

# Tax collection system in the mining sector: Legal framework for an efficient and transparent system

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## Abstract

DRC and Tanzania are two neighboring countries with mineral rich deposits that could be the driving force of their economies. Yet, they remain among under developed countries in the world in general and in Africa in particular. Their populations are still languishing under the poverty threshold while their youths are desperate. After increasing a fiscal burden of corporates exploiting its mineral in 2018, the DRC intended to make the mining sector more fruitful than ever before. 3 years following such ambitious reforms, outcomes are yet to be seen. In fact, the mining sector has not increased the public revenue to date. Lack of transparency in the management of the sector should be fingered. Meanwhile, the Congolese government seems willfully negligent to vehemently address this abnormal situation. On the other hand, Tanzania has reportedly performed well in the mining sector thanks to the strong leadership of its late President Dr Joseph John Pombe Magufuli. Despite such efforts some questions still evolve with regard to the importance of the sector towards socio-economic development. In the same line specific question has been asked on how does one enhance contribution of the mining sector to significant increase of GDP for the two countries? To respond to the question, this paper outlines the state of play of legal reforms underwent by the two countries in the mining sector in the last ten years. Thereafter it suggests ways of increasing transparency in the sector and shows what DRC should learn from Tanzania.

## 1. Introduction

DRC and Tanzania are two neighboring countries with two different historical backgrounds. While DRC has experienced the deadliest conflict after the second world war from 1996 to

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2003,<sup>1</sup> Tanzania has not been in war and its political institutions remain much more stable than those in DRC. Since the end of the war by the global political agreement in 2003, DRC remains in prey to armed groups in its eastern part with a high rate of insecurity. On the other hand, Tanzania is known to have strong political institutions with frequent democratic process from the bottom to the top of the state. Despite the differences in historical context, the two countries share some similarities in different socio-economic context among of which mining as an economic activity form part. Mining sector is among the most important driving force of the economy for the two countries. Nevertheless, in spite of rich mining deposits, DRC and Tanzania span decades in poverty and underdevelopment.

Nonetheless, Tanzania has reportedly performed well in the last five years in the mining sector owing to the deliberate efforts of the 5th Government regime under the late President Dr. John Pombe Magufuli's. Under his leadership Tanzania has succeeded to capture substantial mining revenues to build its success story from inside. This was made possible through review and amendment of relevant laws in the mining sector followed by strict government follow up on the same. For instance, to plug the mining taxation loopholes, the late Tanzanian president John Magufuli directed the Controller and Auditor General to conduct an in depth audit of the mining sector in March 29, 2017.<sup>2</sup> Four months later in July 26, 2017, a courageous decision was made: « The government of Tanzania has slapped Acacia Mining with a tax bill of 190 billion dollars. That's equivalent to almost two centuries' worth of the gold producer's revenue. The charges relate to alleged under-declared export revenue from its Bulyanhulu and Buzwagi mines between 2000 and 2017. »<sup>3</sup> Such a landmark decision brings to light the issue of leadership and regulation as important factors for catalyzing economic development through natural resources in the African continent with a specific focus on the two jurisdictions of choice.

The most recent setback in the DRC's mining sector dates back to 2007. It is what is known as the *Chinese contracts* of September 7, 2007 between a group of Chinese enterprises (Sinohydro and China Railway Engineering Corporation, CREC in acronym) with the funding of EXIM BANK of China and the Congolese government.<sup>4</sup> In fact, the *Chinese contracts* were meant to build 3,500 Km of roads, 3,500 Km of railways, rehabilitate Kinshasa urban road network, 31 hospitals with the capacity of 150 beds in

- 1 See IRC, *Crise au Congo: 5,4 Millions des Morts*, available at <http://www.rescue.org/news/crise-du-congo-54-millions-de-morts-selon-une-tude-de-1-4332> accessed in September 16, 2021.
- 2 The information is available at <https://www.youtube.com/watch?v=DGZyw3ZiKpg> accessed in September 16, 2021.
- 3 The information is available at <https://www.youtube.com/watch?v=FeriZk1aaWE> accessed in September 16, 2021.
- 4 See Adolphe Kilomba Sumaili, *Public procurements in roads infrastructure in DRC: Legal and Parliamentary control of Chinese contracts*, KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques 6 (2019), p96 available at <https://www.nomos-elibrary.de/10.5771/2363-6262-2019-1-90.pdf> accessed on September 2, 2021.

