve the host nation's local content goals.²⁰⁹ These stakeholders include strict adherence and performance of LCRs translate into meaningful benefits for the host nation from its mineral resources.²¹⁰ For such institutions to conduct their work with precision, a data collection system furnishes them with the required data.²¹¹ Tanzania purported to establish what is termed as "National Local Content Committee" according to its Local Content Policy of 2013 to monitor the compliance with its LCR.²¹² Chapter four discusses whether this Committee has lived up to its expectations.

The host nation must incentivise the mining companies to process raw minerals while imposing raw minerals' export duties.²¹³ The incentives may be fiscal incentives such as low tax rates charged on the mining companies.²¹⁴ Such fiscal incentives are useful for mining companies investing in the necessary but expensive beneficiation infrastructure.²¹⁵ It remains the fact that the infrastructure in Africa remains poor and nonexistent.²¹⁶ Other incentives are reductions in the costs of inputs used in beneficiation processes.²¹⁷ The host nation must create a conducive environment for beneficiation by enacting laws that promote it.²¹⁸ These incentives will encourage mining companies to beneficiate minerals.²¹⁹ This encouragement will ensure that raw minerals are supplied and available locally for beneficiation by the local industries.²²⁰ If not correctly implemented, beneficiation can lead to adverse outcomes.²²¹

²⁰⁵ Victor Steenberg & John Sutton 'Establishing a Local Content Unit for Rwanda' available at <https://www.theigc.org/wp-content/uploads/2017/09/Local-content-brief.pdf>, accessed on 30th November 2020.2020.

²⁰⁶ Damilola S. Olawuyi op cit note 96 at 11.

²⁰⁷ Claudine Sigam & Leonardo Garcia op cit note 7 at 6.

²⁰⁸ Damilola S. Olawuyi op cit note 96 at 13.

²⁰⁹ Ibid. 11.

²¹⁰ Ibid.

²¹¹ Extractives Hub op cit note 191 at para 36.

²¹² Damilola S. Olawuyi op cit note 96 at 11.

²¹³ Aaron Cosbey & Isabelle Ramdoo op cit note 173 at 9.

²¹⁴ Jeff Geipel & Dan Hetherington op cit note 181 at 15.

²¹⁵ Dak Collyer *The Influence of Tax Legislation in Promoting Downstream Beneficiation in The South African Mining Sector* (published thesis, North-West University, 2016) at 2.

²¹⁶ Claudine Sigam & Leonardo Garcia op cit note 7 at 19.

²¹⁷ Extractives Hub op cit note 191 at para 17.

²¹⁸ Karolina Werner op cit note 190 at 46.

²¹⁹ Dak Collyer op cit note 215 at 14.

²²⁰ Isabelle Ramdoo op cit note 85 at 9.

²²¹ Sam Luttrell *An international perspective on the Tanzanian Natural Wealth and Resources Acts' Australia-Africa Minerals and Energy Group* (2018) at 6.

Together with the mining companies, the host nation must provide the required infrastructure and financial support to promote beneficiation industries.²²² For instance, these industries require unlimited electricity supply, which remains a challenge in many African resource-rich countries such as Tanzania.²²³ The laws have to provide that missing link between beneficiation and other concomitant policies such as the industrial policy that would address challenges such as the electricity.²²⁴ Without providing the necessary infrastructure, beneficiation will not successfully contribute to the host nation's economic development.²²⁵

4. Conclusion

The revenue generated from the mining sector must reflect on the ground by improving the local beneficiaries' economic and social aspects.²²⁶ It is imperative that for beneficiation to be successful, the host nation must formulate laws and policies capable of implementing and promoting its industries.²²⁷ The host nation must align the laws and procedures with the necessary industrial frameworks as one cannot go without the other.²²⁸ The host government must engage and consult all stakeholders when formulating beneficiation laws and policies to get their views and concerns on board for an overarching legal regime.²²⁹ These consultations are essential to have laws, regulations, and policies that cater to all affected parties' needs.²³⁰ The next chapter (chapter three) discusses the new mining laws in Tanzania on LCRs and particularly beneficiation. Chapter three analyses these new mining laws to establish if they have successfully encompassed all considerations discussed in this chapter. Chapter three further outlines the shortfalls in the new mining laws on beneficiation.

²²² Kojo Busia & Charles Akong op cit note 154 at 179.

²²³ Ibid.

²²⁴ African Center for Economic Transformation (ACET) op cit note 141 at 9.

²²⁵ The European Bank for Reconstruction and Development (EBRD) *Mining Operations Policy: As approved by the Board of Directors at its Meeting on 17 October 2012* (2012) at 34.

²²⁶ Damilola S. Olawuyi op cit note 79 at 49.

²²⁷ Kojo Busia & Charles Akong op cit note 154 at 178.

²²⁸ Ibid. at 179.

²²⁹ Godfrey Mutizwa op cit note 201 at para 4.

²³⁰ Claudine Sigam & Leonardo Garcia op cit note 7 at 33.

Chapter 3: Legal Framework Governing the Local Content Requirements of Beneficiation in Tanzania

1. Introduction

The legislation forming the Tanzanian mining legal framework includes the new mining laws.²³¹ Tanzania passed the new mining laws to provide for some aspects of the mining industry's legal framework.²³² In 2018, Tanzania enacted its Local Content Regulations²³³ and Mineral Beneficiation Regulations²³⁴ to govern the Local Content Requirements (LCRs) to improve the local industries' economy.²³⁵ The new mining laws and regulations aim to limit foreign control over mineral resources, thus maximising the benefits attained from minerals.²³⁶ The new mining laws intend to allow Tanzania to regain control over its mining industry.²³⁷ Two of the new mining laws, the Unconscionable Terms Act²³⁸ and the Permanent Sovereignty Act,²³⁹ find their origin in the United Nations Resolution on states' power and control over their natural resources.²⁴⁰ Collectively, Tanzania promulgated the new mining laws and regulations to address underdevelopment due to the low benefits obtained from the mining industry, which is the ubiquity of many developing resource-rich nations.²⁴¹

This chapter delineates the current legal framework that governs the mining sector in Tanzania at present. It analyses the provisions that address the improvement of benefit sharing in Tanzania's mining industry. This chapter gives a general overview of provisions on the LCRs and, more particularly, beneficiation as this dissertation's scope. This chapter further highlights the shortcomings of beneficiation provisions as part of the LCRs intended to improve benefit sharing.

²³¹ The four new laws include the Mining Act 14 of 2010, Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017 (Sovereignty Act), Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 6 of 2017, the Written Laws (Miscellaneous Amendments) Act 7 of 2017 (Amendments Act), and Finance Act 8 of 2020.

²³² Matt Genasci, Thomas Scurfield & Nicola Woodroffe *Tanzania's New Natural Resources Legislation: What Will Change?* (2017) at 1.

²³³ The Mining (Local Content): Regulations in GN No. 3 of 2018.

²³⁴ The Mining (Mineral Beneficiation): Regulations, 2018 in G.N. No. 4 of 2018.

²³⁵ Amne Suedi op cit note 59 at para 5.

²³⁶ Fumbuka Ng'wanakilala 'Tanzania's new mining rules impose restrictions on foreign banks, insurers' available at <https://www.reuters.com/article/tanzania-lawmaking-mining/tanzanias-new-mining-rules-impose-restrictions-on-foreign-banks-insurers-idUSL8N1QA519>, accessed on 15th June.2020.

²³⁷ Peter Leon & Ernst Muller 'Significant Recent Changes To Tanzania's Mineral Law Regime' available at <https://www.herbertsmithfreehills.com/latest-thinking/significant-recent-changes-to-tanzanias-mineral-law-regime>, accessed on 15th June.2020.

²³⁸ Review and Re-Negotiation of Unconscionable Terms Act 6 of 2017.

²³⁹ Permanent Sovereignty Act 5 of 2017.

²⁴⁰ Peter Leon & Ernst Muller op cit note 237 at para 6.

²⁴¹ Peter Arthur & Emmanuel Arthur op cit note 75 at 58.

2. The Legal Framework Governing Mining

The current legal framework seeks to empower Tanzania to increase its share in the benefits of extracting its mineral resources.²⁴² The discussion below analyses how the Mining Act, the new mining laws, and the accompanying regulations have impacted benefit-sharing from mineral resources through LCRs and particularly beneficiation in Tanzania.

2.1. *The Mining Act*

The Mining Act²⁴³ is the principal piece of legislation that governs minerals, granting mineral rights, and payment of revenue accruing from all mining activities in Tanzania.²⁴⁴ Under the Mining policy of 2009, the Mining Act emphasises LCRs.²⁴⁵ In Tanzania, the government owns and controls all minerals.²⁴⁶ Therefore, one cannot embark on mining activities in Tanzania without a licence granted under the Mining Act.²⁴⁷ Under the Mining Act, possible licences include prospecting licences, special mining licences, and mining licences.²⁴⁸

The Mining Act is also a source of all local content provisions and regulations.²⁴⁹ The Minister²⁵⁰ is empowered to enter into a Development Agreement (DA) with an applicant for a mineral right or an existing holder of a mineral right.²⁵¹ A DA is an agreement that the State enters into with mining companies²⁵² with terms²⁵³ that include the State's mining operations participation.²⁵⁴ Tanzania has entered into DAs with East Africa Gold Mine Limited, Kahama Mining Corporation Limited, and East African Mine Limited.²⁵⁵ The Mining Act is particular that a DA must contain terms for local purchase of goods and services²⁵⁶ for the mining project and employment or training of Tanzanian citizens.²⁵⁷ Therefore, it is not surprising that the Minister must ensure that the public's interest is paramount when calling for mineral rights applications.²⁵⁸ This public interest thus is a precondition that the DA must meet the LCRs to benefit Tanzanians.

²⁴² Leezola Zongwe and Ndamonoghenda Hiveluah op cit note 11 at para 15.

²⁴³ Mining Act 14 of 2010.

²⁴⁴ Ibid. (Preamble).

²⁴⁵ The World Bank Group op cit note 29 at 86.

²⁴⁶ S 5 of the Mining Act.

²⁴⁷ Ibid. s 6(1).

²⁴⁸ Ibid. s 7(1).

²⁴⁹ Mia Ellis & Margaret McMillan op cit note 6 at 4.

²⁵⁰ The Minister responsible for Minerals in Tanzania.

²⁵¹ S 10 (1) of the Mining Act.

²⁵² Ibid. s 4(1).

²⁵³ A free carried interest is the type of interest that is acquired by the state without contributing to the capital of the mining pursuant to s 10(1) of the Mining Act.

²⁵⁴ S 10(1) of the Mining Act.

²⁵⁵ Charles W. Marwa & Isabela Warioba 'Challenges Posed on The New Mining Act and Its Regulations in Tanzania' (2015) 8 *Journal of Politics and Law* at 186.

²⁵⁶ S 10(4)(e) of the Mining Act.

²⁵⁷ Ibid. s 10(4)(f).

²⁵⁸ S 15(1) of the Mining Act.

However, the implementation of LCRs has been unsuccessful. For example, the records and statistics indicate a slump in local procurement of goods and services.²⁵⁹ Section 4 of this chapter three and in detail under chapter four discusses this difficulty in implementation.

