

# LIBERAL RULES ON TRADE AND INVESTMENT AND THE FALSE PROMISE IN DEVELOPING COUNTRIES: A TANZANIAN PERSPECTIVE<sup>1\*</sup>

By Ombella John S<sup>2\*</sup>



## Abstract

International economic law has impacted trade and investment frameworks around the globe through liberalisation of both sectors. Adoption of international economic law principles has potential to impact the economic and social wellbeing of the local population in many countries around the globe. However, some of the countries (Tanzania inclusive) which adopted international economic law seem to have experienced adverse impacts on investment and trade. As a result, Tanzania has taken two major actions recently on the area of

investment and trade, namely revamping her position in natural resources laws and refusal to sign the Economic Partnership Agreement with the European Union. This article analyses the two actions as a response of a developing country, Tanzania in particular, against (potential) legal obligations under international economic laws. The article shows that the move taken by Tanzania is an indicator of an awaking sleeping giant, while at the same time pinpointing the potential legal implications to be faced on the areas of investment and trade as a result of the two actions taken. This article therefore calls for both domestic and international efforts to push for changes in international economic law in order to uplift developing countries in their bid to achieve sustainable development.

<sup>1</sup> \* This paper is an abridged version of the course-work paper submitted in the International Training Programme (ITP) in Sustainable Development and Human Right Law of the Antwerp University 2016/2017. Many thanks to the VLIR OUS for the scholarship they offered me to attend the programme.

<sup>2</sup> \* LL.B (Mzumbe University), LL.M (UWC) SA. The author is a Lecturer at the Faculty of Law of the Mzumbe University. Contacts: Email: ombella@gmail.com and Mobile: +255713227298.

## Key words:

International economic law; investment; trade law; Tanzania

## 1.0 Introduction

Tanzania as other States responded to the pressure of liberalising her economy as a means of attracting foreign investment, and liberalising movement of goods and services. Foreign investment and liberal movement of goods and services have potential to contribute towards increasing employment opportunities in the potentially new established economic investments; increased revenue collection; reviving industrial sector to name but a few. In order to achieve all these, international community has established International Economic Law (hereafter IEL) to regulate both international trade and investment. IEL has been defined differently by various authors;<sup>1</sup> the term IEL is used in this article to refer to rules set by both public and private international, regional and sub-regional institutions (such as: United Nations; World Bank; International Monetary Fund; World Trade Organisation; European Union to name but a few) and or bilateral arrangements between States to regulate movement of capital; goods and services around the globe. States are expected to adopt these rules for them to benefit from international trade and investment.

Despite the adoption of IEL in Tanzanian legal regime, it seems to be adversely impacted in mineral and trade sectors. Tanzania seems to be a victim of imperialism on application of IEL.<sup>2</sup> Consequently, it is not surprising that despite her richness in both exploited and unexploited natural resources; and being a member of multilateral institutions on trade and investment, yet still a considerable number of Tanzanians are unemployed and leave below

poverty line.<sup>3</sup> Although a number of factors may be contributing to this situation such as governance and corruption,<sup>4</sup> yet the framing of IEL has not been able to unleash potentials of some States in achieving sustainable development (Tanzania inclusive).<sup>5</sup> The IEL rules, from financing of investment, transfer of capital, protection of investment and free trade have encroached the policy space of the developing states such that framing new policies for development becomes difficult.<sup>6</sup> Consequently, it impacts the ability of a state to ensure social and economic development to its people.<sup>7</sup> This trend triggered some responses from developing countries such as Tanzania against the IEL.<sup>8</sup>

In response to this the United Republic of Tanzania took two major actions recently on the area of investment and trade, namely, revamping its position in natural resource laws and refusal to sign the Economic Partnership Agreement (hereafter EPA) with the European Union (hereafter EU). From the legal view point, these two actions have implications on the State against its (potential) commitments on the area of International Economic Law (hereafter IEL). This paper therefore, is set to review and analyse the two actions with a view of pointing out why Tanzania took such decision. It further points out the legal implication of the decision taken by Tanzania on the two areas.

Through documentary review of relevant literature, the article presents the response of Tanzania towards the IEL in relation to overhauling its position in natural resource laws and the refusal to sign the EPA agreement.

- 3 See the East African Community Facts and Figures 2016 Report paras 2.4 and 2.5 which indicate that only 59% of rural population access safe drinking water and about 10% of unemployment rate in Tanzania, respectively.
- 4 Collier P, *The political economy of natural resources*, Social Research, 2010, vol. 77, No.4, pp. 113-115.
- 5 Lange S, *Gold and Governance: Legal Injustices and Lost Opportunities in Tanzania*, African Affairs, 2011, vol. 110, No. 439, pp. 233-234.
- 6 Ombella J.S and Cosmas J.S, *Uniform application of the relative standard of treatment to local investors and foreign investors: A good Deal for LDCs?* International Journal of Legal Studies and Research, 2017, vol. 6, No.1, pp. 121-125.
- 7 Lauwo, S and Otusanya O.J, *Corporate accountability and human rights disclosures: A case study of Barrick Gold Mine in Tanzania*, Accounting Forum, 2014, vol.38, No.2, pp. 96-97.
- 8 Ombella J.S and Cosmas J.S, *Uniform application of the relative standard of treatment to local investors and foreign investors: A good Deal for LDCs?* International Journal of Legal Studies and Research, 2017, vol. 6, No.1, pp. 121-125.

Among the documents reviewed in this paper are the Natural Wealth Resources (Permanent Sovereignty) Act;<sup>9</sup> Natural Resource Wealth and Resources Contracts (*Review and Renegotiation of Unconscionable Terms*) Act;<sup>10</sup> the Written Laws (Miscellaneous Amendment ) Act;<sup>11</sup> the notice issuing the ban on mineral ore export;<sup>12</sup> the Mining Act;<sup>13</sup> the Tanzania Investment Act;<sup>14</sup> the Finance Act;<sup>15</sup> Bilateral Investment Treaties (hereafter BITs); Economic Partnership Agreement (hereafter EPA); scholarly works: journal articles; books (chapters) and other relevant pieces of literature. It is believed that the move by Tanzania is an indicator of awaking “sleeping giant” as commonly referred in East African geopolitical discourse.<sup>16</sup> The discussion in this article is organised into four parts inclusive of this introduction. Part two discusses the general over view of liberal rules on trade and investment, while part three discusses the extent to which Tanzania liberalised her mineral and trade sector and its implications. Part four provides a way forward and conclusion.

