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MINERAL RESOURCE GOVERNANCE IN EAST AFRICA

IMPLICATIONS OF POLICY,
INSTITUTIONS, INTERNATIONAL
INSTRUMENTS & POLITICAL-
ECONOMY CONTEXT



African Forum and Network
on Debt and Development

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List of Acronyms

AfDB:	Africa Development Bank
AFRODAD	Africa Forum on Debt and Development
AMDC	Africa Minerals Development Centre
AMV	Africa Mining Vision
ASM	Artisanal and Small Scale Mining
CMV	Country Mining Vision
CSO	Civil Society Organization
DTAs	Double Taxation Agreements
EAC	East African Community
EITI	Extractive Industries Transparency Initiative
EMV	East Africa Mining Vision
GDP	Gross Domestic Product
IFFs	Illicit Financial Flows
KPCS	Kimberley Process Certification Scheme
NEPAD	New Partnership for Africa's Development
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
PWYP	Publish What You Pay
SSA	Sub-Saharan Africa
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme



EXECUTIVE SUMMARY:

A SNAPSHOT ON MINERAL RESOURCE GOVERNANCE IN EAST AFRICA

Economy, resource endowments and domestic resource mobilisation potential

- The Africa Development Bank considers East Africa as the fastest-growing region in Africa. Over the past decade, the region has demonstrated steady economic performance registering a 5.3% growth in 2019 attributed largely to the services, industry and agricultural sectors. The region's real GDP is projected to grow by 3.0% in 2021 bouncing back from the Covid-19 pandemic. Nonetheless, government revenues have shown a shrinking trend over the same period; many revenue authorities in the region fail reach revenue targets to fund government spending. In Kenya for instance, tax revenue totalled Ksh1.607 Trillion in FY 2019/2020 representing 1.7% a increase, however, this was Ksh 33 billion less than the Ksh 1.64 Trillion target. The Uganda Revenue Authority registered a 0.81% growth in FY 2019/2020 revenue collection but this was UGX 3592.49 billion below target. In Tanzania, revenue collection in FY 2019/2020 was TZS 26.3 Trillion. This was 21% less than the set target. These figures illustrate an inherent problem with domestic resource mobilisation prevalent across the region.

- The region (East Africa and the great lakes) is endowed with a vast variety of mineral resources including highly valued minerals such as Tin, Tantalum and Tungsten and Gold. Despite the mining sector portending significant gains in terms of government revenues, it is one of the most underdeveloped sectors - largely underexplored and underexploited resulting in low revenue generation. Recently, there has been an increased focus on revenue generation from natural resources amongst most of the states in the region, especially the resource rich ones. For instance, Kenya exported its first crude oil in August 2019 and the oil production is expected to rise to 100,000 barrels per day in 2022. Tanzania has been negotiating new terms with international oil companies to develop, construct and operate a USD 30 billion liquefied natural gas project which will commence in 2022. Uganda is also in the process of finalizing negotiations for the construction of the USD 3.5 billion oil pipeline which will run through the United Republic of Tanzania.
- Despite the domestic resource mobilisation potential that the extractives sector (particularly mining) portends, it is considered globally as one of the major emitters of illicit financial flows (IFFs). It is estimated that nearly 50% of illicit outflows from Africa are generated via trade mispricing and more than half of trade-related IFFs stem from the extractive sector (UNECA and African Minerals Development Centre, 2017). The Economic Development in Africa Report 2020 indicates that trade mispricing (IFFs) in Africa based on a range of estimates varies from \$30 billion to \$52 billion per annum (UNCTAD, 2020). Burundi and Rwanda top the list of East African emitters of illicit flows (1980-2018); emitting USD 3,796 million (26.7% of total trade) and USD 7,546 million (21.5% of total trade) respectively (Brookings, 2020).

This paper seeks to explore the state of mineral resource governance in East Africa focusing on how the context, initiatives, institutions and various actors/stakeholders are shaping the governance of mineral resources in the region.

Trends in mineral resource governance in East Africa

- We establish that across the region, there has been significant progress, over the past decade, in terms of development of appropriate institutional and policy frameworks for governing the sector. This is evidenced by the enactment of new laws (in the minerals, oil and gas sectors), establishment and reconstruction of relevant institutions, and formulation of policies that seek to improve the sector. These include legislation (targeting regulation of petroleum and minerals extraction), Local Content policies, and tax and revenue generation regimes that aim to maximise benefits from the sector. This progress appears to be substantively influenced and shaped by international or regional governance institutions, instruments and initiatives like the Africa Mining Vision (AMV), EITI, PWYP, Dodd-Frank Legislation, international organisations like IMF, World Bank, UN, OECD and continental institutions like AMDC, AfDB, NEPAD (under the overall framework of the African Union).
- Being members of the African Union, EAC member states are required to domesticate the AMV by aligning laws, policies and regulations to reflect its principles and objectives. However, more than a decade since its inception, the EAC has still not agreed on a contextualised regional protocol on mining aligned with the Africa Mining Vision. Nonetheless, the Community has ongoing policy processes that target to improve cooperative regional natural resource governance. Though not yet operationalised, Article 18 of the EAC Protocol on Environment and Natural Resources Management focuses on the mining sector; it requires Partner States to develop and harmonise common policies, laws and strategies for access to and exploitation of mineral resources for the

socioeconomic development of the Community. The East African Legislative Assembly (EALA) is also processing a bill (EAC Mining Bill, 2017) that seeks to operationalise Article 114(2) (c) of the EAC Treaty on harmonisation of mining regulations and promotion of environmentally friendly mining practices. The bill aims to provide a pathway to adoption of a common mining regime, outlines mechanisms for transparency and accountability, and nurturing a harmonised operating environment by removal of competitive behaviours and encouraging incentives.

- None of the EAC member States have a consolidated and operational Country Mining Vision (CMV). However, some States are pursuing reforms aimed at aligning their policy frameworks with the AMV. Tanzania, for instance, has made significant steps. It has enacted legislation and implementing policies that are working towards reduction of IFFs, improving auditing of mineral production and exporting, optimising benefits of mining and mineral exploitation to local communities, strengthening the sector's fiscal regime, and facilitating review and renegotiation of mining contracts. Some of these include: Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017; The Mining (Local Content) (Amendments) Regulations 2019, The Mining (Integrity Pledge) Regulations, 2018, The Mining (Mineral Rights) Regulations, 2019 and The Mining (Mineral Value Addition) Guidelines 2019 (G.N No. 60 of 2019) also form part of the compendium of laws, policies and regulations for the Tanzania's extractive sector. Kenya has an ongoing process towards development of a Country Mining Vision and has enacted legislation that are significantly aligned to some of the provisions of the AMV like the Mining Act (2019). There is limited evidence of progress among the other EAC states though there are notable policies and legislation in such countries as Uganda (Mining and Minerals Policy, 2018), and Rwanda (Mining and Quarry Operations Law, 2018 and Rwanda Mining Code, 2018) that appear to align with elements of the AMV.
- Some EAC States are involved in various international instruments and initiatives concerned with extractives sector governance like the EITI, PWYP, International Financial Reporting Standards (IFRS among others. In East Africa, Tanzania is part of EITI; Uganda has recently expressed interest in joining. Tanzania's involvement in the EITI has been cited as an example where EITI compliance has improved information on revenue receipts. Although other EAC countries remain uninvolved in EITI, it has provided useful principles for governance of the extractives sector in these countries that is evident in national laws and policies. Rwanda and Burundi are among the three countries in the Africa Great Lakes Region to implement the tin supply chain initiative by the International Tin Association. Also, through the International Accounting Standards Board (IASB), extractive companies have been compelled to disclose public accounts on a country-by-country basis, including payments to governments, production volumes, production revenues, costs, turnover and profits, the names of key subsidiaries and properties, and reserves. This provides useful information that national authorities in the region are utilising for tracking IFFs (especially through such malpractices as transfer mispricing and trade mis-invoicing). Countries like Kenya, Tanzania, and Uganda now have transfer pricing regimes, provisions in their tax codes, and/or special tax rules and considerations for mining, oil and gas industries that are gaining traction in dealing with IFFs from the extractives sector.

Challenges and opportunities for mineral resource governance in East Africa

- We also establish that existing effort (in terms of policy and institutional frameworks) at national, regional, continental and global levels have proffered benefits for mineral resource governance in the region. These include: addressing IFFs from extractives sector; increasing access to information in the extractives sector; promoting sustainable extraction and environmental protection; promoting value addition and proffering benefits to local communities; and addressing artisanal and small-scale mining. Nonetheless, there is considerable influence of contextual realities (local, national and regional) on mineral resource governance. Most prominent includes: (i) gaps in effectiveness of government that continue to hamstring progress (especially in transparency and accountability); (ii) the clamour for mechanisms to finance development (especially ambitious energy and infrastructure projects) that is linked to expansion in resource backed public debt with adverse implications on macroeconomic sustainability; (iii) regional politics with continued interstate tussles like between Kenya and Tanzania; Uganda and Rwanda that have in many instances stalled progress; (iv) variances in land ownership regimes; (v) climate change; and (vi) increased demand for certain minerals that the region is richly endowed with.
- We highlight outstanding gaps and challenges that continue to limit progress in the sector. These include: proliferation of standards and lack of adequate harmonisation, coordination and compliance with existing instruments; inadequate institutional capacity; challenges with inclusion and stakeholder engagement; continued opacity in the sector; and uneven focus of governance instruments.
- Government plays a role in effective mineral resource governance through implementing policies and regulating the mining sector through a set of laws. This is in order to claim their rights to exploit natural resources to develop their economies. Recent statistics from the World Bank have compared the East African countries according to six global governance indicators, namely voice and accountability, political stability and absence of violence, government effectiveness, quality of regulation, rule of law and control of corruption. It is notable that many East African States continue to grapple with challenges in terms of effectiveness of government. Countries whose governments face significant challenges such as corruption, openness to scrutiny, rule of law are bound to have a weak mineral resource governance systems.
- We also document opportunities that can be pursued by multiple stakeholders (in government, international organisations, corporations, Civil Society among others) towards improving Mineral Resource Governance in the EAC. These include: Fast-tracking domestication of Africa Mining Vision, review and harmonisation of international instruments; promoting regional cooperation in extractives governance; pursuit of coherent regional legal and policy frameworks for trade and investment; promoting inclusivity in governance of the sector; promoting ownership and buy-in from policymakers, opening up of policy space to non-state actors; enhancing frameworks for transparency and accountability; enhancing institutional capacity on mineral resource governance; promoting local content participation in the industry; and building on local knowledge.



INTRODUCTION

A Background to this study

It is estimated that the Africa continent holds at least 30% of all mineral reserves globally, and 50% of the world's rarest minerals (IDEA, 2017). The proven oil reserves and recent discovery of new oil wells in Uganda and Kenya build to the proportion of mineral resources the continent provides, in relation to the rest of the world. The demonstrated huge potential of the extractive sector creates an avenue for realisation of the economic and development objectives of the continent. Exploration and exploitation of natural resources could generate necessary revenue to spur growth and investment that transcends the manufacturing industry, and enhance quality of service provisions in critical areas like health and education. Whilst the stock of mineral resources remains massive, the continent remains entangled in the resource curse, otherwise referred to as the "Paradox of Plenty." Resource Curse refers to the inability of resource-rich countries to fully realise and benefit from the natural resource wealth which would provide sufficient muscle power for the government to respond to public welfare needs more effectively (NRGI, 2015). Often, mineral exploitation in Africa does not translate to equivalent development, industrialization and overall prosperity. Instead, the continent's resource curse has spurred conflict, instabilities and economic inequity.

Poor governance of the mineral sector further exacerbates this situation. Across the continent, there exists weak policies and legal frameworks to regulate mineral exploration and exploitation. Additionally, there exist significant capacity gaps within, or lack of strong institutions to oversee development of necessary frameworks to govern the sector and realise the continent's long-term development objectives. With increased focus on short-term gains, revenue capture has inhibited the reduction of poverty, with most resource-rich countries demonstrating poor performance in the Human Development Index (UNDP, 2017).

Rationale for this Research

Given the finite nature of natural resources, it is critical to draw maximum utility from their exploration before they are depleted. Achieving this demands that state and non-state actors at country and regional level assess the current state of mineral resources governance and identify the gaps and good practices that should be exercised to minimise bleeding of resources and maximise benefits of mineral exploration to citizens. Historically, weak governance of mineral resources in the continent has denied states and their citizens the maximum benefits of the resources in the continent, with political instability, corruption and opaque regulations expansion of the sector and, consequently, reaping of benefits from exploration by citizens. While there has been increased investment and progress towards policy reforms, the highlighted challenges persist. As such, this research seeks to explore the state of mineral resource governance, with a focus on East Africa. It interrogates the different frameworks and policy shifts on mineral resource governance, current contextual factors affecting mineral resource governance, and the extent to which African and international institutions and initiatives are shaping the governance of mineral resources in the region. The research forms part of four studies on the state of mineral resource governance in Africa by AFRODAD, under the Stop the Bleed (STD) Campaign. It aims to provide a clear picture of mineral resource governance across the East Africa, with a focus on how the context, initiatives, institution and various actors/stakeholders are shaping the governance of mineral resources in the region. Additionally, the study also aims to explore how mineral governance landscape is curbing Illicit Financial Flows and stopping the bleeding of resources.

Methodology

This study covered five countries in East Africa. These include Kenya, Tanzania, Uganda, Rwanda and Burundi. It adopts an exploratory approach relying on secondary quantitative and qualitative data mainly obtained through desk research. Quantitative data was obtained from facts and figures published by official government institutions, World Bank, global development databases and other research publications by think tanks, international organisations and CSOs. These were useful for highlighting the economic outlook of East Africa, track mineral production in the region and its contribution to the economy, and assess the governance landscape of the region. Qualitative data was derived from relevant official publications by think tanks and international organisations, NGOs and CSOs, government institutions, legislation, policies, media reports and any other relevant sources. Qualitative data useful for exploring the various frameworks governing management of mineral resources (metallic, non-metallic, oil and gas) in the region, through the lens of individual countries. It unpacks the economic status of the region, the policy provisions and institutional framework on mineral resource governance, implications of context on mineral resource governance, and the gaps and opportunities that exist specific to the sector. These combined approaches to exploration provide an overall assessment of the mineral resource governance landscape in the East African region.

2

ECONOMY & NATURAL RESOURCES IN EAST AFRICA - CONTEXTUAL OVERVIEW

Economy – trends and patterns

According to the African Development Bank, East Africa has been ranked as the fastest-growing region in Africa as compared to the rest of the continent. The region has demonstrated steady economic performance registering a 5.3% growth in 2019 attributed largely to the services, industry and agricultural sectors (Africa Development Bank, 2019). The region’s real GDP is projected to grow by 3.0% in 2021 bouncing back from the Covid-19 pandemic. Kenya, Rwanda and Tanzania have demonstrated the strongest economic growth among the East African countries. This economic performance is attributed to the growth in services, industry and agricultural sectors of the different countries.

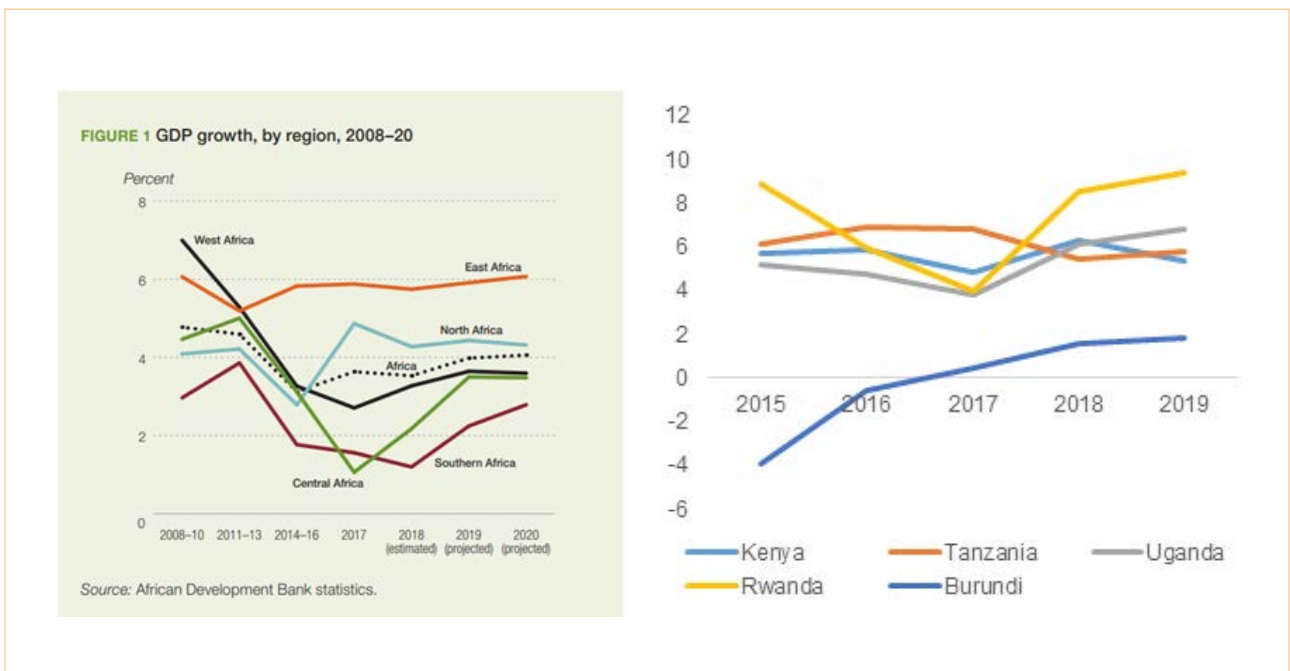


Figure 2: GDP Growth by Region 2008 - 2019

From the chart above, Rwanda and Tanzania have had the fastest growth rates in the financial years 2015/16 to 2019/20 averaging 7.4% and 6.2% respectively. In Rwanda, the growth has been mainly driven by the services sector which has boosted economy-wide labour productivity in areas such as trade, transport and hospitality.¹ On the other hand, Tanzania's economic growth has been driven by construction and manufacturing (Africa Development Bank, 2019). Burundi has had the least growth, which has been attributed to the state fragility, conflict and insecurity in the country.²

Between 2015 and 2019, economic growth in Kenya averaged 5.6% with the highest growth recorded in 2018 at 6.3% and the slowest registered in 2017/2018 (4.8% from 5.8% in 2016/2017). The decline in growth rate was due to the uncertainty during the 2017 election period and the drought which affected agricultural output³. There was a rebound of the growth rate to 6.3% in 2018/19 before reducing slightly in 2019/20 to 5.3% because of the locust infestation which reduced agricultural output. Kenya's budget deficit stood at 7.7% of GDP in 2020 and is expected to widen to 8.3% of GDP in 2021 which is a result of revenue shortfalls and pandemic-related spending. Despite the decline in the growth rate, the economy is projected to grow by 5.0% in 2021 and 5.9% in 2022. This projected growth is however dependent on complete reopening of the economy after movement restrictions occasioned by Covid-19.⁴