2.2. Amendments Act

In 2017, Tanzania fundamentally changed the Mining Act's administration provisions by enacting the Amendments Act.²⁶⁰ This Act has gone further in requiring the inclusion of LCRs in mining contracts between the Tanzanian government and mining companies.²⁶¹ To ensure improvement in the mining sector, the Amendments Act has further introduced a new Mining Commission (New Commission) to guide the Minister on mining-related issues.²⁶² The New Commission replaces (abolishes) the Mining Advisory Board (MAB),²⁶³ the Minerals Commissioner, Zonal Mines Offices, and the Tanzania Minerals Audit Agency (TMAA).²⁶⁴ The New Commission takes over the duties and responsibilities of the MAB and TMAA and must ensure the MA's enforcement and administration.²⁶⁵ The Amendments Act states that the functions of the new Commission are to ensure that the MA is complied with and administered (regulated) properly.²⁶⁶

The New Commission further analyses and evaluates applications for and granting of mineral rights/licences.²⁶⁷ Most importantly, the New Commission estimates and gauges whether mining companies are satisfying LCRs, for instance, whether mining companies are purchasing Tanzanian products and acquiring Tanzanian services, and facilitating skills transfer.²⁶⁸ The Amendments Act provides that a local content plan must accompany applications for mining licences.²⁶⁹ Local content²⁷⁰ plans are mandatory when applying for mining licences and the Amendment Act has included further requirements on local content.²⁷¹ The mining licence holder's responsibility is to ensure that local companies are

²⁵⁹ Siri Lange & Abel Kinyondo 'Resource nationalism and local content in Tanzania: Experiences from mining and consequences for the petroleum sector' (2016) 3 *Journal of the Extractive Industries and Society* at 1099.

²⁶⁰ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 2 & s 11 of the the Written Laws (Miscellaneous Amendments) Act 7 of 2017.

²⁶¹ Mia Ellis & Margaret McMillan op cit note 6 at 4.

²⁶² S 11 of the Amendments Act, inserting a new s 20 into the Mining Act as a part of the new Part III (Administration).

²⁶³ Mining Advisory Board.

²⁶⁴ Tanzania Minerals Audit Agency.

²⁶⁵ S 21 of the Amendments Act.

²⁶⁶ Ibid. s 22(a).

²⁶⁷ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 2.

²⁶⁸ Ibid.

²⁶⁹ S 4 of the Amendments Act which amends s 3 of the Mining Act.

²⁷⁰ S 4 of the Amendments Act amending s 3 of the Mining Act by defining local content to mean the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzanian human and material resources and services in the mining operations in order to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation.

²⁷¹ S 28 of the Amendments Act.

compliant with local content plans' requirements.²⁷² This responsibility becomes problematic when it comes to enforcement, as chapter four of this thesis discusses.

The New Commission must broaden the beneficiation of minerals in Tanzania to accumulate more benefits for the country through royalties and the government's participation.²⁷³ The New Commission's duty regarding beneficiation must translate into visible economic benefits from processed minerals.²⁷⁴ The mining companies are required to furnish annual reports to ensure compliance with LCRs.²⁷⁵ These yearly reports will indicate how mining companies undertake to ensure the transfer of knowledge to Tanzanians.²⁷⁶ The fulfillment of these requirements is a precondition for the renewal of licences.²⁷⁷ However, there are no specific conditions on showing the capacity to beneficiate minerals when renewing licences, which Tanzania must as the mining law needs to be very clear on what it entails.²⁷⁸ In the absence of stipulated clear conditions in the Act, it becomes challenging to understand and comply with the requirements.²⁷⁹

2.3. Permanent Sovereignty Act

The Sovereignty Act vests dominion over mineral resources in the Tanzanian people and further provides that the government shall control the minerals on their behalf.²⁸⁰ The Sovereignty Act prohibits mining contracts that do not cater to Tanzanians' wellbeing and benefit and undermine Tanzania's power and authority over its minerals.²⁸¹ The Sovereignty Act provides that mining contracts must go through the Tanzanian Parliament to ascertain and certify if the contracts are beneficial to Tanzanians.²⁸² The Sovereignty Act also requires that Parliament regularly reviews all future mining contracts between mining companies and the State to ensure that they are beneficial to Tanzanians.²⁸³ Suppose Parliament concludes that the mining contract has unreasonable and unfair terms against Tanzania. In that case, it may order the State to reopen and discuss the agreement within 90 days from the order's date.²⁸⁴ The Sovereignty Act does away with stabilisation clauses by subjecting the contracts to renewed negotiations when the need arises.²⁸⁵

²⁷² Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 11.

²⁷³ Peter Leon & Ernst Muller op cit note 237 at para 4.

²⁷⁴ Tanzania Extractive Industries Transparency Initiative (TEITI) *Tanzania Extractive Industries Transparency Initiative (TEITI) The 9th TEITI Report for the Period July 1 2016 to June 30 2017* (2019) at 11.

²⁷⁵ (1) an annual report on their "achievements in utilizing Tanzanian goods and services," (2) a report on their execution of "a programme prescribed in the regulations," (3) a detailed local supplier development program "in accordance with approved local content plans" and (4) an annual report on their program for training and recruiting Tanzanians see Amendments Act section 22(l).

²⁷⁶ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 11.

²⁷⁷ Ibid.

²⁷⁸ Damilola S. Olawuyi op cit note 79 at 257 & 258.

²⁷⁹ Ibid. at 261.

²⁸⁰ Ss 4 & 5 of the Sovereignty Act.

²⁸¹ Ibid. s 6.

²⁸² Peter Leon & Ernst Muller op cit note 237 at para 3.

²⁸³ Ibid. at para 12.

²⁸⁴ Ibid. at para 10.

²⁸⁵ Peter Leon & Ernst Muller op cit note 237 at para 13.

According to the Mining Act, the Sovereignty Act further improves the framework for LCRs²⁸⁶ by requiring Parliament to ensure that the mining contracts are beneficial to Tanzanians, for instance, through mandating the beneficiation of minerals.²⁸⁷ In terms of beneficiation, the Sovereignty Act requires that mining contracts stipulate a period for establishing plants to benefit raw minerals.²⁸⁸ The Sovereignty Act does not mention when the mining companies must construct beneficiation plants and add value to minerals.

2.4. Unconscionable Terms Act

Similar to the Permanent Sovereignty Act discussed in the above section, the Unconscionable Terms Act mandates the Tanzanian government to reopen, discuss, and change any terms of contracts that are unreasonable and unfair.²⁸⁹ This Act reiterates that the Tanzanian Parliament should deliberate over any intended mining contracts between the government and potential investors before they are signed.²⁹⁰ The Parliament is mandated to assess the mining contracts²⁹¹ and, where necessary, change the original agreed terms and tailor them for Tanzanians' benefit.²⁹² Any mining contract that does not appear to benefit Tanzanians is against the law.²⁹³ This Act extends to review terms of contracts that limit the Tanzanian government's control over their minerals and foreign investments.²⁹⁴ This Act further imposes an obligation on the Tanzanian Parliament to closely examine or inspect all mining contracts for any excessive, unfair, and unreasonable terms against the Tanzanian government.²⁹⁵ Such terms imply that the Tanzanian government is at liberty to remove them from the contract once Tanzanian Parliament has declared them as such.²⁹⁶ The Act further gives the parties freedom to such contracts to discuss the unfair and unreasonable terms they identify. If they disagree on rectifying these unreasonable and unfair terms, the parties must remove such terms.²⁹⁷ However, this Act has omitted to address what will happen to the rest of the contract.²⁹⁸ This lack of answer raises a problem for the parties to the contract when faced with a similar circumstance.

Unlike the Permanent Sovereignty Act, the Unconscionable Terms Act further provides a methodology to be used by the Tanzanian government to discuss any unreasonable and excessive terms that the Parliament has identified in the contracts.²⁹⁹ For instance, the Unconscionable Terms Act is against any terms in the mining contract that refer to

²⁸⁶ Mia Ellis & Margaret McMillan op cit note 6 at 5.

²⁸⁷ Peter Leon & Ernst Muller op cit note 237 at paras 19 & 20.

²⁸⁸ Mia Ellis & Margaret McMillan op cit note at 5.

²⁸⁹ Peter Leon & Ernst Muller op cit note 237 at para 2.

²⁹⁰ S 5 of the Unconscionable Terms Act.

²⁹¹ Ibid.

²⁹² S 12 of the Sovereignty Act and s 4 of the Unconscionable Terms Act.

²⁹³ S 6 of the Sovereignty Act.

²⁹⁴ S 6 (2) of the Unconscionable Terms Act.

²⁹⁵ S 5(1) of the Unconscionable Terms Act.

²⁹⁶ Abel Kinyondo & Christopher Huggins 'Resource nationalism in Tanzania: Implications for artisanal and small-scale mining' (2019) 6 *Journal of the Extractive Industries and Society* at 184.

²⁹⁷ John Page & Finn Tarp op cit note 12 at 285.

²⁹⁸ Ibid.

²⁹⁹ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 6 & s 5(3) of the Unconscionable Terms Act.

disputes through international arbitration.³⁰⁰ However, just like the Sovereignty Act, the Unconscionable Terms Act does not guide how mining companies must meet the requirements to add value to raw minerals.

3. Local Content Requirements Via Beneficiation

Under the new mining laws, the Minister made the Local Content Regulations and Beneficiation Regulations to regulate LCRs and value addition of minerals.³⁰¹ This section will discuss the specific provisions under the Mining Act, new mining laws, and regulations to provide LCRs and beneficiation. Tanzania intended these new mining laws and their regulations to enhance benefit-sharing through LCRs from its mining industry.³⁰² Tanzania primarily designed the LCRs and beneficiation regulations to improve its development from its mineral resources.³⁰³

3.1. Local Content Requirements

The Local Content Regulations³⁰⁴ mentioned above have introduced new LCRs to which mineral rights holders must adhere.³⁰⁵ Foreign mining companies must give the Tanzanian government 16 per cent free carried interest as a condition to be granted a mineral right.³⁰⁶ Apart from the 16 per cent state free carried interest,³⁰⁷ the LCR requires that the foreign companies give local companies a minimum of 5 per cent equity shares on the specific project under a mining licence.³⁰⁸ Aside from the requirement to use the domestic banks to transact, the LCR further requires the mining project to be insured by a local insurance broker.³⁰⁹ Foreign companies are also required to retain Tanzanian lawyers to represent them and protect their best interests.³¹⁰ The New Commission only accepts local content plans after getting advice³¹¹ from its Local Content Committee.³¹² Failure to comply with LCRs attracts a US\$5 million fine.³¹³ The local content regulations do not subscribe to any further sanctions. However, the LCRs extend Tanzanians'

³⁰⁰ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 6 & s 6(2)(i) of the Unconscionable Terms Act.

³⁰¹ Mia Ellis & Margaret McMillan op cit note 6 at 1.

³⁰² *Ibid.* at 2.

³⁰³ John Page & Finn Tarp op cit note 12 at 282.

³⁰⁴ The Mining (Local Content) Regulations, in GN No. 3 of 2018.

³⁰⁵ Chris Green 'Amendments to Tanzania's Mining (Local Content) Regulations' available at <https://www.bowmanslaw.com/insights/mining/amendments-to-tanzanias-mining-local-content-regulations/>, accessed on 15th June.2020.at para 1.

³⁰⁶ Fumbuka Ng'wanakilala op cit note 236 at para 11.

³⁰⁷ Free carried interest is an equity interest that a mining company gives to the Tanzanian government upon acquiring a mining licence see s 4(1) of the Mining Act.

³⁰⁸ Fumbuka Ng'wanakilala op cit note 236 at para 11.

³⁰⁹ *Ibid.* at para 9.

³¹⁰ *Ibid.* at para 13.

³¹¹ Chris Green op cit note 305 at para 9.

³¹² The Local Content Committee is a Committee established under the Mining (Local Content) Regulations in GN No. 3 of 2018 with functions such as advising and making recommendations to the New Mining Commission on approval of local content plans by mining companies.

