PUBLISH WHAT YOU PAY

Promoting Extractives Tax and Transparency Project

Fair Share? Shining a Light on the Extractive Industries Fiscal Regimes in

MOZAMBIQUE, TANZANIA AND UGANDA

PUBLISH WHAT YOU PAY

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List of Acronyms

ACHPR	African Charter on Human and People's Rights
AMV	Africa Mining Vision
AU	African Union
Bcf	Billion Cubic Feet
CCIE	*Coligação Cívica sobre a Indústria Extractiva*
CGT	Capital Gains Tax
CISCO	Civil Society Coalition on Oil and Gas
CIT	Corporate Income Tax
CNOOC	China National Offshore Oil Company
CSR	Corporate Social Responsibility
DRC	Democratic Republic of Congo
DTAs	Double Taxation Agreements
EAC	East African Community
EACOP	East African Crude Oil Pipeline
EITI	Extractives Industries Transparency Initiative
ENH	*Empresa Nacional de Hidrocarbonetos*
FDI	Foreign Direct Investment
FID	Final Investment Decision
HRW	Human Rights Watch
INP	*Instituto Nacional de Petroleo*
JDA	*Juventude Desenvolvimento e Advocacia Ambiental*
LNG	Liquified Natural Gas
MDAs	Mineral Development Agreements
NRGI	Natural Resource Governance Institute
PETT	Promoting Extractives Tax and Transparency
PSAs	Production Sharing Agreements
PWYP	Publish What You Pay
SADC	Southern African Development Cooperation
Tcf	Trillion Cubic Feet
TEITA	Tanzania Extractive Industries Transparency Initiative
TJNA	Tax Justice Network Africa
TMAA	Tanzania Minerals Audit Agency
UN	United Nations
VAT	Value Added Tax
WHT	Withholding Tax

Foreword

Gloria Majiga-Kamoto,
PWYP Global Council Member and CEPA, Malawi

There has long been an assumption that extractive industries in countries with abundant natural resources, could provide the resources to improve the lives and prospects of their populations. However time and time again, the industry has failed to live up to expectations.

Publish What You Pay was founded in 2002 on the principle that managing natural resources with greater transparency, participation and accountability could help fuel development in countries rich in oil, gas and mineral wealth; and that civil society had a critical role to play in overseeing the good governance of the sector. Central to this is ensuring fair tax regimes that benefit resource dependent economies.

Fast forward to 2021, the looming global climate crisis has been exacerbated by the Covid-19 pandemic which has devastated lives and economies; particularly in the Global South, where health systems are notoriously weak, budgets are limited and poor governance often prevails.

The pandemic drove significant, global economic shocks, not least in the extractive industries. Lower oil demand with declining prices and mining supply chain disruptions provided an ominous signal of what is to come as the climate crisis takes hold.

The pandemic has pulled resource rich countries in conflicting directions and increased the urgency to maximise income from oil, gas or mining projects. It has also simultaneously revealed how precarious the future is, if they rely on these projects to fill the state coffers.

This is the increasingly complex backdrop against which the governments of Mozambique, Uganda and Tanzania now operate. All are historically mining nations. All have recently become oil and gas producers. All face immense challenges in avoiding a race to the bottom through low tax concessions, and navigating how – and even whether - the wave of oil and gas discoveries in their nations can translate into tangible benefits for their citizens, as the climate emergency intensifies.

These countries are looking to sustain economic prosperity on the expectation of revenues from projects that significantly contribute to the climate crisis. At the same time they are at risk of making quick deals to exploit those resources - potentially compromising the income from them - in the small window before projects become unviable.

The question now lies in how these countries can get the best deal to realise the desired development. Although it is becoming increasingly difficult to decipher what a “good deal” for citizens in resource dependent countries is. More so as fossil fuel projects are being developed against a lean global carbon budget and are likely to exacerbate a crisis where the impacts will be felt more strongly in the Global South; and also because the timeframe in which these projects will be able to produce adequate returns for governments is ever diminishing, and may have even passed.

What is clear though, is that failing to receive adequate tax revenues from the extractive industries in these countries when the need has never been greater would be a huge failure.

Given the weak legal structures and fragile socio-economic situations in the countries, the onus for change rests heavily on civil society, academia and grassroots activists. They face the immense challenge of ensuring that their nations’ laws, regulations and agreements are transformed, so that for the first time host communities can benefit from the natural resources they live by.

It is, after all, the communities on the frontline of oil, gas and mining operations who bear the brunt of their extraction. The path to change this is through transparency. This is true not just in these African nations, but in other developing countries whose economies rely on their extractive industries. PWYP remains committed to making it happen.

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Executive Summary

Over the last 15 years, the eastern Sub-Saharan countries of Mozambique, Tanzania and Uganda have registered huge discoveries of oil and gas resources. The wave of discoveries in the region began with Uganda's announcement of the presence of commercial oil in the Albertine Graben in 2006. This was followed by news of the discovery of vast amounts of natural gas in Mozambique's Rovuma Basin in 2010. At the same time, Tanzania announced that it had discovered natural gas off its southern coast – while the country was also taking critical steps to revive its historically significant mining sector.

The wave of petroleum discoveries, coupled with efforts to revitalise the mining sector, has the potential to transform the economies of these countries and bring lasting benefit for their citizens. However, this is subject to proper management of resource revenues and good overall governance of the sector. It is also unclear as to how the energy markets on which current projections are based will respond to the short- and long-term effects of the COVID-19 pandemic, and the inevitable transition to clean energy. In the short run, these countries' prospects are highly dependent on their ability to obtain a fair share of their resource revenues. This in turn depends on the quality and effectiveness of the fiscal regime that each country chooses to adopt for its extractive sector – the set of tools that determines how revenues from the extractive industries are shared between the state and companies.

Given the importance of these fiscal regimes, Publish What You Pay commissioned studies to evaluate their effectiveness in Mozambique, Tanzania and Uganda. The Mozambique study focused on the Golfinho/Atum project in the Rovuma Basin, while the Tanzania and Uganda studies were focused on mining and petroleum projects respectively. The objective of these country studies was to generate the information necessary for reform of extractive industries fiscal frameworks, and to steer collective advocacy at the regional and global levels for countries to obtain a fair share of revenue from their resources.

It is a major finding of this synthesised report that on paper, Mozambique, Tanzania and Uganda all appear to have reasonably robust and effective tax and other revenue collection systems. All three countries have legislation for taxation of corporate income, capital gains and other forms of income taxes from the extractive industries. Companies involved in extraction are also subject to other forms of direct and indirect taxes, such as withholding taxes, stamp duty, customs duty and value-added tax (VAT). However, the ability of these countries to secure a fair share of revenues from their resources is often held back by past mistakes and compromises made in the negotiation of pre-existing resource contracts. Past contracts have granted companies excessive and unjustified incentives at the expense of host countries. They also contain stabilisation clauses which greatly limit the ability of states to pursue tax and other legislative reforms aimed at maximising revenues from the extractive industries. In Mozambique, petroleum taxation reforms in 2014 and 2017 do not apply to the Rovuma Basin projects. This has ensured that companies continue to enjoy a discounted corporate income tax rate and other financial advantages, despite the change in circumstances from when the agreements were signed.

In an attempt to break out of this yoke, Tanzania enacted two critical pieces of legislation in 2017 that give its Parliament and the government powers to respectively review and renegiotiate past contracts in the interest of the state. Although it is rather too early to determine how far these reforms will go in strengthening the extractive industries fiscal regime, their effect is already beginning to be felt. For example , in 2020 the government of Tanzania successfully renegotiated its contract with Barrick Gold to give the state a 16% stake in all gold mines operated by the company. Tanzania's move is in line with the State Reporting Guidelines developed by the African Commission on Human and People's Rights – a body established within the African Union. The guidelines, which are in relation to the extractive industries, enjoin countries to "renegotiate agreements that limit the State's ability to collect adequate revenue from commercial activities within the extractives sector".

Besides stabilisation clauses, the findings show that the limited capacity of countries to audit and approve costs recoverable by extractive companies has cost them significant revenues. Delays in the audit of recoverable costs in Mozambique cost the country US$33 million in the period 2015-17. The fiscal regimes in all countries have also been identified as prone to illicit financial flows resulting from treaty abuse, aggressive tax planning, transfer mispricing/ price manipulation and, in some cases, outright tax evasion by the companies. In Tanzania, African Barrick Gold plc was found to have failed to declare profits from its mining operations for a period of four years yet it still managed to pay dividends to its shareholders in the UK. Even then, witholding taxes were not deducted from these payments. On this basis, the Court of Appeal found the company liable to pay taxes worth US$81.8 million.

In Mozambique, the disposal of Anardako's assets at a cost of USD 3.9billion attracted 22.56% (USD 880m) in CGT which is less than the 32% (USD 1.248) prescribed in the law. It is not clear as to how this discounted amount was reached. In Uganda, the move by oil companies to operate through Dutch subsidiaries will cost the country an estimated US$287million in withholding taxes. Continued non-disclosure of resource agreements also poses a huge revenue risk and may compromise all countries' fiscal regimes, no matter their quality. In Mozambique, the Rovuma Basin contracts were kept secret for seven years, and a number of mineral agreements in Tanzania remain secret. Uganda has not disclosed any of its petroleum agreements to date.

Overall, the effectiveness of the extractive industries fiscal regimes in Mozambique, Tanzania and Uganda is greatly undermined by the inherent weaknesses in the regimes themselves, poor enforcement due to capacity constraints, and stablisation clauses in existing contractual arrangements which limit the ability of states to pursue reforms aimed at revenue maximisation. In light of these findings, PWYP makes the following recommendations:

Recommendations to African countries

- Resource-endowed countries in Africa should take seriously their obligation to comply with the State Reporting Guidelines Relating to the Extractive Industries, Human Rights and the Environment. The guidelines, which are binding, establish the standards that states should adopt and comply with for effective fiscal regulation, tax collection and equitable revenue sharing.
- Renegotiate existing resource agreements that seek to limit the state's ability to maximise revenues from the country's extractive sector. It is particularly important to review stabilisation clauses that seek to benefit companies at the expense of host governments, to enable states to obtain a fair share of revenues from their sovereign resources.
- Urgently renegotiate existing Double Taxation Agreements i.e., agreements that restrict the ability of state parties to tax economic activity that spans both countries,especially those that have been concluded with tax haven countries such as the Netherlands and Mauritius. This will help reduce the incidence of illicit financial flows arising from treaty abuse, and the associated tax evasion and avoidance schemes, all of which have had significant impact on resource revenues.
- Establish beneficial ownership registries for all mining prospecting and petroleum exploration and production companies. All such companies should be required by law to disclose their beneficial ownership status. This requirement should also extend to companies involved in the provision of goods and services to the extractives sector (contractors and subcontractors). Beneficial ownership registries should be publicly accessible and regularly updated.
- Incorporate early-warning systems and conflict management into resource governance processess. If adhered to, these mechanisms can go a long way in facilitating a peaceful and conducive political environment for mineral prospecting and oil and gas exploration, development and production.
- Publish without delay all past, present and future resource agreements signed with mining and petroleum companies. Publication of current and future resource agreements is a requirement of the Extractive Industries Transparency Initiative (EITI).
- Adopt appropriate fiscal rules for the effective management of revenues generated from the extractive industries. According to the Natural Resource Governance Institute, a fiscal rule is a multi-year constraint on overall government finances defined by a numerical target. Fiscal rules help in management of extractive revenue expenditure, and cushion governments against the negative macroeconomic effects of resource windfalls.
- Invest in the development of standard and context-informed fiscal regimes for the extractive industries on the continent. This will help harmonise often conflicting extractive fiscal arrangements provided for in specific country laws and resource contracts. A standard progressive fiscal regime for the continent will boost states' potential to secure a fair share of revenues generated from their natural resources.
- In respect to mining, countries should align their mining laws and policies with the Africa Mining Vision (AMV). The challenge however is that while the AMV contains very progressive policy suggestions in respect to fiscal regimes, it is not legally binding on countries. In this regard, the African Union should consider reviewing the AMV with a view of turning it into a legally binding instrument.