The main drivers of growth in Uganda are the service, industry and the agricultural sectors. Between the years 2015 and 2017, there was a prolonged drought season that reduced agricultural output. This resulted in a decline of 1.4% from 5.2% in 2015 to 3.8% in 2017 and 2.4% in 2018. This slow growth has seen the budget deficit increase by 1.4% to 6.6% from 2019 to 2020. Tax revenues have also declined and, in an effort, to cover the revenue shortfalls, the country has increased borrowing and the debt to GDP ratio has risen to 40.8%.⁵

The economic growth of Tanzania averaged 6.2% in the years 2015/16 to 2019/2020 with the service sector being the largest contributor to the economy.⁶ This increased slightly by 0.6% to 6.8% in the financial year 2017/2018 due to the rehabilitation of communications' infrastructure, investments in mobile phones and improvements in the road sector. The growth rate declined in the year 2018/19 to 5.4% due to a decrease in the exportation of cashew which is Tanzania's main cash crop. This was after the government sent military officers to seize the cashew produce after complaints about prices from brokers being too low.⁷ In the mining sector, the government also imposed a nationwide ban on exports of unprocessed gold and copper ores to encourage the construction of a local smelter.⁸

The growth in the economy of Rwanda has mostly been attributed to the service sector. The economic growth of Rwanda was at 8.9% in 2015/16. This reduced substantively in 2016/17 by 2.9% to 6.0% and further reduced by 4.9% to 4.0% in 2017/18. It rebounded in 2018/19 to 8.6% and further increased by 0.8% to 9.4% in 2019/20. Economic growth in 2020 was estimated to decline by 0.4% as a result of the pandemic. Low tax yield and government spending drove the fiscal deficit to 8.3%, a 1% increase from the previous year. A rebound of the economic growth is expected in 2021 and 2022 supported by increased infrastructural activities and a pick up in the tourism sector as the effects of the pandemic dissipate.⁹

1 [Service Sector Development and its Determinants in Rwanda](#)

2 https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2019AEO/REO_2019_-_East_Africa_.pdf

3 <https://www.worldbank.org/en/news/press-release/2017/12/06/kenyas-gdp-growth-slumps-in-2017-but-can-rebound-over-the-medium-term>

4 [African Development Bank; Kenya Economic Outlook](#)

5 [African Development Bank; Uganda Economic Outlook](#)

6 [Trade, Services and Development in Tanzania](#)

7 <https://www.reuters.com/article/us-tanzania-gdp/tanzanias-economic-growth-slows-in-first-quarter-as-construction-softens-idUKKCN1UN07F>

8 <https://www.reuters.com/article/us-acacia-mining-outlook-idUSKCNIBFICB>

9 [African Development Bank; Rwanda Economic Outlook](#)

Burundi is a low-income economy which employs 80% of the population in the agricultural sector.¹⁰ Figure 2 above shows that among the East African countries, it had the least economic performance with the financial years 2015/2016 and 2016/2017 recording negative growth of 3.9% and 0.6% respectively. This was due to war and state fragility. Burundi highly depends on official development assistance (ODA) because the economy is unstable and lacks the ability to substantially invest in development programmes.¹¹ Since 2015, the country has been experiencing a decline in ODA due a clash between the government and the foreign aid groups which arose after the 2015 presidential elections¹². This led to an increase in both fiscal and balance of payment deficits.¹³ The sustained population growth (1.6% from 2015 to 2019) has limited the efforts to mobilize for internal resources. The budget deficit increased from 4.2% of GDP in 2019 to 8.7% of the GDP in 2020. In the year 2020, Burundi fell into recession which was largely contributed by the pandemic. Burundi's economic growth in 2021 is dependent on the success of the measures put in place to control the spread of the pandemic.¹⁴

Domestic Resource Mobilisation - Revenue Performance in EAC

Over the past years, countries in the East African region have been failing to generate enough revenue to fund government spending. The revenue collected for the financial years fall short of the targets set. For instance, the Kenya Revenue Authority revised downwards the 2017/2018 revenue target by KES85 billion to KES1.64 Trillion. In the financial year 2018/2019, the tax revenue totalled Ksh1.58 Trillion, an increase of 11.3%. However, this was 25 billion less than the revised 1.64 Trillion target. The slump in revenue generation in Kenya is attributed to the decline in employment rate emanating from measures taken by private firms to reduce operating costs and a slow growth in non-oil imports. There has also been a decline in the overall oil import volumes which has contributed to the dip experienced.¹⁵

The Uganda Revenue Authority had a 0.81% growth in the financial year 2019/2020 revenue collection but this was UGX 3592.49 billion below the target. The revenue authority failed to meet its target as a result of delayed implementation of some administrative measures such as widening the scope of withholding tax agents, non-implementation of the rental solution and late implementation of Digital tax stamps.¹⁶ In Tanzania, revenue collection in the financial year 2018/2019 by the Tanzania Revenue Authority was TZS 16.2 Trillion. This was 12.6% less than the set target. This shortfall was brought about by financial difficulties experienced by the taxpayers. The delayed exports of cashews and retrenchment of employees, especially in the mining sector reduced the income collected by the Revenue Authority.¹⁷ Over the years, decline in production, consumption, and imports have significantly reduced fiscal revenue in Tanzania.¹⁸ These figures illustrate an inherent problem with domestic resource mobilisation that is prevalent across all five EAC states. The failure of the revenue authorities to meet the set targets further widens the budget deficit. To finance this deficit, the governments have resorted to other measures of raising revenue such as local and external borrowing and donor funding. This has gradually increased their debt to GDP ratios and increased their vulnerability to debt distress. In 2014, a paper by the International Monetary Fund (IMF) stated that the East African countries' economic growth in the past decade was mostly attributed to gains from the construction, transportation, and wholesale trade; manufacturing and mining sectors.¹⁹

10 [World Bank; Burundi Economic Overview](#)

11 Mixed Fortunes ODA and Poverty in Burundi

12 <https://www.npr.org/sections/goatsandsoda/2019/01/23/687400070/why-burundi-is-kicking-out-aid-groups>

13 [World Bank; Burundi Country Profile](#)

14 [African Development Bank; Burundi Economic Outlook.](#)

15 [Kenya Revenue Authority Report](#)

16 [Uganda Revenue Authority Report](#)

17 <https://documents1.worldbank.org/curated/en/873031563454513018/pdf/Tanzania-Economic-Update-Human-Capital-The-Real-Wealth-of-Nations.pdf>

18 <https://www.worldbank.org/en/country/tanzania/overview>

19 <https://www.imf.org/external/pubs/ft/wp/2014/wp14150.pdf>

There has been an increased focus on revenue generation from natural resources amongst most of the states in the region, especially the resource rich ones. For instance, Kenya exported its first crude oil in August 2019 and the oil production is expected to rise to 100,000 barrels per day in 2022.²⁰ Tanzania has been negotiating new terms with international oil companies to develop, construct and operate a USD 30 billion liquefied natural gas project which will commence in 2022.²¹ The Government of Uganda is also in the process of finalizing negotiations for the construction of the USD 3.5 billion oil pipeline which will run through Tanzania.²² Despite the mining sector portending significant gains in terms of government revenues, it is one of the most underdeveloped sectors in the region. Directing more effort to development and governance of the mining sector would boost domestic resource mobilisation and help governments in the region with revenues to plug the perennial budget deficits.

A Snapshot of East Africa's Mining Sector (Resource Endowments)

East Africa is endowed with a vast variety of mineral resources which are yet to be fully exploited. The East Africa countries are home to Africa's great lakes region which are abundant in natural resources including highly valued minerals such as Tin, Tantalum and Tungsten and Gold.²³ The countries are currently underexplored for their minerals resulting in low revenue generation from the mining sector.

Kenya's Mining Sector

Kenya is vastly underexplored for its minerals and the mining sector is currently dominated by the production of non-metallic commodities. Kenya is the third largest producer of Soda Ash in the world and seventh largest producer of Fluorspar.²⁴ The key players in the mining industry in Kenya include global mining companies and local companies. Below is a table of the quantity of resources produced in tonnes for Soda Ash, Fluorspar and Titanium Ore and in Litres for Crude Oil.

Table 1: Mineral Production in Kenya 2015-2019

Resources Produced	2015	2016	2017	2018	2019
Soda Ash (Tonnes)	319,761.0	301,719.0	311,000.0	339,025.0	230,355.0
Fluorspar (Tonnes)	70,096.0	42,656.0	6,945.0	-	-
Titanium Ore Minerals (Tonnes)	549,897.0	457,531.0	643,494.0	597,736.0	486,152.0
Crude Oil (In litres)	-	-	-	-	38,089.3

Source: The Economic Survey 2020

In 2019, total earnings from mineral production declined, as a result of the decline in the quantity of minerals produced, by 5.5% from Ksh 30.8 billion in 2018 to Ksh 29.1 billion in 2019.²⁵ There exist several gaps in the mining sector which limit the development of the sector. These gaps include²⁶:

²⁰ <https://www.reuters.com/article/us-kenya-oil-idUSKCN1VG1FQ>

²¹ <https://www.reuters.com/article/us-tanzania-lng-idUSKCN1SY1TU>

²² <https://www.reuters.com/article/uganda-oil-idUSL1N2KV15D>

²³ https://media.africaportal.org/documents/Conflict_Prone_Minerals_in_the_Great-Lakes-Region-Africa.pdf

²⁴ Kenya mining investment handbook 2016

²⁵ The Economic Survey 2020

²⁶ The Ministry of Mining Gap Analysis Report 2017

- Lack of harmonization of different legislation on Mining in the region leading to smuggling of minerals across the region and thus affecting the entire sector.
- Lack of mining policy which lays the basis for an effective management of the sector
- A general lack of appropriate policy frameworks and strategies to drive the industrialization, value addition and beneficiation agenda.
- Lack of regulations to govern the activities of artisanal Miners.
- The artisanal miners operate on other peoples licensed facilities which pose a challenge of conflict.

Uganda's Mining Sector

Uganda's mining sector contributes to the second objective of the Second National Development plan (NDP II) which aims to "Increase the stock and quality of strategic infrastructure to accelerate the country's competitiveness contribution". Over the years, the government has been conducting appraisals of minerals and have discovered potential mineral targets. The key minerals include Uranium, Gold, Iron Ore, Limestone, Pozzolana, Copper. The exploitation of the mineral deposits can potentially lead to economic growth and additionally create employment opportunities to Uganda's population directly or indirectly²⁷. The sector's contribution to GDP increased from 0.3% in 2013 to 0.6% in 2017. This value is still very low considering the vast mineral deposits the country has which can contribute to GDP²⁸. The table below shows the main minerals produced in Uganda in the years 2015 to 2019. The quantity of minerals produced is increasing slightly across the years.

Table 2: Mineral Production in Uganda 2017-2019

Mineral Quantity in Tonnes	2015	2016	2017	2018	2019
Limestone	979,660.08	203,073.56	1,231,925.66	894,000.97	942,476.88
Pozzolana	686,563.80	846,604.16	792,564.11	1,103,198.16	960,363.33
Gold	0.01	0.01	0.00	0.01	0.01

Source: Uganda Annual Mineral Production Statistics

Mining in the country is mostly carried out by a combination of officially registered mining companies both local and international and artisanal and small-scale miners (ASM).²⁹ The ASM sector provides employment opportunities to approximately 300,000 Ugandans and is economically significant to an estimated 5,000,000 Ugandans (East African Research Fund , 2018). The ASM sector however, suffers from its economic contributions to the economy being inadequately quantified, poorly understood and due to the informality of the sector, it is excluded from official mineral sector statistics.³⁰

²⁷ BMAU Briefing paper

²⁸ BMAU Policy Brief

²⁹ https://www.responsiblemines.org/wp-content/uploads/2018/03/Uganda_case_study.pdf

³⁰ https://www.responsiblemines.org/wp-content/uploads/2018/03/Uganda_case_study.pdf

Tanzania's Mining Sector

In Tanzania, the main minerals explored include; Gold, Iron Ore, Silver, Diamond and Tanzanite among others. The United Kingdom is the largest foreign investor in the industry and in recent years, mineral exploration has increased in several parts of the country which has attracted new foreign investment.³¹ Below is a table showing mineral production in Tanzania in 2015 to 2018. The quantity of minerals produced have increased significantly across the years. There was however a sharp decline in the production of Gemstone in 2018 which was caused by the deferment in production of gemstone at Tanzanite One mines for one year as well as prohibition of raw gemstone export.³² Tanzania's mining sector contribution to GDP has increased over the years, growing from 4.4% in 2017 to 5.1% in 2018.³³ Despite the growth in the industry, there exists gaps in the sector which lead to revenue loss. The Mining companies operating in Tanzania have been accused by the government of tax evasion.³⁴ In 2017, Acacia Mining was accused of evading tax for years and under-declaring exports. The company was targeted with a tax bill of 190 billion dollars.³⁵

Table 3: Mineral Production in Tanzania 2015-2018

Mineral	Unit	2015	2016	2017	2018
Diamonds	Carats	216,491	237,685	304,456	383,391
Gold	Kgs	43,293	45,155	43,490	35,864
Gemstones	Kgs	1,872,915	2,554,932	1,185,697	284,321
Coal	Ton	257,321	276,030	563,053	725,911

Source: The Economic Survey 2018

Rwanda's Mining Sector

Rwanda is the one of the world's largest producers of Tin, Tantalum and Tungsten(3Ts). The country produces half of the world's Tantalum supply.³⁶ In the years 2015 to 2018, the contribution of the mining sector to Rwanda's GDP was averagely 0.06%. Even though Rwanda's leading source of forex revenue are mineral commodities, this sectoral contribution to the GDP is still low. This is due to the fact that processing of the minerals (Tin and Tantalum) occurs abroad hence limiting further local accrument of economic gains. The sector is also predominantly composed of Artisanal and Small mining operations which limits production to a level below what is achievable.³⁷ Despite mining being the second highest foreign exchange earner, the sector has seen little foreign direct investment. The lack of harmonization across ministries has seen the Rwanda Development Board prioritize other sectors over mining.³⁸

³¹ [International Trade Administration; Tanzania Commercial Guide](#)

³² [The Economic Survey 2018](#)

³³ [The Economic Survey 2018](#)

³⁴ [The European Centre for Development Policy Management](#)

³⁵ <https://www.reuters.com/article/us-acacia-mining-outlook-idUSKCN1BF1CB>

³⁶ [International Trade Administration; Rwanda Commercial Guide](#)

³⁷ https://www.theigc.org/wp-content/uploads/2019/10/Mcleod-2019-policy-brief_updated.pdf

³⁸ [Intergovernmental Forum on Mining and Policy Framework](#)

Burundi's Mining Sector

Burundi's primary mineral exports include Tin, Tantalum, Tungsten Ores (which are often referred to as the 3Ts) and Gold. Mining in Burundi is predominantly Artisanal and Small-scale mining (ASM) which is an important source of rural livelihood to an estimated 34,000 people (World Bank, 2018).³⁹ The sector contributes about 1% to GDP. In the financial years 2015/16 to 2017/18 the share of contribution of the mining sectors to the country's GDP was averagely 0.4%.⁴⁰ There are gaps in the mining sector which include low informal taxation of the artisanal and small-scale miners, slow issuance of licenses by the government, lack of a proper traceability system for gold production and lack of a proper mineral pricing framework.⁴¹ The country is also facing a period of conflict and insecurity after the 2015 elections causing significant disruption in the mining sector. This insecurity threatens Burundi's "conflict free" status thus deteriorating interest from the International market.⁴²

³⁹ [World Bank](#)

⁴⁰ [World Trade Organization](#)

⁴¹ [World Bank](#)

⁴² [World Bank](#)



POLICY & INSTITUTIONAL FRAMEWORK FOR MINERAL RESOURCE GOVERNANCE IN EAST AFRICA

Introduction

Across Africa, mineral exploration is a significant source of foreign direct investment, as demonstrated by the 18\$ billion investment in the industry between 2015 and 2018.⁴³ Cognisant of the importance of the mining industry to the continent's development agenda, governments have instituted various policy and regulatory changes, in a bid to draw maximum economic benefits from the mineral resources. These efforts have been largely propelled by need for countries in the region to increase domestic resource mobilisation that is necessary for financing their development agenda.

In this section, we explore the various policy instruments and institutional frameworks related to mineral resource governance for each of East Africa member state. This provides an overview of how the existing governance instruments are impacting the action of offerent stakeholders in the mineral resources sector. The subsequent chapter highlights how contextual issues are impacting implementation of these policies and the how they are influencing the compliance by stakeholders in the sector.

Policy framework on mineral resource governance

Regional legal and policy frameworks

The East Africa Community has instituted various policy and legal frameworks to govern and regulate the mining industry in the region. This section provides a succinct exploration of the various policy and frameworks that shape mineral resource governance in the region.

- **Africa Mining Vision (AMV):** The Africa Union endorsed the Africa Mining Vision (AMV) in 2009. It provides an overarching framework for realisation of inclusive and sustainable transformation in the continent's mineral sector. It envisions sectoral transformation catalysed by equitable, transparent and optimally exploited mineral resources, which, in turn, contributes to attainment of the socio-economic and sustainable development goals of the continent (AMDC, 2014). Implementation of the AMV calls for efforts by stakeholders at national level to localise its provisions through Country Mining Visions, formulation or revision of laws, polices, regulations, and setting defined standards and procedures for the mining sector. Section 5 of this report provides a an assessment of progress towards implementation of the Africa Mining Vision for East Africa member states.

- **EAC Protocol on Environment and Natural Resource Management, 2006:** Article 144 of the protocol stipulates that partner states shall cooperate in efficient and sustainable management and utilisation of natural resources in the region, for mutual benefit of signatory states.⁴⁴ It also stipulates that member states shall promote joint exploration and efficient exploitation and utilisation of mineral resources. This protocol paved way for the harmonisation of mineral sector policies and regulatory frameworks.
- **EAC Transboundary Ecosystems Management Bill, 2010⁴⁵:** The bill provides a legal framework for effective management of trans-boundary ecosystems with the goal of environmental protection and sustainable utilisation of shared natural resources. It provides that countries conduct an Environmental Impact Assessment for projects that transcend boundaries of individual states.
- **Treaty for the Establishment of the East African Community⁴⁶:** Chapter 19 of the EAC Treaty highlights provisions for cooperation in the management of environment and natural resources. Article 114 stipulates that partner states shall take concerted measures to foster efficient management and sustainable utilisation of natural resources. Article 114 (c) further provides that member states shall i) promote joint exploration and utilisation of natural resources, ii) pursue creation and sustenance of an enabling environment for mining sector investment, iii) pursue harmonisation of mining sector regulations, and iv) promote sharing of data and information of development of the mineral sector.
- **East Africa Community Mining Bill (2017)⁴⁷:** This bill provides a legal framework and guide to implementation of the East Africa Community Vision 2050. It also seeks to operationalise Article 114(2) (c) of the Treaty for the Establishment of the East African Community on harmonisation of mining regulations and promotion of environmentally friendly mining practices. Additionally, the mining bill seeks to provide a pathway to adoption of a common mining regime, outlines mechanisms for transparency and accountability, and nurturing a harmonised operating environment by removal of competitive behaviours and encouraging incentives.
- **EAC Model Investment Code⁴⁸:** The EAC Investment Code was formulated in 2002 as a guide for EAC member states to attract local, regional and foreign investments. Attainment of this objective was premised on the culturing a predictable and transparent regulatory environment for investors. The envisioned reforms targeted various sectors, which is considered to bear untapped investment opportunities.

