



ILLICIT FINANCIAL FLOWS (IFF) RISKS RELATED TO BENEFICIAL OWNERSHIP IN THE MINING SECTOR IN TANZANIA



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EXECUTIVE SUMMARY

Tanzania's mining sector is distinguished by its abundant mineral resources, which include metallic minerals, gemstones, industrial minerals, energy sources and construction materials. Tanzania has made tremendous progress, however the mining process evaluation revealed specific stages that are prone to the risk of IFFs. For Tanzania, the issue of IFFs as connected to beneficial ownership in the mining industry necessitates a multi-layered response that includes certain strategic policy reforms, as well as attention to contract transparency and stakeholder cooperation pertains to supervision.

This report evaluates Tanzania's mining sector from the year 2020 to the most recent statistics available. The correlation coefficient between "Mineral rents (% of GDP)" and "Ores and metals exports (% of merchandise exports)" indicates that a unit change of the latter contributes to 30% of the prior, implying that, despite the positive changes made by Tanzanian authorities in terms of BOs and mitigating IFFs, maximum efficiency has yet to be realized. The results of the systematic review support these observations as well. The report acknowledges the progress achieved so far by Tanzania's relevant agencies, but it also suggests that more can be done. Addressing IFF threats necessitates a comprehensive approach that includes government institutions, regulatory entities and international collaboration.



ACRONYMS

IFF	Illicit financial flows
TCM	Mining Commission
APAs	Advance Pricing Agreements
TPDC	Tanzania Petroleum Development Corporation
PEPs	Politically exposed persons
GDP	Gross domestic Product
GoT	Government of Tanzania
AMV	Africa Mining Vision
EITI	Extractive Industries Transparency Initiative
BO	Beneficial ownership
APNIFFT	African Parliamentary Network on Illicit Financial Flows and Taxation
ITU	Internal Taxation Unit
MNC	Multinational Corporation



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1 | INTRODUCTION AND CONTEXT

The Tanzanian mining industry is characterized by rich mineral endowments consisting of metallic minerals, gemstones, industrial minerals, and energy sources as well as construction materials. This has placed Tanzania among the richest African countries as far as natural resources are concerned. However, this wealth has not been accompanied by satisfaction with citizens' contributions and engagement in the mining industry to economic growth of Tanzania. To this effect, Tanzania has taken various measures to deal with the problem including one local content paradigm in the mining industry. The intention is to enhance the many benefits of this industry and provide socio-economic development for its citizens through local content compliance laws.¹

In the historical context, mining sector operations have majorly been state-owned and with limited Citizen participation. Nevertheless, through legislative measures over time local participation has been enhanced by the current government through introduction of local content requirements in the Mining Act 2010.² Such conditions include the restrictions on mineral rights and support for local goods and services procurement.³ Moreover, there have been administrative measures aimed at enhancing local content in Tanzania like the amendment of the mining laws and regulations to accommodate incorporation of provisions for implementation on as well as value added activities. These undertakings aim at ensuring that this sector substantially supports the economy of Tanzania and benefits its citizens.

Local content in the Tanzanian mining sector is mirrored in the African Mining Vision and the EITI which see to promote by Africa Mining Vision (AMV), EITI which together promote a transparent, equitable, optimal utilization of mineral resources to catalyze sustainable development and socio-economic growth aspirations within the African continent. This vision is in line with Tanzania's goal to increase the contribution of its mineral sector to the economy while introducing principles and standards such as beneficial ownership (BO).⁴

The risks related to Illicit Financial Flows in the mining sector of Tanzania revolve around Beneficial Ownership. The historical context of ownership and governance has had a powerful effect on the regulation efforts made lately by imposing legislative reforms for better control of the sector. This has led to the tax administration recovering unpaid taxes in increased interventions aimed at combating IFFs. There is also the addition of local content and environmental standards in mining contracts, which underscores the country's involvement in enhancing transparency levels as well compliance in this field.⁵

¹ Numbi T. a Snapshot of Local Content Compliance Law in the Context of Mining Industry in Tanzania. *Journal of Legal Studies and Research* 2021; 7: 387-416 ¹.

² 14-2010 THE MINING ACT, 2010.pdf (osg.go.tz)

³ THE MINING COMMISSION GUIDELINE FOR SUBMISSION OF LOCAL CONTENT PLAN 2018.pdf (tcme.or.tz)

⁴ Tanzania Extractive Industries Transparency Initiative. Tanzania Extractive Industries Transparency Initiative (TEITI) the 13 th Report, [https://eiti.org/sites/default/files/2023-07/Tanzania 2020-2021 EITI Report .pdf](https://eiti.org/sites/default/files/2023-07/Tanzania%2020-2021%20EITI%20Report.pdf) (2023). ²

⁵ Miyandazi L. ecdpm's Making policies work The complexities of tackling illicit financial flows in practice the example of tanzania, www.ecdpm.org/dp255 (2019). ³

However, the assessment of the mining process, identified specific stages where Illicit Financial Flows (IFFs) are likely to occur. These stages include exploration, contract and license awards, assay activities; and sales during customs exportation, among others.

In addition, transparency and cooperation between the national customs administrations is stressed to make it possible for them to detect IFFs hidden in trade transactions.⁶ Clearly, the issue of IFFs linked to beneficial ownership in the mining industry for Tanzania needs a multi-layered approach that involves some strategic policy reforms as well as attention to transparency on contracts and coordination among stakeholders with regard to oversight within this sector. Measures such as these are vital in controlling the dangers linked to IFFs and creating a balanced and open mining landscape that benefits everyone across the country.

The problem of beneficial ownership in Tanzania’s mining sector is critical since it has implications for transparency, tax compliance and the whole governance structure. First of all, it is indicated that profit shifting, and illegal financial flows seem to be predominant in extractive industries in the developing countries. Tax havens and secrecy services are also emphasized as conduits for profit shifting, more particularly tax avoidance. Other than that, research shows how strengthening tax authorities’ capacity can be an effective tool in fighting illegal financial flows. The above documented evidence brings out the need and importance to deal with beneficial ownership as well as profit shifting within the mining sector in Tanzania through improved standards of transparency, better regulation; and superior tax compliance.⁷ Figure 1 represents the revenue performance from the mining sector in Tanzania according to EITI.



