Foreign direct investment and poverty alleviation in Tanzania: a case of Bulyanhulu and Geita Gold Mines Limited in Kahama and Geita districts

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The Mining Code and FDI performance in Tanzania

The evolution of Tanzania's Mining Code

Tanzania is a mineral-rich country endowed with various kinds of minerals, such as metallic minerals (gold, iron, nickel, copper, cobalt and silver); gemstone (diamond, tanzanite, ruby and garnet); industrial minerals (limestone, gypsum, potassium, sodium, phosphate and kaolinite); energy based mineral (coal and uranium) as well as gravel and sand. Despite these mineral riches, the sector was not making substantial contributions to the country's economy, which is commonly blamed on absence of business friendly environment (starting from independence in 1961 and lasting up to early 1990s. During this period, the sector was not attractive to FDIs due Tanzania's choice to pursue a state-led socialist economy. During the mid-1980s and late 1990s, the government reformed its policies and recognised the potential contribution of the mineral sector to economic growth and the role of the private sector in mining development. The chief goal of the reforms was to open the door to private investment in Tanzania's mining sector. Other objectives included putting in place modern mining practices, luring foreign investors to introduce cutting-edge technology into Tanzania's mining and to invest capital to finance development of the mineral industry.

The literature suggests that the reforms of Tanzania's economy occurred as IMF and World Bank imposed preconditions for debt relief (Butler, 2004; Campbell, 2004). These Structural Adjustment Programs (SAPs), the preconditions for debt relief, entailed a myriad of measures: privatisation of state-owned enterprises, emphasis on export-led growth, removal of subsidies, lowering or abolition of tariffs, dismantling of state marketing boards, liberalisation of foreign exchange regimes and reductions in public expenditure, to mention a few. Tanzania has been trying to adjust and liberalise its economy according to IMF and World Bank prescriptions since the mid-1980s. With huge external debts, Tanzania was highly dependent on multilateral aid and had little bargaining power with regard to debt relief conditions. Policy statements emphasised the government's commitment to create a disciplined and conducive environment for attracting FDI, which should stimulate private sector-led economic growth (Campbell, 2004). Mining was identified as the lead sector for FDI, with an anticipated growth of 10% of GDP (URT, 1998). The SAPs introduced economic liberalisation in Tanzania. The privatisation of public sector industries effectively prepared the ground for further liberalisation, which Tanzania had to implement to become WTO member (WTO, 2000).

According to Butler (2004), the World Bank played a major role as catalyst in the privatisation and reform of Tanzania's mineral sector. With the World Bank's Strategy for African Mining in place, there was an appropriate 'regulatory framework' (mining codes, mineral rights and licenses, mining development agreements), economic and fiscal policy, and institutional reform (introducing institutions such as Ministry of Mines, Geological Survey, Environmental Office) (World Bank, 1992). The World Bank had already indicated that African governments should primarily focus on securing long-term (10 to 20 years) tax revenues from private mining companies, also recommending that foreign and domestic companies receive the same treatment (Ibid.). The paper advised governments to specifically refrain from using mining as potential source of employment creation, and 'should not be required to use or be offered incentives to use employment-increasing techniques'. Rather, tax revenues from mining should be invested in employment-creation initiatives in other sectors of the economy (World Bank, 1992).

The World Bank (2003) also diagnosed absence of accurate and up-to-date geological information and systems for managing this information, inadequate or non-existent environmental regulations and standards, and insufficient human skills and capacity to effectively administer the sector as the major bottlenecks that impede private investment in most resource-rich African countries.

According to the Bank, Tanzania's 1979 Mining Act was problematic on the following grounds. It did not offer private investors a risk-free investment climate. Furthermore, 'security of tenure' over mineral rights was not adequately protected within a legal framework. There was too much discretionary latitude vested to the Minister of Mines; this latitude created a climate of uncertainty, perceived arbitrariness, and the potential for bureaucratic delays. The act also contained national welfare-related 'performance requirements' for private mining companies, i.e. explicit commitments to employ Tanzanians and locally source goods and services, which were tied in prospecting or mining license. Other shortcomings included that the United Republic of Tanzania had the right to acquire a stake in private mining ventures, and to make this right a precondition for granting prospecting licenses. There was no dispute resolution mechanism independent of the Minister of Mines; companies received inadequate services by the ministry, for example, inadequate geophysical data and environmental regulations and standards that were not clearly defined. The 1979 Mineral Act was drafted as part of the state-led development strategy—outdated and inadequate for the changing political and macroeconomic realities of the twenty-first century market-led economy (URT, 1997; Butler, 2004; Campbell, 2004).

