

# Comparative Analysis of the Mining Acts in Kenya and Tanzania

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**Abstract:** Kenya and Tanzania passed new mining acts in 2016 and 2010, respectively. This paper intends to compare and analyze the mining acts of two countries from the aspects of legislative background, legislative status, legislative purpose, legislative structure, administrative power setting, mineral rights, environmental protection, and financial regulations. From the above comparison, the paper can see that Kenya and Tanzania are in the same pursuit of economic development, and both pay more attention to the use of tax policies and the supervision of administrative power.

**Keywords:** Mining act; Mineral rights; Royalty

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## 1. Introduction

In recent years, African countries have been interested in adjusting their industrial structure, shifting from traditional agriculture and planting to some industries with potential for development. Mining is one of the goals that African countries aim for. In order to promote the development of the mining industry and improve the mining structure, it is necessary to revise and promulgate the mining act again. Kenya and Tanzania also followed the trend and revised their mining acts successively. Kenya and Tanzania are not only geographically connected by the same root, but also have many similarities in the choice of economic development direction. This paper compares and analyzes the mining acts of the two countries from the aspects of legislative status, legislative purpose, legislative background, and legislative content, with a view to providing some reference for the revision of China's mineral resources law.

## 2. Comparison of basic information

### 2.1. Legislative background

Kenya is rich in mineral resources. Compared with neighboring Tanzania and Uganda, Kenya's mineral resources

are far from being developed, and the proportion of the mineral industry in the national GDP is also small, which was only about 0.1% before 2010 <sup>[1]</sup>. In recent years, many mineral resources with commercial value have been discovered in Kenya. At the same time, Kenya's mineral industry is also growing, and its contribution to the national GDP has increased from 0.5% in 2012 to 0.8% in 2013. With the increasing proportion of the mineral industry in the national economy, the Kenyan government has paid more and more attention to the mineral industry, and even plans to turn it into a mining center in Africa. Of course, this beautiful vision needs strong legal support.

Tanzania is rich in mineral resources, with a lot of coal, cobalt, copper, diamonds, gold, nickel, silver, and uranium. Tanzania is currently the fourth largest gold producer in Africa, and Tanzania is also the only tanzanite producer in the world <sup>[2]</sup>. In terms of the national economy, the mineral industry is one of the fastest-growing industries in Tanzania in recent years. In 2013, the output value of the mining industry increased by 6.9%, and the mining and quarrying industry accounted for 3.3% of Tanzania's GDP. In terms of employees, about 670,000 artisanal miners produced colored gems, diamonds, gold, and other commodities in 2012; The employment of large mines is about 12,000 <sup>[3]</sup>. Tanzania formulated the Industrial Policy of Mineral Industry in 1997, striving to build the mining industry into a dynamic, well-structured, moderate-scale, and environmentally friendly public-private partnership industry within 25–30 years, accounting for more than 10% of GDP.

## **2.2. Legislative status**

In recent years, in order to improve the mining investment environment in Kenya, the government has made major amendments to the mining act, continuously improved the mining management system, and formulated a series of preferential mining investment policies in order to attract more investors to look for mineral deposits there. Kenya's parliament and cabinet passed the new mining act in early 2016, which was signed and promulgated by President Kenyatta in May.

Tanzania is a country in East Africa that pays more attention to the mining act and policies. It promulgated the mining act as early as 1979, and then successively promulgated some laws and regulations related to mining investment, and made important supplements and amendments to the mining act in 1989. After that, a new mining act was promulgated in 1998. Since then, with the different international mineral investments and the constant changes in the development of the domestic mineral industry, Tanzania has promulgated and implemented a new mining act in 2010. Its mining act has been revised frequently, which is the highest in East Africa.

## **2.3. Legislative purpose**

Kenya's 2016 mining act does not explain the legislative purpose, but it is clearly pointed out in the government announcement issued by Kenya's Ministry of Mining that the promulgation of the mining act is to promote the sustainable development and utilization of mineral resources, manage and deal with mineral exploration, mining, processing and other mining-related activities, and to promote foreign investment and local equity participation in the mining industry and balance the interests of all parties <sup>[4]</sup>.

Tanzania's 2010 mining act did not explain the legislative purpose, but stipulated the vision and mission of policy implementation in its mineral policy in 2009. It is hoped that through the formulation and promulgation of the policy, an effective mineral industry can be established, and the sustainable development and effective utilization of mineral resources will promote the rapid development of the social economy before 2025 <sup>[5]</sup>.