Figure 1: Revenues in USD⁸

⁶Musselli___Policy_Options_to_Curb_Commodity_Trade-related_IFFs_.pdf (unibe.ch)

⁷ Brandt K. Illicit financial flows and developing countries: A review of methods and evidence. J Econ Surv 2023; 37: 789–820. ⁴

⁸ Tanzania | EITI, https://eiti.org/sites/default/files/bulk-export/government_revenue_streams-TZ.csv (accessed 11 May 2024) ⁵

1.1 BENEFICIAL OWNERSHIP

According to Tanzanian law, businesses must identify the natural individuals who eventually possess, manage, or profit from their assets. This is known as beneficial ownership. This is meant to stop money laundering, corruption, tax evasion, and other illegal acts. The guidelines for identifying, registering, and reporting beneficial owners to the Registrar of Companies are provided by the Companies (Beneficial Ownership) Regulations, 2023. Penalties for non-compliance with the regulations include fines and imprisonment.^{9,10}

Tanzania is a country among the few African nations that have adopted a beneficial ownership regime, consistent with international standards set by OECD, FATF and EITI.¹¹ Although Tanzania has improved on this progress it still faces challenges regarding the availability, accuracy and accessibility of beneficial ownership data which include lack of centralized database, low awareness level among companies as well stakeholders' financial constraints that are faced by authorities. Tanzania has a more elaborate and specific definition for beneficial possession that incorporates each ownership and management criteria even it is utilized in every type regarding legal elements or arrangements. Tanzania can be regarded as a leader in the region but also an overseer of beneficial ownership regulations.⁶ The Tanzanian beneficial ownership laws are statutory regulations require companies to identify their beneficiaries and file it with the Registrar of Companies. The requirements are drawn from the following Acts and Regulations:

1. **Companies (Beneficial Ownership) Regulations GN NO. 478 of 2023¹²**, which implements sections 115 and 149 of the Companies Act 2002 as amended by the Finance Act, No. 4 of 2020. It also improves on the details that had been covered in **Companies (Beneficial Ownership) Regulations 2021**. These regulations define a beneficial owner as a natural person who meets any of the following conditions:¹³

- Who owns or has significant control over an entity or arrangement? This includes those who have a significant economic interest in or benefit from it (either alone or with others)¹⁴,
- Those who conduct an arrangement on their behalf,
- Those who have significant control or influence over a person or arrangement through a formal or informal agreement.
- It has also introduced definitions of the Direct Beneficial Owner (direct ownership) and Indirect Beneficial Owner. The amendments have also defined the registered owner as any person whose names appears on the register of members.

⁸ Tanzania | EITI, https://eiti.org/sites/default/files/bulk-export/government_revenue_streams-TZ.csv (accessed 11 May 2024)⁵

⁹ Beneficial Ownership Portal | Home, <https://bo.brela.go.tz/> .⁶

¹⁰ CLYDE & CO. (2023). Tanzania: Companies (Beneficial Ownership) Regulations GN NO. 478 of 2023 : Clyde & Co. <https://www.clydeco.com/en/insights/2023/08/companies-beneficial-ownership-regulations> ⁷

¹¹ OECD. A Beneficial Ownership Implementation Toolkit. A Beneficial Ownership Implementation Toolkit. Epub ahead of print 2019. DOI: 10.18235/0001711.⁸

¹² CLYDE & CO. (2023). Op Cit.

¹³ Tanzania: Companies Act amendment - Bowmans, <https://bowmanslaw.com/insights/corporate-services/tanzania-companies-act-amendment/> ¹⁰

¹⁴ CLYDE & CO. (2023). Op Cit.

2. **The Trustees Incorporations Act¹⁵**, this compels trustees of incorporated trusts to report their beneficial owners to the Registrar of Trustees.
3. **The Anti-Money Laundering Act¹⁶**, It requires reporting firms to identify and verify the beneficial owners of their clients and report any questionable transactions to the Financial Intelligence Unit.
4. **The Income Tax Act**, It compels taxpayers to reveal the beneficial owners to the Commissioner General of the Tanzania Revenue Authority.

1.2 ILLICIT FINANCIAL FLOWS (IFFs)

Illicit financial flows (IFFs) are defined as “the illegal movement of money across borders involving one or more stages namely – its origin, transfer and use”.¹⁷ Overall, Illicit Financial Flows (IFFs) can contribute to the destabilization of countries. This is particularly evident in sectors like mining, where they result in revenue loss, environmental damage, and social conflicts. Tanzania has taken positive steps towards fighting IFFs by measures as transfer pricing guidelines, anti-money laundering laws and disclosure of beneficial ownership of extractives companies. Despite these efforts, Tanzania still loses about \$1.5 billion annually by trade-based money laundering and IFFs.¹⁸

IFFs pose a serious challenge to the country given that they drain away the resources which should have been used in facilitating development and enhancing governance. The transparency and accountability of the beneficial owners of mining companies and assets stands as one huge hurdle in fighting IFFs within this sector.¹⁹ As previously discussed, beneficial owners hide behind intricate and arrangements strategies to avoid paying taxes or complying with regulations as well as being held responsible for what they do.

In addition to the beneficial laws, IFFs laws in Tanzania address to the legal and regulatory framework for preventing, detecting and prosecuting IFFs. Some of the relevant laws include:²⁰

- ➔ **The Anti-Money Laundering Act, 2006**, it established the Financial Intelligence Unit and addresses the prevention and prohibition of money laundering operations.

