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Resource nationalism in Tanzania: Implications for artisanal and small-scale mining

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ABSTRACT

Several African countries have recently enacted mining laws that could be described as resource nationalist: for example, increasing state investment in the sector, increasing royalty rates, and/or requiring local content. These laws mostly focus on large-scale mining (LSM). What implications do they have for artisanal and small mining (ASM)? Particularly in countries where there are forms of cooperation between LSM and ASM (such as purchase agreements, or multi-stakeholder projects for ASM capacity-building), what might resource nationalism mean for such cooperation? This article examines these issues in the case of Tanzania, which enacted several laws in 2017 and reformed the institutional structure of the mining sector. The article is based on interviews with key informants in Tanzania. The research indicates a need for decentralization of decision-making, consultation with stakeholders and increase access to training, capital and technology.

1. Introduction

Since the 1990s there has been increased attention to artisanal and small-scale mining (ASM) from African governments and international actors such as the World Bank (WB) (Hilson and McQuilken, 2014; Campbell, 2013, 2009). These have been reflected in the 2002 Yaoundé Vision on ASM and the African Mining Vision adopted by the African Union in 2009 (UNECA, 2011). ASM is understood differently by various organizations but is generally characterized by limited capital investment and inexpensive technologies, and often conducted without government permits (Hruschka et al., 2003). ASM has long been stigmatized as criminal, unsafe, or environmentally destructive (Huggins et al., 2016; Childs, 2014). However, ASM provides a direct income to more than 10 million people in Africa (Hilson, 2013) and is important to local economies. Macro-economic arguments have also been made for ASM, as it has a 'competitive advantage over industrial mining in exploiting lower grade, lower volume, and difficult to access deposits' (Geenen and Radley, 2014: 64). Hence some policy-makers argue that ASM should be managed through capacity-building and formalization activities and enforceable regulations (WB and ICMM, 2010). However, contemporary mining regulations tend to address ASM using similar mechanisms and legal-institutional frameworks to those used in the industrial mining sector (Mutemeri et al., 2016), which may not be appropriate to this under-resourced and heterogeneous sector. Governments tend to favour approaches which maximize state revenue, often leading to tensions between policies on ASM and large-scale mining (LSM). These tensions are explored in this paper through the case of Tanzania.

1.1. Resource nationalism in the mining sector

Contemporary policy and legal reforms in Tanzania are part of a recent African turn towards 'resource nationalism', also visible in other regions (Ganbold and Ali, 2017; Haslam and Heidrich, 2016; Wilson, 2015). Resource nationalism has been defined as "the maximization of public revenue; the assertion of strategic state control (ability to set a political or strategic direction to the development of the sector); and enhancement of developmental spillovers from extractive activity" (Haslam and Heidrich, 2016: 1). Wilson (2015) categorises resource nationalist strategies into regulations affecting *ownership of resource industries* (e.g. greater ownership by the state, and/or domestic companies); the *operations of resource firms* (e.g. the amount of processing done in-country, or investment in services for local communities), and policies designed to *capture economic rents for public purposes* (i.e. changes in taxation regimes) (pg. 400). As such, resource nationalist policy may include greater intervention by the state in the mining sector (both as a regulator and as a direct operator, e.g. through state-owned enterprises or joint-ownership agreements), increases in royalty

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rates, and more stringent demands on LSM companies regarding where goods and services are purchased, where and how profits are saved and repatriated. Local content policies (LCPs) are a major part of resource nationalist strategies in Africa, for minerals, petroleum and gas (Lange and Kinyondo, 2016; Ovadia, 2016).

African governments, and the African Union (UNECA and AU, 2011) have expressed concern that their countries don't benefit from large-scale mining operations, particularly during the commodities price boom in the early 2000s (Jacob and Pedersen, 2018). In some countries, disagreements and conflicts involving multinational mining companies, local communities, and African states have also prompted policy reform (Huggins, 2016). The 'demand for Africa's minerals from Asian and other countries' (UNECA and AU, 2011: 2) may place mineral-rich countries in a better position to renegotiate the terms of mineral exploration and exploitation. Finally, the phase of mineral exploitation underway is also relevant: countries with little mining activity may be generous in granting mining concessions and contracts, while those with a mature mining sector may find it easier to take a more nationalist stance, as mining companies with expensive 'sunk assets' are in a weaker position (Wilson, 2015).

1.2. What role does ASM play in a 'resource nationalist' mining sector?

ASM is a sector associated with pro-poor job creation; but not with significant revenues for the state. African governments are often divided between a criminalization approach (albeit providing some forms of regulation and formalization) or a more inclusive, developmentalist approach (often within a softer formalization strategy). ASM is a contentious issue that sparks fierce debate across Africa. ASM is typically reserved, either by law or in practice, for nationals, hence it has not figured within conceptual models of resource nationalism. However, there is increased foreign investment in ASM, particularly in semi-mechanized small-scale mining, in Tanzania (Schoneveld et al., 2018) as well as other countries such as Ghana (Hilson et al., 2014). While there is little or no literature on resource nationalist approaches to ASM, attempts to regulate and limit foreign investment in ASM, and efforts to increase the effectiveness of tax collection for ASM, might be seen as aspects of resource nationalism. In the ASM sector, nationalist approaches are likely to pivot on the relationship between the 'local' and the 'national'; in other words, the distribution of costs and benefits of mining between communities and the state; micro-economies and the macro-economy.