each province and 145 health centers.<sup>5</sup> 14 years later, this contract has not yielded expected results. During the nationwide meeting named *état généraux des mines* held in July 2021 in Kinshasa, the civil society urged the Congolese government to open investigations on the Chinese contracts.<sup>6</sup>

Against this background this paper offers an examination of the tax collection system in the mining sector in DRC and in Tanzania, followed by propositions on the best practice for improvement purposes. The paper comparatively examines the legal framework on tax collection in the Congolese and the Tanzanian mining sectors for the last 10 years. It also depicts the state of play in this sector in both countries followed by proposition on how best the Congolese regime may learn from its Tanzanian counterpart in order to improve mining revenue collection therein.

## 1. The DRC and Tanzanian tax collection system in the mining sector: Legal framework and state of play

This point encapsulates successively the most recent legal reform in the mining sector in DRC (1.1) and portrays state of play of this sector after the nationwide meeting named *états généraux des mines* held in July 2021 in Kinshasa (1.2). It ends up by exploring what should be done to make the Congolese mining sector much more effective to enhance mining revenue collection in the country.

### 1.1. The Legal framework in the 2018 Congolese mining Code

The DRC adopted a new mining code in 2002<sup>7</sup> to attract mining investors and generate more money for the Public treasury. 16 years later, the need of changing the law became real since the expected financial outcomes were not reached. In other words, facts did not follow the law. The 2018 mining reform was meant to increase the revenue of the mining sector to financially empower the Congolese state and plugging several loopholes. Unlike the former code of 2002, the new mining code has increased the fiscal burden of mining corporates operating in DRC.<sup>8</sup> The new tax rate arose from 2 % to 10 % for strategic mine-

5 See also Stefaan Marysse et Sara Geenen, « Les contrats chinois en RDC : L'impérialisme rouge en marche? » *L'Afrique des Grands Lacs. Annuaire 2007–2008*, p287.

6 See Pascal Mulegwa, *Le Congo lance ses états généraux des Mines*, July 9, 2021 available at <https://www.rfi.fr/fr/afrique/20210708-la-rd-congo-lance-ses-états-généraux-des-mines> accessed in September 2, 2021.

7 See Law n°007/2002 of July 11, 2002 on mining code as modified and supplemented by the law n°18/001 of March 09, 2018, Kinshasa, Journal Officiel, Numéro spécial, May 3, 2018.

8 The most important mining corporates operating in DRC, we have Anglo-Suisse Glencore, the South-african Randgold, the Canadian Ivanhoé, the Chinese Zijin and China Molybdenum.

ral (cobalt and copper).<sup>9</sup> Those two mineral represent 80 % of Congolese exports.<sup>10</sup> There is now 50 % tax on windfall gains. A new tax has been created to be paid directly to local communities living around the mining site. According to the Natural Resource Governance Institute (NRGI), the tax rate has been raised from 45 % to 72 % for a copper and cobalt mine while it went from 55 % to 95 % for a gold mine.<sup>11</sup> If the legal architecture has changed, once again, facts did not follow as it was in the wake of 2002 reform. The discrepancy between the legal machinery and facts remains remarkable.

Moreover, the 2018 legal reform modified article 2020 of the 2002 mining code on incentives to promote mining investments. Unlike the 2002 mining code that provided a conventional regime and universal incentive for any investor, the 2018 mining reform has foreseen incentive by way of ministerial decree. Such a modification increases the risk of bribery in this sector already corrupt and poorly managed. Although the 2018 mining reform has increased the fiscal burden of mining actors, the risk of non-collection of taxes is still looming on the sector. Yet again, changing the law does not mean increasing the public revenue in DRC. The same situation appeared following the 2002 legal reform due to numerous parallel taxes and para-taxation.<sup>12</sup>

After revising the mining code in 2018 and promising the increase of the mining public revenue, the Congolese state is still languishing under financial drought alongside its population. The national budget remains under 7 billions for 2021 while corruption and impunity remain unaddressed. Admittedly, if the revising of the mining code was seen as a good step towards the increase of the public revenue, the implementation and transparency of the tax collection system remains a big challenge in DRC. Another innovation brought by the 2018 legal reform is the increase of the central bank control on mining exports. 113 recommendations have been made to the Government during the nationwide meeting on mining called *états généraux des mines* held in Kinshasa July 2021.