## 2.0 General Over view of Liberal Rules on Investment and Trade and False Promise

Since the establishment of the Bretton Woods Institutions growth of international rules, and forums regulating capital mobility, protection of investment and free trade have increased.<sup>17</sup> This is notable through for example establishment of the World Trade Organization. Under WTO member States are

- 9 Act No. 5 of 2017.
- 10 Act No. 6 of 2017.
- 11 Act No. 7 of 2017.
- 12 United Republic of Tanzania, Permanent Secretary, Ministry of Energy and Minerals Press Release; Export Ban of Metallic Mineral Concentrates and Ore of 3<sup>rd</sup> March 2017, available at <https://mem.go.tz/press-release-export-ban-of-metallic-mineral-concentrates-and-ore/> (last accessed 18<sup>th</sup> April 2017).
- 13 Act No. 14 of 2010.
- 14 Act No. 38 of 1997.
- 15 Act No. 6 of 2006.
- 16 Pilling D and Agylonb J, Tanzania's New President shakes up the East African Sleeping Giant, <https://www.ft.com/content/0eae9b54-3c5e-11e6-9f2c-36b487ebd80a> last accessed on April 2018; Ihucha A, Study uncovers TZ's Sleeping Giant, <http://www.thecitizen.co.tz/News/Business/Study-uncovers-TZ-s-sleeping-giant/1840414-3217924-format-xhtml-11orygaz/index.html> last accessed April 2018; Mburu C, East Africa: Tanzania, The sleeping giant awakes, <http://allafrica.com/stories/200206120624.html> last accessed on April 2018.
- 17 Akyuz, Y., *Multilateral Disciplines and Question of Policy Space* in FAUNDEZ J and TAN C.(ed) International Economic Law, Globalization and Developing Countries, Edward Elgar Publishing Limited, 2010, p. 34-66, at p. 35.

expected to abide to free trade policies through adoption of all the agreements under the WTO.<sup>18</sup> Furthermore, evidences of increased rules and fora are noted on the regional and bilateral investment and trade agreements among States.<sup>19</sup> These rules are expected to facilitate trade and movement of capital around the globe and to trigger economic growth and sustainable development in different countries.

On the area of natural resource for example, the World Bank organised the mining law reforms in African countries with view to changing the State-owned mining companies to private investment as from 1980s.<sup>20</sup>

Notably, the World Bank reforms were based on the view that the State-owned mining companies were underperforming.<sup>21</sup> Such a poor performance denied countries potential source of revenue and employment opportunities to its people. The World Bank adopted the loan and structural adjustment programme in effecting the reforms that were geared towards liberalising mineral sector in most countries, Tanzania inclusive.<sup>22</sup> It is through these loans and structural programmes whereby laws had to bind the State towards the international investment framework that guarantees protection of foreign investors. As a result, submission to the International Centre for the Settlement of Investment Disputes (hereafter ICSID)

- 18 WTO Agreements on [https://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](https://www.wto.org/english/docs_e/legal_e/final_e.htm) last accessed on April 2017.
- 19 UNCTAD Bilateral Investment Treaties 1995-2006, Trend in Investment Rule Making, available at [unctad.org/en/docs/iteia20065\\_en.pdf](http://unctad.org/en/docs/iteia20065_en.pdf) (last accessed 23<sup>rd</sup> April 2017)
- 20 World Bank and International Finance Corporation Global Mining: Mining reform and World Bank: Policy framework development 2003, p. 6.
- 21 World Bank and International Finance Corporation Global Mining: Mining reform and World Bank: Policy framework development 2003, p. 6; Lissu T, *In God we trust; The political economy of law, human right and the environment in Tanzania's mining industry*, Law Social Justice and Global Development Journal 2001 Issue No. 2 para 4.
- 22 World Bank and International Finance Corporation Global Mining: Mining reform and World Bank: Policy framework development 2003, p. 7; Butler P, Tanzania: Liberalisation of investment and mining sector analysis of the content and certain implication of the Tanzania 1998 Mining Act, [https://www.researchgate.net/publication/265188744\\_Tanzania\\_Liberalisation\\_of\\_Investment\\_and\\_the\\_Mining\\_Sector\\_Analysis\\_of\\_the\\_Content\\_and\\_Certain\\_Implications\\_of\\_the\\_Tanzania\\_1998\\_Mining\\_Act](https://www.researchgate.net/publication/265188744_Tanzania_Liberalisation_of_Investment_and_the_Mining_Sector_Analysis_of_the_Content_and_Certain_Implications_of_the_Tanzania_1998_Mining_Act) last accessed on April 2018.  
; Clement P *Multilateral Development banks and the International Monetary Fund* in Linarelli, John., Research handbook on global justice and international economic law 2013, p.121-145, at p. 125-126.

- 1 Zamora S, *International Economic Law*, University of Pennsylvania Journal of Law, 2014, vol. 17, No. 1, p. 63; Charnovitz S, *What is International Economic Law?*, 2011, Journal of International Economic Law, vol. 14, No. 1, pp. 3-7.
- 2 Sonarajah, M., *The International Law on Foreign Investment*, (2<sup>nd</sup> Ed) Cambridge University Press, 2004, p. 19.

was necessary as loans and guarantee were offered under the World Bank auspices.<sup>1</sup>

The next part addresses the question whether this expectation did materialise.

### 1.1 Implications of Liberal Rules on Trade and Investment and the Concept of False Promise

As it can be noted from above,<sup>2</sup> the adoption of liberal rules in investment and trade was founded on the conception that it will trigger economic growth which will spur development. To begin with investment rules, Sonarajah argues that the least developing countries (hereafter LDCs) were actually misled to believe that for them to achieve development, opening their economy for international investment through bilateral and regional agreements was necessary.<sup>3</sup> In addition, justifying the false in the created belief, Sonarajah points out a number of issues such as the fallacy of the reciprocity in investment treaties between developed and developing countries. He shows that there is no reciprocity because no firms from developing countries could invest in developed countries. Also, he points out that, foreign investors are attracted not by the protection under the investment treaties but presence of natural resources for them to harvest, availability of labour services that can offer a competitive advantage to foreign firm.

Sonarajah further argues that, the use of investment agreements with arbitral clause allowing access to international arbitral tribunals in dispute settlement amounts to colonialism in disguise.<sup>4</sup> This is more evident through the broad interpretation the arbitrators provide on the protection clause such as fair and equitable treatment and non-discrimination principles such as most favored nations and national treatment. The

1 World Bank and International Finance Corporation Global Mining: Mining reform and World Bank: Policy framework development 2003, p. 7.

