

**DRAFT REPORT ON THE REVIEW OF THE MINING CT 2010 AND
MINERAL POLICY OF 2009 TO IDENTIFY GAPS ON THE RIGHTS AND
PARTICIPATION OF WOMEN ARTISANAL MINERS IN TANZANIA**

Consultant: Adam J.Mambi, *LL.B (Hons, UDSM), Masters of Law
(LLM,UK), PhD Candidate (UDSM), Advocate of the High Court of Tanzania*

January

2011

TABLE OF CONTENTS

Contents

1. INTRODUCTION	4
1.2 Background.....	4
1.3 Funding the Project.....	5
1.4 Current Project Background & Definition of the Problem	6
1.6 SCOPE OF WORK & DELIVERABLES.....	9
2. BRIEF OVERVIEW ON ARTISANAL AND SMALL SCALE MINING	10
2.1 The Role of Women in Small scale Mining.....	11
2.2 Why most artisanal and small-scale miners stay under Informal Sector?	12
2.3 Statement of the Problem.....	13
3. REVIEW OF THE MINING ACT IN LINE WITH MINERAL POLICY	16
3.1 Introductory marks	16
3.2 Policy overview	18
3.2.1 introductory remarks	18
3.2.2 Policy objectives	19
3.3. Review of the Mining Act Provisions vis-a-vis Policy Objectives	21
3.3.2 Policy objective and statement	22
3.3.3 Policy objective and statement	24
3.3.4 Policy objective and statement	25
3.3.5 Policy objective and statement	25
3.3.6 Policy objective and statement	26
3.3.6 Policy objective and statement	27
3.3.7 Policy objective and statement	28

4 REVIEW OF THE LICENSING PROCEDURES UNDER THE MINING ACT IN LINE WITH POLICY OBJECTIVES.....	332
4.1 Introductory remarks.....	333
4.2 Review of Licensing procedures	34
4.3 Prospecting Licence	37
4.4 Primary Prospecting Licence	38
4.5 Gemstone Mining Licence.....	38
5. WHY PROMOTE AND SUPPORT WOMEN IN SMALL SCALE MINING?	39
6. CONCLUSION	40
6.1 Observations	40
6.3 Legal and administrative issues.....	41
6.4 Policy Recommendations	41

1. INTRODUCTION

1.2 Background.

Tanzania Women Miners Association (TAWOMA) which is a non-governmental and non-profit organization serving the interest of women and children in the mining communities was formed on 22nd August 1997 and registered on 28th Nov 1997. TAWOMA is affiliated to the Federation of Miners Associations of Tanzania (FEMATA) and is a member of TCCIA, FAWETA, NGOs NETWORK, TANZANIA PRIVATE SECTOR FOUNDATION, TANGO,SADC WOMEN IN MINING TRUST based in Harare, Zimbabwe, and Association of Women Geo – Scientist in Africa.

The mission of the Tanzanian Women Miners Association (TAWOMA) is: ‘To facilitate women miners to organize and access required financial, technical and marketing services so that they can carry out mining activities that are both economically and commercially viable and environmentally sustainable and thereby raise the standard of living for women miners and their families’.. In addition to their household chores women are involved in SSM as either miners (producers) or support service providers to the mining communities. In order to undertake its roles effectively, TAWOMA works with other organizations and development partners. TAWOMA is one of the key stakeholders of mining policies and Laws. The Association has been actively participating in making a follow-up on the policy and legal reforms that affect mining sector especially artisanal mining practiced by women.

In 2008 Tanzania Women Miners Association (TAWOMA) carried out phase One and Two of a project titled “Enforcement of Business Favorable Mineral Trade Laws & Regulations” whose overall objective was to persuade Government to implement National Mineral licensing regulations more effectively. During Phase I, TAWOMA commissioned a study to review and identify the existing laws, regulations and licensing procedures, scale, nature of problems affecting small scale and artisanal miners and provide recommendations for solutions. The study revealed that despite the government’s effort to formalize artisanal and small scale mining by integrating these operations with legal mining practices through the Mineral Policy of 1997,

there are still some constraints in its implementation. The study recommended for the amendment of the 1998 Mining Act with the aim to regularize and improve artisanal and small scale mining.

Based on the recommendations from the Phase I study findings, TAWOMA embarked on Phase II of the project by developing a strategy with the objective of persuading the Government to review the Tanzania Mining Act (1998) in order regularize and improve artisanal and small scale miners as a business enterprise. To facilitate the study, TAWOMA prepared some fact sheets underling the constraints and presented to Ministries of Industries & Trade; Energy and Mining, members of Parliamentary Committee for Energy and Minerals. Awareness creation to the public on the issue was done through media.

In 2010 the Government passed The Mining Act 2010 based on the Mining Policy of 2009.Its from these policy and legal reforms that made TAWOMA to carry out a further study and review the Mining Act 2010 and establish as to what extent the objectives of the Mining Policy of 2009 has been taken on board especially the women rights and other small miners at the mining sector.

1.3 Funding the Project

In 2010 TAWOMA submitted a request for fund to the BEST-ACT to conduct a review of the Mining Act 2010 in line with the Mineral Policy 2009 with the objectives of promoting favourable and condusive business environment of small scale miners and mineral traders. TAWOMA secured a grant from Business Environment Strengthening of Tanzania (BEST – AC) to conduct a review of the Mining Act, 2010 in line with the Mineral Policy 2009. The study to be undertaken is expected to generate report or information which will be used to advocate for change in regulatory system which seems to be not in favour of the private sector growth in the country.

Recognizing the negative effect this situation has on its members' ability to conduct business, TAWOMA will use funds from BEST-AC to hire a consultant to carry out an assignment of reviewing the current legal, regulatory and policy framework that apply to mining sector in

Tanzania, to develop bases and consensus and have a solid policy and legal framework proposal to the government to reform the regulatory process.

The ToR to achieve the study has been prepared for a competent consultant to do the assignment. The overall objective is to persuade Government through the recommendation to implement National Mineral licensing regulations in line with policies taking into account artisanal mining more effectively.

1.4 Current Project Background & Definition of the Problem

. On 23 April 2010 Tanzania's Parliament passed The Mining Act 2010, No 14 after the Bill was presented under "Certificate of Urgency". Small scale mining investors felt that they were demoralized because of being left out in law and protocol enforcement in the mining industry. The Bill lacked the clear provisions for small-scale miners and gemstone mining whereby some people from the private sector organizations called it "the beginning of the end" for small scale miners, pointing to the missing links between the 2009 Mineral Policy and the new bill (2010). The bill appeared to omit Primary Prospecting License making it unlawful for locals to search and explore for minerals; the argument advanced by the government is that small scale miners do both exploration and mining simultaneously. The existing policy and legal framework (that focus on formalizing the sector through licensing) are not clearly supportive of artisanal and small mining in principle.

The Mineral Policy of 2009 seeks to address the challenges of the mineral sector mentioned in the introduction¹. The policy provides for the overall objectives and other eighteen related objectives. While one would expect most of objectives could be clearly addressed under the Mining Act 2010, only few objectives have been addressed. More specifically the objectives aimed at addressing the challenges faced by artisanal miners such as women have not been not clearly transformed into the legal provisions under the new Act.

For instance one of the policy objectives is to "*to promote and develop a marketing system of minerals to ensure that miners get right values of minerals traded in formal markets*"².

¹ See the Mineral Policy of 2009 at page 7.

² See objective (j) of the Mineral Policy of 2009 at page 8.