COUNTRY-SPECIFIC RECOMMENDATIONS

A. MOZAMBIQUE

- o Build internal capacity to conduct regular audits and approvals of cost-recovery claims by companies. The current practice of engaging external auditors is costly and unsustainable. There is also a strong likelihood of conflict of interest, given that some external auditors may have had past dealings with companies.
- o Renegotiate current concession contracts to have a free "carried interest" provision that applies across the entire natural gas value chain, and not just to the research and exploration stages. Otherwise, Mozambique will have to resort to borrowing to meet its share of development costs and reimburse companies in respect to the research and exploration stages.
- o Work towards the peaceful resolution of ongoing internal conflict in order to create a conducive environment, especially for companies operating in the Rovuma Basin. Peace is a prerequisite for the successful development of the extractive sector, and failure of the state to guarantee it will have a significant impact on projected revenues.
- o Convert current incentives given to natural gas companies into state equity in ongoing projects. This will ensure that the state obtains a fair share and that companies do not enjoy a free ride at the expense of other businesses, which have to shoulder a greater part of the tax burden.

Mozambique lies in south-eastern Africa, bordered by Tanzania to the north, Zambia and Zimbabwe to the west, South Africa to the south and the Indian Ocean to the east.

As of 2018, total Natural Resource Rents Contribution to GDP was 15.6%

Mozambique is known for its coal, aluminium and natural gas reserves.

1. The World Bank describes natural resource rents as total natural resources rents, natural gas rents, coal rents (hard and soft), mineral rents and forest rents. This was the only comparable GDP contribution across the three countries.

B. TANZANIA

- o Consider the enactment of specific legislation for the management of mining revenues. The legislation should provide for among other things the establishment of a seperate mining revenue fund for the effective management of all mining revenues. Resource funds that are independently run help reduce the risk of political interference and make it easier to monitor revenue expenditure and hold the state accountable.
- o Involve communities in the negotiation and development of partnership agreements with mining companies and in the implementation of corporate social responsibility plans. Community participation in such initiatives helps create harmony and improve the overall quality of community projects.
- o Publish all past, current and future Mineral Development Agreements (MDAs) in accordance with the EITI Standard. Recent amendments in the law to limit public disclosure of MDAs contravene the country's obligations under the EITI. They should be urgently rescinded in the interest of transparency and accountabilty in the sector.

The United Republic of Tanzania is bordered by Kenya and Uganda to the north; the Democratic Republic of Congo (DRC), Rwanda and Burundi to the west; Zambia, Malawi and Mozambique to the south, and the Indian Ocean to the east.

As of 2018, Total Natural Resource Rents Contribution to GDP was 3.5%[2]

Tanzania is blessed with a vast amount of precious metals (gold, copper), diamonds and gemstones, and industrial minerals.

2. *id*

C. UGANDA

- Uganda should publicly disclose all past, present and future Production Sharing Agreements (PSAs) signed with different international oil companies. Public disclosure of PSAs is key for transparency and accounatbility.
- Put in place an appropriate legal framework for EITI operationalisation. Although Uganda is an EITI member, there is need to enact a law to facilitate implementation of the EITI Standard by enabling the disclosure of revenue collection and allocation, social and economic spending, licence allocations and beneficial ownership of companies. The legal framework should also facilitate engagement between the government, oil companies and civil society.
- Align existing PSAs with the Uganda 2016 Model Production Sharing Agreement. All future agreements should be negotiated on the basis of this model.
- Consider converting all future tax and business incentives given to oil companies into state equity.

Uganda is bordered by Kenya to the east, South Sudan to the north, DRC to the west, and Rwanda and Tanzania to the south.

As of 2018, Total Natural Resource Rents Contribution to GDP was 7.9%[3]

Uganda struck commercial oil in the Albertine region in 2006.

3. *id*

01

Introduction

Uganda has generated close to
US$1 billion
in oil revenues

US$1.4 billion
in capital gains from natural gas discoveries in Mozambique.

US$1.8 billion
from minerals in Tanzania according to the Bank of Tanzania

Recent discoveries of vast quantities of oil and natural gas resources in Mozambique, Tanzania and Uganda have raised hopes and improved the region's prospects of emerging as a new petroleum frontier. However, this possibility is subject to numerous considerations, such as the ability of each country to obtain a fair share of extractive revenues, prudent management of resource revenues, management of the long-term effects of the COVID-19 pandemic, and the transition to clean energy.

The wave of discoveries in the region began with Uganda's announcement of the presence of commercial oil in the Albertine Graben in 2006.[4] The country's proven oil reserves are currently estimated at 6 billion barrels, of which up to 1.4 billion are recoverable.[5] Uganda has the fourth largest petroleum reserves in Sub-Saharan Africa[6] in addition to 500 billion cubic feet in proven natural gas reserves.[7]

Uganda's announcement was followed by the discovery of astounding quantities of natural gas in Mozambique's Rovuma Basin in 2010.[8] Following subsequent discoveries, Mozambique's current natural gas reserves are estimated at about 100 trillion cubic feet. This gives it the third largest reserves in Africa (after Nigeria and Algeria), and the 14th in the world.[9] Also in 2010, Tanzania

4 Petroleum Exploration in Uganda, Petroleum Authority of Uganda, https://www.pau.go.ug/petroleum-exploration-in-uganda/
5 Uganda's Petroleum Resource Potential, Petroleum Authority of Uganda, https://www.pau.go.ug/ugandas-petroleum-resources/
6 Henrique Alencar, Caroline Avan and Joseph Olwenyi, "Cursed by Design: How the Uganda-Netherlands Tax Agreement is Denying Uganda a Fair Share of Oil Revenues", Oxfam Case Study, 1 October 2020, p.6. https://uganda.oxfam.org/latest/policy-paper/money-pipeline
7 Uganda Overview, US Energy Information Administration, https://www.eia.gov/international/analysis/country/UGA
8 Anadarko Gas Discovery in the Rovuma Basin, Offshore Northern Mozambique, Press Release from the Ministry of Mineral Resources (MIREM)/National Petroleum Institute (INP), http://www.inp.gov.mz/pt/Descricao-de-Concessoes/Anadarko-Gas-discovery-in-the-Rovuma-Basin-offshore-Northern-MozambiqueMozambique
9 Overview, US Energy Information Administration, https://www.eia.gov/international/analysis/country/MOZ; Delia Robertson, "Massive Gas Fields Discovered Off Mozambique", VOA News, 9 November 2011, https://www.voanews.com/africa/massive-gas-fields-discovered-mozambique

announced that it had struck natural gas off its southern coast.[10] According to current estimates, Tanzania's natural gas reserves stand at 57.4 trillion cubic feet.[11]

Even before the oil and gas discoveries, these countries were known for their rich mineral endowments. Of the three, Tanzania has the longest and most outstanding mining history. It is blessed with minerals of both metallic and industrial nature, and is the only place in the world where the precious gemstone tanzanite is mined.[12] Tanzania is among the leading mining countries in Africa, with gold exports constituting over 90 per cent of the country's mineral exports.[13] In an attempt to revitilise its mining industry and make it more productive, Tanzania introduced significant legal reforms in 2010.[14] The news of the discovery of natural gas at around the same time opened up debate and fuelled impetus for reform of the country's entire extractive sector. This has resulted in specific legislation to assert the country's permanent sovereignty over all its natural resources. Parliament has been given powers to review all existing resource agreements.[15] Recent reforms have also introduced high national content requirements for companies involved in the extractive industries.[16] While it is too early to predict whether these reforms will succeed in achieving their objectives, their effect to date has been far reaching in as far as they grant the state alot of control over the extractives sector.[17]

The recent wave of oil and natural gas discoveries in Uganda, Mozambique and Tanzania, as well as attempts to revamp the mining sector in Tanzania, have brightened the region's economic propects. The discoveries provide an opportunity for each country to generate significant revenues from its sovereign resources. The countries also stand to reap significant benefits from the ripple effects of an active extractive-based economy.

So far, Uganda has generated close to US$1 billion in oil revenues, a significant portion being from capital gains taxes colleted from oil companies. Since the country is yet to commence commercial oil production, this is a notable achievement. In Mozambique, natural gas discoveries have spurred investment and earned the country an estimated US$1.4 billion in capital gains tax from the Golfinho/Atum project alone. The Rovuma Basin project is also the biggest recipient of Foreign Director Investment (FDI) in Sub-Saharan Africa, at US$20 billion. Tanzania has also been successful in generating revenues from its mineral resources, and is one of Africa's top FDI destinations. According to the Bank of Tanzania, the country earned in excess of US$1.8 billion from its minerals in 2018-19.[18]

If well managed and used, the extractive revenues raised so far and those that will be generated in the future have the capacity to turn around the economies of these countries and to transform the lives of their citizens. However, this will depend on a number of factors, including governance standards, effective regulation of the sector, respect for envionmental and health safeguards, prudent revenue management and the energy transition. More importantly, the ability to yield sufficient revenues from the sector, and ensure that they are spent on creating lasting benefit for all citizens, will also greatly depend on the design and effectiveness of the fiscal regime that each country chooses to adopt.

10 Donald Mmari et al, "The Evolution and Current Status of the Petroleum Sector in Tanzania", in Fjeldstad, Odd-Helge, Mmari, Donald and Dupuy, Kendra (eds), Governing Petroleum Resources: Prospects and Challenges for Tanzania, CMI and REPOA, 2019, p.14.
11 Id. See also Tanzania, Overview. US Energy Information Administration, https://www.eia.gov/international/analysis/country/TZA
12 Tanzania Mining: Mining in Tanzania and its Minerals, https://www.tanzaniainvest.com/mining
13 Id.
14 Tanzania Mining Act, 2010.
15 The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and The Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017.
16 Petroleum (Local Content) Regulations, 2017 and the Mining (Local Content) Regulations, 2018; Tanzania enacts Reforms to make Extractive Industries Beneficial for Local Communities, Oxford Business Group, https://oxfordbusinessgroup.com/overview/unearthing-value-legislative-reforms-seek-make-extractive-industries-more-beneficial-local
17 "Mining Reforms in Tanzania, the Good, the Bad and the Ugly", Mining Review Africa, 20 February 2020, https://www.miningreview.com/gold/mining-sector-reform-in-tanzania-the-good-the-bad-and-the-ugly/

18 Bank of Tanzania Annual Report 2018/19.

1.2 Definition and Purpose of Extractive Industries Fiscal Regimes

Countries' ability to secure a fair share of revenue from their sovereign resources is greatly dependent on the choice of fiscal regime that governs their extractive industries. According to the Natural Resource Governance Institute (NGRI), the term "fiscal regime", when used in relation to the extractive industries, refers to "a set of instruments or tools (taxes, royalties, dividends, etc.) that determine how the revenues from oil and mining projects are shared between the state and companies."[19] Unlike other sectors, the extractive industries involve numerous complexities which, if not well managed, may result in countries not effectively benefitting from their resources. Extractive resources are finite in nature and are often found in remote areas with complex geologies.[20] This poses significant risks and creates extra capital requirements, alongside a long lead-time before profits are seen.[21] Mineral and petroleum resources are also prone to price volatilities on the world market, and their development poses several social and environmental concerns.[22]

The purpose of an effective and transparent fiscal regime is to mitigate the risks posed by the particuliarities of the extractive industries. A well-designed extractive fiscal regime guarantees the state a fair share of the revenues generated, while at the same time encouraging investment in the sector.[23] NGRI has observed that "Natural resource development may provide employment and other returns, but its principal benefit is the generation of government revenues to support development and the well-being of citizens."[24]

Beyond revenue generation and enabling countries to obtain a fair share of resources, the design of an extractive fiscal regime can enhance prudent revenue management, and foster compliance with environmental and other standards. These are critical prerequisites for any country to succeed in converting its extractives wealth into lasting benefit for its citizens. Otherwise, there is a heightened risk of the resource curse setting in – the tendency for resource-rich countries to register low levels of development when compared to those without similar resources.[25] Unfortunately, Africa is replete with examples of countries where the resource curse has become an endemic challenge. The ability of the emerging extractive industries in eastern Sub-Saharan Africa to break this disastrous cycle will be partly determined by the effectiveness of countries' chosen extractive fiscal regimes.