2 See (para 1.0 above) p. 2.

3 Sonarajah, M., *Developing Countries in the Investment Treaty System: A law for need or a law for greed?* in Schill W.S et al (ed) International Investment Law and Development: Bridging the Gap, Edward Elgar Publishing Limited, 2015, p.43-66, at p. 44.

4 Sonarajah, M., *Developing Countries in the Investment Treaty System: A law for need or a law for greed?* in Schill W.S et al (ed) International Investment Law and Development: Bridging the Gap, Edward Elgar Publishing Limited, 2015, p.43-66, at p.49.

non-discriminatory principles are shown to limit the room for the states to formulate policies that are geared towards sustainable development and proper distribution of the economy.<sup>5</sup>

Regarding trade rules, similar patterns of principles of non-discrimination are notable under the WTO Agreements. More or so, the adoption of higher tariff in non-agricultural goods by developed countries, and low or zero tariff on raw materials coupled with the protection of intellectual property rights impacts severely the possibilities of developing countries to industrialise.<sup>6</sup> The Agreement on Agriculture (hereafter AoA) for example provides for the permissible levels of agricultural domestic support under the *diminimis* principle, which is seen by LDCs as subsidies in a name of domestic support.<sup>7</sup> Notably, this depicts unlevelled playground between the farmers in developed and in LDCs.<sup>8</sup> This is even worse where an LDC may not have ability to provide for social economic rights like healthy, clean water and education, hence subsidising its agriculture sector however marginally allowed seems impracticable.

Moreover, through the Trade Related Investment Measures Agreement (hereafter TRIMS); measures such as local content requirements seem to distort trade and are prohibited.<sup>9</sup> This impacts countries ability to develop strategies and policies for proper linkage of the foreign investment attracted to their market and or trade activities to

5 Sonarajah, M., *Developing Countries in the Investment Treaty System: A law for need or a law for greed?* in Schill W.S et al (ed) International Investment Law and Development: Bridging the Gap, Edward Elgar Publishing Limited, 2015, p.43-66, at p. 50.

6 UNCTAD Report 2015, Key statistics and Trend in Trade Policy 2014, p. 11.

7 WTO Agreement on Agriculture, Article 6 (4), International Center for Trade and Sustainable Development (ICTSD), *Negotiating Global rules on Agricultural Domestic Support: Options for the World Trade Organizations' Buenos Aires Multilateral Conference*, available at, <http://www.icts.org/themes/agriculture/research/negotiating-global-rules-on-agricultural-domestic-support-options-for> (last accessed on 25th April 2017).

8 Akyuz, Y., *Multilateral Disciplines and Question of Policy Space* in Faundez J and Tan C.(ed) International Economic Law, Globalization and Developing Countries, Edward Elgar Publishing Limited, 2010, p. 34-66, at p.64; Sauvart P.K., *Attracting Direct Investment and Benefiting from it: Challenges for the Least Developed countries*, Transnational Corporation Review, 2015, vol.7, No. 2, pp. 125-126.

9 See Article 1 and 2 of the WTO Trade-Investment Related Measures Agreement.

contribute towards economic growth.<sup>10</sup>

This part has clearly highlighted the tilted nature of the IEL towards favouring developed countries on investment protection, free movement of capital, free movement of goods and agricultural support versus the developing countries. It is worth to note here that the developed countries did not just achieve all of their economic growth through free trade. They utilised most of trade and investment principles which are now prohibited.<sup>11</sup> The following part focus on two major aspects of overhauled natural resource laws and non-signing of the EPA in discussing the extent to which Tanzania opened up its market for investment and trade under the seemingly tilted IEL system. It also discusses measures taken by Tanzania in its efforts to retain its policy space as a means of attaining sustainable development for its people.

### 3.0 Liberalisation of Mineral and Trade Sectors in Tanzania

Tanzania is one among countries endowed with abundant natural resources in Africa. Natural resources in Tanzania range from arable land, mineral, oil and gas, forests and unique ecology, touristic attractions such as mountains, national parks, huge game reserves and forests to name but a few.<sup>12</sup> Geographically, Tanzania is also placed in between the East African great lake region both from north, west and south west, while the entire eastern strip borders with the Indian Ocean. Despite having such resources, Tanzania is since independence listed as an LDC.<sup>13</sup> This is because such resources have not been able to contribute into the economic growth of the country.

To convert these resources into economic growth, Tanzania adopted a liberal economy

10 Akyuz, Y., *Multilateral Disciplines and Question of Policy Space* in Faundez J and Tan C.(ed) International Economic Law, Globalization and Developing Countries, Edward Elgar Publishing Limited, 2010, p. 34-66, at p.63.

11 Chang, J. H., *Kicking away the ladder: The "Real" history of free trade*, available at [http://ipif.org/kicking\\_away\\_the\\_ladder\\_the\\_real\\_history\\_of\\_free\\_trade/](http://ipif.org/kicking_away_the_ladder_the_real_history_of_free_trade/) (last accessed on 26th April 2017).

12 URT Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector Vol.2, 2008, p. 5.

13 Least Developed Countries, [www.un.org/en/development/desa/policy/cdp/ldc/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf) accessed on 30th December 2017.

since 1990s'. This witnessed passing of investment friendly legislation in 1997 where the Investment Act<sup>14</sup> provided a number of incentives to attract foreign investment. Among the incentives were such as tax holidays for investing companies, access to land through the Tanzanian Investment Centre (hereafter TIC), immigration quarter<sup>15</sup> and access to loan from domestic commercial banks.<sup>16</sup> The Investment Act also provided for guarantees against expropriation of investors assets,<sup>17</sup> free transfer of capital, profit and interests by investors from Tanzania and a guarantee that incentives granted under the investment Act cannot be altered to the detriment of the investors holding such incentives.<sup>18</sup>

Realising that the wording under the Investment Act poses a threat to the policy space, the government proposed some amendments. Consequently, the Finance Act of 2006<sup>19</sup> introduced some amendments which provided for two systems of investment incentive certificates.<sup>20</sup> Notably, the law allows continued existence of the incentive certificates which were issued before 2006 while setting time limit of five years for those incentive certificates issued after 2006.<sup>21</sup> The latter category is provided with periodical stability of five years and once they expire, the government could change them, while the former enjoys endless stability. Adoption of periodic review seems to be an approach aiming at avoiding fettering the discretion of the preceding government which would have seriously impacted its policy space.