³¹³ Fumbuka Ng'wanakilala op cit note 236 at para 12.

involvement, spread the benefits across all spheres, and reduce the non-payment of taxes by foreign investors.³¹⁴ The Tanzania Extractive Industries Act³¹⁵ (TEIA) requires mining companies to comply with LCRs by submitting performance and compliance reports.³¹⁶ These LCRs are essential areas of focus in benefit-sharing; however, they are beyond this dissertation's scope. This dissertation only focuses on the LCRs of beneficiation of raw minerals in Tanzania.

Among other LCRs, the local content regulations aim to enhance local industries' capacity to compete internationally and ensure that the benefits from minerals are shared locally.³¹⁷ One way of this enhancement is beneficiation by adding value to minerals and improving their economic value.³¹⁸ The Local Content Regulations do not delineate how Tanzania achieves beneficiation.

3.2. Beneficiation

The Mining Act requires mining companies to ensure that a specific portion of the minerals are processed in Tanzania to add more value to them, termed as beneficiation.³¹⁹ Under the Mining Act and Permanent Sovereignty Act, Tanzania prohibits exporting raw materials to ensure that mining companies conduct beneficiation.³²⁰ Tanzania first effected this prohibition on the 3rd March 2017,³²¹ according to a recommendation made by the Tanzanian Presidential Probe Committee led by Professor A. Mruma in 2017.³²² This Committee discovered that raw minerals worth trillions of Tanzanian shillings were being exported out of the country, leaving little or no benefits.³²³ Another Presidential Probe Committee led by Professor Nehemiah Osoro reported that the Tanzanian government had lost between 68.59 to 108.5 trillion Tanzanian shillings from exported raw minerals.³²⁴ The Committees recommended that mining companies must conduct beneficiation activities to curb the situation.

Consequently, Tanzania enacted three of the new mining laws in July 2017.³²⁵ The Sovereignty Act states that all mining contracts shall have terms that prohibit selling raw minerals outside Tanzania.³²⁶ The Unconscionable Terms

³¹⁴ Beatrice Materu 'Tanzania relaxes protectionist regulations in mining sector' available at <https://www.theeastafrican.co.ke/business/Tanzania-relaxes-protectionist-regulations-in-mining-sector/2560-5019246-teggptz/index.html>, accessed on 7th July, 2020.

³¹⁵ The Tanzania Extractive Industries (Transparency and Accountability) Act 23 of 2015.

³¹⁶ Erik Richer La Flèche op cit note 36 at 204.

³¹⁷ Mia Ellis & Margaret McMillan op cit note 6 at 1.

³¹⁸ Reg 3 & 4(a) of the Mining (Local Content): Regulations, 2018 in GN No. 3 of 2018.

³¹⁹ S 59 of the Mining Act.

³²⁰ Peter Leon & Ernst Muller op cit note 237 at para 19.

³²¹ Thabit Jacob & Rasmus Hundsbæk Pedersen 'New resource nationalism? Continuity and change in Tanzania's extractive industries' (2018) 5 *Journal of the Extractive Industries and Society* at 287.

³²² Boniphace N. Luhende op cit note 69 at 18.

³²³ Ibid. at 19.

³²⁴ Boniphace N. Luhende op cit note 69 at 19.

³²⁵ Japhace Poncian 'Galvanising political support through resource nationalism: A case of Tanzania's 2017 extractive sector reforms' (2019) 69 *Journal of Political Geography* at 82.

³²⁶ S 9 of the Sovereignty Act.

Act disallows any terms against increasing raw minerals' value and requiring exportation of minerals in their natural state.³²⁷ The ban on the exportation of raw minerals seeks to ensure beneficiation takes place in Tanzania.³²⁸

The Permanent Sovereignty Act requires mining companies to establish plants in Tanzania to add value to raw minerals before exportation.³²⁹ Therefore, mineral right holders must have a plant to keep raw minerals for five days before shifting them to designated government warehouses.³³⁰

The Finance Act³³¹ requires that a clearance centre clears the minerals before being taken to the government warehouse.³³² Under the Amendments Act, the government warehouse stores all raw minerals from all mining companies before they are subject to local value addition or beneficiation before exportation.³³³ The government warehouse must keep the raw minerals awaiting transfer to a local processing plant before selling subject to the Tanzanian government's prior approval.³³⁴ The Mining Act has stringent requirements for control over raw minerals and governmental approval before mining companies can take the raw minerals out of the government warehouse.³³⁵ Mining companies can remove the raw materials from the government warehouse for beneficiation.³³⁶ The new Commission employs a Mines Resident Officer to record and keep all minerals and details in a logbook.³³⁷ Both the Permanent Sovereignty Act³³⁸ and the Unconscionable Terms Act³³⁹ imposes a ban on the export of raw minerals and a requirement for erecting plants in Tanzania.³⁴⁰ A reading of both of these Acts indicated that none of them has considered how long the mining companies may need to erect these beneficiation plants to enable compliance.

In 2018, Tanzania made beneficiation regulations³⁴¹ to replace the regulations of 2010³⁴² to provide specifically for the value addition of minerals.³⁴³ These regulations require a mineral right holder to apply for a processing licence³⁴⁴ to beneficiate minerals in the prescribed form.³⁴⁵ These regulations further direct a mineral right holder to apply for refining

³²⁷ S 6(2)(g) of the Unconscionable Terms Act.

³²⁸ The European Bank for Reconstruction and Development (EBRD) op cit note 225 at 22.

³²⁹ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 9.

³³⁰ S 100A of the Mining Act.

³³¹ Finance Act No. 4 of 2017.

³³² Ibid. s 35.

³³³ Ss 12 & 25 of the Amendments Act.

³³⁴ Peter Leon & Ernst Muller op cit note 237 at para 20.

³³⁵ S 100C of the Mining Act.

³³⁶ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 10.

³³⁷ S 100A of the Mining Act as amended under ss 26 & 27 of the the Amendments Act.

³³⁸ S 9 of the Permanent Sovereignty Act.

³³⁹ S 6(2) of the Unconscionable Terms Act.

³⁴⁰ Sam Luttrell op cit note 221 at 1 para 1

³⁴¹ The Mining (Mineral Beneficiation): Regulations in GN No. 4 of 2018.

³⁴² Ibid. reg 12.

³⁴³ FB Attorneys 'Guide to Mining in Tanzania' available at <https://www.lexafrika.com/wp-content/uploads/2019/06/Guide-to-Mining-in-Tanzania.pdf>, accessed on 15th June.2020.

³⁴⁴ The beneficiation regulations define a processing licence as a licence granted by the Commission for milling, beneficiating and dressing mineral ores and includes refining and smelting of minerals.

³⁴⁵ Reg 3(1), (2) of the Mining (Mineral Beneficiation): Regulations in GN No. 4 of 2018.

and smelting licences (which the beneficiation regulations do not clearly define).³⁴⁶ These licences enable the holder to construct a plant to beneficiate raw minerals and export the processed minerals with a higher value.³⁴⁷ The holders of these licences are further required to comply with the LCRs³⁴⁸ under the Mining Act.³⁴⁹ This holder must have records of the beneficiation activities by making entries on the prescribed form they must keep at the plant.³⁵⁰ The records are required to be submitted to the New Commission every month.³⁵¹ Any default or non-compliance with the Mining Act and these regulations will result in the New Commission suspending and cancelling the licence.³⁵² After the raw minerals have undergone the required beneficiation, the licenses holder can sell or export them.³⁵³ The exportation is subject to requirements under the Minerals and Mineral Concentrates Trading Regulations,³⁵⁴ such as acquiring export permits to pay royalties.³⁵⁵ The beneficiation regulations and the Mining Act have done well to impose these obligations; however, many unresolved shortfalls are discussed in the next section and further in the next chapter four.

4. Shortfalls of the Legal Framework on Beneficiation

Several shortfalls characterised the new mining laws and regulations concerning beneficiation. This section introduces these shortfalls briefly as Chapter four provides a more in-depth discussion. First, the new mining laws and local content regulations do not define local content,³⁵⁶ and the Amendments Act does not explain what 'local content plans' are.³⁵⁷ However, one can presume that 'local content plans' may refer to buying, teaching, and employing (skills transfer) Tanzanians.³⁵⁸ Further, under the beneficiation regulations, a mineral right holder must apply for a refining and smelting licences. However, the beneficiation regulations do not clearly define these licences.³⁵⁹ There is a need for further clarity of services are part of the definition of goods that mining companies may be allowed to source from outside Tanzania if not available in Tanzania when fulfilling their LCRs.³⁶⁰ The lack of a coherent description of key terms will lead to interpretation and compliance predicaments.³⁶¹ This lack of clarity creates a loophole that wealthy foreign

³⁴⁶ Reg 4(1), (2) of the Mining (Mineral Beneficiation): Regulations in GN No. 4 of 2018.

³⁴⁷ *Ibid.* reg 7.

³⁴⁸ LCRs include employment and training of Tanzanian citizens, procurement of Tanzanian goods and services.

³⁴⁹ Reg 8 of the Mining (Mineral Beneficiation): Regulations in GN No. 4 of 2018.

³⁵⁰ *Ibid.* reg 11(1).

³⁵¹ *Ibid.* reg 11 (3).

³⁵² *Ibid.* reg 10.

³⁵³ Thomas Mihayo Sipemba & Jacqueline Matiko *op cit* note 33 at para 101.

³⁵⁴ Mining (Minerals and Mineral Concentrates Trading) Regulations in GN No. 138 of 2019.

³⁵⁵ Thomas Mihayo Sipemba & Jacqueline Matiko *op cit* note 33 at para 101.

³⁵⁶ The World Bank Group *op cit* note 29 at 99.

³⁵⁷ Matt Genasci, Thomas Scurfield & Nicola Woodroffe *op cit* note 232 at 8.

³⁵⁸ S 28 of the Amendments Act.

³⁵⁹ Reg 4(1), (2) of the Mining (Mineral Beneficiation): Regulations, 2018 in GN No. 4 of 2018.

³⁶⁰ Noor Kapdi & Robert Parring 'Amendments to the Mining Act in Tanzania' available at <https://www.lexology.com/library/detail.aspx?g=f26f7200-ee53-4271-9560-2f9b64afb8d0>, accessed on 9th November.2020. at para 6

³⁶¹ The World Bank Group *op cit* note 29 at 99.

companies may be abuse and exploit at Tanzanians' expense.³⁶² This abuse and exploitation will lead to inefficiency and defeat the whole intents and purposes of the new mining laws and accompanying regulations.³⁶³

The Amendments Act must provide for specific regulations on how mining companies must conduct beneficiation of minerals.³⁶⁴ The Amendments Act restricts any export of unprocessed minerals but does not address the capacity to carry out the beneficiation.³⁶⁵ Tanzania passed the Amendments Act and the other new mining laws and regulations. It abruptly imposed a ban on raw minerals' exportation to beneficiate them, yet Tanzania does not have the capacity.³⁶⁶ The Amendments Act also falls short in terms of enforcement mechanisms for non-compliance with the LCRs and particularly beneficiation.³⁶⁷ For instance, concerning LCRs, the Amendments Act places a shared obligation on the Tanzanian government and the mining companies to train and transfer knowledge to Tanzanian citizens.³⁶⁸ However, the Amendments Act does not outline how mining companies will conduct this transfer of knowledge and how the Tanzanian government can implement it.³⁶⁹ The new laws and regulations lack implementation and enforcement mechanisms and sanctions against the intended improvement of benefit sharing from minerals through LCRs such as beneficiation.³⁷⁰ Without such mechanisms, Tanzania will run the risk of rampant non-compliance and the smuggling of raw minerals.