1.3 Purpose of the synthesis report

Given the risks and challenges faced by resource-rich countries in obtaining a fair share of revenues from their extractive industries, Publish What You Pay (PWYP) launched the Promoting Extractives Tax and Transparency (PETT) project to support the advancement of equitable and transparent fiscal policies in Mozambique, Tanzania and Uganda. The project seeks to promote information disclosure and analysis of fiscal frameworks and tax revenues generated from oil, gas and mineral resources in these countries. The information generated is expected to inform the design of more efficicient and effective fiscal regimes, and of the reforms necessary for countries to secure a fair share of revenue from their extractive industries.

19 "Fiscal Regime Design, What Revenues the Government will be Entitled to Collect", NRGI Reader, March 2015, https://resourcegovernance.org/sites/default/files/nrgi_Fiscal-Regime-Design.pdf
20 Jeffrey M. Davis, Rolando Ossowski, Annalisa Fedelino and International Monetary Fund, "Fiscal Policy Formulation and Implementation in Oil-Producing Countries", Washington, D.C., International Monetary Fund, 2003, p.10.
21 Id
22 Id.
23 Supra NRGI Reader; Fiscal Regimes in the Petroleum Sector, International Organisation of Supreme Audit Institutions Working Group on Extactive Industries, http://www.wgei.org/contracts/fiscal-regimes-in-the-petroleum-sector/
24 Precept 4, Natural Resource Charter, NRGI, Second Ed, 2014, https://www.extractiveshub.org/servefile/getFile/id/1225
25 Ross, Michael L., "The Political Economy of the Resource Curse", World Politics 51, no. 2 (1999): 297-322

This report provides a synthesis of the findings from individual country studies of the extractive industries fiscal regimes in Mozambique, Tanzania and Uganda. It also provides a comparative analysis of the design and effectiveness of the varying fiscal regimes, highlights valuable lessons for countries, and makes specific recommendations for reform. More detailed country-specific findings can be found in each of the three individual national studies.

1.4 Scope and methodology

The choice of countries was informed by their recent wave of oil and gas discoveries, rich mining history (in the case of Tanzania) and current critical stage in undertaking reforms vital for the successful management of their resources. In each selected country, PWYP supported teams to study the efficacy of fiscal regimes governing the extractive industries.

In terms of scope, the Mozambique country study focused on the fiscal regime governing natural gas in the Rovuma Basin, in particular the Golfinho/Atum Project. The Tanzania and Uganda studies focused on the fiscal regimes governing the mining and petroleum sectors respectively. All the studies were carried out between April and December 2020. The three national studies were led by an individual consultant, under the cordination and monitoring of PWYP partners in each country. These include the Civic Coalition on Extractive Industries hosted by KUWUKA JDA in Mozambique, Hakirasilimali in Tanzania and PWYP Uganda. The studies also benefited from in-country validation meetings and reviews provided by an independent consultant (author of this report) engaged by the PWYP secretariat in London.

02

Brief Country Profiles

In June 2017,

USD$8 billion

was invested in the development of a Floating Liquefied Natural Gas plant in the south Coral region.

3.77 Trillion

Tanzanian shillings (TZS) from mining and quarrying activities during 2017-18 According to the 10th report of the Tanzania Extractive Industries Transparency Inititaive (TEITA)

2.1 Mozambique Natural Gas in the Rovuma Basin – the Golfinho/Atum Project

Mozambique lies in south-eastern Africa, bordered by Tanzania to the north, Zambia and Zimbabwe to the west, South Africa to the south and the Indian Ocean to the east. It occupies a total area of 799,000 kilometres squared and, as of 2018, had an estimated population of 29 million people.[26] While Mozambique was already known for its coal, aluminium and natural gas reserves, exploration efforts in the Rovuma Basin led by US-based petroleum company Anadarko resulted in the discovery of vast natural gas resources in mid-2010.[27]

The Rovuma Basin, which is located offshore on the border with Tanzania, covers an area of 29,500square kilometers and consists of two major exloration areas.[28] Area 1 is made up of Atum, Barquentine, Camarao, Golfinho, Lagosta, Orca and Windjammer.[29] Area 4 covers the Coral field, which is presently being developed by Italian company, Eni East Africa.[30] In all, there are currently three natural gas development projects spanning both Areas 1 and 4: the Golfinho/Atum Project by Total E&P (the focus of the country study) in Area 1; South Coral

26 See Commonwealth Member Countries, Mozambique, https://thecommonwealth.org/our-member-countries/mozambique.

27 Anadarko Gas Discovery in the Rovuma Basin, Offshore Northern Mozambique, Press Release from the Ministry of Mineral Resources (MIREM)/National Petroleum Institute (INP), http://www.inp.gov.mz/pt/Descricao-de-Concessoes/Anadarko-Gas-discovery-in-the-Rovuma-Basin-offshore-Northern-MozambiqueMozambique

28 Overview, US Energy Information Administration, https://www.eia.gov/international/analysis/country/MOZ. Delia Robertson, "Massive Gas Fields Discovered Off Mozambique", VOA News, 9 November 2011, https://www.voanews.com/africa/massive-gas-fields-discovered-mozambique

29 Overview, US Energy Information Administration, https://www.eia.gov/international/analysis/country/MOZ. Delia Robertson, "Massive Gas Fields Discovered Off Mozambique", VOA News, 9 November 2011, https://www.voanews.com/africa/massive-gas-fields-discovered-mozambique

30 Id.

Floating Liquefied Natural Gas Project in Area 4 by Eni, and the Rovuma Liquefied Natural Gas (LNG) project in Area 4 by the Mozambique Rovuma LNG (MRV).

The Rovuma Basin natural gas discoveries have greatly boosted Mozambique's prospects and attracted much interest from investors in the sector. In June 2017, US$$8 billion was invested in the development of a Floating Liquefied Natural Gas plant in the south Coral region.[31] This was followed by the announcement of a US$20 billion investment in the construction of an inland liquefied natural gas plant by a consortium led by Anardako.[32] This investment, which has since been acquired by Total SA, has been classiffied as the largest FDI in Sub-Saharan Africa. An additional investment involving the Mozambique Rovuma Venture Consortium led by Exxon Mobil in respect to the Mamba project in Area 4 was expected during 2020. However, due to the COVID-19 pandemic, the consortium was forced to push the final investment decision to 2021.[33] Overall, the new investment is expected to unlock up to US$30 billion in capital, making it the largest ever in Sub-Saharan Africa.

With these developments, Mozambique is expected to rise and become one of the world's biggest exporters of natural gas. As of 2018, the country was producing up to 212 billion cubit feet (Bcf) of natural gas. Most of this (148 Bcf) was exported to South Africa via the Sasol Petroleum International Gas Pipeline.[34] Although these exports are yet to return tangible earnings, recent discoveries will greatly boost Mozambique's natural gas exports, especially to Asian and European markets. This in turn will increase the country's natural gas revenue-earning potential, which is expected to positively impact the economy and the lives of its people. Nonetheless, the Natural Gas Master Plan and development plans approved by the country dictate that some of the gas is allocated to the domestic market for production of liquified fuels, electricity and fertilisers. More immediately, the ongoing construction of LNG facilities provides opportunities for employment and skills development, and for businesses to supply goods and services.

In order to harness the opportunities presented by recent natural gas discoveries, Mozambique reformed its petroleum law in 2014.[35] There have also been reforms in the law relating to taxation and tax benefits in the extractive sector in both 2014 and 2017.[36] The fiscal implications of these reforms has been to increase the production taxes payable and to remove corporate tax reductions. However, these changes in the law do not apply to Rovuma Basin projects, including Golfinho/Atum. These are instead governed by the law under which the concession contracts were signed, Petroleum Law no.3/2001 of 21 February 2001.[37]

2.2 United Republic of Tanzania - Mining Sector

The United Republic of Tanzania is bordered by Kenya and Uganda to the north; the Democratic Republic of Congo (DRC), Rwanda and Burundi to the west; Zambia, Malawi and Mozambique to the south, and the Indian Ocean to the east. The country occupies a total area of 947,000 kilometres squared.[38] As of 2018, the total population was estimated at 56

31 Eni, "About Coral South", https://www.eni.com/en-IT/operations/mozambique-coral-south.html
32 Total, "About the Mozambique Liquefied Natural Gas Project", https://www.mzlng.total.com/en/about-mozambique-liquefied-natural-gas-project
33 "ExxonMobil's Delayed FID on Mozambique Project should come Next Year – Official", Reuters, https://uk.reuters.com/article/mozambique-exxon-mobil/exxonmobils-delayed-fid-on-mozambique-project-should-come-next-year-official-idUKL8N2DG6GT
34 See Mozambique Overview, US Energy Information Administration
35 Petroleum Law No.21/2014 dated 18 August
36 Law No. 27/2014 of 23 September , Specific Rules on Taxation and Tax Benefits of Petroleum Operations (Regime Específico de Tributação e de Benefícios Fiscais das Operações Petrolíferas - RETBFAP)
37 d, Article 39. See also Articles 2 and 3 of Exploration and Production Concession Contract (EPC) between the Government of the Republic of Mozambique and Anadarko Mozambique and ENH, Area 1 "Offshore" of the Rovuma Block, 2006 (the Anardako EPC), https://www.resourcecontracts.org/contract/ocds-591adf-3014563630/download/pdf
38 Commonwealth Member Countries, Tanzania, https://thecommonwealth.org/our-member-countries/united-republic-tanzania.

million.[39] Tanzania is blessed with a vast amount of precious metals (gold, copper), diamonds and gemstones, and industrial minerals (phosphates, mica, gypsum, limestone, graphite, quartz and vermiculite). In the early colonial years, mining emerged as a significant contributor to country's GDP, but the sector's importance dwindled following its nationalisation in the late 1960s and early 1970s.[40] The country's mining fortunes only began to recover with the decision to embrace a free-market economy in the 1990s. This facilitated a steady rebound of the sector, as a result of generous tax breaks, the absence of windfall taxes and a competitive royalty rate of 3 per cent.[41]