Kenya National Policy Framework on Mining and Mineral Resource Management

Mining and exploration of mineral resources contributes approximately 4% of the Kenya's GDP (KPMG, 2016). However, the mining sector in Kenya remains largely underexploited, despite geological surveys demonstrating the existence of a wide range of valuable resources in the country. In a bid to enhance exploitation of these resources and boost the contribution of mineral resources to the country's economy, the government has instituted various policy provisions to govern operations in the sector. These are discussed below:

⁴⁴ <https://www.eac.int/environment/natural-resources-management/mineral-resources>

⁴⁵ <https://www.eala.org/index.php/documents/view/the-eac-transboundary-ecosystems-management-bill2010>

⁴⁶ https://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf

⁴⁷ http://kenyalaw.org/kl/fileadmin/pdfdownloads/EALA_Legislation/EASTAFRICANCOMMUNITYMININGBILL2017.pdf

⁴⁸ <https://investment-guide.eac.int/index.php/the-regional-framework/investment-framework>

- **The Constitution of Kenya (2010)⁴⁹:** Chapter 5, Articles 60, 62 (1), 66(2), 69 and 71 of the constitution of Kenya highlight provisions for the prospecting, mining, processing, refining, and treatment of minerals and related dealings. Article (69) specifies that the state shall ensure sustainable exploitation, management and utilisation of natural resources, while ensuring the accrued benefits from the exploitation are shared equitable. Article 72 gives parliament the mandate to enact necessary legislation to effect provision of Chapter 5.
- **Mining Act, 2016⁵⁰:** The Mining Act, 2016 gives effect to provisions of Articles 60, 62(1) (f), 66(2), 69 and 71 of the constitution on management of mineral exploitation and related dealings. Under the act, decision-making power is granted to the Mineral Advisory Board whose mandate include licensing and providing mining approvals. Other key provisions in the Act include: i) Provides structures for negotiating mineral agreements, ii) recognition of artisanal and small scale mining operations, iii) outlines mandates of county governments in consenting to licensing operations, and the National Land Commission to address matters regarding land acquisition, and iv) provides guidelines for transparency and accountability, including publication of mining agreements, production sales and revenue receipts for public access and scrutiny.
- **Mining (Royalties) Regulations, 2017⁵¹:** These apply to holders of mining rights and outlines their obligation to pay royalty as a means of monetary compensation to Kenyan citizens, owners of the minerals within the country. They stipulate that the royalty base for export minerals shall be based off the value of the mineral at point of port exit and that royalty base for locally consumed minerals shall be based off the sale price in the selling point. Regarding timelines, the regulations stipulate that payment of mineral royalties shall be due after every quarter – 31st March, 30th June, 30th September and 31st December.
- **Petroleum Act, 2019⁵²:** The Petroleum Act provides a framework for regulating petroleum mining and effects provisions of the Constitution that apply to petroleum operation in Kenya. The act provides that the Cabinet Secretary (CS) – Ministry of Petroleum and Mining, and the Energy and Petroleum Regulatory Authority shall be responsible for the regulation of petroleum operations in Kenya. It grants the CS powers to award petroleum agreements on behalf of the government. A key element in the Act is the guidelines on revenue sharing between the National and County governments, and the local communities. Articles 56, 57 and 58 provide that revenue from petroleum exploration in Kenya shall be distributed using the 75% - 25% - 5% formula to the national government, county government and local communities respectively.⁵³

Additionally, the government, through the Ministry of Petroleum and mining, has developed various regulatory frameworks related to mining and mineral exploration. These include: (i) Mining (Dealings in Diamonds) Regulations, 2019; (ii) Mining (Mineral Development Agreement) Regulations, 2019; (iii) Mining (Conversion of Artisanal Mining Permit to Small Scale Permit) Regulations, 2019; and (iv) Public Finance Management (Mineral Royalty Fund) Regulations, 2019. These regulations are still in the public participation phase, but form part of the compendium of regulatory framework in the Kenyan mining sector. Overall, Kenya has made substantive progress toward aligning its mineral regimes with principles in the AMV.⁵⁴

⁴⁹ <http://extwprlegs1.fao.org/docs/pdf/ken127322.pdf>

⁵⁰ https://portal.miningcadastre.go.ke/Downloads/Mining_Act_2016_Full.pdf

⁵¹ <http://hakimadinikenya.org/images/publications/Mineral-Royalty-Regulations-2017.pdf>

⁵² http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/PetroleumAct_No_2of2019.pdf

⁵³ <https://www.dlapiperfric.com/en/kenya/insights/2019/highlights-of-the-petroleum-act.html>

⁵⁴ https://media.africaportal.org/documents/policy_brief_vol_08_issue_010_2.pdf

Uganda National Policy Framework on Mining and Mineral Resource Management

Uganda is endowed with a wide range of mineral resources. The exploration and exploitation of these natural resources contributes substantively to government revenues. Revenues collected from the mining and quarrying sector in FY2017/18, FY2018/19 and FY2019/20 are UGX 128.8 billion, UGX 142.3 billion and UGX 109.5 billion respectively.⁵⁵ This points to the importance of the sector to the realization of the country's short-term development plans and its Vision 2040. Given the significance of the sector to the country's revenue stream, the government has installed various legal, policy and regulatory frameworks to govern operations in the industry. These include:

- **The 1995 Constitution of Uganda⁵⁶:** The Constitution grants parliament power to formulate laws regulating exploitation of minerals and to develop guidelines for sharing mineral mining royalties and conditions for payment of mineral-related indemnities.
- **Mining and Mineral Policy for Uganda, 2018⁵⁷:** The policy outlines guidelines to catalyse increased investment in the sector, promote value addition of minerals, and enhance national participation in the sector. Additionally, the policy seeks to enhance revenue generation from the mining sector as a means of attaining socio-economic transformation and eradication of poverty.
- **Mining and Minerals Bill, 2019⁵⁸:** The Bill seeks to repeal the Mining Act, 2003. The bill was adopted with the view of consolidating and reforming legal instruments relating to management of mineral resources in accordance with Article 244 of the Constitution of Uganda. It outlines provisions for licensing of mineral operation, value addition across the sector value chain, sustainable marketing strategies and guidelines for commercialization of mining operations. Additionally, it outlines the role of local governments in the regulation of mining in the county.
- **Mining Regulations, 2004⁵⁹:** The mining regulations were adopted in 2004 to outline procedures to be followed in acquisition of mining licenses related to mineral exploration, location, retention and mining in Uganda.
- **National Environment Act (NEA Act), 2019⁶⁰:** The Act outlines provisions for ensuring institutions undertaking mining activities align their operations with environmental protection measures. It provides that all mining lease holders must conduct environmental impact assessments to determine whether the exploration activities would have any adverse effects on the environment. It also outlines other regulations on land use in Uganda.

Two additional legal and regulatory frameworks are still under development in Uganda. These are: (i) The Mining and Minerals Bill 2020; and (ii) ICGLR Regulations 2019 set to address illegal mineral exploitation and trade.

⁵⁵ https://www.ura.go.ug/openFile.do?path=/webupload/upload/download/staticContent/TOPMENU/9907/10192_RPR.pdf

⁵⁶ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>

⁵⁷ <https://www.oilinuganda.org/wp-content/media/2018/05/Minerals-and-Mining-Policy-2018.pdf>

⁵⁸ <https://www.globalrightsalert.org/sites/default/files/The%20Mining%20and%20Mineral%20Bill%2C%202019%2C%20%20%20Draft%20%2012th%20%20June%2C%202019.pdf>

⁵⁹ <https://www.a-mla.org/masteract/download/343>

⁶⁰ <http://envalert.org/wp-content/uploads/2019/04/National-Environment-Act-2019.pdf>

Tanzania National Policy Framework on Mining and Mineral Resource Management

Tanzania is one of the most mineral-rich countries in Africa and is considered the most mature mining economy in East Africa (Bohne and Thiam, 2018). It is endowed with diverse minerals, including diamonds, gold, gemstones and copper, among others.⁶¹ As part of the Structural Adjustment Programmes (SAPs), within the larger economic reforms, Tanzania embarked on sectoral reforms that included change in the legal and policy frameworks for the mining sector (Muhanga and Urassa, 2013). Some of the major policy reforms are succinctly described below.

- **Mineral Policy, 2009⁶²:** This was enacted to attract and sustain private investments from local and international investors, improve linkages between mining sector and other segments of the economy, encourage women participation in the mining sector, and to improve the contribution of the mineral sector to the economy, among other objectives.
- **Mining Act, 2010⁶³:** This act introduced drastic changes to the initially installed Mining Policy. It specifies that Tanzanian citizens reserve the rights and licenses for mineral exploration and exploitation in the country. Specific to gemstone mining, section 8 (4) of the Act stipulate that mining licenses should be reserved for Tanzanians, with the exception of instances where exploration would require specialised skills and technology, and the foreign participation is limited to 50% or under. On administration, the Act grants the Minister authority to determine standard Mining Development agreements for projects of a large scale (Over \$100 million); and authority to develop necessary regulations for mining operations. On royalties, the Act amended prior provisions that calculated royalties based off net value of the minerals to calculations based off gross value of minerals. The applicable rates are: Uranium – 5%, diamond and gemstone – 5%, metallic minerals (gold, copper, silver and platinum group) – 4%, gem – 1% and other minerals – 3%.
- **Tanzania Extractive Industries (Transparency and Accountability) Act 2015:** The EITI Act's main objective is promoting transparency by outlining obligations on disclosure of financial transactions for mining companies.
- **The Written Laws (Miscellaneous Amendments) Act, 2017⁶⁴:** This act amended some provisions of the Mining Act 2010 with the goal of consolidating the fiscal regime and enhancing compliance with existing laws in the extractive industry.

In 2017, the Tanzanian National Assembly passed the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017. These laws were largely aimed at promoting accountability and transparency. They specify provisions for establishment of a mining commission, review and renegotiation of existing contracts on natural resources and settling disputes. The Finance Act of 2017 also has implications on conduct of mining activities in Tanzania. It specifies that mining companies are obligated to pay a 1% clearing fee based off the value of minerals bound for export.⁶⁵ In addition to these, The Mining (Local Content) (Amendments) Regulations 2019, The Mining (Integrity Pledge) Regulations, 2018, The Mining (Mineral Rights) Regulations, 2019 and The Mining (Mineral Value Addition) Guidelines 2019 (G.N No. 60 of 2019) also form part of the compendium of laws, policies and

⁶¹ [https://www.tanzaniainvest.com/mining#:~:text=Mining%20in%20Tanzania%20includes%20metals,minerals%20\(coal%2C%20uranium\).](https://www.tanzaniainvest.com/mining#:~:text=Mining%20in%20Tanzania%20includes%20metals,minerals%20(coal%2C%20uranium).)

⁶² https://www.madini.go.tz/wp-content/uploads/2017/12/Mineral_Policy_of_Tanzania_2009_sw.pdf

⁶³ <http://extwprlegs1.fao.org/docs/pdf/tan97360.pdf>

⁶⁴ <http://www.gst.go.tz/wp-content/uploads/2018/12/Miscellaneous-amendment-no.-7-of-2017.pdf>

⁶⁵ <https://www.theeastafrican.co.ke/tea/business/tanzania-to-introduce-clearing-fee-for-mineral-exports-1367166>

regulations for the Tanzania's extractive sector.

Rwanda National Policy Framework on Mining and Mineral Resource Management

Mineral resources are among the leading sources of foreign reserves in Rwanda.⁶⁶ In 2017, mineral exports generated \$373.4 million in foreign exchange revenue becoming the second largest contributor to the country's exports.⁶⁷ However, the industry is largely underutilised, with Artisanal mining and small-scale mining operations being the most predominant (Liebetrau and Heizmann, 2017). Additionally, Rwanda largely exports semi-processed minerals, pointing to the limited efforts in investing towards value addition within the sector. Consequently, the mining sector has remained enclaved, contributing only about 11% of the country's foreign exchange earnings.⁶⁸ In a bid to optimise the potential of the industry, Rwanda has put in place various laws and policies to manage and regulate mining operations in the country. Some of these include:

- **Rwanda Policy of Mines and Geology:** This policy provides guidelines for fair management of mineral resources. It outlines provisions to ensure the country leverages exploration of mineral resources in pursuing its objectives on sustainable poverty reduction, while promoting sustainable exploration and exploitation of mineral resources. Additionally, it emphasises the significance of the mineral and other geological resources to the country's economy.
- **New Mining and Quarry Operations Law, 2018⁶⁹:** The law provides comprehensive guidelines on all issues related to mineral resource governance. Chapter 2 outlines requirements for acquisition of mineral licenses to carry out mining activities. Chapter 6 outlines financial provisions for the sector, including guidelines on taxes and royalties. The act also outlines general provisions and guidelines on environmental compliance, health and safety of workers, gender equality in mining and measures to increase productivity in production.
- **Rwanda Mining Code, 2018:** The code aims to improve governance, safety, accountability and environmental protection in the extractive sector.⁷⁰ It outlines legal consequences for non-compliance with established mining standards for companies and individuals in the extractive industry. Additionally, the law halted the issuance of licences for artisanal miners, and introduced a mandatory requirement that all players involved in the extractive industry have to file their financial statements with the Rwanda Revenue Authority. This requirement was introduced to limit illegal flows and money laundering to ensure communities and the country at large benefit fully from mineral exploitation. On environmental protection, the law dictates that all licenced mining companies are required to provide an environmental restoration plan and an environmental rehabilitation guarantee.

Other key laws and policies governing the mining sector in Rwanda include:

- Law N°. 13/2014 of 20/05/2014 on Mining and Quarry Exploitation
- Law N°. 06/2015 of 28/03/2015 Relating to Investment Promotion and Facilitation
- Law N°. 55/2013 of 02/08/2013 on Mineral Tax
- Ministerial Regulations N°. 001/MINIFORM/2010 of 10/03/2010 Fighting Smuggling in Mineral Trading

⁶⁶ https://www.theigc.org/wp-content/uploads/2019/10/Mcleod-2019-policy-brief_updated.pdf

⁶⁷ <https://www.visitrwanda.com/investment-opportunities/mining/>

⁶⁸ <https://www.theigc.org/project/support-to-the-rwanda-mining-board-in-revising-the-mining-policy-and-strategy-2/>

⁶⁹ https://www.rmb.gov.rw/fileadmin/user_upload/MINING_QUARRY_OPERATIONS_LAW.pdf

⁷⁰ <https://www.extractiveshub.org/resource/view/id/13439>

- Ministerial Order N°. 003/MINIFORM/2010 of 14/09/2010 on Requirements for Granting the License for Purchasing and Selling Mineral Substances in Rwanda
- Ministerial Order N°. 002/MINIRENA/2015 of 24/04/2015 on Criteria Used in Categorization of Mines and Determining Types of Mines
- Ministerial Order N°. 003/MINIRENA/2015 of 24/04/2015 Determining Modalities for Application, Issuance, and Use of Mineral and Quarry Licenses
- Ministerial Instruction N°. 010/MINIRENA/2016 of 11/01/2016 Determining Types, Size Limits, and Modalities for Exporting Mineral Ore Samples

These legal and policy frameworks and other recent sectoral reforms are noted to be attractive to investors, setting the stage for the country to position itself as the regional mining hub (IGF, 2017). Additionally, they provide clear linkages with the country's fiscal instruments, demonstrating the government's strong willingness to leverage the potential of the mineral exploration, including consolidation and formalising artisanal mining and small-scale mining operations to finance its socio-economic development agenda. However, the clause on scrapping issuance of licences to artisanal miners in the Rwanda Mining Code 2018 raised opposition among artisanal miners who make up approximately half of the mining contracts in Rwanda.⁷¹

Burundi National Policy Framework on Mining and Mineral Resource Management

Burundi is endowed with varied mineral potential, with Gold, Tin, Coltan and Tungsten contributing the largest share of mineral exports in the country.⁷² The mining sector in Burundi is largely characterised by small-scale and artisanal mining activities. Consequently, the contribution of the sector to the country's GDP remains significantly low at just under 1%. This may be attributable to the limited legal and policy framework governing the sector in Burundi. Up to 2013, the Mining and Petroleum Code, 1976 was the main legal instrument that regulated mining activities in Burundi (IPIS, 2015)⁷³. This was augmented by additional decrees issued as follows: i.) Implementing order (1982), ii.) The Land Code (1986); and iii.) Environmental Code (2000).

There exist substantive gaps with regards to clarity on mineral permits and responsibilities of stakeholders charged with governance of the sector. Cognisant of these gaps, a review of the mining code was initiated, resulting in a new and more comprehensive mining code in 2013. Additional rules and regulations have also since been enacted by the Burundian government to further strengthen the mineral sector. These include:

- Law 1/21 of 15 October 2013 on the Mining Code of Burundi: This act provides that the State shall hold at least 10% stake as a shareholder of mining companies.⁷⁴ It also provides that the Burundian investors have the right to purchase shares in any company engaged in mining operations in the country. Regarding duration of explorations, the Mining Code specifies that the tenure of exploitation permits shall be limited to 25 years. Regarding taxations, the code specifies that all mining activities shall be subjected to corporate income tax and existing custom duties. It also imposes an ad valorem tax on holders of mineral exploitation licenses. The applicable rates are: 7% for gemstones, 5% for precious metals, 4% for basic metals, and 2% for other mineral substances. For quarry and artisanal mine operators, the applicable tax rates are as follows: 2% for gemstones, 2% for precious metals, 3% for basic metals, and 1.5% for other minerals. The new code offers more comprehensive guidelines on mining-related activities from prospecting, exploration, and exploitation, to transport and trade.

⁷¹ <https://www.theeastafrican.co.ke/tea/business/rwanda-alters-mining-law-pushing-out-small-players-1403168>

⁷² https://www.wto.org/english/tratop_e/tpr_e/s384-01_e.pdf

⁷³ Decree 1/138 from 17 July 1976 established the Code Minier et Pétrolier de la République du Burundi into law.

⁷⁴ <https://www.ifri1000.com/NewsAndAnalysis/Burundi-legislative-landscape-Mining-taxation-and-insurance/index/909>

- Decree 100/193 of 16 June 2015 on Mining Rules
- Decree 100/095 of 8 August 2018 on the Mission and Organisation of the Ministry of Hydraulics, Energy and Mines: The decree specifies that the ministry would assume the mandate of designing and implementing policies governing the energy, geology and mines sector. It would also be responsible for promoting geological research and activities in the mining industry.
- Decree 100/184 of 7 December 2018 revising Decree 100/112 on the Creation, Mission, Organisation and Functioning of the Burundian Mining and Carry Authority: This decree mainly specifies the mission and functions of the Burundian Mining and Carry Authority.