Furthermore, the new mining laws and their regulations do not provide any incentives to mining companies to lure them into actively participating in beneficiation.³⁷¹ Such incentives would include tax holidays and low electricity bills for beneficiating companies, as was Mozambique's case with BHP-Billiton in the late 1990s.³⁷² The Mozambican government gave BHP-Billiton incentives by reducing electricity costs to enable them to construct a smelter in Maputo.³⁷³

The Amendments Act does not define the local content plan required for the application for new mining licences.³⁷⁴ The actual meaning of raw materials is not given in any new mining laws, resulting in uncertainty about raw materials' true meaning. Furthermore, restricting the sale of raw materials and formulating plants to add value to minerals have not been aligned with the Amendments Act (there is no nexus). The Amendments Act further lacks clarity and time

³⁶² Boniphace N. Luhende op cit note 69 at 39.

³⁶³ Ulrich E. Hansen, Ivan Nygaard & Mike Morris et al op cit note 70 at 4.

³⁶⁴ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 10.

³⁶⁵ Mia Ellis & Margaret McMillan op cit note 6 at 4.

³⁶⁶ Christopher Huggins & Abel Kinyondo 'Resource nationalism and formalization of artisanal and small-scale mining in Tanzania: Evidence from the tanzanite sector' (2019) 63 *Journal Resources Policy* at 4.

³⁶⁷ Mia Ellis & Margaret McMillan op cit note 6 at 4.

³⁶⁸ John Page & Finn Tarp op cit note 12 at 287.

³⁶⁹ Ibid.

³⁷⁰ The World Bank Group op cit note 29 at 99.

³⁷¹ Kojo Busia & Charles Akong op cit note 154 at 179.

³⁷² Roman Grynberg & Kedibonye Sekakela *Case Studies in Base Metal Processing and Beneficiation: Lessons From East Asia Research Report 21, December* (2015) at 68.

³⁷³ Roman Grynberg & Kedibonye Sekakela op cit note 372 at 68.

³⁷⁴ Mia Ellis & Margaret McMillan op cit note 6 at 4.

frames for existing mining companies to comply with the new mining laws and establish these beneficiation plants. Only the local content regulations gave mining companies a limited and insufficient period of three months to comply with local content plans.³⁷⁵

The Mining Act states that mining companies can sell raw minerals outside Tanzania only under exceptional circumstances.³⁷⁶ The Sovereignty Act further alludes to this exception but does not elaborate on the circumstances under which mining companies can export raw minerals.³⁷⁷ Again, there is a need for the beneficiation regulations to elaborate on what these circumstances for allowing selling raw materials outside Tanzania would be. Further, the new mining laws need to impose a levy on the exportation of raw minerals falling under this exception.³⁷⁸ There is also a need to formulate a conducive environment to enable Tanzania and the companies to beneficiate raw minerals.³⁷⁹ In Tanzania, the distribution of roles and responsibilities in the relevant mining ministry and departments to promote LCRs have been chaotic.³⁸⁰ Unless Tanzania addresses these shortfalls, then beneficiation provisions and their intended benefits will not be successful.³⁸¹ The LCRs and beneficiation provisions under the new mining laws and regulations will remain difficult or impossible to fulfil and enforce and has resulted in a 2.4 per cent slump in gold production as of 2018.³⁸² As already stated, Chapter four further discusses and expounds on the shortfalls and practical challenges under the new mining laws and regulations in detail.

5. Conclusion

This chapter has discussed the position of Tanzania's Mining Act, new mining laws, and regulations of beneficiation as one of the LCRs. Beneficiation is on how Tanzania can enhance its benefit-sharing regarding mineral resources for economic growth.³⁸³ Tanzanian purposely enacted the new mining laws and regulations to ensure it benefits from its mineral endowments.³⁸⁴ However, these laws and regulations have shortfalls that Tanzania must address to ensure efficiency.³⁸⁵ It remains unclear if beneficiation has been a success in enhancing benefit sharing in Tanzania.³⁸⁶ Since its inception, the Bank of Tanzania records a reduction in gold production from 10, 798.4 kilograms to 10, 422.4 in

³⁷⁵ Burure Ngocho & Sadock Magai op cit note 44 at para 58.

³⁷⁶ Ss 100A & 100C of the Mining Act.

³⁷⁷ Mia Ellis & Margaret McMillan op cit note 6 at 5.

³⁷⁸ Evaristus Oshionebo op cit note 68 at 248.

³⁷⁹ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 10.

³⁸⁰ Mia Ellis & Margaret McMillan op cit note 6 at 8.

³⁸¹ Ibid. at 4.

³⁸² Richard Jansen van Vuuren 'Is Tanzania wagging the dog with new Mining Act?' available at <https://www.miningreview.com/top-stories/tanzania-wagging-dog-mining-act/>, accessed on 9th November.2020.

³⁸³ Conrad John Masabo *Regional Organisations and Sustainable Governance of Mineral Resources in Tanzania* (2016) at 21 & 22.

³⁸⁴ Burure Ngocho & Sadock Magai op cit note 44 at para 1.

³⁸⁵ Ibid. at para 59.

³⁸⁶ Michael Nassen Smith, Carilee Osborne, Zunaid Moola et al *South African gold mining and local procurement in Tanzania and Ghana* (2019) at 13.

2016.³⁸⁷ Nevertheless, the Tanzanian government has realised the significance of beneficiation to enhancing benefits from minerals for economic development.³⁸⁸ Tanzania has a limited capacity that is required to conduct beneficiation or value addition of raw minerals successfully.³⁸⁹

Tanzania is currently amending the Mining Act under the Amendment Bill of 2019³⁹⁰ , which is awaiting assent.³⁹¹ The Bill proposes several changes to the current Mining Act.³⁹² The next chapter discusses and assesses the shortfalls, legal and practical challenges that are imposed by the new legislation and its regulations on beneficiation as a means of enhancing benefit-sharing from minerals. This chapter provides an eagle's view on the aspects lacking in the current law on the concept of beneficiation.

³⁸⁷ Michael Nassen Smith, Carilee Osborne, Zunaid Moola op cit note 386 at 13.

³⁸⁸ *Ibid.* at 13.

³⁸⁹ *Ibid.* at 17.

³⁹⁰ Written Laws (Miscellaneous Amendments) (No.2) Bill of 2019 (the Mining Act Amendment Bill).

³⁹¹ Amalia Lui & Esther Kilimba Peter Kasanda 'Regulatory changes in Tanzania's mining sector' available at <https://www.clydeco.com/insight/article/regulatory-changes-in-tanzanias-mining-sector>, accessed on 12th June.2020.

³⁹² *Ibid.*

Chapter 4: Assessment of the Shortfalls and Practical Challenges of the Legal Framework on Beneficiation

1. Introduction

This chapter presents the socio-economic aspects of beneficiation and assesses the legislative framework's legal challenges discussed in chapter three. This chapter will also provide an overview of the legal and practical aspects lacking in the new mining laws and regulations on beneficiation as an aspect of benefit-sharing under the Local Content Requirements (LCRs).

The African Mining Vision intends beneficiation to enhance citizens' participation in the mining industry and the host nation's development.³⁹³ Beneficiation is ideal for benefit sharing of proceeds from the extraction of mineral resources; however, it has legal and practical shortfalls.³⁹⁴ There is a need to formulate a robust regulatory framework and monitoring mechanisms for the effective enforcement and implementation of beneficiation requirements.³⁹⁵ This chapter discusses the shortfalls in the new mining laws and regulations and the practical challenges facing Tanzania's beneficiation activities. As already discussed under section four of chapter three, the new mining laws and regulations have shortfalls and practical challenges that Tanzania must address. Apart from the definitional uncertainty discussed in chapter four, the new mining laws and regulations lack enforcement, monitoring, and sanctioning mechanisms.³⁹⁶ There is also a human resource and capacity deficit to ensure the laws are adhered to,³⁹⁷ coupled with a lack of consultations with stakeholders, among other things.³⁹⁸ The next section of this chapter discusses these shortfalls in greater detail. Section three further discusses the current practical challenges mining companies face due to the new mining laws and regulations' underlying shortfalls. The last section provides conclusions on the legislative framework's shortfalls, leading to this dissertation's concluding chapter.

³⁹³ Oliver P. Maponga & Chilombo Musa 'Domestication of the role of the mining sector in Southern Africa through local content requirements' (2020) *Journal of the Extractive Industries and Society* at 5.

³⁹⁴ Jimmy Swira 'Africa Can Get More From Its Minerals By Building Industries To Service Mines' available at <https://africanminingbrief.com/africa-can-get-more-from-its-minerals-by-building-industries-to-service-mines/>, accessed on 5th October.2020.

³⁹⁵ Perrine Toledano & Nicolas Maennling *Local Content Policies in the Mining Sector: Fostering downstream linkages* (2018) at 7.

³⁹⁶ Mia Ellis & Margaret McMillan op cit note 6 at 5.

³⁹⁷ Karolina Werner op cit note 190 at 48.

³⁹⁸ Herbert Smith LLP 'Making a bad situation worse: Tanzania introduces further regulatory changes to the mining sector' available at <https://www.mining.com/web/making-bad-situation-worse-tanzania-introduces-regulatory-changes-mining-sector/>, accessed on 14th November.2020.

2. Shortfalls in the New Mining Laws and Regulations

This section identifies several shortfalls and practical challenges emanating from the new Tanzanian mining laws and regulations. This section further assesses the socio-economic aspects of beneficiation. This chapter is a continuation of the shortfalls discussed briefly in section 4 of chapter three.

2.1. *Generality of Beneficiation Requirements*

The beneficiation processes are different for each mineral resource, and Tanzania must not treat them the same.³⁹⁹ The new mining laws and beneficiation regulations do not consider specifying and focusing on which minerals would be cheaper but more beneficial to add value to them.⁴⁰⁰ Instead, the new mining laws and regulations⁴⁰¹ give a general requirement to have all minerals beneficiated.⁴⁰² This general requirement limits the chances of successful beneficiation and its implementation in Tanzania.⁴⁰³ Many mining companies would not engage in beneficiation that would not make economic sense or result in losses.⁴⁰⁴ These umbrella beneficiation requirements may not be ideal and achievable for already existing small mining companies.⁴⁰⁵ In 2011, the TMAA⁴⁰⁶ opined that beneficiating copper with the quality and the quantities Tanzania produces would not make economic sense for the mining companies.⁴⁰⁷ Therefore, the beneficiation of minerals that would not be significant defeats the purpose of the new mining laws and regulations.⁴⁰⁸ Consequently, it must be economically sound and achievable for the mining companies for beneficiation to be successful.⁴⁰⁹

2.2. *Lack of Incentives*

As discussed in section 3.3. of chapter two, Tanzania must give mining companies incentives to ensure they comply with beneficiation. Incentives are essential, especially when erecting beneficiation infrastructure, which is an expensive investment.⁴¹⁰ This need to incentivise mining companies becomes apparent due to the limited infrastructure for conducting value addition to raw minerals.⁴¹¹ Further, Tanzania must reduce the costs of materials used in beneficiation

³⁹⁹ Khensane Hlongwane op cit note 77 at 15.

⁴⁰⁰ Thomas Scurfield 'The Challenge of Adding Value in Tanzania's Mining Sector' available at <https://resourcegovernance.org/blog/challenge-adding-value-tanzania%E2%80%99s-mining-sector>, accessed on 13th October.2020.

⁴⁰¹ See s 59 of the Mining Act, s 6 of the Unconscionable Terms Act & s 9 of the Sovereignty Act & section 3.2 of chapter 3 of this dissertation.