9 See David Baché, RDC: le nouveau code minier bouscule le secteur, June 13, 2018 available at <https://www.rfi.fr/fr/afrique/20180613-rdc-nouveau-code-minier-cobalt-cuivre> accessed in September 2, 2021.

10 *Ibidem*.

11 See Thomas Lassourd, La fiscalité du nouveau code minier de la République Démocratique du Congo, November 2018, available at <https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo.pdf> accessed in September 2, 2021.

12 See Thomas Lassourd, *La fiscalité du nouveau code minier de la République Démocratique du Congo*, November 2018, p3. available at <https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo.pdf> accessed in September 2, 2021.

## 1.2. *The Congolese mining tax collection system: The state of play*

The Congolese mining sector is characterized by fraud and lack of transparency.<sup>13</sup> It represents 20 % of the country GDP.<sup>14</sup> Those two shortcomings deprive the state with the money it would have had to develop itself. The discrepancy between the legal machinery and facts remains remarkable. Congo underwent purposely legal reforms in the mining sector between 2002 and 2018 to increase the mining public revenue. The 2002 and 2018 legal reform in the mining sector did not increase public revenue in DRC. The country is till feckless to fund its development. In July 2021, DRC resumed its relationship with the International Monetary Fund (IMF) for a three-years program to acquire 1.5 billions (dollars, CHF?) under the condition of increasing transparency in the mining sector.<sup>15</sup> Another program with the IMF was abruptly cancelled in 2012 due to the refusal of publishing the transfer of state shares in Mining companies by the Congolese government.<sup>16</sup>

The continuous and increased production of copper and cobalt since 2005 has not had any impact on the Congolese budget. Despite being named *geological scandal*, the DRC remains among the poorest countries in the world. The poor governance of the mining sector is the main cause of poverty and underdevelopment. Instead of generating enough public revenue to develop the country and creating wealth, the mining sector revenue is still not captured by the Congolese public Treasury. During the nationwide meeting on the mining sector named *états généraux des mines* held in July 2021, an expert of the Congolese mining sector Kalala Mpinga said that only 15 % of the geological content of the Congolese under-basement is known.<sup>17</sup> The meeting also highlighted the fact that the Congolese mining sector represents less than 10 % of formal jobs in DRC.<sup>18</sup> Last and not least, this sector represents only 20 % of the GDP because the state is unable to capture all incomes generated from this sector. The successive reform of the mining code remains inconclusive.

Thus, instead of increasing the legal inflation with new legal reforms, the country would be better off in making the system much more transparent.

13 See the Concept note of the états généraux des mines prepared by the Congolese National Ministry in charge of the mining available at [https://mines-rdc.cd/SaveDate/pdf/Note\\_conceptuelle.pdf](https://mines-rdc.cd/SaveDate/pdf/Note_conceptuelle.pdf) accessed in September 2, 2021.

14 See GIZ, *Développement économique du secteur minier*, available at <https://www.giz.de/en/worldwide/78576.html> accessed in September 16, 2021.

15 See Le Figaro, *La RDC conclut un programme avec le FMI, un crédit de 1,5 milliard de dollars accordé*, July 16, 2021 available at <https://www.lefigaro.fr/flash-eco/la-rdc-conclut-un-programme-avec-le-fmi-un-credit-de-1-5-milliard-de-dollars-accorde-20210716> accessed on September 3, 2021.

16 *Ibidem*.

17 See words of Kalala Mpinga on <https://www.rfi.fr/fr/afrique/20210708-la-rd-congo-lance-ses-etats-generaux-des-mines> accessed on September 2, 2021.

18 See Pascala Mulegwa, *La RDC lance ses états généraux des mines*, July 9, 2021 available at <https://www.rfi.fr/fr/afrique/20210708-la-rd-congo-lance-ses-etats-generaux-des-mines> accessed on September 2, 2021.