Further diagnosis of the mineral sector prior to the reforms revealed lack or absence of appropriate and consistent macroeconomic policies that could provide an enabling environment for the private sector to invest in mineral development. Also diagnosed was lack or absence of appropriate and consistent mineral sector policies oriented towards promoting private sector participation (URT, 1997). It was also learnt that the competition among developing countries for private foreign investment implied offering 'competitive' incentive packages (in particular, tax relief) to attract investment. The 1979 policy statement gave priority to ’rationalising’ and ’modernising’ the small-scale or artisanal mining sector and diverged from World Bank prescriptions to harnessing the mining sector primarily as motor for economic development.

The World Bank’s Review of Legal and Fiscal Frameworks for Exploration and Mining and Mining Sector Reform and Investment in 2001 set out precise details on country-specific legal and fiscal information to be used by foreign investors (World Bank, 2001). The documents pushed several resource-rich ‘developing’ countries (Chile, Peru, and Mexico) to adopt a model framework--essentially a template for mining sector policy. The World Bank financed, as part of its structural adjustment lending, a number of country-level mineral sector reform projects, designed essentially to implement the reforms suggested in the Strategy for African Mining (World Bank, 1992). The World Bank implemented a five-year Mineral Sector Technical Assistance Project in Tanzania (initiated in 1993), worth a total of $14.5 million.

The project was designed to ‘introduce a legal, regulatory and fiscal framework’ that can provide a conducive environment for private investment in mining. It included assistance in rewriting relevant national legislation, such as the new 1997 Investment Act and the new 1998 Mining Act, in order to ’harmonise’ Tanzania’s legislation with the requirements of the market-led economy. In this context the Government of Tanzania passed into law the new 1998 Mining Act, which replaced the 1979 Mining Act. The new mining legislative framework offers lucrative terms to prospective investors, such as a 3% royalty rate on minerals (5% on diamonds), 30% income tax and no additional profits tax, indefinite carry forward of losses, no import duty or value added tax (VAT) on mining equipment, withholding tax on dividends of 10% and on expatriate salaries of 3%, mining rights transferability and mortgage-ability, and titling on a first-come, first-served basis (Butler, 2004).

The 1998 Mining Act responded to the expressed need to create an enhanced ‘enabling environment’ for private investment, but did not do much to advance the broader development objectives that are mentioned theoretically in the mineral policy statement.

Butler (2004) noted that both the 1998 Mining Act and the 1997 Investment Act were externally influenced; they were introduced as part of the five-year World Bank financed sectoral reform project (1993/94–1998/99). This was the same period in which Tanzania was struggling to qualify for the World Bank’s HIPC (Highly Indebted Poor Countries) debt relief scheme. HIPC conditionality included macroeconomic reforms with additional shifts towards market-oriented, export-oriented and liberalised economy. These motivations are crucial for understanding the general context in which the Government of Tanzania moved to reform its Mining Code. Butler (2004) observed that certain foreign diplomats encouraged Tanzania to adopt investment and mining laws that would respond more closely to their own national corporate interests. Thus, the orientation of the 1997 Mineral Policy and the 1998 Mining Act were not influenced by input and comments from within Tanzania but rather associated with leverage pressures, such as aid packages and support for debt relief from diplomats and officials of Western countries that had vested interests in mining policies of mineral-rich African countries.

Comparison of the 1979 and 1998 Mining Acts

The most significant change from the 1979 Mining Act to the 1998 Mining Act is the entitlement of private license holders to use their mineral rights as collateral and to transfer mineral rights to banks or financial institutions without requiring ministerial approval or consent (Butler, 2004). This practically enables foreign financial institutions to acquire mineral rights in Tanzania. A favourable legislative change, it offers foreign investment houses a new level of protection. At the same time, this legislative change can be regarded as significant erosion of Tanzanian sovereignty over its mineral sector, this alienation had already happened in many other mineral-rich countries implementing reforms: Angola, Botswana, Madagascar, Mali, Ghana, Zambia, Mozambique and D. R. Congo. The sovereignty of the state over its mineral resources had to take into account the economic and political realities of the neoliberal world (Kumar, 1990).

In the 1979 Mining Act, the minister was the only authority in disputes and his decision was final. In the 1998 Mining Act—regarding Mine Development Agreements (MDA), Section 10—there is a provision for ’settlement of any such dispute by international arbitration' (i.e., the International Convention for the Settlement of Investment Disputes--ICSID). Under the terms of the 1998 Mining Act, the minister cannot take a decision concerning the inclusion of, or the terms of, any MDA. Rather, any such decision must be referred to the mining advisory committee. Further, the 1998 Mining Act represents a shift to 'rule-based' system of managing the mining sector: it greatly reduced the discretionary latitude of the minister and the manoeuvring space to interpret the 1998 Mining Act based on national interest. Most significantly for the private mining industry, Section 12(1) of the 1998 Mining Act establishes the principle and practice of 'first come, first served' regarding the granting of mineral rights.