In order to conform to international requirements of the World Bank,<sup>22</sup> the Investment Act also provided a room for

14 United Republic of Tanzania Investment Act No. 38 of 1997.

15 Section 24 of the Tanzania Investment Act No. 38 of 1997.

16 Section 19 (1) read together with section 21 of the Tanzania Investment Act No. 38 of 1997

17 Section 22 of the Tanzania Investment Act No. 38 of 1997.

18 Section 19 (2) of the Tanzania Investment Act No. 38 of 1997

19 Act No. 6 of 2006.

20 Section 30 (1-2) of the Finance Act No. 6 of 2006.

21 Section 30 (2) of the Finance Act No. 6 of 2006.

22 See Butler P, Tanzania: Liberalisation of investment and the mining sector analysis of the content certain implications of the Tanzania 1998 Mining Act, [https://www.researchgate.net/publication/265188744\\_Tanzania\\_Liberalisation\\_of\\_Investment\\_and\\_the\\_Mining\\_Sector\\_Analysis\\_of\\_the\\_Content\\_and\\_Certain\\_Implications\\_of\\_the\\_Tanzania\\_1998\\_Mining\\_Act](https://www.researchgate.net/publication/265188744_Tanzania_Liberalisation_of_Investment_and_the_Mining_Sector_Analysis_of_the_Content_and_Certain_Implications_of_the_Tanzania_1998_Mining_Act) last accessed on April 2018.

investors to access directly the dispute settlement machinery under the ICSID.<sup>1</sup> Notably, the investment framework in Tanzania did not compel investors to exhaust locally available remedies as is in other countries. The Investment Act for example states that dispute settlement may be settled through negotiation between the investor and the government or through arbitral process. As such, the language used is in alternative and not a prerequisite to the other.<sup>2</sup>

Furthermore, a close look at the ongoing review of the Investment Act depicts that the same position seems likely to remain in the newly proposed Investment Act because it still contains almost the same wording.<sup>3</sup> In other countries for example, Republic of Korea, internal dispute settlement arrangement with investors are done via an established ombudsman before investors access the international arbitration which is a costly process and un-predictable as it does not follow rules of precedence.<sup>4</sup> Commenting about Tanzania investment framework, Lange noted that it is too friendly to investors such that it does not enable Tanzania to recoup benefits from her own resources.<sup>5</sup>

The Mining Acts both of 1998 and 2010 also liberalised the mineral sector through guaranteeing investors a number of incentives such as: duty free on capital goods and submission of investment disputes to foreign jurisdictions. Section 10 of the Mining Act 2010<sup>6</sup> for example empowers the minister to enter into Mineral Development Agreement (hereafter MDA) with investors. In addition, the section among other things requires the MDA to have the dispute settlement clause and directs that it has to be by way of international arbitration.<sup>7</sup> The section is silent on the need for investors to exhaust local

remedies which could have been done by the domestic institutions. Speedy and expertise might be the reasons behind the choice of this mode of dispute settlement as business would need a fast and reliable means of settlement of dispute unlike ordinary courts which seem to be overwhelmed with backlog of cases.

Tanzania has also signed a number of BITs with a number of countries. According to UNCTAD Tanzania has signed 20 BITs.<sup>8</sup> Special with these BITs are reciprocal protection of interests of investors through non-discrimination, fair and equitable rules, but also provide stability through ensuring non retrogression of such guarantees to the detriments of investors.<sup>9</sup> It is through these BITs investors sign contractual investment agreements with States on various areas inclusive of mining.

At international level, Tanzania is also a member State of the World Bank and is bound by the Convention on International Centre for Settlement of Investment Disputes.<sup>10</sup> This convention provides a forum for investors who are foreign to the state in which they have invested to file claims against such states. It also offers the forum for the host States to sue foreign investors who will happen to breach some of the terms of investment agreements.<sup>11</sup>

Furthermore, at a regional level Tanzania is also a member of the East African Community (hereafter EAC) which shares common external tariff.<sup>12</sup> This move promotes trade among the East African Community member States now composed of South Sudan, Burundi, Rwanda, Uganda, Tanzania and Kenya.<sup>13</sup> Regional integration like the EAC helps in multilateral trade negotiations at WTO where Tanzania is also a member. Externally, EAC also offers a good platform

for trade deals with other regional trading block like EU as will be discussed in the next part but one. The next part discusses the recent action of revamping of natural resource laws and its implication in Tanzania.

### 3.1 Revamping of the natural resource laws and its legal implication under IEL

Tanzania has recently passed three new laws which have greatly changed the Tanzania investment outlook both at international and domestic level. These laws are the Natural Wealth Resources (Permanent Sovereignty) Act;<sup>14</sup> the Natural Resource Wealth and Resources Contracts (*Review and Renegotiation of Unconscionable Terms*) Act;<sup>15</sup> and the Written Laws (*Miscellaneous Amendment*) Act.<sup>16</sup> The impact of these laws is threefold, namely: the past; present and future (potential) investors in natural resources like mining and forestry in Tanzania as they set the requirements and procedures to be adhered to.

Revamping of the laws on natural resources arose out of the pressing policy of the current government to build more domestic industries instead of relying on foreign imported goods. It is believed that if all minerals mined in Tanzania would have been processed and sold as finished products, mineral sector would have contributed significantly to the economic growth.<sup>17</sup> Additionally, the overhauling of the laws has come as a result of the feeling that minerals are being looted by foreign multinational companies which do pay little or no tax at all coupled with little or no royalties, leaving locals amidst poverty as victims of the mining activities.<sup>18</sup> It is also seen as a gesture on the part of the government to exercise its sovereignty over natural resources

for the benefit of its people.<sup>19</sup> While these laws seem popular and potentially for the public interest, it is worth to unpack some of the relevant silent features here under.

#### 3.1.1 Exercising Sovereignty over Natural Resources

Under international customary law principle, every State is regarded to enjoy exclusive ownership of all the resources within its jurisdiction. Consequently, States are free to dispose of, or develop policies on the utilisation of their resources subject to not causing effects beyond its borders. Additionally, the principle of permanent sovereignty over natural resources (hereafter PSNR) empowers the State to formulate laws and regulations which govern the exploitation of resources within its jurisdiction. As a result, foreign investors and their investments are expected to be bound by the laws of a particular State in which they have invested.

