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THE EFFECTIVENESS OF THE LEGAL FRAMEWORK GOVERNING MINING REFORMS IN BALANCING INVESTOR PROTECTION AND STATE SOVEREIGNTY IN TANZANIA

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Abstract

Tanzania has undertaken substantial reforms in the mining sector to strengthen State control over mineral resources while maintaining an investment environment capable of attracting and protecting investors. These reforms have introduced important changes concerning mineral rights, local participation, government control, natural resource agreements, contractual terms and dispute resolution. However, the expansion of State regulatory powers has also raised questions concerning legal certainty, contractual stability and the protection of legitimate investment interests. This article examines the effectiveness of the Tanzanian legal framework in balancing investor protection and State sovereignty in the mining sector, with particular attention to the post-2017 legal reforms. It analyses the Mining Act, Cap. 123, the Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449, the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, Cap. 450, and other relevant legal instruments. The article argues that Tanzania has established a substantial legal framework for asserting sovereign control over mineral resources and regulating mining investment. Nevertheless, challenges remain in reconciling State regulatory authority with predictability, contractual security and effective investor protection. The article therefore proposes legal and institutional measures aimed at improving regulatory clarity, consistency, accountability and investor confidence without weakening Tanzania's permanent sovereignty over its mineral resources.

Keywords: Mining reforms; investor protection; State sovereignty; natural resources; mining law; Tanzania.

INTRODUCTION

Mineral resources occupy an important position in Tanzania's economic and development framework. Their exploitation involves substantial public interests because minerals are part of the country's natural wealth, while their exploration and development also require considerable financial, technical and managerial investment. The legal regulation of mining therefore has to address two interests that may sometimes pull in different directions: the authority of the State to control and regulate natural resources in the public interest and the need to provide investors with a sufficiently certain and predictable legal environment. Tanzania's recent mining reforms have sought to strengthen the former while retaining mechanisms intended to facilitate investment.

The constitutional foundation for State control over natural resources is significant. Article 27 of the Constitution of the United Republic of Tanzania, 1977 places a duty on every person to protect the natural resources of the country, while the State is entrusted with responsibility for safeguarding the country's natural wealth. The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 R.E. 2023 further gives statutory expression to the principle that the United Republic has permanent sovereignty over its natural wealth and resources. The Act links that sovereignty to the responsibility of protecting the interests of the People and the United Republic in arrangements concerning natural wealth and resources.¹

¹The Constitution of the United Republic of Tanzania, 1977, Art 27; The Natural Wealth and Resources (Permanent Sovereignty)



The mining sector is principally regulated through the Mining Act, Cap. 123. The current legal framework provides for the administration of mineral rights, licensing, regulation of mining operations, local content, environmental responsibilities and other matters connected with mineral development. The Act also establishes the Mining Commission as a central regulatory institution. The framework therefore does not merely facilitate mining investment; it also enables the State to supervise and regulate the exploitation of minerals in accordance with national interests.²

The post-2017 reforms strengthened this regulatory orientation. The enactment of the Natural Wealth and Resources (Permanent Sovereignty) Act and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act introduced stronger mechanisms for protecting national interests in natural-resource arrangements. Under the latter framework, the National Assembly may review Government arrangements or agreements relating to natural wealth and resources where they contain terms considered unconscionable, and the statutory framework provides mechanisms for their renegotiation.³

At the same time, investor protection remains an important consideration in the mining sector. Mining projects normally involve substantial capital expenditure, long investment periods and significant commercial risks. Investors consequently require clear rules concerning the acquisition and security of mineral rights, taxation, regulatory requirements, dispute resolution and the treatment of contractual arrangements. Legal uncertainty may affect the willingness of investors to commit capital to projects whose returns may only be realized over an extended period. This creates a central legal question: how can Tanzania exercise its permanent sovereignty over mineral resources while maintaining a legal environment that provides adequate protection and predictability to investors?

The tension is not necessarily between sovereignty and investment as opposing legal principles. Rather, the issue concerns the manner in which State regulatory powers are exercised. A State may retain extensive authority to regulate natural resources while still providing investors with clear statutory standards, procedural safeguards and predictable mechanisms for resolving disputes. Similarly, investor protection cannot reasonably be understood as preventing the State from changing laws or regulating mining activities in pursuit of legitimate public interests. The legal challenge is therefore to determine the limits and conditions under which each interest can operate.

