



## Reforming Mining Sector Laws to Guarantee Local Procurement as a Tool to Socio-Economically Empower Youths: A Tanzanian Perspective

John Ombella\*

\*Lecturer, Department of Private Law, Mzumbe University, Tanzania



### Abstract

Majority African human resource is youth. These are expected to be directly involved in the harnessing of natural resources such as minerals for their socio-economic well-being. Contrary though, they are mostly unemployed in most mineral resources-rich African countries, Tanzania inclusive. Youth unemployment is an outcome of social, economic, and legal designs. Legally, it is founded on the absence of a robust legal framework to indirectly involve youths in the mining sector through procurement processes. Through documentary review, this paper examines the extent to which this obligation is being upheld in Tanzania. Through a qualitative analysis of reviewed documents, it is found that Tanzania's mineral legal framework partially complies with the African regional and states best practices on adoption of local procurement as a tool to empower youths. Review of the mineral legal framework is recommended to provide for provisions aimed at empowering youths in such a sector.

### Article History

Received: 09 December 2023

Accepted: 06 May 2025

### Keywords:

Youth, Empowerment, Procurement, Mining Law, Tanzania

## 1. INTRODUCTION

Socio-economic development of any state can hardly be discerned without the proper utilization of her human and natural resources.<sup>1</sup> As such, Africa is uniquely and abundantly endowed with human and natural resources. Natural resources can either be renewable (such as water and forest) or non-renewable (such as minerals). On the one hand, with regard to natural resources, particularly non-renewable ones, Africa is leading in the production of various minerals such as gold, diamond, phosphate, and manganese, to name but a few.<sup>2</sup> On the second hand of human resources, Africa is reported to have approximately a population of one billion people.<sup>3</sup> In particular, regarding youths, it is also reported that about 60% of her population is composed of youths.<sup>4</sup> Legitimately, they are therefore expected to be directly involved in the harnessing of mineral resources for their socio-economic well-being.<sup>5</sup> Contrary though, they are mostly unemployed in most mineral resources-rich African countries, Tanzania inclusive.<sup>6</sup> Consequently, socio-economically, they are regarded as poor.

A number of reasons may be attributed to the socio-economic status of youths in Africa, and Tanzania in particular. Inadequate capital, technology, and inadequate job opportunities created to meaningfully engage them in large-scale mining are among such factors.<sup>7</sup> Others

include absence of robust legal and policy framework to regulate the contribution of mining sector into youths' empowerment.<sup>8</sup> It is shown that, despite the great potential of local procurement provisions in addressing poverty eradication in mineral-rich African states, most of them lack such provisions in their mineral laws.<sup>9</sup> This is so despite the existence of African legal frameworks and states' best practices which provide principles that may be relied upon by African countries to empower their youths in the mineral sector. As such, the AU and African states' best practices require countries not only to foster the promotion of private investment and linkages of the mineral sector with other sectors but also to adopt legal measures that will offer preferential margins to youth in procurement in the mining sector.<sup>10</sup> It is argued that Africa needs deliberate efforts to accelerate social and economic development that give high priority to youth empowerment and development.<sup>11</sup>

---

<sup>8</sup>Economic Commission for Africa, 'African Common Position on Human and Social Development in Africa' (Economic Commission for Africa 1994). para 12-14.

<sup>9</sup> Nathan Geipel and Emily Nickerson, 'Promoting Local Procurement through System Change: A Canadian NGOs' Efforts to Improve the Development Impacts of the Global Mining Industry.' in Nathan Andrews, Andrews Grant and Jesse Ovadia (eds), *Natural resource-based development in Africa: Panacea or Pandora's Box* (University of Toronto Press 2022). pp. 215-216.

<sup>10</sup> African Youth Charter 2006.; Statute of the African Mineral Development Centre 2016.; Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area 2021.; African Charter on Human and Peoples' Rights 1986.; Protocol on Mining 1997.; Lusaka Declaration of the ICGLR special summit to fight illegal exploitation of natural resources in the Great Lakes Region. 2010.; ACHPR, Pretoria Declaration on Economic, Social and Cultural Rights in Africa 2004. ; African Union (n 2).; Declaration of the Special Summit of the ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion' 2014.

<sup>11</sup> AU (n 3). p. viii.

---

<sup>1</sup> African Union Commission, 'Agenda 2063: The Africa We Want'.

<sup>2</sup> African Union, 'Africa Mining Vision'. para ii.

<sup>3</sup> AU, 'African Youth Decade Plan of Action 2009-2018: Accelerating Youth Empowerment for Sustainable Development'. p. vii.

<sup>4</sup> *ibid.* p. vii.

<sup>5</sup> SADC, 'Implementation Plan for the Harmonisation of Mining Policies, Standards and Legislative Regulatory Frameworks in Southern Africa, ECA/SA/Tpub/2008/1'.

<sup>6</sup> AU (n 3). pp. vii-viii.

<sup>7</sup> African Union (n 2). para 3.; Ministry of Labour, Employment and Youth Development, 'National Youth Employment Action Plan'. para 3.2.

Structurally, this paper is organized into six sections, including this introduction. The second section provides the background to the problem, while section three discusses the African framework and states' best practices on empowering youths in the mineral sector. Section four examines the extent to which Tanzania's mineral legal framework complies with the African legal framework and states' best practices to empower youths in the mineral sector. Section five presents distilled legal issues from the preceding discussion, and section six offers a conclusion.

## 2. CONCEPTUAL FRAMEWORK

The term procurement seems to have a different meaning in accordance with the perspectives in which it is used. The Oxford Advanced Learners Dictionary for example, defines procurement as a process of obtaining supplies especially by the government or organizations.<sup>12</sup> The same definition is adopted by the Black's Law Dictionary.<sup>13</sup> The term procurement is also defined under the Public Procurement Act to mean,

...buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation and award of contracts.<sup>14</sup>

The two dictionary meanings related to procurement seem to be narrow when compared to the broader approach to defining it under the Procurement Act. Both the dictionary and statutory definitions seem to be silent on where the procurement is done, whether local or international. They also seem

to limit procurement to the process of purchasing goods and/or services. As such, they are silent on how procurement may foster linkages between economic sectors to unleash its potential to contribute to the socio-economic well-being of people in any country.