The mining and quarrying sector is currently responsible for up to 5.1 per cent of the country's GDP[42] According to the 10th report of the Tanzania Extractive Industries Transparency Inititaive (TEITA), in 2017-18 Tanzania earned minerals worth 3.77 trillion Tanzanian shillings (Tzs)[43]) from its mining and quarrying activities.[44] Even then, there was a decrease of Tzs1 trillion in the declared value of minerals produced in 2016-17 i.e., Tzs4.8 trillion.[45] Mining has also become a significant driver of FDI in Tanzania. According to the World Investment Report of 2020, Tanzania received total FDI inflows of US$1.1 billion in 2019, with a significant portion directed to the mining sector.[46] As of 2009, mining accounted for up to 51.9 per cent of the total FDI stock.[47] This is significant when compared to the agriculture sector, which, despite being bigger, only managed to attract 30.5 per cent of total FDI. Mining employs an estimated 35,900 people, 1.4 per cent of the country's total labour force.[48] Mining companies also make a number of corporate social responsibility (CSR) contributions, currently estimated at Tzs13.9 trillion.[49]

The growing importance of mining to the economy has attracted renewed state interest in managing the sector. In 2010, the major law that governs mining was substantially revised to strengthen regulation and enhance revenue collection. Further reforms were introduced in 2017, aimed at giving the state more control over the sector, promoting mineral beneficiation (improvement of economic value of minerals) and state participation, and asserting state power to review and renegotiate existing mineral agreements.[50] The Mining (Local Content) Regulations of 2018 have also introduced several other stringent reforms in the sector. Under the regulations, Tanzanian companies are given first preference in the granting of mining licences.[51] At least five per cent equity participation of a Tanzanian company is required to qualify for a mining licence.[52] It is also mandatory for national companies to own at least 20 per cent of shares in all companies that provide services to mining companies.[53] Mining companies are strictly required to use the services of Tanzanian financial institutions in their mining activities.[54] . While it is too early and difficult to predict the real effect of these legislative reforms on mining revenue,

39 Id.
40 Oxford Business Group, "Tanzania enacts Reforms to make Extractive Industries Beneficial for Local Communities"
41 Id
42 Id. See also Bank of Tanzania Annual Report, 2018/19. The 10th TEITI Report for the period 1 July 2017 to 30 June 2018. pp.23-26, https://www.teiti.go.tz/publications/report
43 Tanzanian shilling is used as the US$ conversion becomes inaccurate
44 The 10th TEITI Report for the period 1 July 2017 to 30 June 2018. pp.23-26, https://www.teiti.go.tz/publications/report
45 Id.
46 World Investment Report 2020: International Production Beyond the Pandemic, UNCTAD, 2020, p.72, https://unctad.org/system/files/official-document/wir2020_en.pdf; "Foreign Direct Investment in Tanzania," https://www.nordeatrade.com/no/explore-new-market/tanzania/investment#:~:text=According%20to%20UNCTAD's%202020%20World,21%2C8%20billion%20in%202019.
47 The Implications of the Extractives Fiscal Regime to the Tanzanian Economy: A case of the Mining Sector, November 2020, HakiRasilimali, Draft Tanzania Country Study Report.

48 Id.
49 Id.
50 The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and The Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017.
51 Regulation 8 (1) Mining (Local Content) Regulations. Under Regulation 3, an Indigenous Tanzanian Company refers to a company incorporated under the Companies Act a) with at least 50 per cent of its equity owned by Tanzanian citizens or b) in which Tanzanian citizens hold at least 80 per cent of executive and senior management positions and 100 per cent of all other positions.
52 Id. Regulation 8 (2)s.
53 Id.Regulation 8 (6).
54 Id, Regulation 34.

if successful, the reforms will improve the country's abilty to secure a fair share of revenue from its minerals. At the same time, the reforms have been blamed for creating much uncertainty in the sector and anxiety among investors.

2.3 Uganda-Petroleum in the Albertine Graben

Uganda is bordered by Kenya to the east, South Sudan to the north, DRC to the west, and Rwanda and Tanzania to the south. The country occupies a territorial area of 241,551 kilometres squared and as of 2018, had a total population of 43 million people.[55] In addition to a mining history dating back to the 1970s, Uganda struck commercial oil in the Albertine region in 2006. This development was a result of more than 80 years of oil prospecting and exploration by different international oil companies.[56] Uganda's current petroleum reserves are estimated to be about 6 billion barrels, of which 1.4 billion are recoverable.[57] In addition, Uganda had 500 billion cubic feet in proven natural gas reserves as of 2015.[58] Going by these estimates, the country has the fourth largest oil reserves in Sub-Saharan Africa.[59] With only 40 percent of the Albertine Graben explored so far, it is still possible for Uganda to join the list of top oil-producing countries in Africa.

Exploration, development and production efforts in the Albertine Graben are currently guided by Production Sharing Agreements (PSAs) signed before the 2013 Petroleum Law entered into force.[60] They are being led by UK-based Tullow Oil (currently in the process of transfer of all interests), Total E&P and China National Offshore Oil Company (collectively referred to as Joint Venture Partners).[61]). The first competitive petroleum exploration licences were issued in 2017 to Armour Energy Ltd and Oranto Petroleum, from Australia and Nigeria respectively. The second licencing round which was earlier on scheduled for mid 2020 was interrupted by the outbreak of the COVID-19 global pandemic.

The pandemic also affected the announcement of the Final Investment Decision (FID) by the joint partners, although initial delays in the FID were occassioned by disputes over taxes payable by Tullow Oil on the "farm down".[62] " of its interests to the other two Joint Venture Partners.[63] These seem to have been resolved with the government approval of the farm down in April 2020. The FID is expected to unlock US $10-20 billion in investment during the initial three years.[64] The FID also has implications for other planned and ongoing projects, such as the building of a refinery with capacity of 60,000 barrels per day, an international airport and industrial park at Kabaale, and the proposed East African Crude Oil Pipeline (EACOP) Project.[65] This involves the development of a 1,443-kilometre crude oil pipeline from Kabaale to the Chongoleani Peninsula in Tanzania.[66] When completed, it will be the longest heated crude oil pipeline in the world.

55 Commonwealth Member Countries, Uganda, https://thecommonwealth.org/our-member-countries/uganda
56 Petroleum Exploration in Uganda, Petroleum Authority of Uganda, https://www.pau.go.ug/petroleum-exploration-in-uganda/
57 Uganda's Petroleum Resource Potential, Petroleum Authority of Uganda, https://www.pau.go.ug/ugandas-petroleum-resources/
58 Uganda Overview, US Energy Information Administration, https://www.eia.gov/international/analysis/country/UGA
59 Henrique Alencar et al, "Cursed by Design: How the Uganda-Netherlands Tax Agreement is Denying Uganda a Fair Share of Oil Revenues", p.6.
60 Petroleum (Exploration, Development and Production) Act, 2013.
61 Field Development and Production, Petroleum Authority of Uganda, https://www.pau.go.ug/field-development-and-
62 Assignment of part or all of an oil, natural gas or mineral interest to a third party
63 Dennis Kakembo, "How Close is Uganda's Oil Final Investment Decision?" Observer, August 26, 2020.
64 Id.
65 The Uganda Refinery Project, Petroleum Authority of Uganda, https://www.pau.go.ug/the-uganda-refinery-project/; Hoima Industrial Park, Uganda National Oil Company, https://www.unoc.co.ug/midstream/kabaale-industry-park/
66 East African Crude Oil Pipeline, Overview, https://eacop.com/about-us/overview/

03

Key Features of the Extractive Industries' Fiscal Regimes in Mozambique, Tanzania and Uganda

The extractives fiscal regime may be defined as a set of tools that determine how revenues from oil and mining projects are shared between the state and companies.[67] The choice of these tools is highly dependent on each country's specific circumstances. Countries with a high appetite for revenue tend to opt for front-ended regimes, in order to generate revenue even before production. Others prefer back-ended arrangements, with a view to collecting more revenue as production increases.[68] The extractive industries fiscal regimes in Mozambique, Tanzania and Uganda constitute a mix of both front- and back-ended arrangements. These fiscal regimes exist either as part of specific legal frameworks or of resource contracts, which provide for a wide range of fiscal tools, including taxes and other forms of instruments and/or revenues.

3.1 Tax-Based Fiscal Instruments

Taxes have been defined as compulsory unrequited payments to general government.[69] In the context of the extractive sector, taxes may be levied on individuals, private companies, contractors, subcontractors and any other legal persons involved in the development of resources or the provision of services to the sector. For Mozambique, Tanzania and Uganda, the extractives fiscal regime is characterised by a mix of direct and indirect taxes. Direct taxes include corporate income taxes, capital gains taxes, petroleum production taxes, stamp duty and withholding taxes. Indirect taxes include Value Added Taxes (VAT). The level, extent and rates of taxes payable are usually defined in law. However, in some some instances, the applicable tax rates are determined in resource agreements.[70]

A limit of

US$200,000

per year on the total amount of local government levies payable by a mining company is imposed on current Mineral Development Agreements (MDAs).

67 See NRGI definition above.
68 Fiscal Regime Design, NRGI Reader, 2015.
69 Definition of Taxes, OECD Expert Group No.3 on Treatment of Tax Issues in Multilateral Agreement on Investment (MAI), 1996, https://www.oecd.org/daf/mai/pdf/eg2/eg2963e.pdf
70 See Draft Country Study Reports.

CORPORATE INCOME TAX

Corporate income tax (CIT) applies to oil, gas and mining companies' incomes at varying rates across the three countries. Under the recently reformed Specific Tax and Fiscal Benefits Regime in Mozambique (Law 27 of 2014), companies involved in petroleum operations are subject to a CIT of 32 per cent without any possibility for negotiation for a discount.[71] However, under Article 39 of this law, companies with existing contracts entered into on the basis of previous legislation (Petroleum Law of 2001) are only required to comply with tax obligations set under those contracts.[72]

TABLE 1: CIT RATES FOR THE EXTRACTIVE SECTOR IN MOZAMBIQUE, TANZANIA AND UGANDA

	MOZAMBIQUE	TANZANIA	UGANDA
Corporate Income Tax rate	32%	30%	30%

Source: Mozambique, Tanzania and Uganda petroleum and taxation laws

In the Golfinho/Atum project in the Rovuma Basin, the Concession Agreement provides for a 25 per cent discount on CIT for a period of eight years after commencement of commercial production. Under this arrangement, the effective CIT rate for the Golfinho/Atum project is 24 per cent, as opposed to 32 per cent under the 2014 Petroleum Taxation law and the Corporate Income Tax Law of 2007. However, Tanzania and Uganda impose a 30 per cent CIT on the chargeable income (gross income of the company, less allowable deductions) of all companies, including those involved in mining and petroleum activities.[73] Tanzania also imposes a 0.5 per cent alternative minimum tax on the gross revenue of companies (including those in mining) which fail to pay CIT as a result of being in a loss-making position for three consecutive years.[74]

CAPITAL GAINS TAX

Capital gains tax (CGT) applies to the disposal of assets of a capital nature. For all three countries, gains realised by companies on the disposal of capital assets are taxable. Mozambique and Uganda each impose CGT at a rate similar to their corporation tax, at 32 and 30 per cent respectively.[75] Tanzania imposes capital gains tax at a rate of 10 per cent for residents and 20 per cent for non-residents.[76] However, where the gain arises from a share disposal, the applicable tax rate is the same as the corporate rate, at 30 per cent.[77]

TABLE 2: CGT RATES FOR THE EXTRACTIVE SECTOR MOZAMBIQUE, TANZANIA AND

	MOZAMBIQUE	TANZANIA	UGANDA
Capital Gains Tax rates	32%	10% residents 20% non residents 30% of gain from a share disposal	30%

Source: Mozambique, Tanzania and Uganda petroleum and taxation laws

It is not clear how much Tanzania has managed to realise in CGT from its mining sector over the years. Until 2012, Tanzanian law did not recognise the application of CGT in respect to transactions involving changes in the underlying ownership of companies achieved through an indirect share disposal.[78] Mozambique and Uganda have been more successful in the collection of CGT on the transfer of petroleum rights and assets. In 2010, the government of Uganda collected US$404 million in CGT from Heritage Oil and Gas Ltd's sale of assets to Tullow Uganda Ltd.[79]An additional US$251

71 Law No. 27/ 2014 of September 23; Article 25, 2014 Petroleum Law.
72 Petroleum Law of 2001, Law 3/2001.
73 See Sections 53 and Schedule 1, Tanzania Income Tax Act cap 332 (Revised Edition) and Section 9 and Part 2 of the Second Schedule, Uganda Income Tax Act cap 340 (as amended).
71 Section 3 and 4 (1) and Item 3 (3) of Schedule 1, Tanzania Income Tax Act.