## **2. Mining Revenue Collection System in Tanzania**

Tanzania is endowed with vast quantities and types of natural resources whose extraction has been significant to the country's economic contribution and growth as catalyzed through its mineral policy. The minerals found in Tanzania include metallic minerals such as gold, iron, silver, copper, platinum, nickel and tin; gemstones such as diamonds, tanzanite, ruby, garnet, emerald, alexandrite and sapphire; industrial minerals such as kaolin, phosphate, lime, gypsum, diatomite, bentonite, vermiculite, salt and beach sand; building materials such as stone aggregates and sand; and energy minerals such as coal and uranium.<sup>19</sup> Endowment with vast quantities of minerals engenders its exports outside the country. For example Tanzania is the fourth largest gold producer in Africa following South Africa, Ghana and Mali.<sup>20</sup>

The Tanzania Mineral Policy, 2009 imbeds an effective and efficient mineral sector, which contributes significantly towards acceleration of socio- economic development of Tanzania. The Policy lays down the framework for attracting local and foreign direct investment in the mining sector and integration of the mineral sector with other sectors of the economy.<sup>21</sup> One among the issues of interest in the Mineral Policy include strengthening of the mining legal and regulatory framework for the purpose of enhancing capacity for monitoring and enforcement therein.<sup>22</sup> The art of enhancing capacity in monitoring and enforcing mining laws may be examined through different perspectives among them being its effectiveness in ensuring revenue collection therefrom. In order to highlight effectiveness of the Tanzanian laws in revenue collection from mining thus country's economic development this section provides an overview of the laws and regulations importing provisions on revenue collection from the mining sector. It is however important to note that remarkable legal development in the Tanzanian mining sector as spearheaded by the 5<sup>th</sup> Government regime which envisioned growth of the country's economy through mining.

Mining represents one among the leading foreign currency earners in Tanzania and a contributor to the Gross Domestic Product (GDP) of Tanzania. Following increasing sentiments on the low sectorial contribution to the GDP as compared to other sectors of the economy Tanzania opted to amend its mining legal framework from 2015. The main objective was to ensure high level contribution of mining revenue to the country's economic growth. As a result of the amendments of such laws it is clear to observe introduction and changes in quite a number of aspects which signify close supervision of mining activities for the purpose of ensuring proper collection of revenues therefrom. The next section offers a sneak-peek view on how the new aspects directly consequential to such amendments have enhanced revenue collection from mining sector in Tanzania. The

19 The Tanzania Mineral Policy 2009, p.7.

20 *Ibid.*

21 Policy Statement 5.1 of the Tanzania Mineral Policy 2009.

22 Policy Statement 5.3 of the Tanzania Mineral Policy 2009.

presentation is followed by the still existing challenges affecting steady revenue collection from mining sector notwithstanding the amendments.

### *2.1. The new laws and new issues on mining revenue collection in Tanzania*

Tax collection system in Tanzania is governed by specific laws and designated machineries for such task. The Tanzania Revenue Authority Act<sup>23</sup> establishes the Tanzania Revenue Authority hereafter TRA for the purpose of administering and giving effect to tax laws,<sup>24</sup> monitoring and ensuring effective tax collection<sup>25</sup> in the country. The TRA is mandated to collect revenues from the mining sector by virtue of the above sections as enunciated under the TRA Act. The Local Government Authorities are also mandated to collect levies from mines established within their own vicinities as provided for under the Local Government Finance Act.<sup>26</sup> For the purpose of examining the extent to which Tanzanian laws are facilitative of mining revenue collection, focus is directed towards specific laws which offer specific aspects relevant in ensuring substantial revenue collection from the mining sector. Such laws include the fairly new pieces of legislations which were enacted following a wave of legal reform spearheaded by the 5th Government Regime led by the late Tanzanian President Dr. John Joseph Pombe Magufuli.

As a way to reorganize mining revenue collection, the Tanzania's parliament passed three pieces of legislation on 3 and 4 July 2017 adding to earlier existing laws which brought significant changes to the legal and institutional frameworks governing oil, gas and mineral extraction. Such legislations include the Written Laws (Miscellaneous Amendments) Act 2017 ("Amendments Act"), the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 ("Sovereignty Act") and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017 ("Contract Review Act"). The same was followed by the 2019 revisions of the Mining Act<sup>27</sup> and the Income Tax Act to keep pace with the earlier passed legislations. Each law has imported its own motion and issue in as far as taxation of the extractive sector as enunciated hereunder:

#### 2.1.1 Payment of taxes on mining revenues

The Tanzanian Mining Act hereafter MA read together with specific tax laws places compulsory legal requirements to mineral right holders to pay taxes at specified tax rates.<sup>28</sup> The