Local procurement, for example, is defined to mean the process by which the government or organizations purchase goods and services from local suppliers.<sup>15</sup> According to the World Bank, local procurement represents opportunities mineral resource-rich African countries can take not only to socio-economically empower their people but also to guarantee technology transfer through diversification and linkages of the mining sector with other sectors such as manufacturing and refining, to name but a few.<sup>16</sup> The same vision calling for linkages between the mining sector and other sectors is also noted by the African Union under the Mining Vision.<sup>17</sup>

The term procurement is used in this paper to mean not only the process by which mining companies purchase goods and services from local businesses and/or enterprises controlled and/or managed by youths, but also the legal linkages of the mining sector to other sectors such as refining to maximize benefits to youths and Tanzanians at large. This definition is pertinent now owing to the fact that there are global and local efforts to eradicate poverty through adoption of legal and other measures via sustainable harnessing of resources.<sup>18</sup> This study examines the extent to which Tanzania's

<sup>12</sup> Margaret Deuter, Jennifer Bradbery and Joanna Turnbull, 'Oxford: Advanced Learner's Dictionary'. p. 1187.

<sup>13</sup> Bryan Garner, 'Black's Law Dictionary'. p. 1245.

<sup>14</sup> The Public Procurement Act 2022. s. 3.

<sup>15</sup> Intergovernmental Framework on Mining Minerals and Metals and Sustainable Development, 'Local Content Policies in the Mining Sector: Scaling up Local Procurement'. p. 4.

<sup>16</sup> World Bank, 'A Practical Guide to Increasing Mining Local Procurement in West Africa'. p.14

<sup>17</sup> African Union (n 2).

<sup>18</sup> UN, 'Transforming Our World: The Agenda 2030 for Sustainable Development A/RES/70/1'. Oal 1; African Union Commission (n 1); United Republic of Tanzania Constitution 1977. Art. 9 (e).

mineral legal framework complies with principles in the African regional framework and states' best practices on the use of local procurement (hereafter, procurement) as a tool to empower youths.<sup>19</sup>

Youth unemployment is a global challenge that states and governments are striving to solve daily. From a global perspective, it is noted that unemployment, particularly youth unemployment, is a major concern.<sup>20</sup> At the African regional level, it is noted above that youths are estimated to constitute about 60% of her population and majority of them are unemployed.<sup>21</sup> Within the Southern African Development Community (SADC) sub-region, which represents an area where large-scale mining is intense, for example, South Africa is reportedly to have a high youth unemployment rate of about 57%, followed by Eswatini at 54%.<sup>22</sup> However, other countries such as; DR Congo and Malawi are reportedly to have less than 10% of youth unemployment rate.<sup>23</sup> A similar rate is also reported in Tanzania which has maintained 10% of youth unemployment since 2014-2021.<sup>24</sup> Although this rate is a commendable achievement when compared to other countries, Tanzania has not yet eliminated the youth unemployment problem.

In particular, for youth employed in the private sector in Tanzania, for example, the rate is 30%, while that of the public sector is 2.6%.<sup>25</sup> A closer review of the sector-specific youth employment shows that youth employed in the mining sector is reported to be 1.5% and 0.2% for men and women, respectively.<sup>26</sup> Such a

trend of youth employment in Tanzania may be explained in twofold. Firstly, there seems to have a narrow private sector participation in the economy. The lesser the private sector is involved in the economy, the lesser the employment opportunities are created for youths, among others.

Secondly, youths' involvement in the mineral sector is very narrow, which shows how limited opportunities are there for youths to work in this sector. It is also noted that there is a disparity between men and women employed in the mineral sector. This suggests that any measure to empower youths in the mineral sector should not be gender blind. Although issues of inadequate skills may be a factor here, the manner in which the mining sector is linked with other sectors to unleash its employment potential seems questionable in Tanzania.<sup>27</sup> As such, inadequate legal and policy linkages of various sectors are named as challenges to be solved in order to effectively empower youths in Tanzania.<sup>28</sup> It is argued that, in the absence of local laws and regulations requiring mining companies to procure from local enterprises led and/or owned by youths, preference may be placed on procurement from foreign firms registered in the country and/or procuring goods and services from abroad, and bear no linkage to the local economy (emphasis added).<sup>29</sup> Such a trend, rip-off the potential socio-economic benefits of the mining sector to empowering youths.

Employment in Tanzania is regulated by employment laws which are informed by the Bill of Rights in the Constitution. The Constitution and the labor laws in Tanzania

---

<sup>19</sup> See para 1 above

<sup>20</sup> Transforming our world: The 2030 Agenda for Sustainable Development A/RES/70/1 2015. para 14.

<sup>21</sup> See para 1 above.

<sup>22</sup> SADC, 'Selected Economic and Social Indicators'.

<sup>23</sup> *ibid.*

<sup>24</sup> National Bureau of Statistics, 'Integrated Labour Forces Survey 2020/2021: Analytical Report' (National Bureau of Statistics 2022). para 9.

<sup>25</sup> *ibid.* para 9.5.

<sup>26</sup> *ibid.* para 9.4.

---

<sup>27</sup> URT Mining Commission, 'Mining Commission Strategic Plan 2019/20-2023/24'. para 3.4.3.

<sup>28</sup> Ministry of Labour, Employment and Youth Development (n 7). para 3.2.