¹⁵ Tanzania Finance Act 2020: The concept of Beneficial Ownership - DLA Piper Africa in Tanzania - IMMMA Advocates, https://www.dlapiperfrica.co.tz/en/tanzania/insights/2020/legal_alert-29th-june-2020.html ¹¹

¹⁶ Burhani A. REGULATIONS OF BENEFICIAL OWNERSHIP FOR COMPANIES IN TANZANIA. 2021. ¹²

¹⁷ FINAL REPORT ON ILLICIT FINANCIAL FLOWS FROM AFRICA (unctad.org)

¹⁸ Stopping the Money Drain: Tackling Illicit Financial Flows in Tanzania, <https://www.digest.tz/stopping-the-money-drain-tackling-illicit-financial-flows-in-tanzania/> ¹³

¹⁹ Tanzania parliamentarians launch APNIFTT national caucus to combat illicit financial flows | Tax Justice Network Africa (TJNA), <https://taxjusticeafrica.net/resources/blog/tanzania-parliamentarians-launch-apniftt-national-caucus-combat-illicit-financial> ¹⁴

²⁰ Eca U. FINAL REPORT ON ILLICIT FINANCIAL FLOWS FROM AFRICA. 2015; 1–24 ¹⁵

- **The Proceeds of Crime Act, 1991**, allows for the seizure and forfeiture of property obtained from or utilized in the commission of criminal offenses.
- **The Economic and Organized Crime Control Act, 1984**, empowers the Director of Public Prosecutions to investigate and prosecute economic and organized crimes.
- **The Extractive Industries (Transparency and Accountability) Act, 2015**, establishes the Extractive Industries Transparency and Accountability Committee and requires the sharing of information on payments and earnings from the extractive industry.
- **The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017**, supports Tanzanians' permanent sovereignty over their natural riches and resources, and forbids the introduction of stabilizing provisions in contracts involving natural wealth and resources.
- **The Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act, 2017**, This allows for the examination and renegotiation of outrageous provisions in contracts involving natural riches and resources, as well as their nullification.

There are also policies that are additional mitigation strategies towards achieving an IFF-free Tanzania that include Transfer Pricing Guidelines 2014, Tanzania Extractives Industry Transparency Initiative, and Tanzania National Caucus on the African Parliamentary Network on Illicit Financial Flows and Taxation (APNIFFT).



1.3 TANZANIA MINING INDUSTRY REGULATORY AND LEGAL FRAMEWORK

Several key provisions in the Tanzanian Mining Act have had a significant impact on the mining industry in Tanzania. The Act imposed several new requirements on how mining companies conduct business, such as a 16% free carried interest for the government, limitations on the export of raw materials for beneficiation outside of Tanzania, and the requirement that contractors, subcontractors, and licensees conducting mining activities give preference to Tanzanian-owned businesses when sourcing goods or services.²¹ By the Act's requirements, any minerals that are found on or below the surface, including water bodies, are considered public property, and are entrusted with the President to hold in trust for Tanzanians. The Act also governs the granting, renewal, and termination of mineral rights. Further, it also governs the payment of royalties, fees, and other charges, and any other pertinent concerns. Last, the Act also governs the exploration, mining, processing, and trading of minerals.

The Minister, who also has the jurisdiction to grant licenses for mineral rights, may engage in a development agreement with the owner or applicant. The statute has undergone many reviews, with the recent one being 2019. In addition to imposing restrictions on the export of raw materials for beneficiation outside of Tanzania, the Act also gives the Minister the authority to enter into development agreements with the owners or applicants of mineral rights, for which the Minister is the licensing authority, and to impose various other new requirements on the way mining companies conduct business.²²



²¹ The United Republic of Tanzania. the Mining Act, 2010. 2010; 1–90. 16

²² *ibid.* 16

Several laws were passed by the Tanzanian government in 2017 to safeguard the nation's natural riches and job prospects for its people. The laws include;²³

Table 1: Legal Framework

Act	Purpose
The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017²⁴	The act prevents investors from exporting raw minerals, bringing money home, or using international dispute settlement procedures. It also mandates that future investor-state agreements "fully secure" the interests of Tanzanian nationals. In an effort to safeguard the nation's natural resources and job prospects for its people, the act was proposed as one of many laws.
The Written Laws (Miscellaneous Amendments) Act, 2017²⁵	The legislation modifies a number of financial regulations and written laws pertaining to the extractive sector in an effort to improve management and compliance, guarantee maximum revenue collection, and protect national interests. The act was presented as a part of a package of laws meant to safeguard the nation's natural resources and job prospects for its people.
The Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017²⁶	According to the act, the National Assembly will have the ability to examine any agreements or arrangements the government has made regarding natural resources and wealth that it deems to include "unconscionable terms.". The statute further allows for the renegotiation of those agreements or arrangements.
The Mining Local Content Rules, 2018 (Local Content Regulations)²⁷	When procuring products or services during mining operations, mining operators are required by legislation to give precedence to indigenous Tanzanian enterprises. A minimal local content level is included in the local content plan that mining operators must submit for approval in accordance with the legislation. The regulations also call for the creation of a database of Tanzanian suppliers and service providers who meet the requirements of the Common Qualification System.

²³ libd. ¹⁶

²⁴ Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 (No. 5 of 2017). | UNEP Law and Environment Assistance Platform. (2017). Retrieved May 13, 2024, from <https://leap.unep.org/en/countries/tz/national-legislation/natural-wealth-and-resources-permanent-sovereignty-act-2017-no-5> ¹⁷

²⁵ CLERK OF THE NATIONAL ASSEMBLY, T. D. K. (2017). THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) ACT, ACT NO. 7 OF 2017. <http://elibrary.osg.go.tz/handle/123456789/900> ¹⁸

²⁶ OAG MIS | The Natural Wealth and Resources Contracts (Review and Re- negotiation of Unconscionable Terms) Act, 2017. (2017). Retrieved May 13, 2024, from <https://oagmis.agctz.go.tz/portal/acts/38> ¹⁹

²⁷ Act, T. H. E. C., Regulations, A. O. F., ProvisioThe companies act, (c. 478(478), 1–8. <https://www.madini.go.tz/media/MINING-LOCAL-CONTENT-REGULATIONS-2018.pdf> ²⁰