At present however, resource nationalism largely involves LSM. How then does ASM figure within contemporary patterns of LSM-focused resource nationalism? The answer depends on different economic, social and geological-environmental aspects of resource nationalism. Some authors emphasize rational economic motivations (see Wilson, 2015) while others draw attention to social and political drivers. Chua (1995) argues that nationalistic politics, aimed at solidifying post-colonial notions of the nation-state through contesting exploitation by foreign organizations, are most significant; however, Stevens argues that socialist political theory influenced the 'golden years' of resources nationalism (1950s–1970s) (both cited in Andreasson, 2015). Regional trends may also influence political leaders; Andreasson (2015) notes that South Africa, Mozambique, Kenya and Tanzania are all taking resource nationalist stances in terms of oil, gas and minerals; additionally, the Democratic Republic of Congo recently increased government royalties on all minerals (Clowes, 2018). Bremmer and Johnston (2009) identify four types of resource nationalism: the 'revolutionary', 'economic'; 'legacy' and 'soft' varieties. These, they imply, involve different calculations and drivers, with the 'revolutionary' and 'legacy' varieties associated with more socio-political issues such as 'broader political and social upheaval' and 'national political and cultural identity' due to historical (often colonial) struggles over resources (pp. 151–150). The influence of historical political and socio-cultural factors on decision-making depends on the contemporary political economy; Andreasson (2015) points out that the so-called 'rational centre' of the ruling ANC party has been able to resist popular pressure to nationalize mineral resources in South Africa, for example.

Wilson (2015) identifies different kinds of political regimes associated with resource nationalism, such as rentier states, with neopatrimonial patterns of redistributing 'rents' from natural resources; developmental states which reinvest mining revenues in public goods such as infrastructure; and liberal market economies which typically use fiscal instruments, rather than increasing state intervention. While these are primarily political-economic categories, socio-cultural dynamics are also implied, as regimes will make claims to legitimacy based on particular notions of patriotism, historical injustices, and 'God-given riches' (Wilson, 2015: 407). The ways in which resources are framed, as well as the sociopolitical importance of particular mineral-rich areas, may influence policy calculations. For example, if the government is focused on maximizing revenues, it may ignore or criminalize ASM and focus solely on the industrial sector.

Key issues in resource nationalist approaches are sovereignty, national interest, and centre-periphery relations. How does an idea of sovereignty centred on the nation-state articulate with claims by central government for revenues found in particular locales? How are revenues re-invested, both locally and nationally? On the one hand, 'public sentiments in Tanzania are strongly coloured by 'legacy resource nationalism' due to the continued fondness for the political positions of President Nyerere' suggesting faith in state institutions (Lange and Kinyondo, 2016:9). On the other hand, grand corruption scandals have undermined simple ideas of resource sovereignty which associate the interests of the central state with those of 'the people'. In the context of riots over natural gas production in Mtwara, one analyst argues that, "the relationship between resources and the nation …[is] entirely fractured rather than unified" (Childs, 2016: 544). Opposition parties in Tanzania have long called for mining sector reform. The particular characteristics of resource nationalism in Tanzania will be discussed more thoroughly in Section 4.

1.3. LSM-ASM collaboration and resource nationalism

Policies which impact large-scale mining firms may affect ASM in many different ways. For example, if industrial mining ceases due to legal disagreements, artisanal miners may encroach on industrial concessions; or LSM-ASM cooperation agreements may be threatened. Agreements between LSM firms and ASM cooperatives, which are increasingly common in Sub-Saharan Africa, may include (temporary) permission for ASM to take place on industrial concessions, or technical assistance to artisanal miners to operate elsewhere, for example. Artisanal miners often work on or adjacent to industrial concessions because the areas reserved for artisanal mining are poorly mineralized (Collins and Lawson, 2014: 38). Cooperation with ASM may be a more efficient strategy for LSM than conflict (Yakovleva and Vazquez-Brust, 2018). Governments may encourage LSM-ASM cooperation, to reduce disputes and contribute to formalization of ASM.

There are several examples of LSM-ASM cooperation agreements in Tanzania. For example, a Multi-Stakeholder Partnership Initiative (MSPI) was launched in 2013 by the Government of Tanzania, World Bank Group, two multinational gold mining companies (Anglo Gold Ashanti and African Barrick Gold) and an association of small-scale miners. MSPI finally resulted in a framework agreement for cooperation in two pilot sites (industrial mining areas) in late 2016 (United Republic of Tanzania (URT et al., 2016). At this time, the government was 'in discussions with a number of mining companies' regarding companies providing access to parts of their concessions to artisanal miners (Anonymous, 2016). The question of whether these kinds of collaborations have been impacted by the recent policy, law and institutional reforms in Tanzania will be addressed further below.

The paper is structured as follows. Section 2 presents the research methodology. Section 3 describes reforms in the mining sector in

Tanzania from the colonial period to the present. Section 4 offers a conceptual framework for understanding ASM under resource nationalism in Tanzania. Section 5 presents the results of interviews with key decision-makers. The concluding section argues that there is a profound and urgent need for an open and far-reaching debate within Tanzanian society regarding the future direction of the mining sector, in order to build confidence, avoid misunderstandings and disputes, and maximize potentials for constructive collaboration between various actors, including both ASM and LSM.

2. Research methodology

This qualitative study was undertaken using a combination of primary and secondary data. Primary data was collected from key informants who were purposely sampled based on their practical knowledge of Tanzania's mining sector. Semi-structured interviews were conducted with 18 key informants: representatives of Tanzanian or international civil society organizations (CSOs), including an organization representing ASM (six participants); public servants currently or previously working in the mining sector (four participants); academics (four participants); politicians (two participants, one from the ruling party and one from the main opposition party); as well as current and former mining company staff (two participants).

Primary data was complemented by extensive review of the academic and policy-related literature on mining in Tanzania. Gaps in secondary data were then used to form core parts of the interview questions. Specifically, any inconsistency or contradiction that arose from secondary data review was communicated to key informants to establish some more clarity. Interviews were guided by three main questions:

i How has mining (both ASM and LSM) evolved over the years in Tanzania?
ii How do the views of politicians and the legal framework shape power-relations in the mining sector?
iii How can mining governance, including ASM-LSM relations, be improved in the mining sector?