<sup>29</sup> Intergovernmental Framework on Mining Minerals and Metals and Sustainable Development (n 15). pp. 5-6.

guarantee non-discrimination with respect to employment issues.<sup>30</sup> Hence, youths are expected to be hired on equal footing with other members of the community. Inversely, the constitutional and labor law provisions seem silent on positive discrimination measures that will address the issue of youth unemployment, a gap that is also noted under general investment and mineral sector laws.<sup>31</sup> This paper however, puts forward an argument that, since youths constitute large part of the community and are shown to suffer from unemployment, there is a need of adoption of legal framework that will positively discriminate them in particular to mining sector.<sup>32</sup> The mining sector is chosen based on the fact that minerals are non-renewable and that, unless linked by laws to other sectors of the economy, it has a tendency to hire very few experts, most of whom are foreigners.<sup>33</sup> The unfolding discussion sets forth the African regional and state best practices on how to empower youths through local procurement in the mineral sector.

### 3. INTERNATIONAL OBLIGATION ON YOUTH EMPOWERMENT IN THE MINING SECTOR

The obligation to socio-economically empower youths may be examined under international, regional and or sub-regional perspectives. This paper, however, chose African regional frameworks as a benchmark to evaluate the extent to which Tanzania complies with them. Notably, however the

study borrows best-practices from other African countries in sporadic manner. Indeed, state best-practices on youth empowerment among other aspects of the mining sector are key in harmonizing mineral governance in Africa.<sup>34</sup> It is also important to note that various stakeholders are involved in youth empowerment, including states and investment companies, many of which are multinational corporations (MNCs). This study, however, focuses on states due to their sovereign authority and their role in regulating access to and use of natural resources through national laws and regulations.<sup>35</sup> Kitonka and Temba show that, it is the rights of the host states to regulate investment of whatever nature in within their border through laws, regulations, policies guidelines emphasis is mine.<sup>36</sup> Multinational corporations (MNCs) are required to comply with the laws of the states where they invest. Therefore, it is the states that legislate, not the MNCs.

This section reviews African legal and policy frameworks aimed at promoting youth socio-economic empowerment in the mineral sector. It examines various conventions, declarations, visions, guidelines, and reports focused on empowering youth within this sector. It is argued that any development project that does not maximize the utilization of human resources, including youths, is unlikely to be sustainable or feasible.<sup>37</sup> From the foregoing discussion, three key principles seem relevant to guiding the discussion on youth empowerment. Such principles are creation of

<sup>30</sup> United Republic of Tanzania Constitution. Art. 13 and 22; Employment and Labour Relations Act 2004. s 7(1).

<sup>31</sup> Sheria ya Uwekezaji Tanzania 2022. ;The National Economic Empowerment Act 2004. ;The Mining Act 2018.

<sup>32</sup> See para 1.3.3 and 1.4.3 below on positive discrimination targeting to socio-economically empowering youths.

<sup>33</sup> Linda Starke, *Breaking New Ground: Mining, Minerals, and Sustainable Development: The Report of the MMSD Project*, vol Volume 1 (IIED 2002) <<http://pubs.iied.org/pdfs/9084IIED.pdf>>.

<sup>34</sup> Statute of the African Mineral Development Centre. Art.3(2)(a).; Treaty for the establishment of the East African Community 1999.Art. 114(2)(c )(iv).

<sup>35</sup> General Assembly Resolution Permanent Sovereignty over natural resources 1962. Art. 1; Charter of Economic Rights and Duties of States 1974 (Resolution 3281 (XXIX)).

<sup>36</sup> Kitonka Naufal and Ferdinand Temba, 'The Right to Regulate in Natural Wealth and Resources in Tanzania: Challenges and Prospects' (2023) 9 Journal of international Trade, Logistics, and Law. pp 676-68.

<sup>37</sup> Economic Commission for Africa (n 8). para 50.



a favorable environment to foster private investment, linkages of mining to other sectors, and guaranteeing preferential margin to youths in all mining procurement processes. The choice of these principles is because they are not only provided for under regional and state best practices but also constitute the elements of local procurement and are a key gateway towards youth empowerment in Africa when properly utilized. Consequently, the unfolding discussion is premised on these themes.

### 3.1. Promotion of private investment

Majority of the African countries suffer from capital, technology and skilled human resources to convert their natural resources into wealth. They also suffer from inadequate budget which could have been invested and guarantee youth employment. Consequently, reliance is placed upon private sector to invest and exploit mineral resources in large-scale.<sup>38</sup> In order to guarantee the inflow of private investment, laws in such countries ought to be clear on the rights and obligations of investors.<sup>39</sup> As such, investors need to have their investment projects protected and on equal footing they should be able to contribute on the socio-economic development in the particular country.<sup>40</sup> It will be noted below that, private investment, when properly regulated under laws of a particular country, has a potential to directly and or indirectly empower youths.<sup>41</sup>

However, since the rate of youth unemployment in Africa is a concern, then

<sup>38</sup> UNGA Resolution, 'Addis Ababa Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) A/RES/69/313'.

<sup>39</sup> Protocol on Mining. Principe 7.; Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area. Preamble; Pan-African Investment Code 2016. Art. 36(1).

<sup>40</sup> *Patrick Mitchell vs The Democratic Republic of the Congo* [2004] ICSID ARB/99/7.

<sup>41</sup> See para 1.4.1 below.

investment in natural resources like minerals should address such a problem.<sup>42</sup> The nexus between private investment and broad-based empowerment is better explained that: 'Private business activity, investment, and innovation are major drivers of productivity, inclusive economic growth, and job creation'.<sup>43</sup>

In line with that, African countries are called to mainstream youths in all development projects inclusive mining.<sup>44</sup> Consequently, laws relevant for promotion of private investment should oblige investment companies to set youth concerns at the center of all their development projects.<sup>45</sup> When youths are placed at the core of all extractive development projects, they are guaranteed to benefit from such projects. Such a nexus arises out of the fact that states are obliged to enact and enforce laws that guarantee its population [youths inclusive] benefits from the use of their natural resources by private entities.<sup>46</sup>

### 3.2. Guaranteeing linkages of the mineral sector with other sectors

Most African countries suffer not only from inadequate industries to propel their socio-economic development but also from inadequate linkages among these industries.

<sup>42</sup> Lusaka Declaration of the ICGLR special summit to fight illegal exploitation of natural resources in the Great Lakes Region. para 7.