75 Article 29 of Law 14/2017 of December 28; Section 18 (1) (a), Uganda Income Tax Act. Business income includes gains from disposal of assets of a business nature.
76 Sections 8 (2) (c), 36 and 90 (1) (a) and (b) Tanzania Income Tax Act
77 Sections 90 and 65 QC, as well as Section 56 (1), Tanzania Income Tax Act.
78 Tax cases involving Afrika Mashariki Gold Mines Ltd held that gains made on share transfers outside Tanzania were not subject to tax, Afrika Mashariki Gold Mines Ltd v. Commissioner General (2005) 3 TTLR 1 and Africa Mashariki Gold Mine Ltd v. Commissioner General (2005) 1 TTLR 37.
79 Namala Doreen, "Uganda wins US$404 million Tax Arbitration Case against Heritage Oil: Attorney General", S&P Global, https://www.spglobal.com/platts/en/market-insights/podcasts/focus/010621-agriculture-rice-americas-2021-supply-harvesting-south-america-us

million was collected from Tullow's farm down to Total E&P and China National Offshore Oil Company in 2015.[80] Mozambique collected US$520 million from Anardako from the sale of a 10% stake in Golfinho/Atum project to Indias Oil and Natural Gas Corporation.[81] An additional US$880 million in CGT was realised from the acquistion of the remaining Anadarko assests (incorporated by Occidental Petroleum at the time) in the Golfinho/Atum by Total.[82]

WITHHOLDING TAX

Withholding tax (WHT) applies to payments made to lenders, employees, service providers, shareholders and subcontractors. In the context of the extractive industries, the paying mining or oil company is required to deduct, withold and remit to the government witholding taxes on interest and dividends payments, as well as other forms of payments made to third parties, such as service providers. Mozambique imposes a 10 per cent WHT on the gross amount of payments made to non-resident subcontractors in respect to the Rovuma Basin projects.[83] Tanzanian law equally imposes withholding tax obligations on mining companies in respect to payments of dividends, interest, natural resource payments, rent and royalties.[84] Service fees and contract payments made by mining companies are subject to a WHT of 5 per cent for residents and 15 per cent for non-residents.[85] Dividend payments attract a 5 per cent WHT if made by companies listed on the stock exchange of Tanzania's capital, Dar-es-Salaam. Dividend payments originating from companies not listed in Dar-es-Salaam attract 10 per cent WHT. Interest payments are taxed at 5 per cent, while all other payments attract a 15 per cent WHT rate.[86]

In Uganda, the Income Tax Act guides all payments of dividends, interests, royalties, rents or management charges made to non-resident persons, who are subject to a 15 per cent WHT on the gross amount received.[87] This same rate of WHT applies to payments made to non-resident subcontractors.[88] WHT obligations also apply to the payment of interest, dividends, professional and management fees to residents.[89]

TABLE 3: COMPARISON OF STATUTORY WITHHOLDING TAX RATES ACROSS THE THREE COUNTRIES

COUNTRY	DIVIDENDS	INTEREST	MGMT AND TECHNICAL FEES	ROYALTIES	NATURAL RESOURCE PAYTS	ALL OTHERS
Mozambique	20%	20%	10%	20%	20%	20%
Tanzania	5% if paying company is listed on Dar es Salaam Stock Exchange and 10% if not listed	10%	5% for payts to residents and 15% for non-residents. In case of pre-2014 contracts 3% for residents	15%	15%	15%
Uganda	15% for both residents and non-residents. If payment is from Uganda-listed company to resident, 10%	15% for both residents and non residents	15% for non-residents and 6% for residents	15% for non-residents	15% for non-residents	15%

Source: Mozambique, Tanzania and Uganda petroleum and taxation laws

80 Press Release, "Tullow Settles Capital Gains Tax Dispute in Uganda", Tullow, https://www.tullowoil.com/media/press-releases/tullow-settles-capital-gains-tax-dispute-uganda/.
81 "Mozambique Capital Gains Tax Bonanza Continues", The Economist, 4 April 2014, http://country.eiu.com/article.aspx?articleid=581698042&Country=Mozambique&topic=Economy&subtopic_4
82 Matthew Hill, "Mozambique sees $880 Million Tax Windfall from Occidental Deal", Bloomberg, 28 September 2019, https://www.bloomberg.com/news/articles/2019-09-28/mozambique-sees-880-million-tax-windfall-from-occidental-deal
83 Article 11 4(e), Anadarko EPC.2006
84 Section 82, Tanzania Income Tax Act.
85 Section 89H (2), Part IX B and Section 120, Uganda Income Tax Act.
86 Sections 117, 118, 118A, 89H(2) and Part IX A, Uganda Income Tax Act.
87 Section 83 and Part IV, Uganda Income Tax Act.
88 Section 85 Part IV of Third Schedule and Section 120, Uganda Income Tax Act.
89 Sections 117, 118 and118A Uganda Income Tax Act.

STAMP DUTY

Stamp duties are imposed on legal instruments involving conveyances, leases, land and share transfers. In Mozambique, consessionaires are exempted from payment of stamp duty for a period of five years from the start of operations.[90] Tanzania imposes 1 per cent stamp duty on legal instruments for conveyancing, leases and share transfers.[91] However, under the Mineral Development Agreements, the rate of stamp duty on the transfer of shares in mining companies has been reduced to 0.3 per cent. Ugandan law also prescribes a 1 per cent stamp duty on all transfers except share transfers by listed companies, to which a lower rate of 0.5 per cent applies.[92]

3.2 Non-Tax-based Fiscal Instruments

In addition to the taxes discussed above, companies involved in petroleum and mining operations in Mozambique, Tanzania and Uganda are required to make other forms of payment to the state, including royalties, bonuses, fees (institutional, research, training and rental) and, in some cases, local government levies. Additional revenues may also be realised from state participation and the government share in production.

ROYALTIES

Royalties refer to payments made to the government to compensate it for the right to extract (and purchase) a non-renewable natural resource.[93] Such payments may be made either as a percentage of the total value of output (the "ad valorem" basis) or as a fixed amount per unit.[94] The extent of royalties and the basis on which they are determined is usually described in law or in agreements signed with companies. The 2014 law in Mozambique provides for production taxes at the rate of 10 per cent and 6 per cent for oil and natural gas respectively.[95] Consessionaires are required to remit payments to the tax administrative authority, but the government reserves the right to demand payment in kind.[96] However, the 2014 law does not apply to the Rovuma Basin projects. For these projects, production taxes on natural gas stand at 5 per cent for onshore deposits, 4 per cent for deposits located at sea depth of less than 100m and 2 per cent for deposits located at a depth of 500m or more.[97] Since the Golfinho/Atum is located in deep waters of more than 500m, the applicable production tax rate is 2 per cent.

In Uganda, the rate of royalties to be paid by companies is negotiable and varies from project to project.[98] Although it is not clear to what extent the country's 2016 Model Production Sharing Agreement has so far been adopted, the agreement provides an idea of the amount of royalties payable by companies. Under Article 9 of the agreement, the royalty rate is determined by a sliding scale on the basis of the gross total daily production for each contract area.[99] The gross total oil production is defined as "the total output of crude oil, less all water and sediments produced and all amounts of petroleum re-injected into the petroleum reservoir."

90 NRGI, Oil Gas and Mining Fiscal Terms, January 2010, https://resourcegovernance.org/analysis-tools/publications/oil-gas-and-mining-fiscal-terms
91 Stamp Duty Act, cap. 189.
92 Stamp Duty Act, 2014.
93 NRGI, Oil Gas and Mining Fiscal Terms, January 2010, https://resourcegovernance.org/analysis-tools/publications/oil-gas-and-mining-fiscal-terms
94 Id
95 Article 10, Law 27/2014.
96 Draft Mozambique Country Study Report, 2020.
97 Article 11 (5)(a)(iv), Anardako EPC, 2006.
98 Mining (Minerals and Mineral Concentrates Trading) Regulations, 2018 also provide that
99 Model Production Sharing Agreement, 2016, https://www.unoc.co.ug/wp-content/uploads/2018/06/MPSA.pdf

TABLE 4: INDICATIVE ROYALTIES UNDER UGANDA'S MODEL PSA 2016[100]

GROSS TOTAL DAILY PRODUCTION (BARRELS OF OIL PER DAY)	UGANDA
Where the production does not exceed 5,000	(2½ + X)%
Where the production is higher than 5,000 but does not exceed 10,000	(5 + X)%
Where the production is higher than 10,000 but does not exceed 20,000	(7½ + X)%
Where the production is higher than 20,000 but does not exceed 30,000	(10 + X)%
Where the production is higher than 30,000 but does not exceed 40,000	(12½ + X)%
Where the production is higher than 40,000	(15 + X)%

Source: 2016 Uganda Model Production Sharing Agreement

The Tanzania Mining Act, 2010 (as amended) enjoins every authorised miner to pay a royalty on the gross value of minerals (determined through market valuation) produced under licence.[101] The issue of mineral export licences is also subject to the payment of royalties and other fees[102] Recent efforts to enforce royalty payments and control illegal smuggling of tanzanite, a mineral found only in Tanzania, saw the enactment of the Mining (Mirerani Controlled Area) Regulations. The law and the construction of the Mirerani wall have seen an increase in mineral production and revenue earnings from Tzs166 million in 2017 to Tzs1.4 trillion in 2018.[103]

TABLE 5: MINERAL ROYALTIES, TANZANIA

MINERAL	MINING ACT 2010	2017 AMENDMENT
Uranium	5%	5%
Diamond and gemstones	5%	6%
Metallic Minerals (Copper, Gold, Silver and platinum group minerals)	4%	6%
Gem*	1%	1%
Others (building materials, salt and industrial minerals group)	3%	3%

Source: Tanzania Mining Act (as amended)

** Gems are defined as cut and polished or engraved gemstone*

100 X represents an additional percentage to be agreed upon with the Companies
101 Section 87, Mining Act 2020 (as amended by the Written Laws (Misc Amendments), 2017..
102 Mining (Minerals and Mineral Concentrates Trading) Regulations, 2018 also provide tha
103 Tanzania Country Study Draft Report, 2020.