Content data analysis was used to gauge the perspectives of key informants (see Chambers, 1997; Scoones, 1998). Triangulation of primary and secondary sources has ensured that the data is reliable and valid (see Yin, 2009).

3. Historical overview of mining in Tanzania

Gold was first discovered along Lake Victoria in 1894 during the German colonial period (United Republic of Tanzania (URT, 2005). Mining activities in Tanzania were halted by the war, and only resumed in the 1920s (Bryceson et al., 2012).

Under British rule, natural resources belonged to the colonial government, with companies and individuals given mining concessions at the discretion of the authorities (Society for International Development (SID, 2009). ASM was not common, until the discovery of gold in 1922 in the Southwestern area of Lupa triggered the first gold rush in Tanzania. (Bryceson et al., 2012). Initially, Africans worked for white settlers at Lupa. However, the 1929 Mining Ordinance allowed Africans who could afford Tshs. 10 to apply for prospecting licensing (Bryceson et al., 2012). This enabled widespread artisanal mining in Tanzania (Lemelle, 1986). LSM began in Tanzania around Lake Victoria, particularly in 1930 with the Geita gold mine (see Bryceson et al., 2012). Gold production continued to increase until 1941 when World War II forced many mines to shut down due to labour scarcity and inaccessibility of relevant supplies. Gold production did not regain its former levels (Chachage, 1995).

The first post-independence government led by President Nyerere was reluctant to pursue mining even following discoveries of gold, diamonds and gemstones. Nyerere's philosophy was that 'minerals do not rot' and thus the country should prevent foreign investment in mining, waiting until the Tanzanian state acquired both technical and financial capacity to mine. In 1967 the Arusha Declaration paved the way for a centrally-controlled economy in which all means of economic production were nationalized. Most mines were subsequently operated under the State-owned Mining Corporation (STAMICO). There was a massive decline in mining between 1964 and 1976.

In the late 1970s, ASM miners discovered several ruby and emerald sites (Society for International Development (SID, 2009). Although ASM activities were illegal, they existed at a small-scale with production smuggled mainly to Nairobi, Kenya to supply the mushrooming jewelry trade in Europe and Asia (Drechsler, 2001; Maliyamkono and Mason, 2006).

The Mining Act of 1979 was the first comprehensive post-independence law guiding mining in Tanzania. The Act relaxed state control over the sector: while LSM was still restricted to ventures that involved partnership with STAMICO (Jønsson and Fold, 2009), citizens were now allowed to acquire prospecting licenses and engage in ASM, thus legalizing ASM for the first time in post-independent Tanzania (Society for International Development (SID, 2009). Artisanally-mined gold could be sold directly to commercial state banks. Economic hardships in Tanzania during the 1980s meant that ASM became a significant economic activity. The number of ASM miners was estimated at 500,000–900,000 by the mid-1990s (Lawyers' Environmental Action Team (LEAT, 2003).

The mid-1980s saw international financial institutions dismantle the Arusha Declaration by forcing the government to privatize parastatals, retrench workers, and abandon agricultural subsidies. The WB heavily influenced the 1997 Mineral Policy, the 1998 Mining Act, and the 1999 Mining Regulations which helped to attract foreign mining investment in Tanzania. This legal framework gave foreign investors exclusive access to prospecting and mining licenses at the expense of locals (Lange, 2011). The Mining Act of 1998 removed the local content requirement for multinationals, stipulated in the Mining Act of 1979. The Act also provided incentives to multinationals including five-year tax holidays, 100% transferability of profits, 100% foreign ownership, exemptions from many taxes and from environmental impact assessments. Stabilization clauses in the Mining Act of 1998 ensured that it was impossible for the government to revise fiscal agreements upward over the long-term. This was compounded by requirements that existing legal and fiscal regimes at the time of signing a mining contract remained unchanged for the entire life of the contract. In addition, economic clauses required the government to compensate the investor if it took any legal or administrative measure that added costs to the mining process. The government was reduced to the role of regulator, promoter and service provider to the sector, without necessarily engaging in mining activities. The Act also provided powers to the minister in charge of minerals to enter into Mining Development Agreements (MDAs) with multinationals, give preferences such as tax exemptions, and negotiate at his or her own discretion, without being restricted by other legal requirements. These powers were later associated, for more than two decades, with alleged grand corruption (Lange and Kinyondo, 2016). Conflicts between LSM and ASM resulted in violence and several deaths, and many people were forcefully evicted without adequate compensation. Meanwhile, local authorities had little power to prevent artisanal miners from being mistreated by mining companies (Lange, 2011). Unsurprisingly then, there is general agreement within Tanzania that the 1998 Mining Act benefitted LSM at the expense of ASM and Tanzanians in general.

3.1. Comparison of 2009 mining policy, 2010 mining law, and recent changes to the law

It is in this context that Tanzania developed the Mining Policy of 2009 and Mining Act of 2010, which, according to the government

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would increase mining revenues and reduce conflicts by demarcating designated areas for ASM and ensuring fair compensation to evicted citizens. The Policy emphasises, 'efforts to formalize artisanal miners into small-scale miners and provide extension services… and establishment of mechanisms for accessing capital' (URT, 2009: 19). By contrast, the 2010 Mining Act only recognizes small-scale miners who acquire a primary mining license. As a result, artisanal miners were not targeted as important stakeholders. The law mainly addressed LSM. For instance, it demanded that royalties from LSM be increased from 3 to 4%. LSM companies were also required to be listed in the Dar Es Salaam Stock Exchange. Furthermore, state-owned enterprises were given a greater role in the mining sector (Jacob et al., 2016). Despite the Act, alleged corruption involving mining companies and senior government officials as well as alleged environmental pollution caused by LSM activities continued (Lange, 2011).