## **2.4. Legislative structure**

Kenya's 2016 mining act is divided into 15 parts with a total of 225 articles, including preliminary, ownership of minerals, general principles, administration, mining institution and bodies, general provision of mineral rights, mineral agreements, surrender, suspension and revocation and of mineral right, surface rights, compensation and disputes, dealings in minerals, healthy, safety and environment, financial provisions, records and registration of mineral rights, monitoring and compliance and enforcement, miscellaneous provisions, repeals, savings and transitional provisions. Tanzania's 2010 mining act consists of 116 articles in eleven parts, including preliminary provisions, general principles, administration, mineral rights, licenses for dealing in mineral or minerals, royalties, fees and other charges, restrictions, reports and the right of entry, disputes settlement, registration of mineral rights, miscellaneous provisions, repeal and savings provisions.

## **3. Mining act content comparison**

### **3.1. Administrative supervision**

Kenya's 2016 mining act stipulates the functions and powers of the Ministry of Mining, and specifically stipulates that the Ministry of Mining has the power to declare strategic minerals. It also establishes the Bureau of Minerals and Geological Survey and defines its functions. Tanzania's 2010 mining act stipulates the appointment of mineral commissioners and other government officials, the performance and entrustment of mineral commissioners' duties, geological services such as geological exploration, mapping, and exploration, the mining advisory council and its functions, and the prohibition of information disclosure by administrative agencies.

### **3.2. Mineral rights**

Kenya's 2016 mining act prescribes reconnaissance license, prospecting license, retention license, artisanal mining operation, and mining license for large-scale operations; For small-scale operations, it prescribes reconnaissance permit, prospecting permit, and mining permit <sup>[6]</sup>. The term of the reconnaissance license shall not exceed two years and shall not be extended; The term of the prospecting license shall not exceed three years at the longest and shall not be extended more than twice; The term of the mining license shall not exceed 25 years or the predicted life of the mine, whichever is shorter, and shall be specified in the license; The extension period of the mining license shall not exceed fifteen years or the remaining life of the mine, whichever is shorter, and shall be specified in the license. The maximum area covered by the reconnaissance license is one block or any block with no more than 5,000 adjacent blocks; The area covered by the exploration license is a block or the largest area with no more than 1,500 adjacent blocks. The term of the exploration license shall not exceed five years and may be renewed once. The duration of a mining license shall be specified in the license and shall not exceed five years. The area contained in the exploration license shall not exceed twenty-five adjacent blocks, and the area contained in the mining license shall not exceed two adjacent blocks.

Tanzania's 2010 mining act prescribes prospecting license, retention license, special mining license, mining license, primary license, processing, smelting, and refining license <sup>[7]</sup>. In terms of the size of the region, Tanzania's 2010 mining act does not provide for it. In terms of duration, the initial period approved by the prospecting license shall not exceed four years, the first period of renewal shall not exceed three years, and the second period of renewal shall not exceed two years. The period for the retention license shall not exceed five years. The term of the special mining license is the estimated life of the ore mentioned in the feasibility study report or the period that the applicant can request, whichever is shorter. The longest term of a mining license is ten years, and an application

can be made for renewal, and the renewal shall not exceed ten years. The primary license is valid for seven years and can be renewed, but the renewal period is not specified. The term of the processing license shall not exceed ten years and may be renewed. The validity period of the smelting license and refining license shall not exceed 25 years and shall be renewed.

### **3.3. Health, safety, and environment**

Kenya's 2016 mining act stipulates that mining owners should abide by the domestic water law, occupational health and safety law, and related environmental protection laws and regulations. In terms of land use, mining owners should ensure the sustainable use of land through the restoration of abandoned mines and quarries; Leakage of toxic waste to streams, rivers, lakes and wetlands should be avoided, and toxic waste should be disposed of in approved areas; Blasting and other operations that can cause great vibration should be carried out properly, and the vibration and impact caused by blasting should be controlled to a reasonable degree in accordance with the provisions of the Environmental Management and Coordination Law; After the completion of exploration or mining, the treated land should be restored to its original state or as close to its original state as possible to an acceptable and reasonable degree <sup>[8]</sup>. Tanzania's 2010 mining act did not specifically stipulate the environmental protection of mining activities, but simply stipulated that the rights conferred by mining rights should be exercised reasonably <sup>[9]</sup>.

### **3.4. Financial provisions**

Kenya's 2016 mining act stipulates that the mining right owner should pay royalties to the state for obtaining different grades of minerals due to mineral rights, and the Minister of Mining stipulates the proportion of royalties; 70% of the royalties paid belong to the central government, 20% to the county government and 10% to the local community <sup>[10]</sup>. According to the constitutional bulletin issued by Kenya in 2013, rare earth, niobium and titanium are listed as precious minerals, which are charged at a royalty rate of 10% of total sales; The royalty rates of coal and gold have doubled from 2.5% of total sales to 8% and 5% respectively; The royalty rate for gold and copper is 10%; The royalty rate for diamonds is 12%. Tanzania's 2010 mining act stipulates that the royalty rate is 5% for uranium, 5% for precious stones and diamonds, 4% for metal minerals such as copper, gold, silver and platinum group minerals, and 3% for all minerals in other minerals including building materials, salt and industrial minerals <sup>[11]</sup>.