1.4 CORPORATE INCOME TAXES, MINING ROYALTIES, AND OTHER MINING TAXES IN TANZANIA

i. Corporate Income Taxes



Citizens of Tanzania are subject to worldwide income taxation, regardless of the source. Income originating in Tanzania is subject to taxation for non-residents. The rate of income tax is 30% for resident corporations, 5% of turnover for permanent establishments (PE) of non-resident corporations, and 5% of turnover for companies that offer technical and managerial services to mining, oil, and gas organizations (with WHT subtracted). There is tax on some payments made to non-residents at the applicable non-resident WHT rates. When investments are made in Tanzania and meet the source conditions, gains from selling such assets are liable to income tax. In these situations, the gain is subject to a 30% tax rate.²⁸ For the first three years after a company is listed on the Dar es Salaam Stock Exchange (DSE), a lower CIT rate of 25% is applicable.²⁹

ii. Mining Royalties



In 2017, the Tanzanian government implemented a 16% free carried interest shares in mining enterprises that possess Mining or Special Mining Licences with the aim of raising mining royalties.³⁰ Exports of gold, copper, silver, and platinum now pay a 6% royalty instead of 4% as previously set. It also mandated that mining firms to provide the government or the general public shares equivalent to sixteen percent of their Tanzanian operations. Mining agreements were subject to a government assessment process to verify their adherence to the Mining Act (2010).³¹

iii. Other Mining Taxes



Other taxes that are related to the mining sector include, dividends at 10%, interest at 15%, service fees provided by non-residents at 15% and for expert and consulting services provided locally at 5%. The value added tax rate is 18%.³²

²⁸ Tanzanian Government Increases Mining Royalties, Takes 16% Stake in Projects and Reviews Mining Agreements - Tax - Insights - BDO, <https://www.bdo.co.za/en-za/insights/2017/tax/tanzanian-government-increases-mining-royalties-takes-16-stake-in-projects-and-reviews-mining-agreements> ²¹

²⁹ Street K, Salaam DE, Habib H. Tanzania tax guide Op. Cit. ²²

³⁰ FREE CARRIED INTEREST SHARES IN TANZANIA MINING LEGISLATION - KG&P. (n.d.). Retrieved May 13, 2024, from <https://kgpartners.co.tz/free-carried-interest-shares-in-tanzania-mining-legislation/>

³¹ Tanzanian Government Increases Mining Royalties, Takes 16% Stake in Projects and Reviews Mining Agreements - Tax - Insights - BDO, <https://www.bdo.co.za/en-za/insights/2017/tax/tanzanian-government-increases-mining-royalties-takes-16-stake-in-projects-and-reviews-mining-agreements> ²³

³² Tanzania Mining Comparative Guide - All Chapters, <https://www.mondaq.com/guides/results/17/209/all/9/tanzania-mining-taxes-and-royalties> ²⁴

2 | METHODOLOGY

This report is aimed at assessing IFF risks relating to beneficial ownership in mining in Tanzania and how the authorities have attempted to mitigate these challenges. The report aims to shed light on the shortcomings and challenges of institutional and legislative frameworks, as well as issues concerning capacity and coordination in related institutions. It also looks into the level of awareness around governance practices within the mining sector. This report was conducted with information backed up by the EITI, EITI being an international standard for promoting the transparent and responsible management of natural resources as well as to evaluate Tanzania's implementation progress towards beneficial ownership transparency in combating Illicit Financial Flows. The report seeks to study the impact of illicit financial flows risks related to beneficial ownership in Tanzania's mining industry through the use of a mix of systematic review and descriptive analysis. The sources of the information included other reliable and valid studies on Tanzania within the mining industry as well as secondary data from World Bank and EITI website.

2.2 Scope

This report examined Tanzania's mining sector from 2010 to the most recent data available. The databases allow for the investigation of trends, variations, and advancements in the mining sector. The report focusses on trade dynamics in the mining sector, including bilateral and multilateral partnerships, as well as policies affected by mining-related regulations focusing on the aspect to IFFs and beneficial ownership.



2.3 Data Analysis

Table 2: Summary Statistics^{33,34}

	Mineral rents (% of GDP)	Ores and metals exports (% of merchandise exports)	revenues_ USD
Mean	1.69	12.06	284,341,582.40
Range	2.36	24.09	413,293,245.31
Minimum	0.81	1.33	148,444,660.28
Maximum	3.17	25.43	561,737,905.59

Mineral rents are the difference between the value of production for a stock of minerals at world prices and their total costs of production. Minerals included in the calculation are tin, gold, lead, zinc, iron, copper, nickel, silver, bauxite, and phosphate.

Ores and metals comprise the commodities in SITC sections 27 (crude fertilizer, minerals nes); 28 (metalliferous ores, scrap); and 68 (non-ferrous metals).

To better understand the mining performance depicted in the dataset, we examine a statistical summary (Table 3) of three key economic indicators: revenues in USD, ore and metal exports as a percentage of merchandise exports, and mineral rents as a percentage of GDP.

On average, mineral rents contribute 1.69% of the GDP, ranging from 0.81% to 3.17%. Metal and ore exports constitute an average of 12.06% of total merchandise exports, with a notable range of 1.33% to 25.43%. Revenues in USD show significant variation across the Tanzanian mining sector, averaging close to \$285 million with a wide annual (?) range from \$148 million, to \$562 million.

These statistical measurements underscore the potential interrelationships between these variables, reflecting diverse economic conditions. Figure 2 visually represents 'Ores and metals exports' and 'Minerals Rent'.

The analysis highlights that since 2016, there has been an improvement in mineral rents as a percentage of GDP, indicating enhanced cost and value performance concerning exported minerals. It's noteworthy that after 2015, there was a significant drop in exports, coinciding with the introduction of The Extractive Industries (Transparency and Accountability) Act, 2015. Subsequently, the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 was enacted, introducing relatively stringent measures in the extractive sector.