<sup>43</sup> UNGA Resolution (n 39). para 35.

<sup>44</sup> African Youth Charter. Art. 11 (1); AU (n 3). para III (1), VI.

<sup>45</sup> OAU/AU 50th Anniversary Solemn Declaration 2013. para D (iv); Statute of the African Mineral Development Centre. Preamble.; Declaration of the Special Summit of the ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion'. para I (3).

<sup>46</sup> African Charter on Human and Peoples' Rights. Art. 21.; ACHPR, 'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment' 21. para 37.; ACHPR, Pretoria Declaration on Economic, Social and Cultural Rights in Africa. para 6.

Taking the mining industry as an example, it tends to hire a reasonable number of unskilled and semi-skilled people at its early stages of development. However, after it has been established, it tends to recruit very few people with high skills. Since most African youths suffer from inadequate skills, they seldom make it into the high and lucrative positions in private investment. Ombella has shown, for example, that mining laws in Tanzania do not compel mining companies to recruit women.<sup>47</sup> The African regional framework however, requires its member states to enact laws which will guarantee a diversified mineral sector.<sup>48</sup> A diversified mineral sector offers room to unleash mineral developmental potential in other sub-sectors such as refinery and the entire value addition chain. According to the African Mining Vision, linkages in the mining sector can be realized on three main fronts, namely: down-stream, up-stream, and side-stream.<sup>49</sup> Perhaps this is what transpires as a wish of the AU member states to using their natural and human resources to propel socio-economic development in Africa.<sup>50</sup>

In addition, proper linkages of mineral sector with other sectors is regarded as a tool to eradicate poverty as it offers a broad-based empowerment to youths among others.<sup>51</sup> Arguably, MNCs involved in mining sector in Africa tend to send raw minerals for refinery in their home state, leaving locals with very limited benefits in the sector.<sup>52</sup> Consequently, the development of youth-led enterprises depends on the law as a tool to guarantee their

involvement in the mining sector. Although extractive laws have a long history of being dominated by two main stakeholders, namely states and MNCs, African countries are called to consider other stakeholders, such as youths.<sup>53</sup> The stronger the laws on linkage of the mining sector to youths lead enterprises the greater the guarantee of youths' socio-economic empowerment.

### **3.3. Guaranteeing youths a preferential margin in procurement processes**

The nature of the problem under research noted above is founded on the fact that, laws of most mineral resources-rich African states are not robust enough to guarantee youths direct involvement in large-scale mining projects.<sup>54</sup> Notably, empowering youths does not only depend on their direct involvement in large-scale mining. An alternative approach, such as procurement, may also guarantee youths' involvement in the mining sector and empower them accordingly. To achieve this, African countries need to enact laws geared towards empowering youths.<sup>55</sup>

In particular, African countries are called to enact laws that will provide preferential margin of entities owned and or controlled by youths in all procurement processes.<sup>56</sup> With respect to mining sector, for example, there is an obligation among Southern Africa Development Community (SADC) member states to socio-economically empower Historically Disadvantaged Groups (HDG).<sup>57</sup> A such the term HDG means and include youths, disabled and women.<sup>58</sup> The African regional level for example, states are called to guarantee that access to and use of natural

<sup>47</sup>John Ombella, 'Review of Tanzania's Mining Legal-Framework on Women Participation in Decision-Making in Mining Sector' (2021) 1 Journal of Contemporary African Legal Studies.

<sup>48</sup>Statute of the African Mineral Development Centre. Art.3 (2)(b).; African Union (n 2). p. v.

<sup>49</sup> African Union (n 2). p. v.

<sup>50</sup> OAU/AU 50th Anniversary Solemn Declaration. para G (iii)

<sup>51</sup>AU (n 3). Annex 1, para n.; African Union Commission (n 1). p. 31.

<sup>52</sup>African Union (n 2). p. 14.

<sup>53</sup> *ibid.* p. v.

<sup>54</sup> See para 1.1 and 1.2 above.

<sup>55</sup> Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area. Art.25 (2); Protocol on Mining. principle 8.;Pan-African Investment Code. Art. 36 (2).

<sup>56</sup> AU (n 3). Annexure 1 para (m).

<sup>57</sup> Protocol on Mining. principle 8.

<sup>58</sup> *ibid.* Art.1.

resources inclusive minerals contribute towards broad based socio-economic development of youths [emphasis added].<sup>59</sup> It is argued that, in order to guarantee youths empowerment, relevant disaggregated data about youths is inevitable.<sup>60</sup> Such data has to identify among other things the rate of youths'; unemployment, margin of preference in procurement processes and beneficial ownership of youths in established entities awarded various tenders in the mining sector.

Borrowing practices from other natural resources-rich developing African countries on this fact, it suffices to reflect the position of the law in Sierra Leone, Ghana and South Africa. The choice of these countries is influenced by two major factors. Firstly, they are all common law countries where principles such as precedent applies among them. Secondly, they represent some of miner-rich African countries whose desire is to harmonize their mining legal framework on youth empowerment among other aspects.<sup>61</sup>

With respect to Sierra Leone, the mineral legal framework requires all holders of mining license to give priority in procuring goods and services in local market.<sup>62</sup> However, local goods and services will only be procured if they meet standards.<sup>63</sup> As such, the requirement seems general as it does not either mention youths and or women. A similar position is also noted in Ghana where the law seems general as it requires mining license holder to procure locally made goods to the maxim possible levels.<sup>64</sup> With respect to South Africa, the procurement of goods and services has been legally linked to the empowerment of blacks and youths. The law does this, first,

through the adoption of preferential provisions aimed at empowering black people, owing to the tilted socio-economic and political impacts of the apartheid regime. Consequently, MNCs are not only compelled to procure 70% of manufactured goods from South Africa, but such goods also must be manufactured by black-owned or controlled companies.<sup>65</sup>

However, since South Africa recognized the problem of youth unemployment, they also linked it accordingly. To guarantee youth empowerment, the law directs that MNCs should spend 5% of the 70% mining goods procured in South African manufactured goods from companies either owned and controlled by female blacks or owned and controlled by youths.<sup>66</sup> This approach adopts a positive discrimination with the view to address not only youth unemployment but it has gone further to address the gender disparity noted in the mineral sector above.<sup>67</sup> Although the South African approach is heralded to have evolved from regulations targeting ownership to general empowerment, it is never without criticism.<sup>68</sup> Reportedly, inadequate monitoring of the empowerment schemes results into; fronting, corruption, inadequate compliance and illicit enrichment of few blacks who are politically linked.<sup>69</sup>

This part has shown that youth unemployment is a global challenge. It also shows that African regional and state best practices require mineral resource-rich African countries to empower youths through procurement. To better achieve this goal, states are called to

---

<sup>59</sup> OAU/AU 50th Anniversary Solemn Declaration. para D (v).