The Tanzanian framework illustrates this challenge. On the one hand, the law requires mineral right holders to comply with local-content obligations, including preferences for Tanzanian goods and

services and requirements concerning the training and employment of Tanzanians. Section 102 of the Mining Act provides the statutory basis for local-content obligations, while the Mining (Local Content) Regulations supplement the framework. On the other hand, investors require sufficient certainty concerning the regulatory conditions under which their investments will operate.⁴

The legal framework has also developed beyond the traditional investment legislation. The Investment and Special Economic Zones Act, 2025 replaced the Tanzania Investment Act, 2022 and establishes a contemporary framework for investment promotion, protection and facilitation. Significantly, however, section 2(1)(a) excludes an investor authorized to undertake reconnaissance, prospecting or mining operations under the Mining Act from the general application of the Act. This makes the Mining Act and the specialized natural-resource legislation particularly important when examining investor protection in mining.⁵

The importance of this distinction has sometimes been overlooked when mining investment is discussed together with investment generally. Mining investment is subject to a specialized regulatory regime because mineral resources are treated as part of the natural wealth of the country. Consequently, the legal protection available to a mining investor cannot be assessed solely by reference to general investment legislation. It must be examined within the combined framework of mining legislation, natural-resource legislation, investment agreements, constitutional principles and applicable international obligations.

Existing scholarship has examined different aspects of mining governance, investment regulation and State control over natural resources. Other literature, explains that natural-resource investment regimes in Africa must reconcile investment security with the regulatory responsibilities of resource-rich States.⁶ Similarly demonstrate that mineral law involves a continuing relationship between private investment and the sovereign authority of States over mineral resources.⁷ More recent scholarship has continued to examine the consequences of regulatory reforms and the relationship between resource nationalism, contractual arrangements and investment certainty in Tanzania.⁸

However, much of the existing literature considers either State sovereignty or investment protection as a principal concern. Less attention has been directed towards a focused assessment of whether Tanzania's present mining framework provides a workable

⁴ The Mining Act, Cap. 123 R.E. 2023, Section 102.

⁵ The Investment and Special Economic Zones Act, 2025, Section 2(1)(a).

⁶ Cotula, Lorenzo (2014), Foreign Investment, Law and Sustainable Development in Africa, Cheltenham, Edward Elgar Publishing, pp. 136-154.

⁷ Bastida, Elizabeth, Waelde, Thomas and Warden, Janeth (2005), International and Comparative Mineral Law and Policy: Trends and Prospects, The Hague, Kluwer Law International, pp. 401-420.

⁸ Ibid.

Act, Cap. 449 R.E. 2023.

² The Mining Act, Cap. 123 R.E. 2023.

³ The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, Cap. 450 R.E. 2023, particularly Section 4-6

legal balance between the two. This article addresses that gap by examining the relevant legislation and institutional arrangements, identifying areas of legal tension and considering reforms that could improve regulatory certainty without diminishing the State's lawful authority over mineral resources. The article proceeds by examining the principal legal framework governing mining investment and State sovereignty in Tanzania. It then assesses the extent to which the framework protects investors while preserving State regulatory authority, before considering the principal legal challenges affecting that balance. Finally, it proposes legal and institutional measures for improving the effectiveness of the framework.⁹

THE LEGAL FRAMEWORK GOVERNING MINING REFORMS IN TANZANIA

Mining regulation in Tanzania is founded on the principle that mineral resources are subject to State control and must be managed in a manner that serves the public interest. At the same time, the legal framework recognizes the need for private investment in exploration, development and extraction. The effectiveness of the framework therefore depends on whether it can exercise State authority without creating unnecessary uncertainty for investors.

Constitutional Foundation of State Sovereignty over Mineral Resources

The starting point is the Constitution of the United Republic of Tanzania, 1977. Article 27 requires every person to protect the natural resources of the United Republic and provides that the State is responsible for ensuring that national resources are used and protected for the benefit of the people. The provision establishes a constitutional basis for State intervention in the management of natural resources, including minerals.¹⁰

The constitutional position is reinforced by the Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 R.E. 2023. The Act affirms the permanent sovereignty of the United Republic over its natural wealth and resources. It further requires arrangements concerning natural wealth and resources to safeguard the interests of the United Republic and its people. This represents a clear legislative policy that mineral resources cannot be treated simply as ordinary commercial assets because their exploitation involves wider national interests.¹¹

However, permanent sovereignty does not mean that the State is free from legal limitations when exercising regulatory powers. The exercise of public authority remains subject to the Constitution, legislation and applicable legal procedures. A mining investor therefore operates within a framework in which State ownership and regulatory authority coexist with legally recognized rights and

obligations arising from mining licences, contracts and other lawful arrangements.¹²