⁴⁰² Thomas Scurfield op cit note 400 at para 6.

⁴⁰³ Ibid.

⁴⁰⁴ Anna Rabin 'Tanzania: Mining Sector Woes' available at <https://www.dragomanglobal.com/sites/default/files/2017-11/Anna%20Rabin%20Tanzania.pdf>, accessed on 18th October.2020.

⁴⁰⁵ Isabelle Ramdoo op cit note 85 at 23.

⁴⁰⁶ Tanzania Minerals Audit Agency. See section 2.2. under chapter 3 of this dissertation.

⁴⁰⁷ Thomas Scurfield op cit note 400 at para 6.

⁴⁰⁸ Ibid.

⁴⁰⁹ Uongozi Institute op cit note 16 at 11.

⁴¹⁰ Dak Collyer op cit note 215 at 2.

⁴¹¹ Claudine Sigam & Leonardo Garcia op cit note 7 at 19.

processes to ease mining companies' burden.⁴¹² The new laws and regulations must back these incentives for beneficiation.⁴¹³ Such incentives include tax holidays or reductions, reduced costs of energy required for beneficiation activities, and minimised state royalty paid to the government for mining companies.⁴¹⁴ In essence, the provision of incentives⁴¹⁵ means that the host nation will incur part of the cost of the investment required for the LCR of beneficiation to ensure that mining companies comply.⁴¹⁶

The new Tanzanian mining laws and regulations do not incentivise the mining companies to add value to raw minerals.⁴¹⁷ The lack of incentives to enable mining companies to efficiently and cheaply conduct beneficiation is one of the main obstacles to successfully implementing the new mining laws.⁴¹⁸ Arguably, the lack of incentives explains the Tanzanian industry's inability to compete with the international industries regarding beneficiation capabilities.⁴¹⁹ Therefore, the local mining companies and industries continue to lack the capacity to add value to raw minerals and thus impossible to comply with such requirements under the new mining laws and regulations.⁴²⁰ A lack of upskilling and training further causes Tanzanian citizens' lack of capacity, as the next section discusses.

2.3. Lack of Upskilling and Training of Citizens

Tanzania has a shortfall of a skilled local workforce to carry out the necessary beneficiation activities.⁴²¹ This lack of essential skilled workforce, just like lack of infrastructure, remains one of the main challenges against successful beneficiation in Tanzania.⁴²² The new mining laws do not make detailed provisions for Tanzanian citizens' training, which is lacking.⁴²³ As discussed in chapter three of this dissertation, there is a lack of clarity on how the mining companies must conduct training and upskilling.⁴²⁴ There is a need to address the deficit of specialised and skilled citizens required to fill in the established beneficiation facilities' jobs.⁴²⁵ Beneficiation of minerals is a technical process that involves identifying physical and chemical aspects of raw minerals to separate the unwanted properties.⁴²⁶ It indeed

⁴¹² Extractives Hub op cit note 191 at para 14.

⁴¹³ Karolina Werner op cit note 190 at 46.

⁴¹⁴ Perrine Toledano & Nicolas Maennling op cit note 395 at 10.

⁴¹⁵ These incentives are effective as seen in Australia in 1905 where the use of incentives such as reduced transportation costs and provision of infrastructure resulted in direct enhancement of beneficiation activities in the Australian steel industry. See Mathew T. Mamina, Rutendo Maganga & Kudakwashe Dzwiti op cit note 168 at 2.

⁴¹⁶ Rafael E. Macatangay 'Optimal local content requirement policies for extractive industries' (2016) 50 *Journal of Resources Policy* at 245.

⁴¹⁷ Perrine Toledano & Nicolas Maennling op cit note 395 at 10.

⁴¹⁸ John Page & Finn Tarp op cit note 12 at 300.

⁴¹⁹ Ibid. at 20.

⁴²⁰ Boniphace N. Luhende op cit note 69 at 39.

⁴²¹ Khensane Hlongwane op cit note 77 at 16.

⁴²² John Page & Finn Tarp op cit note 12 at 80.

⁴²³ Jeantet Aarpi & Victoria Nalule *Mining - Level 2* (2020) at 9.

⁴²⁴ See section 4 of chapter 3 of this dissertation.

⁴²⁵ Evaristus Oshionebo op cit note 68 at 248.

⁴²⁶ Swapan K. Haldar *Mineral Exploration: Principles and Applications* (2018) at 260.

requires technical training, skill, and expertise to be able to use the necessary techniques.⁴²⁷ Without the essential skills, the mining companies risk conducting poor beneficiation to reduce the minerals' value and occasion financial loss.⁴²⁸ Currently, Tanzanian citizens do not have the required skills and capacity to successfully perform beneficiation of raw minerals regardless of the mining companies' legal requirements.⁴²⁹ The lack of upskilling and training of citizens has directly and immediately impacted another area of beneficiation infrastructure lacking, which the next section discusses.

2.4. Deficit of Beneficiation Infrastructure and Skilled Human Resource

The infrastructure necessary for beneficiation includes infrastructure such as refineries and smelters.⁴³⁰ Mining companies use refineries and smelters to add value to raw minerals through an industrial process.⁴³¹ Refineries and smelters are expensive to acquire and assemble⁴³² and consume high amounts of electricity.⁴³³ A significant supply of water is also required in these refineries and smelters.⁴³⁴ Tanzania's electricity supply is currently inadequate to meet the energy-intensive beneficiation activities of smelting and refining raw minerals.⁴³⁵ The new mining laws and Tanzanian government need to address the need for energy and electricity supply for the beneficiation needs.⁴³⁶ At least 4, 500 kilowatts are required to beneficiate a ton of copper.⁴³⁷ This figure juxtaposed with the net 2, 280 gigawatts hours that the Tanzania Electricity Supply Company (TANESCO) generates for the whole country raises some severe concerns in achieving beneficiation.⁴³⁸ The electricity supplied is insufficient to meet the electricity needs of beneficiation activities.⁴³⁹ There is no link between beneficiation and policies to curb electricity shortages.⁴⁴⁰ Unless Tanzania overcomes this electricity challenge, beneficiation will continue to be unsuccessful as electricity plays an integral part.⁴⁴¹ Apart from electricity issues, Tanzania also lacks other infrastructure such as transportation infrastructure necessary for beneficiation such as roads and ports.⁴⁴²

⁴²⁷ Swapan K. Haldar op cit note 426 at 260.

⁴²⁸ Christopher Huggins & Abel Kinyondo op cit note 366 at 4.

⁴²⁹ Japhace Poncian op cit note 325 at 82.

⁴³⁰ Isabelle Ramdoo op cit note 85 at 9.

⁴³¹ Isabelle Ramdoo op cit note 83 at 9.

⁴³² Natural Resource Governance Institute (NRGI) op cit note 188 at 2.

⁴³³ James Fungai Maposa op cit note 189 at para 6.

⁴³⁴ Aaron Cosbey, Nicolas Maennling, Jeff Geipel et al op cit note 13 at 37.

⁴³⁵ Boniphace N. Luhende op cit note 69 at 40.

⁴³⁶ James Fungai Maposa op cit note 189 at paras 6 & 7.

⁴³⁷ Donald I. Bleiwas *Estimates of Electricity Requirements for the Recovery of Mineral Commodities, with Examples Applied to Sub-Saharan Africa* (2011) at 3.

⁴³⁸ *Ibid.* at 12.

⁴³⁹ Kojo Busia & Charles Akong op cit note 154 at 179.

⁴⁴⁰ African Center for Economic Transformation (ACET) op cit note 141 at 9.

⁴⁴¹ The European Bank for Reconstruction and Development (EBRD) op cit note 225 at 34.

⁴⁴² Khensane Hlongwane op cit note 77 2014 at 48.

The new mining laws and regulations do not address the deficit in beneficiation infrastructure and the absence of a skilled local workforce discussed in section 2.2. to carry out these beneficiation activities.⁴⁴³ The absence of the necessary infrastructure for beneficiation is one of the biggest challenges facing Tanzania's value addition processes.⁴⁴⁴ Lack of beneficiation infrastructure is a severe problem in Tanzania and many resource-rich African countries in general.⁴⁴⁵ Without these infrastructures, it is impossible to comply with and implement the beneficiation laws and regulations due to a lack of capacity.⁴⁴⁶ For example, Tanzania compelled a London-listed Acacia Mining Plc (Acacia) to stop the exportation of copper concentrates in its raw form.⁴⁴⁷ Due to a lack of capacity to beneficiate, Acacia had to halt mining activities. This halting was a massive setback to Acacia because copper alone contributed to at least 30 per cent of Acacia's revenues.⁴⁴⁸ Acacia suffered unprecedented losses amounting to U\$246 million, and this loss resulted in Acacia halting some of its operations in their mine known as Bulyanhulu.⁴⁴⁹ Another example pertains to the closure of TanzaniteOne⁴⁵⁰ due to the export ban and the requirement to beneficiate raw Tanzanite.⁴⁵¹ The absence and lack of infrastructure and skilled human resource capacity affected TanzaniteOne's performance of the legal obligation to beneficiate, which resulted in financial losses and its subsequent closure.⁴⁵²

The New Tanzanian mining laws and regulations must address the lack of infrastructure for beneficiation. Otherwise, it will continue to jeopardize other mining operations and the revenue accruing from them.⁴⁵³ The new mining laws do not obligate the Tanzanian government to provide the infrastructure necessary for beneficiation.⁴⁵⁴ The new mining laws and regulations do not offer any temporary option to mining companies that lack the beneficiation infrastructure to add value to their raw minerals.⁴⁵⁵ It merely states that mining companies must beneficiate raw minerals before exportation.⁴⁵⁶ The new mining laws and regulations require immediate compliance with the beneficiation requirements. This requirement disregards the genuine considerations for putting up refineries and smelters, such as the long-term

⁴⁴³ Khensane Hlongwane op cit note 77 at 16.

⁴⁴⁴ John Page & Finn Tarp op cit note 12 at 80.

⁴⁴⁵ Jeantet Aarpi op cit note 175 at 81 at 13.

⁴⁴⁶ Ibid. at 13.

⁴⁴⁷ Thomas Scurfield op cit note 400 para 3.

⁴⁴⁸ Ibid. at para 3.

⁴⁴⁹ Zandi Shabalala 'Acacia Mining scraps dividend after slumping to annual loss' available at <https://www.reuters.com/article/uk-acacia-mining-results-idUKKBN1FW15S>, accessed on 14th November.2020.

⁴⁵⁰ TanzaniteOne Mining Limited is a Tanzanian mining company which mines the rare Tanzanite mineral located in an area known as Merelani in Tanzania, available at <https://www.tanzaniteone.com/>

⁴⁵¹ Sacha Brenac, Rachael Hilderbrand, Cleo Rogers et al *A Comparative Case Study of Amethyst Mining in Brazil and Tanzanite Mining in Tanzania* (2019) at 39.

⁴⁵² Ibid. at 39.

⁴⁵³ Thomas Scurfield op cit note 400 at para 7.

⁴⁵⁴ Perrine Toledano & Nicolas Maennling op cit note 395 at 10.

⁴⁵⁵ Boniphace N. Luhende op cit note 69 at 40.