Lack of harmony between the Land and Mining Acts has always been problematic in Tanzania (Marwa and Warioba, 2015). A holder of land rights in Tanzania does not possess rights to subsoil minerals. This has meant that citizens with occupancy rights could be evicted by LSM with mining rights, without any form of compensation as per section 41(4)(d) and 97 of the 2010 Mining Act. The issue is compounded by the fact that the Land Act of 1999 and Mining Act of 1998 contradicted each other (Pedersen et al., 2016). For instance, while the Land Act provided the devolution of land dispute resolution to local levels, the Mining Act gave the Mining Commissioner the power to singlehandedly decide on all land disputes within designated prospecting and mining areas. This demonstrates that the mining legal framework sponsored by Bretton Woods institutions undermined democratic institutions.

Curtis and Lissu (2008) claimed that very few mining companies paid corporate tax (levied at 30% of profits) as they always falsely declare losses. Their analyses showed that both Acacia and Geita Gold Mine are 'making loses'. A leaked Alex Stewart Assayers' audit report of 2003 showed that Barrick and AngloGold Ashanti overstated their losses by US$ 502 million between 1999 and 2003 resulting in the government losing around US$ 132.5 million (Curtis and Lissu, 2008). Tax break clauses meant that other mining companies could easily evade taxes. Serious human rights abuses, including killings of local people by mine security guards, and forced evictions without adequate compensation, have been documented at various LSM sites such as Bulyanhulu and North Mara Gold mine (Lange and Kinyondo, 2016; Lange, 2011; Society for International Development (SID, 2009)

3.2. Recent disputes between LSM and government

Several commissions (i.e. the Kipokola, Masha and Bomani Commissions) set out to address mining sector challenges between 1995 and 2015. However, they did not result in overall improvements.

President Magufuli launched an anti-corruption campaign immediately after being elected in 2015. In 2017, the government impounded 277 containers of metallic concentrates belonging to Acacia Mining plc and other companies. Two Presidential committees were launched to investigate allegations of fraud by multinational companies. The first, named after its chairman Prof. Mruma, reported massive fraud in mineral sand (concentrates) exports. The committee stated that all impounded containers had gold worth between Tshs. 676 billion and Tshs. 1.146 trillion (compared to the Tshs. 97.5bn officially recorded) and related mineral concentrates worth between Tshs. 829.4 billion and Tshs. 1.438 trillion (which had not been officially recorded at all) (Athumani, 2017a,b). This led to the Minister of Energy and Minerals and the CEO of the Mineral Advisory Board (MAB) being sacked, and the Tanzania Mineral Audit Agency (TMAA) and Mining Advisory Board (MAB) being disbanded (Athumani, 2017b).

Shortly afterwards, the second committee led by Prof. Osoro alleged that most of the 44,227 - 61,320 containers shipped out of the country between 1998 and 2017 had not been declared by Acacia for tax purposes (The Citizens Reporter, 2017). Consequently, the country lost between Tshs. 68.59 trillion and Tshs. 108.46 trillion during that period (The Citizens Reporter, 2017). Specifically, the Osoro report alleged that over 19 years, Acacia Mining Plc failed to pay Tshs. 95.5 trillion in income tax; Tshs. 94.4 trillion in withholding tax; Tshs. 11.1 trillion in mining royalty; as well as Tshs. 1.6 trillion in taxes from under-declared shipping fees.

The Osoro report further alleged that the government's 15% share of Acacia's Bulyanhulu Gold Mine, was sold under mysterious circumstances in 1999; and that stabilization clauses in the Mineral Development Agreement (MDA) between the government and Acacia cannot be above either state sovereignty or UN Resolutions No. 1803 of 1962 and No. 3281 of 1974 on nations' economic rights and responsibilities. Acacia has categorically denied all charges and the two reports have never been published. Several subsequent consultative meetings between the government and Barrick Gold (Acacia's parent company) have been kept confidential.

Upon receiving the committees' reports, President Magufuli ordered the Minister responsible for Justice and Constitutional Affairs to immediately draft new legislation. The task was completed quickly and was tabled in parliament without wide consultations with various stakeholders. In July 2017 the parliament of Tanzania passed three key laws as amendments to the Mining Act of 2010.

In summary, the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 emphasizes that natural resources in Tanzania belong to Tanzanians and thus they must benefit from them. It requires parliament to approve all future agreements in a manner that "fully secures" interests of Tanzanians. It restricts export of raw minerals, repatriation of funds (companies have to deposit their proceeds locally) and limits dispute resolution in the extractive sector to domestic arbitration processes prior to seeking foreign mechanisms to dispute resolution upon agreement between a sovereign Tanzania and 'other parties concerned'. Moreover, the Act re-introduces local content requirements which stipulate that if goods or services are not locally unavailable, they must only be purchased from companies that have entered into joint ventures with a 'local company' (50–100% Tanzanian-owned).

The Natural Wealth and Resources (Revenue and Re-Negotiation of Unconscionable Terms) Act 2017 mandates the government to renegotiate or outright remove terms that parliament deems unconscionable, hence weakening the stability clauses embedded in the Mining Act of 1998 that favoured foreign investors.

Finally, the Written Laws (Miscellaneous Amendments) Act 2017 revises the Mining Act of 2010 by, among others, establishing the Mining Commission, which essentially takes over responsibilities that were previously carried out by the MAB, the previous Commissioner of Minerals, Zonal Mines Offices and TMAA. The Act also increases royalty rates of diamonds and gemstones from 5 to 6%, and that of metallic minerals from 4 to 5% of gross value. Meanwhile government will have at least 16% of carried interest while projects are being negotiated with government. Under this Act, companies are required to list on the Dar es Salaam Stock Exchange and ensure that Tanzanians acquire 30% of the floated shares.