³³ Tanzania | EITI, https://eiti.org/sites/default/files/bulk-export/government_revenue_streams-TZ.csv (accessed 11 May 2024) ⁵

³⁴ Tanzania - Mineral Rents (% Of GDP) - 2024 Data 2025 Forecast 1988-2021 Historical. (n.d.). Retrieved May 13, 2024, from <https://tradingeconomics.com/tanzania/mineral-rents-percent-of-gdp-wb-data.html> ²⁵

Ores and metals exports vs Minerals Rent

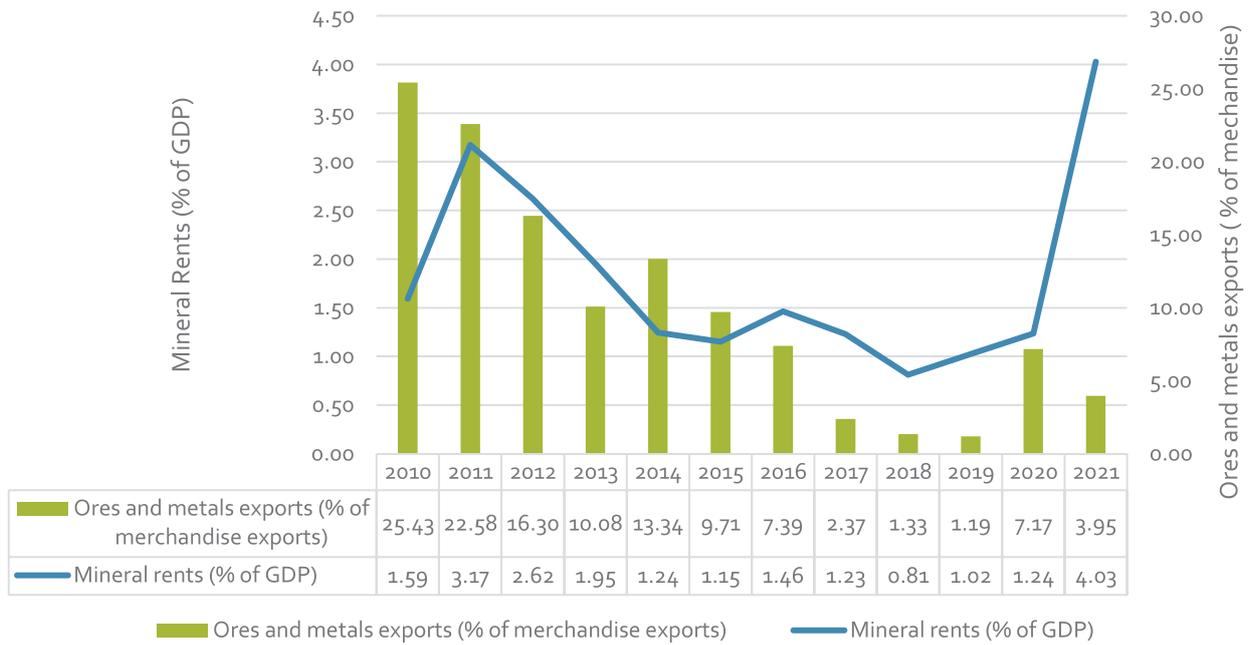


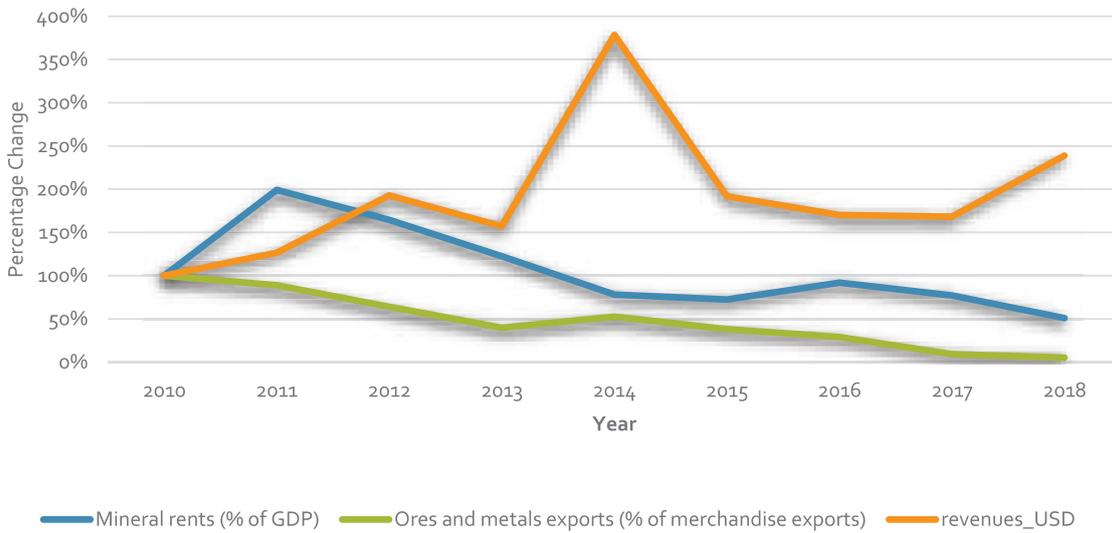
Table 3: Correlation Analysis

	Mineral rents (% of GDP)	Ores and metals exports (% of merchandise exports)
Mineral rents (% of GDP)	1	
Ores and metals exports (% of merchandise exports)	0.303502	1

The correlation coefficient in (Table 4) between “Mineral rents (% of GDP)” and “Ores and metals exports (% of merchandise exports)” is around 0.303502. This positive figure indicates that the two variables have a positive correlation, implying that if Ores and metals exports (% of merchandise exports) grow, so does the Mineral rents. However, the association is rather weak, with a value closer to 0 than 1. In light of these statistics, it appears that there is a positive but moderate association between the proportion of GDP obtained from mineral rents and the percentage of merchandise exports connected to ores and metals. This means that a unit increase in the Ores and metals exports (% of merchandise exports)” has a 30.3% effect on the positive change in the Mineral Rents. Further, despite the positive changes made by the Tanzania authorities with respect to BOs and mitigating IFFs, maximum efficiency is yet to be

realized. It might imply that mineral rents account for a considerable amount of the country’s GDP, and there is a positive link between the share of goods exports ascribed to ores and metals, but more can be done. Figure 3 provides a visual analysis with 2010 as the base are and expressing all the variables in percentages to analyse the annual progress of Mineral Rents, ores and metal exports and the revenue in USD.