In April 2016, Burundi adopted amendments to the Mining Code Law No. 1/21 of 2013. The amendments were largely aimed at removing some legal hurdles in the mining sector, simplifying procedures and incentivising investors by offering more legal protection.⁷⁵ Amendments on article 146 revised upwards the applicable fees and charges on extracted minerals. The amendments also sought to minimize “mineral bleeding” through tax frauds and illegal mineral exploitation by reducing the *ad valorem* tax rates. The applicable rates include a reduction from 2% to 0.8% on precious metals and stones, and a reduction from 3% to 1.5% for other base metals and mineral substances.

Vision Burundi 2025 also emphasizes importance of the mining sector to the country’s economic growth, thus building to the framework of policies governing the industry. It also envisions development of a mining code that is attractive to foreign investors.⁷⁶

Institutional framework on mineral resource governance in EAC

The benefits of a robust legal framework can only materialize when institutions and practices to implement the rules are in place. At regional level, the AfDB Natural Resource Centre (ANRC), the African Mineral and Geosciences Centre (AMGC) and the African Minerals Development Centre (AMDC) exist to support African states in enhancing mineral resource governance (IDEA, 2017).

At sub-regional level, there is no distinct institutional framework on the governance of mineral sources in the EAC, but within its legislative organ, the East Africa Legislative Assembly (EALA), there is a Committee on Agriculture, Tourism and Natural Resources. Under Chapter 19, the committee’s broad function hinges on Co-operation in Environment and Natural Resources Management.⁷⁷ Nevertheless, efforts are underway towards a harmonization of mining policies and mining regimes in the region.

At national level, individual EAC member states have undertaken considerable efforts to develop regulatory institutions to foster democratic mineral resource governance. Mineral resource governance issues cut across political, social and economic aspects from land and environmental concerns to exploration and extraction rights.

The table below shows an overview of the institutional framework in the 5 East African countries. Whilst the table only reflects on mineral resource specific institutions, other institutions exist that address aspects of resource governance.

⁷⁵ <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2467/burundi-updates-the-mining-code->

⁷⁶ https://www.adaptation-undp.org/sites/default/files/downloads/vision_burundi_2025.pdf

⁷⁷ <https://www.eala.org/index.php/committees/committee-on-agriculture-tourism-and-wildlife>

Table 4: Institutional Frameworks for Mineral Resources Governance in East Africa

COUNTRY	INSTITUTION
Kenya	Ministry of Petroleum and Mining Directorate of Mines Mineral Audit Agency
Tanzania	Ministry of Minerals Tanzania Mining Commission Tanzania Chamber of Mines Tanzania Investment Centre
Uganda	Ministry of Energy and Mineral Development
Rwanda	Rwanda Mines, Petroleum and Gas Board Ministry of Forest and Mines Ministry of Environment
Burundi	Ministry of Hydraulics, Energy and Mines Burundian Mining and Carry Authority

In addition to the institutional framework, regulatory frameworks that govern licensing, mineral rights, issuance of permits and royalties exist to further enhance governance in the sector. Of notable concern, is the existence of different institutions mandated with governance of mineral resources, which are unfortunately not coordinated. Experience shows that where there are uncoordinated institutions, governance issues and the attendant mandate tends to vest with discretionary ministerial powers (Luoga, 2016). This encourages government patrimonialism impeding participatory decision making. It is prudent an institutional set up mandated with overall coordination on mineral resource governance is put in place.



IMPLICATIONS OF CONTEXT ON MINERAL RESOURCE GOVERNANCE IN EAC

Introduction

It is not enough that a country has a wealth of natural resources; effective management of these resources and equitable benefit sharing are essential⁷⁸. The EAC is endowed with abundance of mineral resources such as gold, tin, copper, uranium, cobalt, among others. Even with established institutions, policy guidelines and mineral resource governance frameworks, specific country contexts within East Africa tend to affect effective management and governance of mineral resources. This section discusses some of the contextual issues that have affected mineral resource governance in the EAC region. These include the global shift of power from the G8 to G20 countries, effectiveness of government, financing development, regional politics within the EAC, land ownership regimes, colonial linkages, climate change, demand for certain minerals, and the COVID-19 pandemic.

Effectiveness of Government

Government plays a role in effective mineral resource governance through implementing policies and regulating the mining sector through a set of laws. This is in order to claim their rights to exploit natural resources to develop their economies. Countries whose governments face significant challenges such as corruption are bound to have a weak mineral resource governance system. Also, scholars argue that the reforms and benefits that international instruments like EITI can proffer must be considered in the broader governance contexts of the countries where they are implemented (Cust, 2017). This is because adoption of EITI standards does not happen in a vacuum but within and supported by existing institutions of government that affect progress in various ways.

⁷⁸ <http://kmco.co.ke/wp-content/uploads/2020/05/Exploited-Poor-and-Dehumanised.pdf>

Recent statistics from the World Bank have compared the East African countries according to the six global governance indicators, namely voice and accountability, political stability and absence of violence, government effectiveness, quality of regulation, rule of law and control of corruption. From the data illustrated on table 5, it is clear that many East African States continue to grapple with challenges in terms of government effectiveness. Apart from Rwanda the other four States in the EAC appear to have low indices in controlling corruption, rule of law, quality of regulation and political stability. Also, in a previous ranking of the East African countries on the basis of ease of doing business; the ease of conducting business is a significant indicator of where most investors will most likely invest their resources; it was evident that it was easier to do business in Rwanda (41), followed by Kenya (80), Uganda (122), Tanzania (137) and Burundi (164) in that order⁷⁹. The evidence, at least going by these governance indicators, suggests that all five states perform poorly on voice and accountability and other related governance indicators which are an important in terms of cultivating good governance, transparency and accountability. The implication is that as much as improvement are made regarding enactment of new laws, establishment of institutions and implementation or adherence to international instruments in the extractives sector, progress is bound to be stifled by the governance contexts within which all these efforts are made.

Table 5: Governance indicators Across East African Countries

	Worldwide Governance Indicators (%)					
	Voice & Accountability	Political Stability & Absence of Violence	Government Effectiveness	Quality of Regulation	Rule of Law	Control of Corruption
Kenya	36.5	12.4	38.5	41.3	35.6	24.5
Uganda	30.0	22.9	31.3	38.0	43.8	11.5
Tanzania	32.0	32.9	17.3	27.9	29.3	40.9
Rwanda	18.7	52.4	60.6	58.2	56.3	70.7
Burundi	4.9	7.1	10.1	14.9	5.8	4.8

Source: World Bank-2019 Worldwide Governance Indicators⁸⁰

For instance, Tanzanian government enacted laws that introduced changes in the exploitation of natural resources in the country's mining sector to ensure that Tanzania's natural resources are exploited to benefit its citizens⁸¹. However, political tussles and lack of tolerance between the elites from CCM and CHADEMA (the two leading political parties in Tanzania) has further weakened the institutions that would have otherwise held the multinational corporations accountable and transparent in the mining sector⁸². In Kenya put regulations within the mining sector that encourage job creation through the use of local expertise in the mining industry that enables skills retention in the country. This is aimed at developing the local capacities through education, skills and technology transfer, and research and development initiatives to reduce on costs associated with outsourcing such skills and expertise. However, there is little evidence that this has been achieved thus far⁸³. Rwanda, a hybrid and multi-level governance has proven more effective and unique in the EAC region than the state-centred mechanisms applied in both Tanzania and Uganda. This has limited the relative capacity of Multinational companies to commit malpractices, thus reducing levels of violations of human rights in the mining vicinity. Ultimately for the region to maximise benefits of governance in the extractives sector, there is need for more improvements in effectiveness of government (in aspects such as the rule of law, transparency, accountability and inclusion) and the other related indicators to provide the enabling environment for progress to happen and to be sustained.

⁷⁹ <https://openknowledge.worldbank.org/bitstream/handle/10986/29085/122097.pdf?sequence=2&isAllowed=y>

⁸⁰ <https://databank.worldbank.org/source/worldwide-governance-indicators>

⁸¹ "Tanzania seeks to reform mining sector for citizens' benefit," *The East African*, Saturday July 1 2017, available at <https://www.theeastafrican.co.ke/business/Tanzania-seeks-to-reform-mining-sector/2560-3995660-7pubh5/index.html>

⁸² <https://ul.qucosa.de/api/qucosa%3A34780/attachment/ATT-0/>

⁸³ Mining (Employment and Training) Regulations, 2017, Regulation 3.

Financing Development

Over the past decade, there has been a surge in the proportion of development financing covered by public amongst EAC states giving an indication that the countries are increasingly pursuing foreign debt options to finance their development agenda. There are concerns in East Africa that there may be a surge in resource backed/related loans obtained from increasing demand for funding to finance development. Several countries in the region are pursuing financing options for energy and infrastructural projects that are linked to extraction of minerals (including oil and natural gas). Some analysts now believe that the pursuit of resource backed loans are contributing to debt sustainability problems and facilitating IFFs (through the extractives sector) in the region that is detrimental for long term economic development in the region.

Foremost, according to the IMF, many states in the region are considered to be at risk of debt distress having surpassed conventional thresholds. For instance, countries like Kenya and Burundi and have the IMF 50% debt to GDP ratio⁸⁴. Kenya's public debt currently stands at Kshs. 7.3 Trillion⁸⁵, Tanzania's at Tsh. 54.84 trillion as of November 2019⁸⁶, these two being one of the two biggest economies within East Africa. This surging debt has sparked concerns over the countries' capacity to meet repayment obligations. There have been concerns that the composition and the growth of East Africa's debt towards China can be linked to investment deals in the extractives (in mining, oil and gas) and infrastructure sector some of which are backed by or guaranteed by resource endowments though there is anecdotal evidence due to the opacity associated with this.⁸⁷ Such loans and budget allocations associated with huge investments in the mining industry have a strong effect on the region's economy and overall GDP.

Secondly, it has now been proven that a significant proportion of IFFs out of Africa are generated by the extractives sector. In resource rich countries in Africa revenue from extractive industries account for a substantive proportion of tax - estimated at about one-third of the total tax accrued.⁸⁸ But in too many instances there is little to show for the revenues generated, and local ownership often provides little material benefit for local communities. This has been blamed on IFFs that are strongly linked to corruption, mostly orchestrated by the mining companies and tax collecting agencies in such countries.⁸⁹ This is fuelled by laws governing corporations which are generally weak on beneficial ownership declaration, absence of parliamentary oversight that compromises transparency and accountability of SOEs and a highly secretive extractives sector operating under strong discretionary political control (Global Integrity Organisation, 2018). The lack of transparency in the management of revenues arising from mineral extraction, and the accountability of countries and corporate actors in their relations with mining-affected communities and citizens of resource-rich countries is thus a great concern. It has been argued by some scholars and analysts that some of the IFFs in the extractives sector is contributed by unfair debt relations that resource rich countries have with lenders especially emerging ones like China (and other BRIC nations). There are asymmetrical relations between countries that receive debt financing with illicit financial flow. This argument is related to such harmful practices and policies as unfavourable Double Taxation Agreements (DTAs) signed by debt recipient countries, transfer mispricing by MNCs of debt providing nations, and others like tax exemptions, breaks and incentives often negotiated as part of debt instruments and non-formal agreements with debt recipient governments without sufficient public scrutiny and accountability. Continued loss of revenues from the mining sector through IFFs limit resources to finance development. These flows, illicitly acquired and channelled out of the region, continue to pose a development challenge, as they remove domestic resources which could have been crucial for economic development (Nkurunziza, 2012; Ndikumana et al, 2015).

84 <https://www.theeastafrican.co.ke/tea/business/east-africa-faces-debt-crisis-as-borrowing-surpasses-100b-mark-1430754>

85 <https://www.centralbank.go.ke/public-debt/>

86 <https://www.theeastafrican.co.ke/tea/business/debt-is-within-limits-says-tanzania-1434226>

87 https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2019AEO/REO_2019_-_East_Africa_.pdf

88 <https://www-cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf>

89 <https://www.chathamhouse.org/2020/10/african-agency-mineral-resource-governance>

Though it maybe implausible to assume a direct link between IFFs and investment losses, public investment funding gaps created by IFFs are often offset by foreign development funding and in particular by further public borrowing. This is because sustained budget deficits and needs to bridge financing gaps for national development goals like infrastructure development have led to contraction of substantive amounts of public debt in East Africa (Herkenrath et al., 2012). As argued by Ndikumana and Boyce (2003) IFFs can force and or incentivise a government to resort to flight-driven (resource related) external borrowing whilst external debt can also trigger debt-fuelled capital flight (Herkenrath et al., 2012). In both cases, IFFs compound government indebtedness with implicit policy conditionalities.

Regional Politics within the EAC

Regional politics in the EAC has had significant implications on governance of mineral resources. There are policy choices that can be pursued collectively by EAC states towards ensuring sustainable exploitation of minerals and effective utilization of revenues for economic development. The EAC has for example is working on suitable legislation and policies towards domestication of the Africa Mining Vision. Nonetheless, regional politics especially concerning relations between States has been identified as impediments to success. This has been evident also in other areas beyond cooperation in resource governance for example in implementation of the EAC Common Market protocol among other things.

It is notable that in some cases, relations between states in the EAC has created a non-conducive environment for cooperation and joint efforts towards improving resource governance in the region. One major area where this has been evident is in pursuit of cooperation between countries for joint development projects in the mining sector. For instance, Uganda refused to allow an electricity line to pass through the country from Ethiopia to Rwanda through an international support project. The deals over pipelines of petroleum between Uganda, Kenya and Tanzania and the road and railway master plans are still incomplete till date. Also, in 2016, Uganda and Kenya agreed to a 1,380 km pipeline route: Hoima-Lokichar-Lamu. Uganda, however, decided to build the pipeline through Tanzania's Tanga port, leaving Kenya to build its own pipeline to Lamu. This is because Uganda had raised concerns over the location of the pipeline terminal along Lamu Port that was prone to monsoon winds⁹⁰ and security risks posed by al-Shabbab⁹¹. This meant that Kenya failed to secure a financing partner for the pipeline project as opposed to Tanzania that had the financial backing of a French firm, Total E&P⁹². The tussle between Uganda and Rwanda also made it extremely difficult for these two countries to effectively cooperate in mineral resource governance. Uganda accused Rwanda of espionage and spying, while Rwanda accused Uganda of economic sabotage (Uganda failed to extend power transmission lines from Ethiopia and Kenya to Rwanda as agreed; the SGR was diverted to South Sudan and not Kigali as earlier agreed) and torture of the Rwandese people⁹³. Also, some EAC countries have experienced bumpy relations resulting from unresolved disagreements on minerals trading, smuggling and transportation. There have been tiffs: between DRC and Uganda related to illicit gold and timber smuggling; between Tanzania, India and Kenya on gold and Tanzanite smuggling and strained relations between Uganda and Rwanda on mineral transportation⁹⁴.

90 <https://www.theeastafrican.co.ke/tea/news/east-africa/as-uganda-chooses-tanzania-pipeline-route-kenya-to-go-it-alone--1348788>

91 <https://globalriskinsights.com/2016/01/east-africas-pipeline-politics-in-2016/>

92 <https://eprcug.org/eprc-in-the-news/fight-over-oil-pipeline/>

93 <https://www.newtimes.co.rw/news/root-cause-tension-and-conflict-between-uganda-and-rwanda-deeper-analysis>

94 <https://ul.qucosa.de/api/qucosa%3A34780/attachment/ATT-0/>

Whilst there are no known regional factions over mineral resource governance within the EAC, forms of riot and resistance still exists as alluded to by the riots in North Mara, Tanzania against the control of the gold mine owned by Acacia⁹⁵. There has also been a worrying rise of grievance seeking factions in Rwanda, Uganda and Burundi since 1990s from warring movements such as the Forces Démocratiques pour la Libération du Rwanda (FDLR) from Rwanda, the Forces Nationales pour la Libération (FNL) from Burundi, the Allied Democratic Forces (ADF) and the National Army for the Liberation of Uganda (NALU) from Uganda⁹⁶, who militarily operate in a quest to overthrow the governments from administrative control of the country and to defend their lucrative business interests, especially in the DRC (Hans R., 2007).

The other issue regarding regional politics is the complicated relationship with Tanzania – which is both a member of the EAC and SADC. Tanzania is also affiliated to the Southern African Development Community (SADC), whose role is to enhance socio-economic cooperation among 16 countries in Southern Africa. Tanzania has, in the past, aligned and pledged more allegiance to SADC standards of mineral resource governance as opposed to those set by the EAC. This conflict of interest within the two regional blocks has limited cooperation by EAC states with Tanzania in many areas including in resource governance.

Land Ownership Regimes

Land tenure systems in Africa are quite different from the rest of the world. In SSA, about 90% of land is undocumented, informally administered and is thus prone to grabbing⁹⁷. In Uganda, the law does not differentiate customary rights on land and formal legal land tenure and that is why there are tensions with expropriation. Within the EAC, Tanzania and Uganda hold and recognize the customary land tenure system. Land use rights in many regions within the EAC are not well defined and protected, giving oil and natural gas companies the leeway to break land rights laws. For instance, Uganda passed two petroleum bills that subordinated community land rights to petroleum rights⁹⁸. Questions surrounding land remain divisive in spite of progress EAC integration. While the majority of the EAC countries, operate largely open and private land ownership regimes, Tanzania has a more public land tenure system. As such, while some member states are open to foreign ownership of land, other states prefer to restrict land ownership to citizens⁹⁹.

In most EAC countries, the majority of the population derive their livelihood directly from the land through farming, mining and livestock rearing. Also, most of the EAC population live in rural areas and this brings in the problem of mining and farming as both activities normally have competing demands for land. Most of the people live in rural areas and still depend on traditional farming rather than mining, especially for those countries which are small but densely populated such as Rwanda and Burundi. The Burundi population is the most rural in the EAC with only 12% living in urban places. Uganda follows with just 16% living in urban places. While Tanzania, Rwanda and Kenya are encouraging urbanisation, no EAC country has reached 50% yet. Even the countries with enough space, like Tanzania, have conflicted with companies to move people from mining areas.

95 <https://ul.qucosa.de/api/qucosa%3A34780/attachment/ATT-0/>

96 <http://documents1.worldbank.org/curated/en/668411468244798529/pdf/440810WP0BOX327388B01PUBLIC1.pdf>

97 <http://www.worldbank.org/en/news/press-release/2013/07/22/how-africa-can-transform-land-tenure-revolutionize-agriculture-end-poverty>

98 <http://www.brookings.edu/events/2014/02/20-east-africa-oil-gas>.