Provision of state services to private mining industry

The World Bank's Strategy for African Mining prescribed that the state must shift from being 'owner and operator' of mining ventures to acting as 'regulator, promoter and service-provider' to private-led development of the mining sector. To this end, the 1998 Mining Act contains a section detailing how the Ministry of Mines is to be organised and administered, and is much more explicit concerning the tasks and duties of various officials. The 1979 Mining Act contained only a few obligations for the Ministry of Mines to provide services to the mining industry. Inversely, it was private industry that was to provide geological data and information to the state. The 1998 Mining Act effectively reversed this arrangement. Section 21 states that, 'no information furnished or information in a report submitted by a holder of a Mineral Right shall be disclosed, except with the consent of the holder of the Mineral Right'. Moreover, under the new law the Ministry of Mines is charged to 'undertake the geological mapping of Tanzania', to 'provide data concerning the geology and mineral resources of Tanzania', to 'assist members of the public seeking information concerning geological matters', and to 'maintain laboratory, library and record facilities as may be necessary for the discharge of these functions' (Section 18). These services can be regarded as public subsidies given to the private mining industry in the context—as noted above—of Tanzania surrendering considerable discretionary power over the development of its mining sector.

Mine Development Agreement (MDA)

The Mine Development Agreement is a new feature (Section 10) in the 1998 Mining Act (Box 4.1). The concept of a MDA is called ‘a model investment contract for mining ventures, which was introduced in the Mining Code and comprises a new fiscal regime as well as other provisions’. It provides a number of legislative provisions favourable for mining companies: a legislative loophole for mining companies to negotiate fixed tax rates throughout the life of the project, even if the tax laws change (e.g., due to change of government); opportunities to negotiate variety of other incentives and special guarantees; it may entail waiver of company liability for environmental problems; and, as noted above, it may override and/or limit the discretionary authority of the ministry’s officials (URT, 2008).

The favourable position of the private sector is particularly evident in the section that sets out the terms for ‘special mining licenses’, which is the 25 year license issued for major capital-intensive mining ventures. The MDA may limit the minister’s discretion in approving special mining licenses for ‘non-entitled applicants’ (i.e., persons or companies not already holding prospecting or retention licenses); may prevent the minister from rejecting an application for renewal of a special mining license or limit the grounds for refusal; and may limit the ability of the minister to reject an amendment submitted by a company regarding the terms of their special mining license (including terms such as the details of the environmental management plan and plans for training and employing Tanzanians).

In effect, while the 1998 Mining Code is more ‘rule-based’ legislation, the MDA allows some rules to be suspended or modified in favour of private corporate mining interests. Provisions established under the MDAs are ‘binding on the United Republic’ (Section 10[2]), suggesting that they may be subject to litigation.

Box 4.1 Mine Development Agreement (MDA)

Between 1994 and 2007 six MDAs were signed for large-scale mine development in Tanzania. These include Bulyanhulu Gold Mine Limited (BGML) in Kahama, Golden Pride Gold Mine (GPGM) in Nzega; Geita Gold Mine Limited (GGML) in Geita; North Mara Gold Mine (NMGM) in Tarime; Tulawaka Gold Mine (TGM) in Biharamulo and Buzwagi Gold Mine (BGM) in Kahama. According to Section 10(1) of the Mining Act, the Minister of Minerals and Energy is authorised on behalf of the government to sign MDAs with mining investors. The most important features of the MDAs can be found in Section 10(2) of the *1998 Mining Act*, where it reads that an MDA:

- guarantees a fiscal stability system for the entire lifespan of the mine, with regard to royalties, corporate tax, custom duties and various levies,
- relates to circumstances or manner in which the Minister or Commissioner can exercise discretion (granted by the *1998 Mining Act*) to implement the MDA and its by-laws,
- stipulates the responsibilities of the investor to conserve the environment,
- details the manner for resolving conflicts,
- allows mining companies to open and operate offshore company bank accounts;
- sets a ceiling amount for local government authority levy up of $200,000 per year, and finally
- It is a top secret agreement between the government and the investor. It is not accessible to legislators and the public in general.

Source: Adapted from URT (2008). A Report of the Presidential Advisory Committee for Administration of the Mining Sector, April, 2008.

State interest in mining ventures

Section 32 of the 1979 Mining Act provided the United Republic of Tanzania with the right to acquire ‘on stipulated terms or on terms to be agreed, an interest in any mining venture which may be carried on in relation to land in, or which constitutes, the prospecting area’. This stipulation may be included in the prospecting license. In the 1998 Mining Act, this right disappears. At the same time, while the 1979 Mining Act expressly prohibited Ministry of Mines’ officials from holding shares in mining companies or mining licenses, this prohibition is dropped from the 1998 Mining Act. This seems to open the door for ministry officials to act with private, rather than state or public interests in mind. It also creates an additional avenue for private mining companies to try to influence or even directly bribe public officials.