The Mining Act, Cap. 123 R.E. 2023

The principal legislation governing mining activities is the Mining Act, Cap. 123 R.E. 2023. The Act regulates prospecting, exploration, mining and processing of minerals and establishes the institutional mechanisms through which mining activities are administered. It also provides the legal basis for the grant and administration of mineral rights and imposes obligations on holders of those rights.¹³

A significant feature of the Act is the separation between ownership of minerals and the rights granted to investors to conduct mining activities. The investor does not acquire sovereign ownership of the country's mineral resources merely by obtaining a mineral right. Instead, the investor receives a legally defined right to undertake specified activities subject to the conditions imposed by the Act and the relevant licence. This distinction is important because it allows Tanzania to retain control over its mineral resources while permitting private actors to participate in their development.¹⁴

The Act also gives the State substantial regulatory powers. The Mining Commission is responsible for important functions relating to the administration and regulation of the mining sector. The regulatory structure allows the Government to supervise compliance with licence conditions, technical requirements, environmental obligations and other statutory requirements.¹⁵ From the perspective of investor protection, the licensing framework is important because mining investment depends on legally recognized rights to undertake exploration or exploitation activities. However, protection cannot be measured simply by the existence of licences. It also depends on whether regulatory powers are exercised according to clear statutory standards, whether decisions are made consistently and whether investors have effective legal avenues where administrative or regulatory decisions are disputed.¹⁶

Permanent Sovereignty and Control over Mining Agreements

The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 R.E. 2023 strengthens the State's authority over natural-resource arrangements. The legislation establishes that natural wealth and resources are subject to permanent sovereignty and places obligations on the Government in managing those resources for the benefit of the people.¹⁷ This approach is particularly relevant to mining agreements because long-term mining projects can create legal and economic relationships extending over many years. The State must therefore retain sufficient regulatory authority to

⁹ Ibid.

¹⁰ The Constitution of the United Republic of Tanzania, 1977, Article 27.

¹¹ The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 R.E. 2023.

¹² Ibid.

¹³ The Mining Act, Cap. 123 R.E. 2023

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 R.E. 2023.

respond to changes in economic, environmental and social circumstances. At the same time, investors require confidence that the legal conditions governing their investment will not be altered unpredictably. The legal question is therefore not whether the Government should have the power to regulate mining agreements. That power is an essential aspect of sovereignty over natural resources. The more difficult issue is whether the exercise of that power is accompanied by sufficient procedural safeguards, transparency and legal certainty.¹⁸

THE EFFECTIVENESS OF THE LEGAL FRAMEWORK IN BALANCING INVESTOR PROTECTION AND STATE SOVEREIGNTY IN TANZANIA

Adequacy of the Existing Legal Framework

Tanzania has established a legal framework governed mining and the relationship between investors and the State. The Mining Act, Cap. 123 R.E. 2023 provides the principal legal basis for prospecting, mining, processing and dealing in minerals. It establishes procedures for acquiring and administering mineral rights while imposing obligations on persons engaged in mining activities. The existence of this framework provides investors with identifiable legal requirements while preserving the authority of the State to regulate mineral resources.¹⁹ The principle of permanent sovereignty over natural resources is also central to the mining regime. The Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017 recognizes the permanent sovereignty of the United Republic over its natural wealth and resources. This principle provides the legal basis for State control over the exploitation and utilization of mineral resources in accordance with national interests.²⁰

At the same time, the legal framework recognizes the importance of protecting legitimate investment interests. Mining legislation provides a regulatory basis for mineral rights, while investment legislation establishes mechanisms intended to facilitate investment and provide protection to investors. The framework consequently attempts to accommodate State regulatory authority and legitimate private investment interests within the same legal system.²¹ The findings indicate that respondents considered State control over mineral resources necessary for protecting national interests. They nevertheless emphasized that the exercise of State regulatory powers should remain within clearly established legal procedures. This position demonstrates that sovereignty over natural resources should be exercised through law and established procedures rather than through unrestricted administrative discretion.²²

¹⁸ Ibid.

¹⁹ The Mining Act, Cap. 123 R.E. 2023.

²⁰ The Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017.

²¹ The Mining Act, Cap. 123 R.E. 2023; The Tanzania Investment Act, 2022.

²² Anonymous, Government Official, Mwanza, August 2026.