## **4. Analysis of the mining acts of the two countries**

### **4.1. The demands are relatively consistent**

As the largest economy in East Africa, Kenya achieved a gross national income of US\$63.398 billion in 2015, and Tanzania led the East African countries with good economic growth momentum. Generally speaking, the economic strength of the two countries is relatively strong, and the common ground of their economic development mainly depends on traditional industries such as agriculture and planting. How to develop the development potential of different industries and strengthen the development momentum of different industries, so as to make greater contributions to the national economy, is the common thinking of the two countries, and the answers invariably point to the mineral industry. Tanzania is an excellent example. In 2024, Tanzania's national economy achieved 5.5% growth, among which arts and entertainment (17.1%), electricity generation and distribution (14.4%), information and communication (14.3%), financial and insurance services (9% and 13.8% respectively), and health made great contributions, and the growth of the mineral industry has also achieved remarkable results <sup>[12]</sup>.

The mineral resources of the two countries are relatively rich, and the degree of development is extremely low. Revising and perfecting the mining act, gradually updating the domestic mining policy, improving the domestic mining investment environment, and attracting more domestic and foreign funds, so as to develop and strengthen the domestic mining industry, all these measures reflect the common aspirations of the two countries.

#### **4.2. Emphasizing the use of tax policies**

From the comparison of the above financial regulations, it can be seen that both countries, without exception, have chosen to levy a certain percentage of royalties, collect various application fees, renewal fees, etc. To increase national fiscal revenue, which Kenya has a relatively high proportion of. Levying royalties on mineral activities is a trend in the mining policies of various countries in recent years, which not only increases the national economic income but also can be used as compensation for resource consumption and environmental restoration. It can be said that the two countries are killing several birds with one stone. The choice of the two countries is understandable, only by paying attention to the reasonable determination of the collection ratio and the reasonable distribution and utilization of income among all levels can they meet the original intention of setting policies.

#### **4.3. Focus on the supervision of administrative power**

In order to guide the overall normative development of the mineral industry, the two countries have adjusted their corresponding government departments in recent years. Kenya established the Ministry of Mining in 2013, and Tanzania established the Ministry of Energy and Mines. These departments are specialized in petroleum, minerals, and energy-related affairs, and their responsibilities are also stipulated in the mining act of their countries. However, illegal trading and even smuggling in the mineral industries of the two countries are serious, and the efficiency and transparency of government departments have been criticized by the public. How to implement the responsibilities stipulated in the mining act, continuously improve the administrative efficiency and transparency of the corresponding departments, and effectively promote the development of the mining industry is also an aspect that the two countries should continue to pay attention to after the introduction of the new mining act.

#### **4.4. The effectiveness of the implementation of the law is yet to be examined**

There is always a certain gap between the ideal and reality. The introduction of new mining acts by the two countries is either to crack down on illegal mining activities, guide the regularization and legalization of mining activities, standardize the development of the mining industry, or attract more mining investment. In general, it is to promote the development of the national economy. Kenya's mining act was promulgated in 2016, and Tanzania's mining act was implemented as early as 2010. mining act has been promulgated for a period of time, has the purpose of amending mining act been achieved? The answer is not always yes. Judging from the above financial data, only Tanzania's mining industry has achieved gradual growth, and Kenya's mining development has not improved significantly. As for the detailed reasons, it cannot be summarized. The implementation effect of the new mining act promulgated by the two countries to regulate the development of their own mineral industry remains to be further investigated and analyzed.

### **5. Conclusion**

Kenya and Tanzania, as important economies in East Africa, have demonstrated their common aspiration to promote the development of the mining industry by amending the mining act in recent years. The mining acts

of the two countries have both similarities and significant differences in legislative background, administrative supervision, mining rights setting, environmental protection, and financial regulations. Kenya's 2016 mining act has a more detailed structure, clearly defines the classification and duration of mining rights, and pays attention to environmental protection and land restoration; However, the mining act of Tanzania in 2010 is more diversified in the types of mining rights, but the provisions on environmental protection are relatively simple. Financially, both countries increase their fiscal revenue by collecting royalties, but Kenya has a higher rate and a more specific distribution mechanism.

Although the revision of the mining acts of the two countries aims at standardizing industries, attracting investment, and promoting economic growth, the implementation effect remains to be seen. Tanzania's mining industry has grown significantly, while Kenya's mining industry has not yet reached its expected goal. This shows that the improvement of the law is only the first step, and the follow-up needs efficient administrative execution, a transparent supervision mechanism, and reasonable policy adjustment as support.

Generally speaking, the revision of mining acts in Kenya and Tanzania reflects the efforts of African countries to promote resource development through legal means, and their experiences and lessons can be used for reference by other developing countries. In the future, the two countries need to further optimize the implementation of laws and balance economic development and environmental protection in order to realize the sustainable development of the mineral industry.

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