99 <https://issafrica.org/iss-today/much-ado-about-land-in-the-eac>

As communities are displaced from their communal land to pave way for mining activities, they are mostly undercompensated for their land, or even uncompensated in worst case scenarios. In most times, the amount of compensation given to landowners is not commensurate to the land's actual market value. Within the Albertine Graben region in Uganda for example, 10% of households were displaced. Whilst many households felt that the compensation was insufficient, many of them were not advised on how to manage the cash since there was no compensation guidelines put in place (Kimenyi & Lewis, 2015).

There are also concerns that some EAC states are gradually losing their sovereignty in mineral-rich territories as they request global powers to protect their resource rich territories. For instance, Uganda asked France to support securing the Lake Albert and the west Uganda rich in metals and oil. Uganda also received special aid and loans from China as a supplementary force to enable longevity of the ruling elite and humanitarian security in the process of signing a new MoU with CNOOC – a Chinese oil company that leads the consortium of the UK and France multinational corporations involved in the nascent oil industry of Uganda.¹⁰⁰

These land tenure regimes and related issues have significant implications on sustainable mineral extraction, especially that which respects and protects the rights and livelihoods of local communities. The variances in tenure regimes and discordance in national policy frameworks for handling land related to investments in mining, oil and gas industry continue to limit cooperation, symmetry and synergies in governing the sector.

Climate Change

Africa faces a 2% economic loss in GDP annually because of climate change¹⁰¹. The mining sector is extremely energy-intensive and one of the leading emitters of CO₂ and other greenhouse gases (Norgate and Haque, 2010), thus making the mining sector important in policymaking around climate change (Arnet et al, 2014). Climate change carries the risk of causing serious environmental changes in nature that may disrupt resource-dependent livelihood generation such as agriculture, fishing and livestock keeping. Changing climatic conditions within the EAC region has posed both direct and indirect effects on the mining sector. These include increase in temperature and insufficient rainfall, situations which threaten people's livelihoods, the melting of the snow-caps of Mt. Kenya and Mt. Kilimanjaro and water-level rise in Lake Victoria and other water bodies.

Mining companies often operate in areas with marginal physical environments, high poverty and significant social, political and economic challenges. Vulnerable communities are prone to suffer from environmental distress such as drought, floods, rising temperatures and natural disasters. A decrement in the social conditions of living within these areas often lead to civil unrest and political instability¹⁰². Compared to the 1980-2000 period, there is an expected rise in armed conflict in Sub-Saharan Africa as a secondary effect of climate change (David B. et al., 2008). Beyond the effects of climate change on humans, there have also been effects on mining. For instance, soda ash mining in Lake Magadi in Kenya has been affected by siltation, occasioned by deforestation within the Narok county area¹⁰³.

100 <https://ul.qucosa.de/api/qucosa%3A34780/attachment/ATT-0/>

101 World Development Report 2010: development and climate change, The World Bank, Washington, DC, 2010.

102 https://www.bsr.org/reports/BSR_Climate_Adaptation_Issue_Brief_Mining.pdf

103 <https://www.standardmedia.co.ke/ktnnews/ktn-prime/video/2000095213/kenyas-soda-ash-producing-lake-magadi-at-risk-due-to-siltation-occasioned-by-deforestation>

With growing civil society activity and increasing number of mining companies embracing sustainable climate change modalities, private and multilateral agencies and multinational corporations have become more reluctant in supporting mining activities (Sharma et al., 2013). The World Bank's climate strategy for Africa aims to increase knowledge and capacity of countries to mitigate effects of climate change. For instance, the World Bank BioCarbon Fund financed a pilot carbon sequestration project for agricultural carbon in Kenya that purchases carbon credits on a mutually agreed price per tonne from carbon-emitting companies¹⁰⁴.

Demand for Certain Minerals

EAC Partner States are endowed with rich mineral resources potential ranging from gemstones, precious metals, base metals, and industrial & construction minerals amongst others. Rwanda is one of the quickest developing EAC member states, especially in the production of Tin, Tantalum and Tungsten. Uganda has a strong history of Copper production, while Tanzania's extractive industry is the most developed among all the EAC states as the fourth biggest exporter of Gold in Africa. It also produces diamond and tanzanite. Burundi is well endowed with deposits of nickel, vanadium, cassiterite, colombo-tantalite, gold, uranium, rare earth oxides, peat, cobalt, copper, platinum, hydropower, niobium, tantalum, gold, tin, tungsten, kaolin and limestone¹⁰⁵. These mineral resource endowments - cobalt, uranium, coltan, copper and, especially Uganda, Rwanda, Burundi, West Tanzania, oil in South Sudan, Uganda, Kenya, and tanzanite in Tanzania tin predispose the region to the risk of the resource curse. Their exploitation has, however, been limited and largely based on production of mineral commodities for export without further processing to add value in the form of intermediate goods or final products.

Increased demand for some of these minerals has become an important issue for governance in the sector. Normally rise in demand stems from competition between different actors over access to and control of specific mineral endowment of the country, minerals which are highly valued in the global market (Billon, 2013, Watts, 2010). Actors compete to access these minerals, triggering resource-based wars. In the international community, it is highlighted that among metals the most sensitive conflict minerals are 3TGs (tin, tantalum/coltan, tungsten, and gold). Notably EAC states have big reservoirs of gold, oil and metals (copper, cobalt, tin and nickel), which are useful in industries, construction and defence sectors and highly demanded in the global market. There exists a predominance of tin, tantalum and tungsten in Rwanda, and the nascent oil and metal industry in Uganda. Tanzania is endowed with diverse hydrocarbon energy resources including natural gas, coal, geothermal and possibly oil much of which is untapped. Even though the countries have different minerals reserves, the demand for certain minerals has determined the resource extraction political economy of the EAC member states in the last two decades¹⁰⁶.

This increased demand and overdependence on certain mineral resources has led conflict, like the experience with 'blood diamonds', as it provides incentives to cartels and black-market operators to increase unregulated illicit production. Resource-based conflicts are a major threat to the sustainable development of natural resources in Africa and continue to undermine economic development, sustainability and human development (Abba. Kolo, 2011).

104 <https://www.biocarbonfund-isfl.org/>

105 <https://www.eac.int/investment/why-east-africa/investment-opportunities/mining>

106 <https://ul.qucosa.de/api/qucosa%3A34780/attachment/ATT-0/>

Also, increased demand for certain minerals, in some cases (like in the experience with oil boom) has created macroeconomic imbalances especially where reserves are drained or shocks in global markets like the financial crisis in 2008 and Covid-19 in 2020. In Tanzania, an overemphasis on gold revenues has led to less emphasis on other minerals such as diamond, silver and tin in the country. Further, such increases in demand for certain minerals fuel IFFs generated through the sector. Within the past two decades, mineral looting has been prominent within the EAC region; the UN group of experts on illegal trade of minerals accused Rwanda and Uganda of smuggling minerals involved in mineral conflict such as gold, coltan and other metals from DRC. Some scholars argue already that mineral endowment in Africa has become more of a “resource curse” rather than a blessing due to corruption - collusion by political elites with MNCs - “investors” in the mining sector (Mupambwa & Zaba, 2019).

COVID-19 Pandemic

COVID-19 has reversed some of the gains made in trade facilitation in the EAC region. Owing to disruption of business in Africa, UN ECA stated that Corona Virus would shave 1.4% off Africa’s USD 2.1 Trillion GDP¹⁰⁷. The pandemic saw mining companies of all sizes radically slow down or halt their operations, despite available technology and skills for automatic mining activities. The restrictive measures have disrupted global demand and supply of minerals due to global inter-connectedness. The fall in commodity prices significantly affected EAC oil and mineral products exporters, thereby leading to sharp declines in export earnings and financing challenges. Whilst minerals such as coal were exempt from national lockdowns, metals such as zinc, copper, nickel and iron ore experienced price and production declines as a result of the global effect of the pandemic on the mining industry¹⁰⁸. Gold was not affected as such, as its production still continued and its price increased during this time¹⁰⁹¹¹⁰.

Restrictions of international movements of people and tight border controls disrupted cross-border trade, and cut linkages with global and regional value chains within the mining sector. Travel restrictions and lockdowns that were imposed to curb the spread of COVID-19 heavily disrupted supply chains and affected both mineral exporting and importing within the EAC region. This is because EAC’s largest trading partners, namely the EU, USA, China, India and South Africa have been the worst affected by the pandemic since its onset. Kenya and Uganda closed their borders as a result of the pandemic. This move affected Tanzania’s trade in the EAC region; Kenya being the leading destination for Tanzania’s exports, followed by Uganda. The COVID-19 pandemic led to loss of employment of mining sector workers since the travel and movement restrictions couldn’t allow the workers to report to work. Majority of mining sites were closed down in order to limit the spread of the virus among local workers and surrounding communities. The loss of wages among many mining employees was dependent on their cadre of employment; whether they were essential staff or contractual workers.

107 <https://www.iisd.org/system/files/publications/covid-19-employment-mining-en.pdf>

108 <https://www.mining-technology.com/comment/mining-operationshold-covid-19-drops/>

109 <https://www.spglobal.com/marketintelligence/en/news-insights/research/covid-19-impacts-to-metals-prices-volatility-is-here-to-stay-part-2>

110 https://ipisresearch.be/wp-content/uploads/2020/08/202008_ASM-Covid-NTanzania_Layout1.pdf

Rwanda's mining sector was severely affected by the pandemic mostly due to the total lockdown that was issued at the onset of the pandemic. Restrictions by different countries on air travels, coupled by a drop in international prices of minerals, made it almost impossible to supply minerals. However, the Rwanda Mines, Petroleum and Gas Board (RMB) took up some strategies to revive the mining industry. These include boosting production, expedite resumption of Rutongo mines operation, diversification and focus on other minerals such as gold, gemstones and other strategic minerals such as lithium, beryllium, and rare earth element¹¹¹. Compared to the other EAC countries, perhaps the Kenyan mining sector was the least affected by COVID-19 pandemic as this sector remains largely underdeveloped and for a long time been weighed down by a weak policy regime¹¹². Most of the minerals are still illegally smuggled out of the country. The suspension of all ASM in Kakamega and Taita Taveta as a result of the measures to stop the spread of the virus also affected mineral trade in Kenya¹¹³.

A Global Shift of Power

One of the most significant factors influencing mineral resource governance globally and within the EAC region is the shift of political and economic power from the G8 group of countries to the G20 group of countries (Darby S., 2010). Over the years, the G20 has increasingly stood out as a core influence in international negotiations on most matters affecting countries globally. The sudden rise of the economies of the G20 nations (especially India and China) led to a rise in demand for mineral resources and a subsequent influx of private and state-owned companies towards the countries with mineral resource endowment. The rapid rise in demand for mineral resources, especially from large economies such as Brazil, Russia, India and China¹¹⁴ led to the establishment of frameworks to ensure transparency and accountability in mineral resource governance. These include the Extractive Industries Transparency Initiative (EITI), the Publish What You Pay (PWYP), the US Dodd-Frank Wall Street Reform and Consumer Protection Act, and the UN Global Compact, among others. In essence, the emergence of these different governance frameworks led to a far less homogenous approach to mineral resource governance within the EAC region and globally. In fact, researchers have criticized these frameworks as a way of distraction from the real need to establish effective governance institutions and frameworks to regulate multinational organisations in the mining industry. This is because these initiatives have failed to achieve significant buy-in from public and privately owned institutions from some of the G20 states such as Brazil, Russia, India, China and South Africa (Darby S., 2010). The shift in political and economic power from G8 to G20 nations also significantly increased and diversified the number of players shaping global mineral resource governance and global mining institutions.

111 <https://www.miningreview.com/gold/covid-19-recovery-rwandas-quick-wins-to-revive-mining-sector/>

112 <https://citizentv.co.ke/business/kenyas-mining-industry-still-weighed-down-by-weak-regulations-10844875/>

113 <http://www.mininghubafrica.com/2020/08/14/impacts-of-covid-19-on-asm-operations-in-kenya/>

114 <https://www.transparency-initiative.org/blog/613/natural-resource-governance-new-frontiers-in-transparency-and-accountability/>



ROLE OF INTERNATIONAL INSTRUMENTS IN MINERAL RESOURCE GOVERNANCE

Introduction

Over the years, stakeholders in the international community, individually or collectively, have endeavoured to foster sustainable exploitation and governance of natural resources using rules and guidelines (Khadiagala, 2014). Today, there are more than 80 active international instruments working towards improving the governance of natural resources that are operational or considered in various contexts across the world, including the East African Region (Hodge, 2017; UNEP, 2020). These include legally binding instruments (often propped by UN agencies); policy frameworks; national laws with international implications; platforms for dialogue and voluntary instruments. (Hodge, 2017; UNEP, 2020). They have come in the form of guidelines, codes, best practice manuals, scorecards and assessment tools among others.

Most of such existing instruments cover different aspects of supply chains issues in the extractives sector and diverse issues including environmental considerations, human rights, transparency and accountability among others (Billon, 2011). These instruments have been categorised in five broad classes – (i) platforms for standard setting or assessment/indexes or guidance like benchmarking tools; (ii) platforms for capacity building (including networking, knowledge sharing); (iii) platforms for advocacy (including dialogue and coordinating activities); (iv) policy frameworks and (v) legal frameworks. They have also been grouped in other ways as those: related to: (i) Contract and revenue transparency instruments; (ii) Certification instruments; (iii) Broad governance standards; and (iv) Other non-resource-specific initiatives, including tax reform initiatives (Billon, 2011).

Essentially, these instruments/initiatives have been products of policy entrepreneurs (mostly from civil society) who induced governments, international organizations, and corporations to recognise and buy into norms and ideas on natural resources governance (Khadiagala, 2014). Some instruments are driven by the public sector (governments) at national level, others by international organisations (like UN, OECD, AU among others). The thrust of many of these initiatives/instruments has been the focus on governments of resource-rich countries and corporations and governments in the global north, seeking to provide tools to facilitate improvements in resource governance.

Proponents of these instruments have argued that pursuing good governance (through such mechanisms as fiscal rules, sovereign wealth funds or expenditure policies) in the extractives can ensure prudence and efficiency in the managing of resource revenues for the to benefit citizens (Cust, 2017). Others have argued that transparency in enhancing information about revenues and budgets is not only a fundamental right enshrined in Article 19 of the Universal Declaration of Human Rights, but also important as it permits citizens to monitor government action, yielding improved accountability and better development outcomes. There are examples provided for where good governance in the extractives sector has succeeded – for instance in Chile through implementation of fiscal rules, or in Norway using a savings fund, or in Botswana through pursuit of human development objectives in spending choices (Cust, 2017).

In this section, we explore various international instruments, institutions and initiatives that target to improve natural resource governance (especially mineral resources). We interrogate some of the most impactful instruments for the EAC region (these are: Publish What You Pay (PWYP), Extractive Industries Transparency Initiative (EITI), Kimberley Process Certification Scheme (KPCS), Dodd-Frank Legislation, and the African Mining Vision (AMV)) and also provide a longer list of other relevant instruments for reference. We then proceed into a discussion on the impacts of these instruments on mineral resource governance in the East African region. It is important to note that there are instruments that are not specific to extractive resources but single out extractives as a high priority.

Table 6 below illustrates a broad range of initiatives that have emerged since the most recent commodity cycle (about 2001).

Table 6: International Initiatives in the Extractive Sector

Inception	Initiative
2020	Maendeleo Diamond Standards https://www.resolve.ngo/maendeleo_diamond_standards.htm
2018	World Bank Environmental and Social Framework (ESF) https://www.worldbank.org/en/projects-operations/environmental-and-social-framework
2016	Model Mining code by World Initiative of Mining Lawyers (WIOML) https://miningglobe.com/supply-chain-and-operations/what-does-introduction-model-mining-code-mean-industry
2015	Responsible Mining Index www.responsibleminingindex.org/foundation
2014	Solutions for Hope https://www.resolve.ngo/site-sfhtantalum/default.htm
2013	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. https://investorsforhumanrights.org/oecd-due-diligence-guidance-responsible-supply-chains-minerals-conflict-affected-and-high-risk
2013	Better Gold Initiative https://www.planetgold.org/better-gold-initiative
2012	International Finance Corporation Principles and Guidance on Social and Environmental Sustainability - established in 2006 https://www.ifc.org/wps/wcm/connect/c02c2e86-e6cd-4b55-95a2-b3395d204279/IFC_Performance_Standards.pdf?MOD=AJPERES&CVID=kJtjHBzk
2011	Public-Private Alliance for Responsible Minerals Trade
2011	Conflict-Free Sourcing Initiative (CFSI) Smelter Program (CFSP) http://www.responsiblemineralsinitiative.org/news/in-region-sourcing/

2010	Natural Resource Governance Institute https://resourcegovernance.org/about-us/what-we-do
2010	Responsible Mineral Development Initiative (RMDI) http://www3.weforum.org/docs/Responsible_Mineral_Development_Initiative.pdf
2009	Equitable Origin, EO100™ Standard https://energystandards.org/responsible-energy-development/
2009	Devonshire Initiative https://www.devonshireinitiative.org/
2009	Aluminium Stewardship Initiative https://aluminium-stewardship.org/about-asi/
2008	Responsible Minerals Initiative http://www.responsiblemineralsinitiative.org/about/rmi-initiative/
2006	Initiative for Responsible Mining Assurance (IRMA) https://responsiblemining.net/about/about-us/
2006	Enduring Value Framework by Mining Council of Australia
2006	Towards Sustainable Mining initiative of the Mining Association of Canada https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/files/pdf/rmd-rrm/TSM_EN.PDF
2005	Diamond Development Initiative (DDI) https://www.resolve.ngo/ddi.htm
2005	Responsible Jewellery Council https://www.responsiblejewellery.com/
2004	Alliance for Responsible Mining (ARM) https://www.responsiblemines.org/en/who-we-are/history-2/
2003	Kimberley Process Certification Scheme (KPCS) https://www.kimberleyprocess.com/
2003	Extractive Industries Transparency Initiative (EITI) https://eiti.org/who-we-are
2003	ICMM Principles and Sustainable Development Policy framework https://www.icmm.com/en-gb/members/member-requirements/mining-principles
2000	Global Reporting Initiative https://www.globalreporting.org/about-gri/mission-history/
2001	FTSE4 Good Index https://www.ftserussell.com/products/indices/ftse4good

African Mining Vision (AMV)

Beyond global initiatives, there are also notable African resource sector governance initiatives and institutions that are gradually evolving in Africa. They borrow from and incorporate global norms, standards, and structures within the overarching framework of African responsibility captured in the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). The most prominent initiative in Africa is the Africa Mining Vision (AMV). Created by the members of the African Union in 2009, the AMV is a continental policy framework for natural resource governance framework designed to lay down principles for individual countries to harness their mineral wealth for economic development. It aims at achieving transparency, equity, and optimal exploitation of natural resources in the continent. Beyond fostering multistakeholder engagement in management of the continent's natural resources, it emphasises integration of mining (processes and value chains) into local and national economic development.¹¹⁵

¹¹⁵ <https://www.tandfonline.com/doi/pdf/10.1080/02255189.2020.1821352?needAccess=true>

The AMV seeks to ensure that mining activities benefit Africa primarily, and in the long term, ensure the transformation of the continent from an exporter of raw materials to a manufacturer and supplier of knowledge-based services. It covers multiple policy considerations along the mineral value chain, from exploration and project development, through taxation, safeguards, to revenue management, downstream value addition and linkages to the rest of the economy. Contextualized national visions of the AMV are the central mechanisms expected translate the AMV into practical policy prescriptions at the country level. They aim to facilitate inclusive multistakeholder dialogue among different stakeholders (including government, private sector, and civil society). The AMV provides salient building blocks for effective governance of the mineral resources in Africa. These are, amongst others, peace, security and political stability; clear, transparent, predictable and efficient legal and regulatory frameworks to ensure mineral wealth creation; fair and equitable fiscal regimes to facilitate equity in the distribution of benefits; credible public participation to enhance ownership and shape shared development outcomes; transformational leadership and followership to harness mineral wealth with a view to building resilient, diversified and competitive economies; strong institutions to ensure effective management of the sector; adequate infrastructure including an advanced human development to remain competitive; and building a sustainable future beyond mining (ECDPM, 2013).¹¹⁶

Tracking Domestication of AMV through Country Mining Visions in EAC

Being members of the African Union, EAC member states are required to domesticate the AMV by aligning laws, policies and regulations to reflect the principles and objectives enshrined in the AMV. However, more than a decade since its inception, the AMV has faced challenges in transforming the vision into effective policy and durable outcomes in mineral governance in the region. Few of the 54 States in Africa have aligned their national policy frameworks on minerals to the reform agenda espoused in the AMV (PWYP, 2020). This lack of uptake at national level alone has been cited as an obstacle. This has been attributed to a range of factors, among them the increasing competition for market dominance, institutional capacity limitations and overall limited political goodwill to pursue the transformative agenda envisioned in the framework. Other notable challenges that are reflected in existing literature include the nature of existing contractual obligations of some member states, the asymmetric relations between African states and multinational corporations, limited funding, and limited state capacity.