Mineral rights

Under the 1979 Mining Act, there were officially three (effectively four) categories of mineral rights: reconnaissance license (12 months); prospecting license (3 years); and mining license (maximum 25 years). There was an additional ’prospecting right’ (12 months, renewable) specifically for small-scale miners, enabling them to stake claims in areas designated for prospecting and mining for prescribed minerals without requiring ‘substantial expenditure and the use of specialist technology’ (i.e., artisanal mining areas).

In the 1998 Mining Act, there are seven categories: prospecting license (5 years, renewable); retention license (5 years, renewable once); special mining license (25 years, renewable); mining license (10 years, renewable once); gemstone mining license (10 years, renewable); primary prospecting license (12 months, renewable); and primary mining license (5 years, renewable). The two categories of primary licenses are essentially designed for artisanal and small-scale mining, while the special mining license (for minerals other than building materials) and the mining license (for minerals other than gemstones) seem to be designed for large-scale, technologically complex and capital-intensive mining operations. It worth emphasising that primary (artisanal) mining license can be converted, upon request, into mining or special mining licenses, usually by entering into a joint venture with a company that is able to meet the annual expenditure requirements. What this suggests, however, is that tracts of land originally designated for artisanal prospecting and mining (by Tanzanian citizens) may with time gradually become areas under exclusive jurisdiction of private (foreign owned) companies and investors.

National developmental benefits

In the 1979 Mining Act, general developmental benefits (e.g., employment and spill-over effects) were treated as part and parcel of mining ventures and were taken in account in the approval and licensing process. The 1979 Mining Act required applicants for prospecting and mining licenses to indicate their plans for employment and training of Tanzanians. Further, the 1979 Mining Act required mining license applicants to indicate a plan for goods and services to be procured in Tanzania, also including some ‘infrastructure requirements’ (Butler, 2004). Environmental concerns were not given high priority. With the 1998 Mining Act, there are several significant shifts in how national developmental--or sustainable development--objectives are conceptualised. Sustainable development became focused, to a large extent, on environmental protection and standards. Employment creation and poverty alleviation are addressed primarily in relation to the small-scale mining sector, although this sector does not enjoy many privileges under the 1998 Mining Act. The law was primarily designed to attract foreign investment; and the deliberate enhancement spill-over economic effects through local procurement requirements disappears.

Environmental regulations

The 1998 Mining Act has much more stringent regulations, mandating compliance with international standards regarding protection and rehabilitation of the environment in mining areas. Applicants for mining licenses, special mining licenses, and gemstone mining licenses are all required to submit an independent environmental impact assessment and an environmental management plan. In addition, while applicants for primary mining licenses (small-scale mining licenses) are not required to submit an environmental impact assessment, renewal of primary mining licenses is partially determined by their ‘close’ compliance with environmental and safety regulations.

The 1998 Mining Act contains a clear paradox: on the one hand, it introduced greatly enhanced environmental regulation, and, on the other hand, it reduced the capacity of the state to monitor the same. One can only speculate about the reasons for including such paradoxical environmental provisions. Beyond the genuine concern for the environment, an additional explanation is the desire of large mining multinationals to placate an activist public, which is highly concerned and vocal regarding environmental risks in mining. Furthermore, the environmental discourse is increasingly used by large mining companies to enhance their own CSR status and highlight the superiority of their environmental practices against the inadequate and irresponsible practices of small-scale peasant miners (e.g., mercury pollution resulting from artisanal gold processing). The environmental critique of artisanal mining became an additional rationale for regulating and containing the activities of the small-scale sector, ultimately creating a paternalistic relationship between large mining companies and local artisanal mining groups.

Employment

Tanzania's 1997 Mineral Policy identifies the creation of employment opportunities in the mineral sector and the sector's role in the diversification of the rural economy as key challenges addressed by the policy (URT, 1997). Under the 1998 Mining Act, only Tanzanian citizens are eligible to obtain primary (i.e. small-scale) mining licenses. It was estimated that between 450,000 and 1,500,000 Tanzanians worked as artisanal miners (ILO, 1999; Chachage, 1995).

Both the 1997 Mineral Policy and the 1998 Mining Act seek to address issues related to quality of employment in the artisanal mining sector. In other words, they seek to secure improved training opportunities, credit facilities, extension services, and formal regulation, thus enhancing the capacity of the sector to alleviate poverty and improve social and economic development in rural areas. Such goals are strongly promoted by international agencies (UNDP, ILO, and World Bank) as well as by the corporate mining industry, to a certain extent. However, the companies' primary motivation is to minimise potential conflicts between industrial and artisanal mining, and enhance the industry's own public profile through CSR gestures.