The fact that the legislation was hastily passed, as has become a norm lately in Tanzania (see Kinyondo and Villanger, 2017), raised some concerns. LSM companies are unhappy with the legislation. According to Vasani et al. (2017), the new mining laws not only increase the costs of foreign investments in Tanzania but also significantly reduce investment protections, such as international arbitration. They argue that it is incorrect to say that previous laws favoured LSM, citing the fact that there has not been any significant new mining investment in Tanzania in the past decade (see Mining Review, 2018).

It is clear that the new laws have little to do with ASM. While there is an argument that ASM is perhaps covered under local content clauses, the conspicuous omission of ASM is problematic.

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4. Conceptualizing resource nationalism in contemporary Tanzania

Like other theorists of resource nationalism in the mining sector, we will consider both international and national dynamics, with emphasis on the interaction of political and economic factors. Besada and Martin (2015) argue that promotion of greater transparency and accountability in natural resources governance by international organizations, especially the Extractive Industries Transparency Initiative (EITI), has lent legitimacy to recent mining reforms. However, reforms in Tanzania do not seem to rely on a 'transparency' narrative or references to international good governance norms. Rather, pan-African and regional dynamics have some relevance to Tanzanian resource nationalism. The African Mining Vision is credited with giving African leaders the 'boldness and agency' necessary to make developmental-oriented reforms (Nwapi and Andrews, 2017), and 'there is likely to have been an emulation effect between countries' (Katz-Lavigne, 2017: 26). For instance, Tanzania under the leadership of president Magufuli has adopted a developmental state model, linked to resource nationalism, akin to that of neighbouring Rwanda.

Katz-Lavigne (2017) postulates that countries with CSOs monitoring injustices in the mining sector might be more likely to renegotiate terms with LSM. In the Tanzania case, CSOs have documented human rights abuses associated with LSM, and some CSO lobbying influenced the 2010 Mining Act (HakiRasilimali, 2016). However, successive governments in Tanzania have neither explicitly relied on CSO statements; nor significantly involved CSOs in policy-making. The influence of CSOs can therefore be seen as indirect.

Jacob and Pedersen argue that resource nationalist policies had been established in the later years of the Kikwete regime, 'spurred by the historically competitive 2010 elections' as well as high mineral prices on international markets (Jacob and Pedersen, 2018). The Mining Act (2010) included local content requirements, and provided for greater direct state involvement in the sector (Jacob and Pedersen, 2018). The five-year development plan of 2011–2016 emphasized recapitalization of state corporations such as STAMICO and generally emphasized more public-sector involvement in industrialization. Since 2013, STAMICO has acquired full or partial ownership of several mines (Jacob and Pedersen, 2018). However, STAMICO has not yet managed to operate at a profit and relies on subsidies (Masare, 2018).

One of President Magufuli's first strategies was to take a tough stance against corruption and against tax-dodging businesses. However, since late 2016, he has built connections with big-non-mining private companies with an aim to facilitate industrialization; offering some subsidies to businesses while simultaneously overseeing direct public investment in industrialization (Andreoni, 2017). He is therefore seen as trying to build a developmental state. Here we agree with Jacob and Pedersen (2018) that there are continuities with the last years of Kikwete's government, e.g. Nwapi and Andrews (2017) argue that Tanzania was making 'serious attempts' towards developmental policies at this time (p 263).

Nevertheless, other observers argue that President Magufuli is intentionally making a break with recent Chama Cha Mapinduzi (CCM) approaches; previous leaders favoured negotiation which mainly favoured LSM, leading to suspicions of corruption; Magufuli emphasizes action and populist statements. He has consistently expressed frustration with LSM and support for ASM from the early days of his administration. 'By espousing the language of sovereignty and economic war, Magufuli is tapping into political memories of liberation struggle and revolution' (Paget, 2017), aligning himself with Nyerere's legacy. Indeed, the notion of national 'self-sufficiency', central to Nyerere's African Socialism, is important to Magufuli, and 'becoming independent of donors' is a preoccupation of the ruling CCM (Lange and Kinyondo, 2016: 1103).

Combining concepts developed by Bremmer and Johnston (2009) and Wilson (2015), Tanzania can be described as largely developmentalist, seeking to channel revenues from mining into industrialization, and using a legacy form of resource nationalism to do that. The President's approach to state intervention and action against foreign exploitation of minerals clearly reflects long-standing patterns (Lange and Kinyondo, 2016; Jacob and Pedersen, 2018). Nevertheless, there are elements of the 'economic' nationalism model (as the main instruments have been fiscal) as well as the 'revolutionary' model (as the reforms involve sweeping institutional changes, resulting in centralization of power).

4.1. Implications for ASM in Tanzania

To understand how ASM might figure within a resource nationalist strategy, we can highlight its economic and political significance within Tanzania. It is one of the largest economic sectors in terms of income generation and job creation. Economically, ASM may represent 10–15% or more of total gold production in Tanzania (UNEP 2012, cited in Schoneveld et al., 2018), while most gemstone production is artisanal. ASM contributes significantly to the economy; however, most artisanal production is sold informally and hence doesn't contribute to state tax revenue. Economically, the relevance of ASM to the government depends largely on formalization to improve efficiency and increase tax revenues.

Politically, ASM has few major allies in the administration or CCM. Senior policy-makers routinely associate ASM with criminality, primitivism, and irrationality (Childs, 2014). ASM associations have not been very influential. Tanzania is estimated to currently have 600,000–1,000,000 ASM miners (Marwa and Warioba, 2015). Artisanal and small-scale miners represent a significant, if not a key political constituency. Nevertheless, the figure of the 'artisanal miner' in Africa has political resonance. The archetypal artisanal miner (typically assumed to be male, although women play important roles in ASM) is a poor man cooperating with others to benefit through hard work; Bryceson and Jonsson (2014: 9–10), noted that Tanzanian miners often choose their leaders in 'democratic' ways and exhibit a 'shared camaraderie'. These qualities echo the ideal Tanzanian worker in Nyerere's formulation of African Socialism. Indeed, President Magufuli has used 'populist' strategies to position him as 'President of the poor, most conspicuously in the mining and agriculture sectors' (Jacob and Pedersen, 2018: 291), for example when he instructed the Vice President to rescind an LSM mining license which would have resulted in 5000 artisanal miners losing their livelihoods (Guardian Reporter, 2017).