In East Africa, progress towards domestication of the AMV has been particularly slow. Nonetheless, the Community has ongoing policy processes that target to improve cooperative regional natural resource governance. Though not yet operationalised, Article 18 of the EAC Protocol on Environment and Natural Resources Management focuses on the mining sector; it requires Partner States to develop and harmonise common policies, laws and strategies for access to and exploitation of mineral resources for the socioeconomic development of the Community. The East African Legislative Assembly (EALA) is also processing a bill (EAC Mining Bill, 2017) that seeks to operationalise Article 114(2) (c) of the EAC Treaty on harmonisation of mining regulations and promotion of environmentally friendly mining practices. The bill aims to provide a pathway to adoption of a common mining regime, outlines mechanisms for transparency and accountability, and nurturing a harmonised operating environment by removal of competitive behaviours and encouraging incentives.

¹¹⁶ <https://ecdpm.org/wp-content/uploads/2013/11/GREAT-Insights-2-2-Growth-Transformation-Role-Extractive-Sector-2013.pdf>

None of the EAC member States have a consolidated and operational Country Mining Vision (CMV). However, some States are pursuing reforms aimed at aligning their policy frameworks with the AMV. For instance, whilst the Country Mining Vision is yet to be established, Tanzania has made the most progress in the region towards compliance and realisation of objectives envisioned within the AMV.¹¹⁷ On eliminating tax avoidance, The Mining Act 2018 section 28(3) & 106(1) and the Mining (Integrity Pledge) Regulations provide that companies shall not engage in malpractices such as tax evasion, under or overpricing, abuse of treaties on double tax, or corruption. Section 22 of the Mining Act 2018 grants the Mining Commission the mandate to dictate mineral prices and audit the quantity and quality. The Transfer Pricing Regulations 2018 have also been critical to ensuring fiscal compliance within the mining sector. While these regulations are not specific to the mining sector, they impose various documentation and reporting requirements for tax compliance, counteracting tax avoidance. There has also been substantive progress made towards review of Bilateral Investment Treaties (BITs) and Double Taxation Agreements (DTAs) as provided in the AMV. Tanzania has signed DTAs with Canada, Sweden, Finland, Denmark, Norway, Italy, India, South Africa and Zambia.¹¹⁸ While there have been negotiations for new DTAs since 2017, no new agreements have been signed. On BITs, Tanzania has signed BITs with 20 countries, with the latest being China, Canada and Kuwait in 2013. Notably, Tanzania terminated its Bilateral Investment Treaty with the Netherlands in 2018.¹¹⁹ The termination was premised on failed efforts to review the terms of the treaty, which were viewed to be rigid and unfavourable to interests of Tanzania. Review and renegotiation of mining contracts is ongoing in Tanzania. According to the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2017, the Tanzanian National Assembly is authorized to review all contracts and agreements on exploration and exploitation of natural resources in Tanzania. Operationalization of this act resulted in renegotiation of the mining contract between the government and Barrick Gold Corporation in 2019, which birthed a 50/50 sharing formula for economic benefits from the company's mines.¹²⁰ Overall, the country has made significant progress towards domestication of the AMV, including improving business environment, auditing mineral production and exporting, and optimising benefits of mining and mineral exploitation to local communities. This has mostly been done through the various policy reforms instituted between 2017 and 2019. According to Tax Justice Network-Africa and Policy Reform, Tanzania has made sufficient progress in auditing mineral production, strengthening the sector's fiscal regime, and review and renegotiation of mining contracts (Policy Reform, 2020). However, little progress has been made towards development of rent distribution system, strengthening linkages between the mining sector and local economy, improving business environment and review of DTAs (Policy Reform, 2020).

Kenya has also made notable efforts towards domesticating the Africa Mining Vision. There is an ongoing process towards development of a Country Mining Vision. The domestication plan for AMV in Kenya was designed to be actualised in six stages. These include: i) launching a multi-stakeholder taskforce, ii) conducting a gap analysis for the AMV considering Kenyan context¹²¹, iii) Development of AMV compliant policy, iv) Development and execution of CMV implementation plan; and, v) Monitoring and evaluation of CMV implementation.¹²² Thus far, the Ministry of Mining has constituted the technical working group. According to a retreat report on Kenya Country Mining Vision compiled by UNDP and Ministry of Mining (2017), the technical working group was spearheading production of various strategic

117 <https://www.policyforum-tz.org/sites/default/files/AMV%20Report.pdf>

118 <https://www.policyforum-tz.org/sites/default/files/AMV%20Report.pdf>

119 [https://www.africalegalnetwork.com/tanzania/news/legal-alert-tanzania-terminates-bilateral-investment-treaty-netherlands/#:~:text=Legal%20Alert%207C%20Tanzania%20Terminates%20Bilateral%20Investment%20Treaty%20with%20the%20Netherlands&text=On%2030%20September%202018%2C%20hours,\(BIT\)%20between%20both%20nations.](https://www.africalegalnetwork.com/tanzania/news/legal-alert-tanzania-terminates-bilateral-investment-treaty-netherlands/#:~:text=Legal%20Alert%207C%20Tanzania%20Terminates%20Bilateral%20Investment%20Treaty%20with%20the%20Netherlands&text=On%2030%20September%202018%2C%20hours,(BIT)%20between%20both%20nations.)

120 <https://www.reuters.com/article/us-barrick-gold-tanzania-idUSKBN1WZODL>

121 https://www.academia.edu/34906471/Kenya_and_the_Africa_Mining_Vision_AMV_A_gap_analysis_report

122 <http://hakimadinikenya.org/blog/tracking-africa-mining-vision-in-kenya-reflections-from-a-cso-consultative-forum>

papers, including a CMV concept paper, stakeholder engagement plan and a communication and advocacy strategy.¹²³ However, there remains limited evidence demonstrating progress to the other stages of the domestication process. Nonetheless, the various policy and regulatory frameworks established through 2019 demonstrate progress towards domestication and realisation of some key objectives envisioned in the AMV. The country has enacted legislation that are significantly aligned to some of the provisions of the AMV like the Mining Act (2019). Domestication of the AMV is supported by linkages with the country's long-term development plan, Vision 2030, Global Sustainable Development Goals and existing legislations in the extractive sector.

Uganda has actively pursued policy reforms in the mining sector. In particular, the Mining and Minerals Policy, 2018 was significant as it incorporated artisanal mining, a critical segment of the sector that had been overlooked under previous policy regimes (BMAU, 2019). Additionally, there have been deliberate efforts to make the country more attractive to investors. For instance, the Value Added Tax Act of 2015 provides that payment of taxes be constrained to the production stage for persons of corporations licenced to conduct mineral exploration and development.¹²⁴ These policy reforms could be construed to have resulted in positive change, as demonstrated by the issuance of 375 mineral licenses in FY2017/18 and a 5.6% increase in number of active licences between FY2018/19 and FY2019/20 (Ministry of Energy and Mineral Development, 2020). However, progress towards domestication of AMV remains unclear beyond the scope of policy reforms. The domestication process continues to face substantive challenges that are yet to be addressed. Most notable is the limited sense of ownership of foundational concepts enshrined within the AMV by key stakeholders – particularly non-state actors like NGOs.¹²⁵ Additionally, the AMV is perceived to be largely biased towards mining, with limited alignment with oil and gas sectors that have gained great traction over recent years with discoveries of oil and gas deposits in various regions in the country.¹²⁶ These challenges have continued to hinder efforts towards expanding contribution of mineral development to the country's GDP. In FY 2019/20, production of minerals dropped by 25.6% owing to the ban on exportation of unprocessed mineral (DGSM, 2020). Exportation dropped by 52% and consequently, a drop in non-Tax revenues by 21.8% (Ministry of Energy and Mineral Development, 2020). This points the need to additional efforts to implement provisions of the AMV and pursuing additional sectoral reforms aimed at optimizing performance of the sector. The ban on exportation of unprocessed minerals, which it resulted in a negative impact, signals the government's efforts towards improving value addition mechanism.

The governments of Rwanda and Burundi have also made notable reforms and amendments to policy and regulatory frameworks in the mining industry. These reforms highlighted in 3.1.5 and 3.1.6 could be construed to demonstrate progress towards reforms in the sector. Some notable changes from the various legal and policy instruments installed include establishment and definition of mandates of institutions overseeing mining activities, revised rates on mineral extraction, trade and exports, consolidated regulatory frameworks to ensure tax compliance and environmental protection, and improved environment to attract both domestic and foreign investments, among others. These elements demonstrate alignment with some provisions of the AMV. Additionally, Rwanda and Burundi are among the three countries in the Africa Great Lakes Region to implement the tin supply chain initiative¹²⁷ by the International Tin Association.¹²⁸

123 <https://www.ke.undp.org/content/kenya/en/home/library/poverty/Report-on-the-Kenya-Country-Mining-Vision-Retreat.html>

124 <https://finance.go.ug/sites/default/files/Publications/BMAU%20Policy%20Brief%202012-19-Uganda%25u2019s%20Mineral%20and%20Mining%20Sub%20Sector%20-%20What%20can%20be%20done%20to%20harness%20its%20full%20potential.pdf>

125 <https://oilinuganda.org/features/law/domesticating-the-africa-mining-vision-where-civil-society-stands/>

126 <https://www.petroleum.go.ug/index.php/who-we-are/who-we-are/petroleum-exploration-history>

127 This is a regional mineral traceability and due diligence mechanism for tin, tungsten and tantalum. It monitors these minerals through the entire supply chain.

128 <https://www.pactworld.org/country/burundi>

Whilst there is some efforts towards complying with provisions of the AMV, the progress on the process in Rwanda and Burundi remains unclear. Thus far, they are yet to develop Country Mining Visions as the key document guiding the domestication process.

Overall, Tanzania has made the most significant steps towards domestication of the AMV. Kenya and Uganda have also made notable efforts compared to Rwanda and Burundi. However, the EAC region is yet to fully implement the provisions of the AMV. Thus far, none of the member states have a consolidated and operational CMV. The limited progress may be attributable to challenges in the various contexts.

The Publish What You Pay (PWYP) Coalition

The PWYP coalition of civil society actors was launched in 2002 galvanized by a 1999 Global Witness report that highlighted the questionable role of foreign business actors in Angola's civil war. It includes over 300 NGOs and operates in over 50 countries across the world. In Africa, the PWYP movement is widespread, with nearly 30 active national coalitions working on natural resource governance (PWYP, 2020). It advocates for mandatory publication of payments made by corporations involved in extraction of natural resources to governments in resource rich countries and the mandatory publication of revenues received by governments from these companies. It emphasizes significance of revenue transparency in the prevention of corruption and in illicit financial flows, resource rich states. PWYP believes that revenue transparency can facilitate civil society groups to contribute to debate over effective use and allocation of resource revenues for sustainable development in resource rich countries. It is noted in existing literature that PWYP's campaigns for mandatory disclosure paved the way for more transparency and better natural resource governance. It has underscored the power of norm-setting, helping to influence subsequent initiatives. Over the last ten years, PWYP coalitions have worked to raise awareness of, and advance implementation of, the (Africa Mining Vision) in partnership with a range of national and international bodies (PWYP, 2020).

The Extractive Industries Transparency Initiative (EITI)

Created on the back of growing civil society pressure for transparency in the resource sector, EITI is a coalition of governments, corporates, CSOs and international organizations that seeks to alleviate corruption, in the extractive sector, by revealing to the public what (amounts) companies pay in taxes to government and to reconcile those numbers against what governments report to have received (Cust, 2017). It is perhaps the most prominent norm of extractive industries transparency. EITI seeks to assist resource rich countries to transform their wealth into tangible development outcomes, through improved transparency. Across the world, since its inception, EITI has been backed by more than 70 large extractives (oil, gas and mining) corporations. To date more than 25 compliant countries have been validated using EITI quality assurance mechanisms. They include Tanzania and Uganda in East Africa.

In 2020, the EITI Board approved Uganda's application to join the EITI, making it the 54th member country globally and 26th in Africa. The country however, has been an active player in the framework since 2008 when Uganda first shown interest in EITI in the 2008 National Oil and Gas Policy. This was further reiterated in the updated 2012 Oil and Gas Revenue Management Policy. Participation in the EITI is also identified in the 2019-2024 Domestic Resource Mobilisation Strategy.¹²⁹¹³⁰¹³¹ The government views EITI as an opportunity to strengthen tax collection, improve the investment climate, build trust among sector stakeholders and help create lasting value from our mineral and petroleum resources.¹³² The country is expected to make initial disclosures in terms of the [2019 EITI Standard](#) within 18 months of being admitted as an EITI implementing country.¹³³ In Tanzania EITI compliance has facilitated improvements in information on revenue receipts provided by mining companies and also compelled government to make public information on revenue receipts. This has reportedly allowed comparisons and more scrutiny that in the past has unearthed discrepancies that made it possible for actors in the sector to pursue resources that could otherwise be unaccounted for. In 2009 for instance, EITI reports showed a discrepancy of nearly \$37 million between what companies said they had paid and what the government said it had earned. According to reports, this level of scrutiny can be linked to a significant drop in that discrepancy by the next year (from \$37 million in 2009 to about \$4 million 2010).[138]

Although other EAC countries remain uninvolved in EITI, it has provided useful principles for governance of the extractives sector in these countries that is evident in national laws and policies and also informed and galvanised processes for domestication of the AMV. EITI requires regular publication of information on natural resource (oil, gas, and minerals) payments made by corporations to governments and all revenues received by governments from these companies to a wide audience in a publicly accessible, comprehensive, and comprehensible manner (Khadiagala, 2014; Muigua, 2019). It then uses independent administrators to reconcile the reported figures based on international auditing standards. Since 2013, EITI has adopted a broader Standard covering a wider set of transparency measures and dimensions including more contextual information on production, contracts, and beneficial ownership.¹³⁴

EITI is lauded for: (i) establishing an internationally accepted standard for reporting resource revenues by both corporations and governments; (ii) creating a model framework of multi-stakeholder dialogue on critical public policy issues in signatory countries; and (iii) creating an international network of governments, NGOs, and corporate actors who share a commitment to revenue transparency in the extractives sector (Muigua, 2019). Many of its proponents argue that it has contributed to behaviour change in many countries as its reports contain useful information on revenues that would not be available in the public domain (Cust, 2017). Nonetheless, it has also been criticised for weaknesses in translating revenue transparency into improvements in resource governance and overall development outcomes. Also, because despite some improvements in the governance arena, most of them retain low levels of citizen participation in politics, weak accountability systems, and corruption. Further, because implementations of EITI policies depend largely on the very weak institutions that produced the resource governance challenges in the first place.

129 https://www.finance.go.ug/sites/default/files/Publications/NEW%20DOMESTIC%20REVENUE%20MOBILISATION%20STRATEGY_FEB%202020_0.pdf

130 https://www.acode-u.org/Files/oildocs/Oil_Revenue_Mgt_Policy.pdf

131 <http://pau.go.ug/uploads/NATIONALOILANDGASPOLICYFORUGANDA.pdf>

132 <https://eiti.org/news/uganda-joins-eiti>

133 <https://eiti.org/document/eiti-standard-2019>

134 <https://eiti.org/document/standard>

The Dodd-Frank Legislation

In July 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly called Dodd-Frank Act). Sections 1502 and 1504 of Dodd-Frank address the problem of conflict minerals. The Act requires that all companies active in the extractive industry (minerals, oil and gas) in third world countries and registered with the Securities and Exchange Commission (SEC) to publicly report (via a devoted website) on the due diligence they have undertaken to verify their supply chain and avoid conflict-promoting metals. Section 1502 requires companies under the jurisdiction of the Security and Exchange Commission (SEC) to report annually on whether they are using minerals from the DRC. Section 1504 on the other hand requires publicly traded oil, gas, and mining companies to make project-level disclosures of payments above \$100,000 made to governments around the world for the purpose of commercial development of natural resources. It mandates the US Securities and Exchange Commission (SEC) to require publicly listed companies to disclose information on payments they (whether through a subsidiaries or other entities under their control) to foreign governments or U.S. Federal Government meant for commercial development of oil, natural gas or minerals. One of the lauded successes of Dodd-Frank is globalization of mandatory disclosure of payments by extractive sector companies. A decade later, despite lack of concrete evidence of its impact, The Dodd-Frank Act has proven to be a forceful signal to corporates in the extractives sector that for transparency regarding their dealings in mineral rich countries especially in SSA – like DRC and neighbouring countries (AU, 2013).

Influence of international instruments on Mineral Resource Governance in EAC

Proponents of international governance instruments (platforms for dialogue, voluntary instruments, guidelines, codes, best practice manuals, scorecards and assessment tools among others) in the extractives sector contend that they bring credibility and rigor to natural resource governance (Khadiagala, 2014, Cust, 2017; UNEP, 2020). They provide general reference for best practice, valuable especially for governments in countries with weak technical capacity; because such initiatives provide knowledge (that draws on international expertise and experience) and technical guidance upon which they can build their own systems (Cust, 2017). International initiatives also provide credible best practice that key players can consult or rely on to navigate politicized domestic arguments in order to benefit from experiences of countries that pursued trajectories in resource governance (ECDPM, 2013). Beyond providing a useful point of reference, international initiatives are critical for anchoring political commitment as they provide decision makers with external codes or rules that restrict players at national level from deviating from policy choices (ECDPM, 2013).