Time series analysis (Base year-2010)



2.4 Systematic Review

Tanzania has made great strides in ensuring that the variables pertaining to beneficial ownership are entirely effective in mitigating the problem of irregular financial flows; yet there are notable gaps. This report draws attention to the dangers of illicit financial flows (IFF) in connection with beneficial ownership in Tanzania’s mining industry. One coordination issue that exacerbate the risk for IFF is the absence of coordination amongst the Tanzania Revenue Authority (TRA), Mining Commission (TCM), and other pertinent ministries and agencies ^{35,36}. The inability of Tanzania’s mining sector to live up to its ambitious objectives of growth and economic transformation is partly a result of weak and corrupt governmental systems. Although they lack the requisite comparative data to challenge firms definitively, the Tanzania Petroleum Development Corporation (TPDC), Tanzania Minerals Audit Agency (TMAA), and the Tanzania Resources Authority (TRA) are aware of possible over-claims involving related party payments in the extractive industry.

³⁵ Readhead A. Transfer Pricing in the Extractive Sector in Tanzania. Natural Resource Governance Institute 2016; 2004–2013. ²⁶
³⁶ TUME YA MADINI – Official Website. (n.d.). Retrieved May 13, 2024, from <https://www.tumemadini.go.tz/>²⁷

According to the report, insufficient internal and interagency collaboration, a lack of experience with the extractive industries, and challenges in locating pertinent, comparable data are the reasons why the Internal Taxation Unit (ITU) has been sluggish to do transfer pricing audits of mining and petroleum businesses.¹⁴ The analysis suggests that the ministries and agencies should be fully informed about the mining project to ensure proper assessment of royalties and income tax. It also mentions the importance of sharing information between the TCM and TRA to monitor transfer pricing risks along the mining value chain.

It is necessary to acknowledge the major reforms introduced by Late President John Magufuli in the mining sector, including the implementation of three new laws in 2017 as stated in a report titled '*The complexities of tackling illicit financial flows in practice*'. His reforms are however perceived to have controversies including the ongoing dispute between Barrick the largest mining presence in Tanzania, and the government is also discussed, with the company denying claims of IFFs and the government insisting on higher tax payments.³⁷ The research also acknowledges the existence of IFFs in the mining sector but notes the challenges in proving their occurrence and calculating the exact revenue loss. It highlights the recommendations of the High-Level Panel on Illicit Financial Flows from Africa and the World Customs Organisation on dealing with IFFs, emphasizing the importance of partnerships between revenue and customs authorities and capacity building to identify instances of IFFs. The report highlights cases of lack of transparency, money laundering, tax evasion, Corruption and bribery, Transfer pricing manipulation, as well as Misreporting and misclassification.¹⁵

The article covers the constraints and hazards of foreign involvement in Tanzania's Lake Zone mining industry. The analysis identifies government policy volatility, political uncertainty, and fragmented institutions as the primary hurdles to executing the legislative framework controlling the protection of foreign investment in the mining industry. The problems associated with beneficial ownership in the mining sector, particularly those involving illicit money flows, are also examined.³⁸ The mining industry's primary hazards associated with beneficial ownership are highlighted as inadequate regulatory control, complicated corporate structures, corruption, and a lack of transparency. The paper highlights the necessity of strengthened regulatory frameworks, efficient enforcement mechanisms, and more transparency in order to reduce the risks that come with foreign investment in Tanzania's mining industry. Tanzania's government's loss of tax income is one illustration of the detrimental consequences that illicit financial flows (IFFs) have on the mining industry. The government loses out on possible tax income that might have been spent for social welfare, infrastructure development, and public services when money is illegally moved out of the nation through dubious financial channels.

³⁷ Miyandazi L. Op. Cit. ³

³⁸ Pastory WRB. Challenges of the Legal Protection of Foreign Investment in the Mining Sector in Tanzania'S Mainland: a Case Study of Lake Zone. *TheLawbribe* 2022; 8: 13–54. ²⁸

According to the article on *Illicit Financial Flows, Theft and Gold Smuggling in Africa*, beneficial ownership risks within Tanzanian mining sector is evident. It refers to disagreements on how the quantification of IFF in the gold mining sector has problems with methodology and data used for such calculations. This also covers the case of Acacia Mining plc and Tanzania that centres on gold theft where African governments were unable to develop capacity or legislation aimed at ensuring volumes exported are measured.³⁹ The case of Acacia-Tanzania where the issue about underestimation of volumes for gold and allegedly stolen gold brings out the reality that beneficial ownership can be used to mask illegality in financial activities through tax evasion or profit shifting. The report focuses on the growing evidence of gold smuggling to UAE from different countries in Africa. These dialogues illuminate the risks associated with beneficial ownership in Tanzania's mining sector and across Africa.¹⁷ The issues with the Government of Tanzania show that there might be misrepresentation of ownership and financial interests, which could lead to illicit activities. Moreover, the absence of independent evaluation and validation of mineral exports' content in most African countries such as Tanzania- reveals deficient payment for taxes.

The current IFF risks associated with beneficial ownership related to the mining sector in Tanzania should be conceptualized within a broad, comprehensive framework that mainly focuses on illicit financial flows. These risks are outlined in a conceptual framework, "Illicit financial flows in the Tanzanian mining sector" by Miyandazi to Analyse Illicit Financial Flows (IFFs)". This obscurity fosters conditions that make it easy for illicit financial flows to occur because the genuine beneficiaries of revenues from mining are not readily identifiable. In addition, the involvement of PEPs and large corporations could make tracking of beneficial ownership even more problematic resulting in a higher likelihood for illegal financial operations. Additionally, the absence of efficient regulatory systems and weak institutional capacities in Tanzania might aggravate risks concerning beneficial ownership for mining industry. Poor monitoring systems allow for the use of ownership loopholes to facilitate illicit financial practices dangerous if not detected or punished.⁴⁰

Risks of IFF related to beneficial ownership can be found in Tanzania's mining sector. Some of the risks are related to corruption, illegal use of natural resources and tax evasion. However, the relationship between corruption and money laundering is especially important as both phenomena are likely to occur together and support each other. Illegal financial flows may also arise in the mining sector due to bribes paid by illegal resource extractors to officials or tax authorities, this hampers maximum revenue collection from the sector. Besides that, such phenomena as transfer mispricing, underreporting resource volumes or values and non compliance with environmental regulation can be observed among MNC's involved in illegal money movements.⁴¹ Such practices do not only discriminate against African states' resources but also deny them the rightful ownership of natural resources hence fuelling IFF in Tanzanian mining sector.