23 Section 4(1) of the Tanzania Revenue Authority Act, Cap. 399, R.E of 2019.

24 Section 5 (1) (a) of the Tanzania Revenue Authority Act, Cap. 399, R.E of 2019.

25 Section 5(1) (c) of the Tanzania Revenue Authority Act, Cap. 399, R.E of 2019.

26 The Local Government Finance Act, Cap. 290 R.E. 2019.

27 The Mining Act, Cap. 123, R.E of 2019.

28 Part VI of the Mining Act, Cap. 123 R.E. 2019.

MA requires mining companies to pay royalties<sup>29</sup> failure of which renders criminal penalty at 25 % of the tax amount due where the defaulter is an individual person<sup>30</sup> and 50 % of the tax amount for a corporate defaulter. The Income Tax Act on the other hand subjects mineral rights holders to tax<sup>31</sup> at the rate set out in paragraph 1(5) of the First Schedule to the similar statute. Existence of such provisions in the two legal regimes signifies the extent to which the government is motivated to achieve economic growth through mining sector. Furthermore the MA converts any unpaid annual rent, royalty or payment *in lieu* of royalty the unpaid tax into a debt which shall be recovered in a court of competent jurisdiction.

The law requires licensed mining taxpayers to remit to the government a royalty on the gross value of minerals at the rate of 6 per cent for gemstones, diamonds and metallic minerals; and 1 per cent for gems. A mineral dealer must provide payments to the government in *lieu* of royalty on the gross value of minerals exported, metallic minerals sold to smelters or refineries and gemstones sold to a duly authorized lapidary or jewelry maker in Tanzania. One-third of the royalty is paid to the government by depositing refined minerals equivalent to the ascertained royalty into the National Gold and Gemstone Reserve.

A mineral right holder who sells gemstones produced or acquired by him or her is required to pay a sorting and valuation fee as provided in the respective regulations. Further, any person in possession of minerals prior to clearance for domestic use or export must pay 1 per cent of the gross value of minerals as a clearance fee. In accordance with the Income Tax Act, the annual income of an individual conducting mining operations is generally taxed at a rate of 30 per cent. The rate of 30 % is also applicable to the annual income of a corporation. It is pertinent to observe the legislator's intention to tap substantial revenue from mining sector by levying tax to an individual at a rate similar to that of a corporate entity simply because such income is generated from mining activity.

### 2.1.3. Renegotiation of mining contractual terms and ethical considerations

The NWRPSA discussed above operates hand in hand with the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act<sup>32</sup> hereafter NWRCRRU which mandates the Government to re-negotiate and rectify terms of existing investor-State agreements if the National Assembly considers those agreements or aspects of them, unconscionable.<sup>33</sup> The import of the NWRCRRU is to the effect that a term of an investor-state agreement is unconscionable if it, *inter alia* deprives Tanzanian citizens of economic benefits arising from beneficiation in Tanzania. In the same light the Natural

29 Section 87 read with section 66 of the Mining Act, Cap. 123, R.E of 2019.

30 Section 66 (1) (a) of the Mining Act, Cap. 123, R.E of 2019.

31 Section 65B(1) of the Income Tax Act, Cap 332, R.E of 2019.

32 Act No. 6 of 2017.

33 S. 6 (1) of the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017.

Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations of 2020 were made to ensure that agreements on natural wealth and related business activities are entered into in a manner consistent with the highest ethical principles at all times, and within the requirements of the Constitution and all applicable national policies and laws.<sup>34</sup> The art of commanding allegiance to ethical and legal principles is a sure way of indirectly enhancing revenue collection from the mining sector.

The Tanzanian parliament has also enacted the Unconscionable Terms Regulations which provide the procedure for re-negotiations of unconscionable terms in all agreements and arrangements involving natural wealth and resources.<sup>35</sup> The National Assembly is responsible for review of arrangements or agreements by determining unconscionable terms in the said arrangements or agreements which will be subject to re-negotiation. The objective behind this legislative instrument is to ensure effective control of generated minerals and the corresponding mining revenue generation, collection, management and allocation for the benefits of Tanzanians.