⁴⁵⁶ See section 2.1 of this chapter 4.

investments that mining companies require for beneficiation plants.⁴⁵⁷ Unless Tanzania addresses these infrastructure deficits, it will continue to suffer financial loss from the exported raw minerals.⁴⁵⁸

2.5. Lack of Timeframes

The new mining laws have not provided any time frames for mining companies to comply with the beneficiation requirements of establishing plans for processing raw minerals.⁴⁵⁹ The new mining laws and regulations must provide adequate time to enable existing mining companies to comply considering these plants' nature.⁴⁶⁰ It will require a minimum of three years for Tanzania to assemble the requisite beneficiation infrastructure⁴⁶¹ and risk losing millions of revenue from the lack of exportation of minerals.⁴⁶²

The new mining laws do not indicate specific time frames within which mining companies should finalise raw minerals' beneficiation upon commencement.⁴⁶³ Further, the ban for the exportation of raw minerals was imposed on both new and existing mining companies promptly without adequate transitional periods stipulated.⁴⁶⁴ For instance, the new mining laws and regulations gave the mining companies insufficient, unattainable and unreasonable time to comply.⁴⁶⁵ This lack of timeframes and adequate transitional periods for compliance becomes a problem for implementation and enforcement purposes as it can be almost impossible for mining companies to comply.⁴⁶⁶

2.6. Lack of Monitoring, Enforcement, and Implementation Capacity

The implementation of the LCRs and, more particularly, beneficiation has been difficult.⁴⁶⁷ Failure to implement the mining laws and regulations is the most significant shortfall and challenge for success.⁴⁶⁸ Tanzania has had insignificant achievements in terms of the beneficiation of its raw minerals.⁴⁶⁹ The new mining laws and policies in Tanzania have not succinctly provided for the mining companies' required performance targets and monitoring mechanisms.⁴⁷⁰ For example, in 2019, the Tanzanian government engaged in negotiations with Barrick Gold Cooperation (Barrick) over a

⁴⁵⁷ Uongozi Institute op cit note 16 at 4.

⁴⁵⁸ Jeantet Aarpi op cit note 175 at 13.

⁴⁵⁹ Perrine Toledano & Nicolas Maennling op cit note 395 at 12.

⁴⁶⁰ Ibid.

⁴⁶¹ Beneficiation infrastructure includes the plant itself, water supplies, pipelines among others. See <https://www.ceaa-acee.gc.ca/050/documents/p80027/86629E.pdf>

⁴⁶² Thomas Scurfield op cit note 400 at para 3.

⁴⁶³ Jeantet Aarpi & Victoria Nalule op cit note 423 at 36.

⁴⁶⁴ Thomas Scurfield op cit note 400 at para 6.

⁴⁶⁵ Herbert Smith LLP op cit note 398 at para 3.

⁴⁶⁶ Brecken Branstrator 'State of the Colored Stone Market: Building Benefits at Home' available at <https://www.nationaljeweler.com/diamonds-gems/social-issues/8223-state-of-the-colored-stone-market-building-benefits-at-home>, accessed on 16th October.2020 at para 33.

⁴⁶⁷ John Page & Finn Tarp op cit note 12 at 78.

⁴⁶⁸ Abel Kinyondo & Espen Villanger op cit note 76 at 371.

⁴⁶⁹ Boniphace N. Luhende op cit note 69 at 40.

⁴⁷⁰ John Page & Finn Tarp op cit note 12 at 77.

possible acquisition of Acacia Mining Plc (Acacia).⁴⁷¹ However, interestingly, the Tanzanian government offered Barrick an omission of the legal requirement not to export raw minerals and the need to establish beneficiation plants in Tanzania, which the Tanzanian government was considering.⁴⁷² There is no express provision in the new mining laws and regulations empowering the Tanzanian government to exempt some mining companies from complying with LCRs. This example shows a problem in the enforcement and implementation of the new mining laws and regulations.⁴⁷³

The new mining laws and regulations do not provide for the implementation of beneficiation policy strategies.⁴⁷⁴ Unless Tanzania acquires the infrastructure and capacity to beneficiate minerals and manages to enforce and implement the new mining laws and regulations, it will continue to earn less benefit from its mineral resources.⁴⁷⁵

3. Practical Challenges

There is a shortfall in mining companies and other industries' collaboration to meet the new mining laws' beneficiation requirements.⁴⁷⁶ Mining companies find it almost impossible to collaborate with local companies for beneficiation purposes due to their lack of capacity.⁴⁷⁷ The new mining laws and regulations must address these issues as a matter of urgency.⁴⁷⁸

There are several ministries and institutions responsible for ensuring that mining companies satisfy LCRs.⁴⁷⁹ However, the new mining laws and regulations have not spelt out these institutions' respective roles and duties at all points of the beneficiation process, making it difficult for enforcement and implementation.⁴⁸⁰ There is a lack of collaboration between these different institutions, limiting the intended realisation of beneficiation.⁴⁸¹

The Tanzanian government and the New Commission lack enough capacity to monitor, regulate and ensure compliance with LCRs such as beneficiation.⁴⁸² Under the new mining laws and regulations, the new Commission has been overwhelmed with new extra roles and responsibilities on beneficiation without addressing the capacity's underlying issue to fulfil these roles.⁴⁸³ Lack of ability to enforce and implement the beneficiation requirements under

⁴⁷¹ Webmaster 'The Downfall of Acacia Mining Plc in Tanzania: Will Tanzania Get a Better Deal?' available at <https://www.hakirasilimali.or.tz/the-downfall-of-acacia-mining-plc-in-tanzania-will-tanzania-get-a-better-deal/>, accessed on 15th October.2020.at 2 para 2.

⁴⁷² Ibid.at para 12.

⁴⁷³ Ibid.

⁴⁷⁴ Racheal Chagonja op cit note 74 paras 19 & 20.

⁴⁷⁵ John Page & Finn Tarp op cit note 12 at 286.

⁴⁷⁶ Ibid. at 291.

⁴⁷⁷ Ibid. at 20.

⁴⁷⁸ Ibid. at 300.

⁴⁷⁹ Ibid. at 291.

⁴⁸⁰ African Center for Economic Transformation (ACET) op cit note 141 at 10.

⁴⁸¹ Khensane Hlongwane op cit note 77 at 50.

⁴⁸² Extractives Hub 'Local Content' available at <https://www.extractiveshub.org/servefile/getFile/id/4209>, accessed on 6th October.2020.at 4 paras 1 & 2

⁴⁸³ Noor Kapdi & Robert Parring op cit note 360 at para 4.

the new mining laws and regulations is detrimental to the intended improvement of mineral resource extraction benefits.⁴⁸⁴ The lack of such strong capacities has led to significant abuse of LCRs in Tanzania.⁴⁸⁵ Due to this lack of capacity, the New Commission has been unable to sensitise and encourage all stakeholders to comply with the LCRs stipulated under the new mining laws and regulations.⁴⁸⁶ In 2015, there was an establishment of a Local Content Department purported to be the overseer of LCRs in Tanzania and engage all relevant ministries, departments, and institutions to that effect.⁴⁸⁷ However, this Department has yet to roll out its operations and has not made any difference to these shortfalls.⁴⁸⁸ For LCRs such as beneficiation to succeed, there must be proper and adequate enforcement and monitoring mechanisms to ensure compliance.⁴⁸⁹ This entails having the requisite capacity to carry out the monitoring and enforcement duties.

4. Conclusion

There may be a need to have specific policies and laws that address monitoring, regulation, and enforcement of the beneficiation requirements.⁴⁹⁰ For a long time, Tanzania's mining laws lacked enforcement and, monitoring, and sanctions for mineral rights holders.⁴⁹¹ Monitoring compliance entails having adequate human and financial resources to carry out those duties ably.⁴⁹² Tanzania must address these shortfalls to realise the intended goals of LCRs and the beneficiation of raw minerals. Unlike previously, there is a need for stakeholder engagement and consultation when revising these new mining laws and regulations.⁴⁹³ As it stands, the legal requirements and obligations for the LCRs of beneficiation under the new mining laws and regulations are not easily attainable and uncertain for mining companies to comply with.⁴⁹⁴ Otherwise, studies will continue to show that the mining industry fails to benefit Tanzania adequately.⁴⁹⁵ The next chapter discusses the recommendations to the current shortfalls and practical challenges facing the new mining laws and regulations, as discussed in this chapter. This chapter will recapitulate the other chapters and discuss the proposals to be made under the new mining laws and regulations to improve the shortfalls and challenges.

⁴⁸⁴ Jeantet Aarpi op cit note 175 at 10.

⁴⁸⁵ John Page & Finn Tarp op cit note 12 at 19.

⁴⁸⁶ *Ibid.* at 291.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*

⁴⁸⁹ Boniphace N. Luhende op cit note 69 at 39.

⁴⁹⁰ Claudine Sigam & Leonardo Garcia op cit note 7 at 33.

⁴⁹¹ Mia Ellis & Margaret McMillan op cit note 6 at 5.

⁴⁹² Karolina Werner op cit note 190 at 48.

⁴⁹³ Herbert Smith LLP op cit note 398 at para 5.

⁴⁹⁴ *Ibid.* at para 20.

⁴⁹⁵ Racheal Chagonja op cit note 74 at para 2.

Chapter 5: Recommendation and Conclusion

1. Introduction

This dissertation has analysed how the new Tanzanian mining laws and regulations to establish how they have promoted and enhanced the beneficiation of raw minerals to increase the benefits Tanzania accrues from its mining industry. To this end, chapter two discussed the LCRs and beneficiation as a concept of benefit-sharing of the revenue from mineral resources. Chapter three of this dissertation further analysed the new mining laws and regulations and identified various shortfalls and practical challenges regarding beneficiation. Chapter four thereupon motivated for a revision of the new mining laws and regulations.

This chapter gives a summary of the main issues discussed in the previous chapters. This chapter further makes recommendations to the current legal framework. This chapter also outlines how Tanzania can circumvent these obstacles and challenges to improve the benefit-sharing from beneficiation of raw minerals in the mining sector of Tanzania, if at all. This chapter provides recommendations on circumventing and counteracting the current shortfalls and challenges for beneficiation to consider legislators and policymakers. The next section recapitulates and summarises the main issues discussed in this dissertation.

2. Summary of Main Issues

Being a resource-rich country, Tanzania ought to have benefitted more noticeably from its mineral extraction than is the case.⁴⁹⁶ Tanzanian citizens still face poverty, and Tanzania as a country remains underdeveloped.⁴⁹⁷ The infrastructure in mining communities is much dilapidated.⁴⁹⁸

This dissertation has also outlined and discussed the new mining laws and their accompanying regulations.⁴⁹⁹ Tanzania passed the new mining laws to improve the previous mining laws' shortfalls⁵⁰⁰ and strengthen Tanzania's economy.⁵⁰¹ The new mining laws and regulations intended to enhance Tanzania's benefits accrue from extracting its precious minerals by mining companies.⁵⁰² Ideally, the extraction of minerals must develop the host nation.⁵⁰³ Host nations must

⁴⁹⁶ Victoria R. Nalule op cit note 54 at 2.

⁴⁹⁷ Ibid. at 24.

⁴⁹⁸ Bernard Kengni p cit note 57 at para 9.

⁴⁹⁹ The four new laws include the Mining Act 14 of 2010, Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017 (Sovereignty Act), Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 6 of 2017, the Written Laws (Miscellaneous Amendments) Act 7 of 2017 (Amendments Act), , and Finance Act 8 of 2020.

⁵⁰⁰ Matt Genasci, Thomas Scurfield & Nicola Woodroffe op cit note 232 at 1.

⁵⁰¹ Amne Suedi op cit note 59 at paras 1 & 5.

⁵⁰² Fumbuka Ng'wanakilala op cit note 236 paras 11 & 12.