Furthermore, the policy states that one of the objectives of the policy is “*to promote safety and maintain hygiene conditions and information provided by the organizations*”³. In enacting and implementing the new Mining Act 2010, the intention of the government should within the Act address among others challenges that it has identified in relation to the mining sector in Tanzania; specifically. Various policies and strategies relevant to the mining sector highlights that the vision of the government is to have a strong, vibrant, well-organized private sector led, large and small scale mining industry conducted in a safe and environmentally- sound manner which contributes over 10% of gross domestic product coupled with a well developed gemstone lapidary industry whilst providing employment to Tanzanians.⁴

The key question here are these objectives clearly addressed under the law and if yes, to what extent?.This study will answer these questions among others by supporting the answers with the recommendations both legal and policy to the government. The legal and policy constraints are addressed in details below while reviewing and analysing the provisions Mining Act 2010 in line with The Mineral Policy of 2009.

1.5 CURRENT PROJECT OBJECTIVES

The current objective of the project is to have a compelling proposal to implement the Mineral Policy of 2009 while addressing limitations to development of artisanal and small mining sector and be placed in the policy agenda for approval by the government.

 Review of the mining legal and regulatory framework of Tanzania

- More specifically the study will conduct a desk review of the followings:
 - Mining Legal and regulatory framework (The Mining Act 2010) including licensing procedures, transparency, fairness etc
 - Mineral Policy of 2009

³ Ibid objective (r) at page 9.

⁴ See the report on Mining, Abundant reserves but..., UNESCO National Commission of the United Republic of Tanzania at page 173. See also the Mineral Policy of 2009

- ✚ The study will further focus on the following
 - Identify constraints in implementation of artisanal or small scale mining objectives
 - Review the TAWOMA study of 2008
- ✚ Interviews with key stakeholders concerning the findings from the TAWOMA study of 2008 and Mining legal and regulatory frame (guide questions to be prepared and circulated in advance) including:
 - What is the present status of implementation of Mineral Policy
 - What are the key constraints affecting artisanal or small mining
 - Reasons for not formalizing artisanal and small miners to do legal business as opposed to the Mineral Policy
 - What are their expectation
- ✚ Summary of review findings with recommendations and proposal for an ideal Act to implement strategy Mineral Policy

The review of the Mining Act 2010 and Mineral Policy of 2009 will be done to assess potential strengths, weaknesses and loopholes, propose amendments which will address constraints to the development of artisanal and small scale mining sector as a long term sustainable economic activity and allow growing. Under this project Phase TAWOMA expects to achieve the following among others:

- Summary of constraints in implementation of the Mineral Policy of 2009 to development of artisanal and small scale mining
- A consensus of the stakeholders on the proposed recommendations for improvement of the legal framework
- Proposed amendments to the Mining Act 2010 for approval by relevant policy makers e.g. Ministry of Industry Trade and Marketing, Ministry of Minerals and Energy and Ministry of Justice and Constitution Affairs
- A clearly developed stakeholder mapping
- A clear understanding of the current mining legal and regulatory framework
- Strengthened relationship with government

- Effective network with partners in the sector
- Create conducive mining business environment for small scale miners and mineral traders especially women
- Create favourable environment for attracting to small scale miners and mineral traders to formalize their business
- Approval on the amended draft Bill by the relevant policy makers

1.6 SCOPE OF WORK & DELIVERABLES

The main activities during this phase of the project will involve hiring of a legal expert to conduct a review of the existing laws and regulations of the mining sector, make consultations with the government, facilitation of consultative meetings with key partners, drafting a proposal for amending the Mineral Act 2010 and to dialogue with government. Specifically the following activities will be done:

1.4.1 Review of relevant mining legislation and policies, case studies, other relevant documents and the 2008 TAWOMA study whose main objective was to establish the current status of mining and mineral trade in Tanzania

1.4.2 Hold consultative meeting with partners in mining sector to collect views on implementation of the Mineral Policy 2009 and Mining Act 2010.

1.4.3 Analyse and compose information from the study review findings and from meeting with partners prepare a report and a draft for amendments

1.4.4 Presentation to TAWOMA members and partners a draft proposal based on outline of findings examining the mining and regulatory framework and highlights constraints faced by artisanal or small-scale mining from doing business and collect views

1.4.5 Hold consultative meeting with relevant MDAs on the draft proposal

1.4.6 Prepare final draft of proposed amendments to the 2010 Act based on the review findings, views of TAWOMA members and sector partners

1.4.7 Hold dialogue meeting with MDAs (facilitated by consultant) to convince them to approve the proposal for amendments

1.4.8 Hold informal meetings with MDAs to lobby them to begin Bill drafting processes.

1.4.9 Create awareness through media campaigns, public hearing and, informal engagement with key legislators, individually or in groups

2. BRIEF OVERVIEW ON ARTISANAL AND SMALL SCALE MINING

Tanzania is believed to be the fourth largest gold producer in Africa and also richly endowed with diamonds, gemstones and other minerals⁵. The mining sector has attracted some \$2.5 billion in investment over the last 10 years and accounts for 75 percent of foreign direct investment and 40 percent of the country's exports. In spite of these impressive figures, the sector generates relatively little revenue for the government and is a disproportionately small part of the nation's economy.⁶ Most of the operations in small scale and artisan mining is carried out by small scale and artisan mining is carried out by semi-skilled or unskilled labourers⁷. However, the majority of the stakeholders in the small scale mining sub sector operate illegally (informally) due to the nature of the current legal system.

Small-scale and artisanal mining has been a key rural mining activity in Tanzania for many years. Most small scale miners are involved in mining and trading in gemstones and diamonds which exist in many parts of Tanzania⁸. There is no dispute that artisanal mining and small scale mining where women are much involved contribute significantly to the economy of the country and creation of direct and indirectly employment. Some studies indicates that there are between 450,000 to 600,000 small scale miners who contributes over 10% of gross domestic product

⁵ See Revenue Watch Institute (RWI), RWI Parliamentary assistance making the most of Tanzania's mineral wealth for development.

⁶ Some studies indicates that mining contributes only 3.6 percent of tax revenues and 2.7 percent of GDP . See Revenue Watch Institute (RWI), RWI Parliamentary assistance making the most of Tanzania's mineral wealth for development.

⁷ See the TAWOMA Report on the Enforcement of Business Favourable Trade Laws & Regulations in Mining Areas, 2008.

⁸ Gemstones are mainly found in Arusha, Kilimanjaro, Tanga, Morogoro, Shinyanga, Mtwara, Ruvuma and Dodoma Regions. See also the TAWOMA Report on the Enforcement of Business Favourable Trade Laws & Regulations in Mining Areas, 2008, at page 6.

coupled with a well developed gemstone lapidary industry in Tanzania⁹. Small scale mining was the major producer of minerals in Tanzania for the period between 1987 and 1997. However, the definitions of artisanal and small-scale mining are not clear in Tanzania. Most people involved in the mineral sector imply that small-scale miners are those working in Primary Mining licence areas and artisanal miners are those individuals mining haphazardly without proper authority. Both the 1997 and the 2009 Mineral Policies recognize the positive contribution of the artisanal and small-scale mining sub-sector to the economy.