Modern industrial mining is very capital-intensive compared to the small-scale labour-intensive sector. As the long-term effects of the 1998 Mining Act begin to take shape, large tracts of land in mineral-rich regions of the country are being licensed to companies involved in industrial (as opposed to artisanal) mining. It is expected that this will significantly reduce the total number of persons employed in the mining sector as a whole. Many provisions of the 1998 Mining Act favour larger, 'experienced' companies and foreign investors that demonstrably possess the capacity to efficiently and profitably exploit the country's mineral resources. The small-scale mining sector lost out to large, capital-intensive operators. The total number of jobs in mining has been greatly reduced with the onset of large-scale mining, which employs a total of 8,733 workers (Table 4.1).

Maximising broader economic benefits from mining

The 1997 Mineral Policy of Tanzania makes a number of references to the importance of linking the mining sector to broader economic development objectives. For instance, economic diversification is to be partially realised through value-added processing of minerals. Tanzania should become 'the gemstone centre of Africa' with the establishment of a 'well-developed gemstone cutting and jewellery industry'. However, a closer look at the 1998 Mining Act uncovers little if any legislative support for any of these ambitious visions for mineral policy.

Most significantly, there is no mention anywhere in the 1998 Mining Act of any requirement for local sourcing of goods and services. International trade and investment agreements increasingly treat such measures as illegal 'performance requirements'. In this regard, Tanzania's mining legislation was reformed to make it compatible with the 1994 Trade Related Investment Measures (TRIMs) Agreement which considers certain performance requirements—such as local sourcing and local content—violations of GATT Article III National Treatment provision. The WTO's *Trade Policy Review of Tanzania* (2000) states, 'The authorities indicate that Tanzania does not have any local content requirements'. These external policy pressures proved stronger than Tanzania's national policy objectives to secure direct economic benefits through enhancing the local and national economic impact of the large-scale mining sector. It appears that, despite its visionary policy statement, in order to attract FDI the Tanzanian government has been forced to abandon key development objectives.

Table 4.1 Employment in the large-scale mining sector in Tanzania

Name of mine	Tanzanian	non-Tanzanian (experts)
Bulyanhulu Gold Mine Ltd	1,710	203
North Mara Gold Mine	923	80
Tulawaka Gold Mine	481	27
Buzwagi Gold Mine	630	66
Geita Gold Mine Ltd	2,222	74
Golden Pride Gold Mine	604	15
Tanzanite One	579	20
Mwadui Diamond Mine	959	8
El-Hillal Diamond Mine	220	0
Buhemba Gold Mine	405	33
Total	8,733	526

Source: Extracted from URT (2008). A Report of the Presidential Advisory Committee for Administration of the Mining Sector, April, 2008.

Compensation for persons vacated from their land due to mine development

According to the 1997 Mineral Policy, the mining company is responsible for administering a social impact assessment and determining the possible effect of their activities on the community and the environment surrounding their projects. Section 3.3.12 (iii) of the Mineral Policy states that the company should have a sustainable system for cultivating good relationships with neighbouring villages. The 1999 Land Act, Sections 4.2.19 and 4.2.20, states that land appropriated for projects of national interest (including mine development) should be compensated according to market value and the loss of the benefits that the owner previously obtained from that piece of land. Other factors to be considered include disturbance and relocation costs; lost revenue; the value of the homestead/household; previous cost of acquiring that particular piece of land and the interest that would be paid if compensation is not effectuated within the agreed upon time period and according to market prices.

The 1999 Land Act and 1999 Village Land Act are the two major laws that principally govern land, including compensation; however, there are additional laws that also regulate land use practices, including mine development. The 1998 Mining Act, Section 96, stipulates that the land right given in a license to prospect minerals or mine should be used rationally without causing harm to the persons who own this land or the environment. Section 96(3) states that landowners should be compensated at market prices, honestly and adequately. Under Section 96(5), the law stipulates that in case of conflict regarding compensation for land surrendered for projects of national interest (in accordance with Section 96[3]), the parties should take up the matter with the Commissioner of Mining for arbitration, in accordance to the authority granted by Chapter VIII of the 1998 Mining Act.

Despite its extensive elaboration in policy and acts, the situation on the ground is quite different when it comes to implementation. Observations revealed that the timeline for payment is not respected: villagers wait up to ten years for reimbursement. The villagers confirmed that they are not aware of their compensation rights and who should compensate them: the government or the mining companies. Further, investors are given large tracts of land regardless of the actual prior and subsequent use by communities or mining companies. The special mining licenses are offered to companies on ‘first come, first served’ basis and their ability to make the required payments for the land—regardless of other economic activities on this land.

Evaluation of land for compensation is carried out by the government in collaboration with the mining companies. The local communities are not engaged. This lack of participation has led to low understanding of the criteria used to evaluate land and determine payment levels. Further, the local communities do not know how to defend their rights and secure due compensations. The land officer evaluates the land and sets the reimbursement rates, while payment is actualised at the district commissioner’s office. In most cases the criteria for compensation are not followed. Sometimes villagers are evicted without receiving any compensation or alternative land for relocation.