However, Tanzania had surrendered her jurisdiction to the international forum through her laws on investment and mining sector. As noted from above,<sup>20</sup> investment disputes both under the Tanzania Investment Act and the Mining Act had conferred the ICSID and other international forum jurisdiction. In recognition of the tilted nature of the IEL, Tanzania under the Natural Wealth Resources (Permanent Sovereignty) Act;<sup>21</sup> has conferred jurisdiction to local institutions in dispute settlement. As a result, no investor is expected to file any claim arising from investment in natural resources in Tanzania

1 Section 3 of the United Republic of Tanzania; Investment Act No. 38 of 1997.  
 2 Section 23 (1-2) of the United Republic of Tanzania; Investment Act No. 38 of 1997  
 3 United Republic of Tanzania, Draft Review of the Investment Act CAP 38 2002 and Proposal for Investment Act 2015, section 23.  
 4 Sauvart, P.K., *Attracting Direct Investment and Benefiting from it: Challenges for the Least Developed countries*, Transnational Corporation Review, 2015, vol.7, No. 2, p. 126.  
 5 Lange S, *Gold and Governance: Legal Injustices and Lost Opportunities in Tanzania*, African Affairs, 2011, vol. 110, No. 439, p. 235.  
 6 Act No. 14 of 2010.  
 7 See section 10 (4) (d) of the Mining Act No. 14 of 2010.

8 Tanzania, United Republic of, Bilateral Investment Treaties (BITs), available at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/222> (last accessed on 20th of November 2017)  
 9 See (para 3.2.2 below) p. 17 for details.  
 10 Section 23 of the United Republic of Tanzania; Investment Act No. 38 of 1997.  
 11 The Convention on International Center for Settlement of Investment Disputes, articles 25 and 27.  
 12 The East African Community External Tariff of 2017; The Protocol on the Establishment of the EAST African Community Common Market.  
 13 EAC Partner States <https://www.eac.int/eac-partner-states> last accessed on April 2018.

14 Act No. 5 of 2017  
 15 Act No. 6 of 2017  
 16 Act No. 7 of 2017  
 17 United Republic of Tanzania, Permanent Secretary, Ministry of Energy and Minerals Press Release; Export Ban of Metallic Mineral Concentrates and Ore of 3<sup>rd</sup> March 2017, available at <https://mem.go.tz/press-release-export-ban-of-metallic-mineral-concentrates-and-ore/> (last accessed 18<sup>th</sup> April 2017)  
 18 United Republic of Tanzania Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector, Vol.2 of 2008, p.42 para 3.4.8; United Republic of Tanzania, The Commission for Human Rights and Good Governance (CHRGG) Report on Public Inquiry on Displacement of People from the Lands in Tanzania of Feb 2012, pp. 24, - 31, Legal and Human Right Center, Tanzania Human Right Report of 2015, p. 168.

19 Article 1 of the UN General Assembly Resolution 1803 (XVII) issued on 14<sup>th</sup> December 1962; Article 2, of the UN General Assembly Resolution 3281 (XXIX), Charter on Economic Rights and Duties of States of 12<sup>th</sup> December 1974. Also see Article 1 and 3 of the UN General Assembly Resolution 637 (VII) The Right of People and Nations to Self-Determination of 16<sup>th</sup> December 1952, Article 9 and 27 of the United Republic of Tanzania Constitution of 1977 as amended from time to time; see also sections 4 and 5 of the Natural Wealth and Resource (Permanent Sovereignty) Act No. 5 of 2017; See also the interpretation of the ICJ on the illegal looting of the natural resources from Democratic Republic of Congo by the Ugandan army officials as amounting to violation of customary international law in the Case concerning armed activities on the territory of the Congo (Democratic Republic of Congo v Uganda), ICJ Judgment 19 of 2005, para 345.  
 20 See (para 3.0 above), p. 8.  
 21 See section 11 (1) of the Act No. 5 of 2017.

in the international forum.<sup>1</sup>

Moreover, the new legislation seems to provide the State with wider policy space by prohibiting investment contracts with stabilisation clauses.<sup>2</sup> Stabilisation clauses are phrases or paragraphs in a negotiated investment contract or legislation which set a number of aspects such as tax chargeable and legal provisions that shall remain unchanged for a given period of time during the investment. States are therefore bound by the terms of the contract or legislation with stabilisation clauses no matter the change of circumstances. Consequently, this does not only deny the government revenue but also ability to formulate new policies for the public interests. The inability on the part of the government to formulate new policies severely impacts the sovereignty of the State which trickles down to its inability to provide for social services like: health; education; and housing among others.

### 3.1.2 Linkages between Natural Resources and other Economic Sectors

Despite the fact that Tanzania attracts a lot of foreign direct investment in various sectors, investment laws in Tanzania seriously lack provisions that ensure proper linkage of the investment.<sup>3</sup> Absence of proper linkage of investment denies Tanzania potential revenue and transfer of technology from the potential value chains that would have been created had the legal framework so directed. In addressing such gap, the new law limits the export of raw materials in all sectors in Tanzania.<sup>4</sup> For materials to be exported, the law requires initial value addition to be carried out domestically as a means to harness opportunities in employment, transfer of technology and revenue.

1 See section 11(2) of the Act No. 5 of 2017.

2 See section 100 E of the Written Laws (*Miscellaneous Amendment*) Act No. 7 of 2017.

3 OECD Investment policy review: Tanzania 2013, p. 37; See also para 3.3 of the East African Community Vision 2050: Regional vision for socio-economic transformation and development 2016, Arusha, Tanzania.

4 See section 9 of the Natural Wealth and Resource (Permanent Sovereignty) Act No. 5 of 2017.

Notably, this legal requirement comes at a time when mining companies have been transporting the mineral sands for refinery abroad for quite a long time. Exportation of mineral ores instead of value added mineral products from Africa in general and East African States in particular have also been the concern raised under the East African Vision 2050.<sup>5</sup> Taking into account the royalty formula adopted by the government; supervision challenges; and lack of corporate tax that accrue out of such mineral extracts compared with the expectations of the state and public at large, investors have been seen as they are looting instead of investing.<sup>6</sup>

### 1.1.3 Strengthening of the Fiscal Institutions in the Mineral Sector

As opposed to the oil and gas sub-sector, the mining sub-sector did not have a dedicated fiscal institution to ensure the sustainable management of its revenue. The petroleum oil and gas revenue for example are overseen under the Oil and Gas Resource Fund.<sup>7</sup> Among other functions; the fund acts as a pool of all the revenue collected from the investment in extraction of oil and gas. The law also sets principles on how the funds may be used as a means to ensure future generation benefits from the resources.<sup>8</sup> The fund is established under the principle of intergenerational equity which recognizes that oil and gas are non-renewable and belongs to Tanzanians. Noting the gap in the mineral sector, the Written Laws (*Miscellaneous Amendment*) Act<sup>9</sup> introduced the National Gold and Gemstone Reserve with similar functions as the oil and gas resource fund. Additionally, the law has established a requirement that

5 See para 3.3.3 of the East African Community Vision 2050: Regional vision for socio-economic transformation and development 2016, Arusha, Tanzania.