Investor protection was also identified as an important element of the framework. Respondents indicated that investors require clear rules concerning mineral rights, regulatory obligations and available remedies where their interests are affected by governmental action. The findings therefore associate investor confidence with predictability and consistency in the application of mining laws.²³ The study further found that the interests of local communities should form part of the balancing process. Communities located in mining areas are directly affected by mineral exploitation and have legitimate interests in the benefits derived from mineral resources and in protection from adverse effects of mining activities.²⁴

The legal framework is therefore adequate to a considerable extent in establishing a basis for balancing investor protection and State sovereignty. The main concern is not the complete absence of legal regulation, but the manner in which different legal provisions are interpreted, coordinated and implemented. Legal effectiveness consequently depends on both the substance of the law and the manner in which it operates in practice.²⁵

Regulatory Uncertainty and Investor Protection

Regulatory uncertainty constitutes one of the principal challenges affecting the effectiveness of the mining legal framework. The State has authority to reform the mining sector and introduce regulatory measures in response to changing economic, environmental and social interests. However, frequent or inadequately communicated changes may affect the ability of investors to plan their operations with reasonable certainty.²⁶ The post-2017 reforms strengthened State control over natural resources through the Natural Wealth and Resources (Permanent Sovereignty) Act and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act, No. 6 of 2017. These laws reinforce the State's authority over natural-resource agreements and provide mechanisms for addressing terms considered contrary to the national interest.²⁷

At the same time, the legal framework recognizes investment protection, including protection against expropriation and compensation. The coexistence of broad regulatory powers and investment protections creates a need for clear boundaries between legitimate regulation and governmental measures that may substantially interfere with protected investment interests. The findings indicate that respondents regarded the relationship between State regulatory powers and investor protection as an important legal difficulty. Investors require reasonable stability in

²³ Anonymous, Mining Sector Stakeholder, Mwanza, August 2026.

²⁴ Ibid.

²⁵ Nalule, Victoria R. (2023), Mining Law and Governance in Africa: Transformation and Innovation for a Sustainable Mining Sector, Abingdon, Routledge, pp. 1-20.

²⁶ Ibid.

²⁷ The Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017; The Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act, No. 6 of 2017.

the regulatory environment, while the Government must retain sufficient authority to respond to changing national economic, environmental and social priorities. The challenge is therefore to permit legitimate regulatory reform without unnecessarily undermining legitimate investment expectations.²⁸

Institutional Implementation and Coordination

The effectiveness of mining legislation also depends on the capacity of regulatory institutions to implement the law consistently and transparently. Comprehensive legislation cannot achieve its intended objectives where responsible institutions apply legal requirements inconsistently or exercise overlapping mandates.²⁹ The study found that institutional implementation is one of the practical challenges affecting the effectiveness of the mining framework. Respondents indicated that regulatory institutions should operate within clearly defined mandates and apply mining laws consistently and transparently. Where institutional responsibilities overlap or regulatory decisions differ, uncertainty may arise for investors and communities.

The problem is consequently not limited to the content of mining legislation. It also concerns the institutional capacity to administer that legislation. Effective coordination among institutions responsible for mining regulation, investment facilitation and natural-resource governance is necessary to ensure that regulatory decisions are consistent with the applicable legal framework.

State Sovereignty and Legitimate Investment Expectations

State sovereignty and investor protection should not be treated as mutually exclusive principles. The State retains authority over its mineral resources, but investors operate within a legal framework that creates rights, obligations and legitimate expectations. The effectiveness of the mining regime depends on maintaining an appropriate relationship between these interests. The findings demonstrate that State sovereignty should not be understood as permitting unrestricted interference with legally protected investment interests. Similarly, investor protection cannot prevent the State from introducing legitimate measures intended to protect national interests. The central issue is therefore whether regulatory powers are exercised within clearly defined legal limits and through predictable procedures.³⁰ The study further establishes that the principal legal challenge is maintaining coherence between different legal interests. The State requires sufficient regulatory space to exercise sovereignty over mineral resources, whereas investors require a predictable legal environment within which legitimate expectations can be formed and protected.

Protection of Local Community Interests

The interests of local communities provide an additional dimension to the balancing exercise. Mining activities directly affect communities in areas where mineral resources are extracted. The

findings indicate that communities expect meaningful participation in the benefits arising from mineral exploitation and adequate protection from adverse effects associated with mining activities. This consideration extends the balancing exercise beyond the relationship between the State and investors. The State is required to protect national interests, investors seek protection of their economic interests, while affected communities expect mineral resources to contribute to local development. The legal framework should therefore accommodate these interests within the broader public interest.³¹ Community interests are consequently relevant to the effectiveness of mining reforms. A framework that protects investment and State authority but does not adequately address the interests of affected communities may face practical difficulties in achieving sustainable resource governance.³²