Small scale mining is an economic activity that significantly contributes to the rural economy of Tanzania and is very common in all mining communities. Most attention in the mining industry seem to focus on large companies, but in many parts of the world, particularly in developing countries, minerals are extracted by artisanal and small-scale mining (ASM) – by people working with simple tools and equipment, usually in the informal sector, outside the legal and regulatory framework. The vast majority are very poor, exploiting marginal deposits in harsh and often dangerous conditions – and with considerable impact on the environment. In many cases (since ASM seems to fall outside the regulatory framework), it lacks proper legal recognition in terms of mineral and land rights while creating negative attitude of social and environmental impacts to be aggravated.. The relationship between large companies and small-scale miners has not been clearly addressed leading to conflicts. Large companies may consider small-scale miners as ‘trespassers’, while small-scale miners may see the granting of a concession to a large company as depriving them of their land and livelihoods

2.1 The Role of Women in Small scale Mining

Women play a relatively small part in large-scale mining but are frequently involved in smaller-scale operations. In contrast to large-scale mining, the involvement of women in small-scale mining activities in Tanzania and most African countries is generally high. For instance in Bolivia women account for around 40% of the ASM work force; in Madagascar, Mali, and

⁹ The Revenue Watch Institute (RWI), RWI Parliamentary assistance making the most of Tanzania’s mineral wealth for development.

Zimbabwe, the proportion is 50%; and in Guinea, the figure is 75%.⁵ Moreover, women may be predominant in particular parts of the industry. In some cases, particularly in Africa, women own mines or processing plants. Frequently, these enterprises are better managed than those run by men, even though women find it more difficult to get financial, legal, or technical support.⁸ In the case of bank loans, this is because women find it harder to offer collateral and may lack the education that would help them deal with formal lending institutions. In its Small and Medium Enterprise Development Policy 2000, the government of Tanzania acknowledges both the importance of the small and medium enterprise (SME) sector to growth and the role of women in that sector¹⁰.

In Africa there are a number of women's mining associations have been developed which attempt to overcome the barriers to women's advancement within the mining industry. For example, in Southern Africa, the SADC Women in Mining Trust addresses the needs of women miners and has members in Angola, Botswana, Namibia, Congo DR, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. The main objectives of the trust include: lobbying for support of women in mining both regionally and internationally; identifying the training and technical needs of women miners and conducting training programmes to meet those needs; training women in environmentally sound mining methods; funding revolving loans to increase women miners' access to capital; and networking and facilitating the marketing of members' products¹¹.

2.2 Why most artisanal and small-scale miners stay under Informal Sector?

For simplicity, artisanal miners are mobile operators who often employ traditional tools and techniques in exploration and mining. Small-Scale Miners on the other hand, own mining licences and are relatively organized compared to artisanal miners.

¹⁰ See the Small and Medium Enterprise Development Policy 2000.

¹¹ Ibid.

There are a number of reasons why artisanal and small-scale miners continue to operate within the informal sector. Complicated and bureaucratic legal requirements for formalizing mining activities such as licensing, taxation and compliance with environmental standards may contribute more in making small-scale miners to remain under informal sector. They may not know about the legal requirements, and this may be made worse by the demanding bureaucratic procedures often required to become and remain a formal operation. Other factors that may contribute small scale and artisanal mining include registration of business or company, possession of a mining title, compliance with environmental legislation requirements (Environmental Impact Assessment -EIA) among others. Where communities have traditionally operated outside the formal sector, they may also be reluctant to be legalized, particularly where there are no obvious incentives to do so and where legalization involves paying taxes that they would otherwise not pay. Barriers to establishing a business, particularly the lengthy and complex business registration, incorporation and licensing practices have a disproportionately negative effect on women, often making it impossible for them to get started. The Government need to be practically committed to supporting the small-scale mining by facilitating the transformation of the present artisanal mining activities into more organized and modernized small-scale mining units.

In most countries in Africa Governments regard artisanal and small-scale mining (ASM) as an illegal activity. The inadequate and unclear regulatory and policy framework may hinder formalization of the small scale mining sector. Artisanal and small-scale miners may be attracted to formalize and register their operations if they realize incentives and real advantages to doing so. On the other hand, most women operating as artisanal and small-scale mine lack collateral to guarantee them to get financial support from commercial institutions. They also face poor access to markets and support services and low standards of safety and health.

2.3 Statement of the Problem

This paper will particularly highlight concerns in small scale mining hindering sustainable development issues in Tanzania. This paper is prepared to give a clear insight about the major problems ailing the mineral industry in Tanzania and the role of women in the mining industry

under Mining Act 2010, in line with the Minerals Policy 2009. This paper recommends amendments to the proposed law to ensure that mineral rights override surface rights in cases where access to land is unreasonably denied. To correct these weaknesses, the Tanzanian government launched reviews of its policies, laws and contracts. Weak regulations along with the sector's poor integration with broader national development goals contribute to these problems. They are compounded by a general lack of transparency.

To correct these weaknesses, the Tanzanian government launched reviews of its policies, laws and contracts. Four special commissions examined different aspects of the mineral sector and laid grounds for the amendment of the Mining Policy of 1997 and Mining Act of 1998. Approval of a new Mineral policy in late 2009 was followed in April 2010 by passage of a new Mining Act. Since there is no clear definition of ASM, and because many of these miners work casually or informally, it might be impossible to arrive at a total number of artisanal and small-scale miners. Small scale mining sector, most of whom are gemstone miners have been faced with market problems. They lack capacity to directly export their products to the consumer countries. They thus result to selling their produce locally fetching low returns, which negatively affects business. The Mining Act 2010 and Regulations made thereof need to create a secure and better environment for business growth of the as artisanal and small-scale miners as highlighted under the Mineral policy, 2009.

Issues such as occupational health and safety, well-fare, unsafe mercury usage, environmental impacts and social disruption, to name a few, are of great concern in the small scale mining sector. Small-scale miners such as women often operate in hazardous working conditions. According to the ILO, the five major health risks associated with ASM are exposure to dust (silicosis); exposure to mercury and other chemicals; the effects of noise and vibration; the effects of poor ventilation (heat, humidity, lack of oxygen); and the effects of overexertion, inadequate work space, and inappropriate equipment. Associated with these concerns are other cross-cutting issues such as violence and prostitution, HIV/AIDS, gender equality, child labour, family breakdown and law and order problems.¹²

¹² See Lange S. on Land Tenure and Mining in Tanzania, CMI-CHR Michelson Institute 2008. See also Case studies from Geita and Mererani. In cooperation with ESRF. CMI Report R 2006:11).

In some cases Mining laws are in conflict with other laws such as land laws¹³, Environmental Laws and Wildlife Laws. The key concern and challenge with the current legislations is that there appears to lack of coordination between the policy and lawmakers at the time when the land and mining laws were drafted in the late 1990s. The Village Land Act provides ordinary people with customary rights to land – but since there has been no surveying or registration, these rights are fluent and unclear. In cases where the government needs the land for “development purposes” like mining, the law allows the government to order people to move¹⁴. According to the law, occupants of the land will be paid compensation for the investment/work that they have done on the land, but not for the land itself. In short, land rights are only valid for *surface land*, while rights to minerals are secured through prospecting and mining licenses. This means that mining licenses are often given for areas of land where people live and have customary rights to the land. In some cases, people with customary rights have mined, with or without mining licenses. Many of the conflicts that have come up since Tanzania opened up for foreign investment in the mining sector concerns artisan miners who protest against foreign mining companies being given mining rights to areas that they claim to have discovered themselves and which they have obtained mining licenses for in the past (mining licenses are limited in time and the authorities may simply refuse to renew them in the case when an international company expresses interest).

Although the new Mining Act of 2010 seems to bring some significant improvements to the regulatory framework of mineral exploration and mining in Tanzania, it fails to address some key issues, in particular related to interferences between mineral rights and land rights, and to the role and powers of local authorities as regards minerals and mineral operations. The industry currently faces a lot of setbacks due to poor land compensation and dispute resolution structures. There is no specific law governing the Small Scale Mining sector like in other countries where small scale mining exists. Unfortunately, the New Mining Act of 2010 as well as the proposed

¹³ Land Act, 1999 and the Village Land Act, 1999.