BONUS PAYMENTS

Bonuses are lump-sum payments required at specific points in the project timeline.[104] As they are always front ended, and not necessarily dependent on project profitability, bonuses provide a source of early revenues for host governments. Mozambique's petroleum law of 2014 provides for payment of a production bonus each time production reaches averages of 20,000 and 50,000 Barrel of Oil Equivalent (BOE) per day for the first time in a month.[105] However, the Golfinho/Atum project concessions make specific provisions for payment of a production bonus equivalent to US$5 million at the beginning of commercial production and US$10 million when production first reaches 20,000 BOE for the first time in a month. An additional US$20 million is due each time production reaches 50,000 BOE per day for the first time within a month.[106]

Uganda's petroleum law provides for payment of a signature bonus on the grant of a petroleum exploration or production licence.[107] The law defines a signature bonus as "a single, non-recoverable lump-sum payment by the licensee to the government upon the granting of the petroleum exploration or production licence."[108] The amount payable is determined by the agreement between the government and a company. The 2016 Model PSA does not mention a specific amount to be paid as a signature bonus and seems to leave this to the negotiation of the parties. However, the Model PSA does provide for payment of production bonues equivalent to US$5 million when production first reaches 50,000,000 BOE and thereafter US$3 million for any additional 25,000,000 BOE.[109]

LOCAL GOVERNMENT LEVIES

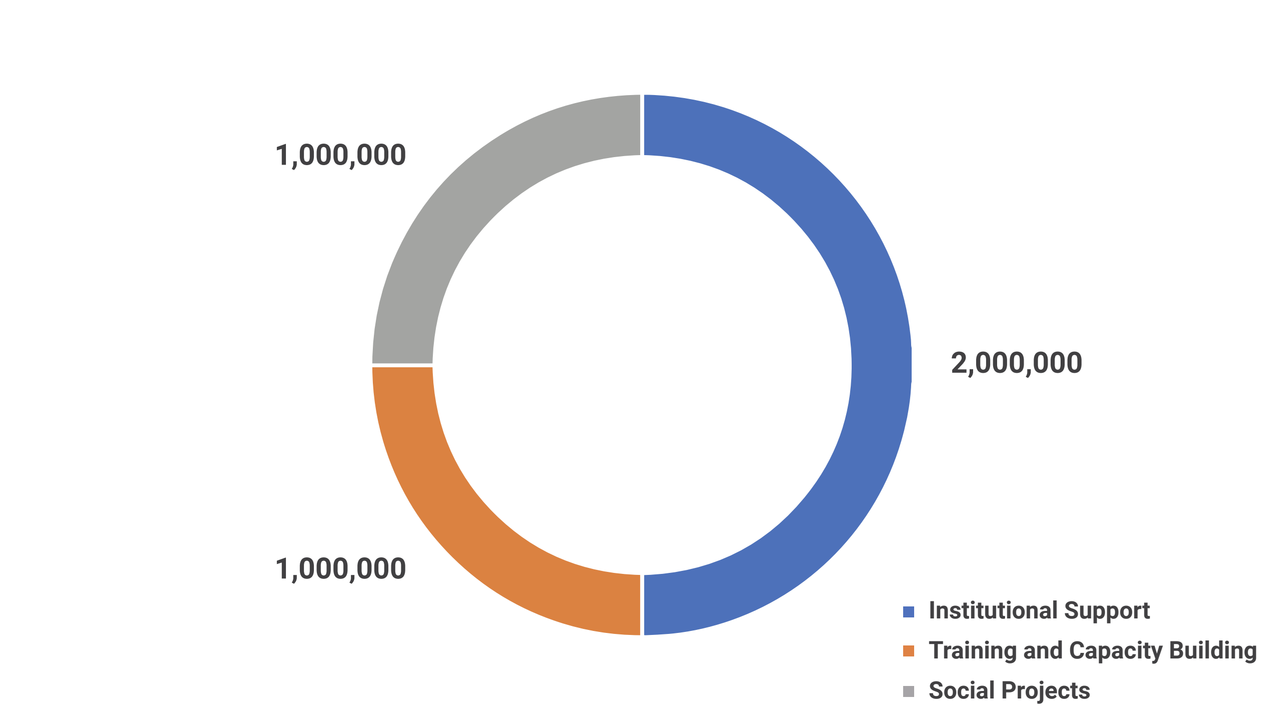
Petroleum companies in Mozambique and Uganda are not subject to any specific local government levies. However, Tanzanian law enjoins all companies to pay a percentage of their gross turnover to the local government authority in areas in which they operate. Under the Local Government Finance Act, 1982 (as amended), a levy of 0.3 per cent is imposed on the gross turnover of all companies.[110] However, current Mineral Development Agreements (MDAs) impose a limit of US$200,000 per year on the total amount of local government levies payable by a mining company.

INSTITUTIONAL PAYMENTS, CONTRIBUTIONS AND FEES

Mozambique's concession contracts provide for payment of three different kinds of contribution by oil companies. For the Golfinho/Atum project, the total amount of contributions payable is US$4 million: US$2 million in institutional support, US$1 million in institutional training and capacity building, and US$1 million to social projects.[111] The other payments required by companies include environmental permits, application fees, demolition fees and reconsideration of development plans.

104 NRGI, Fiscal Regime Design.
105 Petroleum Law No. 21 of 2014.
106 Article 12, Anardako Concession EPC, 2006. .
107 Section 156, Petroleum (Exploration, Development and Production) Act.
108 Section 156 (2) Petroleum (Exploration, Development and Production) Act.
109 Article 8, 2016 Model Production Sharing Agreement.
110 Section 18 of the Local Government Finances Act Cap 290 (R.E 2002).
111 Article 18, Anadarko Concession EPC, 2006.

FIGURE 1: GOLFINHO/ATUM PROJECT INSTITUTIONAL CONTRIBUTIONS (US$)



Source: 2006 Anardako Concession EPC, 2006

In Tanzania, mining companies are required to pay annual rents, application and renewal fees, land rents and land use fees.[112] Others fees include the annual charge for grant of mineral rights.[113] The Finance Act 2017 also imposes a 1 per cent inspection fee on the gross value of all minerals prior to clearance for domestic use or export.

Uganda's petroleum law enjoins every petroleum exploration or production licence holder to make annual payments of fees in respect to acreage, rent, training and research,[114] However, the rate of fees applicable is determined under the petroleum agreement.[115] Aside from the annual payments, fees are charged for access to scientific reports and renewal of reconnaissance permits, petroleum exploration, production and facility licences.[116]

STATE SHARE IN PRODUCTION

The state's share in the resource produced is usually determined either by the agreements signed with companies or by law. Mozambique's Petroleum Operations Tax Law stipulates that the government share increases with production, from 15 to 60 per cent[117] , while the concessionaire's share reduces from 85 to 40 per cent.[118] For the Golfinho/Atum concessions, the government's share in production increases from 10 to 60 per cent, while the concessionaire's share reduces from 90 to 40 per cent as production increases.[119] Under the 2016 Model Uganda PSA, the state's share in production ranges from 50 to 75 per cent..

STATE PARTICIPATION

State participation in extractive projects provides host governments with an opportunity to earn extra revenue, obtain critical information

112 Mining (Mineral Rights) Regulations 2018 (as amended). See also Section 33, Land Act.
113 Section 92, Mining Act, 2010.
114 Section 155, Petroleum (Exploration, Development and Production) Act, 2013.
115 Regulation 129 (2), Petroleum (Exploration, Development and Production) Regulations.
116 Schedule 1, Petroleum (Exploration, Development and Production) Regulations

117 Article 32, Law no. 27/2014.
118 Id
119 Article 9, Anardako EPC, 2006.

and participate in decision making. The level of state participation is usually defined by law, but in some cases may be determined through negotiation or purchase of shares by the state in specific oil, gas or mining projects. State participation provides a potential source of income, as it gives the state rights to share in project profits or dispose of an agreed portion of the resource.

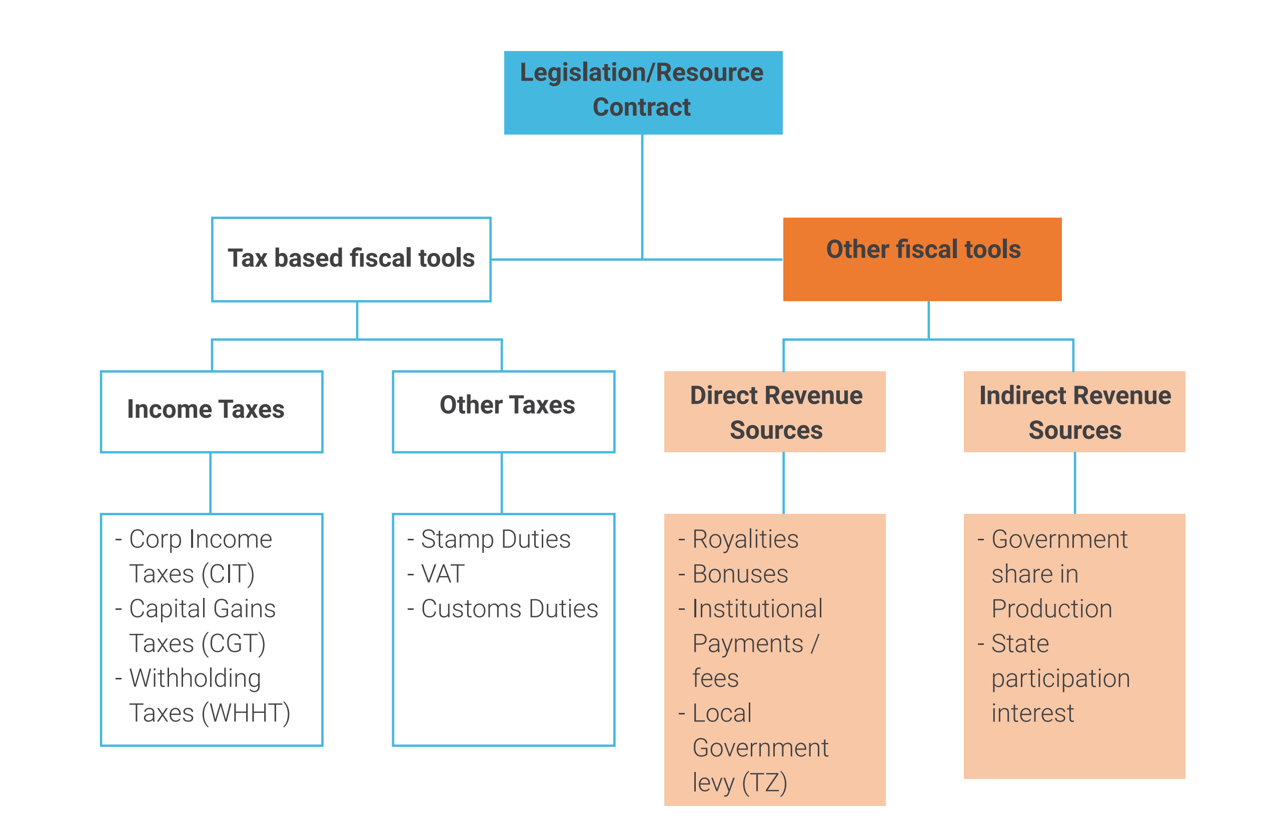
Mozambique's law sets the minimum threshhold for state participation in every project at 10 per cent. This is to be exercised through the national oil company, Empresa Nacional de Hidrocarbonetos. However, the law does not apply to the Golfinho/Atum project. The applicable consession contracts in this case provide for 15 per cent state participation interest[120] The contracts further provide for a "free carried interest" at the exploration and research stages.[121] This means that the state's costs are borne by the consessionaires at this stage.[122] However, at the development stage, the state is required to reimburse all costs incurred on its behalf and to pay its share of development costs.[123] For the Golfinho/Atum project, the state is expected to return US$1.4 million spent on its behalf so far, and to contribute an estimated US$2.2 billion at the development stage. Given the scale of funds, there is risk that the state will turn to borrowing to raise the required amounts. This is likely to be at very high interest rates, as the country's credit status has recently been downgraded.[124]