#### 2.1.4. Sorting and valuation of raw minerals

In order to ensure government receipt of revenue from mineral resources the Mining Act provides explicit procedures for sorting and valuation of won raw minerals from the mining sites.<sup>36</sup> The Act mandatorily requires sorting and valuation process to be carried out in the presence of the Mines Resident Officer, an Officer from the Tanzania Revenue Authority and the relevant institutions of state organ for that purpose before being entered for storage at the mine storage facility.<sup>37</sup> It is furtherly required that mining beneficiation for the won minerals is carried out within the United Republic before they can be dealt with in any way.<sup>38</sup> The section further requires written reports to be made by the respective officers on the sorting and valuation of raw minerals and submitted to the Mining Commission.<sup>39</sup> Such reports form the basis of calculating government royalties which would have been impossible if there was no accurate data on the same.<sup>40</sup>

34 Rule 4 (1), Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, G.N. No. 58 of 2020.

35 The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020.

36 Section 100(B) of the Mining Act, Cap 123, R.E of 2019.

37 Section 100(B) (1) of the Mining Act, Cap 123, R.E of 2019.

38 Section 100(2) of the Mining Act, Cap 123, R.E of 2019.

39 Section 100(B)(3) of the Mining Act, Cap 123, R.E of 2019.

40 Section 100(B)(4) of the Mining Act, Cap 123, R.E of 2019.

### 2.1.5. Inspection Fees for export minerals

In order to effect controls in the mining sector the current reforms have put forward a need to inspect the won minerals at a fee. Such minerals are inspected at the rate of 1 % of the gross value of all minerals exported out of the country. To enable effective inspection, the law requires establishment of clearing houses at appropriate areas including airports and mining areas in order to facilitate verification of minerals and collection of fees. Apart from offering a legal mechanism through which the government collects mining revenue through inspection process, the government is enabled to keep abreast of the amount of exported minerals *vis a vis* the collected mining revenue. This is also one among the methods through which transparency in mining revenue collection is enhanced.

### 2.1.6. Fencing of the Mererani Mine

In a move of similar nature, in September 2017, President Dr. John Magufuli ordered the military to build a 24 km-long wall with security cameras and checkpoints around the Mererani Tanzanite mining site in the Manyara region, to control illegal mining and trading activities such as smuggling. Generally, there have been reported increases in Tanzanite royalties from small-scale (artisanal) miners following the government-introduced controls to curb illegal mining of the blue-violet gemstone. Such a courageous decision shows a clear political will to increase the mining revenue by the 5th government regime. Such a leadership *aura* remains of crucial need in DRC to enhance government's commitment in revenue collection from mining.

### 2.1.8. Payment of Service Levies by mining companies

Most mines are located in specifically drawn geographical vicinities in the country governed by the specific Local Government Authorities hereafter LGA's. As a way to ensure mining companies contribution to the economic welfare of the communities within which they are established the Local Government Finance Act hereafter LGFA authorizes collection of service levy by LGA's therefrom. The LGFA mandatorily charges the levy at 0.3 % of the corporate turnover net of the value added tax and its excise duty.<sup>41</sup> The levy is charged from all monies derived from the service levy payable by corporate entities or a person conducting business in the geographical location of the LGA with business license. The practise assures directs benefits by the mining communities from the collection.

### 2.1.9. Transparency and Verification of mining revenue data

It is without doubt that transparency plays an important role in ensuring clear information on the *recoupment* of revenue from the mining sector. This is especially the case where mi-

41 S. 7 (1) (y), Local Government Finance Act, Cap. 290 R.E. 2019.

ning substantially contributes to Tanzania's export earnings. Transparency in this sector is considered an important measure to overcome some aspects of the resource curse especially the 'rentier politics'. Thus the Extractive Industry (Transparency and Accountability) Act establishes the Tanzania Extractive Industries Transparency and Accountability (EI-TA) Committee which is responsible for ensuring verification of revenue from the extractive industry. Apart from ensuring revenue verification the committee warrants that mining revenues are duly accounted for and prudently utilized for the benefit of the Tanzanian citizens.<sup>42</sup>

#### 2.1.10. Minerals and Gem Houses

The legal mechanisms for improvement of mining revenue collection has rendered establishment of the minerals exchange markets under section 27(C) of the Mining Act by the Mining Commission. Establishment of mineral houses provide selling points for minerals all over the country. The minerals exchange markets potentially augment chances of locating mineral sellers and buyers at all levels. Indirectly this arrangement offers a possibility for mining revenue collection as per the specified rates under the Income Tax Act.

#### 2.1.11. Prohibited Tax stabilization

Generally, the Mining Act prohibits use of stabilization arrangements that intend to freeze laws or take away the sovereignty of Tanzania in revenue tapping process. These clauses should be specific and time-bound, but should not last for the lifetime of the mine. A stabilization agreement on tax expenditure by the government should provide the exact value and how the mining company would compensate the government, and the government should have the option of converting the value into equity holdings in the company. This is a clear reflection on how the laws have been crafted in a manner which intends to ensure maximized tax collection from respective mining licence holders. In DRC, the tax stabilization arrangement is called *clause de stabilité* hereinafter the stability clause. While it was enshrined in the 2002 mining code for 10 years applicable to all mining actors, the 2018 reduced it to 5 years.