<sup>60</sup> AU (n 3). p. 5.

<sup>61</sup> See para 3.1 above.

<sup>62</sup> The Mines and Minerals Development Act 2022. s.166(3)

<sup>63</sup> *ibid.* s.166(3).

<sup>64</sup> Minerals and Mining Act 2006. s. 105(1)(i-iii).

---

<sup>65</sup> Republic of South Africa, 'Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry'. para 2.2.

<sup>66</sup> *ibid.* par 2.2.

<sup>67</sup> See para 1.2 above.

<sup>68</sup> Lerato Shai, Comfort Molefinyana and Geo Quinot, 'Public Procurement in the Context of Broad-Based Black Economic Empowerment (BBBEE) in South Africa-Lesson Learned for Sustainable Public Procurement.' (2019) 11 Sustainability. pp. 20-21

<sup>69</sup> *ibid.* pp. 20-21.



promote private investment, which will create multiple employment opportunities for youths. Once investment is established in the mineral sector, it has to be linked with other sectors such as refinery, manufacturing, and services in a particular country. Lastly, the established legal framework should set preferential procurement margins aimed at empowering youths. The next part discusses the extent to which Tanzania complies with the regional and state best practices noted above.

#### **4. PROCUREMENT AS A TOOL TO EMPOWER YOUTHS IN THE MINERAL SECTOR IN TANZANIA**

Tanzania is hailed as a best destination for investors in Africa. Among six key issues that are reported to attract investors to Tanzania are; her long endured peace and security, reliable infrastructure, reliable energy, political will to promote private investment, low inflation rate, her strategic location and friendly investment laws.<sup>70</sup> In particular, to mining sector in Tanzania is one among the growing sector which contributes about 6.7% - 7.2% of the GDP in the year 2019/2020 to 2020/2021 respectively.<sup>71</sup> It is however estimated that, by 2025, it will have grown to be able to contribute not less than 10% of the GDP.<sup>72</sup> Despite such a growing trend, it has

not yet unleashed all its potentials inclusive addressing the youth unemployment challenge. This part is dedicated to discussing the extent to which Tanzanian mineral legal framework embrace procurement as a tool to socio-economically empower youths. To achieve a logical analysis and conclusion drawing, the section discusses the very same principle as discussed at the international level above. It will be evident here that Tanzania is desirous of empowering youths, but such a desire has not been able to fully embrace procurement as a tool to empower youths in her legally enforceable provisions.

##### **4.1. Promotion of private investment**

Promotion of private investment in the mineral sector in Tanzania is not a new phenomenon. Since attaining her independence in the early 1960s, the mining sector was relatively low with not as many private entrants as it is now. As such a notable reform in the mineral sector that intended to privatize the sector took place in late 1990s.<sup>73</sup> Such reforms were part of the structural adjustment programmes spearheaded by the Bretton Woods Institutions not only in Tanzania but most resources—rich developing countries around the globe.<sup>74</sup> As such the philosophy behind these reforms was enacting laws to attract private investment will allow transfer of capital and technology which in turn will spur development through creation of employment opportunities and revenue generation to the government.

<sup>70</sup>Tanzania Investment Centre, 'Investment Guide to Tanzania: A Gateway to Invest in Tanzania' <[https://www.tic.go.tz/uploads/documents/en-1651477823-](https://www.tic.go.tz/uploads/documents/en-1651477823-INVESTMENT%20GUIDE%202018.pdf)

[INVESTMENT%20GUIDE%202018.pdf](https://www.tic.go.tz/uploads/documents/en-1651477823-INVESTMENT%20GUIDE%202018.pdf)>. para 6.3 ; Daily News Reporter, 'Why Tanzania Is Best Destination for Investors' *Daily News* (Dar es Salaam, 22 September 2023).

<sup>71</sup> The Citizen Reporter, 'Mining Sector Hits 7.3 Percent of Tanzania's GDP' *The Citizen* (Dar es Salaam, 2022).; Ministry of Minerals, 'Press Release: Ministry of Minerals of the United Republic of Tanzania Invites Global Investors to the Tanzania Mining and Investment Forum 2023 Cape Town, 09 February 2023' <<https://www.madini.go.tz/page/9c7e47f5-8c71-4b1c-8afd-4e7489fc1e17/>>.

<sup>72</sup> United Republic of Tanzania, 'The Mineral Policy of Tanzania'. para 8.; Wizara ya Fedha na Mipango,

'Mapendekezo Ya Mpango Wa Tatu Wa Maendeleo Wa Taifa Wa Miaka Mitano 2021/22 – 2025/26: "Kujenga Uchumi Shindani Na Viwanda Kwa Maendeleo Ya Watu"'

<<https://www.parliament.go.tz/uploads/documents/whatsons/en/1612800543-FIRST.pdf>>. para 5.4.4 (Table No. 13 para 1.2)

<sup>73</sup> National Economic Empowerment Council, 'National Economic Empowerment Policy'.

<sup>74</sup> John Ombella, 'Liberal Rules on Trade and Investment and the False Promise in Developing Countries: A Tanzanian Perspective' (2018) 1 Institute of Judicial Administration Lushoto Journal.