Tanzania amended its Mining Law in 2017 to set the minimum level of state participation in all mining projects at 16 per cent on a "free carry" basis.[125] Prior to this, state participation was subject to negotiation between the state and companies[126] This arrangement (negotiated state participation) still applies to all existing MDAs unless they have been renegotiated in accordance with the provisions of the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act of 2017. Recent amendments make it mandatory for all tax incentives granted to mining companies to be converted into government equity.[127] In this respect, the goverment may acquire up to 50 per cent of shares, commensurate to the total amount of tax incentives granted to the company.[128]

The level and extent of state participation under Uganda's petroleum law is subject to negotiation between the government and the licence holder"[129] The 2016 Model PSA provides for "free carry" state participation of up to 20 per cent. The government is required to issue written notification of its intention to participate in the project to the licencee within 120 days of receiving an application for a petroleum production licence.[130]

120 Id. Article 3 (2) (b)
121 "Free carry interest" means that the government does not pay equity, but instead makes concessions enabling companies to recover elsewhere in the fiscal package.
122 Id, Article 9 (13), Anardako EPC, 2006.
123 Id.
124 Mozambique Country Study Draft Report, December 2020.
125 Section 10(1) of the Mining Act, Cap. 128 R.E 2018. .
126 Section 10 (2), Tanzania Mining Act, 2010 (as amended).
127 Id..
128 d.
129 Section 124, Petroleum (Exploration, Development and Production) Act, 2013.
130 Article 10.1, 2016 Uganda Model Production Sharing Agreement.

FIGURE 2: OVERVIEW OF EXTRACTIVE INDUSTRIES FISCAL REGIMES IN MOZAMBIQUE, TANZANIA AND UGANDA



04

Effectiveness of Extractive Industries Fiscal Regimes in Mozambique, Tanzania and Uganda

US$176 million

of capital allowances and operating expenditure had been overstated by the Tanzania Minerals Audit on 12 mining Agency.

The choice and design of an extractive industries fiscal regime is influenced by several factors. These include the complexity of extraction, market prices and host country priorities. For this reason, there is no universal standard of what an effective fiscal regime should look like. However, there have been some attempts to develop general benchmarks and standards against which the effectiveness of extractive industries fiscal regimes can be assessed. According to these standards, an effective fiscal regime should be progressive, giving the government a larger share of revenues as project profitability increases.

To evaluate the strength of country fiscal regimes in this report, PWYP used the African Human Rights Commission State Reporting Guidelines in relation to the Extractive Industries.[131] The guidelines were adopted by the Commission – an African Union body – at its 62nd Session in April 2018. They set general standards and provide a comprehensive guide for states when complying with their reporting obligations under Articles 21 (right of all peoples to freely dispose of their wealth and natural resources) and Article 24 (right to a general satisfactory environment) of the African Charter on Human and People's Rights.

Importantly, the development of the guidelines was driven by the commission's objective "to formulate appropriate tools for promoting national standards and processes that guarantee compliance with human rights and environmental standards and ensure that the extractive industries meaningfully contribute to the improvement of the living standards of people."[132] In this endeavour, the

131 State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and People's Rights Relating to the Extractive Industries, Human Rights and the Environment, https://www.achpr.org/statereportingproceduresandguidelines

132 Id, p.v

guidelines enjoin states to adopt appropriate extractive sector fiscal regulations, and to routinely report to the commission on progress in their implementation. This obligation stems from recognition that the duty of the state to protect people's right to freely dispose of their resources entails the adoption of "comprehensive and beneficial fiscal legislation covering the revenue regime by which extractive industries are bound, including licence fees, profit taxes, royalties, dividends, bonuses, custom duties and capital gains tax."[133]

Since Mozambique, Tanzania and Uganda are all signatories to the African Charter on Human and People's Rights, they are bound to comply with the guidelines.[134] Specifically, they are obliged to uphold and report on compliance with standards relating to the formulation and implementation of effective extractive industries fiscal regulation, as stipulated in the guidelines. These relate to the establishment of robust tax and extractive revenue collection systems, disclosure of extractive revenues, anti-corruption, equitable sharing of extractive revenues, establishment of institutions for fiscal monitoring and enforcement of regulations, and the strict application of tax breaks and duty-free privileges.[135]

ROBUST AND EFFICIENT TAX AND OTHER REVENUE COLLECTION SYSTEMS

On paper, Mozambique, Tanzania and Uganda all appear to have reasonably robust and effective tax and revenue collection systems. All three countries have legislation for taxation of corporate income, capital gains and other forms of income from the extractive industries. Companies involved in the extractive sector are also subject to other forms of direct and indirect taxes, such as withholding taxes, stamp duty, customs duties and VAT. Recent reforms of fiscal regimes in all three countries seek to widen the scope and amount of resource revenues payable to the state.

Uganda introduced major amendments relating to the taxation of income from the petroleum industry in 2006 and has since amended the tax code several times to ensure that the sector is taxed in a more efficient manner.[136] Mozambique has reformed its extractives tax regime twice, in 2014 and 2017.[137] Most recently, Tanzania initiated sweeping legal reforms with significant revenue implications for the mining sector.

While recent reforms have the potential to enhance government shares of revenue from extraction, their application is limited when it comes to pre-existing projects. Stablisation clauses contained in resource agreements that govern these projects expressly retrict the power of the host government to alter taxation arrangements if this is detrimental to companies. For example, under the 2006 Anardako Concession Contract for the Golfinho/Atum project, companies must consent to the application of any new tax legislation to their operations.[138] As this would result in forfeiture of the tax benefits under the concession agreements (for example, the 25 per cent discount on corporate income tax), none of the companies has elected to be taxed under the revised petroleum operations taxation and tax benefits regime.[139]

Similar challenges exist in respect to the application of recent legislative reforms to the mining sector in Tanzania. These are not applicable to existing MDAs despite the fact that they are more progressive. For example, the 2017 amendments to the Mining Act impose a 6 per cent royalty payment on gold and diamonds. This is more rewarding when compared to the 5 per cent and 4 per cent respectively imposed under the MDAs. Existing MDAs also provide for 3 per cent withholding tax on technical services and management fees, which is less than 5 per cent withholding tax provided for under the amendment. Although Tanzania

133 Id, p.33
134 Mozambique ratified the charter on 22 February 1989, Tanzania on 18 February 1984 and Uganda on 10 May 1986, https://www.achpr.org/ratificationtable?id=49
135 Id, Paras 45, 46, 47 and 48.

136 Uganda Country Study Draft Report, January 2021.
137 Mozambique Country Study Draft Report, December 2020
138 Article 11.9, Anardako EPC, 2006.
139 Mozambique Country Draft Study Report, December 2020.

has recently passed two important pieces of legislation asserting the state's permanent sovereignty over its minerals and empowering the legislature to review the terms of existing resource agreements, so far only one MDA has been successfully renegotiatiated – the Acacia (now Twiga Corporation) MDA.[140]

Stabilisation clauses contained in existing resource agreements therefore greatly limit states' ability to reform tax legislation to maximise revenues from their extractive industries. Such clauses instead ensure that companies continue to enjoy financial advantages, despite the change in circumstances from the time when the agreements were signed. This in turn denies host states a fair share of the revenues generated from their sovereign resources.

In some instances, existing resource agreements offer excessive and often unwarranted incentives to companies at the expense of the state. In Mozambique, for example, Golfinho/Atum project concessionaires are entitled to a discount on CIT and are exempt from stamp duty on the act of setting up the company and any changes in share capital or in the constitutitve documents.[141] Tanzania and Uganda exempt companies from import duties on plant, equipment and spare parts used in the mining and petroleum sectors. Oil and gas companies are also exempt from VAT. While some of these incentives may be necessary to attract investment in the sector, the African Charter on Human and People's Rights (ACHPR) Guidelines require a strict application of incentives. This does not seem to be the case, except for Tanzania, where the law makes it mandatory for all incentives given to companies to be converted into state equity.

COST RECOVERY AUDIT AND APPROVAL

The extractive industries are among the most capital intensive and risky ventures. It is partly for this reason that resource-rich countries must rely on private companies for the exploration and development of their resources. Companies' ability to recover some or all of the costs incurred in the extractives enterprise provides a mitigating factor against the risks involved. For this reason, it is prudent for countries to provide for cost recovery as part of the extractive fiscal regime. Mozambique, Tanzania and Uganda all allow companies to recover costs incurred as part of their exploration, development and production activities. However, the extent of costs and the time at which they may be recovered varies across the three countries. The 2014 Petroleum Operations Tax Law in Mozambique provides for cost recovery of up to 60 per cent in a given fiscal year.[142] However, the Rovuma Basin contracts allow for concessionaires to recover up to 65 per cent in recoverable costs.[143]

In Tanzania, mining companies are entited to a 100 per cent deduction of all capital expenses incurred in the generation of income.[144] Other permited deductions or recoverable costs include royalties, annual fees, operating expenses, interest on debts and decommissioning costs, provided that they have been wholly or exlcusively incurred in the prodution of income. The Uganda Model PSA also permits companies to recover up to 100 per cent of operational costs and exploration and development expenditure.[145] However, cost recovery is capped at 65 per cent of the available crude oil or natural gas, and is subject to ringfencing, under which it is restricted to the contract area in which the costs were incurred. Overall, the extent and nature of permited recoverable costs under the extractive fiscal regimes of all three countries is generally acceptable. The principle of ringfencing as applied in all the countries also forbids companies from applying profits from productive contract areas to offset costs incurred in less productive areas. While this

140 Tanzania Country Study Draft Report, November 2020.
141 Article 11(4)(v), Anardako EPC, 2006.

142 Article 31 (5) Law no. 27/ 2014.
143 Article 9(5), Anardako EPC, 2006.
144 Section 33, Tanzania Income Tax
145 Article 11, 2016 Model Production Sharing Agreement.

is all progressive, there are major capacity challenges in the way that the cost recovery regime is enforced. In Mozambique, delays in the audit and approval of recoverable costs for over seven years cost the country hundreds of millions of dollars. A 2018 audit revealed that an estimated US$33 million in costs was owed to the companies. This was notwithstanding the fact that these costs would not have otherwise been recoverable (being ineligible costs) but for the delay in the audit and approval. [146] Under the Rovuma Basin agreements, the government is given a period of three years within which to audit and approve costs submitted by the companies. Companies are entitled to claim all costs where the audit and approval is not conducted in this timeframe.[147]

In all three countries, there exists a tendency among companies to overstate the amount of costs recoverable. This significantly affects the revenues payable, as companies claim more than they are entitled to at the expense of the host state. An overstatement of costs also has the effect of artificially reducing the amount of company profits subject to tax. A 2010 audit conducted by the Tanzania Minerals Audit Agency on 12 mining companies found that they had overstated their capital allowances and operating expenditure by around US$176 million.[148] In Uganda, an audit conducted by the Office of the Auditor General in 2016 found that US$39 million in costs claimed by companies between 2004 and 2011 was not eligible for recovery.[149] The audit also determined that another US$42 million was not recoverable, as it was not from a licensed exploration area.[150] More recently in Mozambique, a 2018 audit found that of the US$2 billion of costs claimed between 2015 and 2017 in respect to Areas 1 and 4, US$33million was not recoverable. As the audit was conducted more than three years from the time the costs were submitted, it was not possible to offset these costs, even when clearly irrecoverable. However effective a fiscal regime may be, a country stands to lose critical revenues if it is not able to audit and approve recoverable costs in a timely and efficient manner.