6 Tanzania Minerals Audit Agency (TMAA); Report on Minerals, Royalty forms and rates applicable in the Mining Industry, available at <http://www.tmaa.go.tz/publications/view/a-study-on-minerals-royalty-forms-and-rates> (last accessed on 21 April 2017); United Republic of Tanzania, Permanent Secretary, Ministry of Energy and Minerals Press Release; Export Ban of Metallic Mineral Concentrates and Ore of 3<sup>rd</sup> March 2017, available at <https://mem.go.tz/press-release-export-ban-of-metallic-mineral-concentrates-and-ore/> (last accessed 18<sup>th</sup> April 2017)

7 See section 8 of the Oil and Gas Revenue Management Act No. 22 of 2015.

8 See section 11 of the Oil and Gas Revenue Management Act No. 22 of 2015.

9 See section 27 D of Act No. 7 of 2017.

all financial dealing in the mineral sector has to be conducted through the local banks in Tanzania.<sup>10</sup> This move seems to address the linkage gap that has been identified by the OECD Review in 2013.<sup>11</sup>

### 1.1.4 Broadening Transparency and Accountability in Natural Resource Extraction

Transparency and accountability (among other factors such as democracy and rule of law, good governance, to name but a few) in natural resource extraction is said to contribute towards effective conversion of the resources into economic growth.<sup>12</sup> Concerns on the illicit financial flow from the natural resource sector as a result of legal framework which among other things does not embrace transparency have been echoed globally, mostly in African countries.<sup>13</sup> In Tanzania natural resources contract negotiations have been labelled as being secretive<sup>14</sup> and tainted with corruption because of lack of transparency.<sup>15</sup> Consequently, despite a number of investors investing in mineral sector since independent to date, the mineral sector has not been able to significantly contribute to the GDP and economic development of an ordinary citizen. Tanzania has however adopted a constitutional

10 See section 10 (1) and (2) of the Act No. 5 of 2017.

11 See (para 3.1.2 above) p. 13.

12 Collier P, *Laws and codes for the resource curse*, Yale Human rights and Development Journal, 2014, vol.11, No. 1, p 10; Collier P, *The political economy of natural resources*, Social Research, 2010, vol. 77, No.4, pp. 113-115; The thematic group on good governance of extractive and land resources of the sustainable development solutions Network, *Harnessing Natural resources for sustainable development: Challenges and solutions: A technical Report for the post 2015 Development Agenda* 2013, p. 9.

13 Para 45 of the UN E/RES/2015/3.

14 Majinge, C. R, *The Doctrine of Permanent Sovereignty over Natural Resources in International Law and its Practice in Developing Countries: The Case of a Mining Sector in Tanzania*, African Yearbook of International Law Online 2008, vol.16, No.1, p. 250; See section 10 of the Mining Act No. 14 of 2010 empowering the minister to enter into MDA for on behalf of the government with no requirement for review or approval of the agreement by the parliament.

15 Majinge, C. R, *The Doctrine of Permanent Sovereignty over Natural Resources in International Law and its Practice in Developing Countries: The Case of a Mining Sector in Tanzania* African Yearbook of International Law Online 2008, vol.16, No.1, p. 250; Lissu, T., *In God we trust; The political economy of law, human right and the environment in Tanzania's mining industry*, Law Social Justice and Global Development Journal 2001 Issue No. 2 para 8.1.

democracy where there is separation of powers between the state, parliament and the judiciary since independence to date.<sup>16</sup> For the first time under the recent passed laws, natural resource contracts are required to be reviewed, re-negotiated and approved by the National Assembly.<sup>17</sup> This step does not only ensure transparency but also open a room for accountability for those officials who will be involved in negotiation of natural resource contracts. It also shades a light towards a greater contribution of mineral sector to the economic growth in Tanzania.

Additionally, the review and or re-negotiation is intended to identify terms which are against the public interest, limiting the government policy space and burdensome on the part of the government.<sup>18</sup> Notably, the law on review and re-negotiation has a retrospective effect and thus contracts entered into by the previous regime are within the reach of the National Assembly. The position of the law seems likely to address previous contractual arrangements which have raised public concern such as the Buzwagi deal.<sup>19</sup>

### 1.1 Legal Implications of the Government's Actions

With the above<sup>20</sup> legal provisions and the policy direction of the government, it is an indicator that the laws are intended to ensure the government makes use of its policy space to convert the resource richness into economic growth. However, when looked from the international investment framework perspective, the following express and implied implications to Tanzania are worthwhile for critical consideration.

16 See the United Republic of Tanzania Constitution of 1977 as amended from time to time.

17 See section 11 of the Written laws (*Miscellaneous Amendment*) Act No. 7 of 2017; Section 12 of the Natural Wealth and Resources (*Permanent Sovereignty*) Act No. 5 of 2017.

18 See key aspects for review under section 6 (1) and (2) of the Natural Wealth and Resources Contracts (*Review and Re-negotiations of Unconscionable Terms*) Act No. 6 of 2017.

19 Majinge, C. R, *The Doctrine of Permanent Sovereignty over Natural Resources in International Law and its Practice in Developing Countries: The Case of a Mining Sector in Tanzania* African Yearbook of International Law Online 2008, vol.16, No.1, p. 250.

20 See (paras 3.1.1-3.1.4 above), pp. 12-15.

### 3.2.1 Review and Renegotiation of the Sealed Contracts and Parties' Consent

As shown above,<sup>1</sup> the National Assembly is given power to review and order for renegotiation of a previous sealed contract between the government and investors. However, investment agreements are protected under principles of law of contract which requires parties consent in varying the terms of the contracts. Moreover, under international law principle of *pancta sunt servanda* it is required that parties have to respect their former commitments, and where changes are made, it should involve the consent of parties.<sup>2</sup> This poses a potential threat as some investors may not be ready to renegotiate out of the guarantees which are in their favor. Consequently, once an investor disagrees with the renegotiation, and the government proceeds terminating the relevant contract, such action may trigger a dispute between the parties.