In Tanzania such reforms took place through enactment of investor friendly laws. Among evidences of friendly provisions were stabilization provisions which took place mostly in Mineral Development Agreements.<sup>75</sup> Others were incentives granted to investors and access to international dispute settlement forums.<sup>76</sup> Notably, these incentives were granted under the Investment Act, which was criticized as being too friendly to investors such that no obligations were assigned to them.<sup>77</sup>

However, other major reforms of the mineral sector took place in the years 2017. In this year for example, mineral laws although attract investors and grant them incentives, it requires utilization of natural resources be geared towards benefiting Tanzanians.<sup>78</sup> In particular, this law echoed the provisions of constitution which directs that all natural resources should be used to address three key challenges in Tanzania namely; poverty, ignorance, and diseases.<sup>79</sup> Empowering youths may not be discerned from efforts to fight poverty by the use of our God given natural resources such as minerals.

In order to guarantee the realization of the constitutional provision, the 2017 mineral laws also required all agreements entered by the government to be reviewed by the National Assembly.<sup>80</sup> The review intends among other things to verify if such agreements were entered into for the benefit of Tanzanians. In particular, whenever, mineral agreements are depriving Tanzanians their benefit, the National Assembly shall direct the government to renegotiate or otherwise.<sup>81</sup> Notably, review

of mining contracts seems to become common now as African countries are trying to maximize benefits from the sector to their population.<sup>82</sup> Indeed, empowering youths cannot be a strange term when it comes to mineral agreements benefiting Tanzanians.

Notably, however, ever since the law was enacted, only one contract was renegotiated. In particular, the negotiation focused on compliance with the mining law requiring 16% freely carried undiluted shareholding by the government in every mining license issued.<sup>83</sup> The establishment of the Twiga Corporation is an evidence of the negotiation and thereby agreement between Barrick Gold and the government.<sup>84</sup> Twiga Corporation holds 16% shares among others in the mining license granted to Barrick Gold.<sup>85</sup> Twiga Corporation is heralded as the model public private partnership project to which has been effective and had increased government earnings from the mineral sector.<sup>86</sup> However, owing to closed nature of the negotiations and its resulting effects, it is unclear if issues pertaining to youths were tabled and discussed. Ombella has shown that, the negotiation seems to have assumed that the only stakeholders in the mineral sector are MNCs and the government,

<sup>75</sup>Tanzania, 'Mineral Development Agreement'.

<sup>76</sup> Sheria ya Uwekezaji Tanzania.

<sup>77</sup> Investment Act 1997.; Sheria ya Uwekezaji Tanzania.

<sup>78</sup> Natural Wealth and Resources (Permanent Sovereignty ) Act 2017. ss. 4-5.

<sup>79</sup>United Republic of Tanzania Constitution. Art. 9

<sup>80</sup> Natural Wealth and Resource Contracts (Review and Renegotiation of Unconscionable Terms)Act 2017.

<sup>81</sup> ibid.

<sup>82</sup> Patrick Ilunga, 'DRC to Audit and Review "unfair" Chinese Mining Contracts.' *Nation* (Nairobi, 4 November 2023).

<sup>83</sup> The Mining Act.

<sup>84</sup>Marylin Scales, 'GOLD: Barrick, Tanzania Settle Differences, Launch Twiga' <<https://www.canadianminingjournal.com/news/gold-barrick-tanzania-settle-differences-launch-twiga/>>

accessed 27 November 2023.;TanzaniaInvest, 'Twiga Minerals Publish Update on Tanzania Operations.' <<https://www.tanzaniainvest.com/mining/twiga-minerals-update-q3-2020>> accessed 27 November 2023.

<sup>85</sup> Scales (n 85).; TanzaniaInvest (n 85).

<sup>86</sup> Karl Lyimo, 'Twiga Minerals Corp. Is an Exemplary P/PP in Tanzania' *The Citizen* (Dar es Salaam, 28 October 2021).; Daily News Reporter, 'Twiga Partnership Creates Sustainable Value for Stakeholders' *Daily News* (Dar es Salaam, 10 February 2023).

sidelining other stakeholders such as; women, youths and local communities.<sup>87</sup>

#### **4.2. Guaranteeing links of mineral sector with other sectors**

Although mining has been carried out since early days of our independence, it has not been adequately linked to other sectors.<sup>88</sup> Inadequate linkages of the mining sector to other sector of the economy dwindles its potential to contribute towards empowering locals through creation of employment opportunities. Although this is capable of being explained in two folds of mineral beneficiation and shareholding in mining companies, the focus is rather on manufacturing industries, for example beneficiation and services. Firstly, with regards to beneficiation, Tanzania for long has been transferring her mineral concentrates for beneficiation abroad.<sup>89</sup> This signaled the fact that Tanzania did not have relevant infrastructure to refine minerals at home. Even the laws regulating the mining sector did not compel locally mined minerals to be value added at home.<sup>90</sup> It is estimated that about 6,320 containers of mineral concentrates have been transferred abroad for beneficiation

between the years 1998-2017.<sup>91</sup> This signals the missed opportunity to empower youths in the mineral sector if beneficiation would have been carried at home.

The current mining laws compel all minerals mined in Tanzania to be value added before they are sold outside Tanzania.<sup>92</sup> Provisions for licensing mineral value addition investment are provided under the mining laws.<sup>93</sup> Promotion of investment in mining sector is now focused on value addition industries, refineries, mineral processing industries and lapidary to name but a few.<sup>94</sup> Arguably, this position of the law as supported by government move to promote mineral value addition intends not only to prohibit transferring mineral concentrates abroad but also maximize employment potentials of the sector. Notably, creation of employment for youths and women is in line with the Tanzania's; plans, visions and desire to achieve middle income status by 2025.<sup>95</sup> Despite such a general provision, Ombella notes that, Tanzania still mines and regulates international trade in rough diamonds.<sup>96</sup> Other notable challenges are smuggling of unprocessed minerals and inadequate compliance to the legal provisions.<sup>97</sup>

---

<sup>87</sup> John Ombella, 'Safeguarding Rights to Clean Water and Food Security for Mine-Host Communities: Analysis of Tanzania's Compliance with International Standards' ((PhD) Law, Open University of Tanzania 2022) <<https://repository.out.ac.tz/3764/>>.