In this section, we explore some of the ways in which international instruments have impacted or may influence mineral resource governance in EAC. We reflect on such key areas as: (i) maximising revenue generation from minerals; (ii) addressing IFFs in extractives sector; (iii) access to information in extractives sector; (iv) promoting sustainable extraction and environmental protection; (v) proffering benefits to local communities; (vi) promoting value addition; (ii) addressing artisanal and small-scale mining; and (iii) increasing inclusion in mineral resource governance.

Maximising revenue generation from mineral resources

As espoused in the AMV, governments in the region, in countries endowed with substantive mineral resources are seeking to ensure that mining activities proffer long-term economic benefits to their citizens. One of the key areas is in streamlining taxation and revenue management, which have significant implications on ensuring that mineral rich countries in the region exploit and obtain the most from these resources in terms of government revenues.¹³⁵ There has been considerable effort in terms of aligning national policies related to mining in EAC countries to the AMV and to such initiatives like EITI. It is notable that Kenya, Uganda, Tanzania and Rwanda have begun processes towards domestication of the AMV. The AMV, through regional institutions, like African Minerals Development Centre (AMDC)¹³⁶ and African Legal Support Facility (ALSF)¹³⁷, is working towards boosting capacities of national institutions to negotiate contracts and extract better deals; to administer [auditing, monitoring illicit financial flows, and regulation] the sector and build robust institutions; and to audit, review and renegotiate (where necessary) existing mining agreements. At the national level, economies (like Kenya, Tanzania and Uganda) are re-designing policies and restructuring institutions responsible for the minerals sector to move from growth to long-term and inclusive transformation anchored on natural resources (ECDPM, 2013). In Kenya for instance, there is notable a department for extractives at the national Audit office charged with among other responsibilities to ensure transparency and accountability in revenues from natural resources. There has also been notable influence of the EITI in assisting countries to maximise revenue collection from corporations exploiting minerals in the region. Tanzania, for instance, has been cited as an example where EITI compliance has improved information on revenue receipts. In 2009, EITI reports showed a discrepancy of nearly \$37 million between what companies said they had paid and what the government said it had earned. In 2010, that discrepancy had dropped to nearly \$4 million.¹³⁸

Addressing IFFs generated by the extractives sector

One of the mostly documented ways through resource rich countries lose revenues is through illicit financial flows. Several studies have highlighted the role of the extractive sector in generating IFFs (UNECA, 2015; UNCTAD, 2020; Jalipa, 2020). The report of the High-level Panel on Illicit Financial Flows from Africa indicated that large shares of illicit outflows from Africa are in precious metals, iron and steel, and ores (UNECA, 2015). It has been estimated that nearly 50% of illicit outflows from Africa are generated via trade mispricing and more than half of trade-related IFFs stem from the extractive sector (UNECA and African Minerals Development Centre, 2017). The Economic Development in Africa Report 2020 indicates that trade mispricing (IFFs) in Africa based on a range of estimates varies from \$30 billion to \$52 billion per annum (UNCTAD, 2020).

In this regard, there has been considerable progress in dealing with IFFs from the extractives sector enabled by international initiatives (instruments and institutions). Issues relating to corruption and tax evasion, both related to illicit financial flows, are gaining attention. Several international initiatives are attempting to address these problems by improving transparency and accountability in resource revenue flows – especially improving contract and revenue transparency. Some observers however doubt the effectiveness of transparency of revenue collection in reducing corruption (IFFs), arguing that most corruption is related to expenditures (Kolstad and Wiig, 2009).

135 <https://repository.uneca.org/ds2/stream/?#/documents/687980b1-002f-5c58-9ab9-d448ffbc64f/page/6>

136 <https://negotiationsupport.org/matrix/african-minerals-development-centre>

137 <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility>

138 <https://www.theeastafrican.co.ke/tea/oped/comment/enough-lessons-time-for-africa-to-benefit-from-its-oil-gas-and-mining-1314622>

There are four major initiatives that are impacting revenues transparency. These are PWYP, EITI, Section 1504 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act, and reforms of International Financial Reporting Standards. These advocate for transparency in resource revenues and though evidence of their impact in the sector is still limited, they have improved revenues transparency that is believed to have connections with reducing IFFs. The EITI, for example, fosters public reporting on financial flows between resource companies and governments.¹³⁹ The Dodd-Frank act (Section 1504) operates on the hope is that such disclosure, by allowing comparisons of companies within a country and within a sector across countries, will be a useful tool for identifying suspiciously low tax rates as well as corruption and embezzlement.¹⁴⁰ In countries where international standards have been adopted and implemented, like in Uganda and Tanzania, Supreme Audit Institutions (SAIs) provide useful information on revenue receipts that can be utilised by Parliament, CSOs, media and others to put pressure on government to ensure they extract the maximum from exploited resources. For instance, in Uganda, there is the audit of the Petroleum Fund and in Tanzania Controller and Auditor General (CAG) audits of the mining sector have been useful in establishing possibilities of illicit financial flows.¹⁴¹

Beyond the voluntary initiatives, the IMF also plays an important role in revenues transparency and access to information on public finances (for example through its requirements for fiscal revenue disclosure and fiscal management standards). Its statistical country reports (Article IV) provide useful information on fiscal revenues from extractive sectors for many countries including those in the East African region.¹⁴² The IMF also issues Reports on the Observance of Standards and Codes (ROSCs).¹⁴³ These have served as quasi-audits for domestic authorities and risk assessment tools lenders and investors in the extractives sector. The IMF's Fiscal Transparency Code provides guidelines for resource revenue management with specific provision on resource ownership and rights, resource revenue mobilisation, resource revenue utilisation and resource activity disclosure that resource-producing countries utilise to improve resource governance.¹⁴⁴

Also, the International Accounting Standards Board (IASB) operates accounting disclosure standards for extractive sectors including the International Financial Reporting Standards (IFRS). Since 2004, the IASB has considered the specificities of extractive sectors and is increasingly putting pressure on require extractive companies to disclose their public accounts on a country-by-country basis, including payments to governments, production volumes, production revenues, costs, turnover and profits, the names of key subsidiaries and properties, and reserves.¹⁴⁵ This provides useful information that national authorities can utilise for tracking IFFs (especially through such malpractices as transfer mispricing and trade mis-invoicing). Transfer mispricing has been deemed a substantive limitation to the ability of States to effectively mobilise domestic resources (especially from extractives) to finance their development (ATAF, 2018). Many countries across the world are putting together mechanisms (legislation, institutions and capacity) to facilitate scrutiny of corporations to ensure that the profits that they report are computed based on international standards and to prevent abusive transfer pricing practices. It is notable that countries like Kenya, Tanzania, and Uganda in East Africa now have transfer pricing regimes, provisions in their tax codes, and/or special tax rules and considerations for mining, oil and gas industries that are gaining traction in dealing with IFFs from the extractives sector.¹⁴⁶

139 <https://www.cmi.no/publications/file/4248-extractive-sectors-and-illicit-financial-flows.pdf>

140 <https://www.cmi.no/publications/file/4248-extractive-sectors-and-illicit-financial-flows.pdf>

141 <https://kenya.oxfam.org/making-extractive-industries-audit-reports-publicly-accessible-gilbert-makore>

142 <https://www.elibrary.imf.org/view/journals/002/002-overview.xml>

143 <https://www.imf.org/en/Publications/rosco>

144 <https://www.imf.org/external/np/fad/trans/Code2019.pdf>

145 <http://www.publishwhatyoupay.org/en/activities/advocacy/accounting-standards-regulations>

146 <https://www.pwc.com/gx/en/tax/transfer-pricing/management-strategy/assets/pwc-transfer-pricing-africa-pdf.pdf>

There have been several meetings between CSOs, corporations, and lending agencies like IFC and World Bank targeted at addressing IFFs generated by the extractives sector. For instance, PWYP through funding from OSI and other NGOs like Save the Children, Action Aid, Christian Aid, Transparency International, Tax Justice Network Africa, AFRODAD among others have pushed for diffusion of mandatory financial disclosure beyond the United States through stock exchange regulators, export credit agencies, disclosure of extractive industry contracts, and stronger standards of due diligence within the resource and financial sectors. These have led some countries in Africa to domesticate and include in their laws the principles of contract transparency that are increasing public information on extractives. Liberia, and the DRC have enshrined this principle in law, while Ghana has pledged official support for publication of contracts. Though still not experienced in EAC, these have provided best practices upon which CSOs and other actors have benchmarked their work and advocacy for contract transparency in the region.

Increasing access to information in extractives sector

The diversity of actors participating in various value chains in the extractive means that there is a variegation of information sources and types that actors (whether in government, corporates, media or civil society) have to rely on for decision-making (UNEP, 2019). This is partly because of significant variations in capacities of the actors that produce and use such information and lack of transparency prevalent in the sector. Essentially, this causes information asymmetry that furthers disproportionate benefits to different stakeholders in the extractives sector and has been argued to lead to mistrust, misunderstandings and even conflict related to extractives (UNEP, 2019). As such, the need for increased public access to information related to extractives cannot be gainsaid.

Notably, a wide range of international initiatives (like EITI, PWYP among others), are working on and promoting generation and publication of more information related to extractive sector processes. EITI for example has been an effective tool for encouraging transparency in the extractives sector in the region, which has facilitated availability of published government revenue data from extractives (Lehman, 2015). It has provided mechanisms for States, like Tanzania, willing to apply transparency in managing public revenues to do so and also allowed companies to pursue openness and transparency in the sector (Lehman, 2015; Cust, 2017). It has promoted publication of natural resource revenue figures in about 21 countries in SSA (EITI, 2010; Cust, 2017). That way, EITI has facilitated a better understanding of government revenue data in the region.

Also, through the OECD/G20 Inclusive Framework Base Erosion and Profit Shifting (BEPS), there has been increased traction in encouraging governments in developed countries to share information on taxes and revenues with those in Africa (including resource rich ones in East Africa). Countries across the globe are increasing cooperation between tax authorities facilitated by frameworks for exchange of information like Tax Information Exchange Agreements (TIEAs), Double Tax Agreements (DTAs) or through multilateral treaties like the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Knobel, Harari and Meinzer, 2014). The Organization for Economic Co-operation and Development (OECD) developed a model Common Reporting Standard (CRS) for a global regime for automatic exchange of information (AEOI) to facilitate tax transparency and reduce cross-border tax evasion (OECD, 2017).¹⁴⁷ It is notable that tax administrations across SSA are not fully utilizing instruments providing for tax information sharing (OECD, 2019).¹⁴⁸ Nonetheless, in East Africa, Kenya and Uganda, are considered to be compliant to standards for Exchange of Information on Request

¹⁴⁷ <https://home.kpmg/xx/en/home/insights/2015/11/financial-institutions-face-aeoi-fs.html>

¹⁴⁸ <http://www.oecd.org/tax/transparency/Tax-transparency-in-Africa-2018-progress-report.pdf>

(EOIR) and the EAC has also developed an Exchange of Information on Tax Matters in the East African Community handbook.¹⁴⁹¹⁵⁰ These efforts have the potential to increase access to information on dealings (profits for corporations and revenues for governments) in the extractives sector (including in mining, oil and gas).

Whilst good progress is observable with regards to increasing information on extractives, challenges still remain. There are those who argue that transparency and accountability efforts in the mining sector have overly focused on financial transparency and pay less attention to increasing transparency regarding social and environmental impacts of operations in the sector. Even where there is some data, it is often published in forms that are difficult for stakeholders to engage with or understand. Other documented gaps (especially for EITI) include: (i) lack of regular and predictable reporting that prevents time-series analysis or comparison; (ii) non-comparability on revenue numbers across countries; and (iii) data quality issues (ECDPM, 2013). Also, some practitioners argue that access to or sharing of information on extractives sector revenues is hampered by Requirements for data security and confidentiality that lock out developing resource-rich countries from benefiting, limitations in capacity to utilise information received and general lack of political will and buy-in from policy makers to pursue standards on transparency and accountability in the extractives sector.

Promoting sustainable extraction and environmental protection

At best, mineral resource revenues should be leveraged for sustainable economic development while at the same time addressing the impact (social, environmental, and economic) that comes with mineral resource extraction. However, the mining industry, globally continues to be faulted by international media and civil society for gaps in sustainability and has also faced conflicts and opposition from local communities related to sustainability of their operations (UNDP, 2017). This is because mining by its very nature disturbs natural environments and poses many threats to human wellbeing. There is always a need for striking the crucial balance of ensuring that mining delivers socio-economic benefits and reduces its impact on the environment which the sector has usually found difficult to achieve.

Cognisant of the need for this balance, the global mining industry commissioned a report in 2001 that highlighted a range of issues related to sustainability of mining (Kickler and Franken, 2017). This led to the rise of many industry-wide initiatives aiming to address these issues.¹⁵¹ These include standards on environmental and social performance of mining like: (i) ICMM Sustainable Development Framework, (ii) Initiative for Responsible Mining Assurance (IRMA) Standard for Responsible Mining, (iii) Responsible Jewellery Council (RJC) Code of Practices, (iv) Bettercoal Code (BC), (v) The IFC Performance Standards on Environmental and Social Sustainability, (vi) Aluminium Stewardship Initiative (ASI), (ii) The Equator Principles among others.¹⁵² Also, the UN Guiding Principles on Business and Human Rights (UNGPR) provides a normative framework outlining the roles of states and businesses in addressing the adverse impact of business operations on human rights.¹⁵³ These guidelines outline obligations of States and corporations to protect and respect human rights and provide effective remedies for ensuring sustainable business (including for the extractives sector) (UNDP, 2017).

149 <https://www.pwc.com/ng/en/assets/pdf/tax-information-exchange-to.pdf>

150 http://eacgermany.org/wp-content/uploads/2014/12/EAC-HandbookEOI_screen.pdf

151 <https://www.iisd.org/system/files/publications/igf-ssi-review-extractive-economy.pdf>

152 https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/Downloads/Sustainability_Schemes_for_Mineral_Resources.pdf?__blob=publicationFile&v=6

153 https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

These have provided benchmarks and basis for development of national level policies, laws and institutions that regulate the mining industry in East Africa. Institutions of government utilise these standards and initiatives to inform processes like licensing, contacting, impact assessments among others that target to ensure safety, protection and conservation of the environment, sustainable extraction among other issues. The concept of free, prior, and informed consent (FPIC) provides that individuals should have the right “to give or withhold their free, prior, and informed consent from actions that affect their lands, territories and natural resource. The Africa Mining Vision has indicative provisions for FPIC. In Uganda, a Human Rights Watch report called on legislators and policymakers in 2014 to include provisions for FPIC within the country’s mining code (Kimenyi and Lewis, 2015). The report covered issues related to how livelihoods and food security are affected by land use activities in the extractives sector (especially mining, oil and gas).

However, despite the existence of these instruments, there is need for strengthening of legal and policy frameworks, to enable sustainable mineral resources development (UNEP, 2019). Countries can benefit from technical progress already documented by the UN through the Framework for Development of Environmental Statistics and System for Environmental-Economic Accounting (UNDP, 2017). There is also need for more capacity development for institutions of government to keep abreast with such standards and to enforce adherence by corporates.¹⁵⁴

Promoting value addition and proffering benefits to local communities

Except for artisanal mining, extractive industries are characteristically capital intensive (with low involvement of labour) unlike other sectors like agriculture, manufacturing and services (ILO, 2015). Nonetheless, there are usually high expectations, of employment, from local populations in communities where there are huge investments in mining (ILO, 2015). At the local level, extractive activities are expected to provide jobs and development, while at the national level there are expectations that revenues (taxes and royalties) will fund development projects that equally should benefit local communities from which mineral extraction happens (UNEP, 2019). However, this is not usually the case. The enclave nature of the sector means that there are few linkages to the local economy and as such, they usually miss out on benefits from their natural resource endowments (Cust, 2017).¹⁵⁵

In this regard, international initiatives have called on mining companies to proffer benefits to local communities, through corporate social responsibility (CSR) activities and greater transparency through joining platforms like EITI. There have also been calls for local content and local participation in extractive value chains through legal mandates that is gaining traction in the East African region (Nwapi, 2016). LCPs seek to ensure that corporations involved in resource extraction give preferential treatment (on issues to do with employment and procurement of goods and services) to local populations in the countries where they operate (Grossman, 1981; Nwapi, 2016; Muhongo, 2020). LCPs seek to ensure more local participation in FDI and that corporations use more local raw materials in their value chains as this would promote technology transfer (Nwapi, 2016; Muhongo, 2020). Some of the most recent jurisdictions around East Africa that have introduced or are working on LCPs include DRC, Tanzania, Uganda and Kenya.¹⁵⁶

¹⁵⁴ https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/Downloads/Sustainability_Schemes_for_Mineral_Resources.pdf?__blob=publicationFile&v=6

¹⁵⁵ <https://blogs.worldbank.org/trade/how-de-enclave-african-resource-sector-more-inclusive-growth-and-development>

¹⁵⁶ <https://www.theeastafrican.co.ke/tea/business/east-africa-pushes-for-local-content-laws-to-secure-community-interests--1407866>

In Tanzania, the Mining Act 2017 (Amending the Mining Act of 2010), supplemented by the Mining (Local Content) Regulations, 2018 (Local Content Regulations) and The Mining (Local Content) (Amendments) Regulations, 2019 (and Amendment Regulations) provide the framework for LCPs.¹⁵⁷ These provide: (i) Regulatory controls on mine ownership by foreigners; (ii) Regulatory Restrictions on foreign procurement; (iii) Negotiated local content requirements in mining agreements; (iv) Local Employment requirements; and (v) Regulatory Sanctions. Kenya is also working on local content policies (LCPs) to ensure that mining industry activities contribute more to local communities through job creation, creation of business opportunities for SMMEs and sharing of revenues with local governments targeted at enhancing local development and more benefit for communities. The Local Content Bill (2018)¹⁵⁸, The Mining Act (2016) and Petroleum Act (2019) seek to address how investors should relate to local communities. Uganda passed a National Local Content Act (2020), Petroleum Regulations (2017) under the 2015 Petroleum Act and has a national content policy drafted in 2017.¹⁵⁹ There is room of the EAC to model a regional initiative for LCPs for East African countries. The Economic Commission for Africa launched the African Mineral Skills Initiative (AMSI) in 2012 that seeks to address skills shortage in African mining.¹⁶⁰

The AMV seeks to promote better management of mineral revenues and increased equity participation by locals. It encourages local beneficiation and economic diversification to increase benefits from their mineral resources by ensuring that local entrepreneurs and other stakeholders participate in all stages of the mineral value chain. It maintains that this has the potential to increase the share of mineral wealth retained locally (AU, 2013). There is ongoing work in the region towards domestication of the AMV; some countries like Kenya and Tanzania have done gap analyses to identify areas through which mining companies can contribute more to local development. In Kenya, a law on sharing of revenues from oil provides for a significant proportion retained by local communities and local (county) government that is perceived to be a good example of how international initiatives encourage progressive policies at national level.