¹⁴ .For instance The United Nations International Covenant on Civil and Political Rights details the basic civil and political rights of individuals and nations. Among the rights of individuals is “the right to legal recourse whereby the covenant states that people have a right to dispose of their natural wealth: resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence (part 1, article 1).

Mining Regulations mentions the small scale mining sector just briefly. There is no clear gender equity provision, nor any reference made to that effect in these documents. One of the main sources for conflict about mining at the local level in Tanzania is the unclear regulation of land tenure. The National Land Policy (NLP) 1996 direct that “permits, licenses, claims and rights for exploitation of natural resources be issued in line with land use policies, and environment conservation policies and programmes”¹⁵. However, it is not clear how licensing mandates will be coordinated at the local and central government levels.

The relationship between large mining companies and smaller-scale operators has often been characterized by tension and mistrust. Because of the problems associated with ASM, the fact that these miners’ traditional rights to land are often not legally recognized, and the potential benefits from large, organized mining operations, governments may be quick to ignore or ‘clear out’ artisanal and small-scale miners in favour of large companies. Building close relationship between large mining companies and ASM requires considerable sensitivity and patience and has to start from the first phases of exploration.

3. REVIEW OF THE MINING ACT IN LINE WITH MINERAL POLICY

3.1 Introductory marks

The current legal framework and fiscal regime for the mineral sector are the outcome of policy reforms that were initiated in 1985. The country moved from a command economy to the free, private-led economy and consequently the Mineral policy of 1997 and Mining Act of 1998 changed the role of the government from being owner and operator of mines to that of administrator, regulator, facilitator and service provider to the industry. The Mining Act of 1998 raised many concerns from the stakeholders including artisanal and small scale mining. Between 2000 and 2008 the Government of Tanzania initiated a series of reforms regarding its policies, legal and institutional frameworks to pave the way for a more attractive business environment for domestic and international mining investments. The reforms were also among other geared toward addressing the challenges such as low integration with other sectors of the economy, low

¹⁵ See paragraph 4.2.10 of the National Land Policy, 1996.

contribution to the GDP, slow development of small scale mining; low capacity of the government to administer the sector, low level of value addition of minerals, and environmental degradation.

In 2009 the Government introduced the Mineral Policy 2009 to promote mining industry and boost the country's economy to the benefit of Tanzanians. This was followed by the enactment of the new Mining Act 2010. The main objective of the Act is to re-enact with substantial amendments the provisions that regulate the law relating to prospecting for minerals, mining, processing and dealing in minerals, to granting, renewal and termination of mineral rights, payment of royalties, fees and other charges and any other relevant matters¹⁶. The Bill that became the Act was drafted in response to challenges faced and experience gained during twelve years of the implementation of the Mining Act. In order to address the challenges in line with the policy objectives, the government formed various committees to evaluate performance of the mineral sector. The Committees included:

The committee to establish the source of conflict between AFGEM Company and Small Scale Miners at Mirerani Mine at 2004, Committee to Review the Mineral Policy, 2004, the Committee to Review the Mining Development Agreement and Fiscal Regime for Mineral Sector, 2006, Governmental Negotiation Team on Mining Development Agreement and Fiscal Regime for Mineral Sector, 2006 and the Presidential Committee to advise the Government on Administering the Mineral Sector, 2007. According to the Mining Bill 2010 the Committee recommended among others for the review of the Mineral Policy 1997 and the Mining Act 1998¹⁷. However, the Bill does not clearly indicate as to whether women miners through TAWOMA or individual were represented in the Committees.

The New Mining Act 2010 is divided into eleven parts including part two which provides general principles on the ownership and control over minerals which is vested to the in the United Republic¹⁸.The key part under this discussion includes part two on control and grant of mineral rights, part three on administration of mining activities, part iv on mineral rights and

¹⁶ See the Summary Title of the Act No.14 of 2010.

¹⁷ See the objectives of the Bill.

¹⁸ See section 5.

licenses part five on dealing in minerals, part iv on the mining controlled areas and part ten on dispute settlements. The provisions under these parts will be reviewed and analyzed to identify gaps on empowering artisanal small scale miners especially women. The analysis will be based on the objectives of the Mineral Policy 2009.

Generally, the law seems to be a globally competitive and investor-friendly. The Act guarantees investors' security of tenure, repatriation of capital and profits, and transparency in the issuance and administration of mineral rights on the basis of first come first served. It also addresses adequately environmental concerns.

The Mining Act sets out the legal framework governing mineral exploration, exploitation and marketing. Various mining regulations have been established under the Mining Act, to regulate mining activities. The Act gives the Minister power to make regulations authorizing the government to participate in the conduct and financing of mining operations and give the government a free carried interest, the level of which is not set by statute but rather by negotiation.

3.2 Policy overview

3.2.1 introductory remarks

A new Mineral Policy was implemented during 2009 to replace the 1997 version. This Policy, whilst containing many of almost the same objectives as its predecessor, seeks to redress the perceived low contribution of the mining sector to the country's GDP¹⁹. The opening statement of the policy as forwarded by the Minister states as follows;

“The Mineral Policy of 2009 will continue to attract investment in exploration and mining; emphasize integration of the mineral sector with the rest of the economy; establish a fiscal regime which ensures benefits to the country and remain internationally competitive; support

¹⁹ See the Report on Mining: Abundant mineral reserves but...by the UNESCO National Commission of the United Republic of Tanzania, 2010.

mineral beneficiation and marketing; underpin development of small scale miners; and promote public participation in mining activities”²⁰.

The policy statement admits that despite the current achievements, the mineral sector has continued to face challenges on slow development of small scale mining; low capacity of the government to administer the sector; low level of value addition of minerals; and environmental degradation²¹. The policy further admits that inspite of various Government efforts to formalize artisanal miners into small-scale miners and provide extension services, the contribution of small-scale mining to the economy is insignificant. However, the policy comes up with encouraging objectives and statements to artisanal and small scale miners especially women. For instance the policy states that the government is still committed to support small scale mining through provision of supportive extension services and establishment of mechanisms for accessing capital. This is aimed to be achieved through the followings;

- (i) The Formalization will develop and implement programmes to transform and upgrade small scale mining into organized and modernized mining;
- (ii) The government will cooperate with stakeholders to facilitate small-scale miners to access market for minerals, geological information, technical and financial services;
- (i) The Government will ensure that medium and small scale gemstones mines are entirely owned and operated by Tanzanians;
- (ii) The government will promote participation of local investors in gemstone mining²²

3.2.2 Policy objectives

The Mineral Policy of 2009 aims among others at improving the legal environment; strengthening capacity for administration of the mineral sector; developing small scale miners;

²⁰ See Forward statement by Hon. William Ngeleja, the Minister for Energy and Minerals at page vii.

²¹ See Mineral Policy, 2009 at page 2.

²² Ibid.

promoting and facilitating value addition to minerals; and strengthening environmental management. The Mineral Policy of 2009 seeks to address the challenges of the mineral sector.

The new Mineral Policy objectives are predominantly concerned with promoting economic integration between the mineral sector and other sectors of the economy, so as to maximize the contribution of the mineral sector to the economy. Other objectives include a strengthening of the legal and regulatory framework for the mineral sector to enhance the capacity for monitoring and enforcement, promotion and facilitation of mining related value added activities to increase income and employment opportunities and strategic participation by the Government in viable mining projects.