LEGAL CHALLENGES AFFECTING MINING REFORMS IN TANZANIA

Regulatory Uncertainty

Regulatory uncertainty remains a significant challenge in the implementation of mining reforms. The State has the authority to change mining laws and introduce measures aimed at protecting national interests. However, frequent changes or unclear regulatory requirements may make it difficult for investors to plan their operations with certainty. The Mining Act establishes extensive regulatory requirements for mining activities, but the effectiveness of these requirements depends on their consistent and predictable application. The challenge is therefore not the existence of regulatory powers but the manner in which those powers are exercised. A mining regime must allow the State to respond to changing national interests while providing sufficient certainty to investors.³³

Interaction Between State Powers and Investor Protection

The post-2017 reforms strengthened State control over natural resources through the permanent sovereignty and review of unconscionable terms legislation. At the same time, investment legislation provides protection for investors and recognizes compensation in circumstances provided by law. The interaction between these provisions creates a legal challenge where State regulatory measures affect existing investment interests. State sovereignty should allow legitimate regulation of mineral resources, but its exercise should remain within established legal limits. Similarly, investor protection should not prevent the State from introducing lawful measures aimed at protecting the public interest.³⁴

Institutional Implementation

The effectiveness of mining legislation also depends on the institutions responsible for implementing it. Where regulatory responsibilities are not clearly coordinated or legal requirements are applied inconsistently, uncertainty may arise for investors and

²⁸ Ibid.

²⁹ Campbell, Bonnie (2009), *Mining in Africa: Regulation and Development*, London, Pluto Press, pp. 213-231.

³⁰ The Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017.

³¹ Ibid.

³² Ibid.

³³ The Mining Act, Cap. 123 R.E. 2023.

³⁴ Ibid.



other stakeholders. Effective mining governance therefore requires not only comprehensive legislation but also capable institutions and predictable administration. Institutional coordination is particularly important because mining regulation involves different aspects of licensing, investment facilitation, environmental protection and natural-resource management. Clear institutional responsibilities can reduce conflicting decisions and improve the implementation of mining laws.³⁵

Protection of Community Interests

Mining reforms must also address the interests of communities affected by mining activities. Mineral exploitation may create employment and economic opportunities, but communities may also experience environmental, social and land-related consequences. The legal framework should therefore ensure that mining contributes to local and national development while protecting affected communities. Community interests form part of the wider public interest that the State is required to consider when regulating mineral resources. Sustainable mining governance consequently requires a balance between investment, State interests and the interests of communities.³⁶

Lack of Coherence Between Legal Interests

The main challenge identified by the study is the need to maintain coherence between mining legislation, natural-resource laws and investment protection. The State requires sufficient regulatory authority, while investors require a predictable legal environment. These interests can coexist, but uncertainty may arise where the relationship between them is not sufficiently clear. The effectiveness of the mining framework therefore depends on clear legal rules, consistent institutional implementation and predictable regulatory procedures. The objective should not be to weaken State sovereignty or investor protection, but to ensure that both operate within a coherent legal framework.³⁷

LEGAL REFORMS FOR STRENGTHENING THE MINING FRAMEWORK

Improve Legal Clarity and Predictability

The existing framework should be reviewed to improve the relationship between mining, investment and natural-resource laws. Clearer provisions are needed on the exercise of State regulatory powers and the protection of legitimate investment interests. This would reduce uncertainty while preserving the State's authority over mineral resources.

Strengthen Institutional Coordination

Regulatory institutions should operate within clearly defined mandates and coordinate their functions effectively. Consistent application of mining laws would reduce conflicting decisions and

improve confidence in the regulatory framework. Institutional effectiveness is essential because the value of legislation depends largely on how it is implemented.

Improve Communication of Regulatory Changes

Regulatory changes affecting mining investments should be communicated clearly and through predictable procedures. This would allow investors and other stakeholders to understand new obligations and adjust their operations accordingly. Predictability does not prevent the State from reforming the mining sector; it ensures that reforms are implemented in an orderly and transparent manner.

Strengthen Community Participation

The legal framework should provide stronger mechanisms for community participation and benefit-sharing in mining areas. Mining reforms should ensure that mineral exploitation contributes to local development while addressing the social and environmental interests of affected communities.

Maintain the Balance Between Sovereignty and Investment Protection

Legal reform should preserve the permanent sovereignty of Tanzania over its mineral resources while providing appropriate protection for legitimate investment interests. The objective should be a coherent framework in which the State can regulate in the public interest without creating unnecessary uncertainty for investors.

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