Many of these international frameworks promote and champion investments (by both governments and private sector) in beneficiation and value addition in the natural resource sector to increase contribution local economy. Beneficiation projects can contribute to skills development and job creation. The AMV and APRM provide mechanisms for fostering enactment of appropriate laws and regulations regarding ownership and local participation like encouraging renegotiation of contracts with mining companies to include empowerment clauses (AU, 2013). For instance, Uganda negotiated a Memorandum of Understanding with three oil investors (Tullow, Total and CNOOC), which includes an oil refinery to manufacture petroleum-related products for both domestic consumption and export within the East African region (Hickey et al, 2015). Also, in private sector driven examples, some companies are pursuing partnerships that ensure more benefits are proffered to local communities where mineral resources are extracted. For example, in Tanzania by fostering local food procurement by a coal mining project in Ruvuma province, Tanzania is promoting inclusive growth of small business ventures by local women (ILO, 2015).

157 <https://www.pinsentmasons.com/out-law/analysis/the-emerging-wave-of-local-content-regulations-in-the-african-mining-sector>

158 <http://www.parliament.go.ke/sites/default/files/2018-11/Local%20content%20Bill.pdf>

159 <https://www.future-energy-partners.com/post/striking-a-balance-in-local-content-for-east-africas-oil-pipeline-project>

160 <http://www1.uneca.org/ArticleDetail/tabid/3018/ArticleId/2203/Mineral-Skills-Initiative-to-support-Africas-Mining-Vision.aspx>

Addressing artisanal and small-scale mining.

Artisanal and small-scale mining (ASM) is widespread in many resource rich countries in Africa and constitutes an integral component of economies of such countries (AU, 2013; IGF, 2017; Gavison, 2020). There are well over 20 million people employed directly in the sector across the continent (Fritz et al. 2018). Largely poverty-driven, providing employment to otherwise-jobless people; its activities generate downstream and upstream income-earning opportunities. However, the informal nature of many of the ASM operations often makes it difficult to estimate total global production from the sector or the sector's contribution to national economies and mineral output (AU, 2013; Fritz et al. 2018; Hilson, 2020). ASM policy and regulatory environment in most African countries is generally not adequately supportive in vital areas such as access to appropriate financing mechanisms, provision of geological information and services, technical and marketing support as well as facilities for upgrading the skill levels of the miners (UNEP, 2019; Hilson, 2020). Some scholars have noted that the persistent informality of ASM have made it difficult for many African States to integrate it into mainstream mining and extractives policy and institutional frameworks and as such, countries continue to miss out on its prospects for economic development (Hilson, 2020).

According to a survey by UNEP (2019), most international instruments focus on formal or large-scale mining and as such miss out on enabling ASM despite acknowledging that challenges of the informal sector significantly differ and require different approaches (UNEP, 2019). Nonetheless, there are some instruments that target improvement of the ASM sector though they appear focused on developing conflict-free supply chains (Hilson & Maconachie, 2017). For instance, the AMV seeks to ensure a viable ASM sector contributing to local and national development with strengthened skills and capacities of operators; and reduced negative impacts (environmental, health and welfare (AU, 2011; UNECA, 2018; Hilson, 2020). It calls on governments to prioritise boosting ASM. The APRM, with its section on Corporate Governance also fosters participation of local SMMEs to avoid leakages of knowledge and foster development of local clusters (Hilson & Maconachie, 2017; Hilson, 2020). Also, international development agencies like the World Bank, have pursued technical support projects targeting mineral resource rich countries aimed formalising ASM more (Hilson, 2020).



CHALLENGES & OPPORTUNITIES FOR MINERAL RESOURCE GOVERNANCE IN EAC

Introduction

As already covered in sections 3, 4 and 5, over the past two decades, the mineral resource sector (and broadly extractives) has seen a surge in operationalisation of international instruments, enactment of laws and implementation of policies (at national levels) that have aimed at improving governance of the sector. Whilst, these efforts have considerably contributed to improvements in governance within the sector, there is still a lot more than can be done to transform governance in the sector to ensure it remains sustainable and proffers maximum economic benefit to the region. This section delves into outstanding gaps and challenges that still need to be addressed and opportunities that stakeholder across the EAC (in government, private sector, civil society among others) can explore and pursue to enhance mineral resource governance in the region.

Gaps in Mineral Resource Governance in EAC

Although there have been multiple initiatives and instruments aimed at fostering better governance in the extractives sector (including in mining), there are still reports of IFFs, leakages and pilferage of natural resources in SSA. This begs the question of the extent to which these national, regional and global mechanisms for resource governance have been effective, legitimate and credible. Some of the challenges limiting progress are reflected in existing literature include:

- **Proliferation of standards and lack of adequate harmonisation, coordination and compliance with existing instruments:** It is notable that since the 2nd commodity boom, there have been more than 80 international instruments and a plethora of national and regional policy frameworks set up to address governance issues in the extractives sector. The multiplicity and proliferation of these instruments have continued without sufficient harmonisation, adequate evaluation of their efficacy and sometimes also their implications for national contexts. This is compounded by inadequate linkages between international instruments/initiatives and national policies. In many countries, these instruments are standalone and parallel structures, which are not sufficiently embedded in national policy and decision-making processes (ECDPM, 2013). Institutional cooperation remains a challenge given the existence of various of laws and institutions that govern natural resources that are unfortunately not coordinated.

- The multiplicity of laws governing the management of natural resources (both international and national policies) unintentionally ends up creating loop holes that can be exploited to corrupt the process of transparency and accountability in the sector. Additionally, overlapping mandates by different ministries, creates an unfriendly environment for investors (DFID, 2018). Lack of coordination in the governance landscape has resulted in inconclusive decisions been made that are not entirely binding. There is need to address the duplicity, complementarity and efficacy of existing policy instruments in the sector to enhance effectiveness. Harmonisation of laws and institutions is therefore essential in enhancing resource governance.
- **Inadequate institutional capacity:** Being a highly technical field, well-structured and capacitated institutions are essential in enhancing the efficiency and effectiveness of resource governance. Weak institutions characterised by inadequate human capacity and poor structures have created implementation gaps between what the law says and how resource governance works in practice. Investing in the institutional set ups is crucial in closing existing governance gaps.
- **Challenges with inclusion and stakeholder engagement:** Effective engagement of stakeholders is central to successful stewardship of mineral resources. However there appears to be outstanding gaps in terms of ensuring all important stakeholders in the sector are meaningfully engaged. For instance, with the AMV being state-centric in its nature and EAC member states being largely political, decision making is dominated by central level actors. Consequently, policies and objectives are developed with a top-down approach leaving out key stakeholders in the mining sector. Also, governments are still reluctant to institutionalise public participation in the policy process (Luoga, 2016). The exclusion of non-state actors such as civil society organisations and local communities from the decision-making process has created a participation gap. Stakeholder engagement in the sector is largely undermined by: unwillingness of governments to accept scrutiny, duplication and mixed priorities of international development partners and CSOs, and selective engagement by corporates. Inclusive decision making needs to be embraced to allow for a system of checks and accountability and as Luoga (2016) argues an informed public is a quintessential to effective democratic governance over natural resources.
- **Competition for legitimacy:** The existence of a plethora of players in the sector ranging from government to mining companies, civil society and citizens leads to competition over who controls what. This is furthered by decentralization of mineral resource governance (Bugembe, 2016). Elite interests of government, private sector and donors tend to clash with those of local elders, CSOs and communities. Sufficient transfer of powers that ensures an efficient co-management system that encompasses all actors is pertinent for better resource governance.
- **Opacity in the sector:** Individual governments within the EAC continue to negotiate contracts shrouded in secrecy and without adequate public participation (even at the level of oversight authorities like Parliaments). This predisposes them to unfair exploitative investment arrangements in the extractives sector (particularly in mining, oil and gas) that limit benefits accrued to citizens. Even with the existence of a robust legal framework, accessing information on the dealings in the sector remains a challenge. Governments are reluctant and unwilling to disclose information inhibiting good governance in the management of mineral resources. Lack of transparency is also evident in the licensing processes and declaration of ownership. This impedes effective resource governance as transparency ensures accountability.

- **Uneven focus of governance instruments:** The mining sector constitutes a broad range of issues from environmental impact to revenue generation, IFFs, livelihoods and rights of communities among others. Currently there is an uneven focus of instruments relative to the broad range of issues confronting that the extractive sector as a whole need to address. Also, there is undue focus on revenue transparency with some key initiatives like EITI focusing exclusively on revenue flows (taxes, royalties, and other fees) and paying little attention to expenditures (Frynas 2010). In terms of sustainability, a lot more emphasis appears to be put on governance of the exploration and extraction processes with less focus on issues like mine closure and site rehabilitation. This unbalanced attention creates weaknesses within policies and institutions. A holistic framework is thus ideal for efficient and effective governance.
- **Power relations:** As one of the major aspects of international politics, mineral resources are susceptible to global power relations as they tend to attract deep and extensive interests from multiple actors. (Tana Forum, 2016). MNCs, multilateral institutions, emerging market economies like China, super powers and social movements among others continue to influence and shape the sector thus impacting governance of resources. As a result, in some instances states do not have much leverage, in reality, over the governance and management of their mineral resources.
- **Prioritization:** GDP of countries in the EAC has long not been dependent on mining. Their economies still rely heavily on agriculture with minerals contributing less than 10% to GDP. This has meant that the mining sector has not received due attention thus has been characterised by weak institutions and outdated/irrelevant policies that do not effectively address governance issues in the sector. Reviews and amendments will help create desirable legal and policy frameworks that address and existing weaknesses.

Opportunities for improving Mineral Resource Governance in EAC

With regard to these challenges and opportunities, it is evident that to improve natural resource governance, key issues to be addresses cut across all spectrums from policy engagement, technical issues, understanding of power dynamic to social issues. We highlight, in this subsection, some of the opportunities that stakeholder across the EAC (in government, private sector, civil society among others) can explore and pursue to enhance mineral resource governance in the region.

- **Resource revenue:** Recent oil and natural gas discoveries in Uganda (2006), Tanzania (2011) and Kenya (2012) have the potential to bring a great deal of new revenue to the region. This expected revenue is seen as potentially transformative for economic and social development (Kimenyi, 2016). As a result, the mining sector is increasingly assuming a significant role in the economies of EAC member states presenting an opportunity to establish institutions and enact laws that foster democratic mineral resource governance. In Kenya, for example, the excitement of oil discoveries prompted government to create The Ministry of Mining and Petroleum, which did not initially exist and go into a flurry of legislative activities. However, it is prudent that effective policies and strong institutions are created to ensure maximum benefits are obtained from resource rents. Kimenyi (2016), argues that the potential contribution of these resources to development calls for the need of proper fiscal management, well-balanced prioritization, engagement of relevant stakeholder and transparency to create an environment for the effective use of the revenues from mineral resources.

- **A proactive civil society:** The civic space in the East African region is increasingly widening, equally citizens are demanding greater social and economic benefits from natural resources, including mining proceeds. This new vested interest in the sector by non–state actors present an opportunity for adopting a multi-actor and multi-level approach that fosters public participation and oversight in the governance of mineral resources. Respective governments are gradually being pushed to exert control of resource rents for national benefit.
- **A paradigm shift:** Over the years, mineral resources have and continue to constitute a major source of violent conflict in Africa, threatening the democratisation process in some states (Tana Forum, 2016). There lies an opportunity to use the mining sector as a key leverage for transformative development by changing the narrative through improvements in the natural resources value chain that does not leave citizens disenfranchised from the process. Appropriate governance, at global level, is critical for mitigating adverse impacts of resource extraction and for enhancing its positive social, economic and environmental outcomes (UNEP, 2019).
- **Policy coherence:** The context of EAC demonstrates limited variations in national realities and experiences. This presents a unique opportunity for aligning policies at national level to reflect the goals envisioned in the EMV and the overarching AMV framework. Thus far, EAC member states have made substantive progress in the area of custom union and enhancement of trade through tax harmonization and removal of non-tariff barriers.¹⁶¹ Similar collaborative efforts can be extended towards harmonization of policy regimes to reflect the goals envisioned in the EMV and AMV.
- **Building on local knowledge:** There is evidence of over-reliance on outsider driven ideas and body of knowledge that threatens effective adaptation and application of local content in policy and institutions for governance of the extractives sector in the EAC region (Bugembe, 2016). East Africa is characterised by community-based resource management systems such as pastoralists who have over the years been the actual custodians of mineral resources. The role played by local communities is thus crucial in mineral resource governance. Understanding their power and building their capacities not only ensures inclusive decision making but also increases opportunities for them to share in the benefits. Notably, in Kenya, there have been substantial efforts to devolve authority of mineral resources to local levels. In Tanzania, more than 3.6 million hectares of forests and woodlands are now managed as Village Land Forest Reserves, entirely under the control of locally elected village governments.¹⁶² Therefore, the opportunity lies in consciously and meaningfully engaging local leaders and communities that possess some form of control over mineral resources.
- **Value addition:** An opportunity for growth in the sector lies in promoting value addition of minerals by exploring markets for intermediate and finished mineral products, improving people’s lives and livelihoods and to strengthening domestic supply chains.¹⁶³ EAC member states have over the years been primary mineral producers optimizing their resource revenue from corporate taxes and royalties. With innovative tax regimes and regulatory frameworks governing the sector, mineral resources can lead to diversified economies through FDI (with good management) if local capital is insufficient.

161 <https://meac.go.ke/eac-achievements/>

162 https://www.iucn.org/sites/dev/files/content/documents/africa_5.pdf

163 <https://uongozi.ortz/wp-content/uploads/2018/11/Enhancing-Value-Addition-in-the-Extractive-Sector-Africa.pdf>

Recommendations for Sustainable Mineral Resource Governance in EAC

The exploration of the exploration of the policy, institutional and contextual landscape of mineral resource governance landscape in EAC in the foregoing sections has highlighted gaps and challenges that continue to limit the realization of a robust mineral resource sector in the region. It has also noted and highlighted opportunities that various stakeholders can explore to intervene. Moving forward, the study draws the recommendations/avenues for change that can be pursued. These include:

- **Fast track domestication of Africa Mining Vision, review and harmonisation of international instruments:** Initiate multi-stakeholder forums to pursue harmonisation of international instruments and to increase knowledge of these instruments by national public sector players and strengthen linkages between them and national policy and institutional contexts in EAC partner states. Further, promote review of international/regional instruments and national policies to move away from narrow focus on revenue transparency and expand and cover the broad range of issues from environmental impact to revenue generation, IFFs, livelihoods and rights of communities among others.
- **Promote regional cooperation in extractives governance; pursue coherent regional legal and policy frameworks for trade and investment:** Nationalism and discordance between existing policies among states in East Africa region continue to expose individual states to volatility of commodity prices and external shocks. Coherence in legal and policy framework would be useful in strengthening regional integration, fostering healthy competition and strengthen linkages between the mineral resource sector and regional economic development. It will also catalyse departure from competition for FDIs to sustaining a cooperative relationship among states.
- **Promote inclusivity in governance of the sector; promote ownership and increased buy-in from policymakers, and opening up of policy space to non-state actors:** Broker more multi-stakeholder engagements to promote inclusion and meaningful participation of non-state actors like CSOs and local communities in sector related decision-making processes. This should aim to increase willingness of governments to accept scrutiny, reduce duplication and mixed priorities of international development partners and CSOs, and discourage selective engagement by corporates. This will be useful in fast-tracking the mineral resource governance reforms, strengthen linkages between the extractive sector and other economic sectors and address other enduring challenges that have characterized the sector. Inclusive decision-making will also be useful for fostering transparency and accountability in the sector.
- **Enhance frameworks for transparency and openness:** This will be useful in ensuring citizens and regional member states draw optimal economic benefit from mineral extraction. There is need for additional efforts towards compliance with objectives envisioned under international instruments and initiatives such as Public What You Pay, Dodd-Frank Act, OECD Due Diligence for Supply Chain Management of Minerals for Conflict Affected and High-Risk Areas. This can be actualised through implementation of laws and policies around access to information that are already gaining traction in several countries in the region. It can also be achieved through strengthening of role of oversight authorities like legislatures to exert more scrutiny in contracting, licensing and regulation. Some practical steps can include integrating mining in discourse on domestic resource mobilisation and reflecting proceeds from mining, oil and gas in relevant budget and planning frameworks (like PRSPs, MLTSFs, and Visions 2030). This will enhance prioritisation of the sector and aid channelling more resources towards improving contribution of the sector in fiscal targets of regional member states.

- **Enhance institutional capacity on mineral resource governance:** Capacity strengthening targeting institutions overseeing the sector is critical for improving administration frameworks and better negotiation of mining contracts for increased benefits to the citizens of regional member states. This can include benchmarking with institutions in the developed world and with other countries in Southern and West Africa that have experienced institutional capacity for example targeting revenue authorities (on such issues as Transfer Pricing, DTAs), regulatory institutions (on such issues as negotiations and contracting, impact assessments), parliament and decentralised government units.
- **Promote local content participation in the industry:** Pursue progressive policy that promote more beneficiation, value addition and local content participation in the sector. Most mining frameworks are largely designed to attract foreign investment. Consequently, most operations in the industry are foreign-owned. This translates to a significant proportion of revenues from the sector benefiting foreign entities than locals. As such, there is need for establishment of policies and frameworks that promote participation of local entities in the industry. This can be through innovative local content policies (LCPs), progressive tax regimes and effective regulatory frameworks.
- **Strengthen policy frameworks governing Artisanal and Small-Scale Mining (ASM):** Artisanal and small-scale mining forms an integral part of the extractive sector and, consequently, the economy in East Africa. However, these operations remain largely informal. Further, the policy and regulatory environment provide limited support to artisanal and small-scale miners as more attention is often given to large-scale mining and exporting (UNEP, 2020). Review regulatory environment to promote growth of the sector, enhance skills and capacity development.
- **Pursue alliances and solidarity with other states globally:** Given Africa's structural and socio-cultural transformation is a shared responsibility, cultivating alliances and partnerships with other states and nations is critical for the transformation of mineral resource governance in the continent. Also, capitalise on improving civic space in the region to build movement of CSOs advocating for improved mineral resource governance, working both regionally (targeting EAC institutions) and nationally (targeting national governments and subnational institutions).
- **Multi-stakeholder engagement:** Initiate multi-stakeholder forums to pursue harmonisation of international instruments and to increase knowledge of these instruments by national public sector players and strengthen linkages between them and national policy and institutional contexts in EAC partner states.
- **Build on local knowledge to effective adaptation and application of local content in policy and institutions for governance of the extractives sector in the EAC region:** Consciously and meaningfully engage local leaders and communities with contextual and traditional knowledge and control over mineral resources.

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