A new Mineral Policy was implemented during 2009 to replace the 1997 version. This Policy, whilst containing many of the same objectives as its predecessor seeks to redress the perceived low contribution of the mining sector to the country's GDP. The new Mineral Policy objectives are mainly geared towards promoting economic integration between the mineral sector and other sectors of the economy, so as to maximize the contribution of the mineral sector to the economy. Other objectives include a strengthening of the legal and regulatory framework for the mineral sector to enhance the capacity for monitoring and enforcement, promotion and facilitation.

Briefly, the key provisions relevant to our discussion on to artisanal and small scale miners especially women includes;

- a) To encourage and promote women participation in mining activities and strengthen enforcement of laws and regulations against child labour in mining activities.
- b) To participate strategically in viable mining projects and establish an enabling environment for Tanzanians to participate in ownership of medium and large scale mines;
- c) To support and promote development of small scale mining so as to increase its contribution to the economy;
- d) To facilitate, support and promote increased participation of Tanzanians in gemstone mining;

- e) To promote and develop a marketing system of minerals to ensure that miners get right values of minerals traded in formal markets²³.

On 23 April 2010 Tanzania's Parliament passed the Mining Act 2010 (the Act). The vision of the government of is to have a strong, vibrant, well-organized private sector led, large and small scale mining industry conducted in a safe and environmentally- sound manner which contributes over 10% of gross domestic product coupled with a well developed gemstone lapidary industry whilst providing employment to Tanzanians. With that vision as a backdrop, the intention of the government is to within the Act address challenges that it has identified in relation to the mining sector in Tanzania; specifically, low integration with other sectors of the economy, low contribution to the gross domestic product compared to the sector growth and low capacity of the government.

3.3. Review of the Mining Act Provisions vis-a-vis Policy Objectives

Generally, policies are made to address certain objectives. The Policy Objectives may present a comprehensive picture of what Government is seeking to achieve in respect of different policy areas, the progress achieved last year, and the plans to deliver results in future²⁴. A policy may be a set of decisions by governments which are oriented towards a long-term purpose or to a particular problem and are often embodied in legislation and usually apply to a country as a whole rather than to one part of it²⁵. Most Policies are not enforceable unless put into legal provisions under the Statutes. As highlighted above Tanzania introduced the Mineral Policy in 2009 which highlight many objectives. The Mineral Policy was formulated as a result of an evaluation conducted during the ten years of implementation of the Mineral Policy of 1977. One of the key policy statements provides that "The Government through its institutions will harmonize the mineral policy and mining legislation with other policies and legislation related to the administration of the mineral sector". To implement and enforce the Mineral Policy objectives, in 2010 the Government enacted the legislation know as the Mining Act, No.14 of

²³ Ibid at pages 7-8.

²⁴ See http://www.policyaddress.gov.hk/pa01/object_e.htm accessed on 12 January 2010.

²⁵ See <http://www.fao.org/wairdocs/ILRI/x5499E/x5499e03.htm> accessed on 12 January 2010.

2010. The Law has addressed some of the key policy objectives and challenges under the mining sector. However, the law has not clearly addressed the challenges faced artisanal and small scale mining and trading as indicated bellow;

3.3.1 Policy objective and statement

“To strengthen the legal and regulatory framework for the mineral sector and enhance the capacity for monitoring and enforcement”.

Government legal response: The government has implemented this objective by in enacting the Mining Act in 2010. However, contrary to the policy, the law has not taken all policy objectives on board.

<p>Recommendations: The Mining Act need to be reviewed and amended to reflect the policy objectives</p>
--

3.3.2 Policy objective and statement

“To encourage and promote women participation in mining activities and strengthen enforcement of laws and Regulations against child labour in mining areas”. This objective is one of the key policy stamens that would economically empower women at the mining areas especially artisanal and small scale mining if clearly addressed under the law. The policy admits that women face economic and socio-cultural barriers which restrict their effective involvement in mining activities; as a result they receive minimal benefits.

Government’s legal response

There is no clear provision that address the role of women especially from artisanal and small scale mining and their participation in mining activities. The law has indirectly mention the

women participation in decision making bodies such as Mining Advisory Board established under section 23 as follows;

“23 (5) The Minister shall, in appointing members under this section ensure that-

(b) at least one third of members of the Board is constituted by women members”. However, the law is not clear as to where one third of members of women will be drawn .g. is from the government, private sector or artisanal and small scale mining. If one clearly interpret this provision he or she may argue that one third of members of women are mainly drawn from the Government as indicated by the persons who qualify to be members of the Mining Advisory Board under the section. Although section 23 (3) (a) (vii) & (vii) provides for the one representatives from the small scale miners and mineral dealers, there is indication that one of them will be necessarily women. Even the word “Chairman” does not reflect gender equality in terms of appointment²⁶.

Furthermore, this provision does not clearly reflect the objective function of the Mining Advisory Board which is to among others to advise the Minister on- the sound development of the gemstone industry and undertake other matters relating to gemstone as prescribed by regulations²⁷.

Section 8 of the Act appears to protect children by restricting the persons bellow 18 old to be granted licenses. However this provision is more focused on restricting the persons bellow 18 old to be granted licenses rather than protecting children who are involved under the mining activities. This might imply that children who do not have licenses may be involved in activities through other persons who have licenses on mineral rights. The provision of the law provides as follows;

“ 8.-(1) Mineral rights shall not be granted to-

(a) an individual who-

(i) is under the age of eighteen years(emphasis added);

²⁶ See Section 23 (1) which provides that *“(3) The Board established under subsection (1) shall be composed of- (a) the Chairman who shall be appointed by the President from amongst persons with knowledge and experience in mining matters; ...”*

²⁷ See Section 23 (2) (b) which provides that t *“(2) The functions of the Board shall be to advise the Minister on sound development of the gemstone industry and undertake other matters relating to gemstone as prescribed by regulations”*

(ii)...

(iii)...”

Furthermore, the Draft the Mining (environmental protection for small scale mining) Regulations, 2010 provides that “No holder of a primary mining licence shall cause children under the age of eighteen (18) to be employed or be engaged in any mining or processing operations in his primary mining licence area” .

Recommendations: The Mining Act need to be reviewed and amended to reflect the policy objectives to encourage and promote women participation in mining activities and strengthen enforcement of laws and Regulations against child labour in mining areas. The law further needs to be amended to reflect the Law of Child Act with regard to child labour in mining areas in mining areas

Impact: Small miners especially women will be economically and socially empowered.

3.3.3 Policy objective and statement

To support and promote development of small scale mining so as to increase its contribution to the economy;

Government’s legal response

There are some provisions under the Act such as Section 23 which indirectly implies the representation of small scale mining and dealers in the administration of the Mining Sector. Section 23 (3) (a) (vii) & (vii) provides for the establishment of the Advisory Board which is among others responsible for advising the Minister on- the sound development of the gemstone industry and undertake other matters relating to gemstone as prescribed by regulations

Recommendations: The section need to be amended to clearly address the policy objective of supporting and promoting the development of small scale mining so as to increase its

contribution to the economy. This policy objective may also be reflected under the Regulations made under the Mining Act.

3.3.4 Policy objective and statement

To facilitate, support and promote increased participation of Tanzanians in gemstone mining

Government's legal response

Section 8 of the Mining Act promotes Tanzanians to participate in gemstone mining by prohibiting non-Tanzanians or foreigners to participate in mining gemstones. The section provides that:

“A mining licence for mining gemstones shall only be granted to applicants who are Tanzanians.