As noted above, it is significant for ASM whether Tanzania's brand of resource nationalism focuses on community development, or only on national-level, macro-economic development. Community benefits can be secured through LCPs, but the so-called 'local local content' requirements in the Draft Local Content Policy (2014) were not included in the Petroleum Act (2015) (Nwapi and Andrews, 2017), or recent reforms in the Mining Sector. LCPs therefore provide that LSM seek goods and services from companies based anywhere in Tanzania. Resource nationalism focused on national economic growth rather than community-level development efforts might be more associated with capturing benefits from LSM, rather than ASM. Raising government revenues from ASM is a challenge, given the informality and legal ambiguities that characterize the sector. President Magufuli has attempted to increase revenues, for example by ordering the construction of a wall around a Tanzanite mining area in Merelani, Simanjiro District, with mixed results thus far (Lyimo, 2018). Several initiatives including the establishment of 'centres of excellence' for ASM, demarcation of dedicated concessions for ASM, indicate continued support for formalization of ASM (Jacob, 2017). These arguably represent the continuation of existing activities, such as a major World Bank-funded project, rather than a completely new direction (World Bank, 2017).

While it is not clear yet how recent reforms will affect ASM, there are signs that, on the one hand, the 'legacy' model will involve respect

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for artisanal mining livelihoods; while, on the other hand, the developmentalist state in Tanzania will not hesitate to take very strong steps to force ASM to formalize and pay taxes. As pointed out by Jacob and Pedersen (2018), STAMICO has acquired full or partial ownership of several mines, but has yet to fully industrialize operation on many of them, meaning that it is increasingly dealing directly with ASM interests (see eg. Nyakeke, 2017). Future disputes between STAMICO and ASM will represent political dilemmas for the state, as artisanal miners are increasingly seen as an important political constituency, and promotion of ASM could be the only economically viable activity for some STAMICO concessions.

5. Contemporary legal and policy reforms in Tanzania: key informant perspectives

As noted above, semi-structured interviews were conducted in Dar es Salaam with experts from government, political parties, industry, civil society, and universities. Interview questions focused on relationships between artisanal mining associations, industrial mining companies and the State, within the context of changing institutional, legal, and policy regimes in Tanzania. Key themes emerging from the interview transcripts have been identified below.

5.1. Over-centralization of day-to-day mining governance

Six participants discussed the problematic ways in which large scale mining companies engaged with Tanzanian institutions. The main negotiations involve national level authorities, and resulting agreements are insufficiently communicated with local-level institutions, leading to misunderstandings and frustrations at the local level. One participant argued that local authorities are relegated to the role of 'spectators'[1]. While a public servant blamed mining companies for this, an academic also pointed to the inadequate consultation by government at local levels. Several participants noted that mining revenues were paid to the central state, which did not always ensure that money was invested locally. This was seen by a couple of participants as a negative aspect of the concept of 'national resources': 'the notion of minerals being 'national resources' and thus benefits ought to be shared nationally is what rips locals off their rightful dues'.[2] There are indications of increased centralization and continued secrecy in the sector (such as mining contracts remaining confidential). Some participants argued for decentralization of mining governance. An academic commented that, 'local government authorities must be given some responsibilities, particularly the District Executive Director to oversee resources at local level.'[3]

5.2. LSM-ASM relations

About a third of all participants knew of negotiations and agreements between industrial mining companies and ASM actors. Several participants mentioned formal projects such as the WB funded Multi-Stakeholder Partnership Initiative (MSPI). Others emphasized the informal nature of many LSM-ASM agreements, framing this as a problem. For example, one respondent mentioned that local people assumed that negotiated agreements were binding, whereas in fact they were often documented only in the minutes of village council meetings, with no formal legal standing. Insufficient monitoring or enforcement of these agreements was mentioned: while NGOs monitor the situation around industrial mine sites this is often ad hoc and uncoordinated. In general, the state was seen as historically unable or unwilling to monitor agreements or effectively mediate disputes, even though 'the law provides the Commission of Mining with the mandate to regulate ASM-LSM relations'.[4] While individual government Ministers had sometimes intervened, they do not have the mandate to do so, and such interventions are seen as short-term political gambits.[5]

Several participants mentioned that projects within the ASM sector had been disrupted or cancelled because of the recent changes (see also World Bank, 2017). For example, a public servant and an academic mentioned that it was specifically Prof. Muhongo, the previous Minister for Energy and Minerals, who had championed support to the ASM sector; the new leadership in the mining sector have not yet been as active, although several initiatives have been announced.

5.3. The nature of policy-making in the mining sector

The Tanzanian mining sector has historically been heavily influenced by international organizations, events and processes, such as the annual African Mining Indaba and guidelines produced by international organizations. This was clearly a source of much frustration to many participants. Referring specifically to the WB, one public servant commented angrily that, 'privatization was one of their initiatives. Conventional investors were ripping off our resources on their watch'.[6] Moreover, Canadian government officials lobbied so that the Bomani Commission recommendations would not be implemented (Society for International Development (SID, 2009). There was consensus amongst participants that international organizations had previously had too much influence over policy-making. However, participants differed in their assessments of the recent reforms. Many participants, especially public servants, were reticent about judging the effectiveness of the current legal and institutional reforms. Several argued that it is too soon to judge the impacts of the changes.