⁴¹ Makumbe D, Charumbira R. Democracy, Security and the Risks of Illicit Financial Flows in Natural Resource Africa: Challenges and Costs. *International Journal of Recent Research in Social Sciences and Humanities* 2018; 5: 21–33. ³¹

³⁹ Grynberg R, Nyambe J, Singogo F. *Illicit Financial Flows, Theft and Gold Smuggling in Africa*. *Tanzan Econ Rev* 2019; 9: 35–59. ²⁹

⁴⁰ Netshisaulu NN, Van der Poll HM, Van der Poll JA. A Conceptual Framework to Analyse Illicit Financial Flows (IFFs). *Risks*; 10. Epub ahead of print 2022. DOI: 10.3390/risks10090172 ³⁰

The challenges associated with Illicit Financial Flows (IFF) in the mining sector of Tanzania are determined by a number of factors. To begin with, international mining companies operating in Tanzania have been reported to engage in tax evasion actions resulting into huge losses of government revenue. This is worsened by the lavish tax breaks given to foreign companies and corruption, which has stifled the country from fully realising returns on its mineral riches. In addition, obfuscated operations and poor financial reporting by mining companies have also afforded IFFs an opportunity. The change in national mining policies including foreign gold investment and mines under private multinational ownership is still yet to provide reliable mitigation on the problem of IFFs.⁴² The problem is compounded further by allegations of corruption, which not only lead to a sense lack community ownership but also cast doubt on the new national philosophy for wealth capture. The analysis acknowledges the progress that has been made so far by the relevant authorities in Tanzania however, more can be done as per the analysis.

2.5 Challenges and Gaps in Implementing and Enforcing Beneficial Ownership Transparency

Implementing and enforcing beneficial ownership transparency in Tanzania's mining sector encompasses addressing various challenges including technical and technological issues, resistance to reform, and gaps or inconsistencies in the legal framework. Here's an analysis of each aspect:

2.5.1 Technical and Technological Challenges

i. **Data Collection and Management:** The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) stated that doing socioeconomic surveys, establishing baseline conditions, and gathering seasonal data might take some time. This is particularly true in the absence of up-to-date or nationwide databases.⁴³

⁴² Rhee S, Nyanza EC, Condon M, et al. Understanding environmental, health and economic activity interactions following transition of ownership in gold mining areas in Tanzania: A case of private to public. *Land use policy* 2018; 79: 650–658. ³²

⁴³ Bernasconi N, Brauch MD, Mann H, et al. Background Document: Legal Framework of Environmental and Social Impact Assessment in the Mining Sector. <https://www.iisd.org/Publications/Background-Documents/Legal-Framework-Environmental-and-Social-Impact-Assessment-Mining-Sector>, <https://www.iisd.org/sites/default/files/publications/igf-esia-background-en.pdf> (2019). ³³

- ii. **Data Security and Privacy:** Implementing transparency measures requires handling sensitive information. The Resource Governance Index Tanzania 2021 study identifies insufficient enforcement of regulations governing local effects and state-owned company governance as major reasons of the widening “implementation gap” with data security being one of the key issues. Ensuring the security and privacy of the collected data while making it accessible for regulatory purposes is a delicate balance requiring both policy and regulatory guidance.
- iii. **Technology Infrastructure:** Effective implementation of transparency requirements is further impeded by inadequate technology infrastructure. For effective data management and accessibility from electronic databases, access to dependable internet, data storage facilities, and IT systems are essential.⁴⁴
- iv. **Integration of Systems:** It can be logistically challenging to coordinate several stakeholders and integrate diverse systems for data exchange and verification, especially if there are already divergent databases in place which is evident.

2.5.2 Resistance to Reform

- i. **Industry Opposition:** Changes that reveal ownership data have encountered criticism from the mining industry, which make a substantial contribution to the economy. Three main concerns raised by the industry are the introduction of the requirement to have and follow local content requirements, the prohibition against resolving disputes in foreign courts or tribunals that were not established in Tanzania, and the free carried interest. The industry has opposed the implementation of new laws. Stakeholders in the industry worry about possible harm to their competitiveness with the enhanced regulation.
- ii. **Political Opposition:** Political figures or entities with vested interests in maintaining opacity have also resisted reforms aimed at beneficial ownership transparency. The passage of the new laws has been hampered by political resistance, with certain parties accusing the government of failing to adequately administer, oversee, and uphold the current legal system. Political will and commitment to reform has been inadequate.⁴⁵
- iii. **Lobbying and Advocacy:** Powerful interest groups have also engaged in lobbying efforts to dilute or block beneficial ownership transparency measures. Overcoming these pressures would determine the level of transparency and accountability to be achieved in the sector.

⁴⁴ TCRA's 2023 Report: Internet and Social Media Usage, <https://www.digest.tz/tcras-2023-report-internet-and-social-media-usage/> ³⁴

⁴⁵ Political Risk Mitigation in the Tanzania Gold Mining Sector - Leadership and Democracy Lab - Western University, https://democracylab.uwo.ca/Archives/2017_2018_research/mining_in_tanzania/political_risk_mitigation_in_the_tanzania_gold_mining_sector.html ³⁵

2.5.3 Gaps and Inconsistencies in Legal Framework

- i. **Lack of Clarity:** Loopholes may be created by ambiguities or inadequacies in the current legislation pertaining to beneficial ownership transparency. Legal provisions may be misunderstood or exploited as a result of unclear language. The absence of a clear legal framework has caused difficulties for Tanzania's mining industry, impeding the adoption of IFFs and beneficial ownership. It has been determined that there are issues with the mining industry's legislative framework for environmental and social impact assessment (ESIAs), which has consequences for how the industry is regulated.⁴⁶ One of the problems noted is the lack of clarity surrounding the use of ESIs and related plans as instruments for decision-making in mining permit procedures. Uncertainty surrounding the rights of the holder of an exploration permit throughout the period of transition from exploration to exploitation is another problem. Another issue is that ESIs and associated plans are not submitted in the proper order throughout the negotiation or permitting processes.