Various overlapping laws and acts that govern compensation

There is multitude of laws and acts that deal with land appropriation for various land uses: the general Land Act, Village Land Act, Mining Act and Wildlife Conservation Act, just to name a few. The two land acts conflict one another and lead to disputes during compensation, especially regarding ownership. For instance, the 1999 Land Act indicates that land is public property vested in the president, existing occupation and customary rights are recognised and secured, an equitable access of land by all citizens with regulated amount of land occupied is guaranteed, ensuring that land is used productively and full, prompt and fair rules of compensation are defined. Inversely, the 1999 Village Land Act indicates that land is village property: the village council detains some powers to decide on the use of land according to the regulations defined in the Village Land Act. The largest possible area is allocated to families, individuals or groups and the community ownership of villages is recognised. Land is also defined and differentiated from minerals under the 1998 Mining Act; however, primary defining legislation for land is the 1999 Land Act, the 1974 Wildlife Conservation Acts, and the 2002 Forests Act. The resulting legal conflicts are a common source of disputes over land.

Tax regimes in Tanzania

In an important step for implementation of the 1997 Mineral Policy, the government amended several financial laws and acts (Miscellaneous Amendments, 1997). The intent was to encourage the private sector, especially FDI, to take charge of mining development in Tanzania. The government proposed the 1998 Mining Act, and reformed the 1992 Foreign Exchange Act, aligning them with the current needs of the mining sector and the 1997 Mineral Policy. According to the reforms, the tax regimes provided several incentives to investors. For instance, Section 15(3) of the 2004 Income Tax Act allows mining companies to recover the funds they spend on environmental rehabilitation, after fulfilling the prerequisites stipulated by the Income Tax Commissioner.

Section 83(1) (a) directs the mining companies to deduct the withholding tax from all payments for management services and technical services rendered by resident or non-resident companies. The withholding tax stands at 5%, as stated in Section 4(c) of the first table of taxes in the 2004 Income Tax Act. The withholding tax for non-resident companies is calculated as per Section 83(1) (b) at 15% of services rendered to the mining company.

The depreciation rate for machinery and other mining equipment is set at 20%, as shown in the fourth class of table three of the 2004 Income Tax Act. The field study did show that some sections of the old 1973 Income Tax Act are still being used, despite the fact that it was repealed by Parliament and replaced by the new 2004 Income Tax Act. For example, Section 145 of the 2004 Income Tax Act allows the use of the third section of table two of the 1973 Income Tax Act. Several important clauses are still being applied:

(a) The investor is granted exemption of 100% capital allowance per year for expenditures.

(b) Mining companies that signed MDAs before 1 July 2001 (others are not eligible) can recover 15% of investment capital unrecovered (it is called Additional Capital Allowance on unredeemed qualifying capital expenditure). This exemption of 15% is given to the mining company every year until it has taxable output (i.e. starts making profit). The companies in question receive an additional compounded interest. This clause significantly prolongs the time period when mining companies finally start paying taxes.

(c) The tax exemption given to mining companies in computing income tax allows the companies to recover investment expenditures and operational costs in all mining projects, regardless whether the project contributed to income during that particular year, i.e. there is no ‘ring fencing’. If the company has two or more mine projects, the company is allowed to recover all the expenditures and costs for all mining operations.

(d) The rates of withholding taxes for companies (with or without MDA signed by 1 July 2001) are shown in the 2004 Income Tax Act. Observation confirmed that in some cases, the withholding taxes are charged under the old regulation of the 1973 Income Tax Act. For example, under the 2004 Income Tax Act, the rate of withholding taxes for all services is 5% for resident companies and 15% for non-resident companies—however mining companies with signed MDAs are charged 3% withholding tax. In some situations the rates stipulated in the 1973 Income Tax Act are not used, for example, the tax on interest from credit extended to the companies from their subsidiary or close associates.

Value added tax (VAT)

Value added tax is charged for all goods and services sold in Tanzania. VAT is governed by 1997 VAT Act, and, according to Section 11, individuals and institutions listed in the third table of 2004 Income Tax Act (which includes all mining companies) are eligible for VAT exemption. Section 11 reads as follows, 'the importation by or supply to a registered licensed exploration, prospecting, mineral assaying, drilling or mining company, of goods which if imported would be eligible for relief from duty under custom laws and services for exclusive use in exploration, prospecting, drilling or mining activities'. According to Section 8, mining companies are not eligible for VAT exemption for goods and services which if imported are not liable for customs duty. Thus, mining companies usually pay custom duties but recover these taxes through VAT exemption. Since mining companies export most of their product (minerals) they are charged 0% VAT. All mining companies recover their VAT from Tanzania Revenue Authority (TRA).