“The Law further provides that “a primary mining licence for any minerals shall not be granted to an individual, partnership or body corporate unless in the case of an individual, the individual is a citizen of Tanzania.”²⁸

Recommendations: There is a need reviewing the law and Regulations with a view of reforming them to provide for clear provisions that will clearly address policy objectives on key issues on supporting and promotion increased participation of Tanzanians in gemstone mining

3.3.5 Policy objective and statement

To promote and develop a marketing system of minerals to ensure that miners get right values of minerals traded in formal markets

²⁸ See Section 8 (2) & (3).

Government's legal response

The law provides for the licensing system such as primary licence for any mining activities as one way formalizing the small mining activities.²⁹

Problem: There is no clear provision under the Act that addresses the promotion and development of a marketing system of minerals especially artisanal and small miners such as women to ensure that they get right values of minerals traded in formal markets.

Recommendations: There is a need reviewing the law and reforming it to provide for clear provisions that will clearly address policy objectives on key issues related to promotion and development a marketing system of minerals to ensure that miners get right values of minerals traded in formal markets

3.3.6 Policy objective and statement

To participate strategically in viable mining projects and establish an enabling environment for Tanzanians to participate in ownership of medium and large scale mines

Government's legal response

The Mining Act under section 8 indirectly provides an opportunity for Tanzanians to participate in ownership of medium and large scale mines through gemstones mining³⁰.

Problem: The objective is not clearly addressed by the Act.

²⁹ Section 8.

³⁰ See also section 49 , 50, 51 and 52 which gives exclusive priority to Tanzanians on employment and training at mining areas.

Recommendations: The Law need to be reviewed and reformed to clearly addressed Policy objective and statement on establishing an enabling environment for Tanzanians to fully participate in ownership of medium and large scale mines for their benefit and the growth of the country's economy

3.3.6 Policy objective and statement

To promote safety and maintain hygiene conditions and information provided by the organizations

Government's legal response

There is no clear proviso under the Mining Act that addresses the above policy objective. On the other, hand the Mining (environmental Protection for Small Scale Mining) Regulations, 2010 provides for Limitation of discharge of pollutants and the use cyanide for leaching process.³¹ The Regulations under the Schedule further provides for certain information that is required to be included in an environmental protection plan for small scale mining operations under Regulations. The information among others include: description of mineral deposit, mining and processing methods, emissions and discharges to air land and water, management of wastes and spoils produced and disposal methods and use and storage of chemicals.

Additionally, the Regulations provides that “the holder of a primary mining licence shall ensure that washing or settling ponds are constructed in his primary mining licence area to provide for washing and sluicing, and no such washing and sluicing shall be done along or fifty metres (50m) from rivers, streams or any other water sources”.³² The Regulations further addresses the policy objectives by providing that “every primary mining licence holder shall ensure that pit

³¹ See section 6.

³² See section 10.

latrines are constructed and maintained at a distance of not less than one hundred metres (100m) inland from any water source other than washing or settling ponds”.³³

Problem: It might be difficult for small miners to meet these requirements on environmental protection as most of them are not aware with the environmental issues including the legal provisions which are technical by nature.

Recommendations: There is a need for clear provisions under the Act and Regulations that will clearly address policy objectives on key issues related to promotion safety and maintain hygiene conditions and information provided by the organizations. The provisions should reflect other relevant laws that specifically deal with these issues. There is a need for capacity building to small miners especially women on the Laws and Regulations on how to promote safety and maintain hygiene conditions and information provided by the organizations.

The Regulations and the Law also need to be interpreted in Swahili versions for easy understanding by the majority of small miners.

3.3.7 Policy objective and statement

“Strengthen management of safety, occupational health and environment in mining activities by promoting best practices in such areas”. The Policy further states that “the Government will strengthen the institutional capacity in monitoring and enforcement of laws and regulations on safety and occupational health, environmental protection and management in mining areas”.

Government’s legal response

There is no clear provision under the Mining Act that addresses the above policy objective except for environmental protection as envisaged under section 44 which obliges the holder of

³³ See section 16.

the special mining licence to prepare the environmental management plan before starting mining operations. The Mining Act further provides that an application for renewal shall be accompanied by an environmental certificate, issued under the Environment Management Act in respect of operations to be conducted during the renewal period³⁴. On the other hand, the law further recognizes environmental protection by providing that a primary mining licence to mine minerals granted under this section shall confer on the holder the exclusive right, subject to this Act and the Regulations including the Regulations applicable to safety and the protection of the environment, to

carry on prospecting and mining operations in the mining area, and for that purpose the holder³⁵. Additionally, there certain laws that deal with wildlife and environmental protection are referred under the Mining Act. These Laws include:

- Wildlife Conservation Act
- The Ngorongoro Conservation Area Act³⁶
- The National Parks Act
- The Forests Act³⁷,
- The Land and the Village Land Act³⁸

On the other hand, this study has revealed there some relevant Regulations that might be linked to the policy objectives and statement. The key relevant Regulations to this objective is the Mining (Safety, Occupational Health and Environment Protection) Regulations, 2010 which among others provides for Safety precautions to be observed by all persons, reporting of anything dangerous and prohibition of person in a state of intoxication to enter a mine or be near any working place on the surface or any machine in motion. More specifically, the Regulations provides that:

³⁴ See section 45 (e). See also section 46 on the obligations of holder of special mining licence which include the requirement of develop the mining area and carry on mining operations in substantial compliance with the programme of mining operations and his environmental management plan and commence production in accordance with the programme of mining operations.

³⁵ See Section 55 (3)

³⁶ Cap 284 referred under section 95.

³⁷ Cap 284 referred under section 95.

³⁸ Cap 113 and 114 respectively.

“No person in or about a mine shall:

- (a) cause or permit any other person to use anything which is unsafe;
- (b) cause or permit any other person to work in a place which is unsafe;
- (c) do any act or cause or permit any other person to do any act which may cause undue risk to any person”.³⁹

The Regulations further provides that “where seven or more persons regularly congregate to eat food, other than where the mining activity of an open pit mine is performed, a lunchroom shall be provided which shall

- (a) be maintained at adequate temperature, lighted, and ventilated;
- (b) have or be located near facilities for persons to wash with running water and dry their hands;
- (c) not have an entrance through a toilet facility;
- (d) contain sufficient fire retardant receptacles with lids which shall be used by employees to dispose of all waste food, paper, and other related material, and the containers shall be emptied regularly;
- (e) have suitable seating facilities and tables which shall be kept in clean and sanitary condition
- (f) be located in an area away from process chemicals and contaminants”.⁴⁰

Additionally, the Mining (Environmental Protection for Small Scale Mining) Regulations, 2010 is also relevant to the above policy objective. The Regulation obliges Holders of Primary Mining Licence to the comply with Environmental Protection Plan, Environmental Standards, Reclamation and other requirements. More specifically the Regulations provides that “Holder of Primary Mining Licence shall, before commencing mining operations, conduct baseline environmental investigation and social study with regard to human settlement, burial sites, cultural heritage sites, water, vegetation, animals and soil, and submit a report regarding the outcome of the investigation and Environmental Protection Plan to mitigate the environmental effects to be caused by mining operations in the licenced area”.⁴¹

³⁹ See Section 19 of the Regulation

⁴⁰ See Section 29 of the Regulation

⁴¹ See Section 1 of the Regulation

The Regulations further provides for the Limitation of discharge of pollutants whereby No Licensee, or Manager or agent of the licensee, shall cause or knowingly permit any discharge, deposit or emission of liquid, solid, gaseous or particulate material, or noise or vibration, from a mine, as defined in the Act, into the environment which will cause pollution⁴². Section 34 of the Regulations provides that No person shall deposit feaces or urine in any place in a mine other than a deposition toilet.