- ii. **Inadequate Enforcement Mechanisms:** The lack of efficient enforcement mechanisms can make laws ineffectual even in cases when they are there. It is essential to fortify regulatory agencies and guarantee that they possess the power and resources to impose measures pertaining to openness. Shareholders who are registered owners but are not BOs must submit a statement to their individual firms. The registered BO is required to provide the firm with a new declaration whenever the BO changes. Maintaining accurate records of beneficial ownership can be challenging due to the burdensome nature of these filing obligations and the possibility that they may not be routinely followed. There are no clear legal penalties for disregarding beneficial ownership obligations and hence the absence of sanctions may cause noncompliance.⁴⁷

- iii. **International Coordination:** It is essential to maintain coordination and adherence to international agreements and norms in order to stop businesses from taking advantage of jurisdictional differences. Legal frameworks and rules pertaining to beneficial ownership vary throughout nations. Data privacy rules and regulations too can make it difficult to share beneficial ownership information between nations. In addition to the above, beneficial owners may live in one nation but have assets in another. Regulations governing beneficial ownership may be more difficult to enforce due to jurisdictional concerns in such cases. Due of this variability, international cooperation may be challenging.⁴⁸

⁴⁶ Bernasconi N, Brauch MD, Mann H, et al. Background Document: Legal Framework of Environmental and Social Impact Assessment in the Mining Sector. <https://www.iisd.org/Publications/Background-Documents/Legal-Framework-Environmental-and-Social-Impact-Assessment-Mining-Sector>, <https://www.iisd.org/sites/default/files/publications/igf-esia-background-en.pdf> (2019).³⁶

⁴⁷ Legal update on the concept of Beneficial Ownership - DLA Piper Africa in Tanzania - IMMMA Advocates, <https://www.dlapiper africa.co.tz/en/tanzania/insights/2021/3rd-june-2021-legal-update-the-concept-of-beneficial-ownership.html>³⁷

⁴⁸ Key challenges, new directions in TZ's mining sector | The Citizen, <https://www.thecitizen.co.tz/tanzania/oped/key-challenges-new-directions-in-tz-s-mining-sector-2585698>³⁸

Recommendations

Tanzania's discovery of offshore gas provides another chance to benefit from its natural resources. To achieve this, effective anti-IFF measures must be in place, backed up by suitable skills, knowledge, and administrative structures. A whole-of-government strategy and inter-agency collaboration are required to address transfer mispricing and guarantee that the extractive sector leads the country's development. Addressing tax evasion and illicit financial flows in the extractive sector need robust anti-tax avoidance measures, more transparency, and effective transfer pricing regulations.

There is need for enhanced collaboration among government authorities, including the Tanzania Revenue Authority (TRA), the Mining Commission (TCM, and Tanzania Petroleum Development Corporation (TPDC), to systematically examine transfer pricing concerns and challenge corporations' tax evasion activities. The use of advance pricing agreements (APAs) and the implementation of the earnings-stripping rule are required to enhance transfer pricing laws and avoid abusive hedging tactics. According to the report, ministries and agencies should be fully informed about the mining project in order to properly evaluate royalties and income tax. It also highlights the significance of exchanging information between the TCM and TRA to monitor transfer pricing concerns along the mining value chain.

Illicit Financial Flows (IFF) pose significant risks to the economic stability and development of a country. Addressing these risks requires a comprehensive approach involving government institutions, regulatory bodies, and international cooperation. Here are some recommendations for managing IFF risks in Tanzania.

Table 4: Recommendations

Recommendations	Implementation
Strengthen Regulatory Frameworks	<ul style="list-style-type: none"> • Improve and implement AML and CTF legislation to prevent illegal financial operations. • Ensure current rules and regulations are thorough and up-to-date to address growing risks and vulnerabilities.
Enhance Financial Intelligence Unit (FIU) Capabilities	<ul style="list-style-type: none"> • Improve the Financial Intelligence Unit's ability to assess and distribute intelligence on questionable financial activities. • Encourage coordination among the FIU, law enforcement agencies, and other relevant organizations.
International Cooperation	<ul style="list-style-type: none"> • Work with international groups like the Financial Action Task Force (FATF) to ensure national actions correspond with global norms and best practices. • Participate in information-sharing agreements with other nations to combat cross-border illegal financial activity.

Transparency and Accountability	<ul style="list-style-type: none"> • Implement steps to increase openness in financial transactions, such as beneficial ownership disclosure requirements. • Improve auditing and reporting requirements for firms to promote accountability and prohibit dishonest financial activities.
Capacity Building	<ul style="list-style-type: none"> • Invest in training programs for government officials, financial institutions, and law enforcement agencies to detect and prevent illegal financial transactions.
Public Awareness and Education	<ul style="list-style-type: none"> • Educate the public about the detrimental effects of illegal financial flows on the economy and the need of reporting suspicious activity. • Conduct instructional initiatives to help firms and people comply with financial requirements.
Collaboration with Civil Society	<ul style="list-style-type: none"> • Collaborate with civil society groups to gain insights, promote openness, and encourage public involvement in anti-corruption activities.
Risk Assessments	<ul style="list-style-type: none"> • Conduct frequent risk assessments to detect financial system weaknesses and change plans as needed.
Political Will and Governance	<ul style="list-style-type: none"> • Ensure strong political will and commitment at the highest levels to combat illicit financial flows. • Strengthen governance structures to reduce corruption and increase accountability.

It will need a coordinated effort from the government, financial institutions, regulatory agencies, and the general public to put these proposals into action. Continually assessing and revising the strategies will be essential to remain ahead of mutating risks related to illicit cash flows.



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