<sup>88</sup> URT Mining Commission (n 27). para 3.4.3.

<sup>89</sup> Kamati Maalumu iliyoundwa na Rais wa Jamhuri ya Muungano waa Tanzania, 'Taarifa Ya Kamati Maalum Kuchunguza Mchanga Uliokkatika Makontena Yenye Mchanga Wa Madini (Makinikia) Yaliyopo Katika Maeneo Mbalimbali Nchini Tanzania.' (2017) I.; Kamati ya Raisi, 'Taarifa Ya Kamati Maalum Iliyoundwa Na Rais Wa Jamhuri Ya Muungano Wa Tanzania Mhe. Dkt. John Pombe Magufuli Kuchunguza Mchanga Ulio Katika Makontena Yenye Mchanga Wa Madini (Makinikia) Yaliyopo Katika Maeneo Mbalimbali Nchini Tanzania' (2017).

<sup>90</sup> Mining Act 1998.

---

<sup>91</sup> Julius Mnganga, 'Sababu Za Makinikia Kutosafirishwa Nje Ya Tanzania' *Mwananchi* (Dar es Salaam, 15 October 2021).

<sup>92</sup> Natural Wealth and Resources (Permanent Sovereignty) Act 2017.

<sup>93</sup> *ibid*.

<sup>94</sup> Tanzania Investment Centre (n 71). ;Wizara ya Fedha na Mipango (n 73). para 6.; para 5.4.4(iv).

<sup>95</sup> URT Ministry of Finance and Planning and Tanzania Investment Centre, 'Tanzania's Development Plan, Vision and Investment Priorities to Achieve Middle Income Status by 2025.' para 4.

<sup>96</sup> John Ombella, 'International Regulation of Trade in Rough Diamonds: An Appraisal of the Tanzanian Mineral Laws' Compliance' (2021) 2 *The Tanzanian Lawyer Journal*.

<sup>97</sup> URT Mining Commission (n 27). para 2.8 (vi).

In addition, mining companies also expected to procure goods which are locally available and from local companies. It is argued that MNCs involved in the mining sector do spend a large chunk of their budget on the procurement of goods and services.<sup>98</sup> Consequently, targeting the procurement may effectively empower locals. To achieve this, Tanzania efforts to empower its people is striving to guarantee that locals do produce goods that meet international standards.<sup>99</sup> Despite such efforts by Tanzania, it is reportedly that, still the quality of goods manufactured in Tanzania lacks standards a fact which compel MNCs to procure internationally.<sup>100</sup> As such, when MNCs procure internationally, this is a missed economic opportunity to empower our youths and women in the mining sector.

Secondly, with respect to the linkages of the mining sector and locally available services, MNCs are required to procure local services instead of foreign ones. Examples of services include legal services, financial services, insurance services, transport services, and others such as geological services. Accordingly, there are set thresholds for newly entered mining companies and those that have operated in the sector for a considerable period. The thresholds range from 10% for newly licensed mining companies, to 50% for companies licensed for more than five years, and 69–90% for companies licensed for the past ten years.<sup>101</sup> It should be noted that the regulations are silent on issues related to youths and gender. As mentioned above, addressing the youth unemployment challenge requires special provisions targeting not only

youths but also women.<sup>102</sup> Also, it is reported that, among challenges that affect MNCs procuring local services include inadequate soft skills among local experts, for example difficulties in communication and inadequate confidence.<sup>103</sup> Local experts are also said to have relevant academic merits but suffers from practical competencies, a fact which compel MNCs to seek for foreign experts instead.<sup>104</sup>

#### **4.3. Guaranteeing youths' preferential margin in procurement processes**

Promotion of private sector investment and ensuring its linkages with other sectors may not, by themselves, significantly reduce youth unemployment. It is noted that most economic sectors are dominated by foreigners and a few locals.<sup>105</sup> To guarantee that, youths and women are also participating in the economy to economically empower them therefore needs a special legal provision aimed at positive discrimination to benefit youths. Although Tanzania has several sectors in which locals may be empowered, the focus in this paper is mining. Indeed, apart from the fact that minerals are finite hence the need to maximize their potential, mining is also listed as focal area where locals are expected to be empowered.<sup>106</sup>

Notably, however, both policy, guidelines and procurement laws seem too general in recognizing preferential treatment of local companies in all public procurement contracts. For example, the National Economic Empowerment Council (NEEC) policy and strategy is to guarantee preferential margin of

<sup>98</sup> Geipel and Nickerson (n 9).

<sup>99</sup> National Economic Empowerment Council, 'National Economic Empowerment Policy' (n 74). para 3.3 (x).

<sup>100</sup> National Economic Empowerment Council, 'Report of the Tanzania Local Content Forum' (National Economic Empowerment Council 2016). para 5.3(1-7).

<sup>101</sup> The Mining (Local Content) Regulations, GN No. 3 2018. First Schedule.

<sup>102</sup> See para 1.2 above.

<sup>103</sup> National Economic Empowerment Council, 'Report of the Tanzania Local Content Forum' (n 101). para 5.3 (1-7).

<sup>104</sup> *ibid.* para 5.3 (1-7).

<sup>105</sup> National Economic Empowerment Council, 'National Economic Empowerment Policy' (n 74). para 2.1

<sup>106</sup> *ibid.* para 3.2 (ii).



all public procurement to local companies.<sup>107</sup> The term local company is defined to mean a company in which more than 50% of its shares are held by Tanzanians.<sup>108</sup> Here the policy seems to be general as it focuses to Tanzanians. It also focuses on those who own the company and not necessarily those who benefit from the company, such as employees. It is also not gender considerate. As such, owing to the gender parity noted above, empowerment strategy in mining sector should not be gender blind.<sup>109</sup> Worth noting here is the call by NEEC to guarantee mainstreaming of gender in all economic empowerment programmes and plans in Tanzania.<sup>110</sup> According to NEEC, specific requirement to consider youths and women in public procurement contracts was introduced in the year 2016.<sup>111</sup> Consequently, section 64 of the law governing public procurement recognizes such a preferential treatment.<sup>112</sup>

However, despite the good intentions of the government and the NEEC to economically empower youths and women through procurement, the legal and policy framework is not without criticism. Firstly, the focus appears to be on public procurement, thereby excluding procurement conducted by private companies. The mining sector is dominated by private MNCs, with only a few state-owned companies regulated under the Public Procurement Act.