⁵⁰³ Damilola S. Olawuyi op cit note 79 at 49.

enact beneficiation laws and regulations with implementation and enforcement mechanisms for success.⁵⁰⁴ Stakeholders must be engaged and consulted when formulating these laws and regulations⁵⁰⁵ to enact laws and regulations that collates various views and ideas.⁵⁰⁶ These consultations will allow Tanzania to develop laws that are easier to comply with as the stakeholders will be aware of their obligations.⁵⁰⁷

This dissertation has argued that the New Tanzanian mining laws and regulations have various shortfalls (discussed in chapters three and four) that need addressing to ensure that beneficiation enhances benefit-sharing of mineral revenue.⁵⁰⁸ Arguably, beneficiation has not improved benefit-sharing of mineral revenue in Tanzania because of these legal and practical shortfalls and challenges.⁵⁰⁹ Therefore, the legislators and policymakers must consider the recommendations that this dissertation makes under the next section to counteract these shortfalls.

3. Concluding Recommendations

As discussed in Chapter four of this dissertation, LCRs and particularly beneficiation in developing resource-rich countries such as Tanzania, come with many challenges and obstacles which need addressing.⁵¹⁰ Tanzania must address these challenges and obstacles for beneficiation and its enhanced revenue to be a success.⁵¹¹ Tanzanian must draw lessons from similar developing resource-rich host nations that have formulated successful LCRs and beneficiation regulations.⁵¹² Therefore, in conclusion, this section makes recommendations for Tanzanian legislators and policymakers to consider.

3.1. Provision of Performance Targets and Incentives

Tanzania must amend or revise the new mining laws to provide performance targets and incentives to mining companies regarding beneficiation.⁵¹³ The new mining laws and regulations must incentivise mining companies with tax holidays and reductions for constructing infrastructure, acquiring skills, and training development. Unless such Tanzania provides such incentives under the new mining laws, realisation and implementation of the beneficiation requirements will remain challenging, resulting in further losses in mineral resources benefits.⁵¹⁴ Strict sanctions or penalties must follow non-compliance with these requirements to deter mining companies from such non-compliance.⁵¹⁵ If the Tanzanian government were at the forefront of investing in and conducting beneficiation through

⁵⁰⁴ Kojo Busia & Charles Akong op cit note 154 at 178.

⁵⁰⁵ Godfrey Mutizwa op cit note 201 at para 4.

⁵⁰⁶ Claudine Sigam & Leonardo Garcia op cit note 7 at 33.

⁵⁰⁷ Abel Kinyondo & Espen Villanger op cit note 76 at 372.

⁵⁰⁸ Burure Ngocho & Sadock Magai op cit note 44.

⁵⁰⁹ Michael Nassen Smith, Carilee Osborne, Zunaid Moola, et al op cit note 386 at 13.

⁵¹⁰ Claudine Sigam & Leonardo Garcia op cit note 7 at 1.

⁵¹¹ *Ibid.* at 17.

⁵¹² *Ibid.* at 1.

⁵¹³ John Page & Finn Tarp op cit note 12 at 77.

⁵¹⁴ *Ibid.* at 300.

⁵¹⁵ *Ibid.* at 77.

a state-owned mining company, it would be more beneficial.⁵¹⁶ In some instances, the government can elect to provide a mining company with other incentives in exchange for the infrastructure necessary for beneficiation.⁵¹⁷ Overarching new mining laws that enhance beneficiation productivity through reduced operational costs like electricity and transport and provides skills and training acquisitions answer the current problems.⁵¹⁸ The host nation must incentivise the mining companies and industries to comply with the requirements of the new mining laws.⁵¹⁹

Tanzania's new mining laws should address the deficits in performance indicators for mining companies, monitoring, and enforcement mechanisms for compliance with LCRs.⁵²⁰ Further, the laws should incentivise mining companies to comply with requirements easily and impose strict penalties for non-compliance.⁵²¹

3.2. Capacity Building

The Tanzanian government must require mining companies to equip the country's citizens with the necessary skills for conducting beneficiation activities.⁵²² Tanzania cannot overemphasise its citizens' need to have the necessary capacity, education, and skills to carry out value addition to raw minerals.⁵²³ Lack of capacity has been the greatest obstacle to beneficiation in African resource-rich countries.⁵²⁴ Once local people have the necessary skills, it will enhance the effectiveness of beneficiation in benefit sharing.⁵²⁵ Tanzania must make investments in education and training to curb this challenge.⁵²⁶ The new mining laws and regulations must require the Tanzanian government to build its citizens' capacity by investing in training and educational facilities and services.⁵²⁷

Additionally, there must be a further requirement to have attained a prescribed percentage of local Tanzanians' employment to perform beneficiation activities.⁵²⁸ The onus is on the host nation to ensure that it provides the necessary educational facilities to achieve this objective.⁵²⁹ Host nations must enact legislation and regulations that spell out the State and the mining companies' duties and responsibilities at each point of beneficiation.⁵³⁰ These laws and regulations must also require the training and education of citizens during beneficiation.⁵³¹ This requirement should be

⁵¹⁶ Perrine Toledano & Nicolas Maennling op cit note 395 at 14.

⁵¹⁷ Ibid. at 11.

⁵¹⁸ John Page & Finn Tarp op cit note 12 at 79.

⁵¹⁹ Ibid.

⁵²⁰ Ibid. at 285.

⁵²¹ Ibid..

⁵²² Victoria R. Nalule op cit note 54 at 85.

⁵²³ Claudine Sigam & Leonardo Garcia op cit note 7 at 17.

⁵²⁴ Alexis Habiyaemye & Evans Mupela op cit note 175 at 330.

⁵²⁵ Claudine Sigam & Leonardo Garcia op cit note 7 at 17.

⁵²⁶ Ibid.

⁵²⁷ Peter Arthur & Emmanuel Arthur op cit note 75 at 68.

⁵²⁸ Tim Grice & Square Circle op cit note 81 at 16.

⁵²⁹ Claudine Sigam & Leonardo Garcia op cit note 7 at 18.

⁵³⁰ African Center for Economic Transformation (ACET) op cit note 141 at 10.

⁵³¹ Claudine Sigam & Leonardo Garcia op cit note 7 at 18.

concomitant with further requirements to furnish periodic reports or quotas for citizens' training on beneficiation.⁵³² For this requirement's effectiveness, the laws should require mining companies to work together on citizens' training instead of alone.

Further, the new mining laws should require the Tanzanian government to establish local or international training institutions for imparting beneficiation skills to the Tanzanian citizens.⁵³³ Tanzania can consider local mentors to train and transfer skills to Tanzanian citizens.⁵³⁴ The mining companies must agree to fulfil these obligations before the Tanzanian government awards them with a mining contract.⁵³⁵

3.3. Provision of Infrastructure for Beneficiation

The Tanzanian government has not displayed any wish to fund the beneficiation activities to enhance the local industries.⁵³⁶ Tanzania must enact the necessary laws coupled with robust institutional and regulatory frameworks that demand the erection of this beneficiation infrastructure.⁵³⁷ These institutional and regulatory frameworks must be armed with the capacity and independence to enforce these laws ably.⁵³⁸ In other words, it should be easier to implement these new mining laws as compared to the current situation in Tanzania if they are to achieve their intended goals.⁵³⁹ They must have traditional roles and responsibilities and set up reasonable targets for mining companies and monitor their compliance.⁵⁴⁰ The already existing Tanzania Extractives Industry Transparency Initiative (TEITI)⁵⁴¹ and other Civil Society Organisations should monitor compliance and implement the new mining laws and regulations on beneficiation.⁵⁴²

The new mining laws must promote the establishment of the beneficiation infrastructures, for example, through incentives.⁵⁴³ The new mining laws must task Tanzania to ensure that the required infrastructure to achieve beneficiation.⁵⁴⁴

Furthermore, there is a need for a general revision of the new mining laws to determine if a broad approach and demand for beneficiation would apply to different circumstances, as seen in the Barrick and Acacia transaction.⁵⁴⁵ In this Barrick and Acacia transaction, the Tanzanian government erroneously waived the legal requirement to beneficiate

⁵³² Claudine Sigam & Leonardo Garcia op cit note 7 at 18.

⁵³³ John Page & Finn Tarp op cit note 12 at 301.

⁵³⁴ Racheal Chagonja op cit note 74 at para 66.

⁵³⁵ Tim Grice & Square Circle op cit note 81 at 18.

⁵³⁶ Racheal Chagonja op cit note 74 at para 68.

⁵³⁷ Tim Grice & Square Circle op cit note 81 at 19.

⁵³⁸ Ibid.

⁵³⁹ John Page & Finn Tarp op cit note 12 at 78.

⁵⁴⁰ Claudine Sigam & Leonardo Garcia op cit note 7 at 34.

⁵⁴¹ Tanzania Extractives Industry Transparency Initiative.

⁵⁴² Racheal Chagonja op cit note 74 at para 70.

⁵⁴³ Evaristus Oshionebo op cit note 68 at 248.

⁵⁴⁴ Claudine Sigam & Leonardo Garcia op cit note 7 at 19.

⁵⁴⁵ See subsection 2.6 of chapter 4.

minerals contrary to the new mining laws and regulations' provisions.⁵⁴⁶ A general condition to construct beneficiation plants would not be reasonable for every mining company in Tanzania.⁵⁴⁷ Removing this generality would permit easy enforcement and implementation of the beneficiation requirements.⁵⁴⁸

Further, there must be a specific requirement for local people's employment during the construction of this infrastructure to enhance the benefits.⁵⁴⁹ Once the new mining laws and regulations do this, it will instil confidence and obligation on the mining companies to invest in this infrastructure.⁵⁵⁰ Considering that it is costly to put up this required infrastructure, Tanzania must enact financial regulations to address infrastructure funding issues.⁵⁵¹

The new Tanzanian mining laws and regulations can consider providing an alternative to local beneficiation by allowing mining companies to add value to minerals outside Tanzania for lack of infrastructure.⁵⁵² Alternatively, the proposed mining laws and regulations can impose a precondition to all mining companies engaged in bidding and tendering mining contracts to satisfy the capacity to beneficiate raw minerals.⁵⁵³ Tanzania should only award these mining contracts to the bidder who meets this precondition together with other conditions under the bid.⁵⁵⁴

3.4. *Enhancement of Stakeholder Involvement*

Tanzanian government must briefly spell out the mining sector's role in enhancing local industrial policy and acquiring the necessary funds.⁵⁵⁵ The LCRs must be aligned with the host nation's industrial policy and must engage all stakeholders involved.⁵⁵⁶ Tanzania enacted new mining laws of 2017 abruptly with limited consultations, engagement, and stakeholder involvement, which are necessary.⁵⁵⁷ The participation of various stakeholders is to get broader perspectives and considering all views raised.⁵⁵⁸ Better mining laws, regulations, and policies stem out of broad stakeholder involvement and consultations.⁵⁵⁹ These consultations will further enable local industries to enhance their capacity and participation to meet the beneficiation laws and regulations' intended needs.⁵⁶⁰ Tanzania can also enhance this capacity by providing local industries funding to meet the beneficiation requirements through a

⁵⁴⁶ See subsection 2.6 of chapter 4.

⁵⁴⁷ Webmaster op cit note 471 at 2.

⁵⁴⁸ Ibid.

⁵⁴⁹ Claudine Sigam & Leonardo Garcia op cit note 7 at 21.

⁵⁵⁰ Ibid. at 20.

⁵⁵¹ Ibid. at 23.

⁵⁵² Jeantet Aarpi op cit note 175 at 81.

⁵⁵³ Extractives Hub op cit note 191 at para 20.

⁵⁵⁴ Ibid. at paras 20 & 21.