### 3.2.2 Withdrawal from the IEL Commitments

Tanzania was a member of both international investment agreements in a form of bilateral and plurilateral arrangements. Tanzania as is for other dualist state international agreements are operationalised through domestic laws. That is to say principles of IEL are founded into our domestic investment laws.<sup>3</sup> Consequently, the enactment of a law contrary to the previous commitment expressly indicates a withdrawal of the state from international conventions and BITs.

Apparently the express withdrawal from international convention and BITs will not immediately impact the existing principles in the international agreements Tanzania has signed. The basis for non-express withdrawal from the international rests on the fact that international investment requires stability. Consequently, State commitment is needed to ensure protection in terms of time to be bound by terms of BITs. State commitment

1 See (para 3.1.4 above), p. 15.

2 Sonarajah, M., *The International Law on Foreign Investment*, (2<sup>nd</sup> Ed) Cambridge University Press, 2004, p. 278.

3 The Tanzania Investment Act No. 38 of 1997.

will include time in which the convention or BIT will be in force and mode of termination of the BITs and impact of such termination on the continued effects of the BITs. Such issues have to be taken into account because not all BITs and convention will immediately cease application upon termination.<sup>4</sup>

Examples could be traced from the BITs between Tanzania and UK in which a period of 12 months will have to lapse before any termination is regarded effective.<sup>5</sup> Also, in the BIT between Tanzania and Sweden the same mode of termination as that between UK and Tanzania is adopted.<sup>6</sup> However, the BIT between Sweden and Tanzania allows a further application of some provisions of the BITs for a period of 15 years from the date of termination in respect to investments entered into when the BITs was still in force.<sup>7</sup> The same time of 15 years lapse of time before an effective termination of the BITs is also found in the BIT between Tanzania and the Netherlands, to name but a few BITs provisions.<sup>8</sup>

In light of the foregoing, neither the withdrawal from the individual mining contract, nor from the international agreements would insulate Tanzania from its international commitments under such agreements. Instead, it will provide room for investors to trigger the ICSID and or other international dispute settlement clauses under the Investment Act, Mining Act and MDAs which have domesticated the BITs and the ICSID Convention. Notably, the chances of winning or losing are unclear as the arbitral tribunals are not operating like court system for its jurisprudence to be predictable under precedence system for example. Also cost

4 UNCTAD Denunciation of the ICSID Convention and BITs: Impact on Investor – State Claims, [unctad.org/en/Docs/webdiaeia20106\\_en.pdf](http://unctad.org/en/Docs/webdiaeia20106_en.pdf) accessed on 3<sup>rd</sup> December 2017.

5 Agreement between Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Republic of Tanzania for Promotion and Protection of Investments, Treaty Series No 90 of 1996, Article. 14.

6 Agreement between the Government of United Republic of Tanzania and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of investments, Article 10 (2).

7 Agreement between the Government of United Republic of Tanzania and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of investments Article 10 (3).

8 Agreement on Encouragement and Reciprocal Protection of Investment between the United Republic of Tanzania and the Kingdom of the Netherlands, Article 14 (3).

implication both in litigating and in case the final verdict is in favour of investors might greatly affect the economy of the state. The possible impacts on the economy of the state might be great financially. Such threats are even higher considering the current investment legal framework which guarantees investors of free transfer of assets, capital, and interest which would include all forms of compensation.<sup>9</sup>

To sum-up, this part has shown that Tanzania is adopting its legal framework to ensure the natural resource richness contributes to the economic growth of the State and its people. This seems to be an internal push towards ensuring the IEL on investment area provides a greater policy space for the country specific development strategies; widen employment opportunities; and revenue base in the natural resource sector. The next immediate part discusses the trade aspect arising out of the Tanzania refusal to sign the EPA agreement.

### 3.3 Non-Signing of the EPA Deal with the EU

The Economic Partnership Agreement commonly abbreviated as EPA is an example of regional trade arrangements between trading blocs. This agreement involves the European Union (EU) on the one hand and the African, Caribbean and Pacific Countries (hereafter ACP) in which East African countries [Tanzania inclusive] are members. The EPA through its provisions intends to ensure free movement of goods and service between the trading blocs. This would mean goods and services from the EU will gain market access in the East African Community (hereafter EAC) equally for goods from EAC gaining free access to the EU market.

In order to realise the concept of free market access EPA provisions are calling for more liberalisation of the market access for EU goods and services into the EAC markets. This would mean under EPA partner states should be prepared to offer lesser tariff commitments than what have actually been agreed in the

9 See section 21 of the Tanzania Investment Act No. 38 of 1997.

multilateral trading system under the WTO.<sup>10</sup> Moreover, to ensure effective protection of the EU market access rules of non-discrimination applies especially when it comes to most favoured nation treatment.<sup>11</sup>

Legal provisions under the EPA agreement are seen to pose threats to the domestic industries in Tanzania since they call for deep integration and free market access among the unequal.<sup>12</sup> To be noted here, Tanzania is among the Least Developing Countries (hereafter LDCs) as per the United Nations record.<sup>13</sup> This makes it a beneficiary of the Generalized Scheme of Preference under the EU Every but Arms (EBA) initiatives.<sup>14</sup> In this scheme, beneficiaries who are LDCs gain duty free and quota free access to the EU markets.<sup>15</sup> Notably, this adds to the disincentive for the opening up of Tanzanian markets to EU through deep lowering the tariff beyond what is agreed at WTO level. As a result, this move supports the protectionism approach Tanzania is taking towards its domestic industry against the possible surge of goods from EU.

In the light of above, it would also mean that, suppose the protectionism approach yield better results (like spur economic growth, increase in manufactured goods, employment and service delivery), Tanzania will graduate from the LDC status. This will automatically disqualify Tanzania from enjoying the benefits under the EU Generalized Scheme of Preference and brings in an incentive to think of re-negotiating the trade deals with EU on equal footing as other middle income countries.<sup>16</sup>

10 The Economic Partnership Agreement between the East African Partner States, of the One Part and the European Union and its member states of the other Part, Article 5 (2) (b).

11 The Economic Partnership Agreement between the East African Partner States, of the One Part and the European Union and its member states of the other Part Article 15 (1-5).