There was broad consensus that the President is playing a key role in decision-making. A public servant and a politician argued that this simply reflected the political system in Tanzania, which has always had a strong Presidency position. Others suggested that President Magufuli should rely more on mining specialists to advise him. Two participants argued that the government is taking 'political approaches to technical issues'[7]. One academic contended, 'let the system determine this [policy] and not an individual'[8]. Several participants contended that the reforms had not been based on comprehensive reviews of the geological potentials and financial aspects of the mining sector, or evaluations of Tanzania's comparative advantage in relation to neighbouring countries. In the words of a politician, 'the law must reflect market conditions'.[9] Especially following the replacement of many experienced public servants, there was concern that the government had insufficient skilled experts in place to manage decision-making. Many participants were concerned about the overall dynamics of rapid institutional reforms. While some participants praised elements of the reforms (e.g. separation of the ministry responsible for energy and minerals into two separate ministries) the sheer pace of change, as well as the lack of widespread consultation about the reforms, means that government regulation of the mining sector seems unpredictable. This unpredictability, according to some participants, has other broader negative effects within and outside government. Institutional changes, staffing changes, and rhetoric around hiring and firing public servants has resulted in uncertainty within government institutions: 'destabilizing institutions is very costly because it undermines confidence'.[10] One participant mentioned that public servants are in a state of 'fear' regarding

[1] Interview with academic participant #3, May 2018.
[2] Interview with CSO participant #2, May 2018.
[3] Interview with academic #3, May 2018.
[4] Interviews with civil society participant #6, July 2018.
[5] Ibid.
[6] Interview with public servant #1, April 2018.
[7] Interview with CSO personnel #3, May 2018
[8] Interview with academic #3, May 2018.
[9] Interview with politician # 1, May 2018.
[10] Interview with politician #2, May 2018.

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their jobs, while levels of trust were low, particularly between actors in different sectors (public, private and non-governmental) and different institutions. Because of these low levels of trust, five participants argued that there was a need for a national dialogue about the mining sector, and related natural resources. Given the high level of tension within the mining field, which was evident also during the interviews, there is a need for trust to be built within and between different institutions.

Some participants were concerned that legal and policy changes have been made without adequate research into the government's commitments under various treaties – such as Bilateral Investment Treaties, the International Centre for Settlement of Investment Disputes (ICSID) Convention, and an agreement with the Multilateral Investment Guarantee Agency (MIGA) – and hence that some aspects of the recent reforms may contravene international laws.

5.4. Legal frameworks

Several participants, especially CSO representatives and politicians (but only one public servant), saw the existing legal framework as a major impediment to cooperation between ASM and LSM. This is particularly because, by law, artisanal miners are unable to legally acquire mining rights. Participants felt that the laws were largely designed around LSM and did not account for ASM. A small number of participants therefore questioned the viability of projects supporting artisanal mining; issues of sustainability were raised in a situation in which miners' mineral claims could not easily be secured. Accordingly, two participants identified a need for a separate law specifically governing ASM.

Several participants commented on the inconsistencies and contradictions between the Mineral Policy of 2009 and the Mining Act of 2010. As mentioned above, artisanal miners are mentioned in the Policy, but not in the law. One participant suggested that a legal mechanism could be developed to enable the transition from artisanal to small-scale mining: 'at least give them a provisional permit. Put even a timeline (say 1 year) after which they must graduate to small-scale miner and acquire a primary mining license.'[11] Four participants stressed the importance of differentiating between artisanal and small-scale mining, on the basis of the legal issues mentioned above.

5.5. Government position towards LSM

A total of five participants contended that the government's position on large-scale mining is ambivalent or illustrative of tensions regarding foreign investment. This argument was particularly common among the public servants, academics and politicians. An academic stated that, 'on one hand we have a policy to promote private sector investment both domestic and foreign. On the other we seem to be fighting with foreign investors'.[12] One participant observed that even though the government was taking a tough line on foreign firms, it was aware that Tanzanian firms were not in a position to replace foreign companies.

Two civil society participants argued that the government is still much more in favour of industrial mining than artisanal mining. The implication of some of the interviews was that, while the government was intent on increasing the amount of government revenue, the recent institutional, legal and policy reforms had been motivated largely by a desire for political 'signalling' as well as for increasing control over the public resources by the political centre.

5.6. Government position towards ASM

Participants had varying perceptions of government policy towards ASM. Six participants (from all categories) argued that the government was generally in favour of ASM. In some cases, participants saw government engagement with ASM as fairly modest: 'There has been an evolution. In the past ASM were ignored. Increasingly the government is moving towards giving more attention to them'.[13] Another participant argued that this was to some extent a continuation of previous policies: '[President] Mkapa never cared about ASM. Things started to change especially after the Bomani Commission [2008]'. While arguing that there was continued negativity towards ASM from various stakeholders, including government, a public servant added that, 'the direction is more towards promoting ASM. The playing field has been slightly leveled'.[14] The public servant provided examples of improved engagement with ASM including training opportunities, mechanisms for small-scale miners to access credit, and more transparent modalities for identifying, registering, and delineating mine sites. Another participant mentioned the purchase agreements between ASM and STAMICO as an example of a pro-ASM stance.

A minority of participants saw the situation as a zero-sum game due to conflicts between ASM and LSM. For example, one CSO staff member stated that, 'the government now is very much pro-ASM meaning big companies are in a dire situation at the moment'.[15] Another respondent noted that while it was often difficult for industry representatives to access the Ministry responsible for minerals, the Federation of Miners Associations of Tanzania (FEMATA), which represents ASM, is now a member of the Mining Commission.[16]

However, several participants were cautious or unsure about the government position. Another four participants (CSO personnel and a public servant) felt that the government was not in favour of ASM. One CSO representative argued that any government support for ASM is 'all talk', which does not overturn asymmetries of power and knowledge. Another echoed the view that government support for ASM is largely rhetorical, arguing that the strategy for addressing ASM is 'fuzzy'. The position of the government towards ASM, as in the case of LSM, is not clear to all key policy makers.