FISCAL DISCLOSURES AND TRANSPARENCY

The disclosure of information relating to the extractive industries is necessary for accountability, and promotes citizen participation in the sector. Under the ACHPR Guidelines, the extractive industries regulatory framework should take into account fiscal transparency in relation to the management of extractive concessions.[151]The guidelines also create obligations for states to report on total revenues collected from the extractive sector and any profits made.[152] States are also required to disclose the extent of involvement in joint ventures and attendant tax implications, if any.[153] More importantly, it is an obligation for states to disclose information relating to the use and expenditure of extractive revenues.[154] Disclosure requirements under the ACHPR Guidelines also apply to extractive companies. They are required to disclose information relating to the identity of owners, shareholders and local partners, profits, financial terms of agreements, and payments made to host governments in the form of fees, taxes, royalties and other revenues.[155]

Mozambique, Tanzania and Uganda are all members of the Extractive Industries Transparency Initiative (EITI) – a global standard for promoting open and responsible management of natural resources.[156] This requires companies and governments to publicly disclose the full text of contracts governing the exploitation of their oil, gas and mineral resources.[157] The EITI also obliges countries to report on the amount of payments

146 Mozambique Country Study Draft Report, December 2020.
147 Annex C, Section 1, number 1.5 (a), Concession Agreements.
148 Tanzania Country Study Draft Report, November 2020.
149 Office of the Auditor General, Annual Report 2016, p.17.
150 Id

151 ACHPR Reporting Guidelines, para 46.
152 Id
153 Id.
154 Id.
155 ACHPR Reporting Guidelines, para 63.
156 The EITI Standard, https://eiti.org/standard/overview#:~:text=The%20EITI%20is%20the%20global,country's%20natural%20resources%20are%20governed.
157 Mozambique Country Study Draft Report, December 2020.

received from the companies.[158] and to carry out an independent audit and reconciliation of extractive revenues paid by companies and received by governments.

Mozambique was admitted as a member of the EITI in 2009. The country was declared EITI compliant in 2012 and as of 2020 it has submitted a total of eight reports.[159] Tanzania also became a member of the EITI in 2009 and was declared compliant in 2012. The country has a dedicated EITI law that provides for the disclosure of local content information, CSR, capital expenditures, contracts and beneficial ownership of companies.[160] The law also establishes the Extractive Industries (Transparency and Accountability) Committee, an independent government body with a responsibilty to oversee the extractives sector. As of June 2020, Tanzania had submitted seven EITI reports and four progess reports. The government has so far dislcosed revenue receipts, equivalent to US$2.5 billion for July 2008 to June 2014. Uganda was only recently admitted as an EITI member, in August 2020, and is yet to produce any report. There are concerns over the absence of a suitable legal framework for EITI operationalisation.
By joining the EITI, all the three countries have signalled their intention to open up their extractives sector to scrutiny. The EITI framework is complimented by a range of freedom of information legislation in force in all three countries. These laws protect citizens' right to access public information. While they all represent positive steps towards ensuring a greater level of transparency, the challenge remains that, in practice, governments are reluctant to publicly disclose critical information on the extractive industries. In Mozambique, the Rovuma Basin contracts were kept secret for seven years and were only disclosed in 2013.[161]

158 Global Financial Integrity, Illicit Financial Flows, https://gfintegrity.org/issue/illicit-financial-flows/ (accessed on March 22, 2020)
159 Economic Commission for Africa, Illicit Financial Flow: Report of the High-Level Panel on Illicit Financial Flows from Africa, Addis Ababa, Ethiopia: United Nations Economic Commission for Africa, 2015.
160 Landry Signe, Marianna Sow and Payce Madden, "Illicit Financial Flows in Africa: Drivers, Destinations and Policy Options", Brookings Africa Growth Initiative Policy Brief, March 2020.
161 Mozambique Country Study Draft Report, December 2020.

A number of existing MDAs in Tanzania remain secret, while Uganda has not disclosed any PSAs to date. The failure to disclose contents of resource agreements greatly undermines the effectiveness of current extractive fiscal regimes.

RISKS OF ILLICIT FINANCIAL FLOWS

Illicit Financial Flows (IFFs) are defined as illegal movements of money or capital from one country to another[162] In the extractive industries, drivers of illicit financial flows include treaty abuse, tax avoidance through base erosion and profit shifting strategies, tax evasion, corruption, misreporting of production volumes, and violations of environmental and social standards.[163] There is growing anecdotal evidence to show that resource-rich countries in Africa are prone to IFFs.[164] The studies also show that the magnitude and intensity with which IFFs are perpetrated in resource-rich countries continues to escalate.[165]

Given this risk, an effective extractive industries fiscal regime should restrict the perpetration of illicit financial flows. Although all three countries have taken steps to limit IFF drivers by, among other measures, enacting transfer pricing legislation and rules, restricting the application of Double Taxation Agreements i.e., agreements that restrict the ability of state parties to tax economic activity that spans both countries and criminalising tax evasion, risks still exist.[166] In particular, information assymetries associated with the extractives sector have made it difficult for countries to effectively contain IFFs. For example, on In August 2020, the Court of Appeal of Tanzania found that African Barrick Gold failed to pay

162 Global Financial Integrity, Illicit Financial Flows, https://gfintegrity.org/issue/illicit-financial-flows/ (accessed on March 22, 2020)
163 Economic Commission for Africa, Illicit Financial Flow: Report of the High-Level Panel on Illicit Financial Flows from Africa, Addis Ababa, Ethiopia: United Nations Economic Commission for Africa, 2015.
164 Landry Signe, Marianna Sow and Payce Madden, "Illicit Financial Flows in Africa: Drivers, Destinations and Policy Options", Brookings Africa Growth Initiative Policy Brief, March 2020.
165 Ibid
166 In Tanzania, for example, double taxation agreement (DTA) benefits are restricted to companies' resident in either of the contracting states with at least 50 per cent of the underlying ownership held by individuals who are resident in either of the contracting states. Mining companies can only benefit from a DTA if they have no other tax benefits. See Section 128, Tanzania Income Tax Act.

withholding taxes on dividend payments amounting to US$ 81,843 .August 31, 2020, the Court of Appeal of Tanzania found that three mining entities belonging to African Barrick Gold plc (Appellant) i.e. Bulyanhulu Gold Mine Ltd, North Mara Gold Mine Ltd & Pangea Minerals Ltd "failed to declare profits of their respective mining operations in Tanzania yet the same entities still managed to send net profits to the appellant (A Company incorporated in the UK), sufficient for the appellant to distribute dividends to its shareholders (in the UK) without so much as deducting withholding tax" On the basis of this decision, African Barrick Gold was found liable to pay withholding taxes on dividend payments amounting to US$ 81,843, 127[167]

Earlier on in October 2019, Barrick Gold Incorp agreed to pay US$ 300 million to the Tanzanian government in settlement of a long-standing tax dispute arising out of the re-acquisition of Acacia Mining which had in 2017 been accused of tax evasion by the Tanzanian government.[168] This amount was eventually settled on January 24, 2020.[169]

Resolute Tanzania Ltd is reported to have exported gold and silver worth US$1.5 billion, but paid CIT only once three years prior to closure of its operations in Tanzania.[170] In Uganda, the opening of Dutch subsidiaries by oil companies may cost the country US$287 million in future withholding taxes on dividends. In Mozambique, the disposal of Anardako's assets at a cost of USD 3.9billion attracted 22.56% (USD 880m) in CGT which is much less than the 32% (USD 1.248) prescribed in the law. It is not clear as to how this discounted amount was reached[171] All these occurrences show the limitations of existing extractive fiscal regimes in the prevention of IFFs.

167 African Barrick Gold PLC v. Commissioner General Tanzania Revenue Authority Civil Appeal No. 144 of 2018 at pg.40.

168 Barrick Gold reaches deal with Tanzania to settle Disputes over Acacia Mining, Reuters, October 20, 2019. Available on https://www.reuters.com/article/barrick-gold-tanzania-idUSL3N2750BB

169 BFumbuka Ng'wanakulala, Barrick Gold's Long Safari ends with Tanzania Deal, Reuters, January 24, 2020. Available on https://www.reuters.com/article/us-tanzania-mining-idUSKBN1ZN0TF

170 Henrique Alencar et al, "Cursed by Design: How the Uganda-Netherlands Tax Agreement is Denying Uganda a Fair Share of Oil Revenues", p.21

171 Total Press, Total Closes the Acquisition of Anardako's Share Holding in Mozambique LNG, September 30, 2019. Available on https://www.totalenergies.com/media/news/press-releases/total-closes-acquisition-anadarkos-shareholding-mozambique-lng. See also Mathew Hill, Mozambique Sees $ 880M Tax Windfall from Occidental Deal, Bloomberg, September 28, 2019. Available on https://www.bloombergquint.com/business/mozambique-sees-880-million-tax-windfall-from-occidental-deal

05

Conclusion

The recent wave of petroleum discoveries, combined with efforts by some countries in eastern Sub-Saharan Africa to revitilise their mining sector, have brightened the region's prospects of becoming a frontier for oil, natural gas and minerals. Current projections show that if all factors remain constant, Mozambique, Uganda and Tanzania will realise between US$ 300billion and US$ 400billion in petroleum and mining revenues. The scale of these revenues has the potential to turn around the economies of these countries and to transform the lives of their citizens.

However, this is dependent on a range of factors, including the extractive sector fiscal regime chosen by each country. Although there is currently no universal benchmark, the African Commission has established broad standards of fiscal regulation in respect to the extractive sector. These are binding on all state parties to the African Charter on Human and People's Rights, including Mozambique, Tanzania and Uganda. As part of their extractive industries fiscal regulation, states must put in place robust tax collection systems; promote prudent revenue management, transparency and equitable revenue sharing, and combat corruption and other illicit financial flows.

Mozambique, Uganda and Tanzania will realise between

US$300 & 400 million

in petroleum and mining revenues if all factors remain constant.

PWYP's country studies show that current taxation legislation in Mozambique, Tanzania and Uganda is fairly robust and has the potential to generate maximum revenues for all three states. In all three, there have been deliberate efforts to reform tax laws applicable to extraction to improve their effectiveness and responsiveness to emerging dynamics in the sector. The broader fiscal regime in all three countries is also fairly comprehensive, to the extent that it incorporates most of the standards and safeguards prescibed in the African

Commission Reporting Guidelines. However, gaps still exist in country extractive fiscal regimes, and in some cases the regime is not well implemented, due to state capacity constraints.

However, the biggest challenge so far emanates from the mismatch between provisions in existing resource agreements and recent legislative reforms. Stabilisation clauses in existing agreements limit governments' ability to alter their fiscal laws to the detriment of companies. This means recent legislative reforms aimed at maximising extractive revenues are of limited application unless existing agreements are renegotiated. So far, only Tanzania has taken steps to reassert sovereignty over its natural resources as a basis for review and negotiation of existing agreements. Even then, only one Mineral Development Agreement has been successfully renegotiated, owing to the protracted nature of the process.

In practice, the effectiveness of the extractive industries fiscal regimes in Mozambique, Tanzania and Uganda is greatly undermined by inherent weaknesses in the regimes themselves, poor enforcement due to capacity constraints, and stablisation clauses in existing contractual arrangements, which limit the ability of states to pursue reforms aimed at revenue maximisation.

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