Customs duties

Mining companies and their contractors receive relief from customs duties, dependent on the development stage of the mine. For example, during prospecting (before production begins in the first year) the companies and their contractors are allowed to import goods and services related to mining activities without paying customs duties. Such goods and services include explosives, plants and equipment, spare parts, vehicles, fuels and lubricants. The relief is granted by the Custom/Tax Commissioner, in consultation with the Minister of Minerals and Energy. After the first year of operation, the companies and their contractors are liable for customs duties for plants, equipment, spare parts, vehicles, explosives, fuel and lubricants. However this rate does not exceed 5% and is half of the 10% prescribed for such materials in the Common External Tariff (CET) for East Africa.

Excise duties

Mining companies are exempt from paying excise duties for all goods and services imported or bought within the country (according to the *Government Gazette number 480 of 25 October 2009*).

Fuel levy

The fuel levy is charged under the 1985 Road and Fuel Act, Chapter 220. According to the *Government Gazette number 99 of 15 October 2005* (which nullified the government instruction of the *Government Gazette number 22 of 5 February 1999*), companies that work in gold mining and have signed MDAs are eligible for fuel levy relief (commonly known as road toll) which exceeds $200,000 per year and this relief is for all mine life span or MDA duration. This is contrary to *Government Gazette number 22 of 5 February 1999* which granted fuel levy relief only for the first year of production. Companies dealing with other minerals and small-scale miners are not entitled to fuel levy relief.

Stamp duties

Mining companies with MDAs pay stamp duties, as stipulated in the MDAs, but these are less than the rates stipulated by Section 189 in the first table of the 1972 Stamp Duty Tax Act.

Local government levies

The 1982 Local Government Finance Act states that all companies—including mining companies—within the jurisdiction of particular local government area are required by law to pay a local government levy set at 0.3% of their turnover. However, the MDAs stipulate that all companies pay $200,000 per year. It is not clear how this amount was reached.

FDI performance prior to the reforms

When Tanzania became independent in 1961, political power was restored but, like many other African countries during this period, the command of the economy remained mostly in the hands of foreign investors. This gave rise to the political tension and dissatisfaction that eventually gave the post-independence socialist government the impetus to announce the Arusha Declaration (AD) in 1967. The AD was an important strategy for Tanzania to take command of its economy; the government claimed direct responsibility for the economy and introduced a wide range of economic controls.

The most important mechanisms included centralised control over investment planning, with restrictive codes for private and foreign investment; administrative allocation of foreign exchange and import licensing along with price controls administered by the National Price Commission; regulated/controlled interest rates and credit rationing according to the annual financial plan as well as the state control on wholesale trade for some import and domestic commodities to specific parastatal organisations.

With the AD, the government enacted a number of acts and directives that directly or indirectly discouraged private (both foreign and domestic) investment. Among other things these acts nationalised all means of production, distribution, and exchange, prohibiting private ownership of small industrial enterprises in villages and cracked down on ’economic saboteurs’ (entrepreneurs who had started small-scale enterprises despite these prohibitions). ‘Means of production’ refers to physical, non-human inputs used in production (the factories, machines, and tools used to produce wealth) and both infrastructural capital and natural capital. The result was an institutional and policy environment that was very hostile towards the private sector.

As a result of this policy environment, prior to the reforms Tanzania attracted very little FDIs, compared to neighbouring countries like Kenya. During this period, FDI inflow in Tanzania averaged about $4.4 million, almost eight times less than Kenya's $32 million. In fact, among the three East African countries, Kenya was the leading destination for FDI before 1990, because of its non-restrictive policies towards foreign investors. From 1970 until 1990, East African countries received some $757 million of FDIs, the lion's share (90%) going to Kenya, nearly 10% to Tanzania, while Uganda hardly received any (UNCTAD, 2002). Tanzania's policies of public investment proved as failures: many of the state controlled investments underperformed and instead became unbearable burden on the government.

FDI performance after the reforms

Because of poor economic performance in the early 1980s, the government adopted the Economic Recovery Programme (ERP), which called for deliberate and systematic removal of regulatory controls, structures and operational guidelines in the administration and pricing systems in the economy. Thus the ERP policy package was bound to impact private investment. The package aimed at improving the balance of payments; reducing inflation, and improving fiscal and monetary policies, supplemented by devaluation of Tanzania's currency. Consequently, Tanzania now offers a favourable investment climate with sound macroeconomic foundations. This positive trend of economic stability gives confidence to foreign investors, putting them in good position to foresee future returns on their investments and in turn stimulating them to introduce technological innovations (an important element for accelerating economic development).

The introduction of the first market-oriented investment code in June 1990 was a deliberate effort to attract both local and foreign private investors by opening up the economy. Due to poor response by private investors in the early 1990s, the government amended the code in 1997, enacting the modernised 1997 Tanzania Investment Act (shortly after the 1996 launching of the New Investment Policy of Tanzania). The 1997 Tanzania Investment Act provides the basic investment framework for Tanzania, with new and modern legislation that reflects both world economic conditions and Tanzania's domestic realities.