Problem: The Provisions of the Regulations are technical and might not be understood by the Small miners who have no acces to awareness and capacity building on the Laws and Regulations especially compliance with management of safety, occupational health and environment in mining activities by promoting best practices in such areas.

Recommendations: There is a need for clear provisions under the Act and Regulations that will address policy objectives on key issues related to strengthening management of safety, occupational health and environment in mining activities by promoting best practices in such areas. The provisions should reflect other relevant laws that specifically deal with these issues. There is a need for capacity building to small miners especially women on the Laws and Regulations especially compliance with management of safety, occupational health and environment in mining activities by promoting best practices in such areas. The Regulations and the Law also need to be interpreted in Swahili versions for easy understanding by the majority of small miners.

⁴² Section 6 of the Regulation

3.3.8 Policy objective and statement

“Enforcement of laws governing the mineral sector” .The Mineral Policy highlights that the legal and regulatory framework of the mineral sector requires transparency, predictability, minimum discretion and security of tenure. The policy further states that “the Government through its institutions will harmonize the mineral policy and mining legislation with other policies and legislation related to the administration of the mineral sector”.

Government’s legal response

There are some indications under the Mining Act that that government has implementing this policy objective by cross-referring the Mining Act with other relevant laws in certain issues as indicated below:

For instance section 49, 51 and 52 mention the Employment and Labour Relations Act, (Cap 366) on the issues of employment and training the Citizens of Tanzania. Furthermore, section 52 (d) refers the Land Act (Cap 113) on matters related to payment of compensation to people within the mining areas. Additionally, section 95 refers the Antiquities Act⁴³, the National Parks Act⁴⁴, the Forests Act⁴⁵, Wildlife Conservation Act, and the Range the Development and Management Act, Additionally; the Land Act (Cap 113) and Village Land Act (Cap 114) are also referred under Mining Act⁴⁶. Additionally, the Ngorongoro Conservation Area Act (Cap 284), the Petroleum (Exploration and Production) Act⁴⁷ are also other examples of the laws referred under the Mining Act as part of the harmonization of relevant laws to mining activities.

Problem: No clear provisions under the Act and Regulations that address policy objectives on the effective and proper Enforcement of the Mining laws.

⁴³ Cap. 333

⁴⁴ Cap. 282

⁴⁵ Cap. 284.

⁴⁶ See Section 97.

⁴⁷ Cap. 328.

Recommendations: There is a need for introducing clear provisions under the Regulations that will thoroughly address policy objectives on the effective and proper Enforcement of the Mining Act and other relevant laws governing the mineral sector. The provisions should reflect other relevant laws that specifically deal with these issues.

4. REVIEW OF THE LICENSING PROCEDURES UNDER THE MINING ACT IN LINE WITH POLICY OBJECTIVES

4.1 Introductory remarks

The Mining Act, 1998 establishes state ownership of minerals and provides rights and conditions whereby the rights to explore, develop and produce such minerals are granted. Licensing procedures are streamlined to ensure transparency to and fairness by conferring ownership of mineral rights on “first come, first served principle”. Licences to mine for gemstones are only to be granted to Tanzanians, regardless of the size of the operation, except where the Minister determines that the development is most likely to require specialized skills, technology or a high level of investment in which case the licence may be granted to an applicant so long as the non-Tanzanian participation element is no more than 50%⁴⁸. Gemstones identified by the new law include diamonds, tanzanite, emerald, ruby, sapphire, turquoise and topaz.

4.2 Review of Licensing procedures

There are seven types of licences issued under the Act as follows:

Licences issued as Division A namely Prospecting Licence and Retention Licence⁴⁹. Other Licences include those as Division A namely Special Mining Licence and Mining

⁴⁸ See Section 8 of the Mining Act.

Ibid Section 4 (a).

⁴⁹ See Part IV Sections 28-38 of the Mining Act.

Licence.⁵⁰ Other Licences includes Primary licences⁵¹, dealer licences⁵² and broker licences.⁵³ Briefly, mineral rights that may be granted under the Mining Act include: a prospecting licence, a gemstone prospecting licence, a retention licence⁵⁴, a special mining licence, a mining licence⁵⁵.

Generally, there are some provisions under the Mining Act that compliment the policy objectives of facilitating, supporting and promoting increased participation of Tanzanians in gemstone mining. The law further reflects the policy objectives of establish an enabling environment for Tanzanians to participate in ownership of medium and large scale mines. These objectives have been implemented under the law through section 8 which provides for restriction on grant of certain mineral rights such as primary mining licences and licences for mining gemstones to Tanzanians only as follows:

8. 2) A primary mining licence for any minerals shall not be granted to an individual, partnership or body corporate unless-

(a) in the case of an individual, *the individual is a citizen of Tanzania;*

(b) in the case of a partnership, *it is composed exclusively of citizens of Tanzania;*

(c) in the case of a body corporate, it is a company and-

(i) its *membership is composed exclusively of citizens of Tanzania;*

(ii) *its directors are all citizens of Tanzania;*

(iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania

(3) A mining licence for mining *gemstones shall only be granted to applicants who are Tanzanians.*

⁵⁰ See Part IV Sections 39-72 of the Mining Act.

⁵¹ See Sections 54-58 of the Mining Act.

⁵² Sections 73-79 of the Mining Act.

⁵³ Sections 80-86 of the Mining Act.

⁵⁴ Granted under Division A of Part IV

⁵⁵ Granted under Division B of Part IV.

Section 15 of the Act for the applications for Mineral rights such as a prospecting licence or licences, a mining licence or licences; or a special mining licence or licences to be made by tender as follows:

15.-(1) Where the Minister considers it in the public interest to do so he may, by notice in the *Gazette* or in a local newspaper, designate any vacant area other than an area already forming part of a reserved area as an area for which he invites applications by tender for-

- (a) a prospecting licence or licences;
- (b) a mining licence or licences; or
- (c) a special mining licence or licences.

Problem:

This section might pose challenges and problem to artisanal and small miners such as women and other miners at the small scale mining sector as they may not be able to comply with complicated procedures of tenders under the procurement laws. This means that only big companies and individuals who are financially able and conversant to procurement procedures are the only ones who might win application through tenders for a prospecting licence or licences; a mining licence or licences; or a special mining licence or licences. This is contrary to the policy objective and statement which allows “*participation strategically in viable mining projects and establish an enabling environment for Tanzanians to participate in ownership of medium and large scale mines*”. This provision does not adequately meet the above policy objective and statement. This is also contrary to the policy objective and statement of encouraging and promoting women participation in mining activities

Recommendations: There is a need for reviewing and amending this provision under the Act and create effective mechanisms that will allow more Tanzanians especially small miners to *participate in ownership of medium and large scale mines* and support and promote development of small scale mining so as to increase its contribution to the economy as required by policy objectives

Section 16 empowers the Minister in consultation with the Board, by order published in the *Gazette* (a) designate any vacant area; or (b) declare any area deemed to have been designated under paragraph (b) of subsection (2) of section 15, as an area exclusively reserved for prospecting and mining operations by persons holding primary mining licences issued under Division C of Part IV.

Problem:

The section does clearly comply with principles of good governance such as transparency and full participation of stakeholders in decision making as the board that is consulted consist of few members are the key stakeholders of mining activities. While Small miners are not adequately represented in the board, people with interest in the land such as individuals and land authorities are not involved. This provision does not mirror and reflect the policy objectives which allow more Tanzanians especially small miners to participate in ownership of medium and large scale mines.