5.7. Government institutional reforms: strengths and weaknesses

As mentioned above, many participants are concerned about negative impacts from the recent institutional reforms. However, a minority of participants were more positive. One noted the record number of mining applications received (8000) which resulted in 7000 new licenses granted by the Mining Commission, 70% of which belong to locals (Kasumuni, 2018). Some participants stated that the reforms had reduced the amount of bureaucratic 'red tape' in the ASM sector. Unwieldy bureaucratic processes are associated with corruption and obstacles to development of the sector (Weldegiorgis and Buxton, 2017). One academic argued that corruption in the civil service justified at least some of the recent personnel reshuffles and institutional reforms.

However, an industrial mining representative argued that in fact the institutional changes had *added* bureaucratic hurdles to the process.

Almost half of the participants emphasized that the institutional reforms would result in a loss of institutional memory, as mentioned above, with one participant arguing that, 'whoever comes in has to learn from scratch. This is learning as you run'.[17]

5.8. Inadequate enforcement of laws

Several participants mentioned that laws, regulations, and regular contract reviews had not been properly enforced in the past. A third of

[11] Interview with civil society participant #3, May 2018.
[12] Interview with academic #2, May 2018.
[13] Interview with academic #1, April 2018.
[14] Interview with public servant #4, April 2018.
[15] Interview with CSO representative #5 April 2018.
[16] Interview with CSO representative #5 April 2018.
[17] Interview with public servant #1, April 2018.

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participants (from each category except the politicians) identified systematic enforcement of laws as a major priority. While some participants emphasized the importance of big companies obeying the legal frameworks, others put as much emphasis on the importance of Tanzanian state institutions following the law. For some participants, the President's decision to revoke two mining licenses in Shinyanga Region while on a tour of the Lake Zone in December 2016 and January 2017 set a bad precedent. In the words of a CSO participant, 'this was not proper as the law then dictated that only the Mining Commissioner had power to revoke licenses, and only after the mining advisory body gave him the go ahead'.[18] In addition, the emphasis of several participants on the need for transparency takes on new meaning, following the announcement in early June that contracts between mining companies and the government would be kept confidential and would be primarily approved through the cabinet rather than through the mining ministry. Several participants commented that implementation and enforcement is easier and more effective when different stakeholders have already been consulted and involved in drafting regulations. Hence greater consultation was recommended moving forward.

6. Conclusion

The Magufuli administration initiated two separate commissions in 2017 which found that mining multinationals have been denying Tanzania its rightful royalties and profits. The government then promulgated three laws that are mainly intended to maximize government revenue, develop local content and recognize permanent sovereign ownership of minerals by Tanzanians.

Using the framework of Wilson (2015) who categorises resource nationalist strategies into regulations affecting *ownership of resource industries*, the *operations of resource firms*, and policies designed to *capture economic rents for public purposes,* we note that Tanzania's recent reforms focus especially on capturing economic rents; as well as on the operations of resource industries, but have not yet built upon the legal potentials for state-owned industries to take greater ownership of LSM. However, laws which limit international arbitration of disputes, require companies to trade on the Tanzanian stock exchange, and include LCP all arguably further embed LSM within Tanzanian legal and economic structures, hence increasing 'ownership' in a sense.

Based on our conceptual framework in Section 4, we argue that President Magufuli's statements on mining largely reflect a legacy form of resource nationalism, with a developmentalist objective. This includes a 'pro-poor' stance with the potential to benefit the ASM sector, albeit within a formalization model which is likely to be controversial. The renewal of commitments to capacity-building and concession-allocation for ASM may be promising.

Nevertheless, interview data presented in Section 5 suggests that the overall direction of recent mining reforms are unclear to key stakeholders. Views from key informants, while expectedly divergent, pointed to several main areas that need urgent improvement. Overall, they questioned over-centralization of mining governance; warned against intervention of international players such as the WB in developing the mining sector legal framework; pointed to the ambivalent nature of the government position towards both LSM and ASM; criticized ad hoc reforms that end up eroding institutional memory and capacities; and pointed to inadequate enforcement of laws.

The new mining laws do not adequately address ASM. They seem to fit the resource nationalism narrative, especially though maximizing economic rents from LSM. While all this is not necessarily a wrong, it happens to exclude ASM from playing a more significant role in the sector. Given the importance of ASM, particularly in job-creation, the government cannot afford to ignore this subsector. It is thus recommended that a separate law focusing on ASM be passed, with institutions provided ample resources to enable effective enforcement of mining laws in the country.

Moreover, as Kinyondo and Villanger (2017) point out, the effectiveness of law enforcement is partly a function of stakeholders' buy-in. Indeed, the extent of compliance to laws is very much determined by prior consensus built among stakeholders. It is thus important that the government consults widely with various stakeholders before finalizing policies and laws.

Going hand in hand with a proper legal framework and stakeholder consensus is the need to improve knowledge/skills pertaining to the mining sector, as well as improved coordination between government ministries, departments and agencies as well as continuous communication between various external actors. This is important especially in terms of building trust between various actors. The move would help clarify and resolve misconceptions or contradictions that may exist in the legal framework. We finally note that the mining sector can only survive in the presence of stronger links between multiple stakeholders, and a transparent platform for monitoring and enforcement of contracts and agreements. Some degree of decentralization of decision making is key. Indeed, since mining operations take place at local level, it is local authorities that stand a better chance to monitor and enforce the law.

Declarations of interest

None.

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[18] Interview with civil society actor #5, April 2018.

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