⁵⁵⁵ Racheal Chagonja op cit note 74 at para 45.

⁵⁵⁶ Claudine Sigam & Leonardo Garcia op cit note 7 at 21.

⁵⁵⁷ Christopher Huggins & Abel Kinyondo op cit note 366 at 184.

⁵⁵⁸ Jeantet Aarpi op cit note 175 at 9.

⁵⁵⁹ Abel Kinyondo & Espen Villanger op cit note 76 at 372.

⁵⁶⁰ Claudine Sigam & Leonardo Garcia op cit note 7 at 22.

development fund.⁵⁶¹ The new mining laws can also give local industries or mining companies a lack of beneficiation capacity to sell their raw minerals to companies that can beneficiate the raw minerals.

Further, the new laws must provide public-private partnerships to enable companies to get funding for the smelters and refinery beneficiation facilities that are typically expensive to acquire.⁵⁶² Public-private partnerships are also crucial in aligning a shared vision, strategy, and decision-making to foster the beneficiation activities.⁵⁶³ Tanzania can take a leaf from the book of Botswana's beneficiation programme where Botswana's government entered into a joint venture with De Beers (Pty) Limited to add value to raw diamonds.⁵⁶⁴ This partnership has made beneficiation in Botswana a success story, and both parties have benefitted exponentially through the development of infrastructure and employment of its citizens.⁵⁶⁵

3.5. Enhancement of Monitoring and Enforcement Mechanisms

The mining laws are unclear in terms of the legal requirements and how Tanzania can enforce them. It leaves room for non-compliance by the mining companies.⁵⁶⁶ Tanzania must arm the proposed new mining laws and regulations with enforcement mechanisms to compel compliance.⁵⁶⁷ These enforcement and monitoring mechanisms must be precise in evaluating compliance.⁵⁶⁸ The proposed new mining laws and regulations should require the Mining Commission to devise a working system to monitor compliance with the legal requirements and enforce the punitive provisions for non-compliance.

Further, the Mining Commission must impose criminal law sanctions that the new mining laws and regulations must provide for against all individuals in non-compliant mining companies.⁵⁶⁹ Other forms of sanctions can be monetary penalties against the non-compliant mining companies to pay the equivalent of the estimated sum of money the host nation would have obtained had the mining companies complied.⁵⁷⁰ This stringent sanction will force mining companies to comply with the new mining laws and regulations since the penalties for non-compliance will be more costly when juxtaposed with compliance costs.⁵⁷¹

⁵⁶¹ Claudine Sigam & Leonardo Garcia op cit note 7 at 34.

⁵⁶² Thomas Scurfield op cit note 400 at para 9.

⁵⁶³ Racheal Chagonja op cit note 74 at para 56.

⁵⁶⁴ Mayer Brown 'Beneficiation Legislation - does it achieve the desired effect?' available at <https://www.lexology.com/library/detail.aspx?g=bb337f71-1d90-43e7-a2b6-9aa201a25a44>, accessed on 6th November.2020.

⁵⁶⁵ Ibid.

⁵⁶⁶ Ulrich E. Hansen, Ivan Nygaard & Mike Morris et al op cit note 70 at 4.

⁵⁶⁷ Victoria R. Nalule op cit note 54 at 85.

⁵⁶⁸ Tim Grice & Square Circle op cit note 81 at 11.

⁵⁶⁹ Damilola S. Olawuyi op cit note 79 at 330.

⁵⁷⁰ Rafael E. Macatangay op cit note 416 at 245.

⁵⁷¹ Ibid.

The new mining laws and regulations should require mining companies to submit compliance and performance periodic reports.⁵⁷² These reports must be coupled with and guided by stipulated performance indicators for reference purposes when determining compliance.⁵⁷³ The performance indicators have specified timeframes within which mining companies must comply.⁵⁷⁴ Without these periodic updates, Tanzania will not ascertain the viability of the LCRs and beneficiation requirements under the new mining laws and regulations.⁵⁷⁵ Tanzania must establish a specific administrative institution or authority to monitor and ensure compliance with these local content and beneficiation criteria under the new mining laws and regulations.⁵⁷⁶ However, the success of the LCRs authority entails having the necessary capacity to carry out its duties.⁵⁷⁷

The laws must stipulate performance indicators. There must be a provision for joint venture agreements to allow mining companies to collaborate and with the national mining company and meet the law's requirements.⁵⁷⁸ These performance indicators or scorecards ensure ease of monitoring and ensuring that mining companies are compliant.⁵⁷⁹ For example, the new mining laws and regulations could require mining companies to employ a specific number of Tanzanian citizens for beneficiation activities.⁵⁸⁰

Tanzania must enact different laws, regulations, and policies to monitor, regulate and implement compliance with beneficiation requirements.⁵⁸¹ Strong institutions should couple these laws, regulations, and policies if they are to succeed.⁵⁸² These institutions are paramount in improving the capacity of the local industries to meet the demands of beneficiation.⁵⁸³ The institutions have to be well-coordinated and synchronise their position on beneficiation for easy enforcement.⁵⁸⁴ The new mining laws and regulations must distribute the roles and duties of these institutions.⁵⁸⁵ The new mining laws and regulations must enhance these institutions' capacity to meet the workload that comes with enforcement and monitoring.⁵⁸⁶ This enhancement can take the form of a committee or an institution of experts who can ably assess beneficiation requirements.⁵⁸⁷ These institutions should conduct sensitisation exercises for all stakeholders to inform of their need to satisfy LCRs as required under the law.⁵⁸⁸ Further, these institutions must impose

⁵⁷² Victoria R. Nalule op cit note 54 at 86.

⁵⁷³ Juan José Herrera, Marcela Morales & Sebastián Jarrín op cit note 62 at 15.

⁵⁷⁴ Damilola S. Olawuyi op cit note 96 at 14.

⁵⁷⁵ Ibid.

⁵⁷⁶ Damilola S. Olawuyi op cit note 79 at 162.

⁵⁷⁷ Juan José Herrera, Marcela Morales & Sebastián Jarrín op cit note 62 at 5.

⁵⁷⁸ Claudine Sigam & Leonardo Garcia op cit note 7 at 22.

⁵⁷⁹ Damilola S. Olawuyi op cit note 79 at 263.

⁵⁸⁰ Isabelle Ramdoo op cit note 85 at 8.

⁵⁸¹ Claudine Sigam & Leonardo Garcia op cit note 7 at 33.

⁵⁸² John Page & Finn Tarp op cit note 12 at 83.

⁵⁸³ Ibid. at 84.

⁵⁸⁴ Ibid.

⁵⁸⁵ Kennedy Chege op cit note 65 at para 10.

⁵⁸⁶ John Page & Finn Tarp op cit note 12 at 84.

⁵⁸⁷ Jeantet Aarpi op cit note 175 at 50.

⁵⁸⁸ John Page & Finn Tarp op cit note 12 at 291.

criminal law sanctions under the mining laws and regulations against all individuals in non-compliant mining companies.⁵⁸⁹ There is a need to formulate stronger mining laws and regulations that address these current challenges.⁵⁹⁰

3.6. Establishment of a Local Content Unit and Supplier Development

Tanzania must address the shortfalls in mining companies and other industries' collaboration to meet the new mining's beneficiation requirements.⁵⁹¹ Therefore, this dissertation suggests that there should be a Local Content Unit⁵⁹² (LCU) to monitor the LCRs such as beneficiation and facilitate the collaboration of companies to conduct value addition processes.⁵⁹³ LCU will spearhead the Tanzanian objectives of successful beneficiation of raw minerals.⁵⁹⁴ The LCU will engage all relevant stakeholders to foster ahead beneficiation.⁵⁹⁵

Further to this, the Tanzanian government should consider formulating a Supplier Development Programme (SDP).⁵⁹⁶ Tanzanian government will task this SDP with increasing local suppliers' involvement and participation in raw minerals' beneficiation by building their financial and human capacities.⁵⁹⁷ This task involves upscaling the skills and capabilities of local Tanzanians involved in beneficiation activities.⁵⁹⁸

3.7. Establishment of a Survey Data on Local Content Requirements

This dissertation further suggests an existing analysis of the impact of LCRs on enhancing the Tanzanian economy.⁵⁹⁹ This analysis is to determine whether such laws governing LCRs are making their intended effect lacking in Tanzania currently.⁶⁰⁰ One way of analysing such impact is through the formulation of well-detailed survey data on LCRs in Tanzania.⁶⁰¹

3.8. Improved Emphasis on training and upskilling Tanzanians

The new mining laws should also make detailed provisions for Tanzanian citizens' training, which is lacking.⁶⁰² Skilled employees in beneficiation activities are required to ensure that beneficiation is a success. There is a need for

⁵⁸⁹ Damilola S. Olawuyi op cit note 79 at 330.

⁵⁹⁰ Siri Lange & Abel Kinyondo op cit note 259 at 1095.

⁵⁹¹ John Page & Finn Tarp op cit note 12 at 291.

⁵⁹² An administrative body tasked with negotiating collaborations between mining companies and enhancing the local capacity through enterprise development programmes and trainings.

⁵⁹³ John Page & Finn Tarp op cit note 12 at 291.

⁵⁹⁴ Damilola S. Olawuyi op cit note 96 at 11.

⁵⁹⁵ Ibid.

⁵⁹⁶ John Page & Finn Tarp op cit note 12 at 300.

⁵⁹⁷ Ibid.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid. at 293.

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid. at 298.

⁶⁰² Jeantet Aarpi & Victoria Nalule op cit note 423 at 9.

specialised and skilled Tanzanian citizens who will be required to perform the duties of value addition to raw minerals in the established beneficiation facilities.⁶⁰³ There is a further need to incorporate the skills necessary for beneficiation into the Tanzanian education system to enhance capacity.⁶⁰⁴ Tanzania needs to create employment opportunities by formulating laws requiring the Tanzanian government to invest in education, human resource, and knowledge development for its citizens.⁶⁰⁵

3.9. Provision of Clear Time Frames for Beneficiation

The new mining laws should indicate specific time frames within which mining companies should finalise raw minerals' beneficiation upon commencement.⁶⁰⁶ These time frames will enable the seamless running of the beneficiation activities.⁶⁰⁷ The new mining laws and regulations need to address the uncertainty of not providing a timeframe within which mining companies can address the infrastructural deficit before they are required to comply.⁶⁰⁸ Currently, Tanzania lacks infrastructure, which requires reasonable time and finances to construct before companies can adhere to the beneficiation requirements.⁶⁰⁹ It is not practical to expect mining companies' immediate compliance with the need to beneficiate raw minerals before exporting them.

4. The Summative Conclusion

Chapters three and four have discussed that Tanzanian new mining laws have shortfalls and practical challenges. There is need to address the shortfalls (such as lack of capacity) and implore the recommendations made in this dissertation to realise the potential of economic benefits and development from the beneficiation of minerals.⁶¹⁰ If properly managed and executed, the benefit of raw minerals can enhance the share of benefits that a mineral resource-rich developing country such as Tanzania can acquire.⁶¹¹

⁶⁰³ Evaristus Oshionebo op cit note 68 at 248.

⁶⁰⁴ Khensane Hlongwane op cit note 77 at 48.

⁶⁰⁵ Racheal Chagonja op cit note 74 at para 51.

⁶⁰⁶ Jeantet Aarpi & Victoria Nalule op cit note 423 at 36.

⁶⁰⁷ Ibid. at 36.

⁶⁰⁸ Noor Kapdi & Robert Parring op cit note 360 at para 5.

⁶⁰⁹ Ibid. at para 5.

⁶¹⁰ Thomas Scurfield op cit note 400 at para 3.

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