Recommendations: There is a need for reviewing and amending this provision under the Act and create effective mechanisms that will allow more Tanzanians especially small miners to *participate in ownership of medium and large scale mines* and support and promote development of small scale mining so as to increase its contribution to the economy as required by policy objectives

4.3 Prospecting Licence

A Prospecting Licence is granted for an initial prospecting period of three years, except in the case of an application for a Prospecting Licence for gemstones where the period may not exceed two years and is not subject to renewal. A Prospecting Licence covering a preliminary reconnaissance period for all minerals other than building materials and gemstones may be

granted for a period not exceeding two years. While section 28 provides for the conditions of application for prospecting licence section 29 provides for prospecting licence by tender.

Section 28 reads as follows

28 (2) An application for a prospecting licence including an application in respect of land in an area reserved for applications by tender for prospecting licences shall be made to the Commissioner and shall be in the prescribed form and accompanied by the prescribed fee.

Problem:

As indicated in other provisions of the law in the foregoing discussions these sections do not clearly give room for more small miners to access mineral rights through tender procedures.

This provision does not mirror and reflect the policy objectives which allow more Tanzanians especially small miners to participate in ownership of medium and large scale mines.

Recommendations: There is a need for reviewing and amending this provision under the Act and create effective mechanisms that will allow more small miners to participate in ownership of medium and large scale mines and support and promote development of small scale mining so as to increase its contribution to the economy as required by policy objectives

The Act groups minerals into categories for purpose of facilitating targeting of incentives, penalties, specialized skills development and mineral administration, as follows:

- i) all minerals other than building materials or gemstones;
- ii) building materials; or
- iii) gemstones.

4.4 Primary Prospecting Licence

A Primary Prospecting Licence authorises the holder to prospect for minerals for any area located in the Zone for which the Zonal Mines Officer has responsibility. The licence shall be granted for a period of one year, and may be renewed for a like period or periods. On the other hand, a Primary Mining Licence confers on the holder the exclusive right to carry on mining operations in the mining area. The licence is granted for a period of five years and may be renewed for the like period. The holder of one or more Primary Mining Licences may apply to convert the licence or licences to a Mining Licence or a Gemstone Mining Licence. Other Licences include primary mining licence⁵⁶ and a processing licence, a smelting licence, and a refining licence.

Section 54 provides that any person not disqualified under section 8, may apply to the Zonal Mines Officer for the grant of a primary mining licence. A primary mining licence shall confer on the holder the right to prospect for and mine minerals.⁵⁷ Artisanal and small scale miners can obtain Primary prospecting license (12 months, renewable) and primary mining license (5 years, renewable, used to be one year under the former act). These licenses, which are only eligible for Tanzanians, can be converted into a mining or special mining license, “usually by entering into a joint venture The Mining Regulations made in 1999 had three main sections.

4.5 Gemstone Mining Licence

A Gemstone Mining Licence confers on the holder the exclusive right to carry on mining operations for gemstones in the mining area. The licence may be granted for a period not exceeding ten years, and may be renewed for the period not exceeding ten years. No Gemstone Mining Licence shall be granted to a non-citizen of Tanzania, unless the Gemstone Mining

⁵⁶ Granted under Division C of Part IV.

⁵⁷ See section 54 (3).

Licence is held by that person in undivided participating shares with a citizen of Tanzania whose share or shares amount to not less than twenty five per cent⁵⁸.

Generally, staggered licensing practices (one for mining, one for processing and another for marketing) may not be helpful. Furthermore, Restrictive provisions of the different ASM permits and licenses hinder the development of viable and well planned operations.

5. WHY PROMOTE AND SUPPORT WOMEN IN SMALL SCALE MINING?

1. Evidence suggests that small scale mining enterprises owned by women are generally better managed than those under male control.
2. Women, on average, are more concerned with environmental, health and safety issues of mining than their male counterparts.
3. Women appear to be much more likely to spend mining incomes on children and the running of households than the men, who are instead prone to wasting it on drinking, prostitution, gambling and personal gratification.
4. Artisanal and small-scale mining is critically important for many poor communities, providing temporary or full-time work and offering potentially the only source of income
5. adopting a gender-sensitive approach that gives particular emphasis to the role of women;
6. encouraging 'fair trade' markets for mining products;
7. looking for ways to give women more power in their communities and their households.

A good starting point for this kind of work is a women's mining association.

⁵⁸ See section 8.

6. CONCLUSION

.....
.....

6.1 Observations

.....
.....

6.2 Recommendations to the role of the Government

Governments have a principal role to play. They need to develop an appropriate, consistent, and transparent policy and regulatory framework that focuses on both the facilitation and management of ASM. For the framework to be effective, they need to ensure that sufficient financial and regulatory incentives exist for small-scale miners to formalize their activities. It is also important that any framework recognizes the linkages between large-scale mining and ASM, and that there is coherence in policy, regulation, and legislation for the whole spectrum of mining activities.

Activities should operate legally in harmony with national mining sector development policies and existing legal frameworks.

- Operations should comply with international social standards, such as social security, occupational health and safety, labour regulations (including ILO conventions about child labour), access to social infrastructure (schooling, medical, etc.) and an acceptable level of income.
- Operations should be environmentally sound.
- manage the exploitation of the national mineral resources in a socially acceptable, environmentally sound and sustainable manner;
- promote investment in the sector;
- license mining titles; and
- promote legalization and normalization of the ASM operations.
- There should be no conflict between small miners and local communities and no degradation of traditional values.
- There should be harmony between small and large mining operations.

- Exploitation should concentrate on products with high recovery values and systematically develop these deposits.
- There should be continuous operation over a longer period of time.
- The country also needs a legal framework that will reduce time spent in courts solving disputes and also enforce fast tracking of the licensing procedure.

6.3 Legal and administrative issues

- Legalization should help ensure that the negative social and environmental effects of the sector are better managed and will enable governments to capture more revenue from the sector. In Tanzania, for example, the implementation of a mineral trade liberalization policy in the late 1980s created a more formalized ASM sector. This increased legally traded gold production from US\$0.55m in 1985 to US\$38.78m in 1992.⁵⁹
- governments are advised to create objective, consistent, transparent and non-discriminatory regulatory mechanisms which offer easy access to mining titles and legal production.
- There is need to fast track the licensing procedure to ensure that investors don't lose too much time and money, which would have been spent on the actual prospecting or/and mining activities.

6.4 Policy Recommendations

In order to create straightforward, steady and sustainable development in the small-scale mining sector in a way that contributes to rural development and is integrated into the formal economy, governments need to develop a consistent policy for the sector. This policy should be based on four strategic pillars: poverty alleviation, a good business climate for the small-scale mining sector, sustainability, and stabilization of government revenues from the sector.

The following tools will help governments to meet these objectives:

⁵⁹ *ibid*

- ✚ Demand-oriented extension services (legal, organizational, economic and technical) for the sector
- ✚ An incentive scheme for legal ASM operations (including tax aids for small businesses, exemptions from import duties, access to finance, free markets, and improved export facilities)
- ✚ The integration of all relevant government institutions into the sector policy implementation (finance ministry, mining ministry, social issue authorities, provincial and local administration)
- ✚ A transparent and appropriate legal framework.
- ✚ Strict control of compliance with the legal framework and sanctions against infractions
- ✚ Need for the support for the private sector.
- ✚ Policy makers need to consider, understand and accept ASM as long-term economic activity that needs to be developed, sustained and allowed to grow or improve
- ✚ The government should focus more on developing ASM as a business enterprise
- ✚ Remove and discourage restrictive ASM permit provisions if any