### 3. Conclusion

Mining companies and other mining licence holders in Tanzania are presently highly regulated. This has been a result of a substantial legal overhaul of the sector through the enacted and revised laws as elaborated above. The said overhaul has made important additional strategic measures aiming at improving mining revenue collections and administration in Tanzania in order to enable the government acquire a bigger slice of the pie from

42 Ss. 4 (1) and 10 (1), the Extractive Industry (Transparency and Accountability) Act, 2015.

the mineral resources thus ensuring significant contributions to the economic growth and development of Tanzania. It goes without saying that the reforms have earned the country substantial revenue which would not have been earned if not for the legal reforms and political will to enforce the said laws. It is interesting to note Tanzania's earning of 528bn/- in 2019/20, up from 168bn/- in 2018/2019 Financial Year.

In fact, the strong leadership of the late President Dr John Joseph Pombe Magufuli made a difference. His political will to increase the mining revenue was evidenced by numerous public investments such airport, health facilities, schools, railways and alike. Its counterpart DRC is still a lame duck.

Reforming the laws to increase the mining revenue is a great step towards a right direction. However, implementing the laws is much better than keep legislating. The leadership of the late Tanzanian President Dr Magufuli plugged out loopholes in linking words to deeds followed by increasing mining revenue transparency therefrom. This is what DRC should learn to increase its mining revenue and build its success story from inside. In terms of transparency, DRC should, yet again, learn linking words to deeds. The implementation of recommendations made by the *état généraux des mines* would be helpful for both Tanzania and DRC *inter alia* publishing the mining contracts alongside their feasibility studies; fight impunity against the fraud in the sector; digitalize the DRC tax collection; train the civil society to beef-up the demand side and alike.

#### **4. Recommendations**

The DRC occupies 170th place out of 179 in the Transparency International ranking in 2020.<sup>43</sup> The risk of dropping to the last position is still higher. In fact, the African Parliamentarians Network Against Corruption (APNAC) has just nominated the Congolese presidency as the most corrupt institution of the country in 2021.<sup>44</sup> As state above, the Congolese mining sector remains corrupt and poorly managed. The lack of transparency makes the Congolese state unable to fund its public policies in terms of education, health and security. Legal reforms remain theoretical and do not yield expected financial outcomes. How do we make the mining sector the engine of growth and socioeconomic development of the DRC as wished by the *états généraux des mines* held in Kinshasa in July 2021? The nationwide *état généraux des mines* dedicated its 3rd panel to examine the issue of transparency and accountability in the mining sector.

43 See Le Figaro, *La RDC conclut un programme avec le FMI, un crédit de 1,5 milliard de dollars accordé*, July 16, 2021 available at <https://www.lefigaro.fr/flash-eco/la-rdc-conclut-un-programme-avec-le-fmi-un-credit-de-1-5-milliard-de-dollars-accorde-20210716> accessed on September 3, 2021.

44 See Emmanuel Momotoy, *RDC: APNAC tire à boules rouges: la présidence est l'institution la plus corrompue (Rapport)*, July 26, 2021 available at <https://www.liberatenews.info/2021/07/26/rdc-apnac-tire-a-boulets-rouges-la-presidence-est-linstitution-la-plus-corrompue-rapport/> accessed on September 3, 2021.

After scrutinizing the sector, it turns out that several challenges block the system to become much more transparent namely the non-publication of mining contracts alongside their feasibility studies; the large scale fiscal fraud in the mining sector; the manual management of the mining sector and impunity. In reviewing cases in the judiciary in the South-Kivu, there is not yet a case where a mining company is being prosecuted due to fraud and corruption. The situation is likewise elsewhere across the country. All mining litigations are solved informally. The state apparatus remains less organized to capture all mining revenue. To capture the mining revenue, the Congolese government should digitalize the DRC tax collection system and publish all mining contracts alongside their feasibility studies. All these measures should be accompanied by the training of the civil society to beef-up the demand side. While comparing DRC to other African countries, it is evident that there is a lot to learn for improvement purposes. The Tanzanian experience might serve as a model to bring in significant improvements in terms of transparency.

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