12 Akyuz, Y., *Multilateral Disciplines and Question of Policy Space* in Faundez J and Tan C.(ed) International Economic Law, Globalization and Developing Countries, Edward Elgar Publishing Limited, 2010, p. 34-66, at p. 41.

13 UN Committee for Development Policy: List of Least Developed Countries (As of May 2016), available at [www.un.org/en/development/desa/policy/cdp/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc_list.pdf) (last accessed on 24th December 2017).

14 European Union Everything But Arms, available at <http://www.eac.int/initiatives/european-union-everything-arms>, (last accessed on 26<sup>th</sup> December 2017).

15 European Union Everything But Arms, available at <http://www.eac.int/initiatives/european-union-everything-arms>, (last accessed on 26<sup>th</sup> December 2017).

16 Sekou Toure Otandi, Tanzania Refusal to Sign EU Trade

It is thus noted in this part that, Tanzania opted to protect its domestic policy against the possible harm that could have been brought by the signing of the EPA. Also, non-signing does not operate negatively to Tanzania as still it gains market access under the Generalized Scheme of Preferences. This sends a hope that Tanzania will make use of such a protectionism approach to ensure its growth and be able to compete at international level.

#### 4.0 Conclusion and the way forward

This article concludes by reiterating the fact that, IEL has potentials of triggering economic growth among nations if properly applied. It is also true that IEL has been used as a mechanism to protect interest of the developed countries around the globe as noted in mineral sector in Tanzania. As a result, it poses serious challenges through limiting the government policy space especially to modern governments which are subjected into increased public awareness, freedom of speech and growing sense of accountability both in public and private sector.

It is also worth to point here the best approach to be taken by the developing countries is to change the tilted IEL rules both from domestic and international levels. This can be done by pushing for more representation, transparency through pressure groups both formed by states and non-governmental organisations. This approach is worthwhile as a move towards avoiding being more involved into unfair trade and investments deals through better negotiations in future, proper framing of domestic investment legal rules towards balancing protection of foreign investment and re-investment in our country. The adoption of better negotiation strategy in EPA deal and reviewed laws on natural resources in Tanzania send a signal of awaking “sleeping giant” in Tanzanian perspective.

As noted from above,<sup>1</sup> the two aspects, the

Pact gives East Africa Time to rethink, available at <http://theconversation.com/tanzanias-refusal-to-sign-eu-trade-pact-gives-east-africa-time-to-rethink-62707> (last accessed on 20th April 2017).

<sup>1</sup> See (paras 3.1 and 3.3 above), p. 11-19.

revamped laws on natural resource and non-signing of the EPA deal bear both express and implied implications to Tanzania. This paper views the following as a way forward for Tanzania.

#### 4.1 Express Withdrawal from International Forum vs Impliedly bound by Past Agreements

Despite the new laws expressly withdrawing Tanzania from the international commitments, the stabilisation clause still impacts the previous signed agreements. According to Peinhardt and Rachel<sup>2</sup> countries cannot withdraw from the entire investment agreements as a result of the stability clauses. Countries such as; Argentina, Bolivia, South Africa to name but a few withdrew from the BITs and from the ICSID but still are bound. Notably, the withdrawal from international forum gives a country a room to think and draft a new model agreement that may offer them a greater flexibility in policy formulation.<sup>3</sup> Examples of such models are the Indian model agreement which encompass human rights consideration clause.<sup>4</sup>

#### 4.2 Express Enjoyment of Sovereignty vs Implied Need to Fill the Skills Gap in the Natural Resource Sector

Entrusting domestic institutions the duty and obligations to handle all disputes arising from the natural resources is an indicator of practical state sovereignty over natural resources. However, Tanzania is challenged by the lack of necessary skills in the area of natural resources particularly in minerals and natural gas. A reflection from the local content policy and URT Natural Gas Utilisation Master Plan<sup>5</sup> indicate that skills on the area are badly needed. Natural resource skills gap impacts a number of institutions

<sup>2</sup> Pienhardt C and Wellhausen R.L., *Withdrawing from Investment Treaties but protecting the investment*, Global Policy, 2016, vol.7, No.4, pp. 4-7.

<sup>3</sup> Pienhardt C and Wellhausen R.L., *Withdrawing from Investment Treaties but protecting the investment*, Global Policy, 2016, vol.7, No.4, p. 6.

<sup>4</sup> See Article 12 of the Model Text for the Indian Bilateral Investment Treaty.

<sup>5</sup> United Republic of Tanzania Final Draft Natural Gas Utilisation Master Plan 2016-2045, paras 2.3, and 7.6; United Republic of Tanzania Local content policy of Tanzania for oil and gas industry 2014 paras 1.1 and 2.4.2.

such as judiciary which is expected to handle natural resource disputes related. Notably, the back log of cases and elongated technical procedures may not be health to foreign investors who are used to an international speedy dispute settlement.<sup>6</sup>

Moreover, the advocates who are the officers of the court need to have the necessary skills in natural resources and principles related thereto for justice to be attained timely.<sup>7</sup> As a matter of fact, the foundation of skills possessed by the advocates and judges is always the universities where they attain their degrees. Consequently, the skills gap cascade further to the curriculum offered in Universities in Tanzania where majority of Tanzanian attain their basic qualifications. Universities are thus expected to move with the pace of the law and economic circumstances so as to offer graduates who are ready to tackle the modern day challenges.<sup>8</sup>

#### 4.3 Tanzania's Potential Graduation from the LDC Status and the Need for Negotiation of EPA

On EPA deal negotiations, Tanzania took the right approach of not signing. Notably however, in future and especially where the move by the government towards industrialisation matures, Tanzania will move out of the least developed countries group. This would mean that Tanzania has to prepare to possibly negotiate such kind of a deal in future as a country in transitional economy as all the benefits will not accrue to it any longer.

<sup>6</sup> Ringo S. F., *The institutional and regulatory framework of insolvency and creditor rights system in Tanzania in light of developing principles of international best practices*, The Tanzania Law Journal, 2010, vol. 1, No. 1, pp. 116-117;132.

<sup>7</sup> Ringo S. F., *The institutional and regulatory framework of insolvency and creditor rights system in Tanzania in light of developing principles of international best practices*, The Tanzania Law Journal 2010, vol. 1, No. 1, p. 132.

<sup>8</sup> United Republic of Tanzania Final Draft Natural Gas Utilisation Master Plan 2016-2045, para 2.3; United Republic of Tanzania Local content policy of Tanzania for oil and gas industry 2014 paras 1.1 and 2.4.2.