Secondly, although youths and women are targeted in public procurement, the policy and law lack precision and may therefore be not effectively implementable. For example, it is silent on the threshold or percentage of procurement contracts that should be set aside for youths and women. In contrast, the NEEC guidelines require Local Government Authorities to set aside 10% of their revenue to empower youths and women equally.<sup>113</sup> Also the discussion above, noted the state best-practice from South Africa where special threshold are set for goods and services to be procured from youths held and or controlled companies.<sup>114</sup> In addition, although fronting is noted as a challenge in local empowerment schemes in Tanzania, no provision is set to guarantee benefits meant for youths and women in mining sector are not derailed.<sup>115</sup>

Generally, this section has demonstrated Tanzania's efforts to align with regional and state best practices by using procurement as a tool to empower youths. While Tanzania has a relevant legal framework to attract private investment, legal measures to ensure linkages with other sectors and to provide preferential treatment for youths in procurement contracts appear to be only partially implemented.

## 5. LEGAL ISSUES ON PROCUREMENT AS A TOOL TO EMPOWER YOUTHS

This part presents distilled legal issues noted in the discussion above. It aims at shedding light on what has been achieved and the challenges preventing the government from effectively utilizing procurement as a tool to empower youths in the mining sector. Based on these issues, the paper draws conclusions

<sup>107</sup> *ibid.* para 4.7.3.; National Economic Empowerment Council, 'National Multisectoral Strategic Framework for Economic Empowerment'. para 2.7.2.

<sup>108</sup> National Economic Empowerment Council, 'National Economic Empowerment Policy' (n 74). para 1.5.

<sup>109</sup> United Republic of Tanzania (n 73). para 6.2.

<sup>110</sup> National Economic Empowerment Council, 'Gender Mainstreaming Guidelines: Promoting Gender Equality and Women Economic Empowerment'. para 1.2.

<sup>111</sup> National Economic Empowerment Council, 'Report of the Tanzania Local Content Forum' (n 101). para 5.3 (iii).

<sup>112</sup> The Public Procurement Act. s. 64 (3)(c).

<sup>113</sup> Baraza la Taifa la Uwezeshaji Kiuchumi, 'Muongozo Wa Utekelezaji Wa Mkaati Wa Taifa Wa Uwezeshaji Wananchi Kiuchumi (NMSFEE)'. para 3.2.5.1 (vi).

<sup>114</sup> See para 1.3.3 above

<sup>115</sup> John Ombella, "FRONTING" a Threat to the Local Empowerment Schemes in Tanzania: Legal and Policy Analysis' (2015) 6 The Open University Law Journal.



and offers recommendations at the end. The discussion below follows the pattern of the themes discussed above.

Notable efforts to promote private sector investment in the mining sector are noted above.<sup>116</sup> Also, Constitutional requirement of the use of Tanzania's natural resources to address among other poverty is noted. Although such Constitutional provisions compel mineral resources to be used to address among other youths' unemployment, the negotiations and re-negotiations of mineral contracts seldom consider the youth's concerns. Even the reviewed and re-negotiated contract seems to represent two main mineral stakeholders, the government and MNCs not youths and or women.

Regarding linkages to other socio-economic sectors, the discussion above has noted the existence of both legal and policy initiatives. Both manufacturing and service-oriented sectors are linked with the mining sector through procurement requirements. Although clear thresholds for both goods and services are provided, there is no provision targeting youths.<sup>117</sup> It is also noted that the quality of goods and services seems to be a challenge, such that MNCs tend to procure from international firms instead.<sup>118</sup>

The current discussion noted not only inadequate youth representation in the mining sector but also that fewer women than men are involved in it.<sup>119</sup> This fact calls for their involvement in this sector to socio-economically empower them. Despite recognition of procurement as a tool to socio-economically empower Tanzanians in the mineral sector, youths are not mentioned at all. Instead, youths are generally referred to only in the public procurement laws, not in private

sector procurement. Notably, even their recognition seems too general, owing to the fact that no specific margin or rate of public procurement contracts is mentioned as relevant for youths.<sup>120</sup> Given the small margin of state-owned companies in the mineral sector and the unclear preferential procurement margin for youths, Tanzania seems to have missed an opportunity to efficiently empower her youths in the mineral sector.

## 6. CONCLUSION

Procurement is one of the effective tools that may be relied upon to socio-economically empower youths in the mineral sector. Mineral resource-rich African countries, which suffer from the problem of youth unemployment, may rely on this tool to eradicate poverty among their youths. It is hard to realize SDG 4 if the legal framework does not properly link youths and the mining sector. Despite this reality, many resource-rich African states, Tanzania in particular, seem to have missed this opportunity due to the absence of a robust legal and policy framework in this area.

Although Tanzania's youth unemployment rate is low compared to other African countries, this does not justify the non-utilization of this golden opportunity to empower youths at an individual or group level through their established companies. To guarantee effective utilization of procurement as a tool to empower youths in the mineral sector in Tanzania, this paper recommends a review of mineral law and policy frameworks to mainstream youth and women considerations in both private and public procurement frameworks.

---

<sup>116</sup> See para 1.3.1 and 1.4.1 above.

<sup>117</sup> See para 1.4.2 above.

<sup>118</sup> See para 1.4.2 above.

<sup>119</sup> See para 1.2.

---

<sup>120</sup> See para 1.3.3 and 1.4.3 above.