As a result of these reforms, FDI inflows rose from $12 million in 1992 to $260.2 million in 2004, peaking at $516.7 million in 1999 (Monthly Economic Reviews, 2000). This upsurge can be attributed to changes in the domestic as well as the intentional economic environment and the adoption of a more dynamic and pragmatic approach to attracting FDIs. The accelerated inflows between 1992 and 1999 considerably improved Tanzania's FDI performance compared to its neighbours, giving it a competitive edge for certain types of FDI. Its share of the total FDI inflow into the least developed countries (LDCs) doubled, from 2.7% in 1991-1995 to 5.3% in 1996-1999, and its share of inflow into sub-Saharan Africa more than doubled during the same period, increasing from 1.5% to 3.3%. The Tanzania Investment Centre (TIC) played an instrumental role in accelerating FDI growth. The TIC has within a short period transformed itself into a modern investment facilitation centre—an efficient one stop shop for investors. Through the TIC, the government has managed to create an investor friendly environment, helping overcome many of the constraints that existed prior to 1996 (Kabelwa, 2006).

Tanzania has put in place a number of proactive measures to help foreign investors: promotion and investment incentives given for FDIs, efforts aimed at reducing corruption and improving administrative efficiency, after-investment services and the provision of social amenities, such as education, health, housing, water and recreation. The business environment for foreign investors has been improved through various initiatives: cutting bureaucratic 'red tape' and reducing state interference in private sector operations, improving facilitation of investments and establishing of investment promotion agencies. The government's privatisation programme of the early 1990s also contributed to attracting foreign investors. The government's trade liberalisation policy and its easing of control over foreign exchange transactions were reinforced by legislative reform. The

1992 Public Corporations Act (PCA) aimed to promote the private sector in the economy as well as encourage Tanzanians to own shares in privatised state-owned enterprises.

Distribution of FDI in Tanzania's economy

It was difficult to obtain accurate FDI data, especially for recent years. The most current investment report (Tanzania Investment Report, 2004), published by the Bank of Tanzania in collaboration with Tanzania Investment Centre and Bureau of Statistic, provides the latest data on FDIs up to 2001. In order to obtain a realistic picture of FDI distribution, this study relied on FDI stock rather than the heavily fluctuating FDI flows. According to the Tanzania Investment Report (2004), the largest share of foreign private capital flows is attributed to FDIs, which also include foreign portfolio investment and long- and short-term loans. In 2001, the FDI stock contributed about 88.6% of foreign private capital stock. This shows the importance of FDI for Tanzania's economy. Looking at FDI components, direct equity investment is a major portion of FDI in Tanzania, about 76.3% of FDI stock in 2001.

Sectoral distribution of FDI in Tanzania

The largest recipient of FDI is the manufacturing sector (33.5% of total FDI stock in 2001) while the second largest sector is mining (28% of total FDI stock for same year) (UNCTAD, 2004). Much of FDI in manufacturing went to the food and beverages industry, while in mining the largest single subsector is the gold mining industry. Thanks to its mineral resources, Tanzania is in prime position to attract mineral explorations and investment. During the 1990s, these natural riches were enhanced by revised, investor-friendly investment regulations and the 1998 Mining Code—all well received by international investors. There has been dramatic growth in the mining sector since the 1990s. In 1998, Tanzania was the leading country in Africa in terms of the number of exploration activities, just behind the traditionally strong mining countries of South Africa and Ghana.

Summary

The Government of Tanzania put a priority on the mineral sector as the key sector for sustainable economic growth (at 10% yearly rate) because it felt it could successfully attract FDI in capital and technology. Prior to the 1990s, the mining sector played a small role in overall development: in fact it was dormant. Following, the neoliberal reforms championed by the World Bank and the enactment of the 1998 Mining Act and other legislative and financial acts, there was sharp increase in FDI. Thus, gold mining gained in importance with 3.2% contribution to GDP and 3.6% to national tax revenues, the result of 75% of FDI in the mining sector. Tanzania became the number three gold producers in Africa, behind the traditionally strong South Africa and Ghana.

Despite the successes, critics argued that win-win outcomes did not materialise, as the policies failed to translate the mineral wealth into tangible benefits for majority of Tanzanian citizens. This tension is aggravated by the fact that most mining contracts are kept secret and remain a mystery to the public. However, mining carries a lot of risk and uncertainty, and as capital intensive puts substantial amounts of funds under strain. Tangible benefits are only expected later, in the long run (10-20 years), through revenues and various forms of rents to the state. Companies use CSR actions to provide some short-terms benefits to surrounding communities. The following chapters (Chapter 5, Chapter 6 and Chapter 7) will present the socio-economic, health and environmental impacts as well as the CSR practices of large-scale gold mining companies in Tanzania.